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General orders no. 100 : why the Lieber code's requirement for combatants to wear uniforms is still applicable for the protection of civilian populations in modern warfare / Robert Cummings

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Abstract:	<p>Robert Cummings argues that the United States must maintain its policy concerning the identification and classification of lawful combatants, a policy that finds precedent in Francis Lieber's Civil War-era General Orders No. 100 ("Lieber Code"). Fundamental to this code is the understanding that armed conflict need not result in the death of innocent civilians, nor indiscriminately destroy their property. In order to protect innocent lives, the laws of war demand that combatants distinguish themselves from non-combatants: a lawful combatant must wear a uniform or distinctive insignia. Those granted lawful combatant status are afforded all the legal benefits granted to prisoners of war upon capture, whereas unlawful combatants are not, incentivizing combatants to distinguish themselves. In Cummings' view, because United States is currently engaged in a conflict with enemies who do not distinguish themselves, and who often disappear into civilian populations, the Lieber Code finds renewed relevance. If followed, it would limit the number of civilian casualties caused by military missions. Elements of the Lieber Code were incorporated into The Hague and Geneva Conventions; however, Additional Protocols I blurred the Code's bright line rules of distinction. The category of those considered lawful combatants was expanded to include non-uniformed combatants. Such an expansion allows for an interpretation of international humanitarian law that includes terrorists and insurgents in the category of lawful combatants. Opposition to this expansion was a primary reason for United States' refusal to ratify the Protocol. United States, however, has occasionally acted in accordance with Additional Protocol I, potentially contributing to a precedent that Cummings does not want to set. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]</p>
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