

Protection of Civilians and LOAC



Scope

- Sources of LOAC
- ADF Legal Advisers: Context, Key Concepts and Rationale
- What is LOAC?
- Basic principles of LOAC



International Humanitarian Law

- IHL is commonly known as LOAC
- Primary sources of international law include:
 - Treaty law
 - Customary international law
- Australia's IHL obligations are contained in the international law applicable to Australia.



Sources of IHL/LOAC

- Treaties, including:
 - Geneva Conventions of 1949
 - Additional Protocol I of 1977 to Geneva conventions of 1949
 - Conventions in relation to particular use of weapons e.g. Chemical Weapons Convention 1993
- Customary International Law
- Expert Manuals and Political Declarations
- Australian Domestic Law

Why IHL/LOAC legal advisers?

- Because IHL creates restrictions, obligations, opportunities and risks that must be managed by military commanders → they need legal advisers to help them navigate this complex area of law

‘Much of what commanders do involves the management and balancing of risk. One such risk is legal risk. This goes further than considerations of individual responsibility for violations of law. Failing to comply with law—or even the perception that the law has not been followed—can undermine the success of operations’.

Air Marshal Geoff Brown, AM
Air Component Commander
Operations BASTILLE and FALCONER (2003)

Additional Protocol 1: Article 82

- Legal advisers in armed forces

*'The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, **shall ensure that legal advisers are available**, when necessary, to **advise military commanders** at the appropriate level on the **application of the Conventions and this Protocol** and on the **appropriate instruction** to be given to the armed forces on this subject'.*

- Two elements:

1. *Advice on application of LOAC during armed conflict*
2. *Training military personnel on LOAC before & during armed conflict.*

What is LOAC?

- LOAC is the law that regulates conduct between States and individuals during armed conflict
- LOAC outlines:
 - The protection of combatants and non-combatants from unnecessary suffering during armed conflict.
 - Limiting destructive effects of conflict
 - Avoid prolonging conflict and facilitation of the restoration of peace.





AUSTRALIAN
DEFENCE FORCE

When does LOAC apply?

- LOAC applies during:
 - International armed conflict
 - Non-international (internal) armed conflict
 - Occupation



Basic principles of LOAC

- LOAC contains the following principles:
 - Military necessity
 - Humanity
 - Prohibition of superfluous injury or unnecessary suffering
 - Distinction
 - Proportionality



Military Necessity



Military Necessity

- During armed conflict, States are permitted to engage directly in hostilities to secure the complete or partial submission of the enemy as soon as operationally possible.
- However, the right of parties to choose means and methods of warfare are not unlimited.



Humanity

- The principle of humanity is central to, and permeates all of IHL. It recognises that despite the lethal and destructive nature of armed conflict, humans retain their inherent worth and dignity.
- It reinforces the principle of military necessity by requiring that once a military purpose has been achieved, the infliction of further harm is unnecessary and therefore unlawful

Prohibition of superfluous injury or unnecessary suffering

- States do not have an unlimited choice in choosing the means and methods of warfare.
- It is prohibited to employ methods and means of warfare which cause superfluous injury or unnecessary suffering
- Means and methods of warfare which cannot comply with the principle of distinction are also prohibited.

Distinction



Distinction

- States must distinguish between military objectives and civilians/protected persons and objects
- Military operations are only to be directed against military objectives
- Indiscriminate attacks and indiscriminate means and methods of warfare are prohibited

Distinction

- *“... Parties shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives...”* (Art 48, AP I)
- When assessing a target, military personnel have an obligation to do everything feasible to verify that the objectives to be attacked are lawful targets - Art 57(2)(a)(i) API

Distinction – Persons

- *The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.’ AP I Art 51(2)*
- The following cannot be targeted in armed conflict
 - Civilians
 - Medical and religious personnel of armed forces
 - Combatants who are *hors de combat* – combatants that are ‘out of combat’
 - Prisoners of war (POW)
 - Civil defence personnel (including members of armed forces)

Distinction – Persons

- Protected Emblems
 - Medical and religious personnel should wear the emblem of the Red Cross, Red Crescent or Red Crystal as evidence of their protected status.
 - However, the absence of their protective emblem does not affect their protected status.



Distinction - Objects

- What objects are legitimate military objectives?
 - The objects by their nature, location, purpose or use make effective contribution to military action **and**
 - Their complete or partial destruction, capture or neutralisation in the circumstances ruling at the time offers a definite military advantage

Proportionality



Proportionality

- An attack “*which may be expected to cause **incidental loss** of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be **excessive** in relation to the concrete and **direct military advantage anticipated**”* is an indiscriminate attack, and therefore prohibited (Art 51(5)(b), AP I)



Proportionality – Precautions in attack

- *‘In the conduct of military operations, constant care shall be taken to spare the civilian population’ (Art 57(1), AP I)*
 - Art 58 – Precautions against the effects of attacks
 - *‘The Parties to the conflict shall...endeavour to remove the civilian population individual civilians and civilian objects under their control from the vicinity of military objectives;’ – (Art 58(a), AP I)*
 - *‘Avoid locating military objectives within or near densely populated areas’ – (Art 58(b), AP I)*
 - *‘Take the necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations’ – (Art 58(c), AP I)*

Proportionality – Precautions in Attack

- Who is responsible for carrying out those precautions?
- *‘Those who **plan or decide upon an attack**’*
 - Who does that include?
 - Planners, decision-makers (Target engagement authorities), operators



Basic Principles of LOAC

- Military necessity
- Humanity
- Distinction
- Proportionality
- Prohibition of superfluous injury or unnecessary suffering



Questions?

