

Christian Morality in the Use of Force: Means, Methods, and Motives



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Overview

- Christian Ethics and the Law – Why is International Law relevant to Christian Ethics?
- Fundamentals of The Law of War – Just War Theory
- Jus ad Bellum (when it is lawful to go to war)
- Jus in Bello (rules for the conduct of warfare)
- Impact of Recent Developments in Warfare



Big Picture: Relationship between God's Law and Man's Law

Laws Made by God

- You shall not murder. (Ex 20:13)
- You shall love your neighbor as yourself. (Matt 22:39)
- Let no one seek his own good, but the good of his neighbor. (1 Cor 10:24)
- If anyone slaps you on the right cheek, turn to him the other also. (Matt 5:39)
- Let every person be subject to the governing authorities (Romans 13:1)
- Whatever you do, work heartily, as for the Lord and not for men (Col 3:23)
- Not even in Israel have I found such faith (Luke 7:9)
- [Uzziah] made machines, invented by skillful men . . . to shoot arrows and great stones. (2 Chron 26:15-16)
- Let each person lead the life that the Lord has assigned to him, and to which God has called him. (1 Cor 7:17)

The church has frequently addressed the confluence of seemingly contradictory duties (all denominations). See e.g. Catechism of the Catholic Church para 2265 "Legitimate defense can be not only a right but a grave duty for one who is responsible for the lives of others . . ."



Christian Values and the Law



Laws made by Men

- “The moralities of [Egyptians, Babylonians, Hindus, Chinese, Greeks and Romans] are astonishingly similar” (C.S. Lewis in *The Abolition of Man*, Appendix)
- Laws reflect both Imago Dei and our fallen, sinful nature.
- Western Civilization in the years most relevant to the law of war’s development accepted the predicate of objective Christian Values.

Conclusion/Hypothesis:

Norms that

- 1) derive from Christian societies, are
 - 2) based on consent (international law), and
 - 3) stand the test of time,
- tend to reflect the Imago Dei more than they do our fallen, sinful nature.

Therefore, We can rely on the law of war to inform our Christian ethics.

Christian Ethics and the Law

- **Corollary** The nature of international law and the law of war is such that the extent to which it is universal in adoption aligns with the fundamental nature of the norms espoused.
- **Obeying God** Ends and means discussion cuts both ways. Ends never justify means in contravention of God's will. But be careful in assigning either to God. (Matt 26:10-11; John 12: 1-11)
- Example: Agreement on defensive motivation to the lethal use of force – war – (jus ad bellum) vs whether a particular application of anticipatory self-defense is appropriate.
- Example: Norm regarding distinction (jus in bello) vs Ottawa Convention norm regarding antipersonnel landmines.



The Complexity of Applying God's Word to War



- War is the ultimate example of the fallen, sinful nature of man.
- Thus, even uncontroversial norms will be applied in the most challenging of circumstances
- Clausewitz: “Everything in war is very simple, but the simplest thing is difficult. The difficulties accumulate and end by producing a kind of friction that is inconceivable unless one has experienced war . . . Countless minor incidents – the kind you can never really foresee – combine to lower the general level of performance, so that one always falls short of the intended goal.”
- Von Moltke the Elder: “No plan survives first contact with the enemy.” This applies to moral/ethical plans as well.
- Mattis’ 3-second rule and planning. (think beforehand)

Fundamentals of The Law of War



Foundational Documents Governing The Law of War

aka *jus ad bellum*

aka international law on the use of force

Cynical Beliefs

- Inter arma enim silent leges
- “If international law is, in some ways, at the vanishing point of law, the law of war is, perhaps even more conspicuously, at the vanishing point of international law.” Hersch Lauterpacht
- “International law is that law that the righteous . . . Abba Eban
- “Hypocrisy is the tribute vice pays to virtue,” Francois de La Rochefoucauld

Just War Theory

- St Augustine of Hippo (4th Century) *The City of God & Contra Faustum Manichaeum*, Book 22
- T. Aquinas (13th Century) *Summa Theologica* II-II, Q40 “on war”
- Hugo Grotius (17th Century) *De Jure Belli ac Pacis*. Move to Rationalist secular natural law basis. Greater *ad bellum/in bello* split

UN Charter



- **Geneva Conventions** Core framework for protecting victims of war (wounded, prisoners, and civilians) during armed conflicts.
- **Hague Regulations** Core framework for regulating means and methods of warfare (primarily 1907 conv IV re: land warfare)
- **Additional Protocols and other Treaties**
Supplement the conventions by expanding protections for civilians and combatants in warzones. Treaties like the Hague Cultural Property Convention (and 1st and 2nd Protocols) deal with areas of particular concern.
- **Treaties addressing specific weapons** (e.g., Biological Weapons Convention, Chemical Weapons Convention, Ottawa Mine Ban Treaty, Convention on Cluster Munitions, Certain Conventional Weapons Convention (CCW))
- **Rome Statute Elements of Crimes** Useful Summary of IHL provisions deemed customary in nature. There are 125 States Party. The U.S., China, Russia, and India are not. But none broke consensus on the elements of crimes.

Foundational Documents Governing The Law of War

aka *jus in bello*
aka International Humanitarian Law,
aka International Law of Armed Conflict

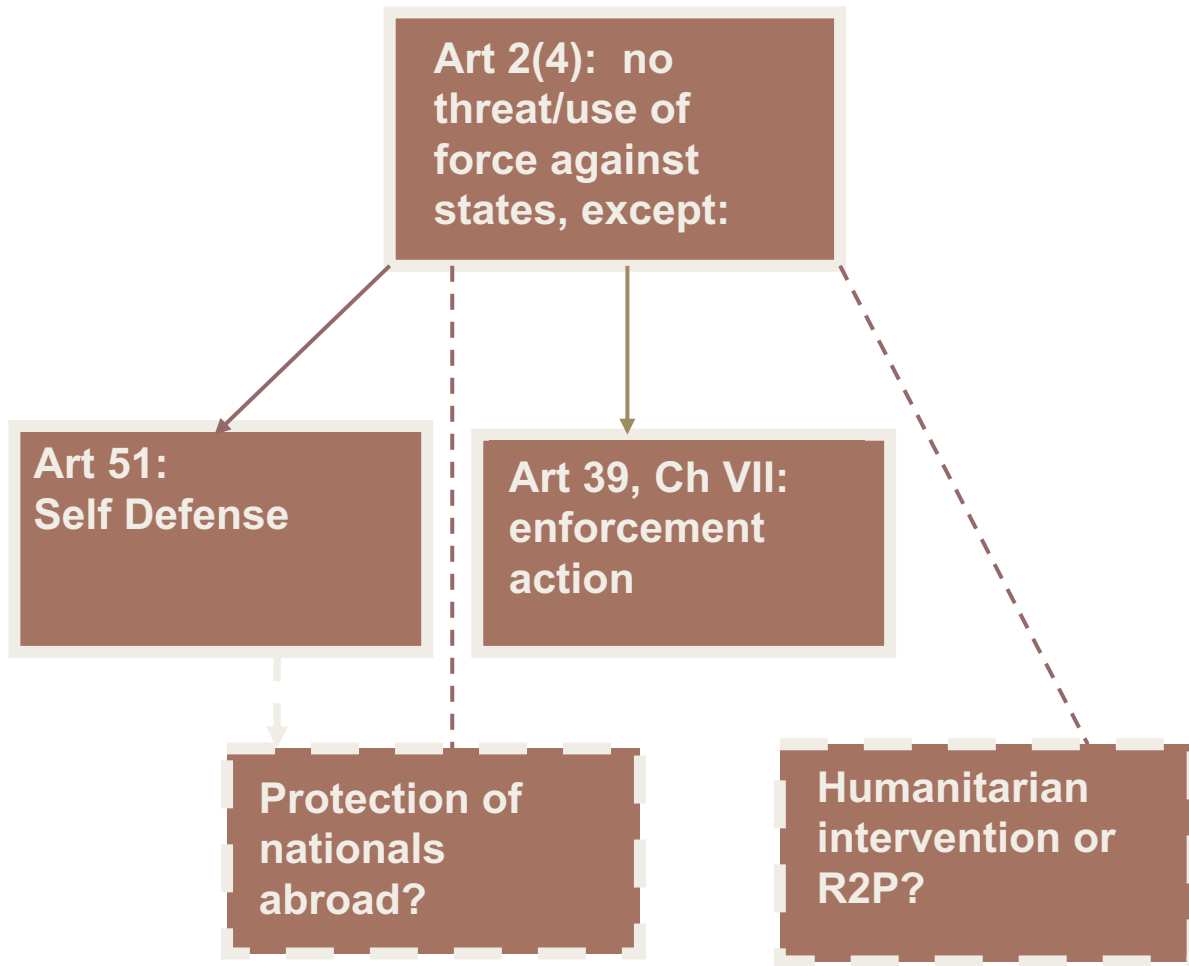


Fundamentals of The Law of War

Jus ad Bellum



UN Charter Regime



- **Article 2(4)**: States are prohibited to threaten or use [aggressive] force
- **Article 39**: Security Council has obligation to determine a threat to the peace, Breach of the Peace, or Act of Aggression & to maintain or restore International Peace & Security
- **Article 51**: States have an inherent right of individual & collective self-defense

United Nations Charter

Article 2(4)

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

- Outlaws aggressive threat or use of force
 - Rejects age-old right to resort to war
- Prohibits “use of force” rather than “war”
- Language is complex & subject to varied interpretations:
 - What constitutes “force”?
 - What does “against the territorial integrity or political independence” mean?
- Chapter 7 is the exception. Only used in: Korea (1950), Gulf War (1990), Somalia (1992), Haiti (1994)



United Nations Charter

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security . . .

- The U.S. required this language
- “armed attack” restricts
- “inherent” expands
- Most significant issue is anticipatory self-defense
- Most U.S. military action: Libya (1986), Panama (1989), Afghanistan/Sudan (1998), Afghanistan (2001), Pakistan/Yemen/Somalia (2002), ISIS (2014), Soleimani in Iraq (2020), Iran-backed militia in Syria/Iraq/Yemen/US shipping (2023/24), Iran (2025), Iran (2026) (Grenada 1983 and Iraq 2003 used a mix of justifications

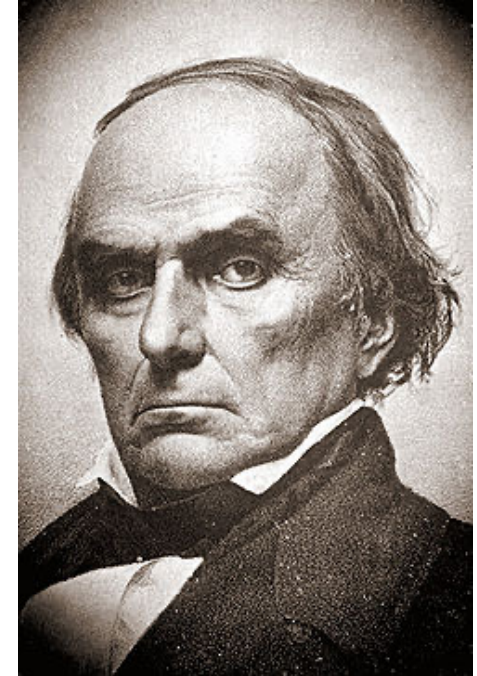


Anticipatory Self-Defense

The Caroline Case

[There must be shown] a necessity of self defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation; [and, further, the action taken must involve] nothing unreasonable or excessive, since the act justified by that necessity of self-defense, must be limited by that necessity and kept clearly within it.

Daniel Webster
U.S. Secretary of State (1842)



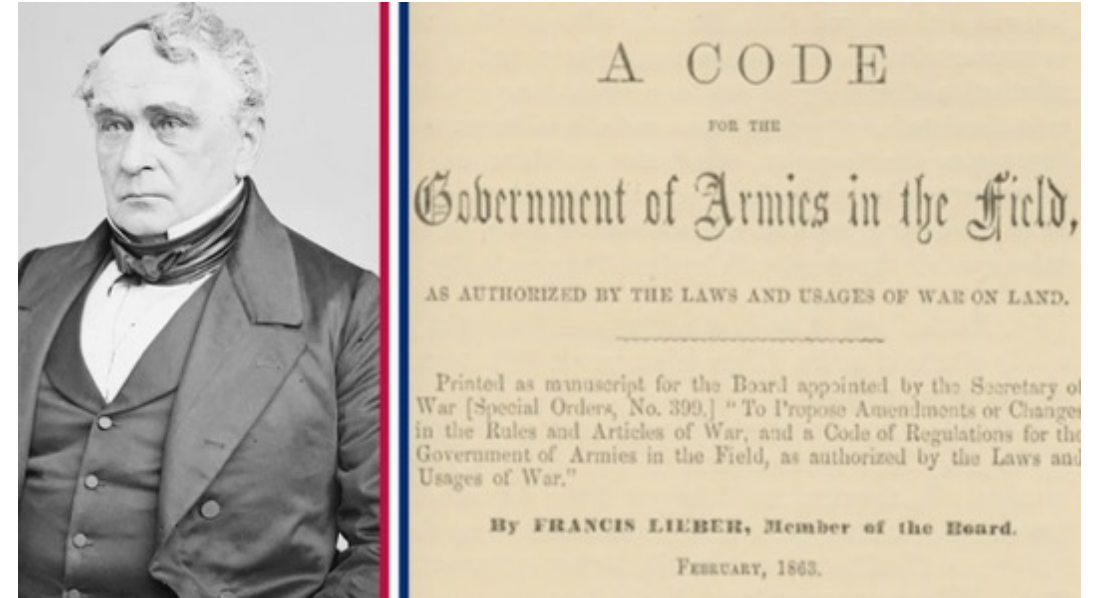
Fundamentals of The Law of War

Jus in Bello



Purposes of *Jus in Bello*

- Just War theory usually focused on *Jus ad Bellum*
- Differentiation dates back to Hugo Grotius
- St. Petersburg Declaration of 1868
 - “... *alleviating as much as possible the calamities of war* ...”
- General Purposes of the LOW (note that Grotius focused on secular underpinnings):
 - Good order and discipline
 - Maintaining domestic, international, and local support
 - Protecting combatants, noncombatants, and civilians
 - Safeguarding those who fall into enemy hands
 - Facilitating the restoration of peace
- The Lieber Code (General Orders No 100, 1863) widely recognized as one of the first, modern, comprehensive documents detailing the laws of war. Fits purposes above. Template for 1873 Brussels Declaration, 1899 and 1907 Hague Conventions, 1864, 1906, 1929, 1949 Geneva Conventions.





Core IHL Principles

Military Necessity

Limits actions in conflict to those essential for achieving legitimate military objectives.

“The Principle that justifies the use of all measures needed to defeat the enemy as quickly and efficiently as possible that are not prohibited by the Law of War.” (DoW Law of War Manual)

Humanity

Unnecessary Suffering: May not inflict suffering/injury/destruction not necessary to accomplish military purpose.

“It is especially forbidden . . . To employ arms, projectiles, or material calculated to cause unnecessary suffering.” (Hague Convention (IV) Respecting Laws and Customs of War on Land of 18 Oct 1907 “Right of belligerents to adopt means of injuring the enemy is not unlimited.”

Distinction: Must distinguish between combatants and civilians, and between military objectives and civilian objects

Proportionality: An attack must not cause incidental injury to civilians or collateral damage to civilian property that is excessive in relation to the direct military advantage anticipated.

Other renditions put Unnecessary Suffering as a corollary to Military Necessity. Or list Distinction and Proportionality as separate principles from that of Humanity, which prohibits cruelty, torture, etc. Older versions add “**Chivalry**” or “**Honor**” to the list at the same level as Military Necessity and Humanity.

The “**Martens Clause**”: 1899 Russian diplomat at First Hague Peace Conference, largely repeated in API Art 1(2) civilians and combatants “remain under the protection of the principles of international law derived from established custom, from the principle of humanity and from the dictates of the public conscience.”

Definitions & Common IHL Issues

Military Objective

Those object which, by their nature, location, purpose, or use, make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. (DoD LOW manual and AP1 Art 52(2))

- Issue of War sustaining targets (factories, power plants, data centers)

Distinction & Civilians taking part in hostilities

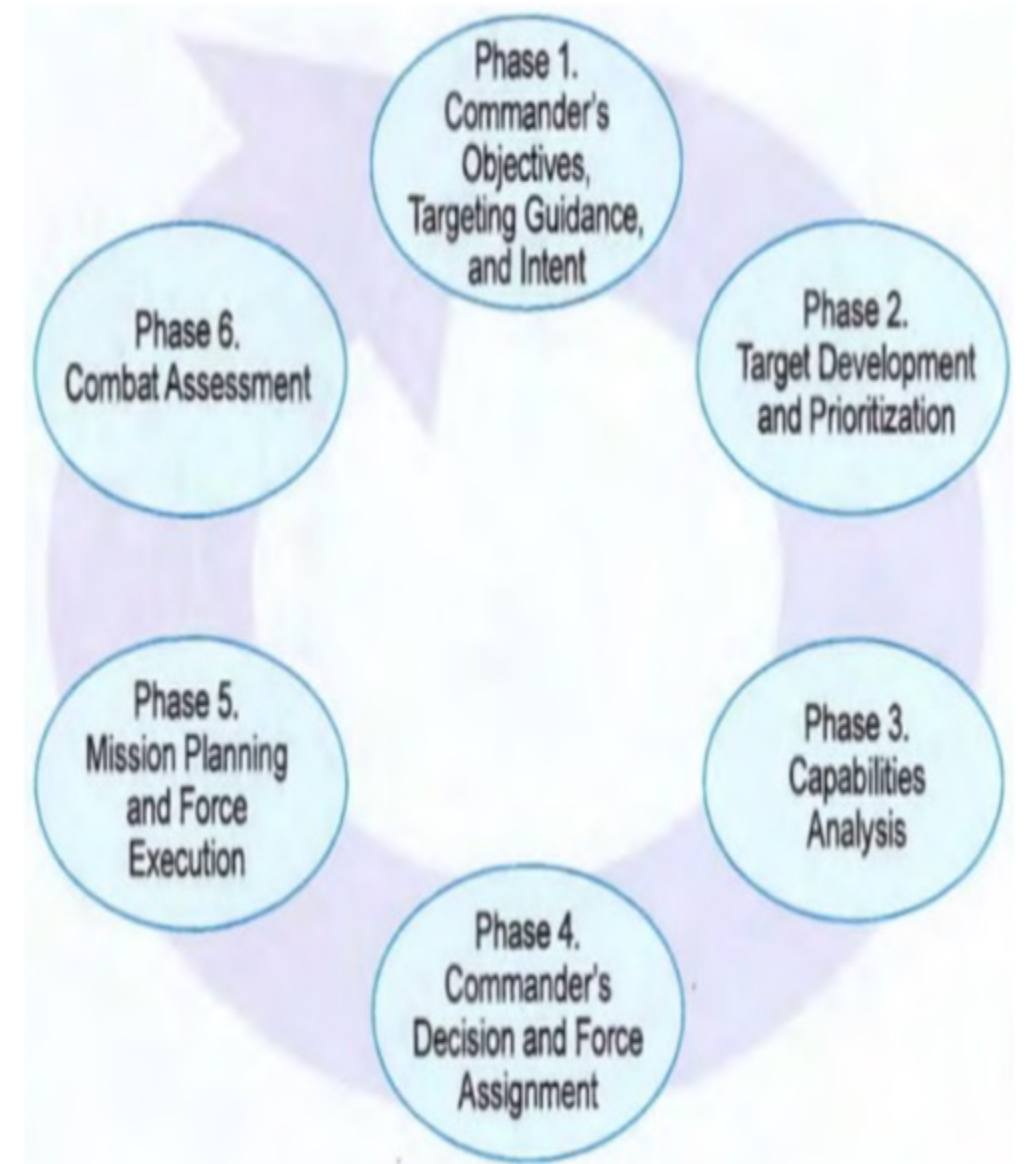
Civilians who take a direct part in hostilities, of course, may be targeted.

- Issue of “unlawful combatant” or “unprivileged belligerent.”
- Responsibility of governments to separate military and civilians
- Issue of what constitutes DPH (contractors, civilians & drones)

Distinction & those Hors de Combat

Distinction more completely applies to those who are *hors de combat*

- See Geneva Conventions I-IV: Wounded, Shipwrecked, POW, Civilian
- See Common Article 3 “Person’s taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘*hors de combat*’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely.”
- What about a “clear intention to surrender”? Feasibility?



Modern Developments and Additional IHL Issues



Principle of Proportionality

An attack is prohibited if it is *expected* to cause incidental loss of civilian life, injury to civilians, and damage to civilian objects which would be [*clearly*] excessive in relation to the concrete and direct [*overall*] military advantage anticipated. (see ICC, DoW LOW manual, AP1 Art 51(5)(b))

Compare ICC's *criminal liability* with DoW's practical guidance

Command Responsibility

Traditional command responsibility – commanders are responsible for crimes they “knew or should have known” subordinates were committing or about to commit – is challenged by technological advancements and the use of more complex weapon systems.

- e.g., Distinction and Proportionality impacted by the ability to use expensive, precise weapons. Are they required?

Nature of IHL and Liability regarding Autonomous Weapons

IHL imposes obligations on the people who make decisions regarding employment of weapon systems, not on the systems themselves.

IHL does not explicitly deal with autonomous systems at present, nor is it likely to do so in the immediate future.

Coercive legal structures usually impose a *mens rea* requirement that is inapposite for modern warfare with autonomous weapons

Backup Slides

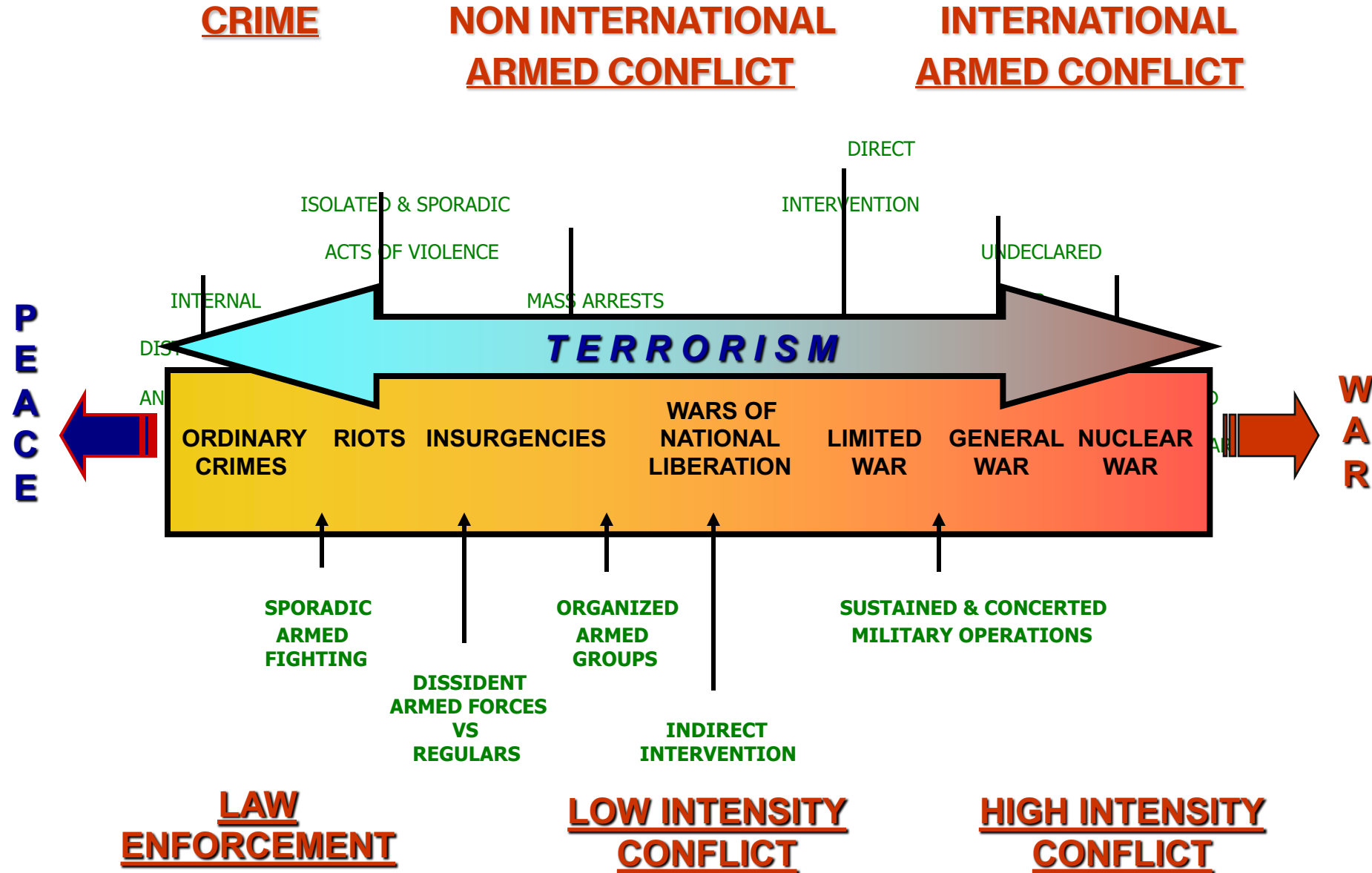


Fundamentals of the Law of War – *Jus ad Bellum*

Historical Antecedents

- Hebrews (Deuteronomy 20: 10-12) (offer terms of peace/forced labor); Sumerians and Egyptians (2000 B.C.) (brutal, only pragmatic); Hittites (1400 BC) (regulated by oaths, honorable conduct, honorable conduct); Chinese (Planting/harvest season off limits); Sparta and Athens (inviolability of sanctuaries, heralds, truces, declarations of war)
- Just War Period (335 B.C. – 1800 A.D.) Aristotle (e.g., to prevent enslavement, leadership in the interest of the led, master those who deserved enslavement); Roman Empire/Cicero (106-43 B.C.) (excuse for war: live in peace unharmed; no war just unless entered after official demand and formal declaration); Thomas Aquinas (1225-1274 A.D.) *Summa Theologica* War must be initiated by sovereign for “just cause” with “right intention” for advancement of good over evil; Hugo Grotius (1583-1645) *De Jure Belli ac Pacis Libri Tres* (*On the Law of War and Peace: three books*) “father of international law, moved to more rationalist/secular natural law basis.
- Positivist War as Fact Period (1800-1919) War simply existed and international law could not prohibit it. Machiavelli (just is the war for whom it is necessary); and Clausewitz (a branch of political activity; war is a continuation of political intercourse)
- WWI/League of Nations (re-evaluation of positivist theory) Covenant not to resort to war but submit disputes to arbitration/judicial settlement; 1928 Kellogg Briand Pact: there is no “just” basis. Defensive use lawful

WHEN DOES LOW APPLY?



Particular Provisions

Oslo Manual

Section III: Remote and Autonomous Weapons: “the technologies . . . are either novel or have yet to emerge and are not explicitly dealt with in either customary international law or in treaty law.” (2020)

Rule 41: “employment . . . is subject to applicable principles and rules of LOAC, in particular distinction, proportionality, and the obligation to take feasible precautions.”

Distinction in IHL – Protection of Civilians/Civilian Objects in Rome Statute

Elements Article 8(2)(b)(i) “object of the attack was a civilian population . . . Individual civilians not taking direct part in hostilities”

Elements Article 8(2)(b)(ii) “. . . Civilian objects, that is objects which are not military objectives.”

Mens rea requirement for consequences (Statute Article 30) includes: the person is aware that a consequence will occur “in the ordinary course of events”

Proportionality

Elements Article 8(2)(b)(iv) “The attack was such that it would cause incidental death or injury to civilians . . . Of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”

Weapons Reviews; Protocol I, Article 36

“In the . . . Adoption of a new weapon . . . Obligation to determine whether its employment would, in some or all circumstances, be prohibited by . . . (an applicable) rule of international law”



Prospects for Future Norm Development

Current International Discussions

The UN CCW actively debates bans and guidelines for autonomous weapons systems.

Ottawa Convention paradigm

Unlikely to be relevant for rapidly developing technologies

Other Likely Treaty and Convention Development

NGOs advocate for comprehensive international agreements to address global issues collaboratively.

Such advocacy will likely fail.

Politics vs Integrity; NGO equities vs State equities

Diverse National Policies

Countries implement policies that vary from strict regulations to promoting development in different sectors.

Norms will emerge from such policies, but binding treaties are likely far behind.

