



The Constitution, Military Lawyers, and the Rule of Law

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The International Law of Armed Conflict: An Overview



Introduction



- Use of Force Law
- Law of Armed Conflict
- Focus in Presentation:
 - international armed conflict
 - armed conflict on land
- Purposes:
 - unnecessary suffering & minimum damage
 - principles of war
 - encourage reciprocity
 - obtain intelligence
 - maintain discipline

Revolutionary War



Military Prosecution



Constitution

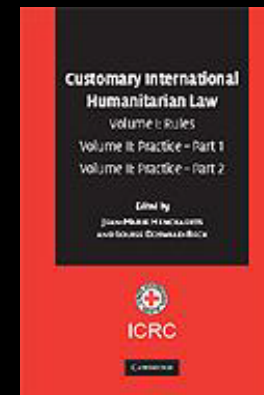
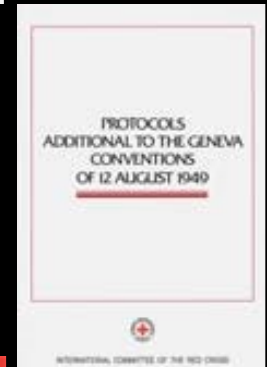


19th Century



Major Sources of Law

- International Agreements
 - 1907 Hague Convention IV
 - 1949 Geneva Conventions
 - 1977 Additional Protocol I
- Customary International Law
- International Human Rights Law?



General Principles



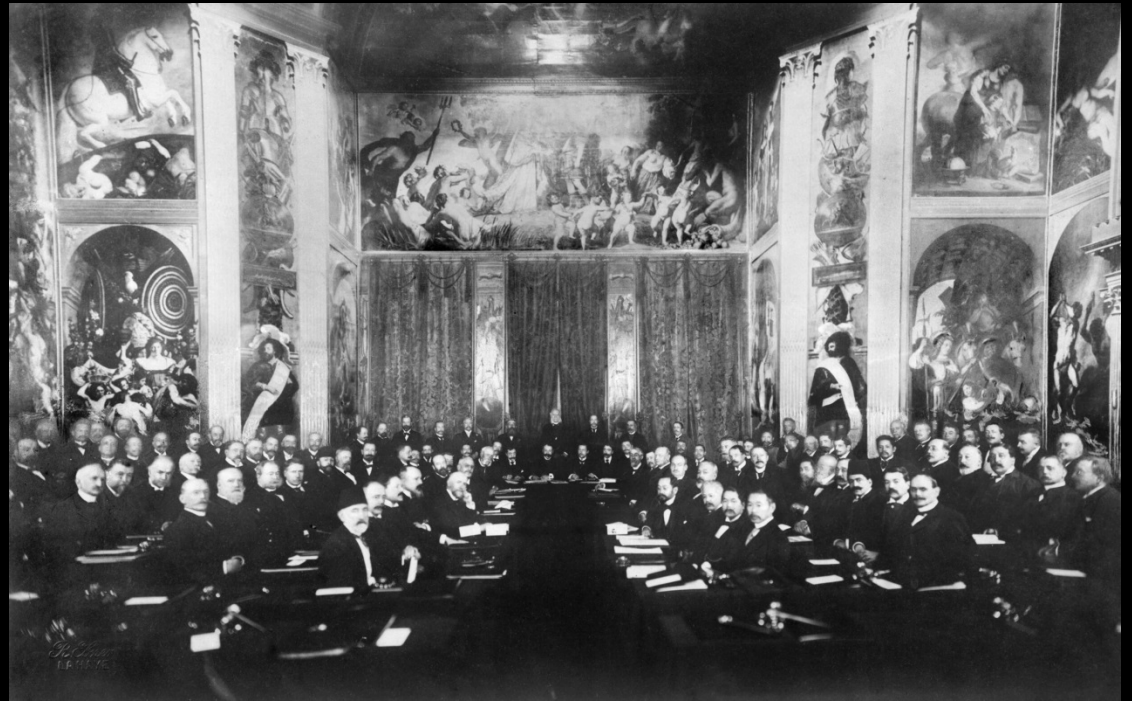
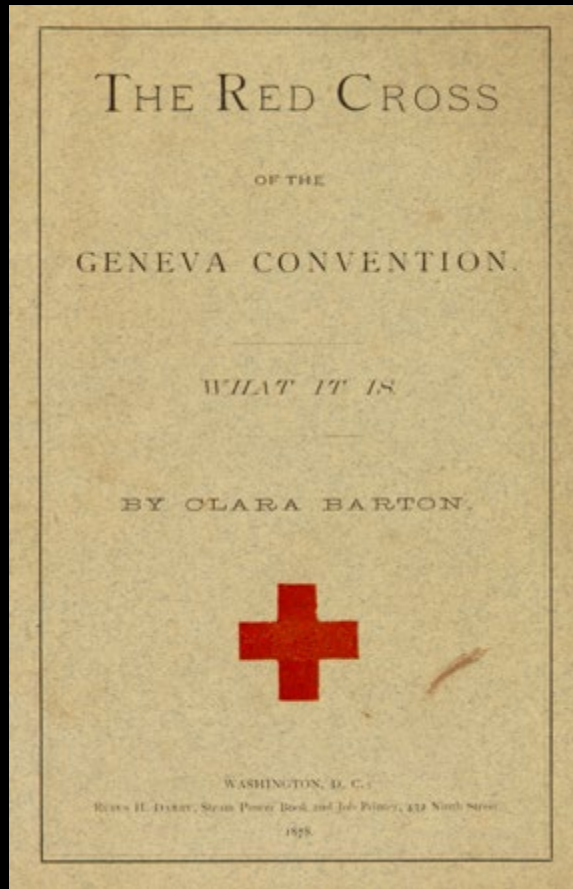
- Military Necessity
- Unnecessary Suffering
- Distinction
- Proportionality



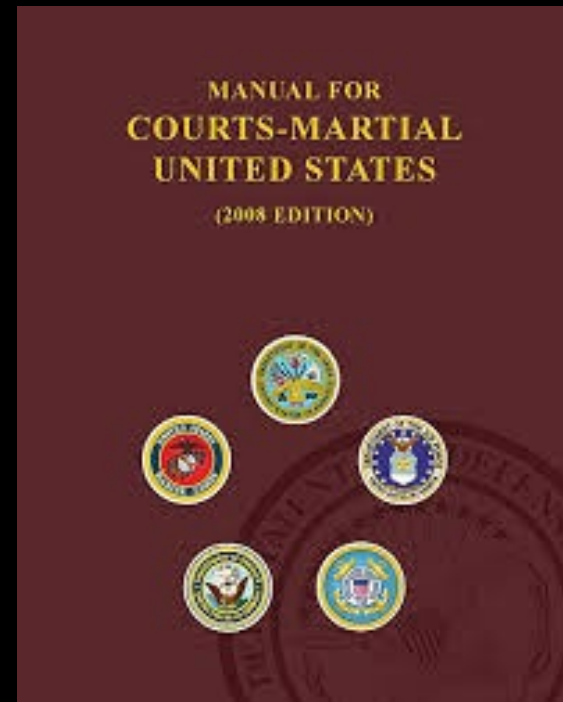
Civil War



International Law of War



World War and beyond



Targeting

- Intentionally Attack Only Military Objectives:
 - combatants
 - military objects
- **Combatants**
 - armed forces, other groups fighting with them
 - inhabitants repelling invasion
 - civilians for such time as they take a direct part in hostilities



Targeting Combatants- Exceptions



- Medical & Religious Personnel
- Surrender
- Prisoner of War
- Wounded & Sick



Proportionality Rule

- incidental civilian injury & damage excessive to the concrete & direct military advantage anticipated



Prisoner of War Status



- regular armed forces
- militia & volunteer units with armed forces
- militia & other partisans not with armed forces who:
 - have responsible commander
 - have uniform or distinctive sign
 - carry arms openly
 - follow law of armed conflict
- authorized persons accompanying armed forces
- merchant marine & civil air crews
- inhabitants resisting invasion
- for AP I states: combatants who carry arms openly in deployment & combat

Prohibited Weapons

General Rules in Customary Law:

- Needless injury or unnecessary suffering
- Indiscriminant

Weapon Prohibited by International Agreement:

- Expanding Small Arms Ammunition



World War II Japanese Balloon Bomb



Sudan Air Force AN26 Used as Bomber



Expanding Small Arm Ammunition

Enforcement



- Trial by a State
 - military courts or tribunals
 - civilian courts
- Universal Jurisdiction over Grave Breaches

Enforcement

- International Courts
 - victorious allied nations
 - UN Security Council
 - International Criminal Court
- No Statute of Limitations



Conclusion: Law of International Armed Conflict

- Applies in armed hostilities between:
 - state vs. state
 - certain international terrorist groups vs. state
- Primary purpose: protect civilians
- Fundamental principles:
 - military necessity, unnecessary suffering, distinction, proportionality
- Provides restrictions on:
 - targeting, treatment of detainees & property, and weapons
- States are obligated to enforce

Exit Question

- Why should we follow the Law of Armed Conflict?
- How do we advise our clients—servicemembers, veterans, families, employers, and others?



Conclusion

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