



Pre-Course Reading Material

This paper will provide some background information for the Military Course on the Law of Armed Conflict on the following matters:

What is “International Law”?

- Where does it come from?
- What is a “Treaty”?
- What is “Customary International Law”?
- What are the “general principles of law” recognised by States?
- The principal components of the “United Nations”.
- What is the relevance of judicial decisions and scholarly writings?
- Are international organisations part of international law?
- How do Treaties enter into force?
- How does a State decide to become part of a Treaty?
- How are Treaties implemented domestically?
- How is international law enforced?
- Can individuals be subject to international law?
- Human Rights’ relationship to International law.

What is “International Law”?

“International law” has many definitions. Perhaps the most succinct is: “that body of law which is composed for its greater part of the principles and rules of conduct which States feel themselves bound to observe, and therefore, do commonly observe in their relations with each other.”¹ It includes:

- a. the rules of law relating to the functioning of international institutions and organisations, their relations with each other and their relations with other States and individuals; and
- b. certain rights, duties and rules of law relating to individuals and non-State matters which are the concern of the international community.

There is a fundamental distinction between “international law” and a State’s “domestic law” (also sometimes called “municipal law”). Domestic law is the internal law of a State derived by a constitutional process to which the citizens of that State are bound. It will normally consist of National (Federal), State (Provincial) statutes and regulations. In certain nations it includes the “common law”.²

International law may sometimes be referred to as “public international law”. This is so in order to distinguish it from “private international law” or that area of a State’s domestic law which has been developed to include foreign laws, treaties and international policy which directly impinge upon that State’s responsibility to it self, its neighbours and the international community.

International law governs a State’s legal rights and obligations in its dealings with other States and international organisations, such as the UN. As an example, if two individuals enter into a contract, the contract will normally be subject to the domestic law of the State in which they were at the time of entering the contract. If a State enters into a contract with an individual or company from a foreign State, that contract will also be subject to domestic law. However, if a State enters into a treaty with another State, that treaty is governed by international law. Equally, if a private individual or company negligently causes an injury to another individual, the duty to pay compensation for that injury will be determined by domestic law. Internationally, if a State engages in activities which cause injury to another State (or that State’s citizens), the State

¹ Shearer, I.A. (1994), *International Law*, (11th ed), Butterworths, London, p.3.

² The unwritten law derived from the traditional law of a nation as developed from judicial precedence, interpretation, expansion and modification. For instance, the common law operates in British Commonwealth countries, the United States of America, the Republic of Ireland and some other individual States.



Pre-Course Reading Material

causing the injury may be obliged under international law to pay compensation, or reparations for that damage to the State concerned.

Where Does International Law Come From?

The sources of international law are set out in paragraph 1 to Article 38 of the Statute of the International Court of Justice (also known as the “ICJ” or “World Court”) which provide, in priority order, the following “primary” sources:

- international “conventions and treaties” to which the States in dispute are party,
- “customary international law”, and
- the general principles of law internationally recognised by civilised nations.

International law is also deduced from secondary means or “subsidiary” sources such as judicial decisions and opinion and the scholarly writings of “experts” in this field.

In practice, priority of action is firstly accorded to “conventions and treaties”, then to “customary international law” and finally to the “general principles of law” recognised by civilised nations (but also see below). If none of these categories furnish a clear set of rules then cognisance is given to judicial decisions which will carry greater weight than scholarly opinion.

What is a Treaty?

A treaty is an agreement between States which is binding in international law. A treaty may also be referred to as a: “convention”, “protocol”, “covenant”, “agreement”, or “exchange of letters”. The basis of treaty law is to be found in “customary international law” (see below) much of which is now embodied in the “1969 Vienna Convention on the Law of Treaties” (especially the interpretation of treaties). Even non States party to the Vienna Convention recognise that much of it restates customary international law on the subject.

Different types of treaties serve different functions, for instance:

- **A bilateral treaty.** These are concluded for a specific purpose and may resemble a contract under domestic law. For example, a bilateral treaty could involve an air services agreement between two States to allow the airlines of each State to fly between their respective national territories.
- **Multilateral Treaties.** These provide the general rules of conduct for States and are often referred to as “law-making treaties”. Using the earlier air treaties as an example, the 1944 Chicago Convention on International Civil Aviation lays down many of the rules for international arbitration.

A treaty will only bind a State which is a party to it but it can confer certain benefits on non-party States. In general terms³, “treaty law” takes precedence over “customary international law”, but it is possible in some instances that customary international law may overrule a treaty.⁴ For instance, Article 64 to the Vienna Convention provides that: “...if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with the norm becomes void and terminates.”

Examples of non-binding treaties are those undertaken by fora such as the International Labour Organisation and the World Health Organisation where guidelines and standards which prevail, while authoritative, are not binding upon States.

What is Customary International Law?

A very important source of international law is that body of international law which has its source in the “customary practice” between States. Before a practice can amount to a rule of customary international law there must be:

- uniform and constant usage practised by States over a period of time; and
- recognition by States that this practice is the result of a rule of international law (*opinio juris*).

³ As is consistent with the standard interpretation of Article 38 to the Statute of the ICJ.

⁴ Some overriding rules, known as *jus cogens*, are not affected by a treaty.



Pre-Course Reading Material

In order to give rise to a rule of “customary international law” State practice does not have to be completely uniform, or consistent. It is sufficient that it is “generally” uniform and consistent.

Unlike a treaty, a State does not have to accept specifically a rule of customary international law before it is bound by it. A State may not be bound by a new rule of customary international law if it has consistently and expressly continued to object to the practice used to support the existence of the rule.

Jus Cogens. The concept of *jus cogens* involves those fundamental principles of customary international law which are accepted and recognised by the international community of States, as a whole, and to which no exceptions, or derogations, are permitted.⁵ For instance, the prohibition of genocide, slavery and racial discrimination are examples of the *jus cogens* rule. The fundamental premise of *jus cogens* is that the norms and interests of the international community “as a whole” are inherent within customary international law and can only be subsequently modified by that forum itself. From this it follows that regional views or pragmatisms are subordinate to the dominion of international law.

What are “General Principles of Law” recognised by states?

In some cases, treaty provisions and international custom by themselves provide insufficient guidance to resolve a particular issue. These gaps may be filled by looking to “general principles of law” recognised by States. This may involve examining the domestic laws of different nations and seeing if there are principles which are universal, or nearly so, amongst such systems.

General principles may also include procedural and evidential principles as well as principles of substantive law. Examples here are the use of “circumstantial evidence”⁶ and the principle of “estoppel”⁷ which have been found to represent general principles of law recognised by States.

What is the Relevance of Judicial Decisions and Scholarly Writings to International Law?

International judicial or juristic decisions will only validly bind parties to an action if such decisions are part of the formulation of a determination, recommendation or declaration on a particular matter which is declaratory of existing customary international law. For instance, the jurisdiction of the International Court of Justice (ICJ) will produce decisions which are binding upon the international community. Conversely, a judgment emanating from a State's domestic court may have an influential bearing (but not necessarily an authoritative action) upon the evolution or development of international law. It is all a question of the “international functioning” or weight of international authority behind the body or organisation concerned.

Scholarly writings, especially those of international jurists and academics, as previously stated are a “subsidiary” source of international law. The significance given to such a source would be dependant on its nature and content. The findings of the International Law Commission, an UN-related body with a mission of codifying and developing international law, is an example.

Are International Organisations Part of International Law?

While international organisations perform as “organs of the international community” and may be structured into executive, administrative and judicial functions, it is true to say that there is no one international organisation which has complete “executive” power over another.⁸ However, some treaties establish international organisations which have the requisite authority to adopt resolutions or acts that are automatically binding on member States.⁹ For example, under Article 25 to the UN Charter, member States agree to abide by and carry out resolutions of the UN Security Council.

⁵ Articles 53 and 64 to the 1969 Vienna Convention refer.

⁶ Evidence indirectly pointing towards an occurrence, without directly showing that it happened.

⁷ Estoppel is the principle that, if one party has accepted a particular situation by its conduct, it would be 'unconscionable' to proceed to challenge the validity of that situation.

⁸ International organisations are not mentioned in Article 38 of the Statute of the ICJ.

⁹ Member States agree to be bound by such resolutions although this is an aspect of treaty law, rather than a separate source of international law.



Pre-Course Reading Material

To understand this best it is necessary to discuss the various elements of the UN. Under its Charter, the UN's functions are divided into six principal components:

1. The General Assembly,
2. The Security Council,
3. The Economic and Social Council,
4. The Trusteeship Council,
5. The International Court of Justice, and
6. The Secretariat.

Only the General Assembly, the Security Council and the International Court of Justice will be examined in this paper.

UN General Assembly. Article 10 to the UN Charter gives, but does not limit the General Assembly's powers and functions to:

- a. promoting the maintenance of international peace and security (in conjunction with the Security Council);
- b. the direction and supervision of international economic and social co-operation;
- c. the supervision of the international "trusteeship" system;
- d. budgetary and financial powers of the organisation;
- e. the admission, suspension and expulsion of member States (in conjunction with the Security Council);
- f. maintenance of its Charter;
- g. the adoption of international treaties, conventions, protocols and declarations.

UN Security Council. In very broad terms the principal powers and functions of the Security Council relate to:

- a. the pacific settlement of international disputes (in concert with the General Assembly);
- b. the maintenance of international peace and security through preventative and enforcement action;
- c. the control and supervision of "trust territories", agencies and regional agreements;
- d. the admission, suspension and expulsion of members where necessary; and
- e. operational issues in conjunction with the General Assembly.

(See "How is International Law Enforced?" (below) for some discussion on the International Court of Justice.)

Fundamentally, UN General Assembly resolutions are not legally binding but are merely recommendations putting forward opinions on various issues with varying degrees of support. The UN General Assembly does however produce many important resolutions and declarations which have a direct influence on the shaping of customary international law. There is no doubt that certain UN General Assembly decisions (such as the UN budget and the constitution of bodies such as the Security Council and the Economic and Social Council) are binding on UN Members.

As noted earlier, under the UN Charter, some decisions made by the Security Council do create immediately binding obligations on every member of the UN. Good examples of such resolutions are those adopted over recent years applying sanctions against certain States.

Caution must be exercised in treating the "resolutions" of international organisations as law as these resolutions may only be recommendations and therefore non-binding.

How do Multilateral Treaties Enter into Force?

This depends on the intent of the treaty itself. Most multilateral treaties¹⁰ take the following broad approach:

- **Text.** The text of the multilateral treaty will provide that the treaty is "open for signature" for a set period of time. States may only sign it within that period.

¹⁰ Treaties between a number of States



Pre-Course Reading Material

- **By Signature.** Signature does not usually bind a State to the treaty obligations itself. A treaty usually provides that it becomes binding following some further act such as “ratification” or “acceptance” for example. The most common form is ratification. If a State does not sign a treaty during the period when it is open for signature, it is generally not able to ratify it. The State is however, able to become a party to the treaty by a single step, called “accession”. The overall effect is the same. Although signature does not usually bind a State, it does impose obligations, such as to refrain from acts which would defeat the object and purpose of the treaty.
- **In Force.** A treaty usually comes into force following a set period of time after a specific number of States have ratified or acceded to it. Those States are then bound by the treaty under international law. The period of time and the number of States required for a treaty to come into force will be given in the text of the treaty itself.

How Does a State Decide Whether to Become Party to a Treaty?

Normally, the key issue in determining whether a State becomes party to an international treaty is whether the treaty is consistent with the State's own “national interests”. This decision is usually based on:

- **Government Level.** National government level consultations, negotiations, debate and consensus on the treaty. State (Provincial) representatives may attend actual negotiations as advisers or observers. Many international treaties need State (Provincial) cooperation for their domestic implementation. For example, discussions with State (Provincial) Governments may occur at many levels ranging from direct consultation at department level, to Ministerial Committees and possibly Treaties Councils.
- **Other Groups.** Relevant industrial organisations, professional groups and Non-Government Organisations (NGOs) may also be consulted although confidentiality may constrain the inclusion of some bodies.

How are Treaties Implemented Domestically?

Under many States' constitutions, treaty making is the formal responsibility of the “executive”¹¹ arm of parliament. Decisions concerning the negotiation of multilateral treaties such as: the determination of objectives, negotiating positions, and whether to sign or ratify the treaty are normally made at ministerial or higher level.

Treaties are normally tabled in a State's parliament where discussion will centre on: the likely economic impact; environmental considerations; social and cultural effects; the obligations to be imposed on the State by the treaty; direct financial costs to the State; how the treaty will be implemented domestically; what consultation has already occurred and whether the treaty provides for withdrawal or denunciation from it. In many States the very act of ratification embodies the treaty into national law.

Once a State's government has made a decision to accept a treaty, the government may then consider:

- whether action is necessary to implement the treaty,
- whether changes must be made to legislation.

In some cases legislation may not be required. For example, no legislation is necessary to implement the “Vienna Convention on Treaties” as it does not create rights or obligations for individuals.

¹¹ In most States it is the 'Executive' (the departments and bureaucrats), the 'Parliament' (those elected or appointed representatives of the people) and the 'Judiciary' (the judicial, or court system of a nation) which control society. It is the relationship and interaction between these tiers that is often referred to as the 'separation of powers'.



Pre-Course Reading Material

How is International Law Enforced?

There are a variety of ways in which international disputes can be resolved:

- **Dispute Settlement.** Minor international legal disputes are usually resolved by diplomatic negotiations between the governments of the States concerned. Disputes may also be settled through the mediation, or good offices¹² of a third party like the UN Secretary-General or a neutral organisation, such as the International Committee of the Red Cross (ICRC). Alternatively, parties may agree to refer the dispute to a particular person for arbitration or to establish a special arbitral or judicial body to decide the dispute. Lastly, many treaties contain settlement provisions and procedures to be adopted in the event of a dispute.
- **The International Court of Justice.** Another possibility is the employment of the ICJ, a permanent judicial body for the settlement of disputes between States. All members of the UN are automatically parties to the Statute of this Court. Other States may become parties to it, subject to certain conditions. A contentious dispute may only be taken before the Court by consent of the States concerned. Being a party to the “statute of the court” does not amount to consent. Consent can take a number of forms and States can agree in advance to submit to the jurisdiction of the ICJ before any particular dispute arises or escalates. Many multilateral treaties expressly provide that disputes arising out of the interpretation or application of a treaty will be referred to the ICJ. Further, States party to the Statute of the ICJ may at any time make a declaration under Article 36(2) of the Statute (the Optional Clause) which provides that they recognise the ICJ jurisdiction. Such declarations may be made unconditionally, or subject to a condition of “reciprocity”¹³, or “reservation”¹⁴. Under Article 94 of the UN Charter: “Each member of the UN undertakes to comply with the decision of the ICJ in any case to which it is a party”. Unfortunately, in some cases where the ICJ has had jurisdiction, the Defendant State has boycotted proceedings or failed to comply with a judgment given against it.
- **Coercive Measures.** Prior to this century, the principal means of enforcement of international law was “self-help”. Where there was a breach of international law, the injured State was entitled to take all measures available to it to enforce its rights. For centuries, the ultimate form of self-help was the resort to “war” but this has been outlawed under Article 2(4) of the Charter. Certain forms of unilateral self-help have been considered to be available to States as a subsidiary means of enforcement. These include “retorsion”¹⁵ and “reprisal”¹⁶. However, in this context, it can be argued that such acts, in peacetime, are

¹² An international term meaning the ‘arbitration’ or ‘mediation’ offered by a neutral State or international organisation in an attempt to resolve, or reach a peaceful settlement to a dispute, or series of disputes between two States, or groups of States.

¹³ Reciprocity is a principle of international law by which States grant each other equivalent treatment through mutual respect. The expectation of reciprocity is a powerful force for international action leading to the creation of treaties and customary international law. For instance in the law of armed conflict one party may suggest that they respect the law of armed conflict because the other party also respects it.

¹⁴ A ‘reservation’ (to a Treaty/Convention/Protocol/Declaration) means the right of a State to exercise their internal judgement on a matter which may be contrary to their national policy or national interest. It is a means by which a State purports to exclude or modify the legal affect of specified provisions of a treaty, convention, protocol or declaration. Reservations arise in practice only in connection with multilateral treaties when there is an aspect of the treaty, convention, protocol or declaration which a State finds unacceptable. Some multilateral treaties, conventions, protocols declarations may expressly prohibit the making of reservations. They are inapplicable to bilateral treaties because any concern by a party about the acceptability of a provision should have resulted in its redrafting in the negotiating process.

¹⁵ A lawful act intended to injure the belligerent State, such as terminating economic aid, or severing diplomatic relations.

¹⁶ A reprisal is an intentional violation, or retaliation committed by one party in response to the illegal action of another, the aim of which must be to induce or coerce the authorities of the adverse party, or State to discontinue its policy of violation of the law of armed conflict. A reprisal is an act, intrinsically illegal but justified



Pre-Course Reading Material

now illegal under Article 2(4) of the UN Charter. A State resorting to such action would need to prove to the international community that its conduct was both “necessary” and “proportional” (see footnotes below) in order to provide the basis of an argument for legitimacy.

- **“Pacific” Resolutions.** One of the major developments in international law this century has been the outlawing of the use of force in international relations, including as a means of settling international disputes. Article 2(3) of the UN Charter now provides that “All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”.
- **Self- Defence.** In the case of an armed attack upon a State, the use of force in self-defence is permissible both under customary international law and under Article 51 of the UN Charter provided that this individual or collective self-defence fulfils the principles of “necessity”¹⁷ and “proportionality”¹⁸. In addition, the law of armed conflict (LOAC) must be complied with.
- **Sanctions.** It is also possible for a number of States collectively to impose sanctions upon a delinquent State. Using Chapter VII of the UN Charter, the UN Security Council may, if it determines that there is a threat to the peace (breach of the peace, or act of aggression), call upon members to apply measures not involving the use of armed force to give effect to its decisions. If the UN Security Council considers that such measures would be inadequate, it can authorise military operations (by the forces of UN members) necessary to maintain or restore international peace and security.

Certain other permanent bodies exist for the settlement of other international disputes. Some multilateral treaties also contain special dispute mechanism clauses.

Can Individuals be the Subject of International Law?

It was once the general view that individuals could not be subject to international law. Under the traditional view, although a treaty might be entered into by States for the benefit of individuals (eg, international human rights treaties), such treaties did not confer rights on individuals under international law. Rather, they conferred rights on States to demand that all other States party to the treaty comply with its provisions.

in the circumstances when taken as an absolute last resort to redress a particular situation. Reprisals taken during peace must be distinguished from those undertaken during conflict. Unlike conflict, peacetime reprisals employ a limited and temporary recourse to force that does not alter the peace between the States concerned. It does not affect any third party State. Peacetime reprisals may be armed and take the form of a blockade, a limited military offensive; or they may be unarmed as is the case with a punitive embargo, freezing of assets or confiscation and sequestration of property.

¹⁷ Necessity means the use of only sufficient military force which is necessary to either achieve the military mission, or terminate a hostile act. The amount of force used must be balanced in order to minimise casualties and collateral damage to non-combatants, property, cultural objects and the environment. Necessary force applies to the function of manoeuvre and the employment of weapon systems.

¹⁸ Proportionality is a term used in both the *jus ad bellum* (that body of law governing when force may be used as an instrument of national policy) and the *jus in bello* (which governs how the force may be used):

- a. *Jus Ad Bellum*. International law addressing the use of force in self-defence, either pursuant to either Article 51 of the UN Charter or customary international law, requires the act of self-defence be both necessary and proportional. The proportionality criterion mandates that the force used in self-defence be limited in intensity, duration and scope to that which is reasonably required to counter the attack.
- b. *Jus In Bello*. The rule in proportionality in its *jus in bello* context by contrast requires that any collateral damage and incidental injury caused be 'justified' (outweighed) by the military advantage that accrues to the party applying the force. This rule has been described as the 'nub' of the law of armed conflict, which may itself be regarded as a development of the rule. Proportionality may be inferred from Articles 15 and 22 of the Lieber Code and is to be found elsewhere, such as in the customary rules on reprisals (see footnotes above). Long recognised as a customary law of armed conflict, it is codified in the 1977 Additional Protocols to the Geneva Conventions.



Pre-Course Reading Material

It is now accepted that individuals can be the subject of certain rights and obligations under international law, but to a more limited extent than States. The War Crimes Tribunals held in Nuremberg and Tokyo, following World War II, asserted that certain individuals could be directly responsible for crimes committed under international law and could not plead, as a defence, that they were acting in accordance with their domestic law. This has been followed up by the Ad Hoc Tribunals for the Former Yugoslavia and Rwanda where jurisdiction has been taken even in non-international armed conflicts. The permanent International Criminal Court (ICC) which has jurisdiction as defined in the Statute over individuals for genocide, war crimes and crimes against humanity. The ICC's jurisdiction is complementary to domestic jurisdictions.

While certain treaties may confer rights directly on individuals and whilst certain rights cannot be derogated under international law, normally individuals lack the means of enforcing these rights (but see below) It is the prerogative of States to bring cases before the ICJ. It will primarily be States (or the Security Council) who bring cases to the attention of the ICC but the Prosecutor has powers to bring forward cases on his own initiative subject to procedural checks.

Where an individual's rights are violated by a delinquent State, an individual must rely on his or her parent State to champion a "diplomatic claim" on his or her behalf. Unfortunately, in the majority of cases it is not possible for an individual violated by his/her own State to bring an action against that State. However some treaties such as the "Optional Protocol to the International Covenant on Civil and Political Rights" do permit individuals to refer claims to the "UN Human Rights Committee". The European Convention on Human Rights also recognizes the right of individual petition.

Human Rights and its Relationship to International Law

The gap between international law, particularly international humanitarian law and human rights law¹⁹ is becoming closer. Indeed, many human rights overlap with humanitarian laws to the extent that international humanitarian law is often referred to as "human rights in armed conflict".

Notwithstanding this trend, there are certain human rights which, in times of conflict, can legitimately be withdrawn, or derogated from. Such rights include: the freedom of movement; the freedom of expression, peaceful assembly to name a few. Certain rights such as the right to life and the prohibition on torture and slavery, cannot be derogated from at any time and remain inviolable.²⁰ Human rights apply equally to all members of the population including the armed forces of a State.

This "Background Information" has been collaboratively produced by James Stythe, Charles Garraway, Michael Schmitt and Matt Fawkner as members of the teaching staff of the International Institute of Humanitarian Law, San Remo.

Your comments and suggestions are welcome. Please forward them to:

**Director of the Military Department
International Institute of Humanitarian Law
Villa Ormond
Corso Cavalotti 113
18038 SAN REMO
ITALY**

Telephone: +39 0184 541848

Fax: +39 0184 541600

¹⁹ An international term used to describe a wide range of freedoms and liberties that an individual enjoys in his/her relations with other individuals or with their State. Such 'rights', are expressed in many UN conventions and declarations principally the UN Charter and the Universal Declaration of Human Rights and also in many regional declarations.

²⁰ Complete protection from interference. Human rights cannot be renounced either in times of peace or conflict.



Main International Treaties on LOAC

1. GENERAL AND LAND	Abbreviation
<u>Hague Convention</u> respecting the laws and customs of war on land. The Hague, 18 October 1907, with Annex:	H IV
<ul style="list-style-type: none">• Regulations respecting the laws and customs of war on land.	H IV R
Treaty on the Protection of artistic and scientific institutions and historic monuments (Roerich Pact). Washington, 15 April 1935.	Washington
<u>Geneva Convention</u> for the amelioration of the condition of the wounded and sick in armed forces in the Field, 1949.	G I
<u>Geneva Convention</u> relative to the treatment of prisoners of war, 1949.	G III
<u>Geneva Convention</u> relative to the protection of civilian persons in time of war, 1949.	G IV
<u>Hague Convention</u> for the protection of cultural property in the event of armed conflict, 1954, with:	HCP
<ul style="list-style-type: none">• Regulations for the execution of the Convention for the Protection of cultural property in the event of armed conflict.• Protocol for the protection of cultural property in the event of armed conflict.• Second Protocol to the Hague Convention on cultural property 1999.	H.CP.R H.CP.P
<u>Protocol additional to the Geneva Conventions 1949</u> , relating to the protection of victims of international armed conflicts (Protocol I) Geneva 1977.	AP I
<u>Protocol additional to the Geneva Conventions 1949</u> , relating to the protection of victims of non-international armed conflicts (Protocol II) Geneva 1977.	AP II
<u>Protocol additional to the Geneva Conventions 1949</u> , relating to the adoption of an additional distinctive emblem (Protocol III) Geneva 2005.	AP III
2. SEA	
Hague Convention relating to the status of enemy merchant ships At the outbreak of hostilities, 1907.	H VI
Convention relating to the conversion of merchant ships into warships. The Hague, 18 October 1907.	H VII
Hague Convention concerning bombardment by naval forces in time of war, 1907.	H IX
Hague Convention relative to certain restrictions with regard to the exercise of the right of capture in naval war, 1907.	H XI



Main International Treaties on LOAC

Declaration concerning the laws of naval war, London 1909. (not ratified by any signatory).	London Decl.
The laws of naval war governing the relations between belligerents. Manual adopted by the Institute of International Law (Oxford Manual of naval war), Oxford 1913.	Oxford
Procès-verbal relating to the rules of submarine warfare set forth in Part IV of the Treaty of London 1930, London 1949.	London PV
Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, 1949.	G.II
San Remo Manual On International Law Applicable to Armed Conflicts at Sea, 1994 (not a treaty).	San Remo
3. AIR	
<u>Haague Rules</u> of air warfare. Drafted by a Commission of jurists, 1923. (this was not binding).	H AW
4. NEUTRALITY	
<u>Haague Convention</u> respecting the rights and duties of neutral powers and persons in case of war on land 1907.	H V
<u>Haague Convention</u> concerning the rights and duties of neutral powers in naval war 1907.	H XIII
Convention on maritime neutrality, Havana 1928.	Havana
5. WEAPONS	
<u>St. Petersburg Declaration</u> renouncing the use, in time of war, of Explosive projectiles under 400 grammes, 1868.	St. Petersburg
<u>Haague Declaration</u> concerning expanding bullets, 1899.	H.Decl.
<u>Haague Convention</u> relative to the laying of automatic submarine contact mines, 1907.	H.VIII
<u>Haague Declaration</u> prohibiting the discharge of projectiles and explosives from balloons, 1907.	H.XIV
<u>Geneva Protocol</u> for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods, 1925.	G.BC



Main International Treaties on LOAC

Convention on bacteriological (biological) weapons, 1972.	CBW
Convention on the prohibition of military or any other hostile use of environmental modification techniques, 1976.	ENMOD
<u>Geneva Convention</u> on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects, 1980:	G.CW
• <u>Protocol 1</u> on non-detectable fragments.	G.CW.P.I
• <u>Protocol II</u> on prohibitions or restrictions and on the use of mines, booby traps and other devices.	G.CW.P.II
• <u>Amended Protocol II</u> on prohibitions or restrictions on the use of mines, booby traps and other devices, 1996.	
• <u>Protocol III</u> on prohibitions or restrictions on the use of incendiary Weapons.	G.CW.P.III
• <u>Protocol IV</u> on Blinding Laser Weapons, 1995.	G.CW.P.IV
• <u>Protocol V</u> on Explosive Remnants of War, 2003.	G.CW.P.V
<u>Chemical Weapons Convention</u> , 1993.	CWC
<u>Ottawa Convention</u> on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and or their destruction, 1997.	OTTAWA
<u>Oslo Convention</u> on cluster munitions, 2008	CCM



Modules of the Course

The International Military Course on the Law of Armed Conflict consists of 10 modules structured in 3 blocks:

A. Foundation Phase:

Module 1: Basic Rules of LOAC

At the end of the module participants will have a general idea of the origins of LOAC, various LOAC treaties and their contents, and the main principles.

Module 2: Applicability of LOAC

At the end of the module participants will be aware of the various strategic situations relevant for the applicability of LOAC and be able to establish the various responsibilities regarding the implementation of LOAC within the State.

Module 3: Methods and Means of Warfare

At the end of the module participants will be able to explain the restrictions and prohibitions concerning the methods and means of warfare and to explain which methods and means of warfare are permitted.

B. Exercise Phase:

Module 4: Internal Armed Conflict

At the end of the module participants will be able to determine and to apply the law regulating non-international (internal) armed conflicts, as distinct from the law as it applies in international armed conflict, or disturbances not amounting to armed conflict.

Module 5: Planning of Operations

At the end of the module participants will be able to identify and integrate LOAC issues in the normal staff work procedures of a military Headquarters.



Modules of the Course

Module 6: Conduct of Operations

At the end of the module participants will be able to integrate and apply the relevant LOAC provisions into conduct of operations in general and to take decisions and measures with respect to LOAC, during combat operations and in situations related to them.

Module 7: Belligerent Occupation

At the end of the module participants will be familiarised with the legal norms applicable during a belligerent occupation and in detention operations.

Module 8: Peace Support Operations

At the end of the module participants will be able to understand the different legal instruments and LOAC principles applicable to Peace Support Operations.

C. Consolidation Phase:

Module 9: Enforcement of LOAC

At the end of the module participants will be aware of the individual and command responsibilities for the enforcement of LOAC and the requirements and possible methodologies for LOAC training.

Module 10: Final Exercise

At the end of the module participants will be able to apply LOAC rapidly and accurately in different situations of peace, neutrality, and armed conflict.



Introduction to the Foundation Phase

1. LEARNING OUTCOME

At the end of the foundation phase participants will be familiarized with the Law of Armed Conflict treaties and general principles and the provisions concerning methods and means of warfare and will be able to determine what rules are applicable in various strategic situations.

2. LEARNING OBJECTIVES

Participants will be able to:

- Explain the principles of IHL and the meaning of distinctive emblems and signs;
- Distinguish the various categories of persons and objects;
- Distinguish between various strategic situations and determine the law applicable in each situation;
- Describe the legal characteristics and conditions of neutrality, and enumerate the rights and duties of neutral powers; and
- Explain which methods and means of warfare are permitted or restricted and which are prohibited.

3. METHOD

The objectives will be achieved by

- Lectures in the plenary on:
 - ***“Introduction to the Law of Armed Conflict”***;
 - ***“Applicability of the Law of Armed Conflict”***; and
 - ***“Conduct of Hostilities”***;
- Exercises in class in which participants:
 - classify categories of persons and objects as provided by the law of armed conflict (definitions, distinctions, particulars);
 - analyse different escalating and de-escalating strategic situations, differentiate between them and decide which body of law is applicable in each; and
 - study documents and discuss the rights and obligations of neutral states and belligerents towards neutral states.
 - study documents and discuss methods and means of warfare.



Introduction to the Command and Staff Exercise

1. LEARNING OUTCOME

At the end of the command and staff exercise “*Scar Island*” participants will be able to identify the applicable law in different strategic situations and to act within their sphere of responsibility in accordance with the Law of Armed Conflict (LOAC).

2. LEARNING OBJECTIVES

Participants will be able to:

- Determine and to apply the law regulating non-international (internal) armed conflicts, as distinct from the law as it applies in international armed conflict, or disturbances not amounting to armed conflict;
- Identify and integrate LOAC issues in the normal staff work procedures of a military Headquarters.
- Integrate and apply the relevant LOAC provisions into conduct of operations in general and to take decisions and measures with respect to LOAC, during combat operations and in situations related to them.
- Determine the legal norms applicable during a military occupation and in detention operations.
- Understand the different legal instruments applicable in peace support operations and the application of the LOAC principles to peace operations.

3. METHOD

The objectives will be achieved by

- Lectures in plenary on:
 - “*Law of Non-international Armed Conflict*”;
 - “*Rules of Engagement*”;
 - “*Belligerent Occupation*”;
 - “*Detention Operations*”;
 - “*Legal Framework of Peace Support Operations*”;
- An integrated command and staff exercise covering different strategic situations,
 - starting with an **internal armed conflict** (“*Operation Diamond*”),
 - which – after the intervention of another State - turns to an **international armed conflict** (“*Operation Barcelona*”), dealing with planning and conduct of operations, including occupation and detention operations and
 - continued by a peacekeeping operation after the end of hostilities.



Introduction to the Command and Staff Exercise

In the command and staff exercise there is no need to know more military details concerning the terrain, enemy force disposition, weather conditions, tactical essential areas, enemy activities and disposition of naval and air forces. The focus is on Law of Armed Conflict aspects! The purpose of the scenarios reported to the staff is not so much to produce standard answers but to generate discussion. The facts are deliberately left vague enough to allow for variations.

4. STAFF DUTIES

Introduction

The primary business of military staff branches is to assist commanders in exercising their command duties.

The staff is organized as a single, cohesive unit for the purpose of assisting the commander in accomplishing the mission.

The chief of staff (COS) is the principal staff adviser to the commander. He directs, supervises, coordinates and integrates the work of the military staff.

The heads of the sections provide the commander assistance in harmonizing and coordinating the plans, duties and operations of all elements of the force.

The common functions of the staff are to provide information, make continuous estimates of the situation, make recommendations, prepare plans and orders, and supervise their execution. Staff officers must submit options and recommend solutions. When making a recommendation, the staff officer must include disadvantages as well as advantages of a given course of action. The staff action should be sufficiently complete so that the commander needs only to express approval or disapproval.

Staff responsibilities and functions will obviously differ to some extent when engaged in peace support operations, as opposed to war fighting, and again, where the operation is multi national the staff duties will differ somewhat from single nation operations.

Chief of Staff (COS)

The military staff is headed by the COS, who is responsible for the execution of the staff tasks, the efficient and prompt response of the staff, and coordinated effort of its members.

The degree of his authority is specified by the commander, and he may have delegated authority which amounts to command of the staff. The COS is both coordinator of the staff work and a planner and supervisor. COS frees the commander from routine details so that the commander can fully devote his energy to those problems that merit his attention. The



Introduction to the Command and Staff Exercise

relationship between the commander and the COS normally is such that the COS is able accurately to reflect the commander's wishes in his absence or when the commander is engaged in more important tasks.

Staff activity may be divided into two groups, one of which is operational and primarily concerned with those activities directly related to the accomplishment of the mission, and the other is concerned with the administrative support of those activities. Administrative support specifically includes personnel functions, logistics, and civil affairs support.

The staff branches are conventionally prefixed with the letter G, which is replaced by J on joint operations, and their respective functions are as follows:-

G/J 1: Personnel

This includes all matters relating to military and associated personnel within the formation, such as overall manning of units, specific appointments and promotions, compassionate issues, discipline, recruiting, pay and allowances etc.

G/J 2: Intelligence, information

Military intelligence may be loosely defined as knowledge of an enemy or potential enemy or an area of operations or potential operations, with conclusions drawn therefrom. The intelligence branch of a military formation must provide timely information required to enable effective decision making, planning and conduct of operations, avoiding being surprised, but enabling surprise on the enemy. Priority is given to those aspects of the situation which represent the greatest prospect of success or greatest threat to accomplishment of the mission.

In peace support operations, where there may be no formally acknowledged enemies, the term "intelligence" is often used interchangeably with the term "information".

G/J 3: Operations, training, planning

The work of the G/J 3 branch is the planning and execution of a military mission, including training and exercises. This may be colloquially identified as the "Sharp end" of military operations, the actual use of force.

G/J 4: Logistics

Logistics includes those aspects of military operations dealing with real estate, the supply of everything from beans to ballistic missiles, maintenance and repair, transportation, medical support, and other services.



Introduction to the Command and Staff Exercise

Based on the commander's decision the Chief Logistics Officer (CLO) performs the following functions:-

- logistic plans
- organization of logistic support areas
- distribution of supplies etc
- control and coordination measures
- communications

G/J 9: CIMIC

CIMIC stands for "Civil/Military cooperation", i.e. relationships between military forces and the local population and its government. The special nature of peace support operations implies that good relationship between all the parties to the conflict and the peace support forces is of vital importance to the accomplishment of the mission. G/J 9 affairs will therefore have a great impact on planning in such operations.



Introduction to the Consolidation Phase

1. LEARNING OUTCOME

At the end of the consolidation phase participants will be aware of means and methods of enforcement of LOAC and will be able to apply LOAC in their sphere of responsibility.

2. LEARNING OBJECTIVES

Participants will be able to:

- Understand the history of the prosecution of war crimes (by national courts, ad-hoc tribunals, International Criminal Court);
- Explain criminal responsibility of individuals and commanders;
- Understand the legal requirement for the dissemination and training of LOAC by states and their public authorities; and
- Take military decisions in accordance with the LOAC.

3. METHOD

The objectives will be achieved by

- Lecture in the plenary on:
 - ***“International Criminal Court”***;
 - ***“Command Responsibility”*** and
 - ***“Training of LOAC”***
- An exercise in which participants analyse and discuss the individual or command responsibility of persons in different situations;
- A final exercise in the plenary dealing with LOAC issues in various strategic situations.



Military Data

1. GENERAL

Emphasis will be placed on the major elements of military forces: infantry, armour, artillery, naval and aviation fire-power.

The military data has been chosen exclusively for the purpose of this course and it is not related to specific armed forces or real scenarios.

2. ORGANIZATION

- Land forces

Combat units: see Order of Battle below

- Logistic units and services: data will be given when necessary.

- Sea forces

Data will be given when necessary.

- Air forces

Data will be given when necessary.

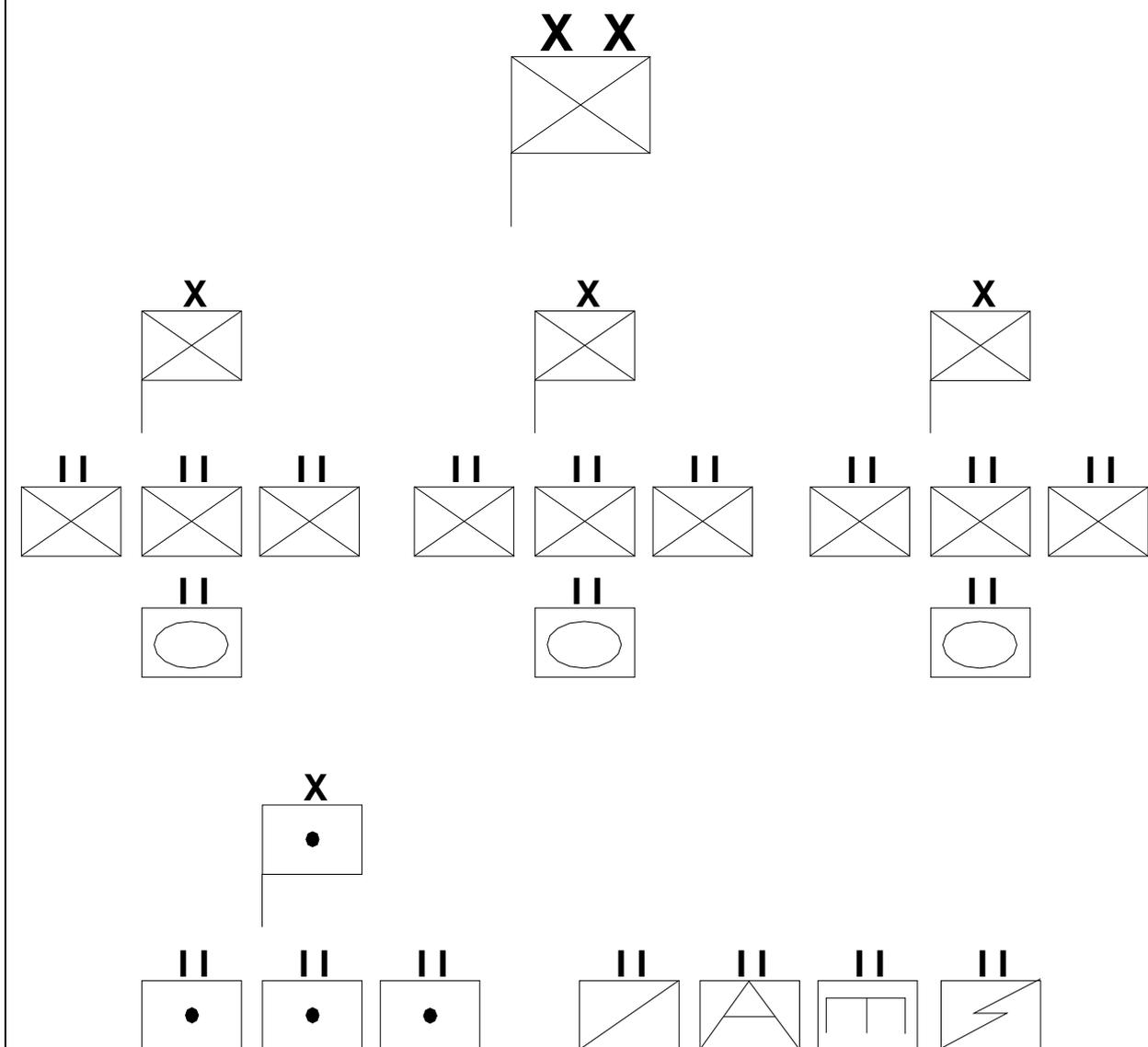
3. MILITARY SYMBOLS

See below.



Military Data

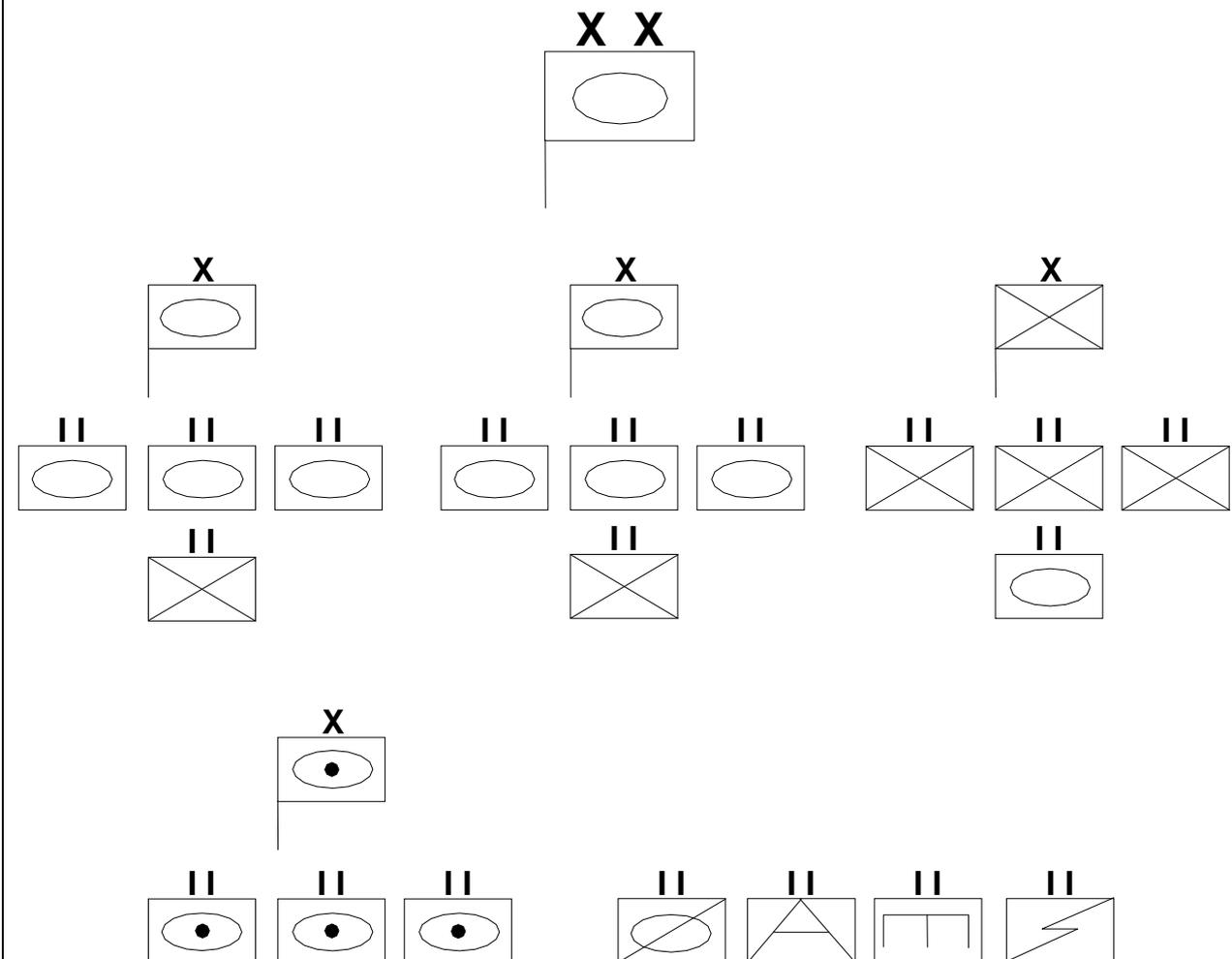
INFANTRY DIVISION





Military Data

ARMoured DIVISION





Military Data

MILITARY SYMBOLS

<u>Symbol</u>	<u>Meaning</u>	<u>Abbreviation</u>
X X X X X X X X X X	Army Corps Division Brigade	DIV BDE
I I I I I I	Regiment Battalion Company, Battery	REGT BN COY, BTRY
• • • • • •	Platoon Half Platoon Squad / Section	
	Infantry	INF
	Armoured	ARMD
	Mechanized	MECH
	Reconnaissance	RECCE
	Artillery	ARTY
	Air defence artillery	ADA
	Engineer(s)	ENGR
	Signals	SIGS
	Medical	MEDIC