

# The Constitution, Military Lawyers, and the Rule of Law

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# JAG Corps Origins



# The International Law of Armed Conflict: An Overview



# Introduction



Terry Richards / AFP



- 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



*We the People*



# Military Prosecution



# Constitution

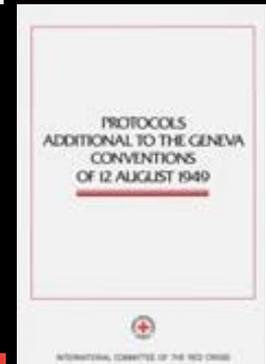


# 19<sup>th</sup> Century



# Major Sources of Law

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



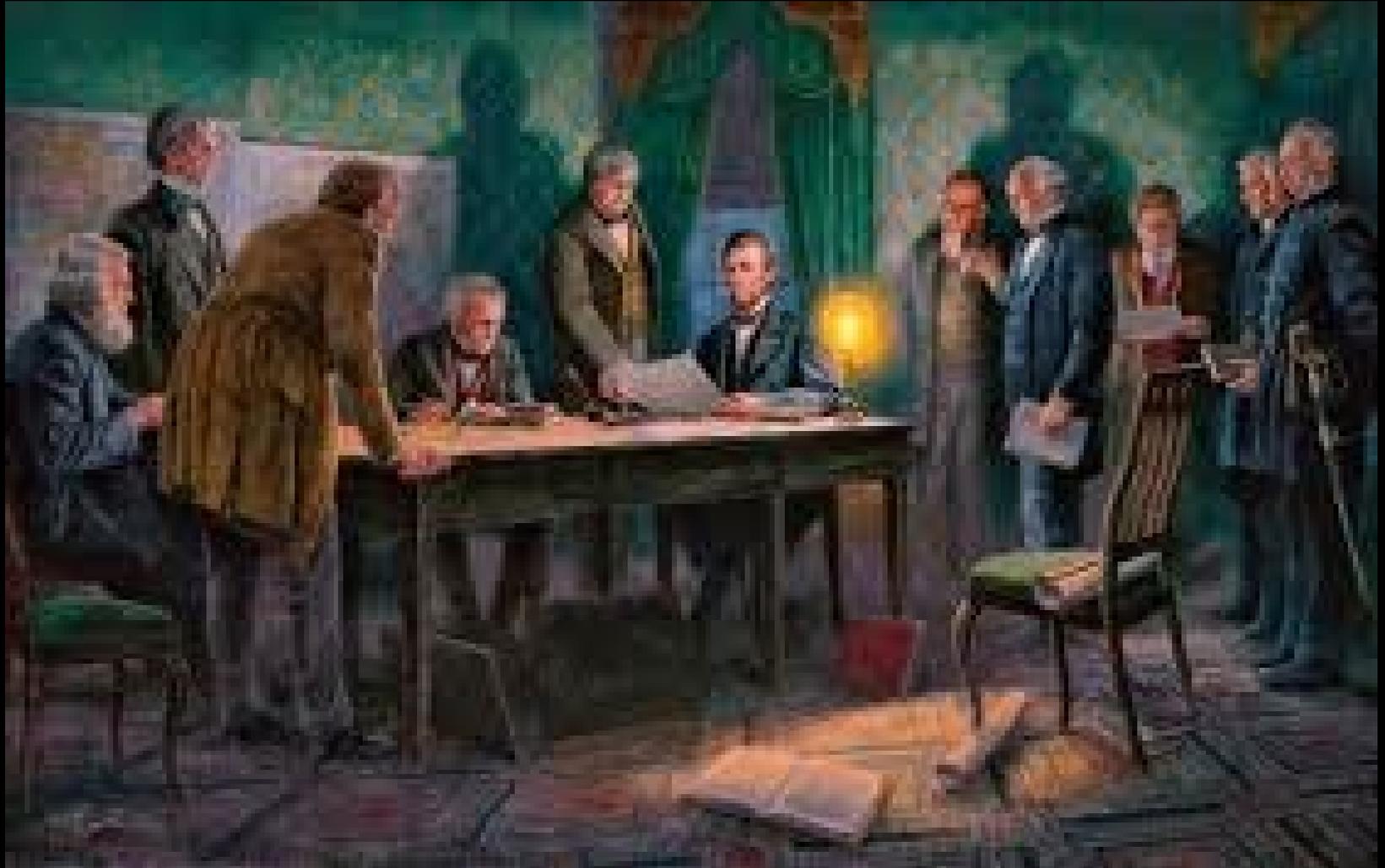
# General Principles



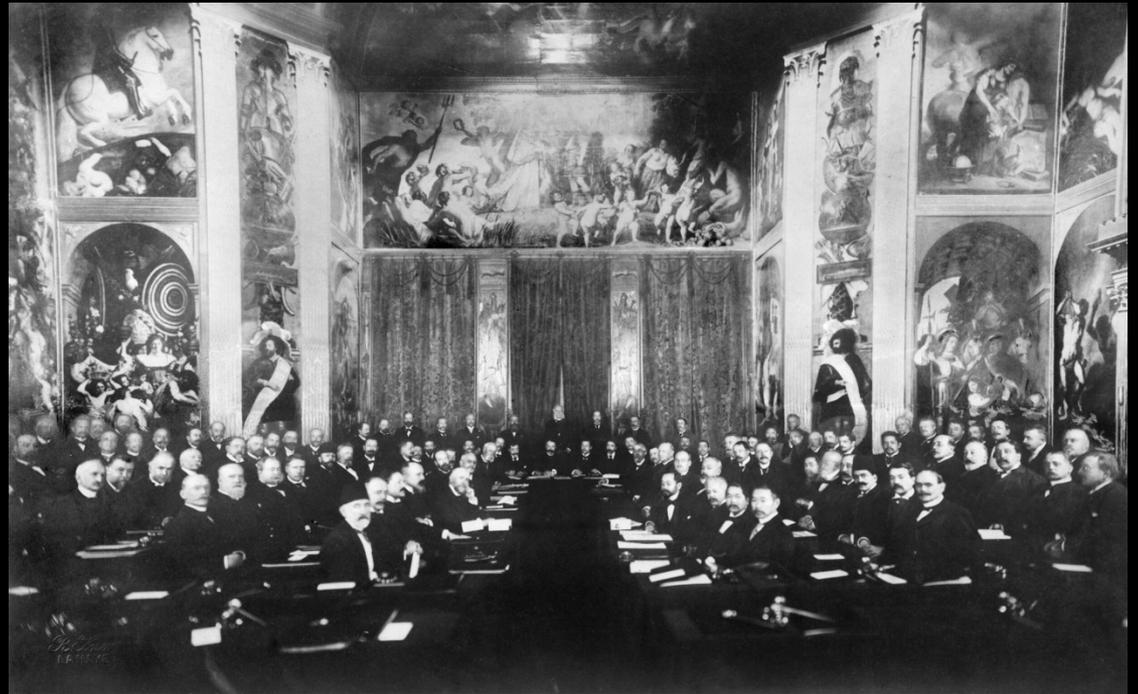
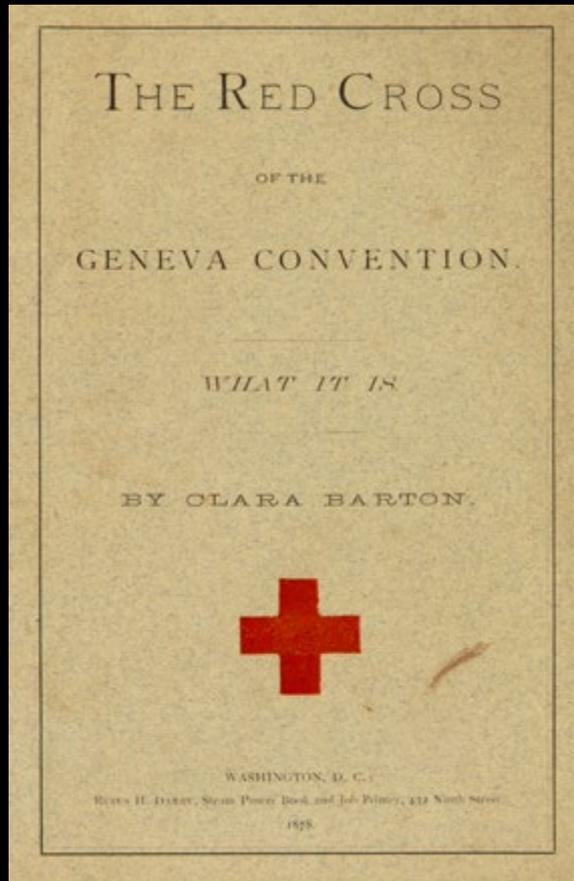
- Military Necessity
- Unnecessary Suffering
- Distinction
- Proportionality



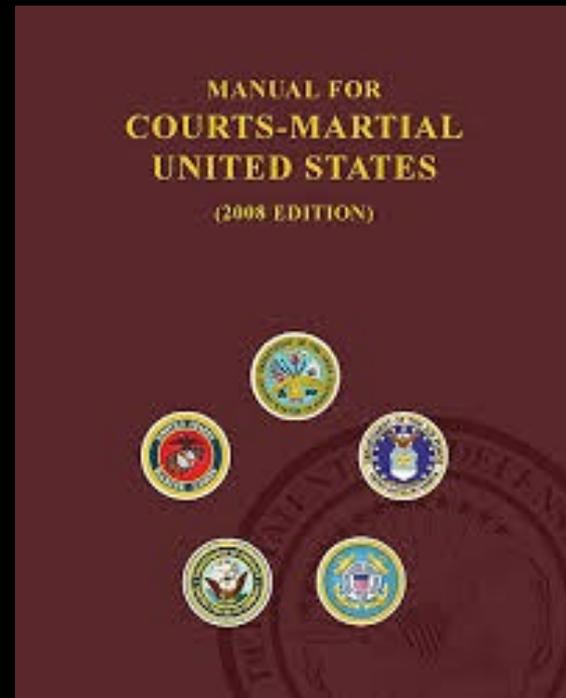
# Civil War



# 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

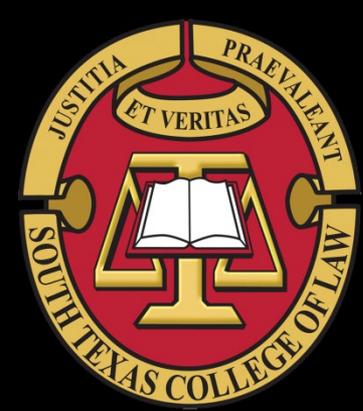


# Conclusion: Law of International Armed Conflict

- 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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