

The Moral Foundations of LOAC

May 20, 2015

RPC 2.1

“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.”

“a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.”

The history of LOAC

PHASE ONE: Chivalry + Just War Theory

The not-so-chivalrous knights



Lieber Code, art. 21

“the citizen or native of a hostile country is ... an enemy ... and as such is subjected to the hardships of war.”

Lieber Code, art. 22

“the principle has been more and more acknowledged that the unarmed citizen is to be spared ... as much as the exigencies of war will admit.”

Lieber Code, art. 25

“protection of the inoffensive citizen ... is the rule, privation and disturbance ... are the exceptions”

Dunant at Solferino



The history of LOAC

PHASE ONE: Chivalry + Just War Theory

PHASE TWO: Humanitarian law as disaster relief

UN Charter Preamble:

“to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.”

“to reaffirm faith in fundamental human rights, in the dignity and worth of the human person.”

UDHR Preamble:

“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of ... peace in the world.”

The history of LOAC

PHASE ONE: Chivalry + Just War Theory

PHASE TWO: Humanitarian law as disaster relief

PHASE THREE: The Great Transformation

Prosecutor v. Furundzija

ICTY 1998, ¶183

“The essence of the whole corpus of international humanitarian law as well as human rights law lies in the protection of the human dignity of every person.... The general principle of respect for human dignity is . . . the very *raison d'être* of international humanitarian law and human rights law.”

Grdlica Bridge, 12 April 1999

<https://www.youtube.com/watch?v=t6zKEUGsP>
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<https://www.youtube.com/watch?v=n4S09ddbd>
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AP I, art. 57(2)(b)

“an attack shall be cancelled or suspended if it becomes apparent that ... the attack may be expected to cause [disproportionate civilian damage]”

Grave breaches of AP I, art. 85:

“wilfully ... launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects....”

The *Hostages* formula:

“Military necessity permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life, and money.”

US v. List (the *Hostages* case)(American Military Tribunal, Nuremberg, 1948),
11 NMT 1230, 1253

ICCPR, art. 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant....

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