



ROYAL DANISH DEFENCE COLLEGE

## RESEARCH PAPER

### **Rules of Deception**

By Jonas Alastair Juhlin, Military Researcher at the Royal Danish Defence College

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I would like to thank the support I have received from the entire Centre of Joint Operations in writing this paper. I would also like to thank Dr. William Mitchell for the encouragement, inspiration, and adjustments I have received during the work on this paper. I would also like to thank Sheila Nightingale for her hard work on proof reading.  
All has been much appreciated.

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Copenhagen May 2015

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Editor: Director of Institute of Military Operations Major colonel Hans Henrik Møller

Layout by B-O. Kure

ISBN: 978-87-7147-101-4

Royal Danish Defence College Publishing House

## CONTENT

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Abstract: .....	4
Rules of Deception .....	4
The Theory of Deception: .....	5
Case no. 1 – The use of enemy uniforms.....	10
Case no. 2 – The use of civilian clothes .....	11
Case no. 3 – Using civilian dress for a non-combat mission .....	13
Case no. 4 – “No flag” operation.....	13
Case no. 5 – Concealing the true value of a target.....	14
Case no. 6 – Sailing through a choke point in a canal zone.....	15
Case no. 7 – Using white, unmarked trucks to portray an aid convoy .....	15
Case no. 8 – Using social media as part of a deception operation .....	16
Case no. 9 – The third battle of Gaza, 1917 .....	17
Case no. 10 – Electronic false flag.....	18
Case no. 11 – Deceiving the battle damage assessment .....	18
Case no. 12 – The use of a false peace proposal .....	19
Case no. 13 – Hiding a country’s involvement in an international conflict .....	19
Case no. 14 – The Columbian rescue operation.....	20
Stratagem and the law: .....	21
Conclusion on the case study: .....	23
Applying the rules to deception planners: .....	23
Rules of Deception .....	25
Sources:.....	26

## **ABSTRACT:**

In all wars, deception has been an important element for the military planners, on both the tactical level and the operational level. The good, effective deception operation is of great risk of conflicting with the current Laws of Armed Conflicts, which will be of great concern for the deception planner, who strives to fight wars and conflicts in accordance with international customary law, and conventions.

This paper seeks to examine the theory of deception in the light of the laws of armed conflict. It will show where and how the means of deception can collide with the law. The paper will do this by examining 14 relevant cases with a theoretical reference to the taxonomy of deception (as presented by James D. Monroe), and analyse it according to the laws of armed conflict. The cases are all inspired by historical cases or by current events taking place in the ongoing conflict in Ukraine.

Finally, the paper will discuss how the inclusion of mission specific rules of deception can greatly help define the boundaries, and give necessary guide lines for conducting deception operations within the laws of armed conflict.

## **RULES OF DECEPTION**

In armed conflicts, past and present, operational and tactical deception has played a large part in the success of military campaigns and intelligence operations. Currently, we have seen this unfolding in the ongoing conflict in Ukraine. The well-planned and well-executed military operation often included an inventive plan of deception that has contributed to its success.

Like all aspects of warfare, a deception operation is regulated by law. This can be treaty law like the Geneva Conventions of 1949 and/or customary law of armed conflict. This is especially important in regards to deception operations, as in many cases the most effective method of deception will be illegal. This should concern deception planners if they wish to operate within the legal framework of the laws of armed conflict. Operating within the legal framework is not as straight forward as it might seem. As with all law there are legal “gray areas” and some rules need additional interpretation.

James Caddell states that “Surprising too many, the specific legal restraints on the use of deception are relatively clear and precise.”<sup>1</sup>

This statement is a gross simplification of the matter. The case scenarios presented will illustrate that there are deception methods that are both the obvious choices and the most effective, but can be within a legal gray area. Therefore, it is the intention of this paper to encourage deception planners to think not only in a military mindset, but also in a legal mindset. The deception planner need not be a lawyer, but an understanding of the legal framework is necessary.<sup>2</sup>

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(1) James Caddell “Deception 101”, p. 13

(2) International Committee of the Red Cross - Lesson 4 the conduct of operations part B attempts to give comprehensive guidelines for the lawful conduct of military operations, including deception operations. While they do touch upon the subject of perfidy and ruse, the cases are overly simple and with an obvious answer.

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This paper seeks to examine the theory of deception in the light of the laws of armed conflict. It will show where and how the means of deception can collide with the law. The paper will do this by examining each case with a theoretical reference to the taxonomy of deception (as presented by James D. Monroe) and analyze it according to the laws of armed conflict.

Finally, the paper will discuss how the inclusion of mission specific rules of deception can greatly help define the boundaries, and give necessary guide lines for conducting deception operations within the laws of armed conflict.

This paper will present the theory behind operational deception, including the taxonomy of deception, and covering relevant terminology.

Second, the research paper will present the relevant sources of law for armed conflict, central legal rules, and terminology.

Third, the paper will present 14 cases that will cover each aspect of deception and each case will have a wide range of legal challenges and problems.

Fourth, there will be a discussion on the benefit of including the rules of deception similar to the rules of engagement.

## **THE THEORY OF DECEPTION:**

I intend to go through the theory of deception and the method-based taxonomy of deception as illustrated by James D. Monroe. The basic theory of deception has been explained and defined in many civilian and military publications before. They are generally in agreement of the definition and various types of deception. However, the authors differ on the way they present it, and the exact wording. The definition of deception given in “Joint Doctrine for Military Deception” is: *“Military deception is defined as being those actions executed to deliberately mislead adversary military deception makers as to friendly military capabilities, intentions, and operations, thereby forcing the adversary to take specific actions (or inactions) that will contribute to the accomplishment of the friendly mission.”*<sup>3</sup>

Based on the definition above, deception is to force your opponent to take a specific course of action. Four overall desired effects are given for deception: Surprise, mislead the enemy, gain freedom of movement, and save lives<sup>4</sup>. It is important to note that deception is not about making the opponent think something specific, but making the opponent do something specific. In this case, to do nothing is also a course of action. In addition, it is not necessarily that the opponent actually believes in it, but must be sufficiently concerned over the prospect that he feels he must provide for it. The last point is especially relevant for active deception.<sup>5</sup>

Deception targets the opponent’s observe, orient, decide, and act loop. This is also known as the OODA loop, and it is used to describe the process in which command elements make decisions.

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(3) Joint Pub 3-58, US armed forces

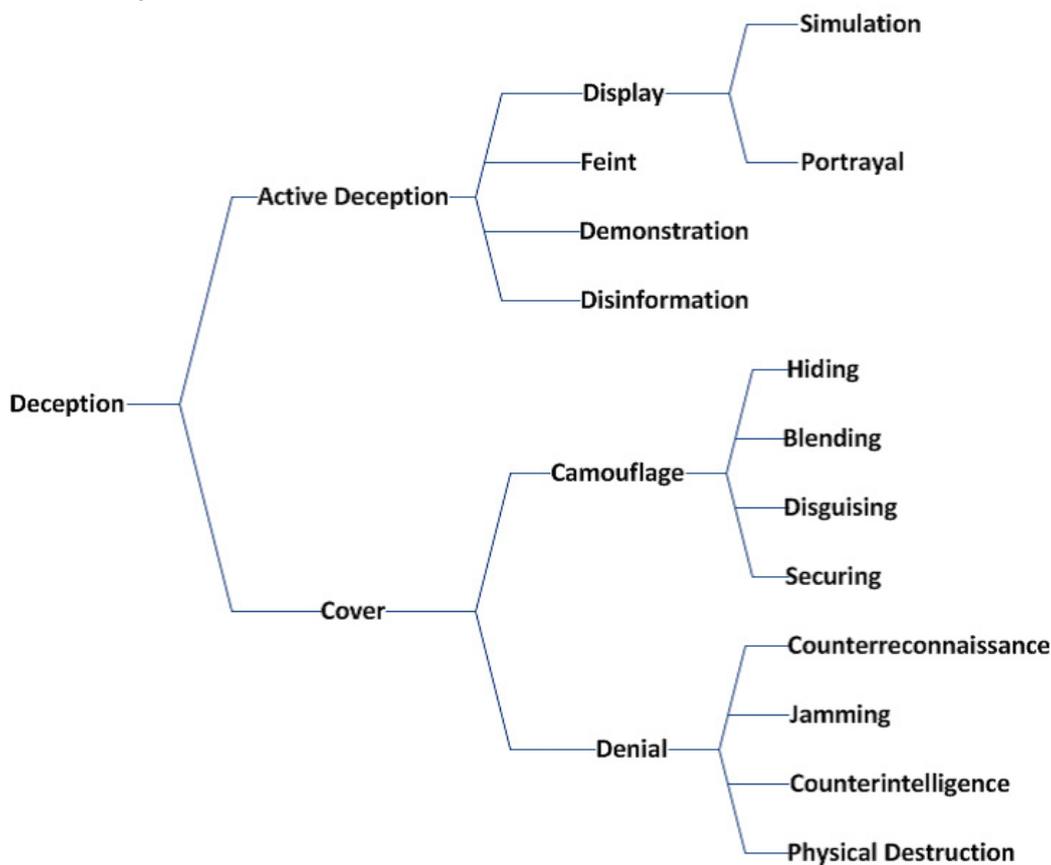
(4) Monroe “Deception: Theory and Practice” p. 54-55

(5) Thaddeus Holt, “The Deceivers”, p. 54-55

The observe element is the information gathering and the observation of unfolding events. The orient element is the digestion of the information which includes an analysis of the information which is affected by personal experiences, cognitive biases, heuristics, new information gained, and personal education. This analysis will lead to a decision (or hypothesis) upon the best action to take. This will then result in an act which will be put to the test if the decision was the right one to take. The process will be repeated for each new decision that is required. This is known as the decision-making process.<sup>6</sup>

The object of the deception is to affect the opponent's OODA loop in order to make him take the desired action that serves the purpose of the deception. In doing so one must go through the OODA loop oneself in order to decide upon the best plan of deception.

**The Taxonomy of Deception:**



This taxonomy was presented by James D. Monroe<sup>7</sup> and illustrates the various means and methods of deception. I have selected the theory and terminology from the paper “Deception: Theory and

(6) James Monroe, “Deception: Theory and Practice” p. 65-72. See also Joint Doctrine Publication that illustrates on how to influence one or several different ways a target conceive information. (Joint Doctrine Publication 3-80.1, sec. 1-5, 1-6).

(7) Monroe, P. 44

Practice” by James Monroe as it is very well presented, and very comprehensive. Barton Whaley follows closely on the terminology, but his presentation is less structured.

Active deception is about showing the false, and is also called “Active Camouflage”.<sup>8</sup> Within active deception there are a number of various methods including display, feint, demonstration, and disinformation.

**Display:** Display is about deceiving the opponent by a display of force, activities, and equipment. This can be either in the physical world or in electronic form. Display is divided into simulation and portrayal. Simulation uses decoys to create a dummy force or capability. Portrayal is an actual unit that appears to be something else; like a force with a different size, or a force with a different capability.

**Feint:** Feint differentiates from demonstrations and display, in that the force seeks contact with the opponent. Usually this is a limited attack with the objective to make the opponent believe that it is the major offensive. It can also be a bait or an entrapment operation to lure the opponent into an unequal fight like an ambush.

**Demonstration:** Demonstrations can be a show of force, like a feint but where contact with the opponent is not sought. It can also be a military exercise to give the impression that an attack is under way, or that defenses are strengthened.

**Disinformation:** Disinformation is about feeding false or selectively true information to the opponent in order to deceive.<sup>9</sup>

Cover is also known as passive deception or passive camouflage. Cover is about hiding the real, and involves camouflage and denial.<sup>10</sup>

**Camouflage:** Camouflage includes hiding, blending, disguising and securing. Hiding is like hiding behind a physical object like an infantry company concealed in the woods. Blending involves an object that merges into the surroundings like high ranking officers wearing other ranks equipment to blend into the squad. Disguising is about making the object appear as something else, and less important. Securing is the concept of reducing the awareness of the object by imposing tight security and control of the access to the objective<sup>11</sup>.

**Denial<sup>12</sup>:** The object of Denial is to deny the opponent access and knowledge about your capabilities or objectives. This includes counter reconnaissance, jamming, counter intelligence, and destruction. As the names imply, it includes countering your opponents physical reconnaissance,

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(8) James Caddell “Deception 101” p. 8

(9) James Monroe, “Deception: Theory and Practice”, p. 45-48 and Barton Whaley, “Strategem; Deception and Surprise in War” p. 7

(10) James Caddell, “Deception 101” p. 17-19 and Thaddeus Holt, “The deceivers” p. 53

(11) Monroe, P. 49 and Whaley, p. 8-12. A part of the deception theory which is not relevant to the legal aspect is the channels of communication through which the deception must be delivered.

(12) Denial is not often thought of as deception. It is included here for completeness sake. Jamming and destruction is for the vast majority governed by the rules of targeting because it would involve some form of offensive action (not necessarily lethal). Targeting is a subject that is much broader than deception and is beyond the scope of this paper.

jamming his electronic capabilities, countering his intelligence gathering efforts, and physically destroying his means of information gathering.

### **Sources of Law for International Armed Conflict:**

The Geneva conventions I, II, III and IV from 1949 are the most relevant treaty law for armed conflicts, both of an international character as well as a non-international character. 196 states have ratified the conventions, including the major powers. The purpose of the conventions are the protection of the wounded and sick, the prisoners, and the civilians. The Hague Convention on the regulation of land warfare from 1907 is also most relevant. It should be noted that the Hague Conventions are written into the Geneva Conventions as the Additional Protocol I to the Geneva Convention.

There is also international customary law. Customary law is law unwritten in any treaty, but that states abide by nevertheless. The law requires two elements: uniformed and consistent state practices, and a belief and convention that the state is legally bound to behave in a particular way according to the customary law.<sup>13</sup>

When referring to the relevant law, it will mostly be the Geneva Conventions III and IV, and Additional Protocol I and II of the Geneva Conventions. Customary law will also be referred to.

There are some basic legal terms and rules that need to be clarified before working with the cases.

An armed conflict is protracted violence and hostilities between two state actors or between a state actor and a non-governmental force parties to the conflict. There are two types of armed conflicts.

The first type is international armed conflicts as defined in Article 2 of the Geneva Convention III. This is between two state actors, and all four of the Geneva Conventions with the addition of Additional Protocol I apply.

The second type is non-international armed conflicts as defined in Article 3 of the Geneva Convention III. This is between a state actor and a non-governmental force party to the conflict. This can also be known as internal armed conflict. In this case, only Article 3 and Additional Protocol II apply. National law of the country where the combat is taking place, and the respective military code of justice of all armed forces involved still applies.

It is important to know that there must be protracted armed violence. If the violence is not protracted, then there are no armed conflicts.<sup>14</sup>

*Ruse and Perfidy* are two words that are essential to the legal aspect of deception. They first appeared in The Hague Convention on Regulating Land Warfare of 1907 and are present in Article 37 in Additional Protocol I.

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(13) Alina Kaczorowska; "Public International Law" p. 35

(14) Gary D. Solis "The Law of Armed Conflict" p. 149-153 and Geneva convention III of 1949, Article 2 and 3

Perfidy is defined in Additional protocol I, Article 37, 1 and Article 85, 3. Perfidy is an act where one is gaining the enemy's confidence by assuming his protection under the laws of war while intending to kill, wound or capture him.<sup>15</sup>

The element of crime in perfidy is that you assume a deliberate claim to legal protection for hostile purposes. You must invite the confidence of an opponent, with the intent to betray that confidence, and an actual act of betrayal of that confidence with the sole objective of killing, wounding and capturing the opponent.

If there is no intent to kill, wound or capture the opponent, then it is not an act of perfidy. Perfidy is prohibited to prevent the abuse and undermining of the protection offered by the laws of armed conflict, and to protect (at least minimize the risk) of non-combatants so their suffering will be as tolerable as possible. Perfidy is prohibited in both international armed conflicts, and non-international armed conflicts. Perfidy is also known as a wrongful deception.<sup>16</sup>

#### **Prohibition of perfidy in a non-international armed conflict:**

The law of perfidy is implemented in international law through Additional Protocol I of the Geneva Convention. Most of the cases in this paper take place in an international armed conflict. Non-international armed conflict as defined in Article 3 of the Geneva Convention is primarily regulated by national law. However, there is much evidence that the prohibition of perfidy are also in effect during a non-international armed conflict. The minimum standards of protection offered to civilians are listed in Article 3, the Geneva Convention III, and Additional Protocol II.

In the Rome Statute of the International Criminal Court, perfidy is also a crime. The International Criminal Court has jurisdiction over individuals from countries that have ratified the Rome Statute, or of crimes committed in the territory of a country member of the Rome statute. This is regardless of whether it is an international or non-international armed conflict. The definition of perfidy in the Rome Statute, Article 8(2)(e)(ix) is not as precisely formulated as in Additional Protocol I. The element of crime is limited to killing or wounding, and not taking into captivity the adversary as it is in Additional Protocol I.

The International Committee of the Red Cross has furthermore conducted a study of perfidy becoming a part of international customary law, by examining military manuals and law from the armed forces from several countries, international practice, as well as legal opinion. These included two cases, one is from the conflict in Afghanistan where the US military commission dealt with the case of *Jawad*, a very young man captured and tried for conducting an attack while wearing civilian clothes. The second, is the case of al-Nashiri, where al-Nashiri was accused of bombing the USS Cole while feigning civilian status.<sup>17</sup>

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(15) Article 37 Additional Protocol I, 1977 and Solis "The Law of Armed Conflict" p. 420

(16) Solis p. 421. U. K. MOD, The Manual of the Law of Armed Conflict, p. 60, 5. 9 – 5. 9. 4 and commentaries on Additional Protocol I, ICRC, Geneva 1987

(17) Richard B. Jackson, "Perfidy in Non-International Armed Conflicts", p. 249-250

The work of the ICRC clearly shows that there is some international practice that gives perfidy status of customary law, but the ICRC's analysis of state practice might not be sufficient to fully support this.<sup>18</sup>

Richard B. Jackson argues in his paper "Perfidy in Non-International Armed Conflicts"<sup>19</sup>, that the basic principles laid out in Additional Protocol II outlaws certain types of perfidy, mainly those that would blur the distinction between combatants and civilians. This is a fine point that helps underline the fact that the deception planner must take into account the element of perfidy in both international and non-international conflicts, especially so with the inclusion of perfidy in non-international armed conflicts by the jurisdiction of the ICC.

Ruse, on the other hand, is allowed in armed conflict. A ruse is a deception with the intention to mislead, confuse, lure the opponent into acting with carelessness, or generally force the opponent to make a tactical or operational mistake. The ruse may indeed have the intention to kill, wound or capture the opponent, but the ruse does not assume protected status under the laws of armed conflict.<sup>20</sup>

With the basic theory and terminology of deception defined, and the most important legal sources explained, the next part deals with the case scenarios which are the main essence of this paper.

Cases: The case study will be organized along the structure seen below. The scenarios will be inspired by contemporary events, or events considered likely to occur in a modern armed conflict.

Scenario: A short description of the tactical or operational problems.

Methods of deception: The method of deception described according to the theory of deception.

Legal aspects: Explains the legal issues, and illustrates why or why not it is in accordance with the law.

Conclusion: A short conclusion of the main issues of the scenario.

## **CASE NO. 1 – THE USE OF ENEMY UNIFORMS**

**Scenario:** During a conflict somewhere in Europe, NATO special forces deploy under cover of darkness in enemy held terrain wearing the opponent's uniforms. According to their instructions, they must infiltrate the enemy's territory and maneuver into a good firing position atop a hill with a good field of fire. They are to wear the opponent's uniforms while maneuvering from the landing zone to the overwatch position. Once in position, they are to discard the uniforms, and fight in the uniforms of their parent army with their own national insignia.

**Deception:** This is an example of an active deception using portrayal to display another unit in a *false flag* operation. There are several historical examples including Colonel Otto Skorzeny's

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(18) John C. Dean, "Permissible Perfidy" p. 635

(19) Richard B. Jackson, "Perfidy in Non-International Armed Conflicts", p. 245-246

(20) Solis p. 426-427

commandos in American uniforms during the Battle of the Bulge in 1944. Wearing the opponent's uniform can be an extremely effective method of deception if one wishes to avoid contact and detection. If spotted, the unit still has a decent chance of avoiding contact with the opponent.

**Legal aspects:** Wearing the uniform of the enemy in combat – in actual contact – is universally regarded as unlawful. There is enough documentation in various national military codes and practice (including the U.S. Military Code of Justice) that it is to be regarded as customary law, and it is prohibited in Article 39, 2 of Additional Protocol I. The matter is less clear if the combatants are not in contact with the enemy. The wording of Article 39, 2 states that it is prohibited to make use of uniforms and insignia “*while engaging in attacks or in order to shield, favour, protect or impede military operations*”. The commentary from 1987 of the convention explains that it includes all situations directly related to military operations. Maneuvering into an overwatch position, or infiltrating the enemy territory as part of a larger operation, will be in accordance with the criteria of Article 39, 2. Therefore, if the state has ratified Additional Protocol I to the Geneva Convention, it will be a minor violation of the law of armed conflict to maneuver in the enemy's uniform. It is not a war crime, and they still retain the right to POW status if captured with no evidence of engaging in combat. If, however, the country has not ratified Additional Protocol I, or they have elected to turn a blind eye to a minor violation, then the guideline should be to wear the enemy uniform until the moment of combat, and then they must revert back to the original uniform of their own nationality.<sup>21</sup>

**Conclusion:** Dressing in the opponent's uniform is a violation according to Article 39 of the Additional Protocol I of the Geneva Convention if directly engaged with the enemy, or if maneuvering can be directly related to a military operation. If the country has ratified it with no reservations, the countries are obliged to abide to the rule. However, if choosing to ignore the Additional Protocol I, or the country has not ratified it, then this deception can be a tactical option.<sup>22</sup>

## **CASE NO. 2 – THE USE OF CIVILIAN CLOTHES**

**The issue of wearing civilian clothes:** A variation is the same special force team on the same mission, but now dressed in civilian clothes instead of enemy uniforms. Their intention is still to switch into army uniforms once in position and while engaging the enemy.

**Deception:** The use of a disguise can help the team in avoiding visual detection by pretending to be part of the daily civilian population. It will hide the team's movement to the firing position. Freedom of movement is vital in these kinds of missions, and the use of a full or partial disguise deception can facilitate this.

**Legal aspects:** In this variation Article 39 is no longer relevant. Instead Article 37 (still of Additional Protocol I) regarding the prohibition on perfidy is relevant. This scenario is presented by

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(21) Solis, p. 432-434

(22) Jean Marie-Henckaerts and Louise Doswald-Beck: Customary International Humanitarian Law p. 215-216. They add that the action is not perfidy because enemy uniforms are not protected by the law. Their improper use has been codified in a number of military manuals from different nations.

Mike Madden in his paper *“Purposive Analysis of Perfidy Prohibitions in IHL”*.<sup>23</sup> Mike Madden comes to the conclusion that the act is not necessarily perfidy. Madden argues that there must be causation between the act and the harm done. Would the injury not have occurred but for the actions of the potential violator? It is the primary test for causation.<sup>24</sup>

This is also known as a *“but for”* causation test. In other words, was the harm done by the Special Forces *only* due to the deception of walking in civilian dress?

If the answer to the above question is no, then there is no direct link between the act of deception and the harm done, and then there is no perfidy. If the Special Forces could reach the hilltop by other means, such as directly landing atop with a helicopter, or landing by parachute, then one cannot say that the killed or injured by the fire of the special forces was a resort to perfidy.<sup>25</sup>

However, this argument has not taken into account the commentary work to Article 37 and Article 44. Article 44 states that *“In order to promote the protection of the civilian populations from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.”*<sup>26</sup>

This very formulation is repeated in section 1507 of the commentary to Article 37. *“A combatant, who takes part in an attack, or in a military operation preparatory to an attack, can use camouflage and make himself virtually invisible against a natural or man-made background, but he may not feign a civilian status and hide amongst a crowd. This is the crux of the rule.”*<sup>27</sup>

These two quotes from the primary sources of international humanitarian law serve to underline that to feign a civilian is prohibited both in actual combat with the opponent, and in a military operation preparatory to an attack. Maneuvering to occupy an advantageous overwatch position (either a hilltop or a building) is by any standard a part of a military operation in preparation to an attack. The maneuvering is a prerequisite for the successful conduct of the attack. In small unit tactics, the advance to contact is as much a part of the attack as the actual firing.

An alternative method of insertion would have involved a considerable risk for the SOF team. Direct insertion into the objective will alert the enemy to their exact location and the helicopter might get shot down.<sup>28</sup> The wearing of civilian clothes would be a major factor in contribution to a successful infiltration.

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(23) Mike Madden, *“Of Wolves and Sheep: A purposive analysis of perfidy prohibitions in international humanitarian law”* p. 457

(24) Madden p. 452

(25) Madden p. 457

(26) Article 44 of the Additional Protocol I from 1977

(27) Sec. 1507 of the commentary to Article 37 of the Additional Protocol I from 1977. Rotem Giladi argues in his paper *“Out of Context: “Undercover” Operations and IHL Advocacy in the Occupied Palestinian Territories”* that Article 44 is for the protection of the civilian population. Therefore, if no civilians are at risk during the advance to contact, then it is allowed. If the preparatory work puts the civilians at risk due to a failure to distinguish combatants and non-combatants, then it is prohibited. (Giladi, footnote 50 and p. 421).

(28) See the battle for Takur Ghar, Afghanistan 2002 for an example of an action where direct insertion into the objective went horribly wrong with severe casualties for the attacking forces.

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**Conclusion:** According to Article 37, 1, c and Article 44, 3 it is prohibited to feign a civilian in the attack, and as part of a military operation in preparatory to an attack. When wearing civilian clothes it is a direct contribution to the successful operation. It must be considered as a military operation preparatory to an attack. (Regardless of other less tactical sound and more risky options)

Wearing civilian clothes as a preparation for an attack is perfidy and a violation of Article 37 and 44. See commentary for Article 44, 3 for the special rapporteur's statement and for exceptions which are not applicable to this case. The object of this rule is to protect the civilians by distinguishing them from combatants.

### **CASE NO. 3 – USING CIVILIAN DRESS FOR A NON-COMBAT MISSION**

**Scenario:** A NATO Special Forces operative is stranded deep in hostile territory. He is wounded and his position is compromised. Hostile forces are closing in. A fellow NATO Special Force operative has dressed up as a civilian fisherman and moved covertly through enemy lines carefully avoiding contact. He located his wounded comrade and successfully extracted him to friendly territory.

**Method of Deception:** A textbook example of an active deception portraying as a civilian. Lieutenant T. R. Norris, U. S. Navy SEAL was awarded the Medal of Honor for such an action in Vietnam, 1972. Like the deception by using the opponents' uniforms, it is very effective in avoiding detection, and it decreases the chance of a direct contact with the opponent.

**Legal aspect:** The aspect to emphasise in this case is the intention of the civilian clad SF operative. In this scenario the operative is not trying to gain the enemies' confidence by assuming protection under the laws of armed conflict. His intention was to move covertly and recover his comrade and not to kill, wound or capture the opponent. It is therefore a legal ruse and not perfidy. Solis arrives at the same conclusion, but avoids the potential legal trap.<sup>29</sup> What if the SF operative had been spotted, and in order to save his comrade and himself had been forced to engage the enemy? In this case we have a situation where a combatant is engaged in combat dressed in civilian clothes. He is committing a breach of Article 37 and loses all rights granted to prisoners of war.

**Conclusion:** If the operative shows no clear signs of killing, wounding or capturing the opponent, then deception by dressing in civilian clothes is indeed an effective method. But if civilian clad operatives engage the opponents with concealed weapons, even in self-defense, it is a violation.

### **CASE NO. 4 – “NO FLAG” OPERATION**

**Scenario:** In an eastern European country there is heavy political unrest. Suddenly one day, a large and powerful military force has appeared in the country's southern peninsula. The unknown soldiers are clearly armed and uniformed, and they are acting within a clear chain of command. The soldiers have been sent in from a militarily strong neighbour state. Their mission is to occupy tactically important locations like military installations, local government buildings, transportation centres, and the airport. These armed men are foreign soldiers with the aim of subduing the local security forces and occupying key installations. They are not dressed in local uniforms. However,

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(29) Solis "The Law of Armed Conflict" p. 434-435

they display no national flag or insignia. All official channels from the invading country deny any involvement. They claim they are local militia forces.

**Deception:** Here we see a creative example of a mix of portrayal and disinformation. It is a variation of the false flag operation, suitably named “no flag” operation. Obscuring the origin of the troops by removing their insignia is a very simple approach to portraying them as local militias. Note that they have not used the same uniforms as the countries’ national troops. The intention (the result to be more precise) is to create confusion on an international level as well as on an operational level. This confusion can be used to buy time to deploy the troops on vital location in order to occupy the peninsula. This scenario is, of course, based on the presumably Russian operation in the Crimea on the 26<sup>th</sup> of February 2014.

**Legal aspect:** By taking a narrow interpretation of the wording of Article 37, 1, Additional Protocol I, the unmarked soldiers did not try to kill, wound or capture local soldiers by assuming their protection under the laws of war, and gaining their confidence by using unmarked uniforms. It was a ruse de guerre used to create chaos and gain freedom of movement. The success of the operation depended on the ability to move swiftly, covertly, and freely across the peninsula. The unmarked uniforms gave them the needed momentum and confusion. Article 37, 2, Additional Protocol I, permits ruses. However, by doing so the conflict status is a non-international conflict according to Article 3, Geneva Convention III. The consequence is that if captured by the opponent, the unmarked soldiers will not be entitled for prisoner of war status. They will be detained according to the domestic law of the detaining nation. The soldiers no longer would enjoy status of POW, which they would be entitled to had they worn their insignia. According to Article 7 of the Geneva Convention III, POW’s may in no way renounce their rights given in this convention. According to the commentaries, this rule was intended for prisoners wishing to change sides, or the status of their country was changed. Such is not the case here, and the situation is different. The rule is absolute nevertheless, and is in force under any circumstances. The deception operation is not perfidy, but it is a violation of Article 7, something the soldiers carrying out the operation should be aware of.

**Conclusion:** With an operational deception like this, using troops with no markings and insignia, there is nothing that would suggest it to be perfidy or a grave breach of the laws of armed conflict. However, it would be a violation of Article 7 because the deception will deny the right to POW status. This is a right that servicemen from nations who have ratified the Geneva Convention on prisoners of war can never renounce.<sup>30</sup>

## CASE NO. 5 – CONCEALING THE TRUE VALUE OF A TARGET

**Scenario:** An industrialized country is under severe threat of an aerial bombardment campaign from an opponent nation. In the northern region there are two major factories. Factory Condor

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(30) *Field Manual 27-10, The Law of Land Warfare*, US Department of the Army, 18 July 1956, as modified by Change No. 1, 15 July 1976 and *Air Force Pamphlet 110-31, International Law – The Conduct of Armed Conflict and Air Operations*, US Department of the Air Force, 1976 both state that it is a permissible ruse to remove unit identification from the uniform. This was what the Russian troops did in the Crimea. However, the effect was a step further than hiding which type of unit they were from. The concealment of nationality created an additional layer of legal aspect and deception as the case shows.

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produces munitions vital for the army and air force, while Factory Beans produces tasteless canned food for the armed forces. The country's intelligence prepares a campaign of deception with the intention of deceiving the opponent into believing that Factory Condor produces non-vital material, but Factory Beans is a valuable military target.

**Deception:** This scenario uses disinformation to try and make the opponent's bomber planes attack the wrong factory. An effective deception can be made using disinformation together with some disguising to deceive the opponent's targeting process.

**Legal aspects:** It is perfidy to dress a civilian target up as a military target. It is likewise considered a violation to try and encourage the opponent to try to commit a violation of the law of armed conflict. It is not a violation to camouflage a military factory as a civilian target or indeed to falsely promote the importance of an otherwise insignificant military target.

**Conclusion:** The important lesson from this case is that it's a violation to dress a civilian target as a military target, but it is a perfectly accepted ruse to dress a military target as a civilian target.

## **CASE NO. 6 – SAILING THROUGH A CHOKER POINT IN A CANAL ZONE**

**Scenario:** A naval NATO convoy has been ordered to sail down a narrow strait in order to evacuate a coastal city. On the way the convoy will pass within range of anti-ship missiles inshore batteries. One naval commander suggests to wait until the canal is full of civilian traffic, and then sail down the strait using the civilian vessels as cover.

**Deception:** Blending in with the civilian environment will make it difficult to target the opponent's vessels. It is an effective cover that will confuse the targeting of the missiles and minimize the casualties of the convoy.

**Legal aspects:** The naval convoy does not assume their protection by trying to gain the enemy's confidence by imitating as a civilian vessel. But, they are seeking to be immune to military actions by placing themselves among vessels and persons of a protected character. This is a grave violation of Article 28 of the Geneva Convention IV.

**Conclusion:** Despite the fact that this deception is in fact not a perfidy, it is still a serious violation of Article 28 and customary law to seek cover behind civilians.

## **CASE NO. 7 – USING WHITE, UNMARKED TRUCKS TO PORTRAY AN AID CONVOY**

**Scenario:** Fighting was being dragged out in a war-torn eastern European country. A neighbouring country is anxious for a conclusion of the fighting. They are also interested in supporting the rebel side so they can gain the upper hand against the government forces. The following deception plan has been prepared: A convoy of white trucks has been prepared to be sent across the border. They are loaded with food, medicine and tents. But, they are also loaded with weapons, munitions, and covert military advisors with the convoy. The trucks are painted white, but they display no UN or Red Cross markings. The official statement is that this convoy is an aid convoy.

**Deception:** This is a portrayal deception where freedom of movement is sought by the convoy to resemble that of an aid convoy. The portrayal of an aid convoy is to camouflage the military value of the convoy, much like in case no. 5. The important part of the deception is the backing of official statements. If the convoy is detained or even attacked it can be used in a political spin. The white trucks play on the association they have with the UN trucks, although the cunning deceiver would claim that they are white because they didn't have time to paint them, or that the trucks are displayed in a crude winter camouflage.

**Legal aspects:** The camouflage of the trucks is a legal ruse. The fact that they are painted white like UN trucks does not make it a perfidy. It is a violation to use UN or Red Cross markings, but that is not the case here where no markings are displayed. State officials lying to the press and their international colleagues is not prohibited. It may not be ethically correct, but that is a different matter.<sup>31</sup>

**Conclusion:** This deception is very close to perfidy. However, in the present example it is still a ruse and the line between ruse and perfidy is not crossed.

## **CASE NO. 8 – USING SOCIAL MEDIA AS PART OF A DECEPTION OPERATION**

**Scenario:** A country is torn by severe civil unrest. They are on the brink of war. Foreign nations have an interest in this conflict being resolved in favour of a particular side. In another country an intelligence operator sets up a mock profile on Facebook. He creates a happening in order to gather a group of civilians for a protest march in front of a military base. The object is to draw their attention and slow their reaction time in response to a planned military incursion from a foreign country.

**Deception:** This is an example of exploration of social media in a deception operation. By using a mix of portrayal and disinformation, an operative can lure people to take specific actions. This almost gives the operation the character of a feint.

**Legal aspect:** This is an area where the law is not yet fully developed. If we turn to the deception taking place in an armed conflict, international or otherwise, then we must revert to the established rules. If the action can be classified as perfidy, then it is a violation. Perhaps it can be difficult to imagine how one can explore social media in a perfidy. Social media could be used to make a happening with the intention to gather a group of civilians to obstruct the line of sight of a military unit or to lure the civilians to move close to a military target in order to shield it against attack. These types of deception would be a clear violation of Article 28 of the Geneva Convention IV.

**Conclusion:** Exploring social media in a deception can be of great use. There is a great deal of gray area regarding the law. National law might regulate what a national can and cannot do in regards to the use of fake profiles and the conduct on social media. In regards to armed conflict

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(31) Jean Marie-Henckaerts and Louise Doswald-Beck: Customary International Humanitarian Law, p. 110. They state that it is prohibited by customary law to target any part of a humanitarian relief mission sanctioned by the United Nations. It would thereby amount to a perfidy if the convoy claimed to be a part of a UN humanitarian relief convoy. In this scenario the convoy state has a humanitarian mission, but it is not sanctioned by the UN. They narrowly avoid falling within this customary rule.

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the vital question is what behaviour is the result of the action. It will certainly be very difficult, if at all possible, to prove who committed the crime. There are certain deceptions as illustrated with objects that are still clear violations according to the laws in an armed conflict.

### **CASE NO. 9 – THE THIRD BATTLE OF GAZA, 1917**

**Scenario:** The third battle of Gaza in 1917 was fought between the armies of the British Empire against the Ottoman Turks. The Ottoman Turks had stalled the British advance in southern Palestine and the war had turned into a bloody stalemate. To break the stalemate General, Sir Edmund Allenby produced a daring plan that had the potential of breaking the Turkish lines. To make the plan succeed General Allenby tasked Major Richard Meinertzhagen to carry out an extensive deception operation. His deception operations include a comprehensive campaign of misinformation through signals intelligence and the leaking of information. Meinertzhagen also carried out a daring operation, in which he conducted a fake reconnaissance where he allowed himself to be ambushed. He got away, but left behind a haversack with deceptive information. Meinertzhagen also tightened the security around headquarters, and serious leaks were detected. A naval and ground artillery barrage was also conducted against Gaza to make it look like it was a preparation for an infantry attack along the coast.

Meinertzhagen also suggested that cigarettes drugged with opium were to be dropped by airplane to the Turkish soldiers. This last suggestion was vetoed by General Allenby because it was too close to being poison. Meinertzhagen is reported to have argued that any stratagem was worth trying if it could save the lives of British and Empire casualties.

The ruse of the lost haversack proved to be most effective. The British deceived the Turks into thinking that the real attack was an advance on Gaza along the coast combined with a sea landing behind the lines. Instead, the British Empire forces attacked Beersheba on the exposed eastern flank in the desert. The offensive is considered to have been a major success.

**Deception:** This operation is particularly interesting due to the use of the various elements in the taxonomy of deception. Meinertzhagen uses active deception supported by passive deception or cover. The active deception included disinformation leaked through various means. The false preparatory artillery barrage at Gaza was a classic feint, and was used to reinforce the disinformation. The lost haversack was a feint combined with disinformation. Denial operations were used to cover the real intention of the offensive.

**Legal Aspects:** Despite the fact that these operations were before the Geneva Conventions of 1949, the Hague Conventions of 1907 were still in effect. General Allenby was conscious that the operation was to be conducted to the standards of the then current Laws of War. All the deception operations conducted, including the lost haversack, were a lawful ruse in accordance with The Hague Convention, as well as the newer Geneva Convention. The idea with the drugged cigarettes was overruled by General Allenby because it violated Article 23, littra a) of the Hague Convention of 1907 that prohibit the use of poisoning. This shows that even in a World War during a major offensive vital to the war effort, senior officers still sought to uphold the international law at the

operational level, despite the fact the deception would have saved British and Commonwealth lives.<sup>32</sup>

### **CASE NO. 10 – ELECTRONIC FALSE FLAG**

**Scenario:** Modern ships send out GPS signals that are used to track their positions on the seas. By the use of special computer programs, their exact position can be tracked with the precise information about the ship's measurement, nationality, appearance, and more. It is required by law that all civilian ships send out this signal due to safety reasons. In this scenario, a warship is sending out false signals so it appears to be a civilian ship. The name and the picture are false so the carrier battleship appears as a civilian cargo ship. The visual appearance of the ship is unchanged. It is the ship commander's intention to change the signal once the ship launches its aircraft on a bombing mission on a humanitarian intervention mission in a foreign country.

**Deception:** To avoid electronic detection this cover deception is useful by using an electronic disguise. Sometimes, it might be obvious that the ship is using this form of disguise, and it might be helpful in buying time before the opponent can identify the true location of the warships. This deception does nothing to disguise the visual appearance of the ships.

**Legal aspects:** This is an electronic modern version of the false flag concept. It adds another layer by presenting a false image of the ship on the computer screen. This operation has some legal traps that need to be considered. The image cannot be of a ship that is guaranteed safe conduct, like a medical ship or a ship operating under UN flag or under a UN mandate. That will be a violation of the proper use of the UN, Red Cross, Red Crescent or another similar agreed upon emblem. As long as the proper use of emblems is not violated, this type of deception is allowed. However, once engaged in combat the true "flag" (both physical and by electronic signals means) must be used.<sup>33</sup>

### **CASE NO. 11 – DECEIVING THE BATTLE DAMAGE ASSESSMENT**

**Scenario:** In a humanitarian intervention, a coalition of several countries has gathered a powerful air force with the mission of bombing a country's C3 capabilities and air defenses. During an air bombing campaign battle damage assessment is carried out to assess the effectiveness of the attacks. It is discovered that a number of blood-stained civilian items, including toys, are found in the rubble. For the coalition air force it appears that they had hit the wrong target. In fact, this is a deception operation carried out by the country owning the target installations. Their objective of the deception operation is to deceive the coalition targeting process and to use it for propaganda.

**Deception:** This deception is to prevent further attacks on the objective, and to gain an advantage in the information domain. This deception uses display to portray a false effect after an attack. Depending on the effect on the target, this deception is properly most useful in the propaganda war.

(32) Sadly, on the Western Front the commanders had no problems using poison gas in violation to Article 23 of the Hague Convention. General Allenby's high moral standard is something to strive for.

(33) Gregory O'Brien, "Information Operation and the Law of Perfidy", p. 15-16

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**Legal aspects:** As seen in a previous case, it is not prohibited to camouflage a military target as a civilian target. The Conventions say nothing about dressing up a target as a civilian target after it has been hit. The deception operation cannot be qualified as perfidy. It is not a violation of the laws of armed conflict. However, no one can accuse the coalition of killing civilians because there would be no evidence of such. It would be a false accusation.<sup>34</sup>

### **CASE NO. 12 – THE USE OF A FALSE PEACE PROPOSAL**

**Scenario:** In June 1950, North Korea invaded South Korea. The invasion came as a complete surprise to the South Koreans and the Americans. The extent and the furiousness of the attack completely threw the combined armies of South Korea and the United States of America. Squeezed into a tight pocket in the south, the Americans and South Koreans were saved by a larger US led UN military force. The UN forces did turn the tide for a period. It was clear to all, however, that the North Koreans had achieved the initial surprise. This was achieved, in part, by the North Koreans use of false peace proposals, as well as adopting a more passive posture along the borders.

**Deception:** This deception had initially a great impact on the ground war. The active peace proposals can best be described as a display using a dummy political arrangement, instead of a dummy military unit. The cessation of the border raids worked as an inverted feint by breaking contact with the opposition. The whole deception plan worked par excellence.

**Legal aspects:** The situation before the outbreak of hostilities was not regulated by the laws of armed conflict. Nevertheless, there is no international law of any kind that prohibits the use of false peace proposals no matter how treacherous it may sound.

### **CASE NO. 13 – HIDING A COUNTRY’S INVOLVEMENT IN AN INTERNATIONAL CONFLICT**

**Scenario:** In late 1950, the Chinese communists intervened in the war in Korea. Their well concealed and well-coordinated winter offensive at the Yalu River, starting on the 1<sup>st</sup> of November 1950, took the UN forces completely by surprise. The Americans and UN forces were forced into a headlong retreat. The Chinese used camouflage to great effect. Because the Chinese were able to conceal their forces, the strength and time of the attack came as a great surprise. To begin with, it was not the People’s Liberation Army that fought in Korea, but instead a mass collection of private individuals travelling to North Korea and volunteering for service on the side of the North Koreans. The intention was to prevent official Chinese involvement in the war.

**Deception:** The method of deception was primarily one of camouflage by hiding. Troop movements and troop identifications were concealed in the initial period. The disguising of the soldiers as private individual volunteers was a simple effort to try and disguise troop identification and a more general involvement of China in the war.

**Legal aspects:** According to the Laws of War this arrangement is possible. The volunteers would be organized and uniformed members acting in a chain of command, and fighting under a party

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(34) Major Mark Johnson, USMC and Major Jessica Meyeraan, “USAF Military Deception: Hiding the real – showing the fake”. The scenario is inspired by the case presented in this paper.

(in this case North Korea) in the conflict. The Chinese soldiers would be entitled to prisoner of war status in accordance with Article 4 of the Geneva Convention III of 1949. This arrangement would obscure Chinese participation in the conflict, which would make it difficult to prove a violation of the responsibilities under the UN Charter. The force can be quite lawful on the ground war, and at the same time one can attempt to bypass the UN charter.

### **CASE NO. 14 – THE COLUMBIAN RESCUE OPERATION**

**Scenario:** In July 2008, the Columbian armed forces were sent out on a hostage rescue mission. The hostages were held by the Columbian rebel group FARC. It was a non-international conflict. The Columbian hostage rescue team disguised their helicopter as an aide helicopter belonging to a non-governmental organization. The background information of the NGO was convincing, but the NGO was false. One of the soldiers wore a Red Cross emblem on his Kevlar vest, and the helicopter was painted white with pieces of orange equipment. The operation was a complete success. No one was killed or injured, and all of the prisoners were freed in good health. Two of the FARC captors were captured, and taken back to.

**Deception:** The deception created by disguising the hostage rescue forces as a NGO aide helicopter was vital for the success of the operation. It was a disguise, and it was elaborate enough for the FARC to fall for the deception. Everything from a fake website for the NGO, the white painted helicopter to the Red Cross emblem helped create this deception.

**Legal Aspect:** This operation was not without some serious legal considerations. There are three points that need to be addressed. First, is the use of the false NGO. Second, there is the use of the Red Cross emblem and thirdly, the intention of the operation and its outcome.

The use of a false NGO: The relevant Articles in Additional Protocol II explicitly prohibit the misuse of the UN and the Red Cross, and its associates' emblem according to Article 12 of Additional Protocol II. According to the Rome statute of the International Criminal Court Article 8 (2) e, ix, it is prohibited to treacherously assume the confidence under protected status in order to kill or injure the opponent. During this operation the hostage rescue squad feigned a non-combatant with protected status. This was achieved regardless whether the NGO was internationally recognized or not. The use of a false NGO is not a violation of article 12, Additional Protocol II, but it is a violation of the Rome Statute Article 8 (2) e, ix, if it results in death or injury (but not capture) of the opponent.

The use of the Red Cross emblem and the white helicopter: The soldier wearing the Red Cross emblem on the Kevlar vest is a clear violation according to Additional Protocol II, Article 12. The fact that the helicopter was painted white had not been noted, and is in itself not prohibited.

The intention of the operation was to rescue hostages. In the process they also captured two rebels. Capture is not included in the Rome Statute Article 8, e, ix, and since no one was injured or killed during the operation, it does not constitute a violation.

**Conclusion:** There seems to be a general acceptance of the humanitarian aspect of the operation, and a willingness to look the other way of the minor violation in the postscript of this incident.

## STRATAGEM AND THE LAW:

**Discussion of the Cases:** Here follows charts of the conclusions from the cases.

Deception type	Case no.
Active Deception	
Display, incl. Portrayal and simulation	4, 7, 8, 11
Feint	8, 9
Demonstration	
Disinformation	4, 8, 9, 10
Hiding	
Blending	2, 3, 6, 13
Disguising	1, 2, 3, 10, 12, 14
Securing	
Denial	9

Case	Deception type	Law references
1	Portrayal	AP I Art. 39, 2
2	Blending by disguising	AP I Art. 37 and Art. 44
3	Blending by disguising	AP I Art. 37 different intentions than in case 2.
4	Portrayal, reinforced by disinformation	GC III Art. 7 regarding loss of POW status.
5	Disinformation and disguising	AP I Art. 37 in regards of the general definition of perfidy.
6	Blending	GC IV Art. 28
7	Portrayal	AP II Art. 12 and AP I Art. 38
8	Portrayal, disinformation and feint.	Depending on the intention, Art. 28 of CG IV might become relevant, although it will depend heavily on how it plays out.
9	Feint, disinformation and denial.	
10	Disguising and disinformation	AP II Art. 12 and AP I Art. 38
11	Simulation	No possibility of accusing the opponent of violations of laws of armed conflict.
12	Disguising in an electronic form.	Disinformation is not regulated by law in this form.
13	Blending	Art. 2(4) of the UN charter.
14	Disguising	Rome Statute Art. 8(2)e and AP II Art. 12

The above tables give the reader an overview of where the cases are relevant in the taxonomy of deception.

Active deception: In active deception, the display is a form of deception that offers great potential as can be seen in case no. 4, 8, 11, and 13. Case no. 8 does not violate any laws of armed conflict by exploiting social media, but it does depend on what actions you try to encourage. Case no. 11

uses display to simulate a false effect of an attack. This is not in itself illegal, but cannot lead to a false accusation of illegal targeting. Cases no. 4 and 13 both change the battlefield status of the soldiers involved in the deception. In case no. 4, it is a minor violation, but not a grave breach.

With display and portrayal there are a few important rules that must be maintained. As long as these rules are observed much can still be achieved in terms of deception without a violation.

Feint as seen in case no. 9 is a military confrontation. The laws of armed conflict that regulate the confrontation between two armed forces are of course relevant, but in terms of deception there is nothing that puts special restrictions on this kind of operation. This is a restricted type of deception operation, and the chance of violation is limited.

Demonstration is a feint without a contact. Like the feint, it is also a restricted type of deception operation with limited chance of violation.

Disinformation is a type of deception that is often seen in support of another type of deception, as seen in case no. 4 and 9. Lying is not regulated by law, and giving false information is an option available to all. As seen in the cases no. 4 and 9, it can reinforce an ongoing deception operation, or it can stand on its own, as in case no. 12.

Passive Deception also known as Cover: There are two branches from the cover deception: camouflage and denial. Camouflage deception involves hiding, blending, disguising and securing. It is in these three categories; hiding, blending, and disguising that the greatest risk of a violation is present. This is because the legal principle of distinction between combatants and non-combatants is at risk. In cases no. 1, 2, 3, 6, 7, 10 and 14, the principle of distinction is in danger. If the deception involves combat, then the use of civilian clothes is very limited as shown in case no. 2. If there is no intention of killing or wounding, as in case no. 3, the use of a civilian disguise can be utilized in a deception operation. In case no. 14 the operation features a misuse of protected emblems, but again the case shows that if the intention (and result) is only capture, then the violation will be tolerated. However, it is still a violation and protected emblems cannot be used without care. As cases no. 2 and 6 show, no blending with the civilians are allowed, and that does put some restrictions on what kind of deception operations are allowed. The deception must be careful not to simulate a unit or an organ protected by international humanitarian law. Case no. 7 provides with an effective example that is stretched to the legal limits. It plays on the association of the UN trucks, but is still very careful to avoid a misuse of the symbol.

Case no. 10 presents an innovative way of using an electronic disguise. The legal framework is broader in this case, but it still may not use the protected emblem of the Red Cross or UN.

Case no. 1 on the use of opponent uniforms is clearly a prohibition according to Additional Protocol I of the Geneva Convention. Despite some different arguments, an opponent's uniform cannot be used in a military deception operation involving combat.

The deception in the form of hiding offers little controversy with the relevant law, because it is defined as hiding behind physical objects. Securing, which is closely linked to denial deceptions does not contravene the law. Control and tight security can be conducted without serious dangers of violation of the laws of armed conflict.

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The last step in the taxonomy of deception is the denial deception. This form of deception is a counterthrust to an opponent's deception. It is not directly linked to a central principle of the laws of armed conflict.

### **CONCLUSION ON THE CASE STUDY:**

The greatest legal challenge is to ensure that the distinction between combatants and non-combatants is preserved in a deception operation. The protected status of Red Cross (and similar), and UN emblems must be respected. However, the intention in all cases does matter on what is allowed, and what is not. The passive deceptions involving blending and disguise must observe these distinctions. It is especially true in disguising deception, as the temptation, and possible benefits of assuming protected status is great. But, it must be abstained from. Deception involving portrayal as a different military unit is both legally accepted, and potentially very effective, but it cannot use any recognized emblems under protected status. The definitions are very precisely defined, and it is still possible to go a long way in terms of deception. The battlefield status can also be changed according to the deception used. In case no. 4 it is a matter of a minor violation (maybe one side is prepared to accept it), and in case no. 1 it can possibly lead to a minor violation depending on the usage.

The use of deception in information operations is relatively open in regards to the law. Again, the use of protected emblems and the false declaration of an armistice are prohibited, but this still leaves plenty of options left for deception operations.

In display deceptions the participants must be aware of the risk in changing their battlefield status if they wish to portray an armed unit of different origin.

The articles relevant in the above cases are Article 37, 38, 39, 44 of Additional Protocol I to the Geneva Convention. It is Article 28 of Geneva Convention IV, article 12 of Additional Protocol II, and finally Article 7 of Geneva Convention III.

### **APPLYING THE RULES TO DECEPTION PLANNERS:**

The deception planner must first develop his plan of deception using the theory behind operational deception. Once the plan has been devised, he must then apply the law as an overlay on a map. As I have tried to illustrate, some deceptions fall outside of what is permissible according to the law. Others might well be permissible or might require some adjustment to be permissible. Generally speaking, the deception is legal if it does not assume its protection under the Laws of Armed Conflict, or bring unnecessary suffering or risk to the civilian population. There are other risks of violations as the cases show. The misuse of enemy uniforms, deprivation of the POW status, and misuse of emblems are the other areas that need to be taken into consideration.

A good practical example is the scenario with the Special Forces dressed up in a deception manner. As we have determined earlier, it is prohibited to dress up in civilian clothes or enemy uniform. However, the Special Forces could wear civilian headgear or scarf (but not more than that). These could deceive an enemy observer from a distance, and perhaps cause some initial confusion which could benefit the team. The Special Forces would still have to carry their arms openly, and wear military uniform so at closer range one would not be in doubt.

Another example is use of the white convoy. Trucks painted white are not a misuse of the UN or Red Cross emblem, and officials and politicians can lie about their real intent with the convoy.

The use of unmarked uniforms is a particularly interesting deception. If used as the Russians did in the Crimea then it is very effective and not perfidy. However, the soldiers lose POW status, a violation that needs to be considered before the deception is launched.

The above examples show what conclusions can be drawn from this line of thinking. Effective methods of deception can be executed within the legal framework, much like in the field where effective tactics can be applied and still be within the legal framework.

There is no need for all deception planners to be lawyers, like there is no need for all military commanders to be lawyers. A legal framework like Rules of Engagement will give the necessary, clear, and well defined legal boundaries in which to operate.<sup>35</sup>

Possible Rules of Deception would need to be built upon three basic requirements: national policy, mission specific concerns, and international law. This foundation in the law is to ensure that the forces conducting the deception are acting within the legal framework. The mission-specific element will differ and reflect any special requirements, like the complete prohibition of a certain type of deception because it is judged to hurt the overall tactical and operational situation. The national policy element is not meant to be a limitation, but it should give the policymakers the opportunity to include rules that could help promote political objectives. The rules should include specific rules that could tell in more precise detail on how a specific element of the law should be interpreted in regards to the various methods of deception. The rules are not intended to break the law, but to provide boundaries and guidance. It is important to note that the rules cannot sanction a violation of the laws of armed conflict.

The cases provide, with examples, on how it could work. The rules would state specifically the amount of civilian clothes the Special Forces could wear, in what way unmarked vehicles can be used for deception, what type of deceptions that cannot be arranged through the use of social media, or what deceptive actions a force deployed with no markings can undertake. These are just some of the many elements which may not be regulated by standard rules of engagement, but would be regulated by purposely designed rules of deception. There could be a mission specific Rules of Deception or a standard Rules of Deception.

The Rules of Deception is meant to be a guide, but not a substitute for the legal framework. The deception planners are assumed to be working within a NATO country.

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(35) Rules of Engagement are not law (laws of armed conflict or otherwise), but instead refer to military directives that dictates how a military force can conduct itself when operating. ROE are often meant to be the primary means of regulating the use of force in an armed conflict or in a conflict short of war. ROE are not directly relevant for deceptions. However, a similar tool may be very useful for deception operations Solis "The Law of Armed Conflict" p. 490 + 495

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## **RULES OF DECEPTION**

### **Ruses of War:**

Ruses of war are not prohibited. Ruses are acts which are intended to mislead an adversary, or induce him to act recklessly. These rules infringe no rule of international law applicable in armed conflict, and are not perfidious as they do not invite the confidence of an adversary with respect to protection under that law.

### **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 international law applicable in armed conflict with intent to betray that confidence, shall constitute perfidy.

### **Active Deception:**

- It is prohibited to use the distinctive emblems of the UN or Red Cross, Red Crescent, or Red Lion and Sun in portrayal of an aide unit or NGO.
- It is allowed to use Vehicles painted white.
- In information operations, it is allowed to demoralize the opponent by all means except to feign a false surrender or armistice.
- It is prohibited to encourage the opponent to commit a violation of the laws of armed conflict, or international law.
- Troops' battlefield status cannot be changed as part of a deception operation.
- Nothing shall restrict the use of disinformation from the written word, and the word of mouth from official sources for the use of deception.

### **Passive Deception:**

- Blending in with civilian population during a military operation is prohibited. During a military operation a single civilian headgear may be worn.
- It is allowed to wear civilian clothes, and to blend in with the civilians in espionage or rescue operations.
- Wearing the opponent's uniform during, or in preparation for a military operation is prohibited.
- It is allowed to use the opponent's markings or uniforms during espionage or rescue operations.
- Electronic disguise by ships' GPS signal is permissible as long as they are not engaged in combat.
- A deception operation may not conceal a violation of Article 2(4) of the UN charter.

### **Conclusion:**

This research paper shows how with the use of the theory of deception, the planner can devise some effective, but illegal deceptions. The paper attempts to illustrate through various scenarios and case studies that some methods of deception requires a thorough legal analysis before making the final conclusion. International humanitarian law, and laws of armed conflict is, in theory, enough to determine the legal basis in the most difficult cases. A rule of deception can be an important tool in defining the boundaries and delivering guidelines.

Like all laws, not everyone is likely to follow them. There will be deceptions conducted that include elements prohibited by the laws of armed conflict. It can be useful to consider all types of deception in the event that one would have to counter such a deception.

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**SOURCES:**

**Deception:**

Barton Whaley: *Stratagem, Deception and Surprise in War*

James Caddell: Deception 101 – Primer on Deception

James D. Monroe: *Deception: Theory and Practice*

Joint Doctrine Publications: *OPSEC, Deception and Psyops*

Joint Pub 3-58: *Joint Doctrine for Deception*

Milan N. Vigo: *Operational Deception in the Information Age*

Roy Godson & James J. Wirt (ed.): *Strategic Denial and Deception*

Thaddeus Holt: *The Deceivers, Allied Military Deception in the Second World War*

**Law**

*Air Force Pamphlet 110-31, International Law – The Conduct of Armed Conflict and Air Operations*, US Department of the Air Force, 1976.

*Field Manual 27-10, The Law of Land Warfare*, US Department of the Army, 18 July 1956, as modified by Change No. 1, 15 July 1976.

Geneva Convention of 1949, The III + VI and additional protocols I and II

Giladi, Rotem “Out of Context: “Undercover” Operations and IHL Advocacy in the Occupied Palestinian Territories”, *Journal of Conflict & Security Law*. Oxford University Press 2010.

Hague Convention of 1907 on regulation of land warfare

ICRC - Lesson 4 the conduct of operations part B

International Committee of the Red Cross discussion on customary IHL – US Practice [http://www.icrc.org/customary-ihl/eng/docs/v2\\_cou\\_us\\_rule57](http://www.icrc.org/customary-ihl/eng/docs/v2_cou_us_rule57)

International Law Studies – volume 73: Deception in armed conflict

Jean Marie-Henckaerts and Louise Doswald-Beck: *Customary International Humanitarian Law* ICRC & Cambridge university press

Mike Madden: Of Wolves and Sheep: A Purposive Analysis of Perfidy Prohibitions in International Humanitarian Law. *Journal of Conflict & Security Law*.

Solis, Gary D.: *The Law of Armed Conflict*