

International Humanitarian Law

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International Humanitarian Law

- ▶ Not a modern law
- ▶ Protects people who are no longer fighting, or no longer able to
- ▶ Distinction b/w who or what may be attacked
- ▶ Civilians can never be directly targeted

IHL v IHRL

IHL

- ▶ Applies in times of conflict and does not allow for derogation
- ▶ Limits the effects of armed conflict, protects persons who are no longer participating in hostilities, and restricts means and methods of warfare.
- ▶ IHL binds all parties to a conflict, including non-state parties

IHRL

- ▶ Applies throughout, including during armed conflict, with the derogation of certain rules
- ▶ IHRL lays down obligations on Governments to act in a certain way or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.
- ▶ IHRL only applies to state parties

Jus ad bellum v Jus in Bello

Jus ad bellum

- ▶ Conditions under which States may resort to war or to the use of armed force
- ▶ Prohibits the use of force amongst States and the exceptions to it (self-defence and UN authorization of the use of force), in the UN Charter

Jus in Bello

- ▶ Regulates the conduct of parties engaged in armed conflict
- ▶ Seeks to minimize suffering in armed conflicts, by protecting and assisting all victims of armed conflict
- ▶ Synonymous with IHL

Sources of IHL

- ▶ Treaties
- ▶ Customs
- ▶ General principles of law

Treaty Law

- ▶ 1864 G.C on the Wounded in Armies in the field
- ▶ 1899 & 1907 Hague Conventions;
- ▶ 1929 G.C on POWs
- ▶ Four 1949 Geneva Conventions
- ▶ 1977 Additional Protocol I (IACs) & II (NIACs)
- ▶ Weapons Treaties

Hague Conventions

- ▶ 1899: The Hague Conventions respecting the Laws and Customs of War on Land, and the adaptation to maritime warfare of the principles of the 1864 Geneva Convention
- ▶ 1907: Review of The Hague Conventions of 1899 and adoption of new Conventions

Geneva Conventions



- Wounded and sick in Armed Forces (Land)
- Wounded and sick, and shipwrecked members of armed forces at sea
- Treatment of POWs
- Protection of Civilians in time of War

Geneva & The Hague

Geneva

- ▶ The 'law of Geneva' which is the body of rules that protects victims of armed conflict, such as military personnel who are hors de combat and civilians who are not or no longer directly participating in hostilities

Hague

- ▶ The 'law of the Hague' which is the body of rules establishing the rights and obligations of belligerents in the conduct of hostilities, and which limits means and methods of warfare.

IHL – Basic Principles

1

The **distinction** between civilians and combatants

2

The prohibition to attack those ***hors de combat***

3

The prohibition to inflict **unnecessary suffering**

4

The principle of **military necessity**

5


The principle of **proportionality.**

Distinction





Prohibition to
attack those hors
de combat



Prohibition to inflict
unnecessary
suffering

Principle of Military Necessity

- ▶ Balance between military necessity and humanity
- ▶ Considerations of humanity impose restrictions on means and methods of warfare



Proportionality

Must not cause damage which is excessive in relation to the direct military advantage

Classifying the Conflict

<u>International Armed Conflict (IAC):</u>	<u>Non-International Armed Conflict (NIAC):</u>
<ul style="list-style-type: none">i) Between two or more Statesii) Occupationiii) Lower threshold of violenceiv) "...against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination..."	<ul style="list-style-type: none">i) Between states and non-government armed groups or b/w such groups onlyii) Higher threshold of violenceiii) Common Art. 3 – Upper limit: "not of an international character" on the territory of one State.iv) AP-II – lower limit: not applicable to "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."

Non- International Armed Conflict (NIAC)

- ▶ 2 elements in Article 1 (2) AP II:
- ▶ The conflict must be of a certain minimum intensity; and
- ▶ The non-state actors must be of a minimum level of organization to be considered 'parties to the conflict'.

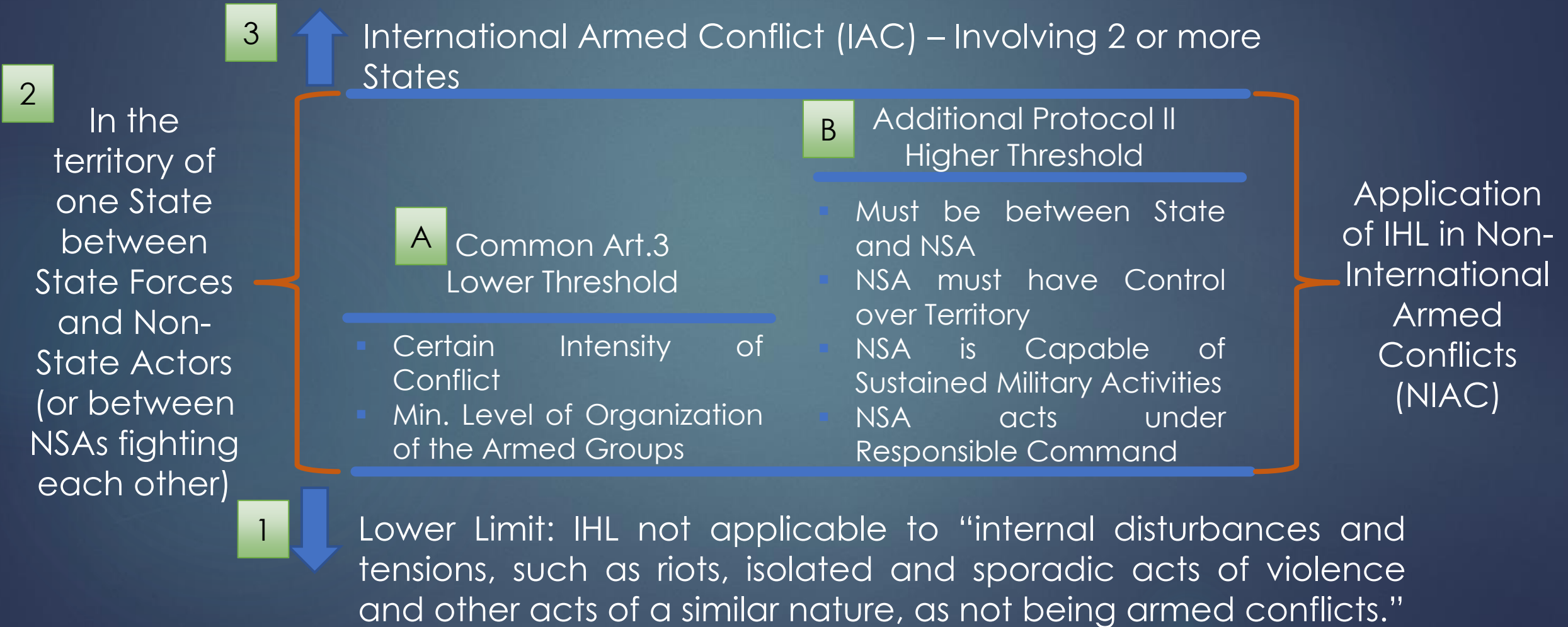
IHL Basis - IAC

- IHL functions on the basis of reciprocity.
- State A follows the rules because it knows if it doesn't then State B will not either.
 - Thus if State A captures soldiers of State B then it will make them Prisoners of War and protect them against torture, etc.
- Now International Accountability has arisen. The International Criminal Court can hold persons individually liable for War Crimes and Crimes Against Humanity.
- We have seen the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda prosecute and punish numerous top level commanders for violations of International Criminal Law.

Limited IHL Application in NIACs

- ▶ But the rules of IHL apply very differently to International Armed Conflicts as compared to Non-International Conflicts. The law is highly developed for IACs but is very limited in relation to NIACs.
- ▶ Reasons:
- ▶ Internal Conflicts the Sovereign Domain of State.
- ▶ Lack of reciprocity in NIACs

Application of IHL in Internal Conflicts (NIAC)



Common Article 3 to GCs, 1949

- ▶ ...(1) Persons taking no active part in the hostilities, ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
- ▶ To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
 - ▶ (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - ▶ (b) taking of hostages;
 - ▶ (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - ▶ (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- ▶ (2) The wounded and sick shall be collected and cared for.

Common Art. 3 cont'd

- ▶ Common Article 3 also notes:
- ▶ “The application of the preceding provision shall not affect the legal status of the Parties to the conflict.”

War Crimes and IHL

War Crimes

- ▶ Statute of the International Military Tribunal of Nuremberg
- ▶ Geneva Conventions and their Additional Protocols
- ▶ Statutes and case law of the ICTY and ICTR
- ▶ Rome Statute of the International Criminal Court

War Crimes

- ▶ Wilful killing of a protected person (e.g. wounded or sick combatant, prisoner of war, civilian)
- ▶ Torture or inhuman treatment of a protected person
- ▶ Wilfully causing great suffering or serious injury to a protected person
- ▶ Attacking the civilian population
- ▶ Perfidiously wounding or killing individuals belonging to a hostile nation or army
- ▶ Using prohibited weapons or methods of warfare



International Criminal Court

Convicted by ICC

Ahmad Al-Mahdi

9 years



Lubanga

14 years



Katanga

12 years





Why is IHL important for Pakistan?



Operation Zarb-e-Azb

Security climate of Pakistan

- ▶ Important to know:
 - ▶ scope of application of IHL
 - ▶ limits of an armed attack

Thank you!