Influencing Without Fighting: Operations Below the Threshold of Attack

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Attacks

• Art. 49 (1) Additional Protocol I

“Attacks” means acts of violence against the adversary, whether in offence or in defence.
• Law of Armed Conflict:
  Legal regime for the conduct of hostilities
  
  Regulating (incl. limiting) methods and means of hostilities
  Protecting certain persons and objects
warfare
Mil ops
attacks
Military Operation (in LOAC)

• Any action performed within the context of hostilities by military personnel and/or military materiel to reach a (relative) military advantage over the opponent.
Threshold of Attack: Traditional Sense

- Military operations performed within the context of hostilities aimed at, or with foreseeable consequences of, physical injury, death to persons, physical damage or destruction of objects or a combination thereof.
LOAC Rules Applicable Below the Threshold?

• Martens Clause

• Back to the Principles of LOAC
Principles of LOAC applicable below the threshold of attack

- Military necessity: yes
- Humanity: yes
- Distinction: yes but difference persons/objects
- Proportionality: yes, balancing neg effects on humanity with pos effects of military advantage
- Chivalry/honor: yes but not as a legal obligation
• Military operations that do not have physical consequences are not attacks but when used as a means or method of warfare have to be in compliance with the principles of LOAC
The negative non-physical effects of a military operation for the civilian population, individual civilians, civilian objects or a combination thereof, may not be out of proportion with the appreciable military advantage anticipated of that military cyberoperation.
“Precautionary measures below attacks”

During planning, preparation and execution of a military operation below the threshold of attack, ‘everything feasible’ should be done to exclude that the operation has, will or could have physical consequences.