

INTRODUCTION TO INTERNATIONAL HUMANITARIAN LAW (IHL)

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Structure of the Lecture

- 1. Introduction**
- 2. Definition and Rationale**
- 3. Progressive Development of IHL(1864-2008)**
- 4. General Principles of IHL**
- 5. Material field of application**
- 5. Basic Rules**



Definition

Principles and rules which set limitations to the use of violence during armed conflicts, in order to:

1. Spare those persons ("civilians") not directly involved in hostilities
2. Limit the effects of violence (even to "combatants") to the amount necessary for the purpose of war

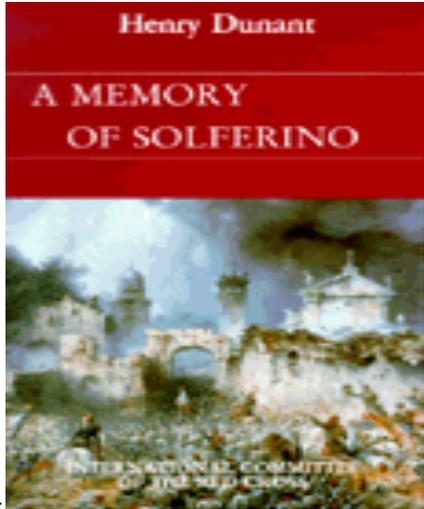
Rationale

1. The necessity to have rules, even in times of armed conflict
2. The feeling (common to all civilizations) that under certain circumstances, human being **friend** or **foe** must be protected and respected

Origins of the Law



SOLFERINO



A Memory of Solferino

3 Problems Identified:

1. insufficient number of military medical personnel
2. no special protection for medical personnel
3. no distinctive sign to identify medical services



Henry Dunant's Proposals

1. Creation in every country of voluntary relief societies auxiliary to the medical services of the armed forces
2. Adoption of an international treaty on the protection of medical personnel
3. Adoption of an international sign of protection for the medical services

Progressive Development

- Constant **enlargement of categories** of victims protected by IHL
- **Expansion of situations** in which victims are protected and regular update of the treaties
- Development along **two different legal currents**: Geneva Law and Hague Law



GENEVA LAW

- Rules of International Law relating to the Protection of persons placed hors de combat or not taking part in the hostilities (e.g. wounded, prisoners of war, civilians)

HAGUE LAW

- Rules relating to the actual conduct of armed hostilities (e.g. rules prohibiting or limiting the use of specific means and methods of warfare)

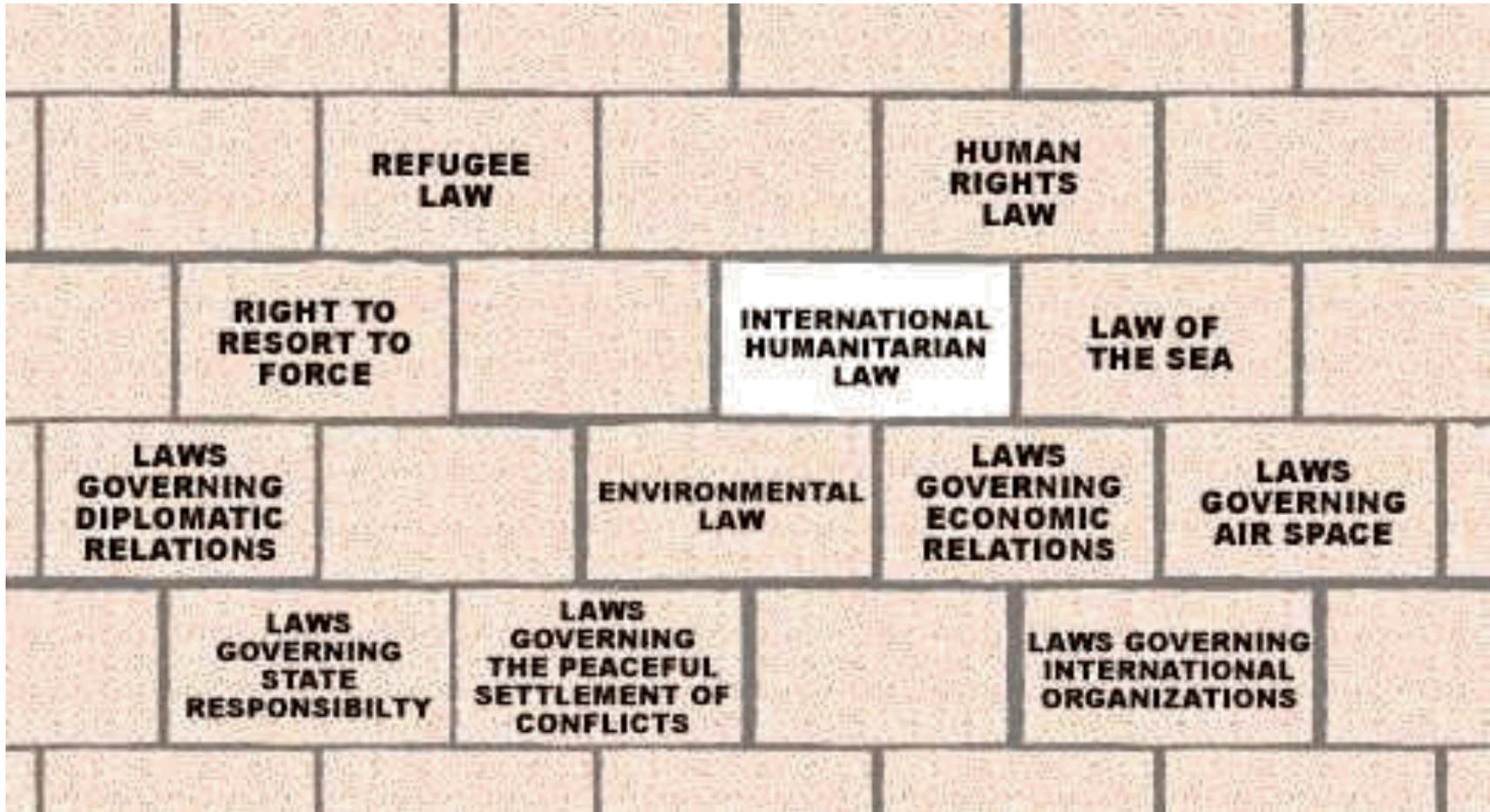


FROM 1864 TO TODAY

1864	First Geneva Convention
1868	Declaration of St. Petersburg
1899	The Hague Conventions
1906	Review of the First Geneva Convention
1907	The Hague Conventions
1925	Geneva Protocol on chemical weapons
1929	"First" and "Third" Geneva Conventions
1949	First, 2nd, 3rd and 4th Geneva Conventions + Common Art. 3
1954	Convention for the protection of cultural property
1977	Additional Protocols
1980	Convention on the use of conventional weapons
1993	Convention on chemical weapons
1995	Protocol relating to blinding laser weapons
1996	Revision of the 1980 Convention
1997	Convention on anti-personnel mines
1998	Statute of the International Criminal Court
2005	Additional Protocol III (New emblem)
2008	Convention on Cluster Munitions



IHL within PIL



jus ad bellum v. jus in bello

- Rules governing the **resort to armed force** (practically disappeared)
 - 2 exceptions (UN Charter):
 - Self-defence
 - Collective security operations
 - Wars of national liberation?
- Rules **applicable between parties** to an armed conflict and related to the armed conflict, formed by 2 main currents:
 - Geneva Law
 - Hague Law

jus ad bellum v. jus in bello

**The High Contracting Parties,
Expressing their conviction that nothing in this
Protocol or in the Geneva Conventions of 12
August 1949 can be construed as legitimizing
or authorizing any act of aggression or any
other use of force inconsistent with the
Charter of the United Nations [...]**

Additional Protocol I (1977), Preamble

Sources of PIL/IHL

Sources of International
Public Law
Sources of International Humanitarian Law

Main Sources

International Custom

International
Multi/
bilateral treaties

General Principles of Law

International Custom

Geneva Conventions
The Hague Convention
Other international Conventions

Humanitarian Law Principles

Other sources

Judicial decision

Teachings

Judicial decisions
Red Cross Law
ICRC's Principles and uses

Teachings



General Principles of IHL

- **"IHL: a Law that is both simple and complicated"**

Prof. E. DAVID

General Principles of IHL

- A common denominator:
Balancing military considerations and humanitarian concerns

The "Cardinal Principles"*

- 1) **Distinction**: "Parties shall at all times distinguish between civilian and combatants and between civilian objects and military objectives (API, Art.48)"
- "You may not attack everyone!"
- "You may not attack everything!"

*ICJ, Nuclear Weapons Advisory Opinion, § 78, 1996

The "Cardinal Principles"

- 2) **Limitation**: In any armed conflict the right of the Parties to choose methods or means of warfare is not unlimited (API, Art 35.1)
- "You may not use all means and methods!"

The "Cardinal Principles"

- 3) "**Humanity**": It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause **superfluous injuries** and **unnecessary suffering** (API, Art 35.2)

Geneva Law Principles I

- **Person in the power of the enemy must be treated humanely and without discrimination**
- See: duty to collect and take care of Wounded, and Sick: treatment of PoWs and Civilian Internees

Geneva Law Principles II

- **Fighting by the rules is not a crime!**
- See: "Right to kill"; duty to release and repatriate PoWs at the end of hostilities

Geneva Law Principles III

- **Protected persons in the power of the enemy cannot renounce their rights**
- (GCI-IV, Art 7)

Geneva Law Principles IV

- **Violating the rules of IHL engage the individual criminal responsibility of the perpetrator**

Geneva Law Principles V

- **Equality of the parties:** under IHL the rights and duties of the victim of the aggression identical to those of the aggressor

General Principles of IHL

- "Do not cause your enemy more harm than war renders necessary"

» Prof. Jean S. Pictet

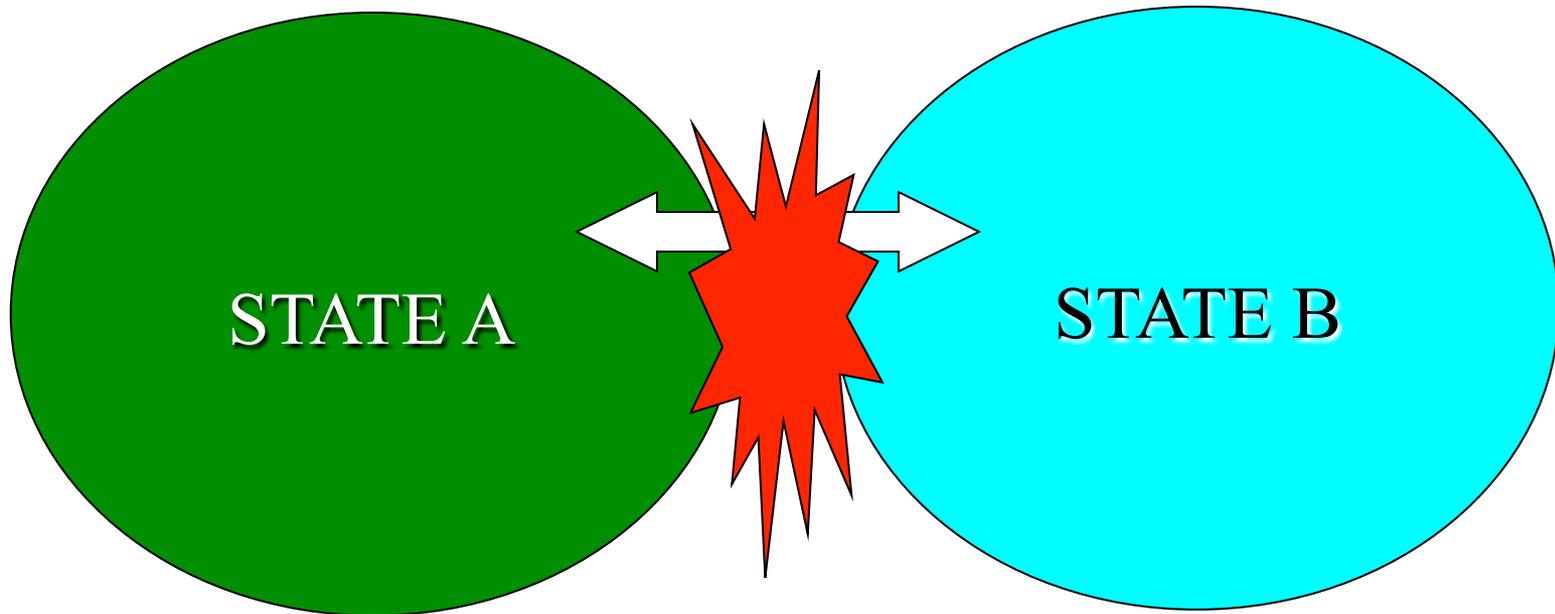
WHEN DOES IHL APPLY?

What is an armed conflict?

"Armed conflict exists whenever there is a resort to armed force between States or protracted violence between governmental authorities and organised armed groups or between such groups within a State."

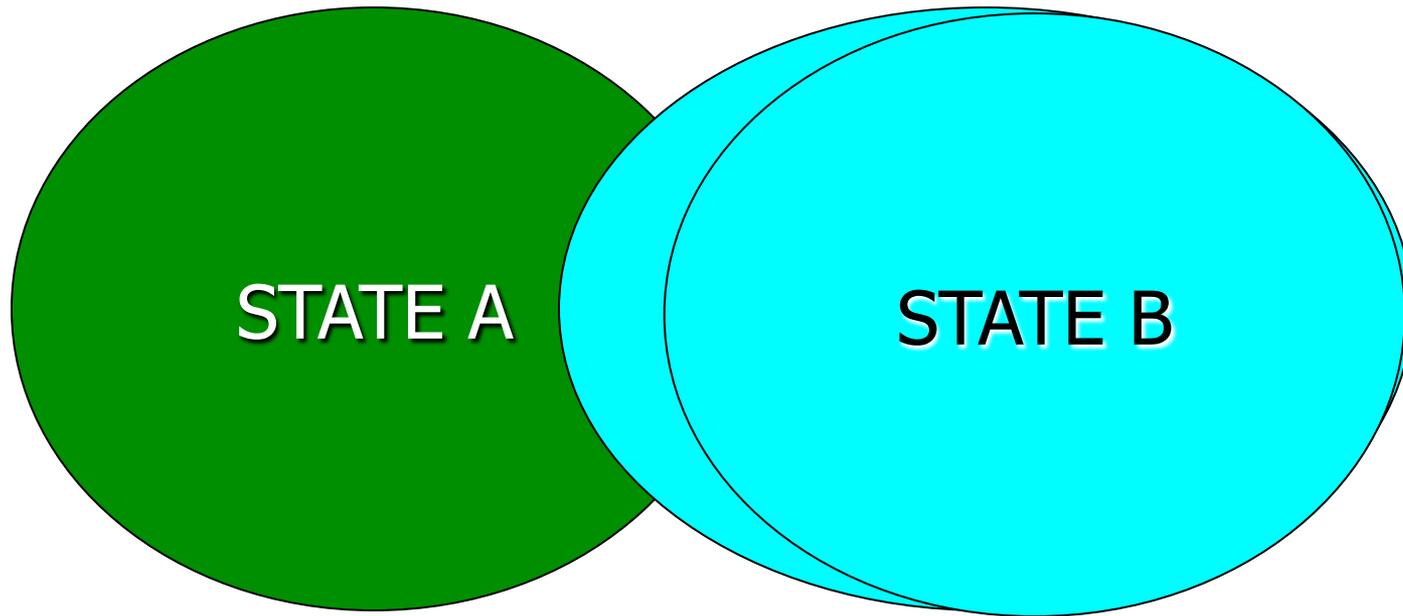
ICTY, Tadic case, Jurisdiction, para. 70

International Armed Conflict



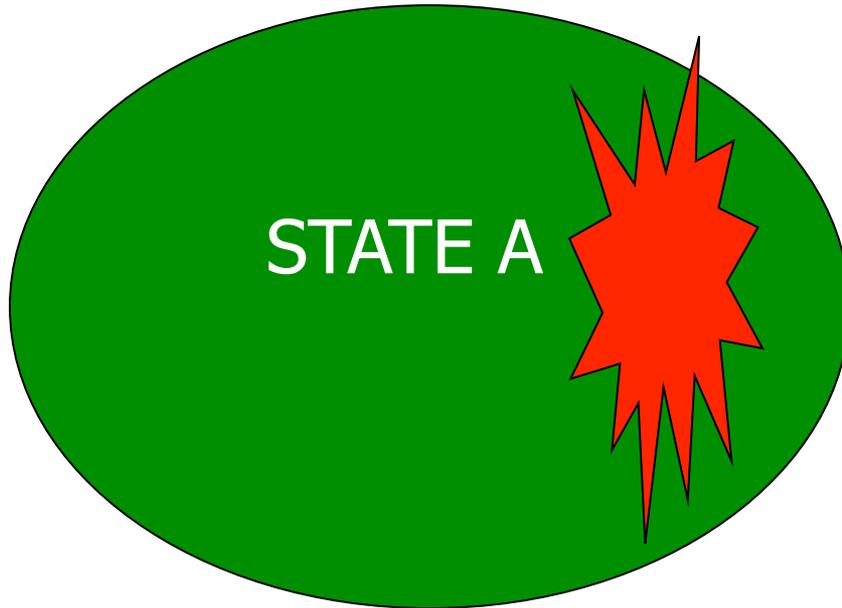
"all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them" (Common Art. 2, GC I – IV)

International Armed Conflict



"all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance" (Common Art. 2, GC I – IV)

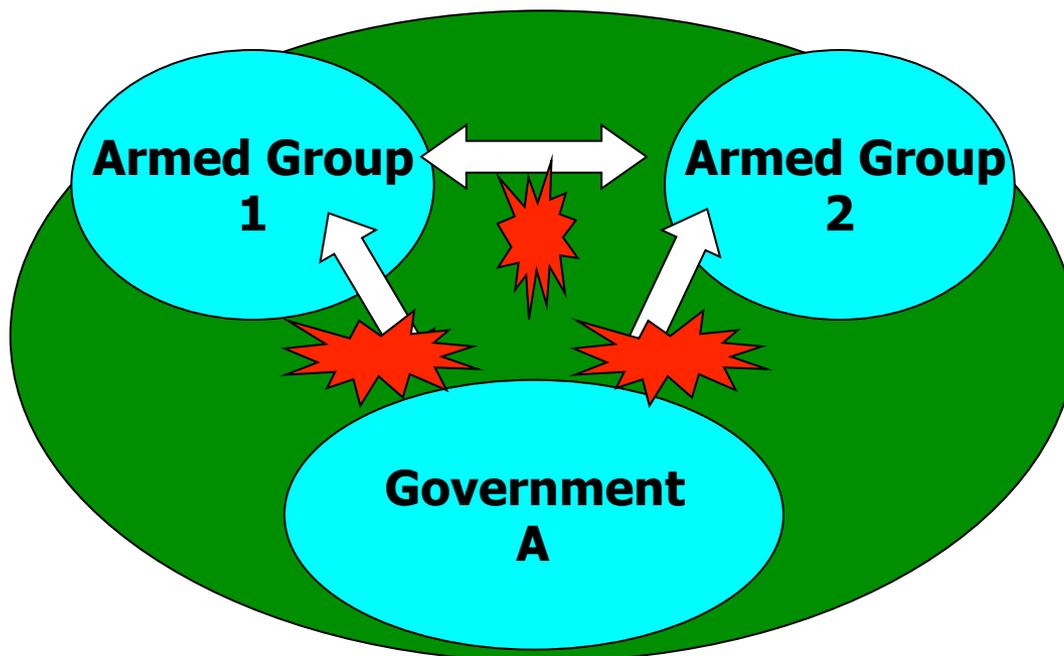
International Armed Conflict



colonial domination
alien occupation
racist regimes

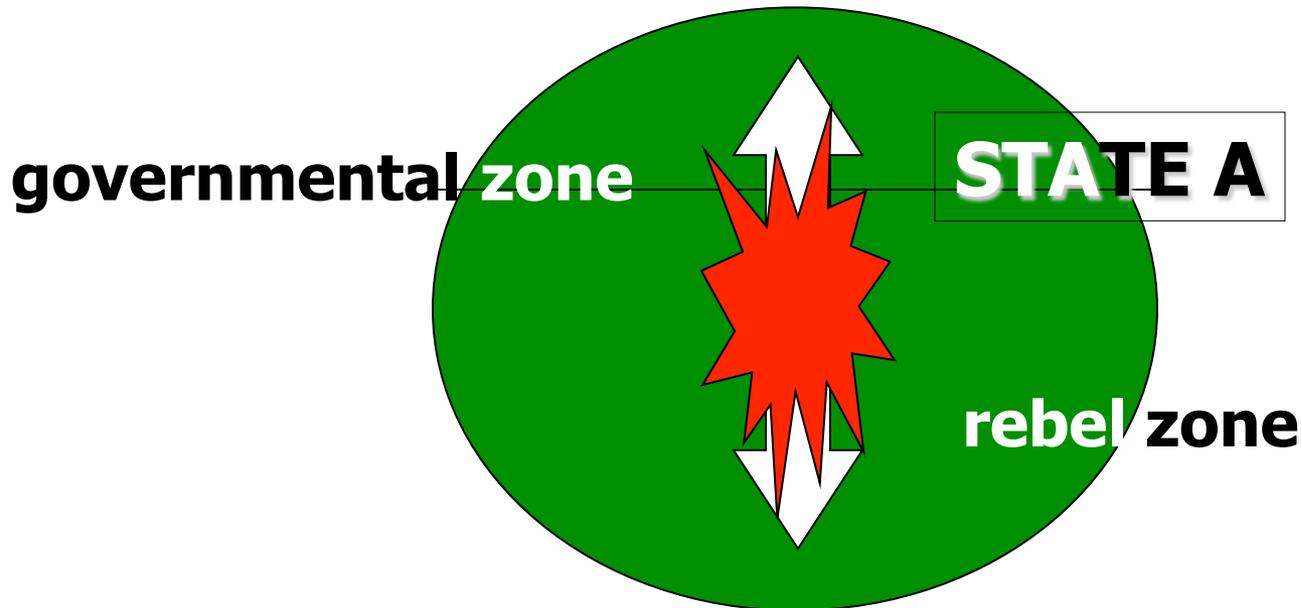
"armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination" (Art. 1(4), AP I)

Non-international Armed Conflict



"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties" (Common Art. 3, GC I – IV)

Non-international Armed Conflict



"all armed conflicts...which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol" (Art. 1(1), AP II)

The lower Threshold

- This Protocol shall **not apply to situations of internal disturbances and tensions**, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

AP II, Art 1.2

EXTRA-CONVENTIONAL SITUATIONS

- [] The ICRC gave the following description of **internal disturbances** during the first session of the Conference of Government Experts in 1971: (27)

"This involves situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules."



EXTRA-CONVENTIONAL SITUATIONS (part 2)

4476 As regards ' **internal tensions**, ' (28) these could be said to include in particular situations of serious tension (political, religious, racial, social, economic, etc.), but also the sequels of armed conflict or of internal disturbances. Such situations have one or more of the following characteristics, if not all at the same time:

- large scale arrests;
- a large number of "political" prisoners; (29)
- the probable existence of ill-treatment or inhumane conditions of detention;
- the suspension of fundamental judicial guarantees, either as part of the promulgation of a state of emergency or simply as a matter of fact;
- allegations of disappearances.

4477 In short, as stated above, there are internal disturbances, without being an armed conflict, when the State uses armed force to maintain order; there are internal tensions, without being internal disturbances, when force is used as a preventive measure to maintain respect for law and order.

Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, §



Basic Rules

- The parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. Neither the civilian population as a whole nor individual civilians may be attacked.
- Attacks may be made solely against military objectives. People who do not or can no longer take part in the hostilities are entitled to respect for their lives and for their physical and mental integrity. Such people must in all circumstances be protected and treated with humanity, without any unfavorable distinction whatever.
- It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting.
- Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare. It is forbidden to use weapons or methods of warfare that are likely to cause unnecessary losses or excessive suffering.
- The wounded and sick must be collected and cared for by the party to the conflict which has them in its power. Medical personnel and medical establishments, transports and equipment must be spared.
- The red cross or red crescent on a white background is the distinctive sign indicating that such persons and objects must be respected.
- Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and receive aid. They must enjoy basic judicial guarantees.

NB These rules, drawn up by the ICRC, summarize the essence of international humanitarian law. They do not have the authority of a legal instrument and in no way seek to replace the treaties in force. They were drafted with a view to facilitating the promotion of the law.

Questions?

Thanks!