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# International Humanitarian Law and Human Rights Law

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# Structure of the Lecture

1. Introduction and definition
2. IHL and the use of force
3. Situations of application
4. Commonalities and differences
5. Material field of application
6. A growing complementarity
7. Concluding remarks



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# IHL: General 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



# *IHL and the Use of Force: 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



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# Situations of applications: 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



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# 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)

"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)

"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)



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# 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)

"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)



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# 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



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# What is common to IHL and IHRL?

- The underlying values of the bodies of law are the same.
- The individual is the ultimate beneficiary of the protection.
- Both IHL and HRL are parts of Public International Law



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# Main Sources of IHL

- Customary Law
- Treaty Law:
  - Geneva Conventions of 1949
  - Additional Protocols of 1977 and of 2005
  - Weapon treaties
  - Rome Statute ?
- Judicial decisions

→ Universal



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# Main HRL treaties

- ▶ **Universal instruments**
  - Bill of Rights
    - UDHR 1948
    - ICCPR 1966
    - ICESCR 1966
  - Convention on Genocide 1948
  - Convention against Torture 1984
  - Convention on the Rights of the Child 1989
- **Regional instruments**
  - African Charter 1981
  - European Convention 1950
  - Inter-American Convention 1969

➔ Universal & Regional



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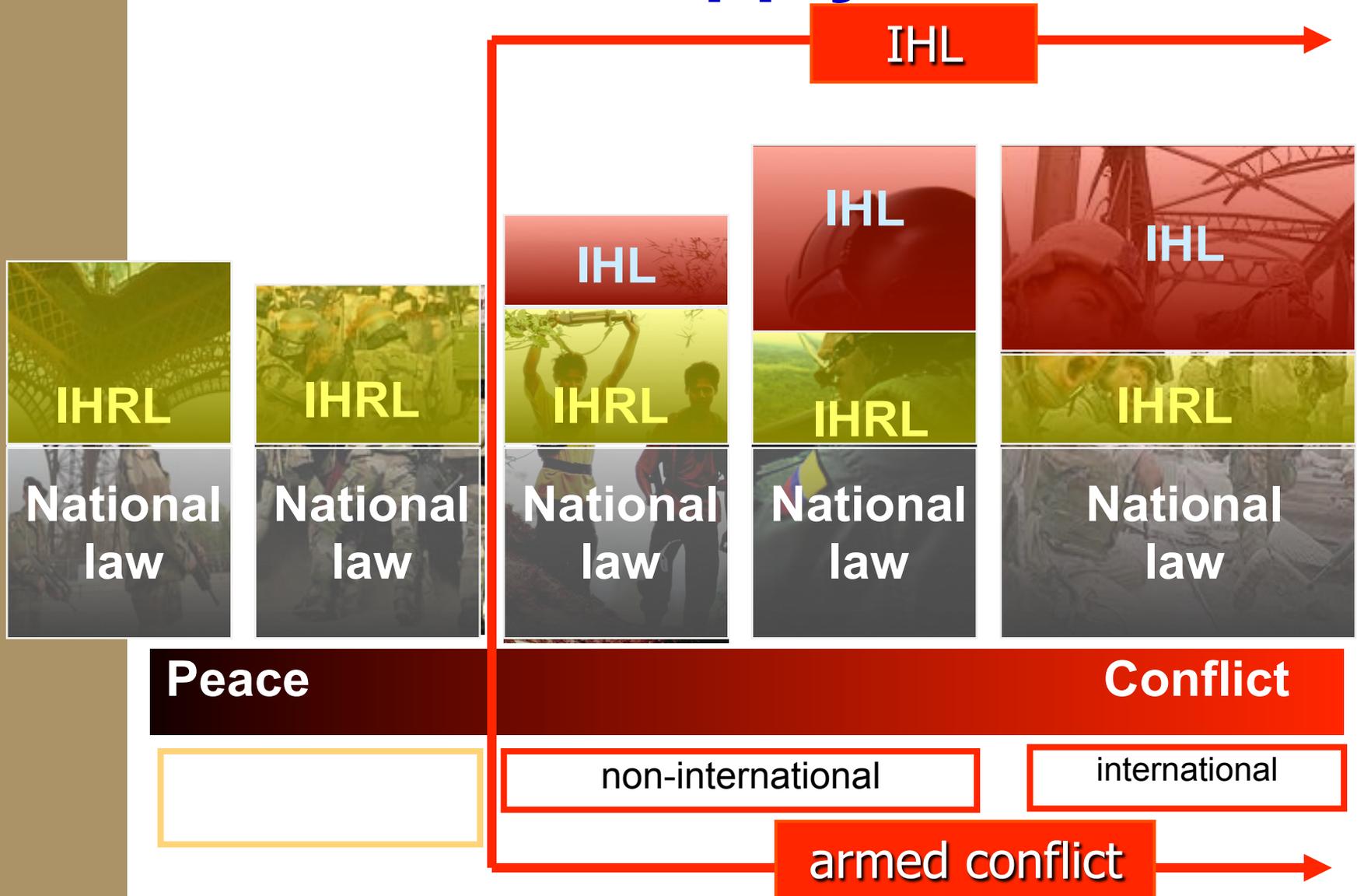
# Differences

	Human Rights	IHL
1	Apply at all times	Only in armed conflict (but some obligations even in peace time)
2	Only binding on States	Binding on States and non-state actors
3	Governs relations between States and individuals	Governs relations parties to conflict
4	Derogations in times of emergency	No derogation from IHL
5	Extra-territorial application?	Unquestionably extraterritorial
6	Soft law	No soft law



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# When do IHL and IHRL apply?





# Derogation

- Certain human rights can be suspended in times of emergency
- Non-derogable rights – right to life, prohibition of torture, prohibition of slavery, prohibition of retroactive criminal laws, fair trial, arbitrary arrest or detention, slavery...
- Derogation is subject to certain conditions, especially proportionality and legality



# Derogation

- Art.4 ICCPR
- 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 origin.
- (...)
- 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.



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# Extraterritorial application of IHRL

- Article 2 ICCPR: “Each state Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory **and** subject to its jurisdiction the rights recognized in the present Covenant [...]”.
- Case law: effective control
  - ▶ Territory under control
  - ▶ Persons in the power of the authorities



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# Complementarity

Common Goal : Protection of the individual

## HUMAN RIGHTS

- Freedom of Expression
- Freedom of Assembly
- Right to Marry

## COMPLEMENTARY PROVISIONS

- Right to Life
- Prohibition against Torture
- Prohibition against Ill-treatment
- Fair Trial

## IHL

- Protection of wounded, sick and shipwrecked
- Protection of POWs and civilian internees
- Conduct of Hostilities



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# Complementarity

- IHL does not always replace IHRL in armed conflict
  - ▶ Art. 72, AP I
  - ▶ Preamble AP II
- IHL is *lex specialis*



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# Complementarity

- When IHL is not clear, IHRL can help to give meaning to it
- IHRL can also fill in "gaps"
- IHL => conduct of hostilities
- HR => law enforcement



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# Key messages

- IHL and IHRL are based on the same values.
- IHL and IHRL both apply during armed conflict, but IHL applies only during armed conflict.
- Where IHL is more detailed (*lex specialis*), it trumps IHRL.
- Where IHL is unclear or where IHL does not address an issue, IHRL complements IHL.

Thank You!



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# Questions?

