

THE LAW OF WAR VADEMECUM

An introduction to the basic rules of International
Humanitarian Law for the Armed Forces



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("The Knights Templar")

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FOREWORD

International humanitarian law was designed, in the aftermath of conflicts that caused unspeakable suffering, to protect the most vulnerable: the civilians, the wounded, the sick, the shipwrecked. It is simply based on common human decency, and forbids inhumane treatment and attacks against defenseless and disabled people, or against people engaged in relief operations in war zones. Unfortunately, neither military nor civilian institutions provide adequate education about this highly commendable part of international law. It is still poorly understood by, and not sufficiently taught to, the troops, even in Western countries (*). As a consequence, fighters regularly violate basic humanitarian law—more often out of ignorance rather than malice—or do not react appropriately as they witness a war crime perpetrated by another belligerent. While flagrant violations may be easily spotted, international peacekeeping soldiers are not sufficiently aware of humanitarian law to identify more subtle violations on the terrain, and they are not competent to advise and instruct rival factions under their control. A crucial problem is also the widespread and blind “following of orders” in contradiction to the Geneva Conventions: a persistent problem among less informed troops of countries that are currently experiencing armed conflict. The concepts of decency and ultimate accountability, which may effectively counterbalance some of the brutal animosity that leads regularly to the kind of war crimes which we witness daily in the news, are not understood properly—let alone appreciated. The conventions stipulating international humanitarian law give clear instructions on what to do, and what not to do in a conflict situation. However, there is an eminent lack of appropriate didactic material, which is rarely available from Armed Forces or from organizations other than the International Committee of the Red Cross (ICRC). As an organization with considerable military and governmental ramifications, OSMTH wishes to fill this gap by publishing the present “Humanitarian Catechism”. Here, the basics of humanitarian law are presented in a down-to-earth manner and supported by concrete examples that form the basis of self-assessment exercises for each and every soldier, starting with the new recruit. In so doing, we hope to contribute to the

dissemination of knowledge about international humanitarian law—and ultimately, to the building of a world in which justice and decency will prevail.

Non Nobis Domine, Non Nobis, Sed Nomini Tuo Da Gloriam.

ADM (Ret. US NAVY) James J. Carey

Grand Commander, OSMTH (*)

(*) Quote: *“Among those to receive instruction, priority should be given to the armed forces set up and trained for combat, whose members must therefore know their obligations, under the law of armed conflicts, to cause the least possible loss of life and material damage. Compared to the combat duties to be discharged by the armed forces, by their units and even by each man, the law of armed conflicts will always seem to them to be of minor importance. It is essential to seek the best means to render the instruction effective. Thus the problem of methods automatically attends the problem of priorities. The two are extremely important to ensure respect for the law of armed conflicts in all circumstances, chiefly in actual combat, and not only during exercises. (...) The teaching of military personnel should not start from scratch, it should be able to count on at least an elementary set of moral principles based on the respect of the human person which the soldiers will have acquired at school while still in civilian life prior to their recruitment.”* (F. De Mulinen, International Review of the Red Cross, no.202, pp.20-45).

I. SCOPE, APPLICABILITY AND SANCTIONS

International Humanitarian Law is designed to limit the suffering in a situation of war. The underlying principle is that States may attempt to weaken the military capacity of the enemy, but may not wipe out the entire enemy nation or cause undue suffering to defenseless or disabled people.

What does international humanitarian law (IHL) guarantee?

- IHL protects military personnel who are not (or are no longer) taking part in combat (such as the wounded, the sick, medical and religious personnel, prisoners of war), and persons not actively involved in hostility (in particular civilians). These protected people shall in all circumstances be treated humanely and without discrimination.
- IHL also defines rights and duties of Parties engaging in hostilities, rules their conduct in combat and limits the means and extent of harm that they may impose on the enemy.
- For all issues not covered explicitly by the established articles of humanitarian law, “combatants and civilians remain under the protection and authority of international law derived from established custom, from the principles of humanity and from the dictates of public conscience”(F. Martens, 1899).

When is it valid?

- Declared war, including civil wars, even when one of the sides does not recognize the state of war.
- Wars against colonial domination or alien occupation.
- Wars against racist regimes.

For how long?

- International humanitarian law is valid until cessation of conflict or occupation. People whose repatriation or release must take place after the formal end of hostilities are still subject to humanitarian law even if the state of hostility is formally ended.

Who is subject to humanitarian law?

- All people involved in a conflict. Civilians are protected, but are also obliged to respect the wounded, sick, shipwrecked, and medical or religious personnel and equipment belonging to the enemy side. All military forces that are involved in a conflict, including peacekeeping and peace-enforcement troops, are subject to the rights and obligations dictated by humanitarian law. Military forces are defined as the officially recognized troops of a Party, or militias that have been organized spontaneously by civilians with en masse involvement.

Who enforces humanitarian law?

- The right of protection under humanitarian law may not be renounced, either in part or totally. The enforcement of

humanitarian law is ideally guaranteed by a Protecting Power, and monitored by the Red Cross or another impartial organization.

What are the sanctions for breaches?

- International humanitarian law requires the States to investigate and punish any person who has committed an act prohibited by humanitarian law, regardless of the nationality of the perpetrator or the place where the crime was perpetrated. Minor breaches of humanitarian law are the object of administrative sanctions by the Armed Forces that have power over the perpetrator. Grave breaches—such as violence and murder, taking of hostages, torture, summary executions, attacks on civilians, deportations, illegal detention of prisoners etc. (“war crimes”) -- will be prosecuted severely. Governments are obliged to enforce legislation to this effect. Failing that, the international community has the right to request extradition of the perpetrator.
- Officers of the Armed Forces have the duty to monitor the standards of compliance of humanitarian law by the troops that they command, and to repress and denounce offences. They may be held partly or totally responsible for grave breaches perpetrated by soldiers under their responsibility.
- A soldier is not obliged to obey an order that involves a grave breach of humanitarian law, and may be held liable if he obeys the order.

II. PROTECTION OF CIVILIANS

Civilians of an occupied territory or of a zone of conflict are protected persons. Special provisions regulate the case of refugees.

It is forbidden to:

- Attack civilians and civilian property.
- Commit acts of violence on civilians, whether committed in offence or defense. Acts of violence include but are not limited to: murder, physical or mental torture, collective punishments, mutilation, taking of hostages, particularly degrading treatment, or the threat of any of the foregoing acts.
- Launch attacks indiscriminately at military and civilian objectives.
- Use civilians (individuals or population) to shield, favor or impede military operations
- Starving enemy civilian population.
- Pillage.
- Destroy the environment to such extent as to cause long term, severe damage.
- Attack objects of military interest, such as dam, dikes, power station etc., the destruction of which may cause severe losses among the civilian population. This protection is lifted only in the case that these objects are used by the enemy for the regular, significant and direct support of military operations and only if the attack is the only feasible means of stopping such practices.

- Deport or forcibly transfer individuals or groups, including sending refugees into zones or countries where their lives and health would be at risk.
- Allow children under 15 to engage in military operations.
- Carry out a death sentence on individuals less than 18 years old, on pregnant women, on mothers of dependent infants, and on anyone before six months have elapsed from the time that notice of the sentence has been given to the Power protecting the accused.

It is mandatory to:

- Facilitate agreed humanitarian aid operations to civilian populations, including the operations of civil defense organizations.
- Respect and protect the personnel taking part in such relief operations.
- Protect and care for children. This includes facilitating the continuation of education and religious practices.
- Facilitate family reunions and contacts wherever and whenever possible, and encourage the work of humanitarian organizations engaged in this task.
- Keep children separated from adults other than their family, in case of arrest.
- Protect and respect women.
- When considering judicial cases relating to the armed conflict, to grant priority to pregnant women and mothers of dependent infants.

- Maintain a fair judicial system, including maintaining the independence of magistrates
- Maintain fair living conditions for the population, including hygiene, access to education for children and religious practices, availability of reasonably priced food.
- Respect cultural monuments and symbols, in particular places of worship.
- Respect safety, neutralized, non-defended and demilitarized zones.

Internees: Individuals or groups may be assigned to a determined residence or internment only for imperative reasons concerning safety. Internment may never be used as punishment. An interned person cannot be forced to work, and even if he/she accepts work, only within the territory and according to labor laws in force. Internees must be released as soon as the reason for the internment has ceased to exist.

III. PROTECTION OF PRISONERS OF WAR (POW)

Upon capture by the enemy Power, some people may be considered Prisoners of War and may be confined as such.

The Status of POW means that the prisoners:

- Are subject to military law rather than the civil judicial system guaranteed to civilians.
- Are subject to the enemy Power as a whole, not to the unit or individuals that captured them.

The following people are entitled to the Status and treatment of POW:

- Any member of the regular armed forces.
- Any member of a provisional army, when this is organized spontaneously and en masse.
- Persons authorized to follow the armed forces without being part of them.
- Crews of the adversary's merchant marine and civil aviation.
- Members of armed forces serving in civilian defense agencies.

The following people are entitled to the treatment, but not the Status, of POW:

- Non-active members of the military forces of an occupied territory.
- Military internees in a neutral country.
- Non-combatant medical and religious personnel of the armed forces.

The following people are not entitled to the Status of POW:

- Spies and mercenaries.
- Civilians may never be captured and subjected to military confinement or military law.

When treated as POW, prisoners:

- Are entitled to respect for their person and honor.
- Retain full civil capacity, including that of marrying per proxy.
- Are obliged to provide to the enemy name, rank, date of birth and army, regiment, personal or serial number or equivalent information, but this information can not be obtained by coercion.
- Are obliged to obey military law and rules.
- If released on parole, are bound to military code of honor.

- Are confined in a safe place, affording hygiene and wholesomeness, and at no time may be sent to or detained in a combat zone.
- May never be used as a human shield.
- May not be physically or mentally tortured.
- May be obliged to work.

IV. BEHAVIOR IN COMBAT OR WITH ONGOING HOSTILITIES

Even in a combat situation and during a bitter war, it is mandatory to abide by a code of honor.

Honesty and fairness towards the enemy, and compassion for the wounded and the sick, are mandatory.

It is forbidden to:

- Kill, injure or capture an enemy using perfidy (*).
- Declare or threaten that no quarter will be given.
- Conduct war in such a way that there will be no survivors.
- Attack an enemy who is hors de combat.
- Attack an enemy who has surrendered or shows his intention to surrender
- Attack an enemy who has parachuted from an aircraft in distress.
- Attack the wounded, the sick and the shipwrecked.
- Requisition civilian medical units, equipment, material or personnel in occupied territories so long as these are required for the treatment of the civilian population or for the completion of treatment of the wounded and sick militaries.

It is mandatory to:

- Respect and protect medical and religious personnel which belong to any of the parties to the conflict, or which are recognized and authorized by any of the parties to the conflict, or which are placed at the disposal of any party to the conflict by a neutral state or by an impartial humanitarian organization. Respect and protect their establishments, means of transports and equipment, The emblems of the red cross or the red crescent must be respected.
- Search for the wounded and the sick, collect them and care for them, even if they are of the enemy side.
- Where applicable, allow, enable and protect civilians and relief organizations—even in invaded and occupied territories—to search and care for wounded, sick and shipwrecked people. It is forbidden to harass, prosecute, convict or otherwise impede them during these operations.
- Organize, as far as possible, a system of reporting of the wounded, sick and shipwrecked, including those of the enemy side that are in your power. Their families have a right to know their fate.
- In case of death, all possible steps must be taken to confirm identity of the fallen (including the enemy) before proceeding to cremation or burial. These should be carried out individually if at all possible, with the scope of writing a report, which shall be addressed to the Information Bureau provided for by the convention, in particular the Central Tracing agency of the International Committee of the Red Cross.

Reprisals: Reprisals are violations of the law carried out in response to another violation by the enemy. Reprisals should be avoided, as a violation remains a violation, but technically are not forbidden in combat. However, they are strictly forbidden against Protected people, such as civilians, the sick, wounded or medical and religious personnel.

(*) Note: It is forbidden to use tactics that lead the enemy to believe that he is entitled to protection or that he is obliged to grant protection under international humanitarian law, and then to attack him by surprise and betraying his trust. For instance, it is forbidden to display recognized emblems such as a white flag or the Red Cross with the intent of tricking the enemy. Wearing of insignia of States not parties to the conflict is strictly forbidden. Wearing of the insignia of the enemy during attacks or in order to impede or favor military operations is forbidden.

(**) Note: The civilian population is equally obliged to care for and respect the wounded, sick and shipwrecked, even if they belong to the enemy side, and may not perpetrate any act of violence on them.

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Historical documents: The full text of all treaties, documents, conventions and protocols, including commentaries and list of signatory states, is available online from the International Committee of the Red Cross, <http://www.icrc.org/ihl>.

ANNEX 1: SELF ASSESSMENT EXERCISES

- [1] A military unit launches an air strike from 10,000 feet on an enemy military base located half a mile from a village. Is this allowed?
- [2] A military unit launches an attack with heavy artillery on enemy units based in a small village. Is this allowed?
- [3] A military unit engages in man-to-man combat with a substantial enemy unit that holds a village in a strategic location. In the operation, three civilians are accidentally killed. Is this a breach of humanitarian law?
- [4] A military unit launches an operation against a small enemy unit that holds a village located in a strategic position. Twenty civilians accidentally lose their lives in the operation. Is this a breach of humanitarian law?
- [5] Your unit launches an attack against a power an ammunition factory that is the main provider of weapons to the enemy. Although this is a military compound, fifty forced laborers held on the premises lose their life. Did you break humanitarian law?
- [6] Nazi Germans operated a policy of scorched earth when pulling out of Russia, destroying all property, crops and livestock behind them. Is this allowed under humanitarian law?
- [7] In order to prevent the enemy from advancing towards the capital town, your government and its military leaders decide to flood the fields that lie between enemy lines and the capital, thus destroying all crops for that year and causing suffering to its own population. Is this allowed?

- [8] How do you identify a Protecting Power?
- [9] The enemy party has retired, leaving behind only a few wounded people in the care of military medical personnel. What can you do with these people? Can you requisition their medical supplies?
- [10] In a hypothetical war with Israel, your unit requisitions medical supplies from the Red Star of David Society in a strip of southern Israel that you have occupied. Is this allowed?
- [11] A soldier is caught behind enemy lines. In order to cross them and rejoin his unit, he sneaks in at night, steals the uniform of a military chaplain and safely crosses the lines. Is that against the Law of War?
- [12] Your unit commander has given you an order that constitute a grave breach of international humanitarian law. What do you do?

ANNEX 2: ANSWERS TO THE EXERCISES

- [1] No. Launching an air strike from this altitude means that aiming precision cannot be guaranteed. The likelihood of hitting the village is too great. The attack may constitute an indiscriminate attack against military and civilian targets.
- [2] No. There are no means to discriminate between militaries and civilians.
- [3] No. The action is directed directly against enemy soldiers, which can be easily distinguished from civilians. It is not an indiscriminate attack on militaries and civilians. Collateral damages must be regretted and all measures must be taken to keep them to a minimum, but they do not constitute a breach of humanitarian law.
- [4] Until proof of the contrary, yes. Twenty civilians in a small village cannot be considered mere "collateral damage" in relation to the small size of the enemy unit. However, the question of whether the strategic location was essential to the enemy's continued and substantial action against your units should be considered.
- [5] No. Firstly, you had no knowledge of the presence of forced laborers. The enemy is breaking IHL two-fold: by forcing civilians to work for them in a military compound, and by using them as potential human shields. This is not your fault. Moreover, loss of civilian life is tolerated if the military action is directed against a target that is used regularly and substantially to support enemy tactics.
- [6] Absolutely not. It is strictly forbidden to destroy the environment to such extent as to impose extreme hardship on the enemy civilian population.

- [7] Although such a decision must and will be pondered carefully, a government has the right to impose hardship on its own citizens if the strategic goal is essential. Such a decision is not a breach of humanitarian law.
- [8] Protecting power are normally supranational military organization recognized internationally, such as the UN peacekeeping troops. Alternatively, they can be a non-military peace organization, such as the Red Cross or the Red Crescent societies. All of these Protecting Powers are identified with their characteristic, unmistakable insignia, which must be respected at all times. More recently, other military organizations like NATO have assumed the role of Protecting Powers. As long as their mandate is recognized by the international community, their insignia must be respected as well.
- [9] The medical personnel as well as the wounded soldiers are clearly protected by international humanitarian law. Since they are in your power, they should be treated and/or classified as Prisoners of War. It is your duty to take care of them and ensure their well-being. If the medical supplies are necessary to ensure the health of the wounded, you may not requisition them. It is technically allowed, though, to transfer this personnel in a POW camp. If they have access to equivalent standard of care and they no longer need their original equipment, you can requisition it.

- [10] The Red Star of David is not recognized internationally as a neutral, non-military peace organization. It is not part of the federation of Red Cross and Red Crescent societies. It is neither part of the Israeli Army, though. Therefore, requisitioning material from them technically falls under requisition of equipment from a civilian source. Technically, it is not a breach of international humanitarian law. However, given the humanitarian efforts of the Red Star society, this act is highly questionable and cannot be justified ethically. Moreover, if the Red Star is actively treating wounded soldiers, you will be held liable if healthcare equivalent or superior to that of the Red Star is not granted to them.
- [11] Stealing a uniform and impersonating a military chaplain may be considered unethical and questioned by the soldier's own military authorities. However, in a desperate situation, the end justifies the means. Since the act is not committed with the intent to trick the enemy into a lethal trap and attack him, but only to ensure one's safety, the act does not constitute a breach of the Law of War.
- [12] If at all possible, ensure that the order is said or repeated in the presence of witnesses. Report immediately to, or contact, the nearest Officer of rank higher than your unit commander. The high-ranking Officer must not necessarily belong to your own Unit or Division.

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