

International armed conflict

Law



**ASSIGN
BUSTER**

The laws of war, also known as the law of armed conflict or international humanitarian law, are codified in multilateral treaties. They reflect ancient traditions of humanity, military chivalry, and internationally agreed-upon customary norms of behavior for belligerents. Current and former military leaders, federal judges, government officials, scholars, international lawyers, journalists, human rights advocates, and others are struggling to understand, adapt, and articulate the appropriate legal framework for fighting the war on Terrorism.

Laws of war should not and cannot be applied equally towards terrorists because they do not comply, acknowledge or respect the spirit of these laws. There will be three main domains of critical analysis conducted on the topics. First, should captured individuals who participate in terrorist activities be considered prisoners of war? Next, how can laws of war be legally and formally applicable towards anti-terrorist military operations? Finally, should standard and agreed upon international laws always be respected even if unforeseen anti-military measures are needed in specific situations?

These questions are ones that bring about great global controversy and should be explored further in order to acquire adequate insight on the topic. History The laws of war are a complex and difficult set of laws to grasp, in order to properly understand the topic one must have insight about the history/origins of the topic. When grappling with the ideas surrounding laws of war it is important to remember that there are two parts to the law, the first *jus ad bellum* and the next *jus in bello*.

Jus ad bellum refers to laws relating to the right to engage in war, for example sovereignty, escape from slavery and aggressors¹. The foundations of this meaning Jus ad bellum lay within ancient Greek society. Jus in bello on the other hand stands for justice in war, the idea in this section is that all wars that originate must be just; examples of this are self-defense and aiding another state with an aggressor². The main message that is gathered from the laws of war is that no matter if an individual is sick, wounded, a prisoner of war or a civilian they are to be protected.

Laws of war are an agreed upon combination of rules and regulations pertaining to war, these rules are produced through state-state negotiations and vested interests of particular states. Throughout the years there have been additions, disputes and amendments made towards the law of war. The Geneva conventions of 1949 are a monumental mark in history for international laws of war and humanitarian law. The Geneva conventions are premised around victims of war who may or have been captured by their opponents³. Common articles one, two and three are relevant and capture the essence of the conventions.

Article one discusses how groups need to respect and keep the respect of the current convention at all times⁴. Article two continues by saying that conventions must be applied to any situation pertaining to declared war or which involve armed conflict with more than one of the high contracting parties⁵. Finally article three discusses the provisions each party is bound to apply in the occurrence of an armed conflict which is not international⁶. The last historical document that should be noted with respects to international

armed conflict and terrorism is the Canadian Anti-terrorist act and the American Patriot act.

Both of these acts were passed in response to the events that occurred on September 9/11. Essentially the main aim of these two acts is to gather information, track, dissemble and apprehend individuals suspected of terrorist links⁷. New terrorist legislation that has been developed is widely regarded as ad hoc, in the sense that these acts/legislation may be interrupted or revised depending on the situation at hand. Prisoners of war It was not until post 9/11 that North American government and the media spoke repeatedly about the war in Afghanistan.

The truth is that there has been a war in Afghanistan for decades between Northern Alliance Force and the Taliban. The humorous fact is the war is only acknowledged now because the United States and Canadian forces are involved in the war. Now that there is a war on terrorism in Afghanistan, government and military personnel encountered a problem in whether or not to classify terrorist captured as prisoners of war. Through this dilemma a term was coined "unlawful combatants", this is amongst many created terms to classify certain aspects of terrorism.

To define the term, unlawful combatants really regard the detainees from Afghanistan but it is also used to refer to individual captured within the terrorist realm. an individual who violates the law by engaging in combat; an individual who is involved in but not authorized to take part in hostilities; also called illegal combatant, unprivileged combatant. An unlawful combatant is someone who commits belligerent acts, but does not qualify under the

Geneva Convention as a prisoner of war. The Geneva Conventions do not recognize any lawful status for combatants in conflicts not involving two or more nation states.

A state in such a conflict is legally only bound to observe Article 3 of the Geneva Conventions, and may ignore all the other Articles⁸. The most significant point that should be retrieved from this definition is that in the Geneva conventions, unlawful combatants are not considered prisoners of wars but belligerents. In my opinion the reason terrorists are not and cannot be considered prisoners of war is that they are not recognized as legitimate combatants. There are many reasons why they are not recognized, the first is that terrorists are not viewed as lawful combatants.

If terrorist were lawful combatants then violent crimes that they commit would be given immunity as long as the act complied with lawful war acts⁹. Another reason terrorist can not be prisoners of war is that they do not comply with the fourth Geneva convention, which means combatants must have distinctive markings and bear open arms¹⁰. Terrorists are well known for concealing weapons such as explosives, guns and knives and furthermore terrorists try to blend into society and for the majority do not show visible markings.

Legal application of law Terrorism is proving to be major challenge for anti-terrorist forces especially since the Geneva conventions and the laws of war set out strict guidelines for lawful combatants. Governments around the globe have been fighting terrorism for many decades now, but no government can has fought more relentlessly than the United State. The

dilemma that is being faced now is, how can the United States and its allies combat terrorism on an equal playing field if they are still mainly abiding by the rules of war?

For example the United States army wears uniforms; this is seen as a distinctive marking and is in compliance with the rules of war. The extended list of law abiding war guidelines is embedded in most international anti-terrorist military operations. In most cases this should be viewed as a good thing but with respect to terrorism this type of compliance acts as a drawback to concrete anti-terrorist operations. Terrorists as a whole do not follow rules of war, therefore monitoring and apprehending suspects is extremely difficult for anti-terrorist forces since they comply to internationally agreed upon rules.

The laws of war really in my view cannot be formally applicable to anti-terrorist forces because most of the time not all anti-terrorist military activity nor terrorist activity embody what is seen as conflict between states¹¹. An example of this situation is when a terrorist group causes death or harm to American/Canadian troops in Afghanistan, this indeed is a conflict of arms but the terrorist groups are not recognized as state while the anti-terrorist forces most likely are.

Another reason why the rules of law cannot be clearly and adequately applied to anti-terrorist forces is because terrorists do not clearly mark or distinguish themselves as military personnel they usually blend in like civilians. This creates a challenge for anti-terrorist forces because terrorist attacks are aimed at public venues and target civilians. These are just a few

of the issues facing governments when they try and apply the laws of war to civil wars and to anti-terrorist forces. It is wise to note that although the application of laws may be difficult in anti-terrorist operations, it is not irrelevant.

With the war on terrorist at hand it is only fitting that there have been some issues with counter-terrorist forces violating basic legal boundaries. A very controversial example of this is the American extraordinary rendition. The extraordinary rendition program has multiple offshore/private prisons, the well known ones are located in Jordan, Iraq, Egypt, Diego Garcia, Afghanistan and Guanti?? namo. Beginning in the early 1990s and continuing to this day, the Central Intelligence Agency, together with other U. S. overnment agencies, has utilized an intelligence-gathering program involving the transfer of foreign nationals suspected of involvement in terrorism to detention and interrogation in countries where -- in the CIA's view -- federal and international legal safeguards do not apply. Suspects are detained and interrogated either by U. S. personnel at U. S. -run detention facilities outside U. S. sovereign territory or, alternatively, are handed over to the custody of foreign agents for interrogation. In both instances, interrogation methods are employed that do not comport with federal and internationally recognized standards.

This program is commonly known as " extraordinary rendition. "... The Department of Justice's arguments notwithstanding, the extraordinary rendition program is illegal. It is clearly prohibited by the United Nations Convention against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment¹². The last portion of this quote really answers the question, laws
<https://assignbuster.com/international-armed-conflict/>

of war cannot be applicable to anti-terrorist forces because they will discover alternative means that are morally wrong (rendition) and make them legitimate.

The passing of such acts/legislation on the behalf of the United States government has brought mixed feelings and responses from the international community. Some states believe that in order to properly combat terrorism rules and guidelines must be shift or bent in order to efficiently combat the issue¹³. Others state that breaking or bending the laws of war place anti-terrorist forces in the same category as the belligerents they seek to apprehend¹⁴. There is no unity regarding this issue of whether rules of law can formally be applicable to anti-terrorist military operations.

The main reason I believe rules of law cannot be formally applied to anti-terrorist forces is because terrorism is not a formally recognized as a legitimate or formal means of combat or rebellion. A good example of this is comes from the Canadian anti-terrorist act and the USA patriot act when it is stated that terrorist negotiations are unacceptable because they are not recognized as a legitimate force/combatant. The main issue governments and policy makers are trying to avoid is the torture and mistreatment of individuals captured who are suspected of terrorism.

Alternate measures and powers Most terrorist operation are designed to be executed with an element of surprise, therefore anti-terrorist forces are faced with the issue of whether or not they should conform and act in reaction to these attacks. Rules of international armed conflict are set and

are to be abided by those who wish to classify themselves as lawful combatants. Unfortunately terrorist activity calls for a change in the rules of war; changes that will allow for a more reaction based response form anti-terrorist forces as opposed to a guideline based approach.

September 9/11 is a prime example of how the United States followed protocol by not immediately retaliating physically against terrorist. After 9/11 the United States along with other allies went through a building process by assessing security, fixing damaged property and raising the level of national security¹⁵. All of these measures are excellent for fighting a " legitimate" war, but terrorism can is not legitimate, doesn't follow laws and cannot be easily detected. What I am trying to say is that all of these text book measures are not sufficient to address such a spontaneous occurrence.

For this reason counter terrorist forces are seeking to be allowed more leniency and judgment when responding to current terrorist threats or actions¹⁶. Many individuals and government officials are against giving more powers to anti-terrorist forces because they fear that there will be an abuse of power, which could result in civilian harassment and casualties since terrorist blend in with civilians. A strong opposition statement was made by Richard Myers who is the former general of the United States air force which speaks for those who oppose giving more powers to anti-terrorist forces. The last thing we want are any civilian casualties.

So we plan every military target with great care. We try to match the weapon to the target and the goal is, one, to destroy the target, and two, is to prevent any what we call 'collateral damage' or damage to civilian

structures or civilian population¹⁷. Governments who support legislation adaptation towards spontaneous terrorist activity have found was to not only present their retaliation as just but have done so by manipulating the laws of war. A prime example of this is the Israeli attack on Lebanon in 1982¹⁸. This issue arose because Israel believed that Lebanon was harboring terrorists.

In response to this the Lebanese government claimed that they could not control or monitor these terrorist actions. With this exchange Israel stated that if terrorist transactions and activities were not controlled in Lebanon that they would face counter measures. This is seen as legitimate because Lebanon's inability to effectively contain terrorism in their own state is immediately threatening the well being of their neighboring country Israel¹⁹. The main inhabitants that were effected in this ordeal were Shatila and Sabra these were refugee camps located outside Beirut, this occurred in September 1982.

In my opinion empirical research and knowledge such as this should be adequate enough to inform anti-terrorist operant's that more power/leeway to act in a spontaneous and retaliating manner cannot be given. I say this because even though at times terrorist situations may call for these types of measures, by conducting operation in this manner counter terrorist forces would be conforming to the acts of the belligerents and unlawful combatants that they are trying to eliminate. Conclusion Terrorism has risen infamously to the top of government, media and civilian attention.

Its methods of operations have proven not to conform to any accepted international laws of conflict. But what they have proven to accomplish is

cause moral, legal and ethical dilemmas and decisions to be made by those who counter terrorism " legitimately". The unfortunate reality is that governments and anti-terrorist operant's must now choose between abiding by set laws or interpret, bend and creating laws that better suit their needs in fight against international armed conflict and terrorism. Whatever the decision may be, we can be sure of one thing and that is it will not be a unanimous decision.