

Introduction to International Humanitarian Law



General Introduction, Definitions and Fields of Application

- ❑ Do we need international humanitarian law, since the UN Charter outlaws war?
- ❑ However, wars continue to happen, and self-defence, collective security exists
- ❑ IHL is a balance between military necessity and humanitarian principles
- ❑ Developed out of the battlefield

International Humanitarian Law

International Humanitarian Law (IHL) What it is:

- IHL is a branch of public international law established by Custom and Treaties, that applies to situations of armed conflicts, whether IAC or NIAC
- It is a set of rules which seeks, for humanitarian reasons, to limit the effects of armed conflict.
- IHL is also known as the '*Law of War*' or '*Law of Armed Conflict*'.

Purposes of IHL

- reduce the unnecessary suffering, loss & damage in time of armed conflicts
- safeguard the fundamental human rights & dignity of persons
- facilitate the restoration of peace

Basic Idea of IHL

"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, but as soldiers that soldiers may only be fought as long as they themselves are fighting. Once they lay down their weapons "they again become, mere men". Their lives must be spared.

Jean-Jacque Rousseau in *The Social Contract* 1762

IHL : How does it protect?

□ In two ways...

↗ by protecting persons who do not or no longer participate in hostile action (Geneva Law)

↗ by limiting the choice of means and methods of conducting military operations (Hague Law)

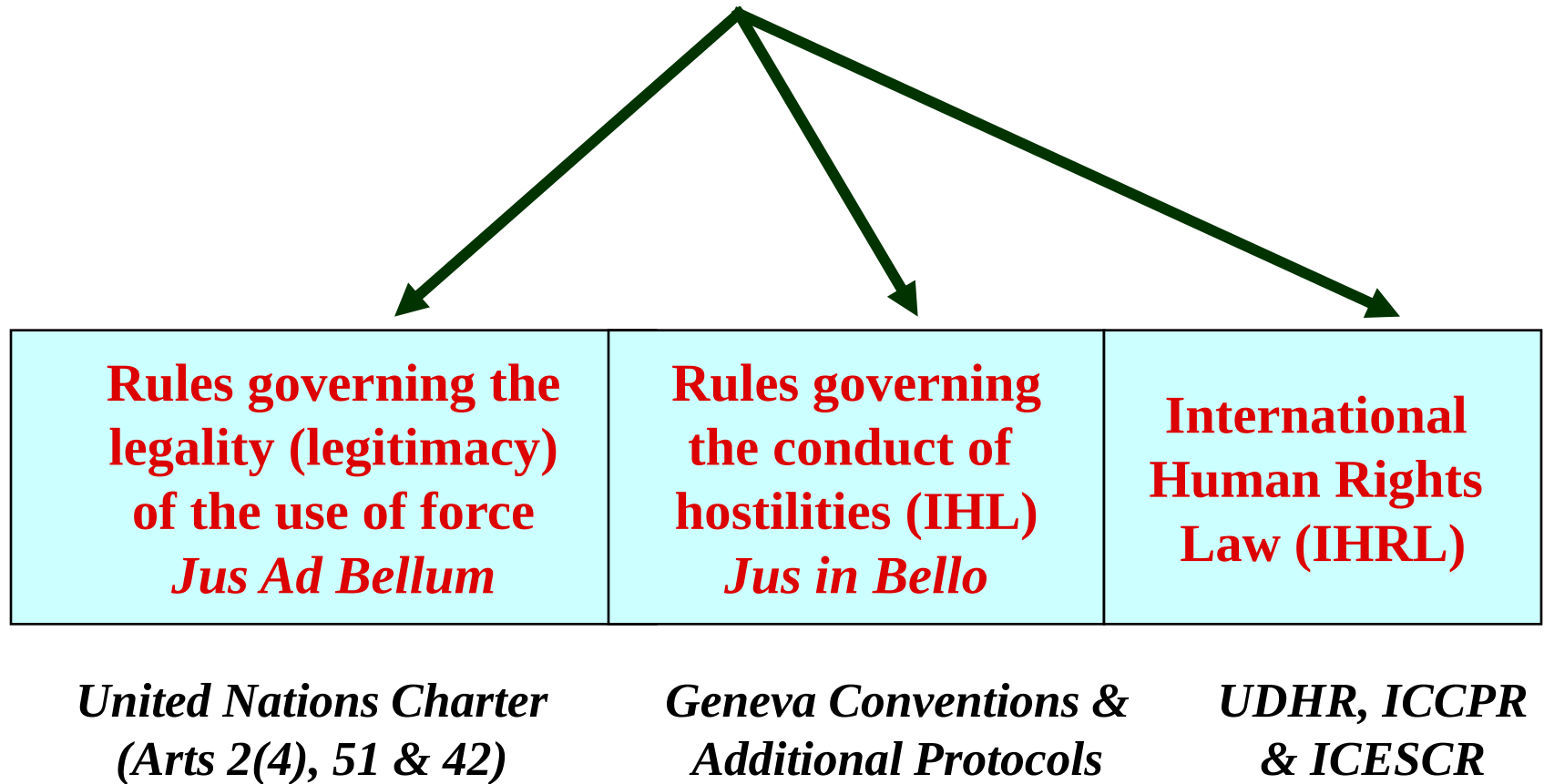
IHL and Legal Context

THE INTERNATIONAL LEGAL CONTEXT

(what law applies?)

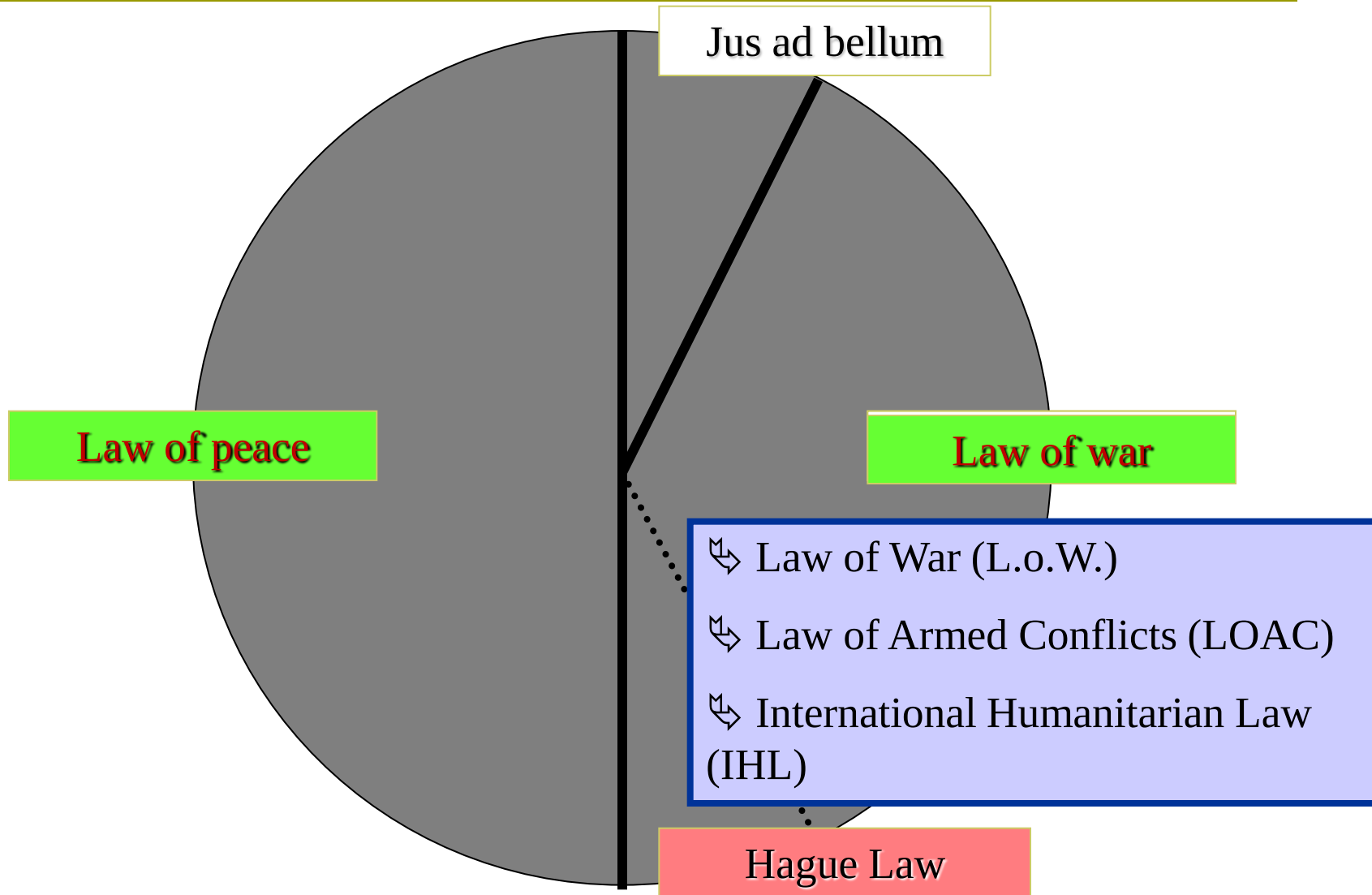


IHL & the International Legal Framework



Public International Law and IHL

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- Prohibition of the use of force, except
 - self defense, whether individual or collective
 - with the authorization of the Security Council under Chapter VII



Jus ad bellum – *United Nations Charter*

DEFINITION

- IHL must be fully applied in all circumstances to all persons who are protected... without any adverse distinction based on the nature or origin of the armed conflict or on the cause espoused by or attributed to the Parties to the conflict.



Jus in bello – International Humanitarian law

Sources of International Law

- ❑ **CONVENTIONS:** Agreements between States setting forth new rules of international law
- ❑ **CUSTOM:** General practice followed by states (*State Practice*) accepted as law (*Opinio Juris*)
- ❑ **COURTS / TRIBUNALS:** Decisions from international and domestic courts / tribunals (*IMT, ICTY, ICC, Finta, Eichmann, Pinochet*)
- ❑ **ARTICLES & PUBLICATIONS:** Writings and teachings of distinguished academics, scholars, etc.

ICJ Statute – Article 38

IHL Legal Instruments

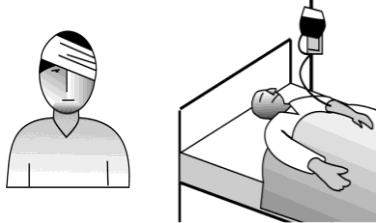
ORIGINS & KEY LEGAL INSTRUMENTS

(Is always one war behind? Or is it trying to mitigate the problems of war)

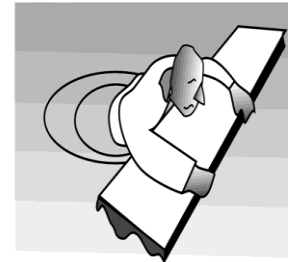
Key Legal Instruments/Treaties

- ❑ **1864 GENEVA CONVENTION**
- ❑ **1868 ST. PETERSBURG DECLARATION**
- ❑ **1899 & 1907 HAGUE CONVENTIONS**
- ❑ **1925 GENEVA GAS PROTOCOL**
- ❑ **1929 GENEVA CONVENTIONS FOR PRISONERS OF WAR**
- ❑ **1949 GENEVA CONVENTIONS 1949**
 - **GCI:** Wounded and Sick
 - **GCII:** Wounded, Sick and Shipwrecked
 - **GCIII:** Treatment of POWs
 - **GCIV:** Protection of Civilian Persons
- ❑ **1977 ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS**
 - **API:** International Armed Conflict
 - **APII:** Non-International Armed Conflict
- ❑ **TREATIES PROHIBITING / LIMITING THE USE OF WEAPONS**
- ❑ **1998 INTERNATIONAL CRIMINAL COURT (ROME) STATUTE**

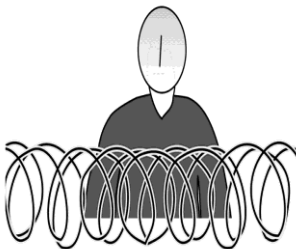
THE GENEVA CONVENTIONS -1949



wounded, and sick on land



shipwrecked, wounded and sick at sea



prisoners of war (POWs)



civilians

Apply in international armed conflict

Sources of IHL - over 100 treaties including

- Four Geneva Conventions of 1949
- 1st Additional Protocol of 1977 (API) – international armed conflicts, protection of civilians
- 2nd Additional Protocol of 1977 (APII) – non international armed conflicts
- 3rd Additional Protocol of 2005 – re additional emblem
- Weapons treaties (eg. Ottawa Convention, Chemical Weapons, Biological W, Certain Conventional Weapons),
- Convention on protection of Cultural Property
- Child Soldiers
- ICC – war crimes
- Customary Law

Fundamental Principles of IHL

□ **Fundamental Principles of IHL - Developed from this history**

- **Military Necessity**

- **Humanity**

- **Proportionality**

Military Necessity

↗ Principle :

- ↗ It is permissible to use those measures not forbidden by international law which are necessary to secure the complete submission of the enemy as soon as possible with the least expenditure of personnel & resources.
- ↗ Recognises that use of force during armed conflict is legal, within the limits set out by IHL.
- ↗ Further recognises that legitimate military targets can be attacked/destroyed and enemy combatants killed, for legitimate military purposes.

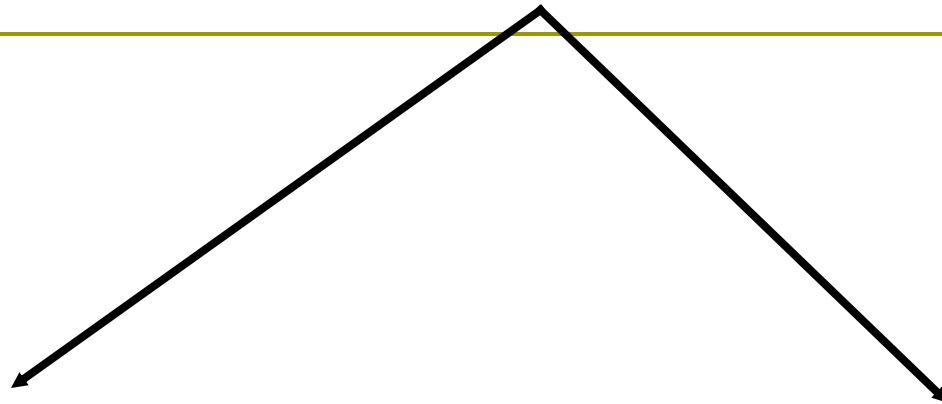
Humanity

↗ Principle :

- ↗ It is forbidden to inflict suffering, injury or destruction not actually necessary to accomplish a legitimate military purpose.
- ↗ The very purpose of IHL
- ↗ Aims at protecting the victims of armed conflict

IHL Strikes a Balance:

between:



MILITARY NECESSITY

Use of armed force to attain legitimate military objectives & complete submission of the enemy is lawful.

HUMANITY

It is forbidden to inflict suffering, injury or destruction not actually necessary to accomplish a legitimate military purpose

The balance between **MILITARY NECESSITY** and **HUMANITY** is achieved through the application of the principle of **PROPORTIONALITY**.

Proportionality

➤ Principle :

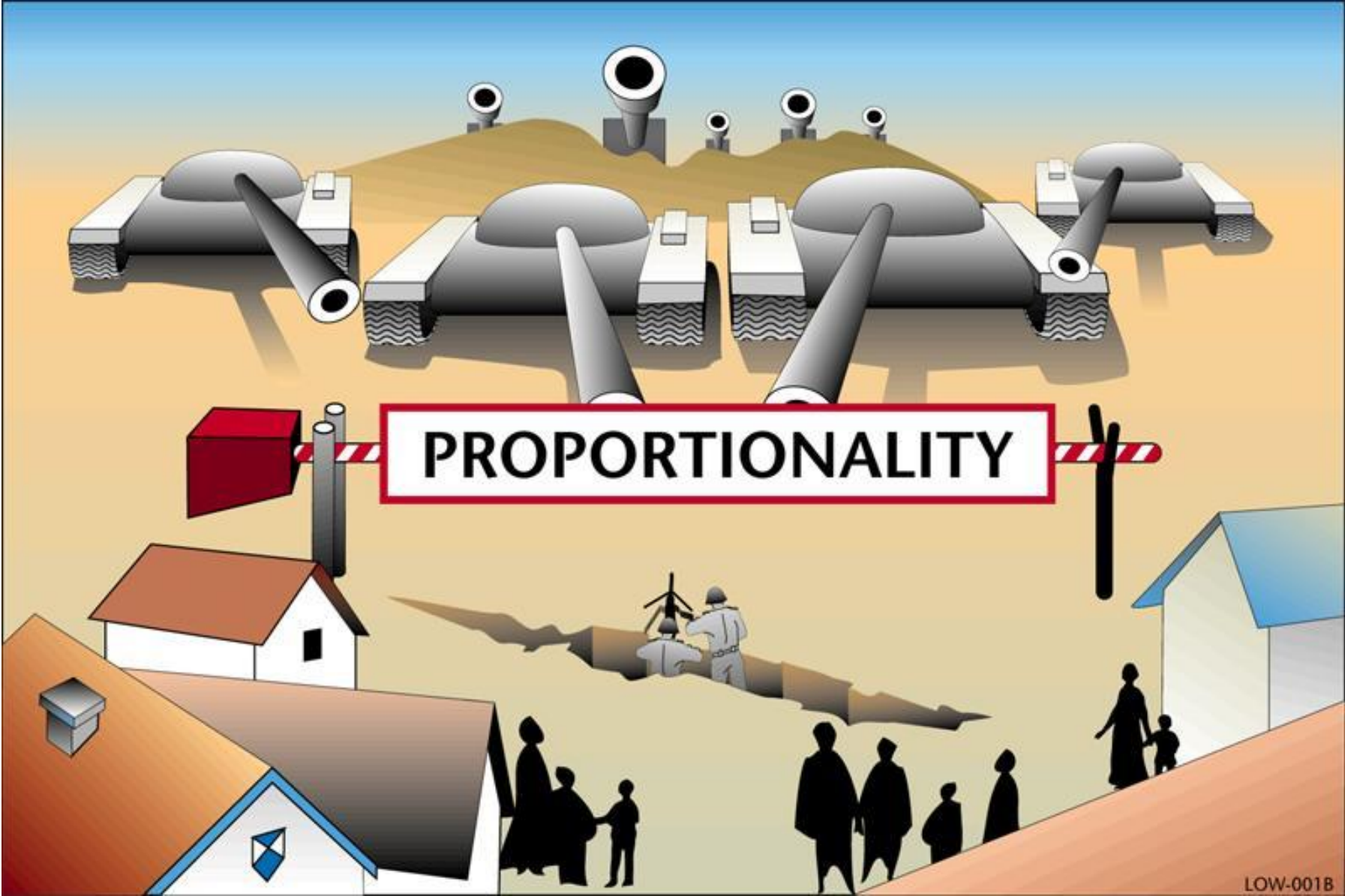
➤ *Collateral damage* shall be proportionate to the concrete and direct *military advantage* anticipated.

➤ What is a collateral damage ? :

☞ Collateral damages are incidental loss of civilian life, injury to civilians & damage to civilian objects.

➤ What is a military advantage ?

☞ A military advantage is the total or partial destruction, capture or neutralisation of a combatant or military objective necessary for the ultimate submission of the enemy.



PROPORTIONALITY

Fundamental Rules of IHL

▣ **FOUR FUNDAMENTAL RULES**

- **Limitation**
- **Distinction**
- **Precautionary Measures**
- **Superfluous Injury and Unnecessary Suffering**

Limitation

➤ Rule :

- ▣ **The right of Parties to a conflict to choose methods and means of warfare is not unlimited.**
- ▣ **Dates back to the St Petersburg Declaration (1868)**
- ▣ **Codified in modern IHL treaties (Article 35 of AP I)**

Distinction

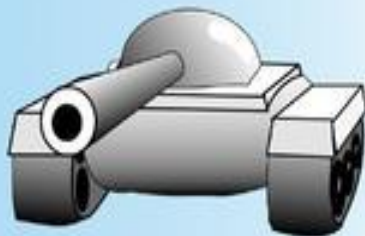
➤ Rule :

▣ Parties to a conflict shall at all times distinguish between :

- the civilian population and combatants
- military objectives and civilian objects

▣ Attacks shall be directed solely against combatants and military objectives.

DISTINCTION



Distinction - Civilians

"A civilian is any person who does not [have the status of combatant]."

"In case of doubt whether a person is a civilian, that person shall be considered to be a civilian."

"Civilians shall enjoy the protection afforded by [IHL], unless and for such time as they take a direct part in hostilities."

Distinction-Combatant

- ❑ See GC III Art. 4 & AP I Art. 43 (Hague IV, 1907, Art.1)
- ❑ Members of AF groups and units that are under a command responsible to the Party for the conduct of its subordinates
- ❑ Not chaplains & medical personnel (no right to participate)
- ❑ Members of militia & volunteer corps who:
 - (1) are commanded by a person responsible for his or her subordinates;
 - (2) have a distinctive emblem recognisable at a distance;
 - (3) carry arms openly;
 - (4) conduct operations in accordance with IHL.

Distinguishing can be difficult



Civilian Objects and Military Objectives

"Civilian objects are all objects which are not military objectives."

"...objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."

Distinction - Target Selection

Military objectives (Art. 52(2) API)

1. Objects which by their **nature, location, purpose or use** make an **effective contribution to military action** and
1. whose total or partial **destruction, capture or neutralization**, in the circumstances ruling at the time, offers a **definite military advantage**

Indiscriminate Attack

- ↪ those which are not directed at a specific military objective;
- ↪ those which employ a method or means of combat which cannot be directed at a specific military objective; or
- ↪ those which employ a method or means of combat the effects of which cannot be limited as required by [IHL].

Precautionary Measures

➤ Rule :

- ▣ During military operations, all feasible precautions must be taken to spare the civilian population and objects and protect them against the dangers resulting from the effects of hostilities.
- ▣ Verify that objectives are legitimate military targets.
- ▣ Avoid locating military objectives within or near the civilian population.
- ▣ Related to the principle of Distinction

Superfluous injury & unnecessary suffering

➤ Rule :

- ▣ The use of weapons, materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering is prohibited.
- ▣ (Related) It is prohibited to use methods & means of warfare which are intended (or may be expected) to cause widespread, long-term and severe damage to the natural environment.

Types of Conflicts and Applicable Law

- International Armed Conflict - Geneva Conventions, Customary IHL, API (where ratified)
- Non-International Armed Conflict – Four Geneva Conventions Common Article 3, Customary IHL, APII (where ratified)
- Internal Disturbances and Tensions – i.e., below threshold of Armed Conflict, domestic Law and Human Right Law

International Armed Conflicts

- ❑ Between two or more States (no threshold of application)
- ❑ Includes all cases of occupation
- ❑ National liberation wars
- ❑ Internal conflict with external intervention

GCs and AP I apply

Non- international Armed Conflicts

- ❑ Non-international armed conflicts - under Common Article 3
 - Any other type of non-international armed conflict provided:
 - ❑ A minimum of organisation
 - ❑ Military operations
 - ❑ Minimum of intensity

Internal disturbances and tensions - No application of IHL

Non-international Armed Conflicts

- ❑ Non-international armed conflicts under AP II
 - forces of a State against organised armed groups...
 - Under responsible command
 - Exercise armed control over a part of the territory
 - Carry out sustained or concerted military operations
 - Able to implement Additional Protocol - II

September 11th, 2001...



What law applies here...



Madrid & London bombings – what law applies

The changing nature of conflict... what law applies?





Enforcement & Accountability...

AP

MARTENS CLAUSE

AP I

... in cases not covered ...,
civilians and combatants
remain under the protection
and authority of the
principles of international
law derived from ...

- established custom
- the principles of humanity
- the dictates of public conscience

AP II

... in cases not covered
by the law in force, the
human person remains
under the protection of
...

- ---
- the principles of humanity
- the dictates or the public conscience

The content of IHL

- Respect for persons who do not participate in hostilities or who are *hors de combat*.
- Prohibition against killing or injuring an enemy who surrenders or who is *hors de combat*.
- The wounded and sick shall be collected and cared for
- Respect for lives and dignity of captured combatants and civilians
- Judicial guarantees
- The choice of means and methods of warfare is limited
- Distinction

Thank you for your attention!!!!