Conflict Classification (plus a little extra)

IHRL ICRC Workshop
Santa Clara 2012
Presented by: Maj Andy Gillman, USAF
The Judge Advocate General’s Legal Center & School
International and Operational Law Department
Map source: BBC News

Modified Objectives

• Know the three categories of armed conflict
• Understand which laws apply to each category
• Talk intelligently, not ignorantly

Flight path preview

• Main Point: Framework
  – Three Conflict Categories
  – Sources of the Law of Armed Conflict
  – Triggers for Categories

• A Little Extra: Two In-Flight Breaks
  – Introduction to International Law
  – History of LOAC
Three Categories of Conflict

• State vs. Individual: Law Enforcement (LE)

• State vs. Group*: Internal Armed Conflict (NIAC)
  * More than mere banditry—organized insurgency?

• State vs. State: International Armed Conflict (IAC)

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LOAC for the Visual Learner:
The Conflict Spectrum

<table>
<thead>
<tr>
<th>Peace</th>
<th>Armed</th>
<th>Conflict</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Enforcement</td>
<td>Internal</td>
<td>International</td>
</tr>
</tbody>
</table>

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Introduction to International Law

• What is International Law?

  International law consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations inter se, as well as with some of their relations with persons, whether natural or juridical. Restatement 3rd, Section 101
Introduction to International Law

- Who are the Key Players?

  **States**

  1. Defined Territory
  2. Permanent Population
  3. Government
  4. Capacity to Conduct International Relations

Unifying Themes / Principal Prongs

- **Jus ad Bellum** (Justice of War)
  - Regulate the decision to go to war
  - UN Charter

- **Jus in Bello** (Justice in War)
  - Regulate the actions of a State in war
  - Means and Methods; Targeting and Treatment

- **Jus post Bellum** (Justice after War)
  - Post conflict resolution – defining a just peace
  - Emerging area

International Law

- Private Law (commercial law)
- Public Law (intergovernmental)
  - Law of Armed Conflict
  - Law of Peace
  - Conflict Management (**jus ad bellum**)
  - Rules of Hostilities (**jus in bello**)
  - *U.N. Charter
  - *Arms Control
  - *Customary Law
  - *Hague Conventions (means & methods)
  - *Geneva Conv/Protocols (humanitarian)
  - *Customary Law
Principal Sources of LOAC

- Treaties
  - Hague Tradition (Means and Methods)
  - Geneva Tradition (Respect and Protect)
  - Additional Protocols I and II
- Consistent state practice + sense of legal obligation (opinio juris)
- Don’t need 100% agreement
- Still Binding on all states unless Persistent Objector
- Can’t object to Jus Cogens
  - universally accepted norms
  - genocide, slave trade, torture

The 1977 Additional Protocols to the 1949 Geneva Conventions

- Response to brutal civil wars
- Merges Hague (Means & Methods) and Geneva (Respect & Protect) Traditions
- Most of our allies are signatories
- Many provisions viewed as CIL
- U.S. is not a party to either (not ratified)
  - Object to certain provisions
  - US recognizes many provisions as CIL

1977 Additional Protocols

<table>
<thead>
<tr>
<th>AP I - IAC</th>
<th>AP II - NIAC</th>
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</thead>
<tbody>
<tr>
<td>- Supplements CA 2</td>
<td>- Supplements CA 3</td>
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<tr>
<td>- Controversial expansion</td>
<td>- Controversial reduction</td>
</tr>
<tr>
<td>- Gives other groups</td>
<td>- Armed group must now be</td>
</tr>
<tr>
<td>(those fighting colonial</td>
<td>under responsible command &amp;</td>
</tr>
<tr>
<td>domination, alien</td>
<td>hold territory</td>
</tr>
<tr>
<td>occupation, racist</td>
<td>CIL – Pres. Obama</td>
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<td>regimes) protections as</td>
<td>Administration support</td>
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<tr>
<td>if “state actors”</td>
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<tr>
<td>- Most provisions are CIL</td>
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<td>- Matheson Memo</td>
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</tbody>
</table>
Other Sources of LOAC

- UN Charter (1945)
  - Modern Jus ad Bellum (Jus Contra Bellum)
- Commentaries for 1949 Geneva Conventions
  - Jean Pictet, Official Reporter – "Legislative History"
  - Incorporates both law and policy

Other Sources of LOAC

- Art. 38 of the International Court of Justice Charter
  - Agreements and Custom
  - General principles of law of civilized nations
  - Judicial decisions/writings
- The ICRC CIL Study?
  [http://www.icrc.org/customary-ihl/eng/docs/home](http://www.icrc.org/customary-ihl/eng/docs/home)

Law of Armed Conflict – Evolution

<table>
<thead>
<tr>
<th>Year</th>
<th>Event/Development</th>
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<tbody>
<tr>
<td>335 BC</td>
<td>Greeks and Romans</td>
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<tr>
<td>1800</td>
<td>Principle of Self-Defense, Don't attack civilians</td>
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<tr>
<td>1862</td>
<td>Treaty of Westphalia: Only nations can wage war</td>
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<tr>
<td>1860s</td>
<td>Laws Codified / Treaty Development</td>
</tr>
</tbody>
</table>
| 1899 & 1907 | Hague (1899 & 1907)  
             | Geneva (1864, 1906, 1929)                                                       |
| 1949   | 1949 GCI-IV                                                                        
| 1977   | 1977 Protocols                                                                     |
Reactive Nature of the Law of Armed Conflict

- US Civil War
- Solferino
- World War I
- World War II
- Indo-Chinese Wars
- Guerrilla Wars
- GWOT / OCO

<table>
<thead>
<tr>
<th>Year</th>
<th>Treaty/Protocol</th>
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<tbody>
<tr>
<td>1863</td>
<td>Lieber Code</td>
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<tr>
<td>1864</td>
<td>Geneva Conv (W/S)</td>
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<tr>
<td>1925</td>
<td>Gas Protocol</td>
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<tr>
<td>1929</td>
<td>Geneva Conv (+ PW)</td>
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<tr>
<td>1949</td>
<td>Geneva Conv (+ C)</td>
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<td>1954</td>
<td>Hague Cultural Prop</td>
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<td>1977</td>
<td>Protocols</td>
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Triggering LOAC

- Conflict classification
- “Common Articles” 2 and 3 (Identical in all 4 GCs)

CA 2 – International Armed Conflict
The entire GC apply

CA 3 – Non-International Armed Conflict (internal armed conflict)
Only CA 3 applies

International Armed Conflict

- Common Article 2
- State v. State
- Triggers full body of GC
- Combatants & Protected Persons get protections from all 4 GCs
- Most important provision?
  - Combatant Immunity

Pictet: Armed Conflict: “Any difference arising between two States and leading to the intervention of armed forces”
Non-International Armed Conflict

- Common Article 3
- State v. Insurgent or Non-State
- Only CA 3 applies
  - Not full body of GC
  - “Mini-convention”
  - No Prisoners of War
- Domestic Law applies

Pictet: Armed Conflict:
1) organized military force?
2) subject to some authority?
3) control territory?
4) Respect the law of war?
5) Does the State respond with regular armed forces?

Non-International (Internal) Armed Conflict

What is Common Article 3?
- It is a mini-convention (the 4 GCs do not apply)
- Requires Humane Treatment
- Prohibits
  - Violence (murder, mutilation, cruel treatment, torture)
  - Hostages
  - Outrages on personal dignity – no humiliating or degrading treatment
  - No sentences or execution without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples

What Laws Apply?

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<tr>
<th></th>
<th>LOAC</th>
<th>CA 2</th>
<th>GC I-IV + AP I</th>
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<tbody>
<tr>
<td>IHRL</td>
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<td>Domestic Law</td>
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<td>Peace</td>
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<td>Demonstrations</td>
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<td>Armed Rioters</td>
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<td>Organized Armed Groups</td>
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<td>Armed Conflict</td>
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<td>State v. armed group</td>
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LOAC = LOW = IHL
Modified Objectives

• Know the three categories of armed conflict

• Understand which laws apply to each category

• Talk intelligently, not ignorantly

Concluding Thoughts:

• Mexico
• Afghanistan
• Libya
• Pakistan

Workshop this afternoon
CA 2, CA 3, AP I, AP II

Questions?

Andrew D. Gillman, Major, USAF
Associate Professor, International & Operational Law
TJAGLCS, 600 Massie Road, Charlottesville VA 22901
andrew.gillman@us.af.mil