



THE LAW OF ARMED CONFLICT

Belligerent occupation



ICRC



ICRC

International Committee of the Red Cross
Unit for Relations with Armed and Security Forces
19 Avenue de la Paix
1202 Geneva, Switzerland
T +41 22 734 60 01 F +41 22 733 20 57
E-mail: dc_com_fas.gva@icrc.org
www.icrc.org

BELLIGERENT OCCUPATION



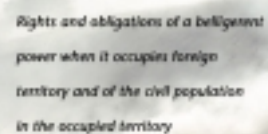
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The aim of this lesson is to explain the duties and rights of a belligerent power when it occupies foreign territory and of the civilian population in the occupied territory.

The lesson will cover:

1. Definitions.
2. The legal position of the civilian population.
3. The duties and rights of the occupying power.



Rights and obligations of a belligerent power when it occupies foreign territory and of the civilian population in the occupied territory

INTRODUCTION

The law of belligerent occupation (which from now on we will refer to simply as the law of occupation) governs the relationship between the occupying power, on the one hand, and the wholly or partially occupied State and its inhabitants, including refugees and stateless persons, on the other. It is applicable only in international armed conflicts.

The first codification of international rules relating to occupation can be found in the Hague Regulations of 1899 and 1907, which themselves were built on customary international law. Many lessons drawn from the crimes committed in the occupied territories of Europe and the Far East during the Second World War were subsequently incorporated into the Fourth 1949 Geneva Convention, which codifies a substantial part of modern international law applicable to occupation. The law was further strengthened by the fundamental guarantees laid down in Article 75 of Additional Protocol I of 1977. Elements of international human rights law are also applicable.

The relationship between the Hague Regulations and GC IV is clarified in Art. 154 GC IV: the GC supplements Sections II and III of the Regulations.

1. DEFINITIONS

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Territory is considered **occupied** when it is placed under the authority of the hostile army. The occupation extends only to the territory where this authority has been established and can be exercised. The law on occupation applies to all cases of partial or total occupation, even if such occupation does not encounter armed resistance.

The essential ingredient for applicability of the law of occupation is therefore the actual control exercised by the occupying forces.

Occupation ceases when the occupying forces are driven out of or evacuate the territory.

The beginning and end of application of GC IV is specified in Art. 6 (1) and (3) GC IV.

A territory has been **invaded**, but not occupied, when enemy armed forces stay or fight on it but the enemy's authority is not yet established.

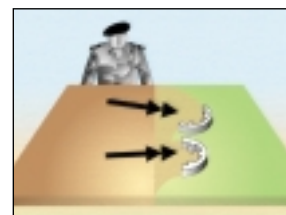
In such cases, in particular Arts. 13-26 and 27-46 GC IV are applicable.

2. THE LEGAL POSITION OF THE CIVILIAN POPULATION

The civilian population of an occupied territory owes no allegiance to the occupying power. As we will see in detail later, it cannot be forced to fight its own country, be involved in any way with the armed forces or give military assistance to the occupying power.

It is in many ways difficult to separate the legal rights of the civilian population from the duties of the occupying power, i.e. a duty for the latter is often a right for the former. In this section we will therefore cover the general legal position and rights of civilians in occupied territory. We will cover more detailed aspects later.

Civilians are at all times entitled to respect for their persons, honour, family rights, religious convictions, and manners and customs. Their private property is protected.



HR IV, Art. 42
Common Article 2 GC

HR IV, Art. 46
GC IV, Art. 27
GP I, Arts. 48 ff.

Any discrimination for reasons of race, nationality, language, religious convictions and practices, political opinion, social origin or position or similar consideration is unlawful.

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The civilian population is in a tense and vulnerable position. The law states that it must be humanely treated in all circumstances and protected from any acts of violence, including by third parties. The occupying power may only put in place such measures of control and security as may be necessary as a result of the conflict. Collective penalties, measures of intimidation, terrorism and hostage-taking are prohibited.

The legal rights of the inhabitants of occupied territory cannot be curtailed by any agreement or other arrangement between the occupying power and the authorities of the occupied territory. This is intended to prevent national authorities from being put under pressure to make concessions which might not be in the population's best interests or weaken its legal rights.

Similarly, the inhabitants of the occupied territory cannot renounce their rights under the Fourth Geneva Convention. This again is a safeguard. It prevents the occupying power from exploiting the vulnerability of the occupied territory by exerting undue pressure to undermine and weaken the protection which the law affords.

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Individual or mass forcible transfers and deportations of the civilian population from occupied territory are prohibited.

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Specific areas may be temporarily evacuated if warranted by the security of the population or imperative military necessity. Generally speaking, the population may not be evacuated to locations outside the occupied territory, again unless this is the only option available. In that case, the evacuees must be returned to their homes as soon as the security situation allows.

In any such evacuation, the occupying power must ensure to the greatest practicable extent that proper accommodation is made available for the evacuees (male and female), that the move to the temporary holding

GC IV, Art. 27
GP I, Art. 75



HR IV, Art. 46
GC IV, Arts. 13, 27,
33 & 34

GC IV, Arts. 8 & 47



area is carried out in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The occupying power must not deport or transfer parts of its own civilian population into the territory it occupies.

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If the occupying power considers it necessary, for imperative reasons of security, to take safety measures concerning civilians, it may at the most subject them to assigned residence or to internment. Assigned residence could mean their own homes or elsewhere. As with the temporary evacuations described above, the stay should be as short as the security situation warrants and those interned should be provided with adequate conditions, food, etc.

RESISTANCE TO OCCUPATION

After effective occupation of territory, members of the territory's armed forces who have not surrendered, organized resistance movements and genuine national liberation movements may resist the occupation. If they do so, they must distinguish themselves from the civilian population, or on the basis of GP I, at least carry their weapons openly during attacks and deployments.

Civilians who take a direct part in such hostilities lose their protection against attack for the time of their direct participation, but not their civilian status. If they do not participate directly in hostilities or no longer do so (for example, if they are *hors de combat*), they are protected against attacks. You know this from the lesson on the conduct of operations.

Indirect support for the resistance movement, such as providing information or non-military supplies, does not constitute taking a direct part in hostilities. Those so engaged are civilians and therefore protected against attack. They may, however, be in contravention of security laws passed by the occupying power. In that case, they can be tried and sentenced or their freedom of movement restricted.

GC IV, Art. 49



GC IV, Art. 78
in connection with
Arts. 41-43

GP I, Arts. 43 & 44

3. THE DUTIES AND RIGHTS OF THE OCCUPYING POWER

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ADMINISTRATION AND THE LEGAL SYSTEM IN GENERAL

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As legitimate State authority has now passed into the hands of the occupying power, the latter must take all measures in its power to restore and ensure, as far as possible, law and order and public safety.

As a rule, the occupying power must allow the territory to be administered as before. It must respect the laws in force in the territory before occupation unless it is absolutely prevented from doing so.

The status of judges and public officials must not be changed. It is prohibited, however, to compel them to perform their duties if for reasons of conscience they no longer wish to do so. Officials may therefore resign if they do not wish to serve under the occupying authorities, without suffering disadvantage as a result.

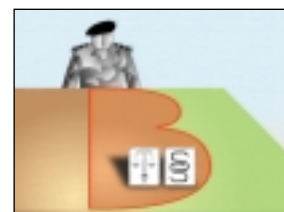
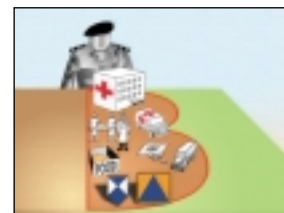
The civil police must also be able to continue to uphold law and order.

SPECIFIC RULES RELATING TO PENAL MATTERS

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We have mentioned the principle that the occupation of a country does not invalidate its national legal system. This also applies to penal law. As military commanders or members of the military legal services, you may become involved in applying the law (you are authorized, for example, to establish military tribunals in occupied territory). The purpose of this section is to outline the main rules governing application of the law. Those requiring further details should refer to the legal reference for each point.

The first point to make is that the occupying power may well decide to repeal the penal laws of the occupied territory or to enact penal provisions of its own. It can choose the first option only if the existing laws constitute a threat to security or are quite plainly an obstacle to the application of the Fourth Geneva Convention. It can choose the second if it is required to do so to maintain law and order in the occupied territory and to ensure its own security. In either case, the population must be informed of all changes in its language before they come into effect.



HR IV, Art. 43

HR IV, Art. 43

GC IV, Arts. 51 & 54



GC IV, Arts. 64 & 65

MILITARY COURTS/TRIBUNALS

Although again in principle criminal offences in the occupied territory should continue to be prosecuted by the local courts, jurisdiction could pass, for example, to **military courts** of the occupying power if the local courts are not able to function properly.

Any breaches of the penal provisions promulgated by the occupying power for its security may be prosecuted by its own military courts.

Civilians who take a direct part in hostilities against the occupying power may be prosecuted. Remnants of the occupied country's armed forces who continue fighting are of course combatants and must be treated as such. If captured, they are entitled to POW status and treatment as laid down in the Third Geneva Convention. In particular, they cannot be tried for the simple fact of taking part in hostilities. If, however, they commit acts in violation of the law of armed conflict, they may be subject to prosecution.

Jurisdiction in penal matters may be assigned either to existing military tribunals or to special military courts created for the occupied territory, the judges being members of the occupying power's armed forces. The courts must be non-political and properly constituted, the judges independent and impartial. Special courts set up on an ad hoc basis are not permitted. The courts must sit in the occupied country, i.e. the accused must be tried in their own surroundings.

GC IV, Art. 66

The occupying authorities may provide for or establish an appeal body, but are not obliged to do so. If they do not, convicted persons must at least have the right to petition. Again, courts of appeal so established should sit in the occupied country.

GC IV, Arts. 66 & 73

PROCEDURAL MATTERS

Military courts so established must comply with the rule of law. They must ensure the accused receives a fair trial.

GC IV, Arts. 67 & 69-75
GP I, Art. 75

Military courts are required to apply in particular the following principles of law in dealing with the cases before them:

- penal provisions may not be applied retroactively; (GC IV, Art. 65)
- the accused must be informed in writing, in a language they understand, of the charges preferred against them; (GC IV, Art. 71)
- the accused have the right to be represented by an advocate or council of their choice, and in serious cases to defence counsel provided by the Protecting Power, or if necessary by the court; (GC IV, Art. 72)
- the defence has the right to present the necessary evidence and in particular to call witnesses; (GC IV, Art. 72)

- the accused have the right to an interpreter;
- the penalty must be proportionate to the offence;
- the period spent awaiting trial must be deducted from any sentence;
- information must be provided on the right of appeal or petition;
- the case must be handled with dispatch.

(GC IV, Art. 72)

(GC IV, Art. 67)

(GC IV, Art. 69)

(GC IV, Art. 73)

(GC IV, Art. 71)

Where applicable, the Protecting Power and the National Information Bureau must be notified about the proceedings, the **National Information Bureau** being the organization that should be set up at the outbreak of hostilities by any State to receive and transmit information relating to POWs and foreign civilians in its power. It cooperates very closely with the **Central Tracing Agency of the International Committee of the Red Cross (ICRC)**.

Representatives of the Protecting Power or an organization delegated to carry out its functions, such as the ICRC, may attend the proceedings at any time and obtain information on their progress.

GC IV, Arts. 71 & 74

Lastly, the Protecting Power or those delegated to carry out its functions and the National Information Bureau should be informed of every judgement. This ensures that the Central Tracing Agency will be duly informed and can perform its duty to protect the accused and inform close relatives.

GC IV, Arts. 136 & 140

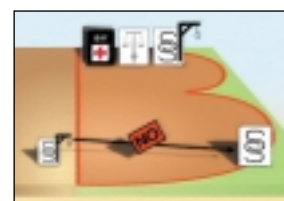
PENALTIES

Minor offences are punishable only by internment or simple imprisonment.

GC IV, Art. 68

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Serious offences may be punishable by death. The law of armed conflict in no way, however, sanctions the death penalty, which many States worldwide have now banned. What it says is that if the death penalty still exists in the occupied territory and the serious offences listed below were punishable by death before the occupation began, then and only then can the death penalty be imposed.



GC IV, Art. 68

GP I, Arts. 76 & 77

Serious offences are exclusively:

- espionage;
- serious acts of sabotage against the occupying power's military installations;
- intentional acts causing the death of one or more persons, insofar as the national law in effect prior to occupation allows the death penalty for such acts.

Anyone sentenced to death must have the right of appeal. In no circumstances can the penalty be carried out during the six months after which the Protecting Power has received notification of the final judgement confirming the death sentence, or of an order denying pardon or reprieve.

GC IV, Art. 75

The death penalty may in no circumstances be pronounced on a person who was under eighteen years of age at the time of the offence.

GC IV, Art. 68

Every effort should be made not to pronounce the death penalty on pregnant women or mothers with dependent children. Even if pronounced, the death penalty must not be carried out.

GP I, Art. 76 (3)

Nationals of the occupying power who sought refuge before the conflict in the now occupied state, e.g. refugees, must not be prosecuted on that account. They can, however, be prosecuted for crimes and other punishable offences committed by them after the conflict began.

GC IV, Art. 70

Persons accused or convicted of offences must be detained under **humane conditions**. All detainees have the right to be **visited** by delegates of the Protecting Power and the ICRC.

GC IV, Arts. 76 & 143

SUMMARY OF ADMINISTRATIVE AND LEGAL ASPECTS

These rules underline the basic concern of the law of occupation, which is to maintain the status quo ante (i.e. as it was before) in the occupied territory as far as is practically possible. This makes sense. The annexation of conquered territory is prohibited by international law. This necessarily means that if one State achieves power over parts of another State's territory by force or threat of force, the situation must be considered temporary by international law. The international law of belligerent occupation must therefore be understood as meaning that the occupying power exercises provisional and temporary control over foreign territory. It follows from this that measures taken by the occupying authorities should avoid far-reaching changes in the existing order.

It is also worth mentioning that in these situations the population is confused and frightened enough without having to deal with completely new laws and officials.

The law therefore ensures that central administrative functions continue uninterrupted in the interests of the population. The population will not be unduly undisturbed by foreign control if day-to-day matters continue to be dealt with by familiar administrative offices and public officials. Lastly, the occupied territory's own judges are best placed to enforce the law.

If the necessary administrative bodies or courts do not actually exist, if the laws do not meet generally accepted standards or if public officials or judges are unable or unwilling to perform their duties properly, then the occupying authorities must remedy the situation. In such cases, the law allows them to set up their own civilian administration and/or new courts to fill the vacuum.

GC IV, Art. 64

REQUISITION OF CIVILIAN RESOURCES AND SERVICES

Civilian resources and services may be requisitioned in occupied territory in accordance with strict rules. They must only be requisitioned if they are needed by the armed forces of occupation or public utility services, or to feed, shelter, clothe, transport or care for the population of the occupied country, and then only if they are indispensable for these purposes. In addition, foodstuffs, general articles and medical supplies may not be requisitioned unless the requirements of the civilian population have been adequately met. This is logical since under the law the occupying power is obliged to guarantee that the occupied territory is provided with foodstuffs and medical supplies.

The order to requisition must be issued by the commander of the locality occupied. Soldiers cannot simply take what they want. The requisition of civilian resources and services without the authorization of the commanding officer is prohibited in all circumstances.

HR IV, Art. 52
GC IV, Arts. 51 & 55

The amount of items and extent of the services requisitioned for the army of occupation must be in proportion to the territory's resources, i.e. the occupied territory should not be bled dry.

Items in kind must as far as possible be paid for in cash. If this cannot be done, a receipt must be given. Payment must then be made as soon as possible.

HR IV, Art. 52
GC IV, Art. 55

An occupying power may also collect taxes, tariffs and duties, again as far as possible on the basis of the regulations and systems in place. It may not change the whole tax system overnight. The occupying power must use the funds thus raised to defray the administrative costs of running the occupied country's administration. Additional funds may only be raised to meet the requirements of the occupying forces or to cover its administrative costs.

No extra amounts (contributions) are to be collected except under a written order issued by a commanding officer. For every contribution a receipt must be given to the contributors.

HR IV, Arts. 48,
49 & 51

REQUISITION/SEIZURE OF PROPERTY

The law of occupation is very detailed about the requisitioning/seizure of government, military and private property. The main points are discussed below.

Movable government property that can be used for military purposes becomes spoils of war. It can be freely seized by the occupying power, whose property it becomes without the need for compensation. Such property includes, for example, cash, other financial assets, realizable securities, all military equipment, and means of military transport.

HR IV, Art. 53

Fixed government property such as telecommunication and transportation systems (railways, public transport, airlines) may be seized. They must be restored and compensation paid when peace is made.

The occupying power does not acquire ownership of public buildings, real estate and agricultural estates in occupied territory.

Fixed government property should be managed and maintained by the occupying power. The proceeds may be used only for the administration of the occupied territory.

Private property cannot be confiscated. An exception is made for items that can be used for military purposes, commodities designed for consumption, and businesses such as airlines, railways, road transport networks and telecommunications. After the conflict has ended, seized property of this type must be returned and, if appropriate, compensation paid.

Property used for religious purposes, for charity, education, or the arts and sciences, must be treated as private property even if it belongs to the State. Here the law is quite clear. It is forbidden to seize, destroy or wilfully damage such property. The same applies to historical monuments and cultural property.

HR IV, Arts. 46 & 56
HCCP, Art. 5

Civilian hospitals may be requisitioned on condition that priority is given to the civilian population and patients already in the hospitals. If civilian needs are adequately met, then and only then can the occupying power requisition hospitals for its own use. There are further limitations. Civilian hospitals may only be requisitioned for the adequate and immediate medical treatment of wounded and sick members of the armed forces of the occupying power or of POWs, and only for as long as that immediate necessity exists. The same rule applies to the use of medical equipment and personnel.

GC IV, Arts. 56 & 57
GP I, Art. 14

Destruction of property. The occupying power is not allowed to destroy real or personal property belonging individually or collectively to private

persons, to the State, to other public authorities or to social or co-operative organizations, except where such destruction is made absolutely necessary by military operations.

GC IV, Art. 53

The occupying power must **not compel members of the population to serve in its armed forces**. Doing so constitutes a grave breach of the Geneva Conventions. Any pressure or propaganda aimed at securing enlistment is also prohibited. The ban applies to participation in military operations and even mere recruitment into the forces, whether armed, paramilitary or auxiliary. For example, it is prohibited to use members of the population to fight the resistance in an occupied country.

The prohibition does not cover service in the civilian police force, whose duty is to maintain law and order. Here too, though, it would be wrong for the occupying power to use members of the population to fight the resistance, even in a policing role.

HR IV, Art. 23 (h)
GC IV, Arts. 51 & 147

The occupying power may **compel civilians over eighteen years of age to work** but only in three situations: to serve the immediate needs of the occupation forces; for the benefit of the public utility services; or to feed, shelter, clothe, transport or care for the population of the occupied territory. Civilians used in this way do not lose their civilian status.

The type of work permitted is also restricted. Civilians may not be ordered to work to improve the operational readiness of the occupying forces, nor to contribute to military operations. Work linked to improving fortifications, trenches and military airfields, for example, is banned, as is work in the armaments industry. Work concerned with rebuilding or maintaining water and electricity supplies, transportation, the food industry, fertilizer or cement factories, etc., is permitted.

Such work must always be in the occupied territory itself and in the interests of its population or the occupying power. As far as possible, the workers must be kept in their usual places of employment. Existing working conditions – wages, hours, etc. – may not be changed. Pregnant women and maternity cases should not be made to work.

HR IV, Art. 52
GC IV, Art. 51

Civil defence organizations must be allowed to continue their work and be given the necessary facilities to do so. Their personnel must not be compelled to perform other activities which would interfere with civil defence tasks. The occupying power must not change the structure or personnel of these organizations in any way that might lessen their efficiency. It must not compel, coerce or induce the civil defence organizations to perform their tasks in a way that is prejudicial to the interests of the civilian population. It can disarm civil defence personnel for reasons of security.

GP I, Art. 63

THE DUTY TO PROVIDE SUPPLIES TO THE OCCUPIED TERRITORY

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It is the duty of the occupying power to ensure that the population is provided with supplies to the fullest extent that it can.

What is meant by supplies? The law refers to basic needs and to other supplies essential to the survival of the civilian population in the occupied territory. It specifies basic food and medical supplies as well as clothing, bedding and means of shelter. Also included are objects necessary for religious worship. Obviously, a common-sense approach is required in meeting the requirements of the law. In cold climates, for example, fuel for heating may take priority.

The occupying power must prohibit discrimination in the provision of supplies, special treatment being warranted only by the medical condition, age or sex of the affected persons.

If the supplies available in the occupied territories are still insufficient to meet needs, the occupying power must do something about it. It can permit local authorities or individuals to import the necessary goods from another country or possibly from an unoccupied part of the country. If this is not enough, then it must permit relief operations by other States or by humanitarian organizations such as the ICRC. The procedures and rules for this form of relief operation were covered in earlier lessons.

The representatives of the Protecting Power and, where applicable, the ICRC, have the right to verify the state of supplies on the spot at any time. They are bound to give the authorities of the occupying power an objective picture of the actual conditions and advise them on measures to be taken.



GC IV, Arts. 27 (3) & 55
GP I, Arts. 69 & 75 (1)

GC IV, Art. 59
GP I, Arts. 69-71

GC IV, Art. 55 (3)

SUMMARY OF THE LESSON

“If you are in control, try and maintain the country’s practices, contracts and family traditions. The occupying power should respect the local laws, religion and customs. It should attempt to consolidate its authority by adopting a conciliatory approach in the administration of the occupied territory.”

Does that sound like the Fourth Geneva Convention in a nutshell? It could be, but in fact it was taken from a translation of centuries-old Eastern texts on occupation. Nothing is really new. The modern law of occupation represents a sensible approach to a difficult and age-old problem.

Questions from the class

APPENDIX

Questions from the instructor to the class to consolidate the lesson

1. Status of the inhabitants of occupied territory

Situation. You capture the following people in occupied territory: 14 members of a resistance group which has carried out sabotage activities in your area, and a civilian from the occupied territory bearing no insignia but who fired at and wounded one of your soldiers. How should you deal with them?

Answer. The members of the resistance movement may be considered as combatants provided that they:

- are led by an individual responsible for his subordinates' conduct and actions;
- are subject to an internal disciplinary system allowing for enforcement of the rules of the law of armed conflict.

In order to be entitled to POW status, these combatants must distinguish themselves from the civilian population while engaged in an attack or in a military operation in preparation for an attack. The Third Geneva Convention requires that they wear a distinctive insignia which can be recognized at a distance and that they carry their arms openly.

Additional Protocol I develops that rule, stating that it is sufficient that they carry their arms openly during each military engagement, and during such time as they are visible to their adversary while engaged in a military deployment preceding the launching of an attack in which they are to participate. If they fail this requirement, they shall nevertheless be given protection equivalent in all respects to that accorded to POWs by the Third Geneva Convention. This includes the protection afforded POWs being tried and sentenced for any offences they have committed.

Sabotage operations are lawful combat activities provided they are carried out by lawful combatants and against legitimate military targets. If the resistance movement has satisfied those conditions, its members may not be punished for sabotage. However, if the act of sabotage did not constitute a lawful act of war, they may be punished in accordance with Arts. 99 ff. of the Third Geneva Convention. If the members of the resistance group do not fulfil all the conditions of combatant status, they can be punished for the sabotage activities which they committed in accordance with the criminal and procedural laws which apply to the

civilian population in the occupied territory. Remember that in case of doubt, captives should be treated as POWs until their exact status can be ascertained by a higher authority.

The civilian who is not a member of a group authorized to participate in combat activities and who fired at and wounded a soldier can be tried and sentenced for that act, either by a civilian court or, if there is none, by a military court.

2. Forceful evacuation of civilians (this question might also be asked after the *conduct of operations* lessons.)

Situation. In preparing to defend newly occupied territory, a brigade commander decides to clear a border village of its entire civilian population. The evacuation is necessary for urgent military reasons and for the safety of the local population. The commander directs his Brigade Major/S1/G2 operations to draft a suitable order. The latter submits the following draft:

“A Company, 1st Battalion, will immediately dispatch five four-man teams to announce the evacuation by means of posters. The A Company Commander will personally notify the mayor. Notification of the mayor and display of the announcement shall be completed by midnight tonight. Evacuation will begin at 0600 hours and be completed by 1800 hours tomorrow. The roads to city D will be kept clear for this purpose. Forcible transportation will be implemented if the civilian population refuses to be evacuated. In addition, the houses of individuals who refuse to be evacuated will be destroyed. Special detachments will be available after 0600 hours tomorrow to carry out punitive measures to ensure compliance if necessary”.

What reservations should the Company Commander have concerning the order as drafted? How should the order be modified?

Discussion. Generally, all individual or mass evacuations of civilians by force and the displacement of protected individuals in a combat area are prohibited. However, the military can completely or partially evacuate a specific region for urgent military reasons or for the safety of the local inhabitants, in which case the evacuation must be coordinated by brigade headquarters. In our example, the evacuation is necessary both for urgent military reasons and for the safety of the local population. Civilians and other protected persons should not be detained in an area which is particularly exposed to the dangers of war. In carrying out the evacuation, the military must also see that the needs of the evacuees are met and that they have suitable shelter.

A lawful evacuation can be implemented by force if the civilian population does not obey reasonable implementing orders. Non-complying inhabitants may also be punished for refusing to abide by these orders. However, any punishment must be left to the judgement of a civilian court or a military court of the occupying forces.

Punishment for not obeying lawful implementing orders cannot be imposed summarily. Measures designed to intimidate or terrorize the civilian population are prohibited. It is therefore unlawful, in the above case, to threaten to destroy houses for non-compliance. Moreover, the deliberate destruction of civilian property is itself a violation of the law of armed conflict and constitutes a war crime.

The draft order should be modified to eliminate all references to threats to destroy civilian homes. However, the local inhabitants should still be warned that individuals refusing to obey the evacuation order will be subject to judicial punishment. The evacuation should be coordinated and carefully planned by the brigade staff and arrangements made for the care and relocation of all displaced persons, who should be returned to their own homes as soon as the security situation allows.

3. Treatment of the civilian population in occupied territory (this question could also be asked after the *conduct of operations* lessons.)

Situation. A platoon is responsible for an occupied enemy village. On occupying the village, the platoon found no enemy soldiers. The population was ordered to hand over any weapons it had. No weapons were handed over and none were found. Later, a section on patrol in the village came under fire and the section commander was shot in the back. Members of the platoon immediately conducted a house-to-house search and rounded up a number of civilians. It was certain that no one had been able to escape before or during the search.

Certain soldiers now urge the platoon commander to order the civilians to identify the perpetrator and to threaten them with execution if they refuse. Some demand that three civilians be shot in retaliation for the murder of their comrade and that the house from which the shot came be burned down.

Are their demands lawful? What action would you take as the platoon commander?

Discussion. Even assuming that the individual who killed the section commander is among the civilians taken in, punishing all of them for the act of one is prohibited. **Collective punishment** is a violation of the law of armed conflict. It is unlawful to apply **physical or mental coercion** to protected civilians to obtain information from them. Just the threat of shooting the civilians who do not comply is a violation of the law.

It is also unlawful to execute the three civilians in retaliation for the shooting of the soldier and to burn the house from which the shot came. **Reprisals** are forbidden against civilians and their property in occupied territory.

The platoon commander should reject all demands and deliver any persons suspected of committing or participating in the killing to a collecting point, along with a detailed report of the incident.

CASES AND EXAMPLES

The Iraqi occupation of Kuwait, 1990

According to C. Murphy, whose reporting on the 1990 occupation of Kuwait won a Pulitzer Prize, Iraq violated a number of provisions of the Fourth Geneva Convention: "Iraq barred the departure of foreign nationals. Hundreds of Kuwaitis were arrested during the occupation and transferred to prisons in Iraq. In the last days of the occupation, about fifteen hundred men were rounded up and taken to Iraq, presumably as hostages of war. Numerous civilians were tortured during interrogation. These actions violated several provisions of the Conventions that bar the deportation of civilians from the occupied territory, the taking of hostages, and the physical or moral coercion of civilians, particularly to obtain information; Iraq encouraged its citizens to move to Kuwait and settle there. Although this did not occur on a large scale, it violated the Conventions, one of whose provisions states that the occupying power shall not transfer its civilian population into occupied territory. Other Iraqi violations included the failure to allow Kuwaitis access to humanitarian relief and to the International Committee of the Red Cross facilities for tracing prisoners; the withholding of normal medical care from Kuwaitis in some hospitals; the theft of State and personal property, including the transfer of thousands of automobiles from showrooms and private garages and the plundering of university libraries and scientific laboratories".

Source: C. Murphy in Crimes of War: What the public should know, R. Gutman & D. Rieff (eds.), W.W. Norton & Co., New York/London, p. 264.

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