

5.26 NON-FORCIBLE MEANS AND METHODS OF WARFARE

In general, propaganda, information gathering, and bribery are permissible means and methods of warfare.

5.26.1 Propaganda. In general, the use of propaganda is permissible under the law of war, even when it encourages acts that violate an enemy State's domestic law or is directed towards civilian or neutral audiences. However, certain types of propaganda are prohibited.

5.26.1.1 Propaganda – Notes on Terminology. Propaganda has been referred to as psychological warfare, psychological operations (PSYOP), or military information support operations (MISO).⁸¹¹ The word “propaganda” often has been used with a pejorative connotation to refer to misleading or false statements, but “propaganda” is used in this section without intending any such connotation.

5.26.1.2 Propaganda Generally Permissible. In general, propaganda is a permissible means of warfare.⁸¹² Propaganda has been disseminated through a variety of communications media, including printed materials, loudspeakers, radio or television broadcast, aircraft, or the internet. Propaganda is sometimes used with bribery⁸¹³ or to support intelligence gathering.⁸¹⁴ Propaganda may be directed at enemy civilians and neutrals.⁸¹⁵

Propaganda may encourage enemy persons to commit acts that would violate the domestic law of the enemy State.⁸¹⁶ For example, it would be permissible to encourage enemy

⁸¹¹ Robert Gates, Secretary of Defense, *Memorandum: Changing the Term Psychological Operations (PSYOP) to Military Information Support Operations (MISO)*, OSD 1012-10 (Dec. 3, 2010) (“Since the 1940s, military information activities, undertaken both in wartime and peacetime, have been described as ‘psychological warfare,’ ‘psychological operations,’ or PSYOP. These terms helped draw a useful distinction between lethal military operations, on the one hand, and military efforts to change minds and reduce or prevent conflict through truthful, persuasive information, on the other. Today, however, the term ‘Psychological Operations’ has become anachronistic and misleading. Although PSYOP activities rely on truthful information, credibly conveyed, the term PSYOP tends to connote propaganda, brainwashing, manipulation, and deceit.”).

⁸¹² GREENSPAN, *MODERN LAW OF LAND WARFARE* 323 (“Propaganda must be considered a legal means of warfare, since there are no specific rules of war which forbid its use, nor is it as such incompatible with the existing rules of war.”).

⁸¹³ 1976 AIR FORCE PAMPHLET 110-31 ¶5-6 (“In World War I, Austrian airmen dropped leaflets over Italian lines inviting desertion with the promise of compensation for every airplane surrendered intact. In the Korean conflict, an award was offered to any enemy flier who would defect with his plane intact to the United Nations Command. In fact \$100,000 was paid to a North Korean pilot for such a defection.”).

⁸¹⁴ Robert Gates, Secretary of Defense, *Memorandum: Changing the Term Psychological Operations (PSYOP) to Military Information Support Operations (MISO)*, OSD 1012-10 (Dec. 3, 2010) (“In Iraq and Afghanistan, U.S. military information programs urging civilians to report possible insurgent activity led to valuable information, enabling our forces to disarm hundreds of improvised explosive devices safely and capture numerous key insurgent leaders.”).

⁸¹⁵ For example, 1958 UK MANUAL ¶313 note 3 (“In the Second World War both sides established regular wireless services for spreading war news among both the enemy and neutrals. They also resorted on a large scale to propaganda disseminated from aircraft and from the ground.”).

⁸¹⁶ See SPAIGHT, *AIR POWER AND WAR RIGHTS* 333 (“To drop a pamphlet inciting to assassination would no doubt be an offence under the laws of war, assassination being forbidden by those laws. It is an entirely different matter

combatants to defect, desert, or surrender.⁸¹⁷ Similarly, it is generally permissible to encourage insurrection among the enemy civilian population.⁸¹⁸

5.26.1.3 *Prohibited Types of Propaganda.* Propaganda must not: (1) incite violations of the law of war; nor (2) itself violate a law of war rule.

Propaganda must not incite acts that are prohibited by the law of war.⁸¹⁹ For example, propaganda intended to incite attacks against civilians is prohibited. In certain cases, individuals may be liable for instigating or inciting violations of the law of war.⁸²⁰

Propaganda is also prohibited when it would violate other law of war rules. For example, it is specifically prohibited for an Occupying Power to use propaganda that aims at securing voluntary enlistment of protected persons in its armed or auxiliary forces.⁸²¹ Similarly, it is prohibited to declare that no quarter will be given, and propaganda in the form of a declaration to the adversary that no quarter will be given would be prohibited.⁸²² In addition, propaganda would be prohibited if it constituted a measure of intimidation or terrorism against the civilian population, such as the threats of violence whose primary purpose is to spread terror among the civilian population.⁸²³ Similarly, propaganda may not be used to subject a detainee to public curiosity or other humiliating or degrading treatment.⁸²⁴ Additionally, the delivery of the

when the act which the message seeks to accomplish is one not repugnant to natural law, not *malum in se*, but merely contrary to the law (because to the interest) of the State affected, or *malum prohibitum*. It cannot be held that to try to persuade a modern civilized nation to change its form of government is to incite to an act of the former category.”).

⁸¹⁷ For example, FINAL REPORT ON THE PERSIAN GULF WAR xxvi (“Coalition strategy also benefitted immensely from psychological operations, the success of which is evidenced primarily by the large number of Iraqi soldiers who deserted Iraqi ranks or surrendered without putting up any resistance during the ground offensive. Our efforts built on, among other factors, the disheartening effect on Iraqi troops of the unanswered and intensive Coalition aerial bombardment, the privations they suffered due to the degradation of the Iraqi logistics system, and the threat of the impending ground campaign. Radio transmissions and leaflets exploited this demoralization by explaining to the Iraqi troops how to surrender and assuring them of humane treatment if they did. More specific messages reduced Iraqi readiness by warning troops to stay away from their equipment (which was vulnerable to attack by precision munitions) and induced desertions by warning troops that their positions were about to be attacked by B-52s.”).

⁸¹⁸ For example, LAUTERPACHT, II OPPENHEIM’S INTERNATIONAL LAW 426-27 (§162a) (“The legitimacy, formerly controversial, of inciting enemy subjects to rise against the Government in power is now no longer disputed. ... While, in the Second World War, both sides established regular wireless services for spreading war news among both the enemy and the neutrals, the Allies resorted on a large scale to propaganda disseminated from aircraft as a means of inducing the population of Germany to remove a dictatorial régime which, it was asserted, was solely responsible for the war.”).

⁸¹⁹ 1976 AIR FORCE PAMPHLET 110-31 ¶5-6 (“Propaganda which would incite illegal acts of warfare, as for example killing civilians, killing or wounding by treachery or the use of poison or poisonous weapons, is forbidden.”).

⁸²⁰ Refer to § 18.23.2 (Instigating or Directly Inciting).

⁸²¹ Refer to § 11.20.1.1 (Prohibition on Compulsory Service in an Occupying Power’s Armed Forces).

⁸²² Refer to § 5.4.7 (Prohibition Against Declaring That No Quarter Be Given).

⁸²³ Refer to § 10.5.3.2 (Collective Penalties and Measures of Intimidation or Terrorism).

⁸²⁴ Refer to § 8.2.2 (Protection Against Humiliating or Degrading Treatment).

propaganda should be consistent with other law of war obligations.⁸²⁵

5.26.2 Information Gathering. The employment of measures necessary for obtaining information about the enemy and their country is considered permissible.⁸²⁶

Information gathering measures, however, may not violate specific law of war rules.⁸²⁷ For example, it would be unlawful, of course, to use torture or abuse to interrogate detainees for purposes of gathering information. Similarly, it is prohibited to make improper use of a flag of truce to obtain information.⁸²⁸

Some forms of deception used to gather information, although not prohibited by the law of war, may put the persons engaging in them at risk of being treated as spies.⁸²⁹

5.26.3 Bribery or Offering of Rewards. In general, it is permissible to offer rewards for assistance in the conduct of hostilities, including rewards intended to corrupt enemy combatants or civilians.⁸³⁰ Rewards, however, may not be offered for the commission of violations of the law of war, and rewards may not be offered for the killing of enemy persons.

5.26.3.1 Prohibition on Offering Rewards for Enemy Persons Dead or Alive. It is forbidden to place a price on the head of enemy persons or to offer a reward for enemy persons “dead or alive.”⁸³¹ Such actions encourage the denial of quarter or encourage private persons to take up arms whose participation in hostilities is often undisciplined and associated with the commission of war crimes.⁸³² This prohibition extends to offers of rewards for the killing or wounding of all enemies, including specific individuals or a class of enemy persons (e.g., officers).

However, this rule would not prohibit offering rewards for the capture of unharmed enemy personnel generally or of particular enemy personnel.⁸³³ Similarly, this rule does not

⁸²⁵ See, e.g., GREENSPAN, MODERN LAW OF LAND WARFARE 324 (“It would appear to be improper to induce enemy nationals to listen to propaganda emanating from the opposing side by such methods as doling out a few names of prisoners of war on the occasion of each broadcast and deliberately holding other next of kin in suspense, instead of transmitting such information by the most rapid means possible.”).

⁸²⁶ HAGUE IV REG. 24 (“[T]he employment of measures necessary for obtaining information about the enemy and the country are considered permissible.”).

⁸²⁷ GREENSPAN, MODERN LAW OF LAND WARFARE 325 (“In obtaining information, a belligerent must not contravene specific rules of war.”).

⁸²⁸ Refer to § 5.24.7 (Flags of Truce).

⁸²⁹ Refer to § 4.17 (Spies, Saboteurs, and Other Persons Engaging in Similar Acts Behind Enemy Lines).

⁸³⁰ 1958 UK MANUAL ¶313 (“It is not unlawful to employ spies; or to corrupt enemy civilians or soldiers by bribes in order to induce them to give information, to desert with or without technical equipment, new weapons, vehicles or aircraft, to surrender, to rebel, or to mutiny; or to give false information to the enemy.”).

⁸³¹ 1956 FM 27-10 (Change No. 1 1976) ¶31 (Article 23 of the Hague IV Regulations “is construed as prohibiting ... putting a price upon an enemy’s head, as well as offering a reward for an enemy ‘dead or alive.’”).

⁸³² Refer to § 4.18.3 (Private Persons Who Engage in Hostilities – Lack of the Privileges of Combatant Status).

⁸³³ See 2004 UK MANUAL ¶5.14.1 (“[O]ffers of rewards for the capture unharmed of enemy personnel generally or of particular enemy personnel would be lawful.”).