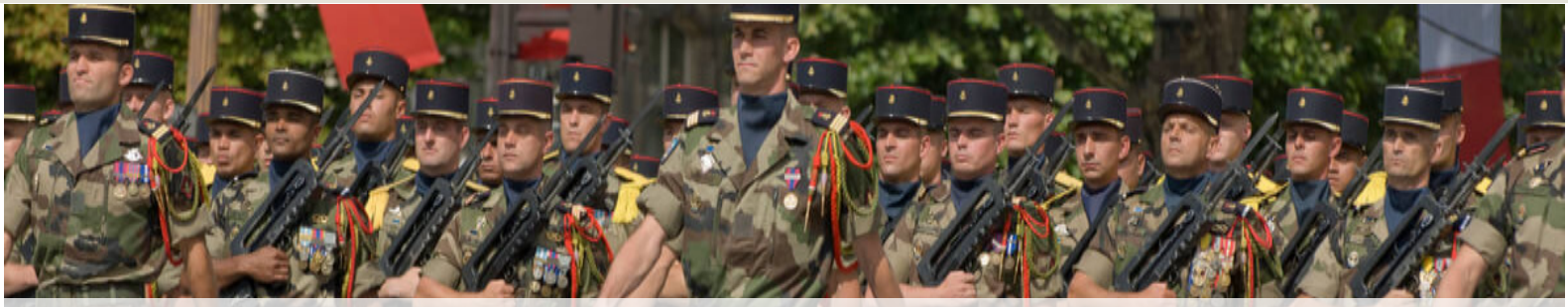

The action of our armies is necessarily part of a legal context that is now well established, even if it is still evolving.1/2

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L'Armée de Terre dans la société

It is not possible to discuss the place of ethics in the use of armed force without including the legal dimension of this use, for this dimension is of particular importance, at least in the Western world, where it is the fruit of very ancient religious and philosophical questions. The current legal framework for the use of armed force is in fact the result, still in the process of being developed, of a regulation of violence aimed at introducing humanity and humanism into confrontations that may be inhuman, both because of their intrinsic cruelty and because of their sometimes apocalyptic dimension. That is why law and ethics, while not covering the same areas of behaviour, interact both at the level of the individual and at the level of institutions, and in particular within the armed forces.

The use of armed force has always been questioned, because although violence is unfortunately inherent to man, its regulation, or even its control, has been, in all societies, to some extent evolved, considered essential whether for imperialists or for those who are not.This is true whether it be for economic imperatives or by reference to codes of behaviour deemed essential for what would today be called "living together" between victorious and defeated States , whatever the degree of submission to which the latter were forced to submit. The history of conflicts has thus gradually generated a corpus of rules that are more or less accepted and respected. Under the influence of the West, these rules were expanded in the nineteenth and twentieth centuries and claimed to be universal, with the aim, among others, of protecting unarmed civilian populations by putting them, as it were, 'out of the game' in direct confrontations between belligerent forces .

From a certain point of view, one can only note that this praiseworthy approach has remained a pious hope, if one thinks of the horrors of the "total war " that was the Second World War , with bombings such as those of COVENTRY, DRESDE, HIROSHIMA or NAGASAKI, to name but this category of aggression. But, from another point of view, it can be said that attempts to humanize war have not been without result, especially for Western armed forces engaged in operations that do not involve vital interests such as

the survival of the nation. For it must be observed that when it comes to vital interests, history shows that all rules can be blithely violated in the name of a higher interest for which, more often than not, the end is supposed to justify the means. This does not mean that all legal prescriptions are without effect in the case of major conflicts, but it is clear that their application or degree of application is totally dependent on the will of the belligerents.

Following these introductory observations, which shed light on the conceptual and practical difficulty of applying a law in the use of force, it is useful to reflect on the legal environment that prevails today for the operations of Western forces. It is increasingly sophisticated and complex and the product of a long history.

LThe historical evolution of the law in conflict

Since antiquity, thinkers have tried to develop rules to distinguish between necessary violence and unreasonable or unjustifiable violence. Thus the concepts of "jus ad bellum" and " jus in bello" emerged. The jus ad bellumis the "right to wage war". Its historical criteria are just cause, just intention, being a last resort under legitimate authority, proportionality of action... and hope of success! The doctrine of just war is a model of thought and a set of rules of moral conduct defining under what condition war is a morally acceptable action. The in bello juice is the body of legal rules applicable to the conduct of hostilities: determination of protected areas, property and persons, determination of authorized means of combat, treatment of prisoners... Traditionally, jus in bello is confused with the law of LAHAYE , but given its inadequacies, it has been supplemented by the law laid down by the 1949 GENEVA Convention.

The first major questioning of the doctrine of just war was by Cicero (De Officiis1.11.33-1 .13.41). His questioning was taken up by Christian authors such as St. Augustine, St. Thomas of AQUIN, Francisco de VITORIA and his disciple Francisco SUAREZ. At the end of the 12th century, Johannes FAVENTINUS associated the idea of a just war in defence of the patria with the idea of ratio (or "raison d' état "). It is also legitimized to defend the Church (the status Ecclesiae) if it is a crusade against the infidel. In Francisco VITORIA all the main themes of the school of SALAMANCA appear: that war is one of the worst of evils and that it can only be used to avoid a greater evil. Preventive war against a tyrant who might attack is one of the examples recognized by this school. However, all forms of dialogue must be used beforehand and war can only be used as a last resort. From now on, the essential question will be whether there are legal remedies that avoid the use of force.

In this journey towards greater humanity, which is the elaboration of jus in bello, a few historical landmarks: In the tenth century, the "Peace of God" (proclamation by several regional councils of theIn the 10th century, the "Peace of God" (proclamation by several regional councils of the prohibition of the plundering of Church goods), in the 11th century, the "Truce of God" (no fighting during certain liturgical periods). In 1625, GROTIUS, in "Du droit de la guerre et de la paix", establishes categories of non-combatants to be spared from wars: women, children, labourers, merchants, clergy, and the literate, and establishes the civil/military distinction. In 1864, the GENEVA Humanitarian Convention on the Amelioration of the Condition of the Wounded was proclaimed and in 1868, the Declaration of SAINT PETERSBURG prohibited the use of certain projectiles. In 1899 the LA-HAYE Convention (actually 3 conventions) deals with the peaceful settlement of international disputes, the laws and customs of war on land and the adaptation to maritime warfare of the principles of the Geneva Convention of 1864. In 1907, the Convention of THE HAGUE for the peaceful settlement of disputes was established,

which did not prevent the First or Second World War... It actually includes 13 specific conventions.In fact, it includes 13 specific conventions concerning the peaceful settlement of international disputes, the outbreak of hostilities, the laws and customs of war on land, war at sea, the rights and duties of powers and neutral persons in the event of war on land.

The main points of LA-HAYE's law are the limitation of targets (prohibition to attack civilian populations and protection of property with the prohibition to bomb cities and villages and cultural and religious property) and the limitation of the means of combat: weapons causing superfluous injury or unnecessary suffering and having indiscriminate effects are prohibited; but in this area, the law of war is always lagging behind a war: for example, the prohibition of chemical and bacteriological weapons after the Great War in 1925, or, following the war atrocities in Vietnam, a protocol was signed in 1980 for the prohibition of incendiary weapons. In 1972 a convention was signed to prohibit the development, production and stockpiling of bacteriological and toxin weapons, and in 1999 in OTTAWA a decision was taken to ban anti-personnel mines.

But the most important event was the 1949 Geneva Convention. Its initial purpose was to improve the lot of the wounded and sick in armed forces in the field, to improve the lot of the wounded and sick and shipwrecked of armed forces at sea, to improve the treatment of prisoners of war and to protect civilians in time of war. It is supplemented by the 1977 Additional Protocols on the Protection of Victims of Armed Conflicts. This is the starting point of " modern humanitarian law", which is more attentive to the victims of conflicts than to the rules between enemies. And for the first time, these conventions were drawn up under the aegis of an NGO, the ICRC.

They qualify crimes by distinguishing between war crimes, genocide and crimes against humanity and provide for sanctions, in particular by international courts (the International Criminal Tribunal [ICT] or the International Criminal Court [ICC]).

But the application of this law is relative. Originally, jus in bello represented a limitation of violence in wars between States and its effectiveness was based on the goodwill of States and the principle of reciprocity. In the late 19th and early 20th centuries, it also became part of the "Art of War". and the honour of the army; hence a certain respect for the rules until the First World War. In fact, the presence of the notion of " military necessity", including in the most recent texts, restricts the application of jus in bello and amounts to allowing people to refrain from respecting their obligations.

This is why, under increasing pressure from NGOs, jus in bel lo is gradually giving way to humanitarian law. It gives NGOs a major role in its application through their assistance role and the legal protection they enjoy. However, the emergence of new types of conflicts makes the application of both humanitarian law and jus in bello problematic, because these conflicts are caused by non-state actors: civil wars, national liberation movements, terrorism... who are not signatories to the conventions or subjects of international law.

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