



**MANUAL ON INTERNATIONAL LAW
APPLICABLE TO AIR AND MISSILE WARFARE**

Bern, 15 May 2009

cited in U.S. v. Flores, No. 11-50536 and on September 9, 2013

PROGRAM ON HUMANITARIAN POLICY AND CONFLICT RESEARCH
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FOREWORD

It is my pleasure and honor to present the *HPCR Manual on International Law Applicable to Air and Missile Warfare*. This Manual provides the most up-to-date restatement of existing international law applicable to air and missile warfare, as elaborated by an international Group of Experts. As an authoritative restatement, the *HPCR Manual* contributes to the practical understanding of this important international legal framework.

The *HPCR Manual* is the result of a six-year long endeavor led by the Program on Humanitarian Policy and Conflict Research at Harvard University (HPCR), during which it convened an international Group of Experts to reflect on existing rules of international law applicable to air and missile warfare. This Group of Experts, under the guidance of HPCR Senior Academic Advisor, Professor Dr. Yoram Dinstein, has conducted, since 2004, a methodical and comprehensive reflection on international legal rules applicable to air and missile warfare, drawing from various sources of international law. The enclosed Black-letter Rules of the *HPCR Manual* were adopted by consensus by the Group of Experts in Bern, Switzerland on 15 May 2009. A separate Commentary on the Black-letter Rules was drafted by selected experts from the original Group, under the supervision of Professor Dinstein and HPCR Project Coordinator, Bruno Demeyere. While the *HPCR Manual* restates current applicable law, the Commentary clarifies the prominent legal interpretations and indicates differing perspectives.

The *HPCR Manual* is the product of a collective effort. We would like, first and foremost, to acknowledge the remarkable role of Professor Yoram Dinstein throughout this process. His internationally recognized expertise and analytical engagement have been instrumental in maintaining the momentum and authority of this initiative over the years. Members of the Group of Experts (please see Appendix I in the Introduction to the Commentary for the full list) have individually made important contributions to each step of the process by studying

a particular area of the law of air operations and by providing comments on the overall exercise. We would like to recognize, particularly, the members of the Drafting Committee (please see Appendix IV in the Introduction to the Commentary) who have invested countless hours in summarizing the various interpretations of the Black-letter Rules discussed among the experts. HPCR Project Coordinator Bruno Demeyere managed this process in an adept and diligent manner that was much appreciated by his colleagues.

As ever, this project would not have been possible without the substantial financial support and generosity of its donors, primarily the Swiss Federal Department of Foreign Affairs. In addition, several governments supported the convening of the Group of Experts in their various meetings, as well as regional consultations, namely Australia, Belgium, Canada, Germany, the Netherlands, and Norway. The International Society for Military Law and the Law of War also facilitated consultations with military experts at regular intervals during the project. Words of gratitude are also in order for the Fritz Thyssen Foundation and the Max Planck Institute for Comparative Public Law and International Law for their support in the hosting of Group of Experts meetings. Finally, a word of special thanks goes to Barbara Fontana, from the Political Division IV of the Swiss Federal Department of Foreign Affairs, who kept a watchful and constructive eye on this process since its inception.

Through the publication of this Manual, HPCR hopes that legal advisors and military officers will benefit from an in-depth presentation – and interpretation – of international law applicable to air and missile warfare. A greater clarity of the law will also enhance the protection of civilians in armed conflict.

Claude Bruderlein
Director, Program on Humanitarian Policy and Conflict Research
February 2010

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SECTION A: DEFINITIONS

1. For the purposes of this Manual —
 - (a) “Air” or “airspace” means the air up to the highest altitude at which an aircraft can fly and below the lowest possible perigee of an earth satellite in orbit. Under international law, airspace is classified as either national airspace (that over the land, internal waters, archipelagic waters, and territorial seas of any State) or international airspace (that over contiguous zones, exclusive economic zones, the high seas, and territory not subject to the sovereignty of any State).
 - (b) “Air or missile operations” mean military operations in armed conflict involving the use of aircraft or missiles of all types; whether in offence or defence; and whether or not over the territory of one of the Belligerent Parties.
 - (c) “Air or missile combat operations” mean air or missile operations designed to injure, kill, destroy, damage, capture or neutralize targets, the support of such operations, or active defence against them.
 - (d) “Aircraft” means any vehicle — whether manned or unmanned — that can derive support in the atmosphere from the reactions of the air (other than the reactions of the air against the earth’s surface), including vehicles with either fixed or rotary wings.
 - (e) “Attack” means an act of violence, whether in offence or in defence.

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- (f) “Belligerent Party” means a State Party to an international armed conflict.
- (g) “Cartel aircraft” means an aircraft granted safe conduct by agreement between the Belligerent Parties for the purpose of performing a specific function, such as the transport of prisoners of war or parlementaires.
- (h) “Civilian aircraft” means any aircraft other than military or other State aircraft.
- (i) “Civilian airliner” means a civilian aircraft identifiable as such and engaged in carrying civilian passengers in scheduled or non-scheduled service.
- (j) “Civilian objects” mean all objects which are not military objectives, as defined in Rule 1 (y).
- (k) “Civil Defence” means the performance of some or all of the humanitarian tasks mentioned below, intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival. These tasks are: (i) warning; (ii) evacuation; (iii) management of shelters; (iv) management of blackout measures; (v) rescue; (vi) medical services, including first aid, and religious assistance; (vii) fire-fighting; (viii) detection and marking of danger areas; (ix) decontamination and similar protective measures; (x) provision of emergency accommodation and supplies; (xi) emergency assistance in the restoration and maintenance of order in distressed areas; (xii) emergency repair of indispensable public utilities; (xiii) emergency disposal of the dead; (xiv) assistance in the

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preservation of objects essential for survival;
(xv) complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization.

- (l) “Collateral damage” means incidental loss of civilian life, injury to civilians and damage to civilian objects or other protected objects or a combination thereof, caused by an attack on a lawful target.
- (m) “Computer network attack” means operations to manipulate, disrupt, deny, degrade, or destroy information resident in computers and computer networks, or the computer network itself, or to gain control over the computer or computer network.
- (n) “Contraband” means goods which are ultimately destined for territory under the control of an enemy Belligerent Party and which are susceptible for use in international armed conflict.
- (o) “Cultural property” means, irrespective of origin or ownership:
 - (i) Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

- (ii) Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (i) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (i);
- (iii) Centres containing a large amount of cultural property as defined in sub-paragraphs (i) and (ii).
- (p) “Electronic warfare” means any military action involving the use of electromagnetic and directed energy to control the electromagnetic spectrum or to attack the enemy.
- (q) “Feasible” means that which is practicable or practically possible, taking into account all circumstances prevailing at the time, including humanitarian and military considerations.
- (r) “International armed conflict” means an armed conflict between two or more States.
- (s) “Law of international armed conflict” means all the principles and rules of treaty and customary international law binding on a State and governing armed conflict between States; the term “law of international armed conflict” is synonymous with “international humanitarian law relating to international armed conflict”.
- (t) “Means of warfare” mean weapons, weapon systems or platforms employed for the purposes of attack.
- (u) “Medical aircraft” means any aircraft permanently or temporarily assigned — by

the competent authorities of a Belligerent Party — exclusively to aerial transportation or treatment of wounded, sick, or shipwrecked persons, and/or the transport of medical personnel and medical equipment or supplies.

- (v) “Methods of warfare” mean attacks and other activities designed to adversely affect the enemy’s military operations or military capacity, as distinct from the means of warfare used during military operations, such as weapons. In military terms, methods of warfare consist of the various general categories of operations, such as bombing, as well as the specific tactics used for attack, such as high altitude bombing.
- (w) “Military advantage” means those benefits of a military nature that result from an attack. They relate to the attack considered as whole and not merely to isolated or particular parts of the attack.
- (x) “Military aircraft” means any aircraft (i) operated by the armed forces of a State; (ii) bearing the military markings of that State; (iii) commanded by a member of the armed forces; and (iv) controlled, manned or preprogrammed by a crew subject to regular armed forces discipline.
- (y) “Military objectives”, as far as objects are concerned, are those objects which by their nature, location, purpose or use, make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
- (z) “Missiles” mean self-propelled unmanned weapons — launched from aircraft, warships

or land-based launchers — that are either guided or ballistic.

- (aa) “Neutral” means a State not a Belligerent Party in an international armed conflict.
- (bb) “Precision guided weapons” mean weapons that can be directed against a target using either external guidance or a guidance system of their own.
- (cc) “State aircraft” means any aircraft owned or used by a State serving exclusively non-commercial government functions.
- (dd) “Unmanned Aerial Vehicle (UAV)” means an unmanned aircraft of any size which does not carry a weapon and which cannot control a weapon.
- (ee) “Unmanned Combat Aerial Vehicle (UCAV)” means an unmanned military aircraft of any size which carries and launches a weapon, or which can use on-board technology to direct such a weapon to a target.
- (ff) “Weapon” means a means of warfare used in combat operations, including a gun, missile, bomb or other munitions, that is capable of causing either (i) injury to, or death of, persons; or (ii) damage to, or destruction of, objects.

SECTION B: GENERAL FRAMEWORK

- 2. (a) The objective of this Manual is to produce a restatement of existing law applicable to air or missile operations in international armed conflict. This is without prejudice to the pos-

sible application of some of the Rules in this Manual to non-international armed conflicts (for details, see the Commentary).

- (b) Nothing in this Manual affects existing obligations of States under treaties to which they are Contracting Parties.
 - (c) In cases not covered by this Manual, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.
3. (a) Subject to binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations, the Rules reflected in this Manual also apply to all air or missile operations conducted by United Nations forces when in situations of armed conflict they are engaged therein as combatants, to the extent and for the duration of their engagement.
- (b) The Rules reflected in this Manual also apply to armed conflicts involving any other international governmental organization, global or regional.
4. The fundamental principle is that, in any armed conflict, the right of the Belligerent Parties to choose methods or means of warfare is not unlimited.

SECTION C: WEAPONS

5. Weapons used in air and missile warfare must comply with:

- (a) The basic principle of distinction between civilians and combatants and between civilian objects and military objectives.

Consequently, it is prohibited to conduct air or missile combat operations which employ weapons that (i) cannot be directed at a specific lawful target and therefore are of a nature to strike lawful targets and civilians or civilian objects without distinction; or (ii) the effects of which cannot be limited as required by the law of international armed conflict and which therefore are of a nature to strike lawful targets and civilians or civilian objects without distinction;

- (b) The prohibition of unnecessary suffering or superfluous injury.

Consequently, it is prohibited to conduct air or missile combat operations which employ weapons that are calculated, or of a nature, to cause unnecessary suffering or superfluous injury to combatants.

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- 6. Specific weapons are prohibited in air or missile combat operations. These include:
 - (a) Biological, including bacteriological, weapons.
 - (b) Chemical weapons.
 - (c) Laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.
 - (d) Poison, poisoned substances and poisoned weapons.

- (e) Small arms projectiles calculated, or of a nature, to cause explosion on impact with or within the human body.
 - (f) Weapons the primary effect of which is to injure by fragments which in the human body escape detection by x-ray.
7. The use of any weapon not expressly mentioned under this Section of the Manual is subject to the general rules and principles of customary and treaty law of international armed conflict (in particular the principle of distinction and the prohibition of unnecessary suffering), as well as to any other treaty law applicable for Contracting Parties.
 8. There is no specific obligation on Belligerent Parties to use precision guided weapons. There may however be situations in which the prohibition of indiscriminate attacks or the obligation to avoid – or, in any event, minimize – collateral damage, cannot be fulfilled without using precision guided weapons.
 9. States are obligated to assess the legality of weapons before fielding them in order to determine whether their employment would, in some or all circumstances, be prohibited.

SECTION D: ATTACKS

I. General rules

10. (a) In accordance with the basic principle of distinction, attacks must be confined to lawful targets.
- (b) Lawful targets are:
 - (i) Combatants;

- (ii) Military objectives (as defined in Rules 1 (y) and 22);
 - (iii) Civilians directly participating in hostilities (see section F of this Manual).
11. Attacks directed against civilians or civilian objects are prohibited.
12. (a) In case of doubt as to whether a person is a civilian, that person shall be considered a civilian.
- (b) In case of doubt as to whether an object which is ordinarily dedicated to civilian purposes is being used for military purposes, it may only be attacked if, based on all the information reasonably available to the commander at the time, there are reasonable grounds to believe that it has become and remains a military objective.
13. (a) Indiscriminate attacks are prohibited.
- (b) Indiscriminate attacks are those that cannot be or are not directed against lawful targets (as defined in Rule 10 (b)) or the effects of which cannot be limited as required by the law of international armed conflict, and which therefore are of a nature to strike lawful targets and civilians or civilian objects without distinction.
- (c) Attacks must not treat as a single lawful target a number of clearly separated and distinct lawful targets located in a city, town, village or area containing a similar concentration of civilians or civilian objects.
14. An attack that may be expected to cause collateral damage which would be excessive in relation to

the concrete and direct military advantage anticipated is prohibited.

15. (a) It is prohibited to order that there shall be no survivors in combat operations, to threaten an adversary therewith, or to conduct hostilities on that basis.
 - (b) Persons who are *hors de combat* — either because they have clearly expressed an intention to surrender or as a result of sickness, wounds or shipwreck — must not be attacked, provided that they abstain from any hostile act and no attempt is made to evade capture.
16. (a) At all times, and particularly after an engagement, Belligerent Parties must, without delay, take all possible measures to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, and to search for the dead and prevent their being despoiled.
 - (b) The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.

II. Specifics of air or missile operations

17. (a) Only military aircraft, includingUCAVs, are entitled to engage in attacks.
 - (b) The same Rule applies to the exercise of other belligerent rights, such as interception.
18. Acts or threats of violence in the course of air or missile operations cannot be pursued for the sole

or primary purpose of spreading terror among the civilian population.

19. Belligerent Parties conducting, or subject to, air or missile operations:
 - (a) Must take all possible measures to search for and collect the wounded, sick and shipwrecked, ensure their adequate care, permit their removal, exchange and transport, and search for the dead;
 - (b) Must, whenever circumstances permit, arrange cease-fires, if necessary through a neutral intermediary, to facilitate the activities described in paragraph (a);
 - (c) Ought to accept the assistance of impartial humanitarian organizations and facilitate their work in favour of the wounded and other victims of air or missile attacks.
20. Air or missile attacks must be conducted in accordance with those feasible precautions required under Section G of this Manual designed to avoid — or, in any event, minimize — collateral damage.
21. The application of the general Rules prohibiting attacks directed against civilians or civilian objects, as well as indiscriminate attacks, is confined to air or missile attacks that entail violent effects, namely, acts resulting in death, injury, damage or destruction.

SECTION E: MILITARY OBJECTIVES

I. General rules

22. In the definition of objects as military objectives (see Rule 1 (y)), the following criteria apply:

- (a) The “nature” of an object symbolizes its fundamental character. Examples of military objectives by nature include military aircraft (including military UAV/UCAVs); military vehicles (other than medical transport); missiles and other weapons; military equipment; military fortifications, facilities and depots; warships; ministries of defence and armaments factories.
- (b) Application of the “location” criterion can result in specific areas of land such as a mountain pass, a bridgehead or jungle trail becoming military objectives.
- (c) The “purpose” of an object – although not military by nature – is concerned with the intended future use of an object.
- (d) The “use” of an object relates to its present function, with the result that a civilian object can become a military objective due to its use by armed forces.

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- 23. Objects which may qualify as military objectives through the definition in Rules 1 (y) and 22 (a) include, but are not limited to, factories, lines and means of communications (such as airfields, railway lines, roads, bridges and tunnels); energy producing facilities; oil storage depots; transmission facilities and equipment.
- 24. The connection between a military objective and military action may be direct or indirect.

II. Specifics of air or missile operations

- 25. Aircraft may be the object of attack only if they constitute military objectives.
- 26. All enemy military aircraft constitute military objectives, unless protected under Section L of this

Manual, or as otherwise agreed by the Belligerent Parties under Section N (V).

27. Without prejudice to Sections I, J and L of this Manual, the following activities may render any other enemy aircraft a military objective:
- (a) Engaging in hostile actions in support of the enemy, e.g. intercepting or attacking other aircraft; attacking persons or objects on land or sea; being used as a means of attack; engaging in electronic warfare; or providing targeting information to enemy forces.
 - (b) Facilitating the military actions of the enemy's armed forces, e.g., transporting troops, carrying military materials, or refuelling military aircraft.
 - (c) Being incorporated into or assisting the enemy's intelligence gathering system, e.g., engaging in reconnaissance, early warning, surveillance or command, control and communications missions.
 - (d) Refusing to comply with the orders of military authorities, including instructions for landing, inspection and possible capture, or clearly resisting interception.
 - (e) Otherwise making an effective contribution to military action.

SECTION F: DIRECT PARTICIPATION IN HOSTILITIES

28. Civilians lose their protection from attack if and for such time as they take a direct part in hostilities.

29. Subject to the circumstances ruling at the time, the following activities are examples of what may constitute taking a direct part in hostilities:

- (i) Defending of military objectives against enemy attacks.
- (ii) Issuing orders and directives to forces engaged in hostilities; making decisions on operational/tactical deployments; and participating in targeting decision-making.
- (iii) Engaging in electronic warfare or computer network attacks targeting military objectives, combatants or civilians directly participating in hostilities, or which is intended to cause death or injury to civilians or damage to or destruction of civilian objects.
- (iv) Participation in target acquisition.
- (v) Engaging in mission planning of an air or missile attack.
- (vi) Operating or controlling weapon systems or weapons in air or missile combat operations, including remote control of UAVs and UCAVs.
- (vii) Employing military communications networks and facilities to support specific air or missile combat operations.
- (viii) Refueling, be it on the ground or in the air, of a military aircraft which is about to engage in, or which is engaged in, air or missile combat operations.
- (ix) Loading ordnance or mission-essential equipment onto a military aircraft which is about to

cited in U.S. v. Flores, No. 11-50516 archived on September 29, 2013

engage in, or which is engaged in, air or missile combat operations.

- (x) Servicing or repairing of a military aircraft which is about to engage in, or which is engaged in, air or missile combat operations.
- (xi) Loading mission control data to military aircraft/missile software systems.
- (xii) Combat training of aircrews, air technicians and others for specific requirements of a particular air or missile combat operation.

SECTION G: PRECAUTIONS IN ATTACKS

I. General rules

- 30. Constant care must be taken to spare the civilian population, civilians and civilian objects.
- 31. All feasible precautions must be taken to spare all persons and objects entitled to specific protection under Sections K, L, M and N of this Manual.
- 32. Constant care includes in particular the following precautions:
 - (a) Doing everything feasible to verify, based on information reasonably available, that a target is a lawful target and does not benefit from specific protection;
 - (b) Doing everything feasible to choose means and methods of warfare with a view to avoiding — or, in any event, minimizing — collateral damage; and

- (c) Doing everything feasible to determine whether the collateral damage to be expected from the attack will be excessive in relation to the concrete and direct military advantage anticipated.
33. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be the one where the attack may be expected to cause the least danger to civilian lives and to civilian objects, or to other protected persons and objects.

II. Specifics of air or missile operations

34. Constant care must be taken by all those involved in planning, ordering and executing air or missile combat operations to spare the civilian population, civilians and civilian objects.
35. In carrying out air or missile combat operations, an attack must be cancelled or suspended if it becomes apparent:
- (a) That the target is not a lawful target; or
 - (b) That the target is and remains entitled to specific protection in accordance with Sections K, L, M and N of this Manual; or
 - (c) That the expected collateral damage is excessive in relation to the concrete and direct military advantage anticipated.
36. In order to avoid the release of dangerous forces and consequent severe losses among the civilian population, particular care must be taken if works and installations containing dangerous forces, namely dams, dykes and nuclear electrical generat-

ing stations (as well as installations located in their vicinity) are attacked.

37. When the attack of a lawful target by air or missile combat operations may result in death or injury to civilians, effective advance warnings must be issued to the civilian population, unless circumstances do not permit. This may be done, for instance, through dropping leaflets or broadcasting the warnings. Such warnings ought to be as specific as circumstances permit.
38. Effective advance warnings must also be given before attacking persons and objects entitled to specific protection under Section K, L and N (I and II), as provided for in these Sections, as well as under Section J.
39. The obligation to take feasible precautions in attack applies equally to UAS/UCAV operations.

III. Specifics of attacks directed at aircraft in the air

40. Before an aircraft is attacked in the air, all feasible precautions must be taken to verify that it constitutes a military objective. Verification ought to use the best means available under the prevailing circumstances, having regard to the immediacy of any potential threat. Factors relevant to verification may include:
 - (a) Visual identification.
 - (b) Responses to oral warnings over radio.
 - (c) Infrared signature.
 - (d) Radar signature.
 - (e) Electronic signature.

- (f) Identification modes and codes.
 - (g) Number and formation of aircraft.
 - (h) Altitude, speed, track, profile and other flight characteristics.
 - (i) Pre-flight and in-flight air traffic control information regarding possible flights.
41. Belligerent Parties and Neutrals providing air traffic control service ought to establish procedures whereby military commanders — including commanders of military aircraft — are informed on a continuous basis of designated routes assigned to, and flight plans filed by, civilian aircraft in the area of hostilities (including information on communication channels, identification modes and codes, destination, passengers and cargo).

cited in U.S. v. Flores, No. 11-50536 archived on September 9, 2013

**SECTION H:
PRECAUTIONS BY THE BELLIGERENT PARTY
SUBJECT TO ATTACK**

42. Belligerent Parties subject to air or missile attacks must, to the maximum extent feasible, avoid locating military objectives within or near densely populated areas, hospitals, cultural property, places of worship, prisoner of war camps, and other facilities which are entitled to specific protection as per Sections K, L and N (II).
43. Belligerent Parties subject to air or missile attacks must, to the maximum extent feasible, endeavour to remove the civilian population, individual civilians and other protected persons and objects under their control from the vicinity of military objectives.

44. Belligerent Parties subject to air or missile attacks must, to the maximum extent feasible, take necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.
45. Belligerent Parties actually or potentially subject to air or missile operations must not use the presence or movements of the civilian population or individual civilians to render certain points or areas immune from air or missile operations, in particular they must not attempt to shield lawful targets from attacks or to shield, favour or impede military operations. Belligerent Parties must not direct the movement of the civilian population or individual civilians in order to attempt to shield lawful targets from attacks or to shield military operations.
46. Both the Belligerent Party launching an air or missile attack and the Belligerent Party subject to such an attack have obligations to take precautions. Nevertheless, the latter's failure to take precautionary measures does not relieve the Belligerent Party launching an air or missile attack of its obligation to take feasible precautions.

cited in U.S. v. Flores, No. 11-50836, archived on September 9, 2013

SECTION I: PROTECTION OF CIVILIAN AIRCRAFT

I. General rules

47. (a) Civilian aircraft, whether enemy or neutral, are civilian objects and as such are entitled to protection from attack.
- (b) Civilian aircraft can be the object of attack only if they constitute military objectives.

48. (a) All enemy civilian and State aircraft other than military aircraft may be intercepted, inspected or diverted in accordance with Section U.
- (b) Neutral civilian aircraft may be intercepted, inspected or diverted in accordance with Section U.

II. Enemy civilian aircraft

49. Enemy civilian aircraft are liable to capture as prize in accordance with Rule 134.
50. Subject to the specific protection of Sections K and L of this Manual, enemy civilian aircraft are liable to attack if engaged in any of the activities set forth in Rule 27.

III. Neutral civilian aircraft

51. Neutral civilian aircraft are liable to capture as prize if engaged in any of the activities enumerated in Rule 140 and if the requirements of Rule 142 are met.
52. Neutral civilian aircraft may not be attacked unless they are engaged in any of the activities enumerated in Rule 174.

IV. Safety in flight

53. (a) In order to enhance their safety whenever in the vicinity of hostilities, civilian aircraft must file with the relevant air traffic control service required flight plans, which will include information as regards, e.g., registration, destination, passengers, cargo, identification codes and modes (including updates en route).
- (b) Civilian aircraft ought not to deviate from a designated air traffic service route or flight

plan without air traffic control clearance unless unforeseen conditions arise, e.g., safety or distress, in which case appropriate notification ought to be made immediately.

54. Civilian aircraft ought to avoid areas of potentially hazardous military operations. In the vicinity of hostilities, civilian aircraft must comply with instructions from the military forces regarding their heading and altitude.
55. Whenever feasible, a Notice to Airmen (NOTAM) ought to be issued by Belligerent Parties, providing information on military operations hazardous to civilian or other protected aircraft and which are taking place in given areas including on the activation of temporary airspace restrictions. A NOTAM ought to include information on the following:
 - (a) Frequencies upon which the aircraft ought to maintain a continuous listening watch.
 - (b) Continuous operation of civilian weather-avoidance radar and identification modes and codes.
 - (c) Altitude, course and speed restrictions.
 - (d) Procedures to respond to radio contact by the military forces and to establish two-way communications.
 - (e) Possible action by the military forces if the NOTAM is not complied with and if the civilian or other protected aircraft is perceived by those military forces to be a threat.
56. If a civilian or other protected aircraft enters an area of potentially hazardous military activity, it must comply with a relevant NOTAM.

57. In the absence of a NOTAM (and, whenever feasible, in case of non-compliance with a NOTAM) military forces concerned ought to use all available means to warn the civilian or other protected aircraft — through radio communication or any other established procedures — before taking any action against it.

SECTION J: PROTECTION OF PARTICULAR TYPES OF AIRCRAFT

I. Civilian airliners

58. Civilian airliners are civilian objects which are entitled to particular care in terms of precautions.
59. In case of doubt, civilian airliners — either in flight or on the ground in a civilian airport — are presumed not to be making an effective contribution to military action.
60. While civilian airliners (whether enemy or neutral) ought to avoid entering a no-fly or an “exclusion zone”, or the immediate vicinity of hostilities, they do not lose their protection merely because they enter such areas.
61. Any civilian airliner suspected on reasonable grounds of carrying contraband or otherwise being engaged in activities inconsistent with its status is subject to inspection by a Belligerent Party in an airfield that is safe for this type of aircraft and reasonably accessible.
62. Enemy civilian airliners may be captured as prize but only on condition that all passengers and crews are safely deplaned and the papers of the aircraft are preserved.
63. Subject to Rule 68, activities such as any of the following may render a civilian airliner a military objective:

- (a) Being on the ground in a military airfield of the enemy in circumstances which make that aircraft a military objective.
- (b) Engaging in hostile actions in support of the enemy, e.g. intercepting or attacking other aircraft; attacking persons or objects on land or sea; being used as a means of attack; engaging in electronic warfare; or providing targeting information to enemy forces.
- (c) Facilitating the military actions of the enemy's armed forces, e.g. transporting troops, carrying military materials, or refuelling military aircraft.
- (d) Being incorporated into or assisting the enemy's intelligence gathering system, e.g., engaging in reconnaissance, early warning, surveillance or command, control and communications missions.
- (e) Refusing to comply with the orders of military authorities, including instructions for landing, inspection and possible capture, or clearly resisting interception.
- (f) Otherwise making an effective contribution to military action.

II. Aircraft granted safe conduct

- 64. Aircraft granted safe conduct by agreement between the Belligerent Parties — such as cartel aircraft — are entitled to specific protection from attack.
- 65. (a) Aircraft granted safe conduct lose their specific protection from attack in any one of the following instances:

- (i) They do not comply with the details of the agreement, including availability for inspection and identification.
 - (ii) They intentionally hamper the movements of combatants and are not innocently employed in their agreed upon role.
- (b) Loss of specific protection will only take place if the circumstances of non-compliance are sufficiently grave that the aircraft has become or may reasonably be assumed to be a military objective.
66. In case of doubt whether an aircraft granted safe conduct qualifies as a military objective as per Rule 27, it will be presumed not to qualify as such.
67. Aircraft granted safe conduct are exempt from capture as prize, provided that they:
- (a) Are innocently employed in their normal role;
 - (b) Immediately submit to interception and identification when required;
 - (c) Do not intentionally hamper the movement of combatants and obey orders to divert from their track when required; and
 - (d) Are not acting in breach of a prior agreement.

III. Provisions common to civilian airliners and aircraft granted safe conduct

68. Civilian airliners and aircraft granted safe conduct may only be attacked if they have lost their protection as per Rules 63 and 65 and if the following cumulative conditions are fulfilled:

- (a) Diversion for landing, inspection, and possible capture, is not feasible;
 - (b) No other method is available for exercising military control;
 - (c) The circumstances leading to the loss of protection are sufficiently grave to justify an attack; and
 - (d) The expected collateral damage will not be excessive in relation to the military advantage anticipated and all feasible precautions have been taken (see Section G of this Manual).
69. Any decision to attack a civilian airliner or an aircraft granted safe conduct pursuant to Rule 68 ought to be taken by an appropriate level of command.
70. In case of loss of protection pursuant to this Section, a warning must be issued – whenever circumstances permit – to the civilian airliner or the aircraft granted safe conduct in flight before any action is taken against it.

**SECTION K:
SPECIFIC PROTECTION OF MEDICAL
AND RELIGIOUS PERSONNEL, MEDICAL
UNITS AND TRANSPORTS**

71. Subject to Rule 74, medical and religious personnel, fixed or mobile medical units (including hospitals) and medical transports by air, land, at sea or on other waters must be respected and protected at all times, and must not be the object of attack.
72. (a) Medical and religious personnel ought to wear a water-resistant armband bearing a distinctive emblem provided by the law of international

armed conflict (the Red Cross, Red Crescent or the Red Crystal). Medical units and medical transports ought to be clearly marked with the same emblem to indicate their status as such; when appropriate, other means of identification may be employed.

- (b) As far as possible, the distinctive emblem ought to be made of materials which make it recognizable by technical means of detection used in air or missile operations.
- (c) The distinctive emblem and other means of identification are intended only to facilitate identification and do not, of themselves, confer protected status.
- (d) The failure of medical and religious personnel, medical units and medical transports to display the distinctive emblem does not deprive them of their protected status.

cited in U.S. v. Flores, No. 11-356, 2013 WL 4011356 (D. Minn. August 9, 2013)

- 73. A Belligerent Party may inform the enemy of the position of its medical units. The absence of such notification does not exempt any of the Belligerent Parties from the obligations contained in Rule 71.
- 74. (a) The protection to which medical and religious personnel, medical units or medical transports are entitled does not cease unless they commit or are used to commit, outside their humanitarian function, acts harmful to the enemy.
- (b) For medical units or medical transports, protection may cease only after a warning has been given setting a reasonable time-limit, and after such warning has remained unheeded.
- (c) The following must not be considered as acts harmful to the enemy:

- (i) that the personnel of a medical unit are equipped with light individual weapons for their own defence or for that of the wounded, sick or shipwrecked in their charge.
- (ii) that a medical unit is guarded by sentries or by an escort.
- (iii) that portable arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the medical unit.
- (iv) that members of the armed forces or other combatants are in the medical unit for medical or other authorized reasons, consistent with the mission of the medical unit.
- (d) Medical units must not be used to shield lawful targets from attack.

cited in U.S. v. Flores, No. 11-50536 archived on September 9, 2013

SECTION L: SPECIFIC PROTECTION OF MEDICAL AIRCRAFT

- 75. A medical aircraft is entitled to specific protection from attack, subject to the Rules of this Section of the Manual.
- 76. (a) A medical aircraft must be clearly marked with a distinctive emblem as provided by the law of international armed conflict, i.e. the Red Cross, the Red Crescent or the Red Crystal, together with its national colours, on its lower, upper and lateral surfaces.
- (b) A medical aircraft ought to use additional means of identification where appropriate.

- (c) A temporary medical aircraft which cannot — either for lack of time or because of its characteristics — be marked with the distinctive emblem, ought to use the most effective means of identification available.
- (d) Means of identification are intended only to facilitate identification and do not, of themselves, confer protected status.

77. In and over areas controlled by friendly forces, the specific protection of medical aircraft of a Belligerent Party is not dependent on the consent of the enemy.

78. (a) In and over areas physically controlled by the enemy, as well as in and over those parts of the contact zone which are physically controlled by friendly forces or the physical control of which is not clearly established, the protection of medical aircraft can be fully effective only by virtue of prior consent obtained from the enemy. Although, in the absence of such consent, medical aircraft in the contact zone operate at their own risk, they must nevertheless be respected once they have been identified as such.

(b) The consent of the enemy as per paragraph (a) has to be sought in advance (or immediately prior to the commencement of the operation of a medical aircraft) by a Belligerent Party employing a medical aircraft. The request for consent ought to be accompanied by a detailed flight plan (as set forth in the International Civil Aviation Organization Flight Plan form).

(c) When given, consent must be express. Consent for activities consistent with the aircraft's med-

ical status, e.g. evacuation of the wounded, sick or shipwrecked, and transportation of medical personnel or material, ought not to be refused, unless on reasonable grounds.

79. Any conditions of consent obtained from the enemy for the protection of a medical aircraft must be adhered to strictly.
80.
 - (a) While flying over an area covered in Rule 78 (a), medical aircraft may be ordered to land or to alight on water to permit inspection. Medical aircraft must obey any such order.
 - (b) If inspection reveals that the medical aircraft has been engaged in activities consistent with its medical status, it must be authorized to continue its flight without delay.
 - (c) However, if the medical aircraft has engaged in activities inconsistent with its medical status, or if it has flown without or in breach of a prior agreement, then it may be seized. Its occupants must then be treated in accordance with the relevant rules of the law of international armed conflict.
 - (d) Any aircraft seized which had been assigned as a permanent medical aircraft may be used thereafter only as a medical aircraft.
81. A medical aircraft must not possess or employ equipment to collect or transmit intelligence harmful to the enemy. It may, however, be equipped with encrypted communications equipment intended solely for navigation, identification and communication consistent with the execution of its humanitarian mission.
82. A medical aircraft may be equipped with deflection means of defence (such as chaff or flares) and carry

light individual weapons necessary to protect the aircraft, the medical personnel and the wounded, sick or shipwrecked on board. Carrying of the individual weapons of the wounded, sick or shipwrecked during their evacuation does not entail loss of protection.

83. Subject to Rule 74, a medical aircraft loses its specific protection from attack if it is engaged in acts harmful to the enemy.
84. Except by prior agreement with a Neutral, a belligerent medical aircraft must not fly over or land in the territory of that Neutral, unless it is exercising the right of transit passage through straits used for international navigation or the right of archipelagic sea lanes passage.
85. (a) Should a belligerent medical aircraft, in the absence of a prior agreement with the Neutral or in deviation from the terms of an agreement, enter the neutral airspace, either through navigational error or because of an emergency affecting the safety of the flight, it must make every effort to give notice and to identify itself. Once the aircraft is recognized as a medical aircraft by the Neutral, it must not be attacked but may be required to land for inspection. Once it has been inspected, and if it is determined in fact to be a medical aircraft, it must be allowed to resume its flight.

(b) If the inspection reveals that the aircraft is not a medical aircraft, it may be seized. Any combatants on board will be interned by the Neutral in accordance with Rule 170 (c).
86. (a) Search-and-rescue aircraft used to recover military personnel, even if they are not military aircraft, are not entitled to protection.

- (b) Medical aircraft must not be used to search for the wounded, sick and shipwrecked within areas of combat operations, unless pursuant to prior consent of the enemy. If medical aircraft nevertheless operate for such purposes they do so at their own risk.
- 87. Without prejudice to the status of medical personnel under the relevant provisions of the law of international armed conflict, members of the crew of medical aircraft must not be captured by the enemy and must be allowed to carry out their mission.

SECTION M: SPECIFIC PROTECTION OF THE NATURAL ENVIRONMENT

I. General rule

- 88. The destruction of the natural environment carried out wantonly is prohibited.

II. Specifics of air or missile operations

- 89. When planning and conducting air or missile operations, due regard ought to be given to the natural environment.

SECTION N: SPECIFIC PROTECTION OF OTHER PERSONS AND OBJECTS

I. Civil defence

- 90. (a) Specific protection must be provided to civil defence organizations and their personnel, whether civilian or military. They must be enti-

tled to perform their civil defence tasks except in the case of imperative military necessity.

- (b) Specific protection must also be provided to buildings and materiel used for civil defence purposes and to shelters provided for the civilian population. Objects used for civil defence purposes may not be destroyed or diverted from their proper use except by the Belligerent Party to which they belong.

91. Belligerent Parties have to endeavour to ensure that — while exclusively devoted to the performance of civil defence tasks — their civil defence organizations, personnel, buildings and materials, as well as shelters provided to the civilian population, are identified as such by the recognized international distinctive sign for civil defence and any other appropriate means of identification.

92. The protection to which civilian civil defence organizations, their personnel, buildings, shelters and materiel are entitled does not cease unless they commit or are used to commit, outside their proper tasks, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

II. Cultural property

(i) Use of cultural property

- 93. (a) Belligerent Parties must refrain from any use of cultural property and its immediate surroundings, or of the appliances in use for its protection, for purposes which are likely to expose it to destruction or damage.

(b) Cultural property or its immediate surroundings may only be used for military purposes in cases where military necessity imperatively so requires. Such decision can only be implemented after the emblems identifying the object in question as cultural property have been removed.

94. Belligerent Parties ought to facilitate the identification and protection of cultural property under their control, by marking it with the internationally recognized emblem and by providing the enemy with timely and adequate information about its location. However, the absence of such measures does not deprive cultural property of its protection under the law of international armed conflict.

(ii) Attacks against cultural property

95. (a) Subject to paragraph (b) and to Rule 96, Belligerent Parties must refrain from any act of hostility directed against cultural property.

(b) Cultural property, or its immediate surroundings, may only be attacked in cases where military necessity imperatively so requires.

(c) In attacking, through air or missile attacks, military objectives in the immediate surroundings of cultural property, the Belligerent Parties must take feasible precautions to avoid damage to the cultural property (see Section G of this Manual).

96. Whenever cultural property has become a military objective, the decision to attack the object must be taken by an appropriate level of command, and with due consideration of its special character as cultural property. An effective advance warning should be given whenever circumstances permit

cited in U.S. v. Flores, 41-3571, 11-3571 Archived on September 9, 2013

and an attack should only be conducted if the warning remains unheeded.

III. Objects indispensable to the survival of the civilian population

97. (a) Starvation of civilians as a method of warfare is prohibited.
- (b) It is prohibited to attack, destroy, remove, or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying the civilian population their use.
- (c) The prohibitions in paragraph (b) do not apply to such of the objects covered by it as are used by the enemy:
- (i) as sustenance solely for the members of its armed forces; or
 - (ii) if not as sustenance, then in direct support of military action, provided, however, that in no event can actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

cited in U.S. v. Flores, No. 11-506 archd on September 9, 2013

IV. UN personnel

98. (a) UN personnel must be respected and protected.
- (b) Directing attacks against UN personnel is prohibited, as long as they are entitled to the protection given to civilians.

- (c) Directing attacks against material, installations, units and vehicles of the UN is prohibited, unless they constitute military objectives.

V. Protection by special agreement

- 99. Belligerent Parties may agree at any time to protect persons or objects not otherwise covered by this Manual.

SECTION O: HUMANITARIAN AID

I. General rules

- 100. (a) If the civilian population of any territory under the control of a Belligerent Party is not adequately provided with food, medical supplies, clothing, bedding, means of shelter or other supplies essential to its survival, relief actions which are humanitarian and impartial in character — and conducted without adverse distinction — should be undertaken, subject to agreement of the Parties concerned. Such agreement cannot be withheld in occupied territories.

- (b) Relief actions may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross.

- 101. The Parties concerned must allow and facilitate rapid and unimpeded passage of relief consignments, equipment and personnel in accordance with Rule 100, subject to technical arrangements including search.

- 102. (a) Humanitarian relief personnel, acting within the prescribed parameters of their mission,

must be respected and protected. The protection extends to humanitarian transports, installations and goods.

- (b) Each Belligerent Party in receipt of relief consignments must, to the fullest extent practicable, assist the relief personnel referred to in paragraph (a) in carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.

II. Specifics of air or missile operations

103. Whenever circumstances permit, Belligerent Parties conducting air or missile operations ought to suspend air or missile attacks in order to permit the distribution of humanitarian assistance.

104. "Technical arrangements" as used in Rule 101 may include such matters as:

- (a) Establishment of air corridors or air routes.
- (b) Organization of air drops.
- (c) Agreement on flight details (i.e. timing, route, landing).
- (d) Search of relief supplies.

SECTION P: "EXCLUSION ZONES" AND NO-FLY ZONES

I. General rules

105. (a) A Belligerent Party is not absolved of its obligations under the law of international armed

conflict by establishing “exclusion zones” or no-fly zones.

- (b) Zones designated for unrestricted air or missile attacks are prohibited.

106. Nothing in this Section of the Manual ought to be deemed as derogating from the right of a Belligerent Party:

- (a) to control civil aviation in the immediate vicinity of hostilities; or
- (b) to take appropriate measures of force protection in the form of, e.g., the establishment of warning zones.

II. “Exclusion zones” in international airspace

107. Should a Belligerent Party establish an “exclusion zone” in international airspace:

- (a) The same rules of the law of international armed conflict will apply both inside and outside the “exclusion zone”.
- (b) The extent, location and duration of the “exclusion zone” and the measures imposed must not exceed what is reasonably required by military necessity.
- (c) The commencement, duration, location and extent of the “exclusion zone”, as well as the restrictions imposed, must be appropriately notified to all concerned.
- (d) The establishment of an “exclusion zone” must neither encompass nor completely bar access to the airspace of Neutrals.

- (e) Due regard must be given to the lawful use by Neutrals of their Exclusive Economic Zones and continental shelf, in particular artificial islands, installations, structures and safety zones.

III. No-fly zones in belligerent airspace

- 108. A Belligerent Party may establish and enforce a no-fly zone in its own or in enemy national airspace.
- 109. The commencement, duration, location and extent of the no-fly zones must be appropriately notified to all concerned.
- 110. Subject to the Rules set out in Sections D and G of this Manual, aircraft entering a no-fly zone without specific permission are liable to be attacked.

cited in U.S. v. Flores, No. 11-50036 archived on September 9, 2013

SECTION Q: DECEPTION, RUSES OF WAR AND PERFDY

I. General rules

- 111. (a) It is prohibited to kill or injure an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of the law of international armed conflict, with the intent to betray that confidence, constitute perfidy.
- (b) The following acts are examples of perfidy as per paragraph (a): feigning of civilian, neutral or other protected status.

112. Without prejudice to the rules of naval warfare, the following acts are prohibited at all times irrespective of whether or not they are perfidious:

- (a) Improper use of the distinctive emblem of the Red Cross, Red Crescent or Red Crystal, or of other protective emblems, signs or signals provided for by the law of international armed conflict.
- (b) Improper use of the flag of truce.
- (c) Improper use by a Belligerent Party of the flags or military emblems, insignia or uniforms of the enemy.
- (d) Use by a Belligerent Party of the flags or military emblems, insignia or uniforms of neutrals.
- (e) Use by a Belligerent Party of the distinctive emblem of the United Nations, except as authorized by that Organization.

113. Ruses of war are permitted. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of the law of international armed conflict and which do not meet the definition of perfidy in Rule 111 (a).

II. Specifics of air or missile operations

114. In air or missile combat operations, the following acts are examples of perfidy (subject to the definition in Rule 111 (a)):

- (a) The feigning of the status of a protected medical aircraft, in particular by the use of the distinctive emblem or other means of identification reserved for medical aircraft.

- (b) The feigning of the status of a civilian aircraft.
 - (c) The feigning of the status of a neutral aircraft.
 - (d) The feigning of another protected status.
 - (e) The feigning of surrender.
- 115.** Irrespective of whether or not they are perfidious, in air or missile combat operations, the following acts are prohibited at all times:
- (a) Improper use by aircraft of distress codes, signals or frequencies.
 - (b) Use of any aircraft other than a military aircraft as a means of attack.
- 116.** In air or missile combat operations, the following are examples of lawful ruses of war:
- (a) Mock operations.
 - (b) Disinformation.
 - (c) False military codes and false electronic, optical or acoustic means to deceive the enemy (provided that they do not consist of distress signals, do not include protected codes, and do not convey the wrong impression of surrender).
 - (d) Use of decoys and dummy-construction of aircraft and hangars.
 - (e) Use of camouflage.
- 117.** Aircrews conducting combat operations on land or on water — outside their aircraft — must distinguish themselves from the civilian population, as required by the law of international armed conflict.

SECTION R: ESPIONAGE

I. General rules

118. Espionage consists of activities by spies. A spy is any person who, acting clandestinely or on false pretences, obtains or endeavours to obtain information of military value in territory controlled by the enemy, with the intention of communicating it to the opposing Party.
119. Acts of espionage are not prohibited under the law of international armed conflict.
120. A member of the armed forces of a Belligerent Party who gathers or attempts to gather information in territory controlled by the enemy is not considered a spy if, while so acting, he is in the uniform of his armed forces.
121. A member of the armed forces of a Belligerent Party who falls into the power of the enemy while engaging in espionage does not have the right to prisoner of war status and may be prosecuted for his acts before domestic courts.
122. A member of the armed forces of a Belligerent Party who, having been engaged in espionage rejoins his own forces but is subsequently captured by the enemy, may no longer be prosecuted for his previous acts of espionage.

II. Specifics of air or missile operations

123. Military aircraft on missions to gather, intercept or otherwise gain information are not to be regarded as carrying out acts of espionage.

124. The use of civilian aircraft and State aircraft other than military aircraft of a Belligerent Party, flying outside the airspace of or controlled by the enemy — in order to gather, intercept or otherwise gain information — is not to be regarded as espionage, although the aircraft may be attacked at such time as it is carrying out its information-gathering mission.

SECTION S: SURRENDER

I. General rules

125. Enemy personnel may offer to surrender themselves (and the military equipment under their control) to a Belligerent Party.

126. It is prohibited to deny quarter to those manifesting the intent to surrender.

127. Surrender is contingent on three cumulative conditions:

- (a) The intention to surrender is communicated in a clear manner to the enemy.
- (b) Those offering to surrender must not engage in any further hostile acts.
- (c) No attempt is made to evade capture.

II. Specifics of air or missile operations

128. Aircrews of a military aircraft wishing to surrender ought to do everything feasible to express clearly their intention to do so. In particular, they ought

to communicate their intention on a common radio channel such as a distress frequency.

129. A Belligerent Party may insist on the surrender by an enemy military aircraft being effected in a prescribed mode, reasonable in the circumstances. Failure to follow any such instructions may render the aircraft and the aircrew liable to attack.
130. Aircrews of military aircraft wishing to surrender may, in certain circumstances, have to parachute from the aircraft in order to communicate their intentions. The provisions of this Section of the Manual are without prejudice to the issue of surrender of aircrews having descended by parachute from an aircraft in distress (see Section T of this Manual).
131. Subject to Rule 87, surrendering combatants, as well as captured civilians accompanying the armed forces (such as civilians members of military aircraft crews) and crews of civilian aircraft of the Belligerent Parties who do not benefit from a more favorable treatment, are entitled to prisoner of war status.

SECTION T: PARACHUTISTS FROM AN AIRCRAFT IN DISTRESS

132. (a) No person descending by parachute from an aircraft in distress may be made the object of attack during his descent.
- (b) Upon landing in a territory controlled by the enemy, a person who descended by parachute from an aircraft in distress is entitled to be given an opportunity to surrender prior to being made the object of attack, unless it is apparent that he is engaging in a hostile act.

133. This Section does not apply to airborne troops.

SECTION U: CONTRABAND, INTERCEPTION, INSPECTION AND CAPTURE

I. Enemy aircraft and goods on board such aircraft

134. Enemy civilian aircraft and goods on board may be captured as prize on the ground or — when flying outside neutral airspace — be intercepted and ordered to proceed to a reasonably accessible belligerent airfield that is safe for the type of aircraft involved. Prior exercise of inspection is not required.

135. As an exceptional measure, captured enemy civilian aircraft and goods on board may be destroyed when military circumstances preclude taking the aircraft for prize adjudication, provided that all persons on board have first been placed in safety and documents relating to the prize have been preserved.

136. (a) Enemy military, law-enforcement and customs aircraft are booty of war. Prize procedures do not apply to captured enemy military aircraft and other State aircraft, inasmuch as their ownership immediately passes to the captor government by virtue of capture.

(b) If a military aircraft becomes disabled or experiences technical problems that require it to land in enemy territory, the aircraft may be seized and destroyed or converted for use by the enemy.

(c) Captured aircrews of military aircraft covered under this Rule are prisoners of war.

II. Neutral civilian aircraft

137. (a) Belligerent Parties are entitled to intercept neutral civilian aircraft outside neutral airspace, provided that due regard is given to the safety of civil aviation.
- (b) If, after interception, reasonable grounds for suspecting that a neutral civilian aircraft is subject to capture exist, it may be ordered to proceed for inspection at a reasonably accessible belligerent airfield that is safe for the type of aircraft involved.
- (c) As an alternative to capture as prize, a neutral civilian aircraft may consent to be diverted from its declared destination.

138. In order to avoid the need for interception, Belligerent Parties are allowed to establish reasonable measures for the inspection of the cargo of neutral civilian aircraft and the certification that an aircraft is not carrying contraband.

139. The fact that a neutral civilian aircraft has submitted to such measures of supervision as the inspection of its cargo and grant of certificates of non-contraband cargo by one Belligerent Party is not an act of unneutral service with regard to the opposing Belligerent Party.

140. Neutral civilian aircraft are subject to capture as prize outside neutral airspace, if it is determined as a result of inspection or by other means that any one of the following conditions is fulfilled:

- (a) They are carrying contraband.
- (b) They are on a flight especially undertaken to transport individual passengers who are members of the enemy's armed forces.

- (c) They are operating directly under enemy control, orders, charter, employment or direction.
- (d) They present irregular or fraudulent documents, lack necessary documents, or destroy, deface or conceal documents.
- (e) They are violating regulations established by a Belligerent Party within the immediate area of military operations.
- (f) They are engaged in breach of an aerial blockade (see Section V of this Manual).

141. Goods on board neutral civilian aircraft outside neutral airspace are subject to capture as prize in any one of the following cases:

- (a) They constitute contraband.
- (b) The neutral civilian aircraft is engaged in activities rendering it a military objective under Rule 174.

142. The capture of neutral civilian aircraft and of goods on board can be exercised only in the cases provided for in Rules 140 and 141 and is subject to prize adjudication.

III. Safeguards

143. In all circumstances of capture of a civilian aircraft – whether neutral or enemy – the safety of passengers and crew on board must be provided for. Documents and papers relating to the aircraft must be safeguarded.

IV. Determination of enemy character

144. The fact that a civilian aircraft bears the marks of an enemy Belligerent Party is conclusive evidence

of its enemy character. Enemy character of a civilian aircraft can also be determined by registration, ownership, charter or other appropriate criteria.

145. For the purposes of capture and prize, a civilian aircraft bearing no marks is presumed to have enemy character.
146. (a) If the commander of a military aircraft suspects that a civilian aircraft with neutral marks in fact has enemy character, the commander is entitled to exercise the right of interception and, if circumstances require, the right to divert for the purpose of inspection.
- (b) If it is established, after inspection, that the civilian aircraft with neutral marks does not have enemy character, it must be allowed to proceed without delay.

cited in U.S. v. Flores, No. 11-50536 archived on September 9, 2013

**SECTION V:
AERIAL BLOCKADE**

147. An aerial blockade is a belligerent operation to prevent aircraft (including UAVs/UCAVs) from entering or exiting specified airfields or coastal areas belonging to, occupied by, or under the control of the enemy.
148. (a) An aerial blockade must be declared by a Belligerent Party and notified to all States.
- (b) The declaration must specify the commencement, duration, location, and extent of the aerial blockade and the period in which neutral aircraft may leave the blockaded area.
- (c) Whenever feasible, a Notice to Airmen (NOTAM) about the establishment of the aerial

blockade ought to be issued by the Blockading Party in accordance with Rule 55.

149. (a) The cessation, temporary lifting, re-establishment, extension or other alteration of an aerial blockade must be declared and notified to all States.
 - (b) Whenever feasible, a Notice to Airmen (NOTAM) about any changes under paragraph (a) ought to be issued by the Blockading Party in accordance with Rule 55.
150. An aerial blockade must not bar access to the airspace of Neutrals.
151. An aerial blockade must be effective. The question whether such a blockade is effective is a question of fact.
152. The force maintaining the aerial blockade may be deployed at a distance determined by military requirements.
153. (a) An aerial blockade may be enforced and maintained by a combination of lawful means of warfare, provided that this combination does not result in acts inconsistent with the law of international armed conflict.
 - (b) Aircraft in distress must be allowed to enter the blockaded area when necessary.
154. To the extent that an aerial blockade is maintained and enforced exclusively by military aircraft, the condition of effectiveness (Rule 151) requires a sufficient degree of air superiority.
155. An aerial blockade must be enforced impartially as regards the aircraft of all States.

cited in U.S. v. Flores, No. 11-50536 archived on September 2013

156. For an aerial blockade to be considered effective under Rule 151, it is required that civilian aircraft believed on reasonable grounds to be breaching, or attempting to breach, an aerial blockade, be forced to land, inspected, captured or diverted. If civilian aircraft clearly resist interception, an order to land and capture, they are at risk of attack after prior warning. As for civilian airliners, Section J applies.

157. The establishment or maintenance of an aerial blockade is prohibited in any one of the following cases:

(a) Its sole or primary purpose is to starve the civilian population or to deny that population other objects essential for its survival.

(b) The suffering of the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the aerial blockade.

158. Subject to Rule 100, if the civilian population of the blockaded area is inadequately provided with food or other objects essential for its survival, the Blockading Party must provide for free passage of such foodstuffs or other essential supplies, for example by establishing a humanitarian air corridor, subject to the following conditions:

(a) The Blockading Party retains the right to prescribe the technical arrangements, including inspection, under which such passage is permitted.

(b) The distribution of such supplies may be made subject to the condition that it will be carried out under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross.

cited in U.S. v. Flores, No. 11-30576, archived on September 9, 2013

159. The Blockading Party must allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to prescribe technical arrangements, including inspection, under which such passage is permitted.

SECTION W: COMBINED OPERATIONS

160. A combined operation is an operation in which two or more States participate on the same side of an international armed conflict, either as members of a permanent alliance or an *ad hoc* coalition.
161. A State may not invoke its participation in combined operations as justification for its failure to perform its obligations under the law of international armed conflict.
162. The legal obligations of a State participating in combined operations do not change when its armed forces are operating in a multinational force under the command or control of a military commander of a different nationality.
163. A State's obligations under the law of international armed conflict do not change when its air or missile forces are operating from the territory of a co-belligerent, including when its air or missile forces are operating from the territory of a co-belligerent that has different obligations under the law of international armed conflict.
164. A State may participate in combined operations with States that do not share its obligations under the law of international armed conflict although those other States might engage in activities prohibited for the first State.

SECTION X: NEUTRALITY

I. Scope of application

165. Where the Security Council takes binding preventive or enforcement measures under Chapter VII of the Charter of the United Nations – including the authorization of the use of force by a particular State or group of States – no State may rely upon the law of neutrality to justify conduct which would be incompatible with its obligations under the Charter of the United Nations.

II. General rules

166. Hostilities between Belligerent Parties must not be conducted within neutral territory.

167. (a) Belligerent Parties are prohibited in neutral territory to conduct any hostile actions, establish bases of operations or use such territory as a sanctuary. Furthermore, neutral territory must not be used by Belligerent Parties for the movement of troops or supplies, including overflights by military aircraft or missiles, or for operation of military communication systems.

- (b) However, when Belligerent Parties use for military purposes a public, internationally and openly accessible network such as the Internet, the fact that part of this infrastructure is situated within the jurisdiction of a Neutral does not constitute a violation of neutrality.

168. (a) A Neutral must not allow any of the acts referred to in Rule 167 (a) to occur within its territory and must use all the means available to it to prevent or terminate them.

- (b) If the use of the neutral territory or airspace by a Belligerent Party constitutes a serious violation, the opposing Belligerent Party may, in the absence of any feasible and timely alternative, use such force as is necessary to terminate the violation of neutrality.

169. The fact that a Neutral resists, even by force, attempts to violate its neutrality cannot be regarded as a hostile act. However, the use of force by the Neutral must not exceed the degree required to repel the incursion and maintain its neutrality.

III. Specifics of air or missile operations

170. (a) Any incursion or transit by a belligerent military aircraft (including a UAV/UCAV) or missile into or through neutral airspace is prohibited. This is without prejudice to the right of transit passage through straits used for international navigation or archipelagic sea lanes passage.

(b) A Neutral must exercise surveillance, to the extent that the means at its disposal allow, to enable it to prevent the violation of its neutrality by belligerent forces.

(c) In the event a belligerent military aircraft enters neutral airspace (other than straits used for international navigation or archipelagic sea lanes), the Neutral must use all the means at its disposal to prevent or terminate that violation. If captured, the aircraft and their crews must be interned for the duration of the armed conflict.

171. Belligerent Parties must not commit any of the following acts:

- (a) Attack on or capture of persons or objects located in neutral airspace.
 - (b) Use of neutral territory or airspace as a base of operations — for attack, targeting, or intelligence purposes — against enemy targets in the air, on land or on water outside that territory.
 - (c) Conducting interception, inspection, diversion or capture of vessels or aircraft in neutral territory.
 - (d) Any other activity involving the use of military force or contributing to the war-fighting effort, including transmission of data or combat search-and-rescue operations in neutral territory.
172. (a) Belligerent military aircraft may not enter the airspace of Neutrals, except that:
- (i) Belligerent military aircraft in distress may be permitted to enter neutral airspace and to land in neutral territory under such safeguards as the Neutral may wish to impose. The Neutral is obligated to require such aircraft to land and to intern the aircraft and their crews.
 - (ii) The airspace above neutral international straits and archipelagic sea lanes remains open at all times to belligerent aircraft, including armed military aircraft engaged in transit or archipelagic sea lanes passage.
 - (iii) The Neutral may permit belligerent military aircraft to enter for purposes of capitulation.

- (b) Neutrals must use the means at their disposal to require capitulating belligerent military aircraft to land within their territory, and must intern the aircraft and their crews for the duration of the international armed conflict. Should such an aircraft commit hostile acts, or should it fail to follow the instructions to land, it may be attacked without further notice.

173. A Neutral is not bound to prevent the private export or transit on behalf of a Belligerent Party of aircraft, parts of aircraft, or material, supplies or munitions for aircraft. However, a Neutral is bound to use the means at its disposal:

- (a) To prevent the departure from its jurisdiction of an aircraft in a condition to make a hostile attack against a Belligerent Party, if there is reason to believe that such aircraft is destined for such use.

- (b) To prevent the departure from its jurisdiction of the crews of military aircraft, as well as passengers and crews of civilian aircraft, who are members of the armed forces of a Belligerent Party.

174. Without prejudice to Sections J and V of this Manual, the following activities may render a neutral civilian aircraft a military objective:

- (a) It is believed on reasonable grounds to be carrying contraband, and, after prior warning or interception, it intentionally and clearly refuses to divert from its destination, or intentionally and clearly refuses to proceed for inspection to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible.

- (b) Engaging in hostile actions in support of the enemy, e.g. intercepting or attacking other aircraft; attacking persons or objects on land or sea; being used as a means of attack; engaging in electronic warfare; or providing targeting information to enemy forces.
- (c) Facilitating the military actions of the enemy's armed forces, e.g. transporting troops, carrying military materials, or refuelling military aircraft.
- (d) Being incorporated into or assisting the enemy's intelligence gathering system, e.g., engaging in reconnaissance, early warning, surveillance or command, control and communications missions.
- (e) Refusing to comply with the orders of military authorities, including instructions for landing, inspection and possible capture, or it clearly resists interception.
- (f) Otherwise making an effective contribution to military action.

175. The fact that a civilian aircraft bears the marks of a Neutral is *prima facie* evidence of its neutral character.