

# Perfidy in NIAC

Naval War College

21 June 2011

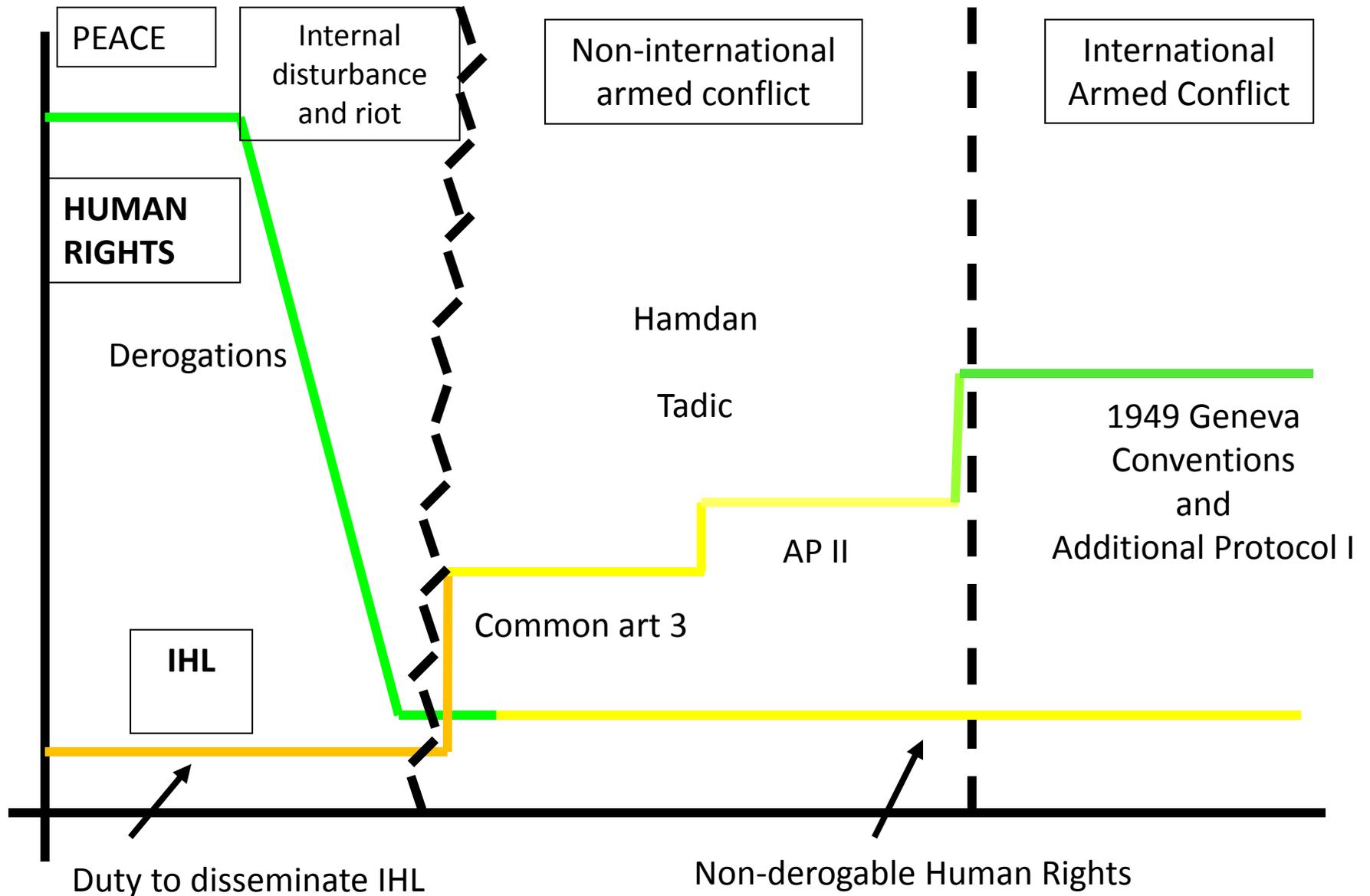
# Perfidy – the most frequent serious LOAC violation in NIAC?



**Insurgents Strike Iraqi Police  
With Ambulance Bomb**

Jan 19, 2011 9:11 AM CST

# The Intersection Between International Human Rights and Humanitarian Law



# Perfidy Defined

- Prohibited to kill, injure or capture an adversary by inviting the confidence of the adversary in protection provided by LOAC (Art. 37, AP I)
- Illustrative examples:
  - Feign surrender
  - Feign incapacitation
  - Feign civilian, (or) non-combatant status
  - Feign protected status (provided by emblems)
- Treacherous killing (Art. 23(b), HR); chivalry?
- Query – is the use of enemy uniforms a form of perfidy?

# Principle of Distinction

- Distinguish combatants from civilians, non-combatants, and other protected persons
- E.g., Art. 13, AP II – the civilian population shall not be the object of attack
- CCW provisions: Art. AP II and Protocol III
- Art. 51, AP I [as CIL]:
  - Indiscriminate attacks are prohibited
  - They are “of a nature to strike civilians w/o distinction

# Other Provisions

- Fundamental Guarantees(Art. 4)
  - “No Quarter” Provision
  - Specific Prohibitions (Murder, violence to life/health)
- Wounded and Sick (Art. 7)
  - “respected and protected”
- Distinctive Emblems (Art. 12, AP II)
  - “respected in all circumstances”
  - Prohibition on misuse
- Medical Personnel (Art. 9) and Units (Art. 11)
  - “respect and protect” at all times, no attack
  - Unless used to commit hostile acts [w/ warning]

# But what about capture?

- Operation Checkmate
  - Ruse of War
  - Impermissible capture?
- Not included in Hague 1907
- Article 85(3)(f):
  - Excluded as a “grave breach”
- Persistent Practice of States . . . law enforcement

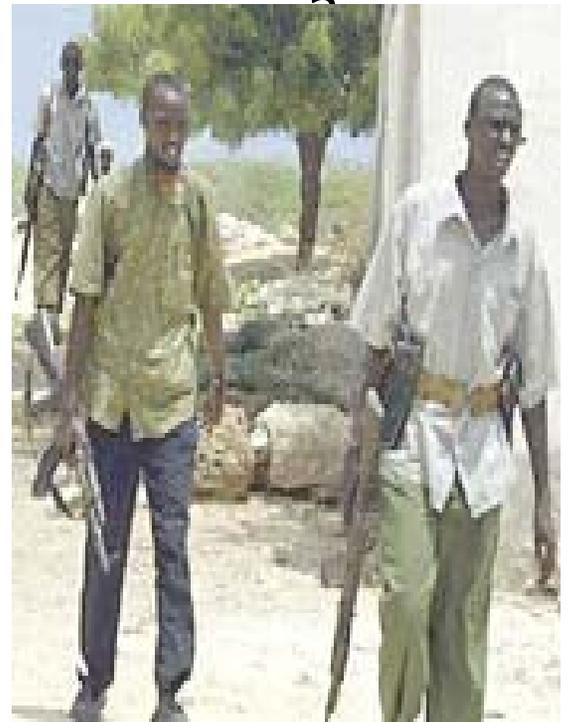


ICRC.ORG/COLOMBIAN DEFENSE MINISTRY



# Feigning Civilian Status

- Most Important Application of Perfidy
- But What About Art. 44, AP I?
  - “Carrying arms openly,” without further distinction
  - Are those that bear arms in NIAC target?
- *Jawad* Illustration:
  - Proof of detrimental reliance req’d?
  - Additional element of proof, under Military Commissions Act



# Government Forces in NIAC

- Hybrid Mission
  - Support to HN authorities
  - Law enforcement
  - Intelligence gathering
  - Self Defense Matter
- But obligation to protect civilians:
  - AP II and “precautions in the attack”
  - Raison d’etre in COIN
- A Modest Proposal . . .



# Current Issues in Afghanistan

- Wear of Civilian Clothes
  - Analysis of “distinctive insignia” provision, initially
  - Also fear of putting civilians at risk
  - But support to HN authorities? SOFA?
  - Limitation: offensive military activities
- Carrying of Concealed Weapons
  - Not a question of perfidy
  - Art. 44 not an issue
  - Limitation based on domestic law of the HN and international agreements