International Humanitarian Law

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Timeliness and Interest

Background

International humanitarian law (IHL), also known as the “law of war” or “law of armed conflict”, is a body of law which regulates the conduct of combatants on the battlefield, protecting those who do not or are no longer taking part in hostilities and limiting the means and methods of warfare in order to alleviate human suffering during armed conflict.\textsuperscript{1} IHL does not address whether a nation is justified in using military force but instead assumes the presence of armed conflict and is therefore only concerned with humanizing conflict, balancing military necessities with the preservation of human dignity.\textsuperscript{2}

The need for restrictions during war is clear. The risk of civilian death and criminal abuse is greater than ever before. Advancements in military technology, the proliferation of weapons, and impunity for war crimes have made it easier for nations and armed groups to deal death and destruction without repercussion. Today’s conflicts are being fought in densely populated urban settings, putting civilians at extreme risk of collateral harm. Over the last century civilian casualties during armed conflict has increased exponentially and now account for around 90\% of total wartime casualties.\textsuperscript{3}

For some, the unrestrained killing of civilians seems an unfortunate but natural, or even necessary consequence of war; after all, war is war. Cicero once famously observed “\textit{Inter arma enim silent leges}”, roughly translated as “in times of war, the law falls silent”.\textsuperscript{4}

Ultimately, Cicero’s claim is both inaccurate and dehumanizing. For centuries, military customs and codes of conduct have reduced human suffering in war and protected vulnerable populations from harm. Since the American Civil War these customs and courtesies have formed into a robust set of international laws and norms found in numerous multilateral treaties, an extensive body of both international and domestic judicial decisions, and the general practice of nations.\textsuperscript{5} Military personnel throughout the chain of command, as well as non-state actors are bound by these laws. Although some refuse to comply, violators may be prosecuted for their illegal acts. International criminal tribunals have been established to prosecute those most responsible for war crimes and crimes against humanity, strengthening compliance regimes.\textsuperscript{6} Domestic courts complement this system, bringing to justice others alleged to have committed grave breaches of IHL.

Since the American Civil War, the United States has played an instrumental role in the development of IHL, offering the first modern codification of rules regulating battlefield conduct in 1863 with the pronouncement by President Abraham Lincoln of General Order No. 100, commonly known as the “Lieber Code”.\textsuperscript{7} 150 years later, the United States continues to be a leader in the development of IHL but has increasingly pushed the law to its outer most bounds (or beyond) in recent years.
Recognizing the horror of war on civilian populations and military personnel, the international community of nations has taken on the difficult task of creating international norms to regulate the conduct of soldiers. Momentum at the turn of the 20th century for the codification of humanitarian principles into hard law led to the adoption of a number of international treaties which remain at the foundation of IHL today; however it was the horrors of World War II which led to the creation of an international criminal justice regime and precipitated a push for a universal set of rules governing conduct in war.

The Geneva Conventions, which today serve as the foundation for modern IHL, are the only international treaties that have been adopted by every nation in the world.8 Their universal acceptance illustrates the importance of this body of law as a cornerstone of international relations. Based on four central tenants: 1. military necessity (only targets offering a definitive military advantage can be attacked); 2. distinction (fighters must at all times distinguish between military targets and civilian persons and buildings); 3. proportionality (attacks cannot cause collateral damage which is excessive to the military advantage gained from the attack); 4. the prevention of unnecessary suffering (belligerents must not use means and methods of warfare which cause superfluous injury or unnecessary suffering), IHL is a critical ceiling on the use of force during armed conflict.9

But modern conflicts have not only changed the dynamic of warfare, they have also changed the dynamics of the law. Non-state armed groups, indistinguishable from the civilian population, often act outside of the law, killing indiscriminately and using terrorism to exploit military asymmetries. Nations also operate in the grey space of the law as they seek to gain any military advantage possible over opposing forces and employ cutting edge weaponry not imagined when the Geneva Conventions were adopted 64 years ago. As war and the tools to fight it continue to evolve, so too must our understanding of the limits on war. Where the appropriate balance is between military necessity and humanity is up for debate!

**International Humanitarian Law as a Policy Debate Topic**

The high school community has previously debated restrictions on international arms sales in 1982-83 (Resolved: That the United States should significantly curtail its arms sales to other countries); restrictions on weapons of mass destruction in 1964-65 (Resolved: That nuclear weapons should be controlled by an international organization) and in 2001-02 (Resolved: That the United States federal government should establish a foreign policy significantly limiting the use of weapons of mass destruction); and detention in 2005-06 (Resolved: The United States federal government should substantially decrease its authority either to detain without charge or to search without probable cause).10

Recent Lincoln Douglas (LD) and Public Forum (PF) topics have also drawn attention to a number of IHL related issues, in particular: foreign intervention to stop human rights abuses
(LD Mar/Apr. ’13); the extension of constitutional rights to non-citizen terrorists (LD Sept/Oct. ’12); targeted killing (LD Mar/Apr. ’12 & PF 2013 National Tournament); the use of private military companies (LD Mar/April ’11); and intervention for democracy promotion (PF 2011 Nationals), however discussions on the use of force during war have largely not been replicated in the policy forum.\textsuperscript{11}

The prevalence of international law related topics in the LD and PF circuits illustrates the importance of these issues to the debate community. Debating limits on the use of force in the policy forum would expand upon these discussions with a new target audience and offer an opportunity to view policy proposals from a broader perspective, considering social, legal, political and philosophical considerations, in addition to moral ones which dominate LD debate. Making IHL the centerpiece of policy debate for an entire year will allow debaters to delve into contemporary issues in greater depth and respond the changing circumstances in law and policy over the course of the year, creating more dynamic and educated debates. The more narrow focus on the use of force by military personnel in armed conflict proposed in this paper will also ensure original debate content, framing discussions around a more nuanced set of laws and regulations largely unfamiliar to youth in the United States and eliminating redundant debate on issues like detention. For these reasons, IHL is ripe for debate in the policy forum.

Knowledge of International Humanitarian Law in the United States

Whether we know it or not, international humanitarian law plays a huge role in all of our lives. Research reveals that most do not know it.

In 2011, the American Red Cross conducted a survey of 1019 adults and 502 youth (ages 12-17) to analyze the level of awareness among the general public about the Geneva Conventions and to also gauge sentiment regarding conduct those surveyed believed was appropriate during armed conflict. The survey revealed that while 55% of adults felt they were “somewhat familiar” or “very familiar” with the Geneva Conventions, only 20% of youth responded in kind. 59% of youth believed it was “acceptable at least sometimes” to torture captured soldiers in order to acquire important military information, but most startling was that 41% of youth indicated it was “acceptable at least sometimes” for the enemy to torture American soldiers for military information.\textsuperscript{12} These figures reveal not only a general lack of knowledge about IHL among youth, but also that youth are more likely to believe certain unlawful practices are acceptable during armed conflict.

As a nation which has engaged in dozens of small and large scale conflicts since World War II, approximately 77% of adults have a close friend or relative has served in the military.\textsuperscript{13} Citizens are concerned about the lives and the treatment of American soldiers abroad. They are also concerned about the perception of the United States on the world stage and whether the military is acting in accordance with the rule of law. The atrocity of My Lai\textsuperscript{14} and various
incidents in Iraq\textsuperscript{15} and Afghanistan\textsuperscript{16} have drawn international condemnation and remain a dark blemish on the human rights record of the United States.

The wars in Iraq and Afghanistan, as well as the United States response to terrorism around the world, have dominated political debates over the last four presidential terms. The most recent presidential election saw President Obama leveraging the death of Osama bin Laden, to counter charges by Mitt Romney over security failures in Benghazi, Libya.\textsuperscript{17} Debates over the use of force also dominate mainstream media coverage and public debates. The use of “drones”, the targeted killings of American citizens, the status of terrorists, and use of military contractors in armed conflicts are emerging issues discussed in courtrooms, legislative sessions, the classroom, and even around the water cooler every day.

Despite the historical role of the United States in developing IHL, current military practice rooted in strict respect of the law, and the universal adoption of the Geneva Conventions of 1949, most Americans remain unaware that rules in war exist. Encouragingly, the Red Cross survey found that 8 in 10 youth believed that they should receive more education on international humanitarian law before they become eligible to vote or enlist in the military.\textsuperscript{18} The emergence of new questions of law and policy set the stage for an interesting, challenging and timely topic, with timeless educational value.

### Existing Programs

The United States has adopted a comprehensive body of domestic law regulating the use of force by the military during armed conflict. These laws limit when force can be used, who/what represents a legal military target, as well as what types of weapons can be used during combat operations.\textsuperscript{19} Military personnel are trained in these rules of conduct, expressed in the military’s Rules of Engagements and elsewhere.\textsuperscript{20} Judge Advocates work directly with battlefield commanders providing advice and guidance on the scope of the law and how to use lethal force in compliance with legal obligations. Failure to abide by legal limits on force can result in criminal prosecution of soldiers and commanders under the Uniform Code of Military Justice.\textsuperscript{21}

Separate federal laws regulate the jurisdiction of military courts\textsuperscript{22}, detention authorization\textsuperscript{23}, the status of enemy fighters\textsuperscript{24}, and codify into the United States Code grave breaches of the Geneva Conventions and other international obligations.\textsuperscript{25} Despite a significant push by political and military leaders to increase education of and compliance with international humanitarian law in recent decades, violations of IHL still occur.

Although the President is the Commander-in-Chief of the armed forces with wide discretion to choose how military force is used during war,\textsuperscript{26} this power is not without limit. The President can sign on to bind the United States to treaties, provided that two thirds of the Senate offers its advice and consent.\textsuperscript{27} In addition, it is Congress which the power “to declare
war, grant letters of marque and reprisal, and make rules concerning captures on land and water”, “raise and support armies”, to “provide and maintain a navy” and to “make rules for the government and regulation of the land and naval forces.” Congressional investigations into the Obama administration’s drone program also reveals that Congress may initiate inquiries into Executive actions taken without proper authorization or deemed to be contrary to the law.

Questions concerning the lawful use of military force and scope of military authorization have also dominated the docket of the Supreme Court and lesser courts throughout the country for the past 12 years. The Court, historically reluctant to intervene with respect to Executive decisions during war, has reviewed numerous controversies covering issues of detention and treatment of foreign fighters both at home and abroad, addressing whether US citizens held at Guantanamo are eligible for habeas rights, and whether US citizens may be remotely targeted in foreign countries. The clash between the co-equal branches of government offers a compelling backdrop to debate important issues of humanitarian law and policy.

**Range and Scope**

**Remote Warfare**

The use of unmanned aerial vehicles has become a centerpiece of the US’ efforts to eradicate terrorism. Since 2009, President Obama has significantly increased the use of these weapon platforms, commonly referred to as drones, to kill suspected terrorists. The use of drones presents numerous potential advantages within the realm of IHL. Drones can gather great amounts of intelligence about potential targets by loitering for long durations of time, providing military commanders with the most current and comprehensive information possible to determine whether force may be used, and if so, the most appropriate means of attack. This information, as well as the precision guided munitions carried by drones, allows commanders to better distinguish between military targets and civilian persons, reducing collateral damage.

Despite the advantages of these systems, the potential for their misuse is serious. Pakistan, Iran and others have demanded the cessation of surveillance and targeting operations within their borders, calling US drone operations a clear violation of national sovereignty.

So-called “signature strikes” are conducted by considering a target’s observable behavioral and demographic characteristics and comparing them to those typically associated with terrorist forces, making a person a possible target of attack without confirming the true identity of the individual. Reports have also revealed an alarming pattern of so-called drone “double-taps”, referring to secondary strikes on first responders to an initial missile strike. If proven, this would be a clear violation of international humanitarian law.
Moreover, the United States continues to struggle with the role of the CIA in drone warfare\textsuperscript{40}, the geographic scope of the battlefield\textsuperscript{41} and the legality of targeting an American citizen abroad\textsuperscript{42}. The operation against al-Qaeda officer Anwar al-Awlaki, and release of the Department of Justice “White Paper” justifying his killing, provides additional ground to debate remote warfare.\textsuperscript{43} These issues present extreme challenges for political leaders, lawyers and human rights activists who struggle to understand the nature of these strikes in the context of international and domestic legal obligations. As conflict continues to extend further from traditional battlefields, these questions will inspire passionate debate among citizens for years to come.

Non-State Actors

The legal rules that apply during hostilities against or between non-state armed groups remains an intensely debated subject in legal and political circles. The transnational conflict against terrorism, pitting professional military forces against militant fighters who refuse to wear uniforms or carry arms openly is seemingly without geographic boundary.\textsuperscript{44} It was not until 2006, in the landmark case of Hamdan v. Rumsfeld that the Supreme Court ruled that Common Article 3 protections of the Geneva Convention applied to detainees at Guantanamo Bay.\textsuperscript{45} Despite focusing greater attention in recent years on detention issues, the debate on the appropriate limits on the use of force against terrorist suspects and the scope of the military theater of combat continues without resolve. When can you kill a person who is a farmer by day but a fighter by night? Can you kill an associate of al-Qaeda who merely serves as a propagandist? Does the Authorization for Use of Military Force (AUMF) extend globally? Can the fight against terrorism be sustained indefinitely?

The use of private military contractors and mercenaries similarly raise difficult questions about the applicability of IHL. The outsourcing of war fighting raises the prospect of civilian casualties and abuse of the law.\textsuperscript{46} This new phenomenon illustrates potential gaps in the law, exploited by governments and private companies. Status of forces agreements often extend immunity to private military contractors, contributing to inadequate oversight and lack of legal repercussions for crimes committed.

Other Emerging Technologies and Weapon Systems

Killer robots, laser weapons, and lighting weapons may generate mental images of combat in a galaxy far-far away, however, these emerging weapons technologies are already a reality. Autonomous weapons systems which can identify, categorize and respond to threats without human intervention are being deployed on naval vessels and near the demilitarized zone between North and South Korea.\textsuperscript{47} Blinding laser weapons have already been prohibited by
international humanitarian law but a new generation of heat weapons and “directed-energy weapons” may fall outside of current prohibitions. While the Geneva Convention mandates that new weapon systems be tested for compliance with the laws of war prior to their deployment, whether a weapon system is inherently illegal is a flexible and subjective determination.

Cyber Warfare

Cyber warfare represents the next generation of war fighting. Over 100 nations are creating or have already established offensive and/or defensive cyber capabilities within the military ranks. Some analysts contend that the United States is currently engaged in a cyber arms race with China and other nations in the quest to develop sophisticated military programs. China for instance has touted the establishment of its own cyber division, now estimated to be roughly 100,000 personnel strong. The United States has prioritized the development of cyber capabilities, devoting substantial resources to their development. Despite rapidly scaling up cyber operations, online attacks on US government agencies and corporations are near daily occurrences. The recent infiltration of US networks containing top secret data on advanced weapon systems by suspected Chinese agents led one House Representative to assert that the US is engaged in a cyber war with China.

The use of cyber capabilities to supplement and complement kinetic operations has been widely documented. Russia, in one of the first large scale state-to-state cyber operations, launched powerful denial of service attacks against the government of Estonia in retaliation for domestic moves to distance the country from its Soviet past. Israel conducted cyber attacks against its neighbor and longtime foe, Syria, prior to a strike on a suspected Syrian nuclear facility. The United States is also suspected of launching the Stuxnet virus which shut down hundreds of Iranian nuclear centrifuges in 2010.

But cyber space is not within the exclusive control of national governments. Small groups and even individuals, acting independently or on behalf of governments, can wreak havoc on cyber networks. During the most recent incursion of Israeli forces into Gaza, the clandestine group “Anonymous” reportedly conducted 40,000 cyber strikes against Israeli networks. While little damage was reported, the capabilities of individuals and groups will increase in the future.

On September 12, 2012 then legal advisor for the U.S. Department of State, Harold Koh, announced for the first time the United States’ position that “international law principles do apply in cyberspace.” Outlining a series of 10 principles in the context of cyber warfare, Koh acknowledged that the law regulating conduct in cyberspace was at its infancy, and that no international consensus existed even with regards to whether international humanitarian law could, as the US believes, apply to military operations online.
Treaties

Despite the historical prominence of the United States in shaping international humanitarian law norms, the United States has declined to sign and ratify a number of IHL treaties in recent decades. Specifically, the United States has declined to bind itself to Additional Protocol I and II of the Geneva Conventions of 1949, the Convention on the Rights of the Child, the First and Second Protocols to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, the Rome Statute of the International Criminal Court, the Ottawa Convention, the Convention on Cluster Munitions, and ratification of the international Arms Trade Treaty seems unlikely. Implicating both the means and methods of warfare, IHL treaties bring an additional international flavor to this topic.

Balance and Materials Available

The debate over appropriate conduct in armed conflict and the laws applicable to modern asymmetric conflicts between nations and non-state actors has been a politicized one with comprehensive answers unlikely in the short term. Since much of international humanitarian law operates in the “fog of war”, this topic is diverse in subject matter and equally rich in perspectives. It is a common misperception that the debate over measures to strengthen the rule of law is one between proponents of national security protections on the one hand, and advocates of human rights protections on the other. Politicians, practitioners, as well as military professionals present a wide array of viewpoints, prioritizing different considerations on IHL issues which hit close to home.

By focusing on restrictions on the use of force during armed conflict debaters are given a precise framework in which to operate, eliminating generic debates about the legality of wars themselves and instead forcing debaters to examine the specific ways forced is employed on the battlefield. Moreover, limiting the proposed policy recommendations to address the use of force by military personnel adds greater specificity to the context, excluding issues examined in recent years such as detention policy and the rights of terrorists. Operating within this context, affirmative teams may pursue a variety of mechanisms to increase restrictions on the use of force. Proponents of the resolution may regulate when forced is used by defining the geographic and temporal scopes of the battlefield, may choose to regulate specific means of warfare such as emerging weapon systems considered un- or under-regulated by current legal regimes, or may choose to regulate specific methods of warfare, such as cyber operations.

While proponents of the resolution are afforded flexibility to choose different approaches for affirming restrictions on the use of force, requiring proponents to limit their policy recommendations to address the use of military force during armed conflict will ensure predictable, in depth debate, preserving substantial negative ground.

Since regulations on military force by political entities often precipitates backlash from the military ranks, military disadvantages such as readiness and hegemony will be strong
negative positions. Politics disadvantages will also be prominent. Spending and tradeoff disadvantages may find a unique place in core negative arguments, particularly in the era of sequestration, as increased regulations will necessarily imply new administrative costs. Critiques of power and the law will also provide negative teams useful philosophical options to attack affirmative plans.

Although these positions are prominent in many foreign policy oriented topics, international humanitarian law provides additional generic negative ground. Relations and alliance disadvantages will be strong positions as revision of codes of combatant conduct will affect military interoperability with allies or alternatively, may reduce confidence in the US military umbrella. Restrictions on the use of force may also decrease incentives to pursue humanitarian interventions, resulting in the proliferation and increase severity of conflicts. New restrictions on the conduct of traditional military personnel may also precipitate a shift of military operations to clandestine agencies which operate outside of the scope of the law. Hot spot disadvantages will offer case specific options to counter new policy proposals.

Finally, both affirmative and negative teams will have unparalleled access to different policy implementing agents. At the core of the domestic debate over IHL issues is the constitutional balance of powers between the separate but interconnected branches of the federal government. The debate over the use of military force has been the most prominent and hotly contested national issue since September 11, 2001, pulling the Executive, Legislative and Judicial branches of the federal government into unprecedented fight for authority. Unlike any topic in recent history, international humanitarian law is uniquely situated to delve into the balance of power and the constitutional mandates of the these different governmental actors.

**Conclusion**

The use of force during armed conflict is the quintessential hybrid topic. International humanitarian law is grounded in international sources such as treaties and foreign relations policy, but also maintains a dominant presence in domestic law and policy, one which will not dissipate in the future. With America’s historic contribution to the development of international humanitarian law, its stress on IHL implementation, and challenges raised by the evolution of the battlefield, this topic addresses issues relevant to future policy makers, lawyers and advocates while ensuring ample room to engage in lively and compelling debates. The focus on legal protections brings a new element to the debate, presenting a narrow but dynamic context for teams on either side of the debate. The increasing prominence of law and war in public discourse ensures easy access to information, translatable concepts and a level playing field for all.
**Potential Resolutions**

1. Resolved: The United States federal government should substantially increase restrictions on the use of force by military personnel during armed conflict.

2. Resolved: The United States federal government should establish new restrictions on the use of force by military personnel during armed conflict.

3. Resolved: The United States federal government should substantially increase the restrictiveness of the rules of engagement for military personnel applicable during armed conflict.

4. Resolved: The United States federal government should substantially increase restrictions on the use of force by military personnel in armed conflict for the protection of civilians.

5. Resolved: The United States federal government should substantially increase legal protections for any class of persons protected by the Geneva Conventions of 1949.
Definitions

Any

**The American Heritage Dictionary Online**

adj.

1. One, some, every, or all without specification: Take any book you want. Are there any messages for me? Any child would love that. Give me any food you don't want.

2. Exceeding normal limits, as in size or duration: The patient cannot endure chemotherapy for any length of time.

**Merriam-Webster Online Dictionary**

1: one or some indiscriminately of whatever kind:
   a : one or another taken at random <ask any man you meet>
   b : EVERY —used to indicate one selected without restriction <any child would know that>

2: one, some, or all indiscriminately of whatever quantity:
   a : one or more —used to indicate an undetermined number or amount <have you any money>
   b : ALL —used to indicate a maximum or whole <needs any help he can get>
   c : a or some without reference to quantity or extent <grateful for any favor at all>

3 a : unmeasured or unlimited in amount, number, or extent <any quantity you desire>
   b : appreciably large or extended <could not endure it any length of time>

Armed

**The American Heritage Dictionary Online**

v. armed, arm·ing, arms

v.intr.

1. To supply or equip oneself with weaponry.

2. To prepare oneself for warfare or conflict.

**Black’s Law Dictionary – the lawdictionary.org**

A vessel is “armed” when she is fitted with a full armament for fighting purposes. She may be equipped for warlike purposes, without being “armed.” By “armed” it is ordinarily meant that she has cannon, but if she had a fighting crew, muskets, pistols, powder, shot, cutlasses, and boarding appliances, she might well be said to be equipped for warlike purposes, though not armed. 2 Hurl. & C. 537; Murray v. The Charming Betsy, 2 Cranch, 121, 2 L. Ed. 208.

**Armed conflict**

**The Prosecutor v. Limaj (International Criminal Tribunal for the Former Yugoslavia), 2005**

“The determination of the existence of an armed conflict is based solely on two criteria: the intensity of the conflict and the organization of the parties, the purpose of the armed forces to engage in acts of violence or also achieve some further objective is, therefore, irrelevant.” – Limaj Case, ICTY (2005)

In the current conflict with al Qaeda, I can offer no prediction about when this conflict will end, or whether we are, as Winston Churchill described it, near the “beginning of the end.” I do believe that on the present course, there will come a tipping point – a tipping point at which so many of the leaders and operatives of al Qaeda and its affiliates have been killed or captured, and the group is no longer able to attempt or launch a strategic attack against the United States, such that al Qaeda as we know it, the organization that our Congress authorized the military to pursue in 2001, has been effectively destroyed. At that point, we must be able to say to ourselves that our efforts should no longer be considered an “armed conflict” against al Qaeda and its associated forces; rather, a counterterrorism effort against individuals who are the scattered remnants of al Qaeda, or are parts of groups unaffiliated with al Qaeda, for which the law enforcement and intelligence resources of our government are principally responsible, in cooperation with the international community – with our military assets available in reserve to address continuing and imminent terrorist threats. At that point we will also need to face the question of what to do with any members of al Qaeda who still remain in U.S. military detention without a criminal conviction and sentence. In general, the military’s authority to detain ends with the “cessation of active hostilities.”[22]


The United States is currently at war with Al Qaeda and its associated forces. President Obama has made clear that the United States is fully committed to complying with the Constitution and with all applicable domestic and international law, including the laws of war, in all aspects of this or any armed conflict. US reiterated its compliance with the rules of war and human rights.

Supreme Court of the United States, 2006 (Supreme Court of the United States, Hamdan v. Rumsfeld, Secretary of Defense, et al., No. 05-184, Decided June 29, 2006).

The Court of Appeals thought, and the Government asserts, that Common Article 3 does not apply to Hamdan because the conflict with al Qaeda, being “international in scope,” does not qualify as a “conflict not of an international character.” 415 F. 3d, at 41. That reasoning is erroneous. The
term “conflict not of an international character” is used here in contradistinction to a conflict between nations. So much is demonstrated by the “fundamental logic [of] the Convention’s provisions on its application.” Id., at 44 (Williams, J., concurring). Common Article 2 provides that “the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties.” 6 U. S. T., at 3318 (Art. 2, ¶1). High Contracting Parties (signatories) also must abide by all terms of the Conventions vis-à-vis one another even if one party to the conflict is a nonsignatory “Power,” and must so abide vis-à-vis the nonsignatory if “the latter accepts and applies” those terms. Ibid. (Art. 2, ¶3). Common Article 3, by contrast, affords some minimal protection, falling short of full protection under the Conventions, to individuals associated with neither a signatory nor even a nonsignatory “Power” who are involved in a conflict “in the territory of” a signatory. The latter kind of conflict is distinguishable from the conflict described in Common Article 2 chiefly because it does not involve a clash between nations (whether signatories or not). In context, then, the phrase “not of an international character” bears its literal meaning. See, e.g., J. Bentham, Introduction to the Principles of Morals and Legislation 6, 296 (J. Burns & H. Hart eds. 1970) (using the term “international law” as a “new though not inexpressive appellation” meaning “betwixt nation and nation”; defining “international” to include “mutual transactions between sovereigns as such”); Commentary on the Additional Protocols to the Geneva Conventions of 12 August 1949, p. 1351 (1987) (“[A] non-international armed conflict is distinct from an international armed conflict because of the legal status of the entities opposing each other”).

Although the official commentaries accompanying Common Article 3 indicate that an important purpose of the provision was to furnish minimal protection to rebels involved in one kind of “conflict not of an international character,” i.e., a civil war, see GCIII Commentary 36–37, the commentaries also make clear “that the scope of the Article must be as wide as possible,” id., at 36. In fact, limiting language that would have rendered Common Article 3 applicable “especially [to] cases of civil war, colonial conflicts, or wars of religion,” was omitted from the final version of the Article, which coupled broader scope of application with a narrower range of rights than did earlier proposed iterations. See GCIII Commentary 42–43.

**Applicable**

*The American Heritage Dictionary Online*

adj. Capable of being applied; relevant or appropriate: a rule not applicable in all cases; added the applicable sales tax.

**Civilians**

*Black’s Law Dictionary – the lawdictionary.org*

One who is skilled or versed in the civil law. A doctor, professor, or student of the civil law. Also a private citizen, as distinguished from such as belong to the army and navy or (in England) the church.
Merriam-Webster.com

noun

1: a specialist in Roman or modern civil law

2a : one not on active duty in the armed services or not on a police or firefighting force

Class

The American Heritage Dictionary Online

n.

1. A set, collection, group, or configuration containing members regarded as having certain attributes or traits in common; a kind or category.

2. A division based on quality, rank, or grade, as:

a. A grade of mail: a package sent third class.

b. A quality of accommodation on public transport: tourist class.

Black’s Law Dictionary – the lawdictionary.org

The order or rank according to which persons or things are arranged or assorted. Also a group of persons or things, taken collectively, having certain qualities in common, and constituting a unit for certain purposes; e.

Conflict

The American Heritage Dictionary Online

n.

1. A state of open, often prolonged fighting; a battle or war.

2. A state of disagreement or disharmony between persons or ideas; a clash: a conflict over water rights.

During

The American Heritage Dictionary Online

prep.

1. Throughout the course or duration of: suffered food shortages during the war.

2. At some time in: was born during a blizzard.

Engagement

The American Heritage Dictionary Online

n. 1. a. The action of engaging or the state of being engaged: engagement in diplomacy.

b. The condition of being in gear: engagement of the transmission.

2. a. A mutual promise to get married.

b. The period during which this promise is kept: a long engagement.

3. A pledge or obligation: meeting one's engagements.
4. A promise or agreement to be at a particular place at a particular time: a dinner engagement.

5. a. Employment, especially for a specified time: his engagement with the firm.
   b. A specific, often limited, period of employment: a speaking engagement.

6. A hostile encounter; a battle.

**Establish**

Merriam-Webster Online Dictionary – Merriam-webster.com

1: to institute (as a law) permanently by enactment or agreement
2 obsolete : SETTLE
3a : to make firm or stable
   b : to introduce and cause to grow and multiply <establish grass on pasturelands>
4a : to bring into existence : FOUND <established a republic>
   b : BRING ABOUT, EFFECT <established friendly relations>
5a : to put on a firm basis : SET UP <establish his son in business>
   b : to put into a favorable position
   c : to gain full recognition or acceptance of <the role established her as a star>

**Force**

Merriam-Webster Online Dictionary – Merriam-webster.com

1a (1) : strength or energy exerted or brought to bear : cause of motion or change : active power <the forces of nature> <the motivating force in her life> (2) capitalized —used with a number to indicate the strength of the wind according to the Beaufort scale <a Force 10 hurricane>
   b : moral or mental strength
   c : capacity to persuade or convince <the force of the argument>
2a : military strength
   b (1) : a body (as of troops or ships) assigned to a military purpose (2) plural : the whole military strength (as of a nation)
   c : a body of persons or things available for a particular end <a labor force> <the missile force>
   d : an individual or group having the power of effective action <join forces to prevent violence> <a force in politics>
   e often capitalized : POLICE FORCE —usually used with the
3: violence, compulsion, or constraint exerted upon or against a person or thing

American Heritage Online Dictionary

5. a. Military strength.
   b. A unit of a nation's military personnel, especially one deployed into combat

Geneva Conventions of 1949

International Committee of the Red Cross, 2013

The Geneva Conventions and their Additional Protocols are at the core of international humanitarian law, the body of international law that regulates the conduct of armed conflict and seeks to limit its effects. They specifically protect people who are not taking part in the hostilities (civilians, health workers and aid workers) and those who are no longer participating in the hostilities, such as wounded, sick and shipwrecked soldiers and prisoners of war.
Military

*Black’s Law Dictionary – the lawdictionary.org*

Pertaining to war or to the army; concerned with war. Also the whole body of soldiers; an army.

*The American Heritage Dictionary Online*

adj.

1. Of, relating to, or characteristic of members of the armed forces: a military bearing; military attire.
2. Performed or supported by the armed forces: military service.
3. Of or relating to war: military operations.
4. Of or relating to land forces.

n. pl. military also mil·i·tar·ies

1. Armed forces: a country ruled by the military.
2. Members, especially officers, of an armed force.

Persons

*The American Heritage Dictionary Online*

n 6. Law A human, corporation, organization, partnership, association, or other entity deemed or construed to be governed by a particular law.

Protected

*The American Heritage Dictionary Online*

tr.v. pro·tect·ed, pro·tec·ting, pro·tects

1.

a. To keep from being damaged, attacked, stolen, or injured; guard. See Synonyms at defend.

b. To keep from being subjected to difficulty or unpleasantness: a mother who wanted to protect her children from the troubles she had seen when growing up.

c. To keep from being curtailed or exposed to risk: The reporter vowed to protect the privacy of his sources.

2. To help (domestic industry) with tariffs or quotas on imported goods.

Personnel

*The American Heritage Dictionary Online*

n.

1. (used with pl. verb) The people employed by or active in an organization, business, or service.

2. The department of human resources in an organization.

Protections

*Dictionary.com*

noun

1. the act of protecting or the state of being protected; preservation from injury or harm.
2. a thing, person,
**Restricting (Restriction)**

*Black’s law dictionary*

1. A limitation or qualification.

2. A limitation (esp. in a deed) placed on the use or enjoyment of property.

3. *Military Law.* A Deprivation of liberty involving moral and legal, rather than physical, restraint. A military restriction is imposed as punishment either by commanding officer’s nonjudicial punishment or by a summary, special or general court-martial. Restriction is a lesser restraint because it permits the restricted person to perform full military duties.

**Restrictive (Restrictiveness)**

*Merriam-Webster Online Dictionary*

1a : of or relating to restriction  
b : serving or tending to restrict <restrictive regulations>  
2: limiting the reference of a modified word or phrase  
3: prohibiting further negotiation  
— restrictive noun  
— re-stric-tive-ly adverb  
— re-stric-tive-ness noun

**Rules (Rule)**

*Black’s Law Dictionary*

n. 1. Generally, an established an authoritative standard or principle; a general norm mandating or guiding conduct or action in a given type of situation.

**Rules of Engagement**


Rules of Engagement are directives issued by competent military authority that delineate the circumstances and limitations under which U.S. [naval, ground, and air] forces will initiate and/or continue combat engagement with other forces encountered.


“A. Rules of Engagement (ROE) are the primary tools for regulating the use of force, making them a cornerstone of the Operational Law discipline. The legal factors that provide the foundation for ROE, including customary and treaty law principles regarding the right of self-defense and the laws of war, are varied and complex. However, they do not stand alone; non-legal issues, such as political objectives and military mission limitations, also are essential to the construction and application of ROE. As a result of this multidisciplinary reach, Judge Advocates (JA) participate significantly in the preparation,
dissemination, and training of ROE. Although Jas play an important role, ROE ultimately are the commander’s rules that must be implemented by the Soldier, Sailor, Airman, or Marine who executes the mission. “

Use

Merriam-Webster Online Dictionary – Merriam-webster.com

v.tr.
1. To put into service or employ for a purpose: I used a whisk to beat the eggs. The song uses only three chords.
2. To avail oneself of; practice: use caution.
3. To conduct oneself toward; treat or handle: "the peace offering of a man who once used you unkindly" (Laurence Sterne).
4. To seek or achieve an end by means of; exploit: used their highly placed friends to gain access to the president; felt he was being used by seekers of favor.
5.
   a. To take or consume for a purpose: She used her savings to buy a computer.
   b. To partake of, especially as a habit: She rarely uses alcohol.


The UN Charter mandates that all member States resolve their international disputes peacefully. It also requires that States refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State. This ban on aggression, taken from Article 2(4) of the UN Charter, is regarded as the heart of the UN Charter and the basic rule of contemporary public international law. An integral aspect of Article 2(4) is the principle of non-intervention, which provides that States must refrain from interference in other States’ internal affairs. Put simply, nonintervention stands for the proposition that States must respect each other’s sovereignty.


General. In both customary and treaty law, there are a variety of internationally-recognized legal bases for the use of force in relations between States. Generally speaking, however, modern jus ad bellum (the law governing a State’s resort to force) is reflected in the United Nations (UN) Charter. The UN Charter provides two bases for a State’s choice to resort to the use of force: Chapter VII enforcement actions under the auspices of the UN Security Council, and self-defense pursuant to Article 51 (which governs acts of both individual and collective self-defense).
Before committing U.S. military force abroad, decision makers must make a number of fundamental policy determinations. The President and the national civilian leadership must be sensitive to the legal, political, diplomatic, and economic factors inherent in a decision to further national objectives through the use of force. The legal aspects of such a decision, both international and domestic, are of primary concern in this determination. Any decision to employ force must rest upon the existence of a viable legal basis in international law as well as in domestic law (including application of the 1973 War Powers Resolution (WPR), Public Law 93-148, 50 U.S.C. §§ 1541-1548). This chapter will focus exclusively on the international legal basis for the use of force.
Example Bibliography


Tristan Ferraro ed. Occupation and Other Forms of Administration of Foreign Territory, International Committee of the Red Cross, Apr. 2012.
Example Search Engine Terms and Results

A cursory search of simple terms and phrases related to international humanitarian law reveals a deep library of resources and information. The following searches, done with the Google search engine, are illustrative of the breadth of information and accessibility of international humanitarian law resources:

Term/Phrase: “International Humanitarian Law”
   Results: 1,910,000 results

Term/Phrase: “Law of Armed Conflict”
   Results: 208,000 results

Term/Phrase: “Geneva Conventions of 1949”
   Results: 879,000 results

Term/Phrase: “War Crimes”
   Result: 11,000,000

Term/Phrase: “Means and Methods of Warfare”
   Result: 12,100,000 results

Term/Phrase: Drone or “Unmanned Aerial Vehicle”
   Result: 1,420,000 results

Term/Phrase: Cyber warfare
   Results: 10,500,000 results

Term/Phrase: “Non-international armed conflict”
   Result: 1,080,000 results
Organizations / Interest Groups

American Society of International Law – www.asil.org/

Crimes of War Project - http://www.crimesofwar.org/


Geneva Call - http://www.genevacall.org/home.htm

InterAction – www.interaction.org/

International Committee of the Red Cross – www.icrc.org

International Criminal Court - http://www.icc-cpi.int/Pages/default.aspx


International Institute of Humanitarian Law – www.iihl.org/

Professionals in Humanitarian Assistance and Protection (PHAP) – http://phap.org/

Program on Humanitarian Policy and Conflict Research (HPCR) – www.hpcrresearch.org

Rule of Law in Armed Conflict Project - http://www.geneva-academy.ch/RULAC/

United Nations Office for the Coordination of Humanitarian Affairs (OCHA) – www.unocha.org


United States Naval War College - http://usnwc.libguides.com/LOAC-IHL

United States State Department – www.state.gov/
INTERNATIONAL HUMANITARIAN LAW

1. Resolved: The United States federal government should substantially increase restrictions on the use of force by military personnel during armed conflict.

2. Resolved: The United States federal government should establish new restrictions on the use of force by military personnel during armed conflict.

3. Resolved: The United States federal government should substantially increase the restrictiveness of the rules of engagement for military personnel applicable during armed conflict.

4. Resolved: The United States federal government should substantially increase restrictions on the use of force by military personnel in armed conflict for the protection of civilians.

5. Resolved: The United States federal government should substantially increase legal protections for any class of persons protected by the Geneva Conventions of 1949.

Possible cases: Increasing restrictions on the use of force during armed conflict can take a number of different forms including: prohibiting military tactics or methods of warfare, regulating the use of emerging weapon systems and technologies, ratifying international treaties, and defining the geographic or temporal scope of the battlefield. While this topic may be perceived as allowing too much affirmative ground, the focus on increasing restrictions on the use of force during armed conflict will be inherent limitations on the scope of affirmative cases.

Negative approaches: Given the debate at all levels of government and the military, there will be a strong base of core negative ground. Politics, hegemony and military disadvantages will be strong arguments. Allied relations, hotspot, tradeoff/shift and spending disadvantages will also be prominent. Agent counterplans will be uniquely suited for this topic, providing ample alternative mechanisms for plan implementation. Critiques of militarism and the legal system will also be available to negative teams.

Debatability: The use of force during wartime has captured the attention US citizens for the last twelve years. Debates over the use of force, including the appropriate use of drone technology, the targeted killing of American citizens, the detention of alleged terrorists, and the authority of the separate but co-equal branches of the federal government to manage wartime policy have been the single most contentious issue in public and private circles during this time. These debates continue without resolve. A topic covering restrictions on the use of force is diverse in subject matter and equally rich in perspectives. It is a common misperception that the debate over measures to strengthen the rule of law is one between proponents of national security protections on the one hand, and advocates of human rights protections on the other. Politicians, practitioners, as well as military professionals present a wide array of viewpoints, prioritizing different considerations on this issue which hit close to home. With a wide availability of easily
accessible public resources, all teams will have equal opportunity to engage in debates concerning restrictions on the use of force during armed conflict regardless of budgetary constraints or the size of debate squads. Debating restrictions on the conduct of soldiers in war would also address demand for additional IHL education among youth and teach students valuable skills which they can apply in future careers, in voting booths, during military service or even just around the water cooler.

Synopsis of the Topic Area: International humanitarian law (IHL), otherwise known as the “law of armed conflict” or “law of war”, seeks, for humanitarian reasons, to limit the means and methods of warfare, protecting vulnerable populations from the effects of war and minimizing human suffering during armed conflict. IHL does not address whether a nation is justified in using military force but instead assumes the presence of armed conflict and is therefore only concerned balancing military necessities with the preservation of human dignity. Debates about IHL focus on restrictions on the use of force by soldiers. Proponents of greater restrictions may regulate when forced is use, prohibit the use of specific means of warfare such as emerging weapon systems considered un- or under-regulated by current legal regimes, or may choose to regulate specific methods of warfare, such as cyber operations. Opponents are flush with arguments raised by military planners, politicians and even human rights activists against greater regulations on the conduct of combatants. As war and the tools to fight it continue to evolve, so too must our understanding of the limits on war. Where the appropriate balance is between military necessity and humanity is up for debate!
Endnotes

13 Id.
18 American Red Cross, supra note 12.
19 LOAC Deskbook, supra note 4, pg. 19-20.
24 Id.; Ex-partes Quirin, 317 U.S. 1 (1942); Title 10 United States Code §948a available at http://www.law.cornell.edu/uscode/text/10/948a (defining “unprivileged enemy belligerent”).
26 United States Constitution, Article II, Section 2.
27 Id.
28 United States Constitution, Article I, Section 8.
31 Id.
36 Id.
39 Living Under Drones, supra note 34.
43 White Paper, supra note 42.
44 Johnson, supra note 41.
45 Hamdan, supra note 23.
53 Nicco Mele, Anonymous takes charge, the Web takes down governments, Salon, May 5, 2013 available at http://www.salon.com/2013/05/05/anonymous_takes_charge_the_web_takes_down_governments/.
58 Id.