

DECISION-MAKING PROCESS IN MILITARY COMBAT OPERATIONS



ICRC



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PREFACE

Every state has an obligation to ensure respect for the law of armed conflict. The ICRC is mandated to support states in these efforts and does so through a range of activities, including promoting the integration of appropriate compliance measures into military doctrine, education, training and sanctions, with a view to ensuring that behaviours of those engaged in armed conflict comply with the law.

The present note is designed to support the integration of the Law of Armed Conflict into military decision-making processes, primarily at the operational level. It is not based on any specific national doctrine. It is designed to support those responsible for developing national doctrine and operational planning procedures in their efforts to integrate the Law of Armed Conflict into military practice. The desired outcome is staff procedures which ensure the development of military plans and orders that accurately and effectively integrate compliance with the Law of Armed Conflict into operational practice, thereby reducing the effects of armed conflict on those who do not, or no longer, participate in the hostilities.

The techniques of warfare change rapidly, particularly at times when combat operations are commonplace. The humanitarian impact of conflict is timeless. The Law of Armed Conflict is designed to limit the humanitarian consequences of war. The effective integration of the law into military planning is the epitome of effective, professional command and staff processes. It is the aim of this publication to encourage the further development of such processes.

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INTRODUCTION

1. Command responsibility or hierarchical accountability is a tenet of the Law of Armed Conflict (LOAC). Accordingly, commanders will be held criminally responsible if they knew, or should have known, that subordinates were going to break the law (i.e. commit a war crime) but did nothing to prevent it; or if they fail to take any action against (punish or report) subordinates who have already committed a war crime. Other superiors, such as staff officers, though they do not have operational command responsibility, are still criminally liable if they become aware of current or pending war crimes committed by their subordinates and do not prevent them, or fail to report them to their superiors.

2. The present notice is intended for commanders, staff officers and – above all – doctrine writers. With the objective of assisting them in their legal responsibility, it provides an illustration of *where* and *how* the application of LOAC should be integrated into the operational and tactical decision-making process and operational orders in time of armed conflict to create the necessary conditions for the law to be respected in the conduct of operations. The structure of this guide therefore reflects the classical military estimate or appreciation process as taught, trained and applied in the majority of armed forces around the world.

3. To comply with the language of its users and as a matter of simplification, the text refers to:

- “Law of Armed Conflict”, or LOAC, instead of “International Humanitarian Law”, as the commonly preferred term within the military;

- "Decision-making procedure or manual", leaving it up to the reader on the basis of his or her own national doctrinal framework to consider the relevant set of documents;
- "Legally protected persons, objects, installations and areas" to generically cover all these categories;
- "Collateral damage", instead of "incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof", as the commonly preferred term within the military;
- "Attack" to indifferently cover both offensive and defensive operations;
- "Relevant staff appointment", leaving it up to the reader to designate the relevant appointment(s) as staff organization varies from one country to another; while
- "Measure" covers the tasks allocated, "means" refers to the necessary tools, and
- "Mechanism" relates to a coordination between different staff appointments to ensure respect for the law.

Expressions such as "the commander", "he" or "his" are not meant to exclude female commanders or staff officers in any way. Whenever the masculine gender is used, both men and women are included.

4. It is a basic rule of international law that states cannot use domestic law to justify non-implementation of their international obligations. The present document is, therefore, based on the assumption that those authorities with the legal power to change the domestic statutes, decrees, rules or regulations have ensured that domestic law is in conformity with international standards.

5. The present document is based upon ICRC field experience and LOAC. As an illustration of the necessary translation of legal rules into concrete measures, means and mechanisms to ensure respect for the law, it does not replace the law. It remains the subject of improvement and any suggestion in this regard will be appreciated.

UNDERSTANDING THE OPERATING ENVIRONMENT – FRAMING THE PROBLEM

Initial preparation

6. The commander will frequently start his analysis with his orders and a map or chart, before his staff develop the intelligence preparation of the battlefield (IPB) tools needed to give him detailed information. At this early stage, accurate information on general locations of legally protected persons, objects, installations and areas will help to shape his initial thoughts. The decision-making procedure should ensure that accurate information is available at appropriate levels of notice, to inform this early decision-making phase.

Legal framework

7. During conflict, an important shaping factor, setting the scene for the commander's planning process and later the development of courses of military action, is the specific legal framework within which the hostilities are to be conducted. The commander must be apprised of his legal framework as part of the initial framing of the problem. He must clearly understand the implications of the legal status of his operations. The legal framework will shape all military activity, from the strategic to the tactical level. The level at which this issue is dealt with may vary according to the organization of the respective armed forces and their exact relation or subordination to political authorities. Therefore it is sensible to ask whether the decision-making procedure or manual provides the commander and his staff, at the

relevant level(s) of the organization, with the necessary measures, means and mechanisms to deal with:

- The analysis of the mission directive to establish the legal status of the conflict (e.g. international armed conflict, non-international armed conflict) and the applicability of various elements of LOAC, including applicable treaties (e.g. Additional Protocols, Ottawa Treaty on the prohibition of anti-personnel landmines);
- The guiding principles of LOAC (i.e. precaution, necessity, distinction, proportionality and limitation) and their mandatory application in the planning, ordering and conduct of operations;
- The difference, in operations on the enemy's territory, between an initial invasion phase and a subsequent situation of occupation (particularly concerning the occupying forces' responsibility towards the population).

UNDERSTANDING THE PROBLEM – MISSION ANALYSIS

8. While analysing a superior's orders, i.e. extracting and deducing the immediate superior commander's intent, the tasks (specified and implied) necessary to fulfil the mission, the applicable constraints and the potential changes in the situation, the tasked commander needs to assess whether he may lawfully execute the given mission within the applicable legal framework. He should therefore be conscious of his obligations under LOAC and of the potential humanitarian impact of his actions. His Commander's Planning Guidance to his staff should include the necessary direction to ensure that the staff incorporate legal and humanitarian factors into their analysis.

Legality

9. Discipline and due obedience rest upon the general assumption that superiors, as a rule, issue legally valid orders. Nevertheless, obeying a superior's order is no excuse in the case of violation. If any doubt exists as to the legality of a received order or the possibility to execute it in accordance with the law, the capacity must exist for its legality to be questioned by subordinates and either be clarified or confirmed by their superiors. Furthermore, in any case, only legal means and methods of warfare may be used to achieve the legal objectives. The decision-making procedure should therefore include processes for:

- Setting the mission in the broader picture, so as to establish the military necessity of each element of the

superior's plan. This will inform the assessment of proportionality for each subsequent action (i.e. the balance between military advantage gained from a successful attack and the potential risk to protected persons or objects);

- Providing the opportunity for a tasked subordinate to seek clarification as to the legality of a received order which is not evidently legal in his analysis;
- Reminding commanders and subordinates of the legal obligation to refuse to execute a manifestly illegal order (e.g. no quarter or no prisoners, deliberate killing of civilians);
- Giving guidance on any specific means and methods of warfare which would be illegal in the mission context, or where extra guidance would be required (for example the prohibition on the use of incendiary weapons in an urban environment).

Specified and implied tasks

10. The analysis of both specified tasks (i.e. those stated in the directives or orders received by the subordinate from his superior commander) and implied tasks (i.e. other activities that have to be carried out in order to achieve the mission) enable the commander to identify what he should do to accomplish his mission. This analysis is also an opportunity for the commander and his staff to check the legality of the different tasks and to identify those measures (both actions and constraints) which will be necessary to ensure the tasks are executed in accordance with the law. These necessary actions will translate into missions to subordinates. The constraints will shape planning and may be expressed in the form of Rules of Engagement or fire support coordination measures in due course. The decision-making procedure or manual should address:

- The obligation to perform only legitimate actions in the execution of the designated mission;
- Means to provide the commander with the appropriate advice on the legality of the various tasks (for example through the availability of a legal advisor);

- The tasking of relevant staff appointment(s) for the identification of implied tasks necessary to meet LOAC obligations, such as:
 - Precautions necessary to ensure respect for legally protected persons, objects, installations and areas (e.g. evacuation, marking cultural objects and works or installations containing dangerous forces, issuing constraints to ensure their protection, etc);
 - Physical protection of legally protected persons, objects, installations and areas to prevent attacks, assaults or pillage (e.g. by protecting minorities, guarding works and installations containing dangerous forces, cultural objects, places of worship, etc);
 - The capture, guarding and evacuation of captured persons;
 - The search for, handling and evacuation of wounded, sick, shipwrecked and dead;
 - The handling of war booty;
- Tasking selected subordinate units for these purposes, whenever these are adequately trained, equipped and available;
- Providing measures whenever resources are unavailable (e.g. requesting additional resources from the superior echelon, including time for task-specific training, contracting or commandeering local transports, etc).

Commander's direction and review

11. On completion of his Mission Analysis, the commander gives direction on the completion of the Estimate (Commander's Planning Guidance and the plan for staff work) and may also seek any necessary clarification required. He continues to review his mission throughout the estimate process and subsequent execution.

12. Course of Action (COA) development is based on the direction given by the commander after mission analysis. The Commander's Planning Guidance is therefore an opportunity for the commander, at an early stage, to direct the staff to design COAs which would minimize the

humanitarian impact of his operations, and to emphasize the areas where he expects LOAC compliance to be critical. The decision-making process should provide concrete measures for the commander, in his guidance to his staff, to:

- Clarify the constraints, in time, space, rules of engagement, resources, movements, humanitarian effects, etc., which the commander wishes to impose in order to avoid, or in any event minimize the humanitarian impact of his operations;
- Specify the procedures he wishes to establish in order to control the targeting process, including the identification of legitimate military objectives and the assessment of proportionality in attacks, in particular the appropriate level at which decisions on proportionality should be made;
- Specify the factors, including issues of proportionality, distinction and humanitarian impact, that the commander wishes to be used in evaluating the COAs.

UNDERSTANDING THE PROBLEM – EVALUATION OF FACTORS

13. Beyond his given mission, a number of factors, such as the enemy, the environment, his troops and the timing, shape the commander's decision and his operation. During the evaluation of these factors, the identification of their legal and humanitarian implications in addition to their military significance is key for enabling LOAC rules to be applied effectively in the execution of the mission. Relevant information is directly derived from the intelligence preparation of the battlespace (IPB). Its accuracy and prompt delivery therefore directly affects the planning and conduct of operations.

Intelligence preparation of the battlespace

14. IPB products cannot be developed in isolation of the emerging plan which begins in mission analysis and a plan should not be developed without using the products of the IPB process. The analysis of the local geography and demography, in addition to their direct input in determining the elements of the envisaged COAs, should also highlight specific elements that play a role in the application of the legal rules. This analysis must be complemented by an evaluation of the existing humanitarian situation and of the possible consequences of planned or ongoing operations. Without timely and accurate information on the human element of the environment the commander will not be able to meet his obligations to distinguish between military

objectives and combatants on the one hand and legally protected persons, objects, installations and areas on the other hand. Similarly he will not be able to accurately assess proportionality in his operations. A correct understanding of the human dimension of the battlespace and of the potential collateral damage resulting from his operations permits the commander to fix limits to the planned or ongoing COA. The decision-making procedure or manual should address the tasking of the relevant staff appointment(s) to continuously identify all legally protected persons, objects, installations and areas (including location, situation and movements) within the area of intelligence interest and influence, to assess their relative proximity to military objectives and the potential humanitarian impact resulting from the attack of those objectives. These IPB products should include, in particular:

- The provision of a detailed analysis of potential opposing forces and military objectives;
- The provision of a detailed analysis of all legally protected persons, objects, installations and areas within the area of operations;
- The elements of identification of the opposing forces, including the distinction of their protected members (i.e. medical and religious personnel);
- The location, movements and situation of personnel, installations and transport means of the enemy's non-combatant units (i.e. medical and religious personnel);
- The location of POW camps and military or civilian internment camps (i.e. under enemy control);
- The legal status of the police forces, civil defence units and other organized national services (i.e. members of the armed forces or not);
- Locations and concentrations of the civilian population (e.g. towns, villages, hamlets, shelters, camps for refugees, displaced persons or civilian internees);

- The possibility, at the outbreak of the hostilities, of having to face elements of an hostile “*levée en masse*”¹ acting as combatants and how they are to be dealt with;
- The likelihood of direct participation in hostilities by civilians;
- The presence, location, situation and movements of UN personnel (civilian or military) and humanitarian organizations, if any;
- Objects indispensable for the survival of the population (e.g. drinkable water, foodstocks and their storage, agricultural areas, etc);
- Civilian medical installations or facilities, permanent or temporary, and their personnel;
- Cultural objects (buildings or objects of high cultural value with their recognized level of protection and their personnel);
- Works and installations containing dangerous forces in the legal meaning (i.e. nuclear power plants, dams and dykes) as well as other specific facilities presenting an equivalent threat (e.g. chemical industry, petrol installations) and their personnel;
- Areas with special status (e.g. demilitarized or neutralized zones, non-defended localities, diplomatic representations) and their personnel;
- The necessary coordination mechanism for the continuous and prompt updating and sharing of this information throughout the planning and conduct of the operation with the relevant cells, including in particular the targeting team;

1 The term *levée en masse* refers to the inhabitants of a territory which has not been occupied and who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves into regular armed forces. They must be treated as combatants if they carry their arms openly and respect the laws and customs of war. If captured they have the right to be treated as prisoners of war.

15. The nature, situation, deployment and combat power of the enemy are essential elements of information permitting the commander to correctly assess his possible COAs and hence their potential impact on the humanitarian situation. The IPB will include a terrain analysis and this will frequently allow identification of enemy avenues of approach or movement corridors. A development of this analysis will allow the IPB to give an indication of potential civilian movement corridors, particularly as they relate to potential enemy COAs. This analysis should in turn inform the development of the commander's own COAs. The decision-making procedure or manual should address the tasking of relevant staff appointment(s) for the continuous delivery of information, in particular, on:

- An analysis of the likely COAs of legally protected persons, in order to inform the commander's planning;
- Movements of the civilian population on the various routes within the area of operations as well as immediately outside, within the formation's area of intelligence interest;
- The necessary coordination mechanism for the continuous and prompt updating and sharing of this information throughout the planning and the conduct of the operation with the relevant cells, including in particular the targeting cell.

16. The IPB analysis will rarely, if ever, provide the commander with all the information he requires. Gaps in his information may be met through information requirements passed to his superior command, or through the tasking of his own information, surveillance, target acquisition and reconnaissance assets. It is particularly important for the commander to identify and attempt to clarify information gaps which may affect his ability to conduct operations in accordance with LOAC. Therefore the decision-making procedure or manual should emphasize the importance of developing as complete a picture as possible of potential humanitarian concerns. Information shortfalls affecting LOAC compliance should be identified and appropriate actions identified as ISTAR tasks, including:

- The provision of a detailed listing and description of potential enemy combatants and military objectives whose nature, location and/or movements must be verified;
- The provision of a detailed listing and definition of all legally protected persons, objects, installations and areas whose location, situation and movements must be verified.

Environment

17. The analysis of environment factors embracing topography and demography must be considered from both the enemy and own viewpoints and will inevitably be closely linked to understanding the terrain analysis, etc. They will also be closely linked to the situation of the civilian population, which will be particularly vulnerable during periods of conflict to the effects of local environmental challenges. Therefore the environmental factors need to be evaluated in relation to the possible relative courses of action (COAs) (i.e. one's own, the enemy's and that of the civilian population) and the impact of these options on legally protected persons, objects, installations and areas. For this purpose, the decision-making procedure or manual should address the tasking of relevant staff appointment(s) for the continuous monitoring of, and timely and effective sharing of information within the staff regarding:

- The general humanitarian situation (health, food and water supply, medical facilities, etc) and status of the support infrastructure (e.g. hospitals, food storage facilities), the associated risks, concerns and limitations of these systems, and their evolution (including their capacity to handle additional demands resulting from the conflict);
- Possible links between environmental factors and the risk of collateral damage (e.g. temperature, precipitation levels, first and last light timings);
- Possible links between local architectural features and the risk of collateral damage (e.g. use of timber or wood for housing and other building construction, absence of cellars as potential shelters);

- The evaluation of the risks and consequences of environmental damage;
- The evaluation of the risks and consequences of the release of dangerous forces (i.e. in the legal meaning: nuclear power plants, dams and dykes; by extension, other specific facilities presenting an equivalent threat, e.g. chemical industry, petrol installations).

Civilians

18. The nature of modern conflict has made the role of civilians and the humanitarian impact of military operations increasingly important in shaping and influencing those operations. With increasing urbanization and the growth of asymmetric operations, civilians have become central to the battlespace. Military activity that affects the civilian population is widely reported. The impact in the information sphere can have strategic effects on military planning. The commander must therefore consider how best to ensure that the civilian population and the humanitarian situation are considered adequately by the staff. In addition, he must reinforce the distinction between a civilian (who is protected against direct attack under LOAC) and a combatant or anyone else directly participating in the hostilities. Thus it may be useful to have a separate analysis of this issue, distinct from any assessment of enemy and friendly forces. In any case, for both humanitarian and operational reasons, the decision-making procedure or manual should provide guidance for:

- Identifying specific elements of civilian information (e.g. demography, population, economics, culture, religion, media, attitude) to be gathered and taken into consideration during planning;
- Identifying most likely and worst case scenarios for the development of the civilian situation;
- The proximity of legally protected persons, objects, installations and areas to anticipated military objectives and the potential risk of collateral damage;
- Defining precautionary measures (e.g. identification of military objects by human intelligence source, setting of

safety distances) to avoid, or in any event minimize, the risk of collateral damage;

- The assessment of potential civilian casualties (i.e. wounded, sick, shipwrecked and dead which will need to be handled besides one's own casualties) and the capacity of civilian authorities and facilities to cope adequately with them (this is closely linked to the development during the environment analysis of a thorough understanding of the humanitarian situation and support infrastructure);
- The risk and potential location and direction of population displacement (if not covered in IPB).
- The attitude to adopt towards internally displaced persons, refugees and other civilian victims entering or crossing the area of action;
- The dispositions of humanitarian aid agencies active in the area (including how to recognize them, their *modus operandi* and activities);
- The tasking of the relevant staff appointment(s) for the liaison with civilian authorities or humanitarian agencies;
- Information on the role and task of the local law enforcement and rescue agencies (members of the armed forces or not).

Enemy forces

19. In evaluating the enemy's combat power, the commander and his staff seek to form a clear impression of his capabilities and intentions. To enable a sound application of LOAC, the potential humanitarian impact and consequences should also be deduced from the enemy capabilities. Updated input from the IPB is most useful here. The decision-making procedure or manual should provide guidance for the tasking of the relevant staff appointment(s) for the continuous delivery of information, in particular, on:

- The definition and identification of members of the enemy armed forces as well as other persons not protected against attack (i.e. civilians directly participating in hostilities) and military objectives;

- The assessment of potential enemy casualties (i.e. wounded, sick, shipwrecked, dead and captured which will need to be handled besides one's own casualties);
- The assessment and the direct consideration of the likely impact on the legally protected persons, objects, installations and areas of the possible enemy COA, including the "most probable" and the "worst case" scenario (e.g. recording and presentation of that assessment to the commander during planning and in the conduct of the operation).

Own (or friendly) forces

20. As the commander and his staff review their available assets and what will be required to achieve each action, they will need to ensure that tasks necessary to comply with LOAC are both identified and assigned to force elements as part of the plan. They will also need to assess objectively their subordinates' state of preparedness to fulfil these tasks in compliance with LOAC (e.g. their ability to distinguish themselves from the civilian population, or to behave in accordance with the law). The decision-making procedure or manual should specify:

- The responsibility of the commander to verify the knowledge of his subordinates regarding their rights and obligations under LOAC;
- The requirement to verify the adequacy of the training and equipment of troops or to determine additional needs:
 - In general, as regards their rights, obligations and behaviour when in contact with legally protected persons, objects, installations and areas (e.g. when they capture or detain people) or when they themselves become legally protected persons (e.g. when wounded, shipwrecked or captured);
 - In particular, as regards the performance of specified and implied tasks (e.g. collecting wounded, sick and shipwrecked, burial details, guarding and/or interrogating captured persons, guarding cultural objects, guarding works and installations containing dangerous forces).

- The need to issue adequate identification means and verify their effective use in compliance with the law, in particular ensuring that their use in specific circumstances does not amount to perfidy (i.e. an act inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under LOAC, with intent to betray that confidence and which leads to the killing, injury or capture of an adversary):
 - For armed forces members (e.g. uniforms, identity cards and identity discs for all, distinctive protective signs for medical and religious personnel);
 - For civilians who accompany or follow the armed forces (e.g. civilian crews, civilian medical or religious personnel, journalists, civilian contractors) (e.g. identity cards and identity discs for all, distinctive protective signs for medical and religious personnel).
- The requirement to maintain the necessary registers (e.g. of enemy captured, wounded, dead, grave locations) and promptly transmit all data to the superior echelon;
- The requirement to assess one's own potential casualties (i.e. wounded, sick, shipwrecked and dead) and the capacity of the force to handle them;
- The verification of logistics aspects related to respect for LOAC (e.g. supply roads, alternative supply roads to avoid populated areas, reserved roads for civilian traffic, precautions for the dumping and storage of dangerous supplies, requisition procedures, medical evacuation chain, captured enemy combatants evacuation chain, precautionary measures when siting units in the vicinity of legally protected persons, objects, installations and areas, requesting, contracting or commandeering additional resources);
- The tasking of the relevant staff appointment(s) to assess the existence and effectiveness of communication means necessary for the transmission of information related to respect for legally protected persons, objects, installations and areas (e.g. liaison with civilian authorities, channels for the evacuation of wounded, sick or shipwrecked,

warning of population before an attack “unless circumstances do not permit”);

- A mechanism for the timely communication within the staff of the state of preparedness of the force to fulfil tasks in accordance with LOAC, in order to inform the commander’s decision;
- Measures to remedy potential shortfalls (e.g. additional training, issuance of missing identification means).

Time

21. Time, often linked to space, will inevitably constrain the possible COAs. The commander or his staff has to assess the timing of each task identified. Timing includes both the sequence of tasks and the duration of each, as far as this can be realistically assessed before contact with the enemy. In particular, the commander will be focused on generating tempo – achieving his objectives at a greater rate than his opponent. However, the commander needs also to consider the tempo of his operations relative to the responses of the civilian population. So in addition to analysing the likely timelines which can be predicted for enemy action, a similar analysis is required for the reaction of the civilian population to the effects of the conflict. The duration of military operations in any particular area will be an important factor in assessing the extent to which the civilian population will be impacted. Thus an accurate assessment of duration, linked to the humanitarian infrastructure analysis addressed during the IPB, could impact on the commander’s proportionality decisions during the planning process. The decision-making procedure or manual should address the tasking of staff resources to consider:

- The time necessary for precautions to be taken to avoid, or in any event to minimize, the risk to legally protected persons, objects, installations and areas in the planning and conduct of operations (e.g. time and means necessary for an effective warning of the population prior to an attack, time necessary for civilians to take shelter or be evacuated, conditions for a possible ceasefire for civilians to re-supply themselves with medicine, food and water;

possibility for an attack to be scheduled when legally protected persons, objects and areas are less at risk);

- The time required to ensure that precautions to protect legally protected persons, objects and areas, including mission-specific training for troops if required, are completed;
- The timeline of likely movements or displacements of the civilian population;
- The endurance of the humanitarian support infrastructure under the additional pressures which will be imposed by the planned military operations (e.g. days of supply in medical facilities including medicines and fuel, capacities of water supply systems both *in situ* and on potential population displacement routes, adequacy of food stocks which cannot be re-supplied due to fighting);
- The period of time that POWs and other detainees will need to be maintained at each detention stage and location.

Rules of engagement

22. Rules of Engagement (ROE) are issued by competent authorities and assist in the delineation of the circumstances and limitations within which military forces may be employed to achieve their objectives. They provide authorization for and/or limits on, among other things, the use of force, the positioning and posturing of forces, and the employment of certain specific capabilities. Although no additional combat tasks may be deduced from these additional factors, they can have a significant effect on the conduct of a campaign, major operation, battle or engagement.

23. As a minimum, ROE must encapsulate the legal obligations of LOAC, applicable in the prevailing circumstances. They may, for military and political reasons, be much more restrictive than LOAC. Accordingly the decision-making procedure or manual should deal with:

- The tasking of the relevant staff appointment for the evaluation of the ROE received from the superior

command to determine if they are adequate to enable mission success without permitting excessive use of force which may lead to violations of LOAC;

- A coordination mechanism to allow dialogue with the superior command to seek clarification of the ROE if necessary, and specifically if means or methods of warfare which appear to be non-compliant with the legal framework are permitted.

DEVELOPMENT AND EVALUATION OF COURSES OF ACTION

24. The development of COAs involves a complex process of developing options to achieve the decisive effects identified by the commander as necessary to fulfil his mission, within the constraints imposed by the factors identified during the estimate. The process will include the allocation of troops to task and the synchronization of military activity in order to achieve the mission within these constraints and the inevitable limits of available resources. In particular, the operation will be set in time, and will detail the allocation of combat power to tasks, with the integration of fires. Each step in this process will need to be informed by an appreciation of the respect for LOAC.

Synchronization

25. Having analysed the specified and implied tasks, and the constraints the commander has imposed or has had imposed on him, the staff will develop COAs to achieve the desired outcome within these given constraints. The timeline of an operation is necessarily driven by the effects matrix derived during planning and the availability of resources, both in terms of time, combat power and logistics. However, in order to meet the obligations of LOAC, it should also take into account the potential timing of combat operations that could reduce, to the minimum possible, the impact on legally protected persons, objects, installations and areas. The decision-making procedure or manual should provide measures for the consideration of:

- The timing of operations in order to avoid, or in any event to minimize, their humanitarian impact (for example, selecting a night attack to minimize the presence of legally protected persons, or synchronizing attacks so that the most accurate fires can be employed in order to reduce the risk of collateral damage);
- Allowing a delay between warning and beginning of the attack, to allow time for civilians to take shelter, where appropriate;
- Allowing time and space for legally protected persons to move to areas of safety where possible.

Allocation of combat power

26. The allocation of troops to task should be conducted in such a way as to support compliance with LOAC. For example, the deployment of more or less discriminate forms of combat power and fires will have an impact on the risks to legally protected persons or places. In allocating troops to task, the staff should ensure that those allocated tasks in which they will have particular responsibilities for compliance with the law (for example, POW guards, medical orderlies, etc) are appropriately trained and supervised for these tasks. The decision-making procedure or manual should give guidance regarding:

- Consideration of the allocation of combat power so as to avoid, or in any event to minimize, the risks to or impact on legally protected persons or places;
- The careful selection of forces to be employed on tasks with special relevance for respect for LOAC;
- Adequate training and supervision for troops involved in tasks with special relevance for respect for LOAC.

Deployment

27. The plan for deployment of forces should take into consideration the requirement to avoid putting legally protected persons, objects, installations or areas at risk by making them potential targets. The decision-making procedure or manual should address:

- The prohibition on establishing military positions, including logistics and fire support positions (e.g. artillery, mortars, anti-aircraft weapons) close to legally protected persons, objects, installations and areas and, when this cannot be avoided, the responsibility to evacuate or shelter the civilians at risk or, as a minimum, mark their presence;
- The location of medical facilities away from combat positions, or when this is not possible, the decision or not to mark these facilities with the distinctive protective emblem in accordance with rules prohibiting abuse of the emblem and perfidy (i.e. an act inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under LOAC, with intent to betray that confidence and which leads to the killing, injury or capture of an adversary);
- The duty, when necessary, to evacuate, shelter or otherwise safeguard legally protected persons, objects, installations and areas (including marking of their location);
- The necessity to inform the population (directly or through their representative) of any significant security threat brought to their environment (e.g. disruption of roads or communications, prepared destruction of a bridge, minefields) in a timely manner;
- The responsibility of the commander to avoid causing unnecessary harm to legally protected persons or damage to objects, installations and areas by moving heavy military assets (e.g. main battle tanks, self-propelled artillery) through villages or other protected areas;
- A process by which commanders can request, at the appropriate level, the suspension of the legal protection of a cultural object when the tactical situation justifies it and there are no other alternatives. Any request will need to specify the duration of the withdrawal of immunity.

Fires

28. The appropriate use of fires is an integral part of effective combat operations. Control of fires through an accurately and continuously updated targeting process, which objectively weighs the expectation of collateral damage against the military value of the target in the circumstances prevailing at the time, is an essential element of compliance with LOAC. The use of accurate and well understood fire support control measures is important in ensuring that legally protected persons, objects, installations and areas are safeguarded. In addition, the means and methods that can be employed in conducting military operations are not unlimited, and this will be particularly significant in the design of fires to support the commander's plan. The decision-making procedure or manual should address:

- The identification and verification of the exact nature and current or foreseen use of potential military objectives, as well as their surroundings (including the distance between military objectives and legally protected persons, objects, installations and areas);
- The systematic evaluation of the anticipated concrete and direct military advantage in targeting an objective;
- The systematic evaluation of potential collateral damage;
- The identification of restricted or prohibited means or methods of warfare (e.g. prohibition of chemical and biological weapons);
- The selection of effective measures in order to avoid, or in any event to minimize, the potential risk of collateral damage, e.g. selection of appropriate means of attack (restriction or prohibition of certain weapons); selection of appropriate timing (e.g. attacking when civilian workers are not present, or at least when minimum numbers are present); creeping artillery fire; use of observed fire; defining no-fire lines; or restricting the use of certain munitions in given sectors;
- A mechanism (including timing within the decision-making process) for the effective presentation of the balance between the anticipated military advantage and the potential risk of collateral damage (proportionality);

- A means to record that balance and the commander's decision (to enable the lessons learned process and the identification of best practices);
- Measures, during all operations, for the constant review of the military necessity of an attack and its effects on the ground; timely application of appropriate precautions whenever the proportionality balance turns against making or pursuing the attack (including cancelling it).

Rules of engagement

29. As a minimum, rules of engagement (ROE) must encapsulate the legal obligations of LOAC applicable in the prevailing circumstances, and be tailored to the COA. They may for military and policy reasons be much more restrictive than LOAC. The commander and his staff will often negotiate the available ROE with the superior command, or whoever holds the ROE, in order to give him the freedom of manoeuvre to achieve his mission, as he sees fit. The ROE should give sufficient freedom in the use of force to allow the commander to achieve his military purpose, but no more. Depending on his level, a commander may also have to distil the ROE received from his superior for his own subordinates (i.e. tailor-making ROE for subordinates according to their assigned tasks). Often, ROE may thus become more restrictive for subordinates, with the superior commander retaining authority on a particular rule, thereby obliging the subordinate to request the release of the rule whenever needed. The decision-making process procedure or manual should address:

- The levels of authority and the procedures for developing (at a higher level), negotiating (between a commander and his superior) or distilling (process directed by a commander towards subordinates) LOAC-compliant ROE;
- A mechanism to ensure joint working between legal advisors and Operations/Planning staffs in the development of ROE;
- A process by which ROE are refined, and potentially restricted if appropriate to ensure compliance with LOAC, before being issued to subordinates;

- The tasking of appropriately trained officers for these purposes as part of the development of COAs;
- A mechanism for the personal approval of ROE by the commander when he selects his COA;
- The dissemination of ROE to subordinate units and the training of them to apply and respect those rules.

Wargaming

30. The advantages and disadvantages of COAs should be considered against appropriate metrics to ensure that they have taken into consideration the direction given by the commander after mission analysis. If time permits, each COA can be wargamed to assist in deciding which one should be adopted. When two or more courses of action are equivalent in their military effect and are equally efficient, then that COA which will have a lesser impact on legally protected persons, objects, installations or areas should be preferred. Where wargaming, modelling or similar tools are employed to test or evaluate COAs, the decision-making procedure or manual should address:

- A measure for the humanitarian impact of the various options to be included as one factor in the decision;
- A measure for the recording of that measurement and decision (to enable the lessons learned process and the identification of best practices).

THE COMMANDER'S DECISION

31. At every level, the commander is responsible, after staff work or an individual estimate, for the ultimate decision on the course of action and the tasking of subordinates. This responsibility covers the military, command, individual and legal aspects and extends throughout the full execution of the mission through the commander's permanent control function. The commander should be able to call on legal advice in his selection of COAs as necessary. Accordingly the decision-making procedure or manual should address:

- The availability of legal advisors at different levels (e.g. number, access to the commander, availability within units according to their tasks rather than their size);
- A mechanism for the consultation of legal advisors by commanders when they have no such specialist available within their own staff.

By the end of planning

32. The commander must choose among the different possible COAs the one which presents, in his view, the most efficient manner to fulfil his mission. However, when a choice is possible between equally efficient COAs, preference must be given to the one entailing the least potential impact on legally protected persons, objects, installations and areas. Therefore the proposed courses of action must be legal and presented with their associated risk of collateral damage and an assessment of proportionality. The decision-making procedure should give the commander the tools to enable him to make such a decision:

- All the available elements of intelligence, including known gaps, integrated into a tool allowing the commander to assess the risks of collateral damage, in particular by identifying legally protected persons, objects, installations and areas and, if needed and if time permits, allowing him to request the completion or verification of the available data.
- A list of all verified military objectives specifying their priority ranks and balancing the concrete military advantage they may offer, compared to the collateral damage their attack may cause;
- A format to record the presentation to the commander of the expected level of collateral damage associated with the proposed COAs;
- Recommendations on the legality of the available methods and assets (e.g. incendiary weapons, mines, marking of minefields) to be employed in the different COA options, and recommendations on the selection of those means and methods likely to cause minimum damage to legally protected persons, objects, installations and areas;
- An analysis of the ROE received from superior level and distilled for subordinate units according to their specific tasks.

Scheme of manoeuvre

33. Once the preferred COA is selected by the commander, the staff will draw together all the planning to draft a scheme of manoeuvre for the operation. The scheme of manoeuvre states *what, where, when* and *how* a command will achieve its purpose in relation to the enemy, in order that subordinates understand *what role* they have to play in the operation and *what outcome* they are to achieve. The potential collateral damage on legally protected persons, objects, installations and areas resulting from the nature, movement and use of the different available assets must be taken into consideration in the scheme of manoeuvre. Precautionary measures, in particular to ensure respect for the principles of distinction and proportionality at every

level of command and in every phase and operation of war, need to be constantly assessed. The decision-making process should address:

- The timing within the decision-making process for these precautionary measures to be taken;
- The requirement to keep the location of military objectives (e.g. combatant units, logistics, maintenance installations or workshops) as far as possible from legally protected persons, objects, installations and areas. When unavoidable, to precisely delineate the legal military objective and take precautionary measures (e.g. by evacuation, grouping and marking, sheltering, the effective advance warning of the population *“unless circumstances do not permit”* prior to an attack, using alternative logistics routes, etc);
- The importance of locating medical units or installations away from combat units and military objectives, whenever feasible. This must be linked to decisions on the use of protective emblems in accordance with the prohibition of abuse of the emblem and perfidy (i.e. an act inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under LOAC, with intent to betray that confidence and which leads to the killing, injury or capture of an adversary);
- The verification of proper identification of armed forces members and those who follow them (e.g. uniform, identity card, identity discs, distinctive protective emblems for non-combatants), including for contracted or commandeered means (e.g. transport);
- The availability of sufficient resources for the proper handling of wounded, sick, shipwrecked, dead and enemy captured, the measures to be taken (e.g. search, collect, identify, transfer, guard, shelter) and the related procedures required to meet the obligations of LOAC (including identification, registering and communication of data to the superior echelon);
- The recommendation on the potential retention of enemy medical and religious personnel (i.e. to tend their own wounded and sick or captured personnel);

- The designation of war booty (i.e. enemy fighting material) and procedures for its handling and potential use;
- The designation, reconnaissance and installation of collection points, interrogation posts and camps for captured persons;
- The designation of locations and procedures for the burial of mortal remains;
- The expected level of authority at which the protection of a cultural object may be waived;
- The maintenance of liaison with civilian authorities where appropriate during execution.

During execution

34. The commander's responsibility for the application of the legal rules covers the full extent of the execution phase through his permanent control function. His choice of course of action (COA) must reflect this responsibility and offer him the best option to achieve this requirement. The decision-making procedure or manual should include provisions for:

- Continuous monitoring and reporting on the extent of collateral damage;
- The commander, throughout the whole execution phase, to be able to alter, suspend or cancel the execution of the mission, or of specific elements of his plan, if it appears that the resulting collateral damage would be excessive in relation to the anticipated military advantage;
- The measures necessary to control the legality of every element of the execution as a requisite part of the control function;
- The means available to the commander to prevent or suppress violations of LOAC.

LOAC IN MILITARY OPERATION ORDERS

35. An operation order should contain the minimum detail necessary for the commanders of subordinate formations and units to act purposefully, to issue their own orders and to ensure co-ordination. The application of LOAC should not be formulated as a separate element or supplement to the basic elements of the operation order. The integration of legal aspects into the orders must be the logical result of its incorporation within every step of the decision-making process. The orders must clearly convey to subordinates any potentially significant risks of collateral damage or other humanitarian concerns, which have been identified during staff work and the decision-making process. At the Operational Level, the specific Operation Order (OPORD) may be supplemented by a more general Force Instructions Document (FID), giving overall guidance for the entire deployment. The comments in this section refer to the OPORD, but where appropriate the issues raised may be addressed in either the OPORD or the FID.

Situation

36. **General.** The Situation paragraph gives subordinate commanders a common understanding of the current and projected situation and thus provides the operational context – including the higher commanders’ intent – of the orders that follow. The general situation should allow subordinate commanders to understand the military necessity of their mission and to identify the potential humanitarian concerns which may result during, or as a result of, the execution of the mission. The procedure or manual

detailing the format and content of operational orders should address, in this section, the setting of:

- The legal framework, expressed in appropriate terms and detail for those receiving the orders. This is particularly important in multinational operations, where different force elements may operate under different national guidance. The OPORD must make clear the legal framework as it applies to all personnel;
- Key areas requiring precautionary measures to reduce the risk of harm to legally protected persons, objects, installations and areas.

37. Enemy Forces. The Enemy Forces sub-paragraph establishes a common understanding of the enemy's organization, capabilities, vulnerabilities and intentions. In addition to these necessary elements, adequate information should be available in order for subordinate commanders to be able to plan to deal with the different enemy personnel categories, including those captured. This section should therefore include clear direction on the legal status of the different enemy categories and the behaviour expected towards them. The procedure or manual detailing the format and content of operational orders should address:

- The definition and identification of opposition forces (including, but not limited to members of the enemy armed forces as well as other persons not protected against attack, ie. civilians taking a direct part in hostilities), other enemy personnel and military objectives;
- The enemy's likely courses of action, and their potential impact on the humanitarian situation and legally protected persons;
- The expected number of potential enemy casualties and captured persons.

38. Friendly Forces. The primary purpose of the Friendly Forces sub-paragraph is to set the context for the commander's mission. The current impact of the friendly forces activity and the conduct of hostilities on the humanitarian

situation of the local population must be assessed. The procedure or manual detailing the format and content of operational orders should address:

- The composition of friendly forces components and the different status of those who might be found in their vicinity (e.g. combatant and non-combatant members of the armed forces, civilians directly participating in hostilities, civilians following the armed forces, etc.);
- Preparations to facilitate respect for the law (e.g. identification means, knowledge of own forces' rights and obligations, appropriate logistics and communication means).

39. Attachments and detachments. LOAC recognizes a commander's responsibility for both members of the armed forces under his command and other persons under his control. The commander has an equal responsibility for those originally or normally under his command, and for those attached for a specific task or mission. Accordingly, the procedure or manual detailing the format and content of operational orders should address:

- The establishment of appropriate command and control measures to ensure the commander has an adequate level of awareness of the actions taken by all his subordinated units;
- The early establishment by the new commander of his influence over the attached units, in particular with regard to his responsibility for ensuring compliance with LOAC;
- The immediate briefing of attached units on the location and conditions of legally protected persons, objects, installations and areas, and the humanitarian situation in their new area of interest.

40. Environment. This section dealing with weather, terrain and civil considerations should provide subordinates with relevant information on the humanitarian situation in their area of interest, including that under enemy control, and its possible evolution. The expected impact of operations on

the environment and in particular the civilian population as well as their likely courses of action (e.g. mass movement) need to be communicated to subordinate levels. This section should also be used to clearly state those locations within the area of operations identified as containing dangerous forces (i.e. dams, dykes or nuclear electrical generating stations) or cultural property (e.g. ancient monuments, buildings of historic or artistic interest, etc), and specify the restrictions in place to protect these sites. The procedure or manual detailing the format and content of operational orders should address:

- **Protected persons and places**

- The nature and location of any specific legally protected persons, objects, installations and areas in the unit's area of interest, including areas under enemy control. This must include, where appropriate, objects indispensable to the survival of the civilian population, installations containing dangerous forces, and protected cultural property.

- **Humanitarian situation**

- The relevant humanitarian situation (health, food and water supply, medical, etc), the support infrastructure (e.g. hospitals, food storage facilities) and related concerns in the current situation (including the capacity of that infrastructure to cope with additional humanitarian pressures);
- The assessed risk, scale, location and direction of population displacement;
- An estimate of potential civilian casualties and the capacity of civilian authorities to respond.

- **Humanitarian risks**

- The expected risks and consequences for:
 - legally protected persons, objects, installations and areas;
 - the humanitarian situation;
 - the environment;
- as a consequence of:
 - the expected enemy course of action (COA) and friendly forces' planned operations;

- the proximity of legally protected persons, objects, installations and areas to anticipated military objectives;
- meteorological or geographical factors (e.g. temperature, heavy rains, potential for inundation, first and last light timings) including extreme meteorological conditions;
- local architectural features (e.g. use of timber or wood for housing construction providing little protection from fire, the presence or absence of cellars as potential shelters);
- reserves or supply shortages;
- the release of dangerous forces².

Mission

41. The mission stated by the commander in his orders is that given to him by his superior. This part is therefore a literal quotation of the order received from the upper echelon. However, if a request was introduced for its legality to be verified (or that of any specified or implied task), the clarification and explanation must be passed to subordinates, so as to avoid any further misunderstanding. The procedure or manual detailing the format and content of operational orders should address:

- The procedure for any ambiguity on the legality of the mission (or of any of its elements) to be clarified by the commander issuing the orders.

Execution

42. **General.** The Execution paragraph specifies the conduct of operations in sufficient detail to allow subordinates to act within a coordinated framework. The degree of detail required will depend on the situation and will reflect the commander's judgement of a number of factors including the complexity of the operation, his subordinates'

2 For example the release of water and subsequent inundation following the destruction of a dam, the release of radiological material following damage to a nuclear facility, or the release of poisonous clouds if a chemical plant is damaged.

understanding and the state of training, morale and fatigue within his command. The execution paragraph must not only explain how the commander intends to achieve his military end state, but also how he expects to do so with the least possible humanitarian impact. The operational orders should clearly address:

- The commander's assessment of the potential for collateral damage and humanitarian impact, as identified during the decision-making process, as well as his plan to reduce this risk.

43. Concept of operations. In this paragraph, the commander expresses his vision of purpose (*why*), his method (*how* he intends to conduct his selected course of action in order to accomplish his mission) and *whom* in general terms he assigns to perform it, so that subordinates understand *what role* they have to play in the operation and *what effect* they are to achieve. The concept of operations is the expression of the commander's choice between the possible courses of action. It must be expressed in such a way that no ambiguity is left as to the legality of any task or action. The procedure or manual detailing the format and content of operational orders should address:

- The expression, by the commander, of how he intends to achieve his mission with the minimum risk of collateral damage or humanitarian impact;
- The general measures in place to control both manoeuvre and fires in order to avoid, or in any event to minimize, collateral damage.

44. Missions and tasks to subordinate units. A commander must assign a mission or task to the commanders of each of his subordinate force elements. The mission is *a clear, concise statement of the task to be achieved by the commander and its purpose*. His implied tasks, as derived from his mission analysis, should become apparent here, as each will need to be assigned to a subordinate. The formulation of missions for subordinate units should leave no doubt about their legality or that of the specified and implied tasks to be

fulfilled in achieving them. In setting priorities for combat support and logistic support elements the commander should attach sufficient importance to those tasks which directly impact on compliance with LOAC, so that he is assured of meeting his obligations. The procedure or manual detailing the format and content of operational orders should address:

- Precise use of doctrinally agreed language to clearly state the legitimate missions and tasks of subordinates, in order to avoid the risk of abuses of LOAC. This is of particular importance in multinational operations sharing a single common operating language, often amongst non-native speakers;
- The allocation of clear priorities to combat support and logistic support elements in order to ensure sufficient assets are assigned to LOAC compliance tasks;
- The possibility for a subordinate, if time and situation permit, to clarify the legality of a received mission or of a specified or implied element of it;
- The duty of a subordinate to obey legal orders only, and to employ exclusively legal means and methods in their execution;
- The identification of subordinate units for tasks which will be essential to ensure compliance with the requirements of the LOAC:
 - Intelligence and reconnaissance to provide a continuous assessment of the risk of collateral damage (e.g. identification and verification of military objectives, elements of information on the location and identification of legally protected persons, objects, installations and areas);
 - The handling, guarding and evacuation of captured persons;
 - The search for, handling and evacuation of the wounded, sick, shipwrecked and dead;
 - The handling of war booty;
 - The physical protection of and due respect for legally protected persons, objects, installations and areas, including:

- protecting them from the effects of operations, e.g. by supporting evacuation, recording and marking minefields, etc.;
- preventing illegal attacks, assaults or pillage, e.g. by protecting minorities;
- marking works and installations containing dangerous forces, cultural objects, places of worship, not attacking them and avoiding them whenever feasible.

Coordinating instructions

45. **General.** The purpose of Coordinating Instructions is to set out control measures which are necessary for the execution of the mission. By supplementing standing operating procedures (SOPs) and drills, this section of the order provides the commander with the opportunity to give specific instructions to subordinates not only to orchestrate the operation, but also as precautionary measures which will facilitate and direct respect for legally protected persons, objects, installations and areas. The instructions should detail the measures needed to avoid or minimize the risks of humanitarian impact identified during the planning process. The procedure or manual detailing the format and content of operational orders should address LOAC-related concerns as follows:

Timing

- The impact of the timing of the operation on the distinction between enemy (and friendly) forces and protected persons, including on combat identification, rules of engagement and the choice of equipment;
- The provision of adequate preparation time to allow troops tasked with duties pertaining to detainees and/or the civilian population (for example civilian security operations) to receive adequate mission-specific training to be able to perform their task within the appropriate legal framework.

Fires

- Procedural measures to control the effects of fires. These should provide adequate constraints to avoid, or in any event to minimize, the risk of collateral damage or humanitarian impact;
- Targeting procedures should include a targeting list limited to military objectives, whose nature is verified, and that balances military advantage against the risk of collateral damage;
- A control mechanism which allows for a suspension of fire or for the engagement of an alternative target as soon as it appears that collateral damage is at risk of becoming, or has become, excessive;
- The preparation and monitoring of demolitions is subject to unique and strict control measures (e.g. assessment of the military necessity to destroy a bridge weighed against the humanitarian consequences). This may be detailed in coordinating instructions or under Command and Signals;
- The use of obstacles, including minefields, in conjunction with fires, should be subject to the same proportionality testing as other direct forms of fires and should take into account the humanitarian impact of these techniques. Restrictions on the use of obstacles should be given when necessary to reduce the humanitarian impact of operations. These may be in the form of coordinating instructions or rules of engagement.

Manoeuvre and battlespace management

- The assignment of routes and battlespace so as to allow military objectives such as logistic facilities (including convoys) or artillery manoeuvre areas to be separated from protected persons and places;
- Instructions on the appropriate level of authority for decisions on a total or partial waiving of the protection of a protected cultural object or a protected place (e.g. a medical facility);
- Instructions to reduce the risks created by the scheme of manoeuvre for legally protected persons, objects, installations and areas (e.g. establishment of liaison with civilian

authorities, movement control, allocation of operations areas, avoidance of urban areas, restrictive bypassing policy, reserved routes for the evacuation of civilians, behaviour rules, etc.);

- Policy and procedures for establishing local truces with the enemy for the search for, removal and evacuation of wounded combatants or civilians, in particular from besieged or encircled areas (e.g. level of authority for the decision, control and communication).

Intelligence

- At the Operational Level, the OPORD will usually define Intelligence Areas of Interest and Influence and may include an Intelligence Collection Plan. Wherever appropriate, the intelligence guidelines must include clear direction on interrogation procedures to ensure that detainees are protected from torture or cruel, inhuman or degrading treatment;
- Allocation of appropriately trained personnel for the conduct of interrogation, either in the field (at the point of capture) or in places of detention;
- Intelligence tasking should enable the provision of sufficient information on protected persons and objects to support proportionality decisions as part of the targeting process.

Logistics

- The assignment of routes and battlespace so as to allow military objectives such as logistic convoys to be separated from the civilian population and protected places.

Rehearsals

- The use of appropriate mission rehearsals to reinforce the applicable LOAC rules in a given operation.

46. Rules of engagement. Rules of engagement (ROE) may either be part of the coordinating instructions, an annex to the OPORD or detailed in the FID as appropriate. In any case, they represent the practical application of LOAC to the

activities of the individuals engaged in military operations. They represent a confluence of legal and policy constraints balanced against the needs of the mission, and should therefore be the product of a collaboration between legal, policy and operational personnel. In practice ROE form the rules by which military personnel should operate. They may change from one phase of an operation to another and potentially from one military unit to another (ROE for medical personnel for example will be limited to self-defence of themselves and their patients and will be far more restrictive than ROE applied to combat forces operating in the same mission area). They therefore play an important part in compliance with LOAC and all personnel should be briefed in detail and trained in their application. Where necessary, drills and rehearsals should be used to reinforce key points and to make the ROE understandable and applicable at the appropriate level. The procedure or manual detailing the format and content of operational orders should address:

- The development of ROE which are sufficient to achieve mission success and no more;
- The need for ROE to be developed by appropriately trained officers;
- The requirement for ROE to be accurately briefed to all personnel as part of the orders process;
- The response to civilians or other protected persons directly participating in hostilities (loss of protection for the duration of the direct participation) or cases of doubt (to be treated as civilians);
- The carrying and use of individual weapons by medical and religious personnel (and other protected persons: civil defence, cultural property guards, etc).

47. Civil-military cooperation (CIMIC). The commander has a legal obligation to facilitate humanitarian operations. He may in addition see value in conducting his own Civil Affairs (CA) operations as part of an Information Operations campaign or similar, designed to win "hearts and minds". The two activities are both legally and operationally

different. The commander has an obligation to facilitate humanitarian operations, which are strictly neutral, impartial and prioritized by the humanitarian needs of the victims. CA operations will always focus on supporting the achievement of the military end state. Commanders must make clear the distinction and ensure their sub-units adopt appropriate behaviours towards humanitarian agencies and personnel and when directly engaged in CA operations themselves. The procedure or manual detailing the format and content of operational orders should address:

- The need for effective liaison with humanitarian agencies, without trying to shape humanitarian operations to support the military plan;
- The legal obligation to facilitate the rapid and unimpeded passage (inspection is allowed) of relief consignments, equipment and personnel engaged on strictly humanitarian operations;
- The need for clear direction to subordinates on dealing with humanitarian actors;
- An acceptance that where humanitarian actors refuse military escort, one should not be imposed, in order to respect their neutral nature;
- The need for subordinates, when conducting CA operations, to clearly identify themselves as members of the armed forces, in order to avoid confusion with humanitarian actors, which could call their neutrality (and therefore safety) into question.

Logistics

48. **General.** The material support to the conduct of operations as well as other services offered by combatant or non-combatant elements of the armed forces must also strictly apply LOAC rules, essentially in reducing the risk of collateral damage by enabling members of the armed forces to be clearly distinguished from protected persons and objects. The material support to the conduct of operations (supply, repair, reinforcement, etc) is a constituent of military capacity and, as such, offers important targets to

the enemy. In general, commanders must ensure that these units distinguish themselves from the civil population. The procedure or manual detailing the format and content of operational orders should address:

- The necessity for logistic installations (workshops, dumps, command and control posts, etc) to be at a sufficient distance from protected persons or places so as not to place them at risk;
- The obligation to protect the civilian population by sheltering or evacuation if it is not possible to maintain an appropriate safety distance for logistic installations;
- The necessity to separate military supply movements from civilian traffic (by separating routes, establishing time sharing on the use of the roads, etc), if not covered under coordinating instructions;
- The selection, where possible, of supply routes avoiding populated areas, limitation of the crossing time of these areas when they cannot be avoided, the interdiction or strict limitation of halts in such areas.

49. Equipment. Military equipment and weaponry must be distributed and used in accordance with the law. The procedure or manual detailing the format and content of operational orders should address:

- The issue of equipment appropriate to the task to be undertaken (e.g. the issue of non-lethal means of force to troops engaged in internal security and public order control operations);
- The prohibition of the use of certain weapons, as applicable in the circumstances (e.g. the prohibition on use of chemical or biological weapons, or the prohibition of the use of indiscriminate weapons such as booby traps attached to objects that are likely to attract civilians).

50. Medical support and evacuation chain. The military installations, vehicles and personnel dealing with armed forces victims (medical and religious services) must distinguish themselves from the rest of the armed forces and abstain from any discrimination in the support offered. The

procedure or manual detailing the format and content of operational orders should address:

- The concept of medical priority in evacuation and care of the victims (no distinction between friendly forces, enemy, civilians);
- The correct marking of medical installations, vehicles, ships, aircraft, supplies and personnel from the medical and religious services, and the obligation for them to strictly comply with the conditions of their protected status;
- The obligation for all forces, not just medical personnel, especially following an engagement, to search, collect and care for the victims (including the identification and appropriate treatment of the dead);
- Guidance on cooperation with civilian, aid or humanitarian agencies, volunteers, etc. for such search, collection and care;
- Separate roads or separate uses of a common supply road to distinguish between the supply chain and the medical evacuation route (as a minimum, the vehicles to circulate at different times if on the same road).

51. Prisoner-of-war (POW) and detainee handling and evacuation chain. At the tactical level the operation order should detail the responsibilities of tactical units in the first two phases of POW detention (capture and evacuation to the rear area where, ultimately, organized POW camps and detention facilities take care of them up to their release and repatriation or, where appropriate, trial, at the end of the hostilities). At the operational level, it will need to address the full logistic arrangements for transporting to safety, caring for and adequately holding POWs and detainees in accordance with LOAC. The procedure or manual detailing the format and content of operational orders should address:

- The obligation to treat POWs or other detained persons humanely, not to expose them to danger or public curiosity, not to force them to do dangerous work and to evacuate them as soon as possible from the area of danger;

- The status of enemy medical and religious personnel, who are not POWs but are retained with a view to assisting POWs;
- The relevant training of personnel who will have direct contact with detained persons (guards, interrogators, etc.);
- The appropriate selection of POW assembly points and (at the operational level) camp locations (away from the direct fire zone, at a safe distance from military objectives, etc.);
- The limits of the information a POW is bound to give (rank, name, serial number, date of birth) and the prohibition of any coercion to obtain other information from him;
- Awareness by friendly forces of their legal rights on capture and during captivity.

Command and signal

52. **General.** The application of the legal rules depends directly on the personal involvement of the commander (and his staff). During every phase of an operation, the commander must be ready to react to changes which affect the proportionality equation, to stop or change attack plans if the risk of incidental damage begins to outweigh the anticipated military advantage, and to act to prevent or suppress violations of LOAC taking place under his command. In order to achieve this, the commander must maintain an accurate battle picture, relayed to him through effective command and control systems and compiled into a clear picture by an effective staff. The commander must always be in a position to identify and to take action to suppress violations of the law and it is his responsibility to ensure that he has measures in place to allow him to do so. At the level where legal support can be provided, the commander should be supported by a competent legal advisor. Prior to operations, the commander has an obligation to ensure his staff is appropriately trained to be able to provide him this level of assurance.

53. **Command and control.** The application of the legal rules, as integrated into the decision-making and orders

process, must remain an essential element in the execution of the mission, through the constant control by the commander (and staff). The procedure or manual detailing the format and content of operational orders should address:

- The personal responsibility of every commander and subordinate for the application of LOAC rules during the planning, tasking and execution of the mission;
- The requirement for battle management procedures to provide adequate information to the commander to allow him to be able to comply with his requirement to be aware of, and be able to prevent or suppress, any violations of LOAC taking place, or likely to take place under his command;
- The presence and use, at the necessary level(s), of a competent legal advisor (either a lawyer with military operational training or an operational officer with a relevant legal background) to advise the commander in the legal aspects of the decision-making process, as well as in the control of the execution;
- The need, at the operational level, for a systematic after-action report process to address collateral damage and to identify, as far as possible, its probable cause(s), so that measures can be taken to avoid recurrence in future.

54. Communications and reporting. In parallel with its essential operational and logistic function, the communication system must permit the circulation and management of the information dealing with the application of LOAC. The procedure or manual detailing the format and content of operational orders should address:

- Communications linking those responsible for specific LOAC issues (targeting cell, Civil Affairs/CIMIC cell, legal advisors, etc.) with the operational commander, so as to permit control and possible correction of the application of LOAC rules;
- The capacity of the subordinate operational or tactical commanders to report on the local humanitarian situation, its possible evolution and any resulting requirements.

- The capacity to effectively warn the population before an attack (technical means to broadcast warning messages, public information materials, loudspeakers, use of the population's own language in verbal or visual communication, warning shots or rounds, etc);
- The capacity to communicate with the local population to address their humanitarian concerns: personnel (translators) and assets (glossary, loudspeakers, etc);
- The requirement to report significant collateral damage (upwards) through the chain of command;
- The systematic forwarding of information on the identity, fate and whereabouts of military combat victims (wounded, dead, POWs, etc.) or civilian internees up to the National Information Bureau, or to the ICRC Central Tracing Agency.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.



ICRC