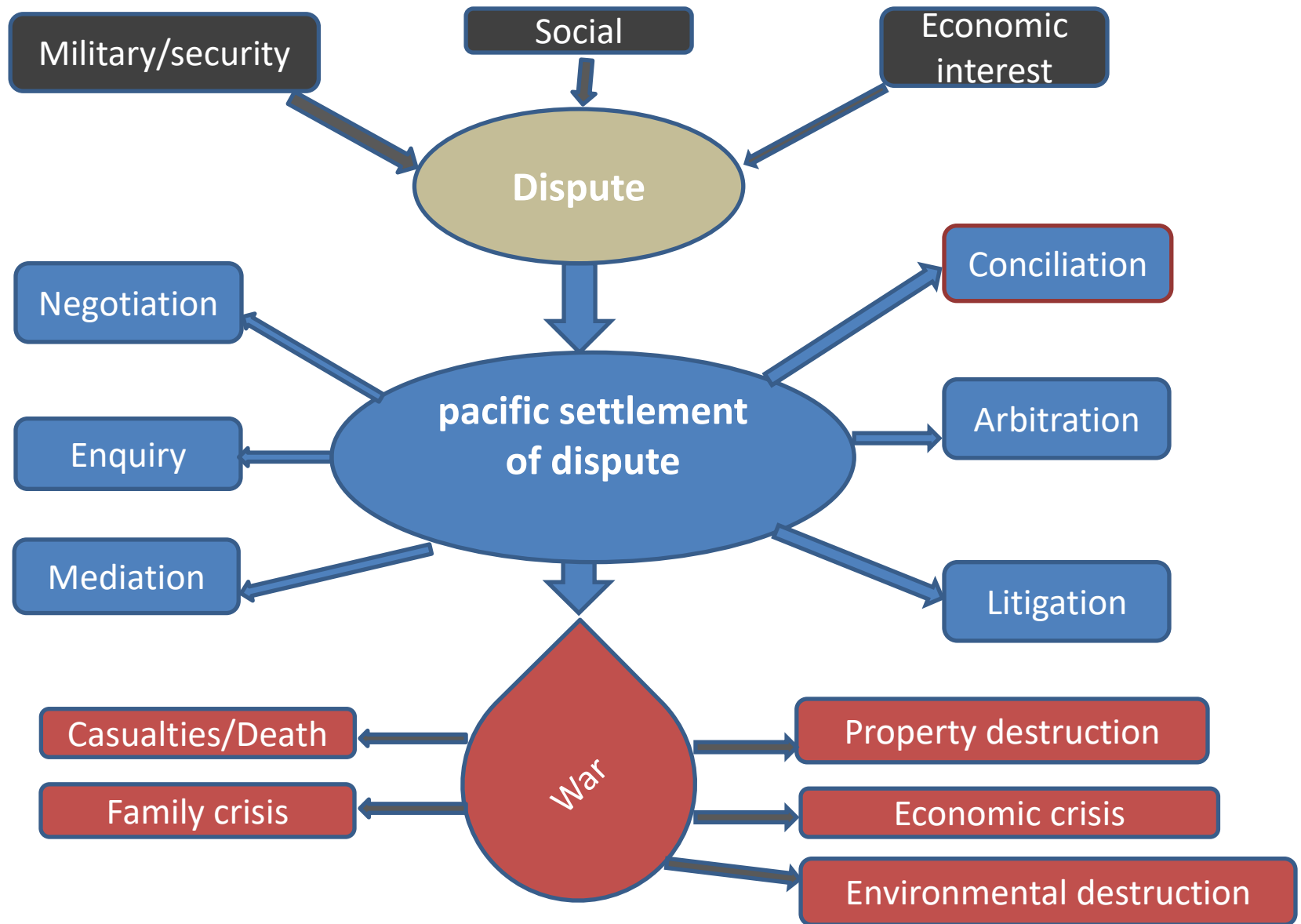


IHL



Chapter 1: Concept and Purpose of IHL:



War/armed conflict:

- It is state of armed conflict b/n states, governments & informal paramilitary groups such as mercenaries, insurgents & militias
- Characterized by extreme violence, aggression, destruction, mortality using regular or irregular military forces

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❖ **Types of warfare:**

- **Asymmetric warfare:** between belligerents of drastically different levels of military capability
- **Conventional warfare:** declared war b/n states
- **Civil war:** same nation or political entity
- **Cyber warfare:** to attack & attempt to damage another nation's information systems
- **Total warfare:** warfare by any means possible, disregarding the laws of war placing no limits on legitimate military targets

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- **Nuclear warfare:** war involving nuclear weapon



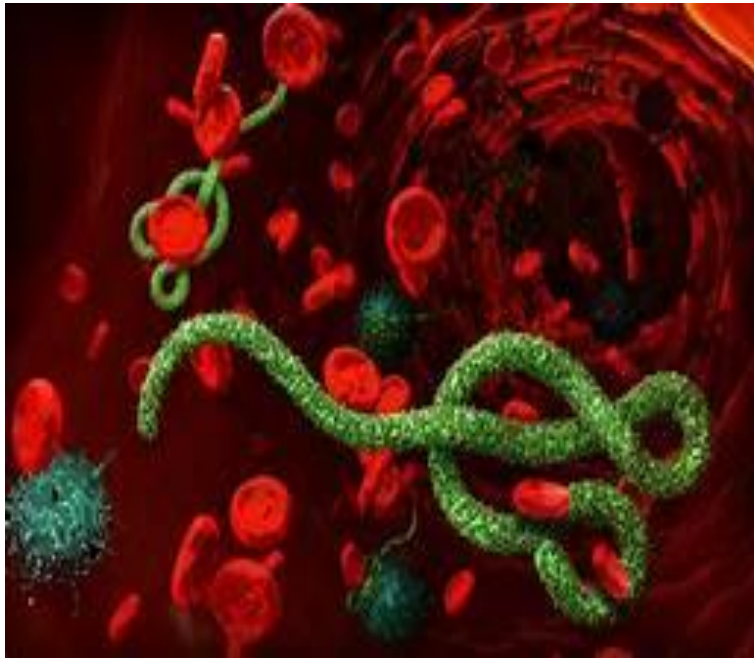
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Chemical warfare: use of weaponized chemicals in combat



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Biological warfare (germ warfare): the use of weaponized biological toxins or infectious agents- bacteria, virus & fungi, in combat



Ebola virus



pathogenic bacteria (lethal)

...cont'd

- Cyber warfare





War



- War results in immeasurable sufferings
- **Nuremberg Tribunal**: described war as “evil”
- Effect: Civilian casualties & destruction of cities/environment

❖ Syria:





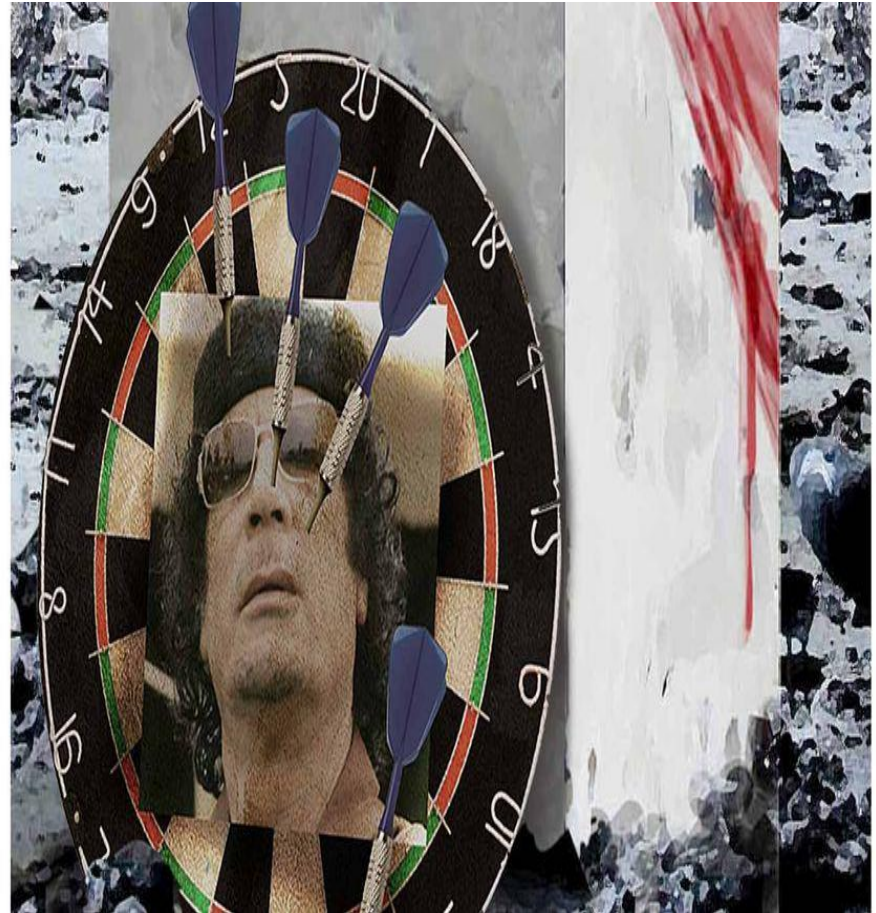
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❖ Libya



Until Tuesday, most Nato air strikes in Tripoli had been carried out at night





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❖ IHL:

- Called the “**law of armed conflict**”, “law of war”
- It is part of international law, but applied only to **armed conflict** (Common Article 2, GCs)
- It applies whenever armed conflict breaks out no matter for whatever reason
- Also concerned about the fate of the people who are not taking part in the conflict
- Limits the means & methods of warfare



...cont'd



Purpose of IHL:

- Ensuring peace among people
- Promote humanity in times of war by:
 - ✓ Limiting the means & methods of warfare &
 - ✓ preventing complete barbarity



Historical Development of IHL



❖ Controlling war:

➤ Clausewitz (1780- 1831)

Prussian general and military theorist.

“The soldiers trade, ... has to be anchored to an unshakable code of honor. Otherwise those of us who follow the drums become nothing more than a bunch of hired assassins, walking around in gaudy clothes... a disgrace to God and mankind.”





...cont'd



➤ **Disarmament**- 19thC

- Proposed by Russia, France, Britain & Denmark
- Armament and armed forces cost money. The budget is huge & fearsome

➤ **Arbitration**: 19th C

- Aimed to resolve international conflict by peaceful & rational means
- 25 arbitration treaties & 212 arbitral awards in 19th C



...cont'd



➤ **Hague conferences** (1899 & 1907):

- Called peace conferences
- Aim: disarmament

Outcome:

- Attempt to create “compulsory arbitration” forum to settle international dispute was failed;
- **“Permanent Court of Arbitration”** (PCA) was established- voluntary forum of arbitration
- Adopted Hague Conventions:



...cont'd



1. Conventions for the Pacific Settlement of International Dispute
 - Created PCA- operative until today
2. Conventions with respect to the Laws & Customs of War on land:

Innovations:

✓ Treatment of POW





...cont'd



- ✓ Prohibited looting town, the killing of enemy combatant, bombardment of undefended towns, collective punishment, etc
- 3. Convention for the Adaptation of Maritime Warfare
- 4. Declaration concerning the **prohibition of the use of projectiles** with the sole object to spread asphyxiating poisonous gases (deleterious gases)
- 5. Declaration concerning the use of bullets which can easily expand or change their form inside the human body



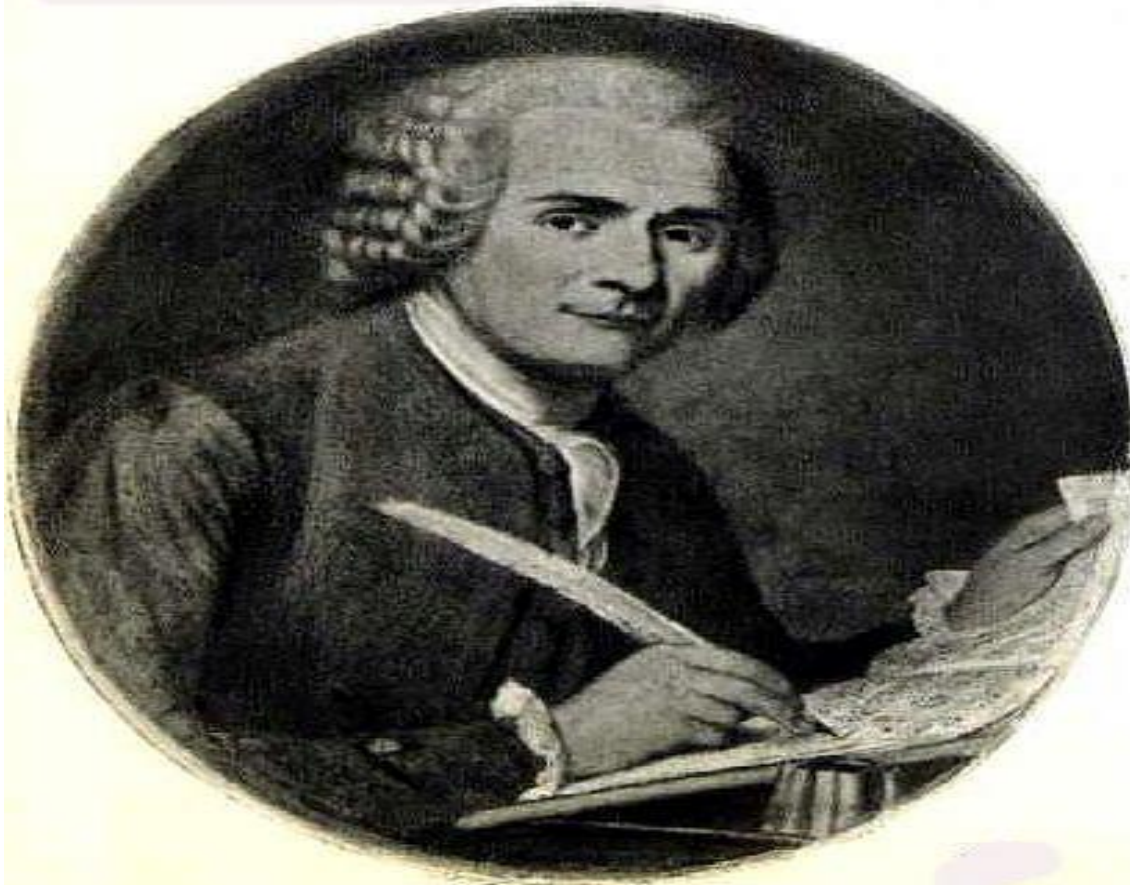
Geneva Conventions of 12 August 1949



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- Jean-Jacques Rousseau (1712 – 1778):





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“War is in no way a relationship of man with man but a relationship between States, in which individuals are only enemies by accident, not as men, nor even as citizens, but as soldiers...”

“Since the object of war is to destroy the enemy State, it is legitimate to kill the latter's defenders **as long as they are carrying arms**; but as soon as they lay them down and surrender, they **cease to be enemies or agents of the enemy**, and again become mere men, and it is no longer legitimate to take their lives.” **Rousseau (1762)**

✓ **Humanity, distinction**



...Cont'd



Henry Dunant (1828- 1910):

- Book- “A Memory of Selferino”- (1862)
- First noble peace prize winner (1901)



...cont'd



- **Battle of Solferino 1859** (France v Italy)
- Concluded with the victory of French allies
- **40,000** wounded soldiers left on the field due to lack of facilities & lack of medical personnel





...cont'd



- He proposed:
 - ✓ an international agreement on the “**neutralization of medical personnel in the field**”
 - Led to the adoption of the first Geneva Convention in **1864**
 - ✓ the creation of a permanent organization for practical assistance to the war wounded.
 - Led to the creation of **Red Cross in 1863**





...cont'd



Development of Geneva Conventions:

- **1864**- Amelioration of the Condition of the Wounded Armies in the Field
- **1906**- Revised
- **1929**- Revised (included treatment of POWs)
- **1949**- full range of GCs
- **1977**- Additional Protocols I (IAC) & II (NIAC)



...cont'd



Geneva Conventions of 12 August 1949:

1. **Convention I:** Ameliorations of the Conditions of wounded & sick at the field (revised, expanded in 1864, 1906, 1929 & 1949)
2. **Convention II:** Ameliorations of the Conditions of wounded, sick & shipwrecked at Sea (1906 & 1949)
3. **Convention III:** Treatment of Prisoner of War (POWs) (1929 & 1949)
4. **Convention IV:** Protection of Civilian Persons in time of war
5. Additional Protocol I- Protection of victims of IAC (1977)
6. Additional Protocol II- Protection of victims of NIAC (1977)
7. Additional Protocol III- Adoption of additional distinctive emblem

Just war theories

- Jus ad bellum
 - ✓ Legality/authority to use force
- Jus contra bellum
 - ✓ Prohibition of use of force
- Jus in bello
 - ✓ Right conduct in war (comply with IHL rules)
- Jus post bellum
 - ✓ Right conduct after war

Jus ad bellum

➤ **Just cause**

- ✓ Innocent life must be in imminent danger and intervention must be to protect life;
- ✓ **US Catholic Conference (1993):** *“Force may be used only to correct a grave, public evil, i.e., aggression or massive violation of the basic human rights of whole populations.”*

➤ ***Legitimate authority:***

- ✓ Only duly constituted public authorities may wage war.

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➤ **Right intention-**

- ✓ not for punishing the wrong doer or for material gain

➤ **Probability of success**

➤ **Last resort**

- ✓ Force may be used only after all peaceful and viable alternatives have been seriously tried and exhausted or are clearly not practical



❖ ***Jus ad bellum:***

- Right to wage war (the right to go to war)
- legality to use force
- Art 2(4)UN Charter & A/RES/25/2625, para 1:

“... shall refrain from the **threat or use of force** against the **territorial integrity or political independence** of any state, ... **inconsistent with the Purposes of the United Nations.**”

 - Use of force & threatening to use force is prohibited
 - ***Jus contra bellum***- law on the prevention of war- (Art 2(4) UNC
- **NATO Treaty (4 April 1949):**
 - ✓ Art 1- Prohibits the **threat or use** of force by member states

...cont'd

Exceptions on use of force:

1. When the UNSC decides (Art 39 of UNC):

*“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make **recommendations, or decide** what measures shall be taken in accordance with Articles 41 and 42, to **maintain** or **restore** international peace and security.”*

- **Art 41: Non-forceful measures:**

- interruption of economic relations &
- Interruption of rail, sea, air, postal, telegraphic, radio, and other means of communication, &
- the severance of diplomatic relations

...cont'd

- **Art 42 UNC: Forceful measures**

- If the non-forceful measures doesn't workout,
- include: forceful action by air, sea, or land forces
- Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the UN
- When it is necessary to maintain or restore international peace and security

...cont'd

2. Self-defense

- ✓ Individual v. collective self-defense measure
- ✓ retaliatory force against repressive nations that break the non-aggression principle

- **Art 51 of UN Charter:**

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense **if an armed attack occurs** against a Member of the UN, until the Security Council has taken measures necessary to maintain international peace and security.”

...cont'd

- **Art 5 of NATO treaty:**

*“...an **armed attack** against one or more of them ...shall be considered an **attack against them all** and consequently..., each of them, in exercise of the right of individual or collective self-defense recognized by Art 51 of the UN Charter, will assist the Party or Parties so attacked by taking forthwith, **individually and in concert** with the other Parties, such action as it deems necessary, including the **use of armed force**, to restore and maintain the security of the North Atlantic area.”*

...cont'd

- When do you engage in self-defense?

According to ICJ:

- ✓ Necessity
- ✓ Proportionality

In terms of Immediacy:

- ✓ **Anticipatory**: anticipating attack & taking preventive measures before the attack
- ✓ **Reactive**- measure after armed attack



...cont'd



❖ ***Jus in bello:***

- The right conduct within war
- law in the use of force
- addresses the practices forbidden during a war
- Includes principles of:
 - ✓ distinction- legitimate targets
 - ✓ Proportionality- how much force could be used
 - ✓ Military necessities –indispensable measure to end the war



Autonomy of *jus in bello*:



- “...provisions of the GC of 12 August 1949 and of this protocol must be fully applied **in all circumstances** to all persons who are protected by those instruments **without any adverse distinction based on the nature or origin of the armed conflict or on the causes**...” (Protocol I to GC, para 4)
- “The High Contracting Parties **undertake to respect and to ensure respect** for the present Convention in **all circumstances.**” (Art 1 common to all GC)
- IHL applies to armed conflict regardless of the reason/legality of its cause
- ***Jus ad bellum***-determined by UNC; *jus in bello* -determined by GCs and its additional protocols.
- **The violation of *jus ad bellum* cannot justify the violation of *jus in bello*!!!**



...cont'd



- **Discussion:**

State A resorted to use of force against State B in contravention of UN Charter. Is IHL or *jus in bello* applicable to:

State A?

State B.....?

Jus post bellum

- Right conduct after war
- Concerns justice after a war, including:
 - ✓ [peace treaties](#),
 - ✓ [reconstruction](#),
 - ✓ [war crimes](#) trials &
 - ✓ [war reparations](#).



Scope of application of IHL



- IHL- applicable only on armed conflict
- Application of IHL doesn't depend on :
 - ✓ a formal declaration of war
 - ✓ whether the parties to a conflict recognize one another as states or not (Israel – Arab conflict)



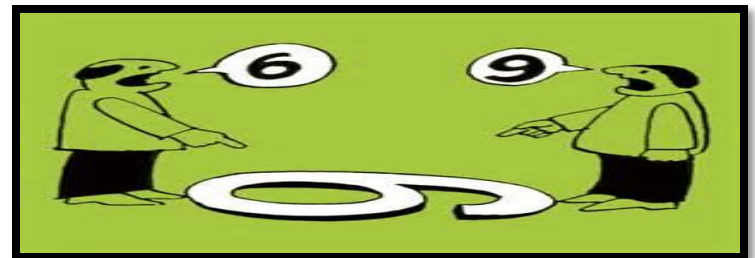
IHL v. IHRL



- IHL- apply only when there is “armed conflict” -declaration of war is not necessary (Com Art. 2 of GC)
- IHRL- apply everywhere every time (at state of peace and conflict).
- ICJ -Protection by IHRL doesn't cease in armed conflict:
 - ✓ *Legality of use of nuclear weapons*, Para 24
 - ✓ *Construction of Wall in Palestinian territory*, Par 106

Armed conflict- (ICRC Commentary):

“***any difference*** arising between two states and leading to the **intervention** of the members of the armed forces is an **armed conflict**”





...cont'd



- IHL applies to all armed conflict between conflicting parties;
- IHL applies during the UN peacekeeping & enforcement actions



Sources of IHL



❖ Sources of international law:

Art 38 of ICJ Statute:

- International conventions,
- International customs- general practices accepted as law (CIL)
- general principles of law,
- Judicial decisions & the teachings of the most highly qualified publicists

Sources of IHL:

I. Treaties

1. Hague Conventions:

- Conventions with respect to the Laws & Customs of War on land (1907);
- Convention for the Adaptation of Maritime Warfare;
- Declaration concerning the prohibition of the use of projectiles with the sole object to spread asphyxiating poisonous gases (deleterious gases);
- Declaration concerning the use of bullets which can easily expand or change their form inside the human body;
- Conventions for the Pacific Settlement of International Dispute;
- The 1954 Protection of Cultural Property in the Event of Armed Conflict (Additional protocols of 1954 & 1999)

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2. Geneva Conventions (I, II, III & IV) and AP I, II & III

- ✓ GCs are the most codified & universally accepted treaties
- The four GCs- ratified by 196 states including Palestine
- AP I: 174 states parties
- Ap-II: 168 "
- AP III: 73 "

3. Rome Statute of the International Criminal Court

II. Customary international law- applicable to:

- ✓ non- parties to GC,
- ✓ where states makes reservation to GC

III. Cases laws



Fundamental Principles of IHL



1. Principle of military necessity:

Art 14 - Lieber Code(1863):

“Measure indispensable for securing the end of the war & which are lawful according to modern law & usage of war”

- *Attacks shall be limited strictly to **military objectives**!!*
- “Every injury done to the enemy, even though permitted by the rules, is excusable only so far as it is absolutely necessary; everything beyond that is criminal.” [Solis, Law of Armed Conflict p 258]
- Measures should be limited to the ***amount strictly required to achieve concrete & direct military advantage***.
- Military necessity can't justify violation of IHL! It Can't justify taking certain measures prohibited by IHL- use of biological weapon, killing of POW!
- It protects combatants!



...cont'd



2. Principle of humanity:

- War is a relation b/n states, not b/n men (Rousseau)
- War- to weaken the enemy state so , *it is legitimate to kill its defenders as long as they are carrying arms.*
 - Protection & care for the wounded, sick & shipwrecked(Art 12-16, GC I, Art 12-21 GC II)
 - Burial or cremation of the dead (Arts 17 GC I ; 20 of GC II)
 - Protection for POWs- Common Art 3 of GCs
 - Protection for medical Units, hospital ships & medical personnel medical transport, medical air craft (Art 19, 24, 33, 35 & 37 of GC I; Art 22, 36,38,39, etc)



3. Principle of distinction

- Combatants v. civilians ;
 - ✓ **Art 43(2)AP I**- members of armed forces are combatants
 - ✓ **Art 51**- a person who isn't combatant is civilian
- Combatants should distinguish themselves from civilian
- Civilian objects v. military objects
 - ✓ Civilian objects cant be object of attack or reprisal (Art 52(1) AP I)
 - ✓ **Military objects** (Art 52(2) AP I):

*“...those objects which by their **nature, location, purpose** make an effective contribution to military action and whose ...destruction, capture or neutralization ... offers a definite military advantage.”*

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- Military objectives by nature:
 - ✓ combatants, armored fighting vehicles, weapons, fortifications, combat aircraft & helicopters, supply depots of ammunition & petroleum, etc
- Military objectives by their location:
 - ✓ bridge, road, mountain
- Military objectives by their purpose:
 - ✓ Civilian buses or trucks - being transported to the front to move soldiers from point A to B

ICJ: PPL of distinction is one of the cardinal principle of law of war!!!



...cont'd



- Civilian can be targeted if they take part in hostilities (Art 51(3) AP I)



- Military objectives can be targeted!



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❑ Challenges to PPI of distinction:

- The rise of NIAC
- Terrorism
- The rise of killer robots (LAR) & drones



military drones

Killer robots



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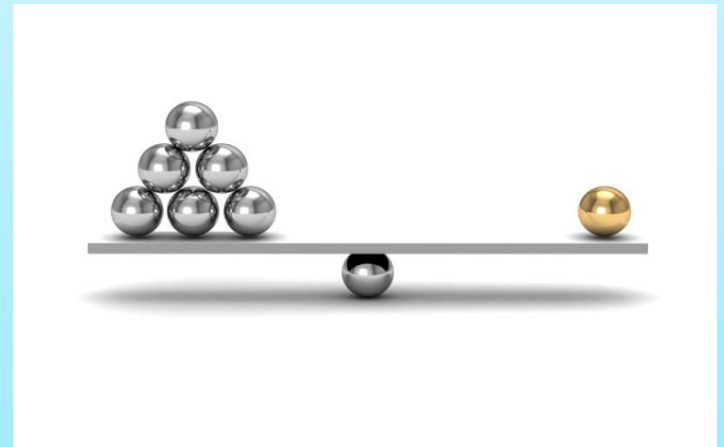


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4. Principle of proportionality:

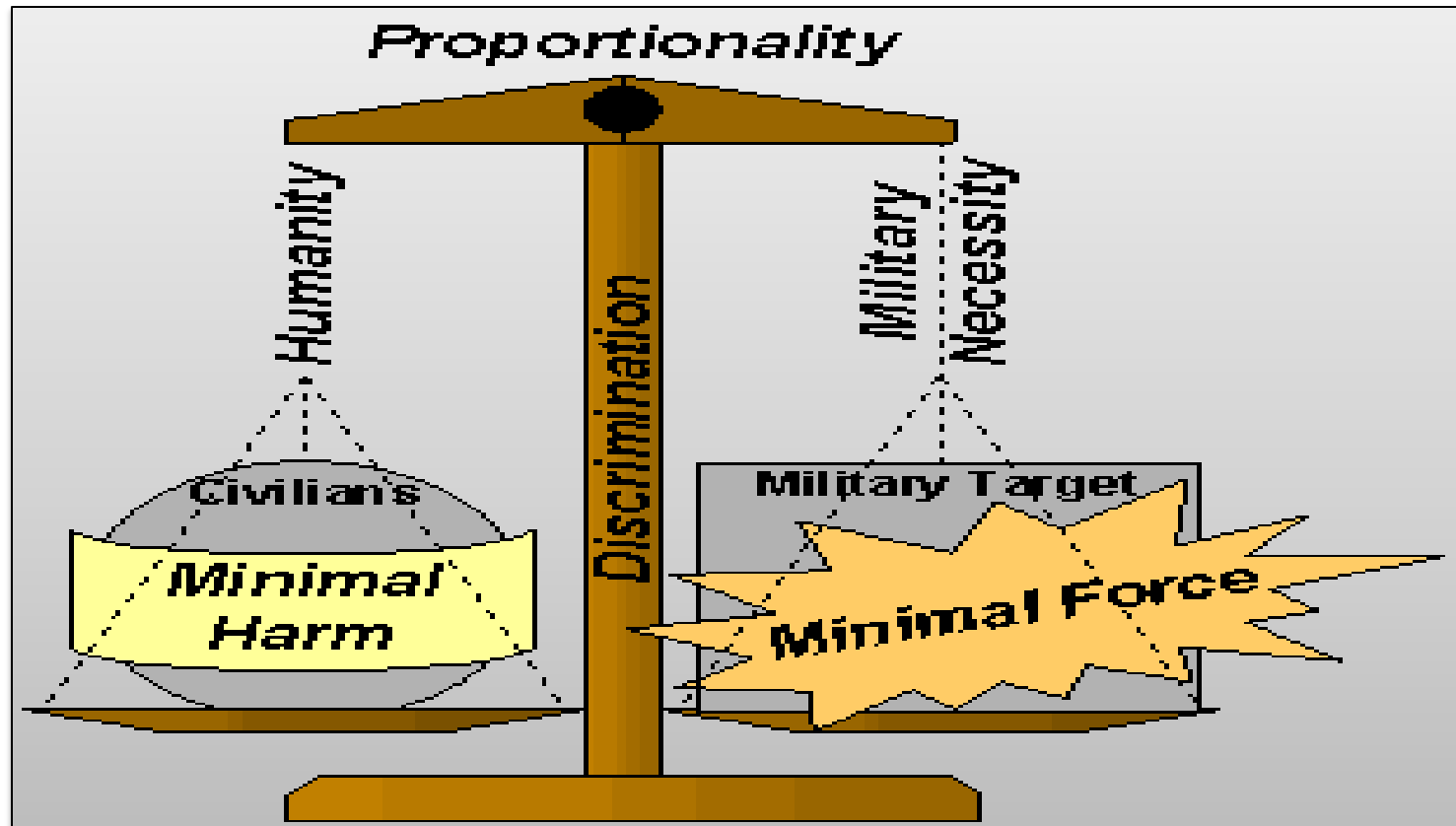
- Balancing or weighing the risk in terms of its advantage:

“Loss of life and damage to property *incidental* to attacks **must not be excessive** in relation to the concrete and direct military advantage expected to be gained.” (U.S. Army Field Manual)



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- Proportionality in IHL (Art 57 - 58 AP I):



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- **'Incidental'**: outside of the military target;
- when considering a target the damage to civilians and their property **cannot be excessive** in r/n to the military advantage gained;
- This principle brings with it an obligation to consider all options when making targeting decisions: verify the target, timing, weapons used, warnings and evacuations for civilian populations.
- **Proportionality is not a requirement if the target is purely military.**
- It protects non-combatants!!

...cont'd

Proportionality requires:

- ✓ **Distinguishing** civilian from combatant & military objectives from civilian objects;
- ✓ Take **feasible precautionary measures**
- ✓ **refrain** from any attack which may cause incidental loss of civilian life & of their properties, which would be excessive in r/n to military advantage
- ✓ Effective warning
- ✓ Prohibit an indiscriminate attack (AP I- Art 55(4) & (5))

AP I: Art. 51 — Protection of the civilian population

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- a) those which are not directed at a specific military objective;
- b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
- c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

- a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects;
- b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

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- Art 58 of AP I: suggests:
 - ✓ Removing civilian population & civilian objectives from the vicinity of military objectives
 - ✓ Avoid locating military objectives within or near densely populated areas

4. Avoiding unnecessary Suffering

- It is prohibited to employ weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.” (AP I, Art 35(2))
- It protects Combatants