

# Law of Armed Conflict

## *International Humanitarian Law*

**Lieber Code**, 1863 (General Orders #100)

### Article 14

Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are **indispensable for securing the ends of the war**, and which are **lawful according to the modern law and usages of war**.

### Article 16

Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

## Third Geneva Convention (1949)

### *Protected Persons*

#### Article 4

**Prisoners of war**, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

- (1) **Members of the armed forces** of a Party to the conflict, as well as members of **militias or volunteer corps forming part of such armed forces.**
- (2) **Members of other militias and members of other volunteer corps**, including those of organized resistance movements, belonging to a Party to the conflict and... fulfil[ling] the following **conditions**:
  - (a) that of being **commanded by a person responsible** for his subordinates;
  - (b) that of having a fixed **distinctive sign** recognizable at a distance;
  - (c) that of **carrying arms openly**;
  - (d) that of conducting their **operations in accordance with the laws and custom of war.**

## *Protected Persons*

### Article 4 (cont.)

Inhabitants of a non-occupied territory, who on the approach of the enemy **spontaneously take up arms to resist** the invading forces, without having had time to form themselves into regular armed units, provided they **carry arms openly and respect the laws and customs of war**.

## Additional Protocol I (1977)

### Article 47 (Mercenaries)

A mercenary shall not have the right to be a combatant or a prisoner of war. A mercenary is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Does, in fact, take a direct part in the hostilities;
- (c) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
- (d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- (e) Is not a member of the armed forces of a Party to the conflict; and
- (f) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

## *POW Rights*

### Article 13

Prisoners of war must at all times be **humanely treated**. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited.... [P]risoners of war must at all times be **protected, particularly against acts of violence or intimidation and against insults and public curiosity**.

### Article 17

Every prisoner of war, when questioned on the subject, is bound to give only his **surname, first names and rank, date of birth, and army, regimental, personal or serial number**, or failing this, equivalent information.... No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war **to secure from them information of any kind whatever**.

### Article 118

Prisoners of war shall be **released and repatriated without delay after the cessation of active hostilities**.

## Common Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely.... To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

## **Additional Protocol I (1977)**

### Article 75 (*Fundamental guarantees*)

[P]ersons who are in the power of a Party to the conflict and **who do not benefit from more favourable treatment under the Conventions** or under this Protocol shall be **treated humanely** in all circumstances and shall enjoy, as a minimum, the protection provided by this Article...

The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

- (a) Violence to the life, health, or physical or mental well-being of persons, in particular: (i) Murder; (ii) Torture of all kinds, whether physical or mental; (iii) Corporal punishment; and (iv) Mutilation;
- (b) Outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
- (c) The taking of hostages;
- (d) Collective punishments; and
- (e) Threats to commit any of the foregoing acts.

# Detainees in the Global War on Terror

President Bush (memo, 7 Feb 2002)

## ***Taliban detainees***

I determine that the provisions of Geneva will apply to our present conflict with the Taliban.

I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva.

## ***Al Qaeda detainees***

None of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva....

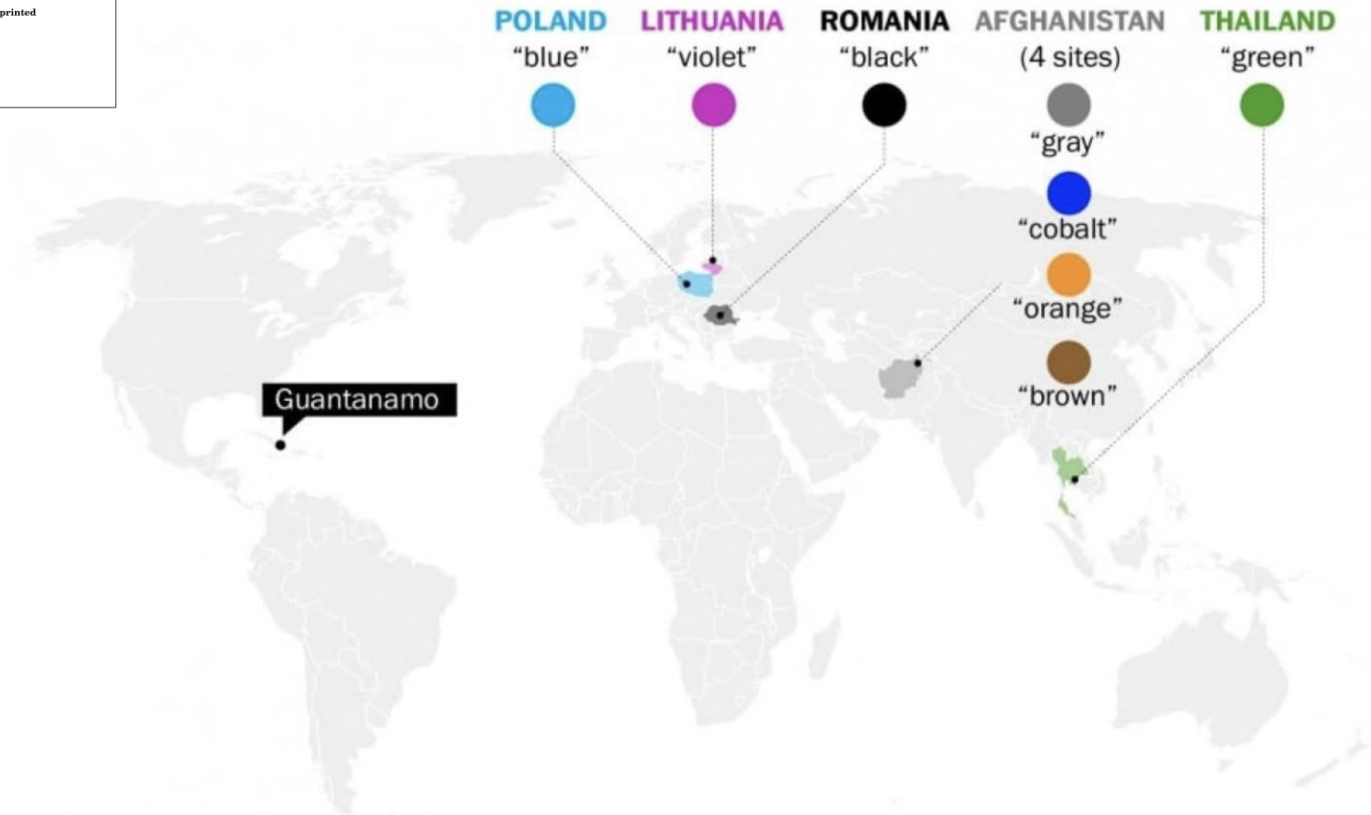
Because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as POWs....

## On humane treatment

I determine that common [Article 3 of Geneva does not apply](#) to either al Qaeda or Taliban detainees, because, among other reasons, the relevant [conflicts are international](#) in scope and common Article 3 applies only to “armed conflict not of an international character.”

Our Nation has been and will continue to be a strong supporter of Geneva and its principles. [As a matter of policy](#), the United States Armed Forces shall continue to [treat detainees humanely](#) and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

# CIA "Black Sites"



## From the “Torture Memos”

Asst. Attorney General Jay Bybee (memo, 1 August 2002)

### *On criminal intent:*

Knowledge alone that a particular result is certain to occur does not constitute specific intent.... Thus, even if the defendant [i.e., the accused torturer] **knows that severe pain will result** from his actions, if causing such harm is **not his objective**, he lacks the requisite specific intent **even though the defendant did not act in good faith**. Instead, a defendant is guilty of torture only if he acts with the **express purpose of inflicting severe pain or suffering** on a person within his custody or physical control.

### *On what qualifies as torture:*

The victim must experience intense pain or suffering of the kind that is **equivalent to the pain** that would be associated with serious physical injury **so severe that death, organ failure**, or permanent damage resulting in a **loss of significant body function** will likely result. If that pain is psychological..., these acts must cause **long-term mental harm**.