

IHL in NON-INTERNATIONAL ARMED CONFLICTS

and HUMAN RIGHTS LAW

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IHL IN NON-INTERNATIONAL ARMED CONFLICTS

Concept of Armed Conflicts

- Once an armed conflict exists, any action taken for reasons related to that conflicts is governed by IHL
- An armed conflict exists whenever recourse is had to armed forces or belligerent occupation between states - International Armed Conflicts (IAC); or
- When a protracted armed violence takes place between governmental authorities and organized armed groups or between such organized armed groups - non-international armed conflicts (NIAC)

Concept of Armed Conflicts

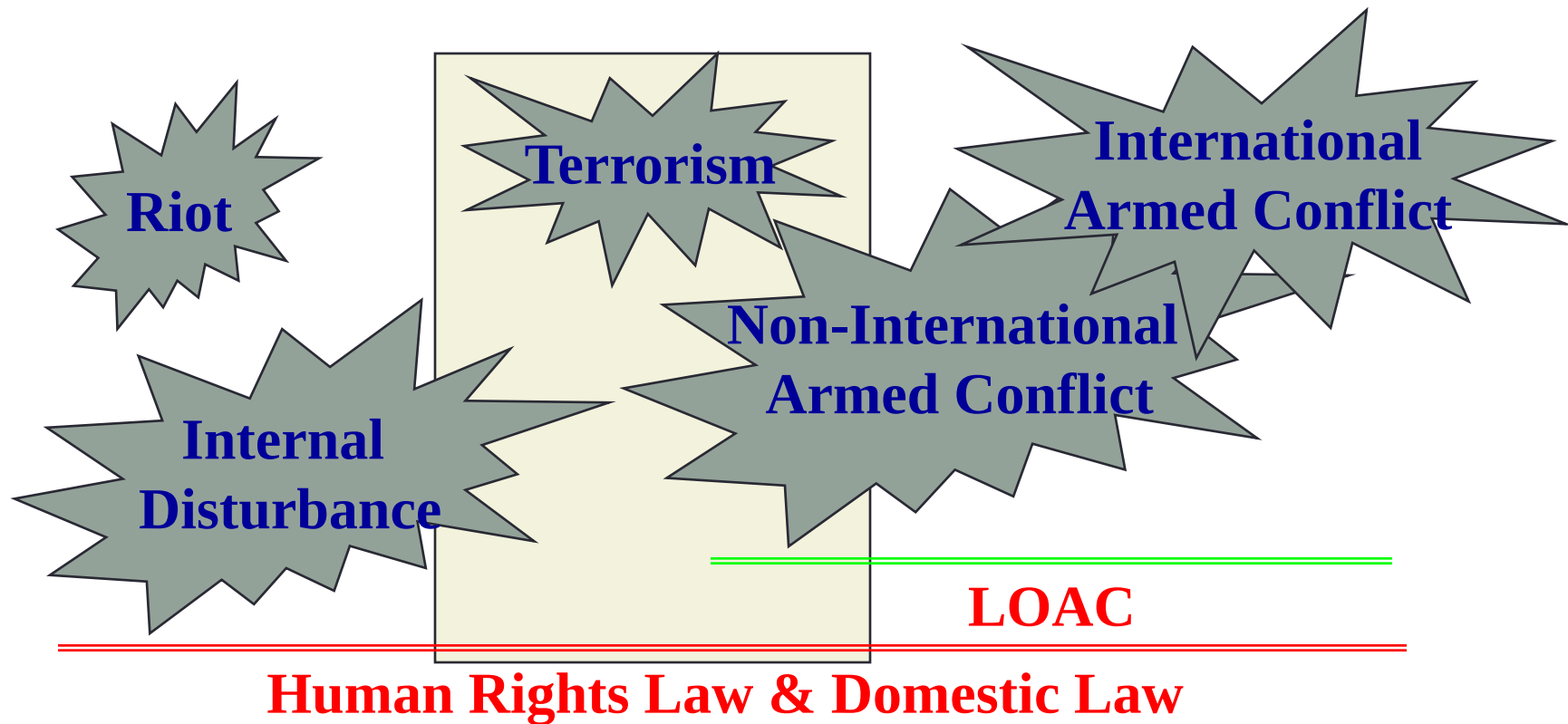
- Belligerent occupation exists to the extent, and for as long as one state maintains military authority over all or part of the territory of another state, even if such occupation encounters no armed resistance
- Armed conflicts involving foreign (including multinational) intervention are deemed to be international or non-international in nature depending on whether they involve armed confrontations between states, or states and organized armed groups

Concept of Armed Conflicts

- Legally speaking there are no other types of armed conflict - International disturbances and tensions - riots, isolated and sporadic acts of violence and similar acts - do not amount to armed conflicts
- IHL is specifically designed to govern armed conflicts, as it contains detailed provisions regulating the means and methods of warfare and the protection of persons and objects having fallen into the power of belligerent party

THE CONCEPT OF 'ARMED CONFLICT'

What Law Applies?



Non-International Armed Conflicts (NIACs)

- The vast majority of the contemporary armed conflicts are waged, not between states, but between states and organized armed groups or between such groups - they are non-international in character (NIACs)
- IHL treaty mechanisms governs the NIACs, the foremost, of Common Article 3 Geneva Conventions and Additional Protocol-II
- Along with it a number of treaties on the regulations, prohibition or restriction of certain types of weapons also apply

WHAT IS AN INTERNAL ARMED CONFLICT ?

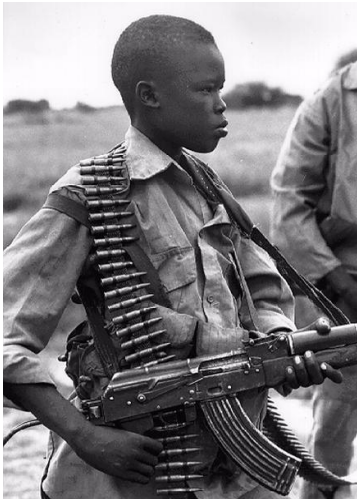
FOR GC COMMON ARTICLE 3:

Protracted armed conflict occurring in the territory of a State between government troops and organised armed groups

FOR ADDITIONAL PROTOCOL II:

- Which takes place in the territory of a State
- Between armed forces and organised armed groups
 - Which are under responsible command
- Which exercise control over a part of the territory
- So as to enable them to carry out concerted military operations; and

Features of Non-International Armed Conflicts



- Non state actors / organizations
- No longer a monopoly on violence
- A lack of respect for IHL rules

Features of NIAC



- Civilians = targets
- Increased suffering for civilians
- Lack of accountability

THE LEGAL SITUATION DURING NIAC

FOR THE STATE AUTHORITIES

- **National security, police and prison laws**
- **Human rights laws & mechanisms**
- **National IHL legislation**
- **Criminal prosecutions**

FOR NON-STATE ACTORS

- **Threat of prosecution**
- **Voluntary adherence**
- **Dissemination of IHL**
- **Special agreements between parties**

IHL APPLICABLE TO NON-INTERNATIONAL ARMED CONFLICTS (NIAC)

- **Common Article 3 of 1949 Geneva Conventions**
- **Additional Protocol II of 1977**
- **IHL Treaties on Means & Methods of Warfare**
- **CRC Protocol on Involvement of Children in Armed Conflict**
- **Laws and Customs of War Applicable to NIAC
(Accepted by Nations / Determined by Tribunals)**

KEY FEATURES – GC COMMON ARTICLE 3

- **FIELD OF APPLICATION**
- **MINIMUM HUMANITARIAN GUARANTEES**
- **OBLIGATIONS OF PARTIES**
 - Humane treatment - certain categories of persons
 - Prohibition of certain acts
- **CARE OF WOUNDED AND SICK**
- **RIGHT OF HUMANITARIAN INITIATIVE**
- **SPECIAL AGREEMENTS BETWEEN PARTIES TO THE CONFLICT**
- **STATUS OF THE PARTIES IS UNAFFECTED**

KEY FEATURES – ADDITIONAL PROTOCOL II

- **DEFINITION OF A NON-INTERNATIONAL ARMED CONFLICT**
- **FUNDAMENTAL GUARANTEES OF HUMANE TREATMENT**
- **JUDICIAL GUARANTEES FOR DETAINEES**
- **PROTECTION OF WOUNDED, SICK AND SHIPWRECKED**
- **PROTECTION OF CIVILIAN POPULATION AND OBJECTS**
- **REGULATION OF MEANS AND METHODS OF WARFARE**
- **WORK OF HUMANITARIAN ORGANIZATIONS**

Threshold of organization

- Without a minimum level of organisation, it is impossible to conduct coordinated military operations and to ensure collective compliance with IHL.
- Therefore, minimal level of organization has always been considered a defining element of armed forces or organized armed groups participating in an armed conflict as opposed to participants in riots and other forms of unorganized large scale-violence.

Threshold of organization

- While state armed forces are generally presumed to satisfy this criterion, the level of organisation of non-state armed groups has in practice been assessed based on a series of indicative factors including elements such as:
 - The existence of a command structure and disciplinary rules and mechanisms within the group;
 - The existence of a headquarters;
 - The fact that the group controls a certain territory;
 - The ability of the group to gain access to weapons, other military equipment, recruits and military training;
 - Its ability to plan, coordinate and carry out military operations, including troops movement and logistics
 - Its ability to define a unified military strategy and use military tactics
 - Ability to speak with one voice and negotiate and conclude agreement such as ceasefire or peace accord

FUNDAMENTAL RULES OF IHL

(Applicable in all Circumstances)

- Ensure humane treatment of persons not taking part in hostilities
- Do not kill or injure protected persons
- Collect and care for the wounded and sick
- Respect the lives & dignity of captured combatants and civilians
- Respect fundamental judicial guarantees during trials & proceedings
- The choice of means & methods of warfare is not unlimited
- Distinguish between combatants and civilians at all times – Attack only military objectives

NIAC and international HUMAN RIGHTS LAW

HUMAN RIGHTS LAW

- A separate body of international law from IHL
- Protects individuals and groups against violations of their, civil, political, economic, social and cultural rights
- Deals with the protection of those rights
- **Primarily concerned with how a government treats its own citizens**
- General acceptance of these rights by several countries not yet enjoyed
- Often politicized

PRINCIPAL HUMAN RIGHTS TREATIES

- **Charter of the United Nations (1945)**
- **Universal Declaration of Human Rights (1948)**
- **International Covenant on Civil and Political Rights (1966)**
- **International Covenant on Economic, Social and Cultural Rights (1966)**
- **International Convention on the Elimination of All Forms of Racial Discrimination (1965)**
- **Convention on the Elimination of All Forms of Discrimination against Women (1979)**
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)**
- **Convention on the Rights of the Child (1989)**

IHL – MINIMUM STANDARDS/GUARANTEES

GC Common Article 3 (NIAC) – Humane Treatment

GC III Art. 13 (IAC) – Humane Treatment (POW)

GC III Art. 17 (IAC) – No Torture, Coercion, Threats or Insults when questioning POW

GC IV Art. 27 (IAC) – Humane Treatment (Civilians), including against threats, acts of violence, insults & public curiosity or prejudice (special protection for women)

AP I Art. 75 (IAC) – Minimum Standards of (Humane) Treatment & Fundamental Judicial Guarantees

AP II Arts. 4 - 6 (NIAC) – Minimum Standards of (Humane) Treatment & Fundamental Judicial Guarantees

SIMILARITIES AND DIFFERENCES INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

IHL and Human Rights Law:

- Share a common purpose – protecting human dignity
- *Lex specialis* and *Lex generis*
- Guarantee respect for life – physical and mental well being
- Both technically apply in armed conflict but they are designed to apply to different kinds of situations:
 - Human rights law is designed to govern in peacetime
 - IHL only applies in situations of armed conflict
- Protections under IHL can NEVER be derogated from and apply equally to all parties to the conflict, if protected persons
- Human rights can be derogated from in certain circumstances
- IHL offers more protection in armed conflict than general non-derogable human rights

ENFORCEMENT OF IHL & HRL

- **Human Rights:**

- Injured party institutes legal proceedings – against government officials & agencies
- Reports of international committees
- Serious violations can be prosecuted (as Crimes Against Humanity)

- **IHL:**

- Protection by the ICRC or protecting powers
- Enforced by domestic courts or an international tribunal/court by prosecution (as War Crimes)
- All individuals (government officials and/or private citizens) may be held responsible for violations

STATES OF EMERGENCY

International Covenant of Civil & Political Rights (ICCPR) – Article 4.1:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social

NON-DEROGABLE HUMAN RIGHTS...

ICCPR:

The right not to be arbitrarily deprived of life (Art.6)

Prohibition against torture and other cruel, inhuman or degrading treatment or punishment (Art.7)

Prohibition of slavery and servitude (Art.8.1-2)

Prohibition against detention for debt (Art.11)

Prohibition against retroactive criminal laws (Art.15)

Recognition of legal personality (Art.16)

Freedom of thought, conscience and religion (Art.18)



INTERROGATION vs. TORTURE
(See Case Study)

IRAQ – ABU GHRAIB





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THE MINIMUM STANDARDS

(Under *both* IHL and IHRL)

POW, internees or detainees may be questioned. They may be willing to freely give important information or may be induced to do so through skilful interrogation, however, they are under no obligation to do provide information. It is prohibited to use any of the following techniques in order to obtain information:

- a. *torture;*
- b. *degrading treatment such as leaving POW naked;*
- c. *inhumane interrogation methods;*
- d. *threats of violence or death;*
- e. *threats to other persons;*
- f. *refusal to treat wounds or provide medical attention;*
- g. *administering chemicals, drugs or other substances.*



PHOTO: REUTERS

An al-Qaeda detainee is escorted by US military personnel at the Guantanamo Bay Naval Base in Cuba.

Red Cross to scrutinise US treatment of captives

**THANK YOU FOR YOUR
ATTENTION**

QUESTIONS / COMMENTS?

DETAINEES

The Northern Ireland Case (Ireland v. United Kingdom)

Torture, Cruel, Inhumane or Degrading Treatment or
Punishment / Interrogation

BACKGROUND

Between 1972 and 1976 Ireland brought a case against the United Kingdom (UK) for alleged breaches of the European Convention for the protection of Human Rights and Fundamental Freedoms, in particular Article 3 of that Convention, which like the ICCPR and all other regional human rights instruments states: *No one shall be subjected to torture or to inhumane or degrading treatment or punishment*".

The charges were that the UK joint military/police interrogation unit systematically employed the so-called "*five interrogation techniques*" on persons detained in connection with the internal troubles in Northern Ireland. The case was first heard by the European Commission of Human Rights (Commission) and then went on to the European Court of Human Rights (ECHR).

THE FIVE TECHNIQUES:

1. Wall standing: forcing the detainee to remain for periods of some hours in a stress position. The position was described as being spread-eagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers;
2. Hooding: putting a black bag over the detainee's heads and, at least initially, keeping it there at all times except during interrogation;
3. Noise: holding detainees awaiting interrogation in a room where there was a continuous loud hissing noise (white noise);
4. Sleep deprivation: not allowing the detainees to sleep between interrogations;
5. Deprivation of food & drink: allowing detainees only a reduced diet during their stay at the detention centre pending investigation.

Torture (Definition)

- Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984):

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as:

- a. obtaining information or a confession;*
- b. punishing him/her/3rd person;*
- c. to intimidate or coerce; or*
- d. for any reason based on discrimination of any kind,*

Where the pain or suffering is inflicted at the instigation, consent or acquiescence of an official or person acting in an official capacity.



Torture (Definition)

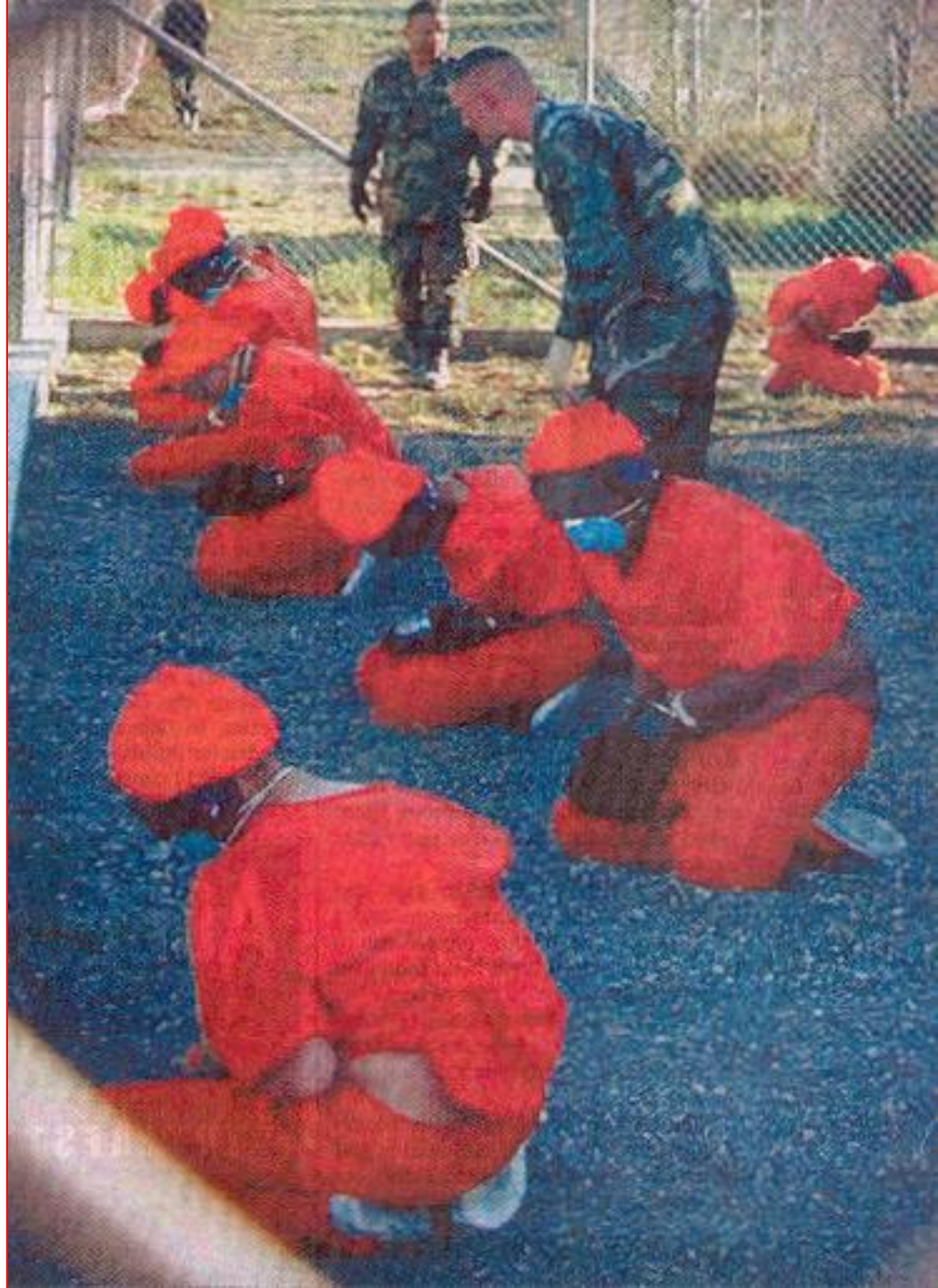
- Rome Statute of the International Criminal Court: (Article 7(2)(e))

“the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent or incidental to, lawful sanctions”



Discussion Points:

1. Do you consider the five techniques amount to torture? If not, do they amount to inhumane and degrading treatment?



Discussion Points (Cont'd):

2. In either of the above cases (i.e. torture or inhumane/degrading) were the security forces justified in using the five techniques?
3. Would your answer to the last question be different if you knew that the person under interrogation had planted a bomb set to go off somewhere in the centre of the city on two hours' time?



Outcomes of the Case

- The Commission stated that the purpose of the five techniques was to obtain information, the extraction of confessions and the naming of others and/or information. It was unanimous that the combined effect of the five techniques amounted to torture. It regarded them as a sophisticated method to break / eliminate the detainees' will.
- Dealing with the “ticking time bomb scenario” the Commission said *“Any such strain on the members of the security forces **cannot** justify the application on a prisoner of treatment amounting to a breach of Article 3 (inflicting torture or inhumane or degrading treatment or punishment).”*
- The ECHR described the “five techniques” as a form of “in depth interrogation” involving disorientation or sensory deprivation techniques. Disagreeing with the Commission, it concluded that use of the “five techniques” did **not** amount to torture, but **did** constitute inhumane and degrading treatment.
- In summary, the ECHR determined that the five techniques were a violation of Article 3 and were at the **upper end** of inhumane and degrading treatment (i.e. they bordered on torture)

**THANK YOU FOR YOUR
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QUESTIONS / COMMENTS?