

LAW OF ARMED CONFLICT (LOAC)



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HISTORICAL BACKGROUND

The Law of Armed Conflict (LOAC) (sometimes also referred to as the Law of War, LOW) is a series of broad-based rules defining how we fight a war. LOAC differs from the Rules of Engagement (ROE) in that ROE are specific instructions telling us how to operate during a specific scenario such as in Desert Storm. However, LOAC is a set of generalized rules that would apply to any armed conflict. LOAC principles have developed from a variety of places. Another place that LOAC rules come from is international law, such as the Geneva Conventions, Hague Conventions, and the Chemical Weapons Convention. Finally we have rules that develop from U.S. law such as the UCMJ, and the Code of Conduct.

The Geneva Conventions are concerned with protecting persons involved in conflicts. For example: Prisoners of War (POWs), wounded and sick, shipwrecked, and civilians. The Hague Conventions dictate the means and methods of warfare, or which weapons are lawful and unlawful, and what are lawful targets. The Chemical Weapons Convention outlaws all use of chemical weapons, including for self-defense. It also bans the use of riot control agents "as a method of warfare."

Why do we need rules telling us how to fight a war? There are many reasons. These reasons include minimizing the damage we cause during a war, avoiding unnecessary suffering, protecting human rights, and easing the transition from war back to peace. It has been shown that a losing country is more likely to accept the terms of a peace agreement if the other country did its best to minimize property damage and injuries to people. Following LOAC also increases efficiency and effectiveness, helping us in our mission. For example, most people would agree that a church used only for worship purposes is not a military threat. If we waste a bomb blowing up that church, that is one less bomb we have to use against a military target such as an enemy aircraft hangar.

LOAC BASIC PRINCIPLES

Military Necessity:

This refers to only taking actions that are necessary to achieve a legitimate military objective. Military objectives are defined as any object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage. This principle prevents things such as torture to gain confessions, and injuring the enemy except during the fight.

Humanity:

This principle prohibits the use of any kind or degree of force not necessary for the purposes of war, which is resulting in the submission of the enemy with the least possible expenditure of life, time, and physical resources. We must avoid inflicting any unnecessary

suffering and keep from destroying the enemy's property just for the sake of wreaking havoc.

One example of the principle of humanity is the use of land mines versus booby traps. Booby traps are prohibited under the rules of LOAC. A mine is a concealed ordnance designed to kill personnel in the battlefield. On the other hand, a booby trap is an ordnance which is also designed to kill people, but is disguised as an otherwise innocuous object unrecognizable as ordnance, and specifically intended to draw the interest of enemy personnel. Not only could enemy personnel be killed, but an unsuspecting civilian or child could also be killed.

Proportionality:

Loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained. Any excessive destruction or suffering not required to accomplish the objective is illegal as a violation of the LOAC.

This does not mean we are required to use the minimum amount of force necessary to destroy a target. What it does mean, is that your use of force should not be so excessive that collateral damage is disproportionate to the amount of force necessary to achieve your legitimate military objective. **Proportionality** is the key word here.

Chivalry:

In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants.

TARGETS

During a time of conflict, you may only attack lawful targets, which include certain people, places, and things. Combatants are lawful targets. A combatant is anyone engaging in hostilities in an armed conflict on behalf of a party to the conflict. All members of the military are combatants except for medical personnel, chaplains, POWs, wounded and sick, shipwrecked, and parachutists escaping disabled aircraft.

You may also run into some noncombatants. Noncombatants are NOT legal targets. Noncombatants include the exceptions above and civilians. A noncombatant poses no military threat to us and so there is no military necessity (principle 1) in targeting them. However, if a noncombatant threatens your life they have given up their protected status and become unlawful combatants. Unlawful combatants are legal targets. Remember that you always have a right to self-defense. This includes a right to defend yourself, other U.S. troops, and certain U.S. property essential to national security.

Many places are legal targets as well. Any base, forward-located military base, or area housing troops are legal targets. Places like command posts, military dorms, the chow hall, and military buildings

are legal targets. Places such as hospitals or religious buildings (church, mosque, synagogue) are protected if they are marked – whether military or civilian buildings. These buildings cannot be used for other than religious purposes or treating the sick and injured people. If we store extra M-16s in the chapel or in a shack adjacent to the hospital, our chapel and hospital lose their protection. We cannot protect lawful targets by sheltering them in protected places. Cultural landmarks are also protected places. Finally, POW Camps are protected places. POW camps, like hospitals and churches, must be marked. POW camps are marked with a PW or PG.

The last sets of targets we may see in a war are things. Any military vehicle, ship, tank, or aircraft is a legal target, unless they are being used for legitimate medical purposes like an ambulance or C-9. Any military weapon is a legal target. A power plant is a legal target if it provides electricity to run military operations. Civilian factories are legal targets if they are being used to support the war effort. Also, you may NOT steal from civilians.

WEAPONS

All weapons used by the Air Force are reviewed to make sure they are legal. So if the Air Force issues you a weapon, you can use it. Be sure to use the weapon in the form it is issued to you. Altering the weapon (e.g. making bullets hollow point) can make a legal weapon illegal. Weapons are evaluated to see if they cause unnecessary suffering. If they do, they are illegal. Napalm, flamethrowers, white phosphorous, and nuclear weapons are all legal weapons. Poisons, asphyxiating (choking agents), and other gases are illegal. Biological weapons are also illegal. Hollow point bullets are illegal for most people to use, though there are exceptions for some Special Forces and security police.

A unique problem with weapons centers on riot control agents. The most commonly used riot control agent is tear gas. Under the Chemical Weapons Convention, riot control agents have been outlawed as a means of warfare. However, they can still be used to control noncombatants. The only person who can authorize the use of riot control agents is the National Command Authority.

PRISONERS OF WAR

POWs receive special protections under LOAC. Combatants are entitled to POW status. So are civilians who accompany the armed forces and crewmembers of both the merchant marine and civil aircraft of parties to the conflict. Since it is not always clear who is a combatant and who is not, U.S. policy is to treat all people as POWs until their status is determined. POWs are not returned until the end of the conflict. Medical personnel and chaplains are not combatants, therefore they do not get POW status. Medical personnel and chaplains are considered retained personnel. The enemy is only supposed to keep them long enough to treat our troops and they should be returned as soon as possible. Retained personnel are NOT to be held until the end of the conflict.

POWs are entitled to special protections. We are supposed to keep POWs separated from the battlefield if at all possible. POW camps are supposed to be marked and are not legal targets. We cannot use POWs to shield our own people. We can use handcuffs and blindfolds to secure POWs temporarily only if it is absolutely necessary to restrict their vision or movement.

POWs are not to be used for propaganda purposes. They are entitled to humane treatment and respect. We are required to protect POWs from violence, intimidation, insults, and public curiosity. POWs are entitled to keep their personal property such as a wedding ring and family photographs. Any information they have pertaining to the

military or war may be confiscated. Any weapons may be confiscated. Anything that can be used as a weapon, such as shoelaces or a helmet, may be confiscated.

REPORTING REQUIREMENTS

You have an affirmative duty to report any suspected LOAC violation. This includes violations by the enemy, U.S., or any of our allied forces. You should report any suspected LOAC violations to your commander, the IG, the chaplain, or the legal office. It does not matter if your suspicions turn out to be wrong. Always err on the side of caution and report things up the chain of command. In this case, it is truly better to be safe rather than sorry.

You must also follow lawful orders. However, an order to commit a criminal act, such as a violation of LOAC, is illegal and you must not follow it. You can presume an order to perform a military duty is legal, but following an order that an ordinary person would know to be illegal isn't excusable. For instance, an order to shoot all unarmed civilians or to kill a POW would be illegal. Obeying it would be a violation.

What should you do if you think you've been given an illegal order? First, ask for clarification. Maybe the order was unclear, or you didn't understand it. If you still think the order is illegal, try to get it withdrawn. If that doesn't work, you must disobey it. If others obey the order, you have the duty to report that violation of the law of armed conflict.

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