



#### **International Humanitarian Law (IHL)**

**Definition:** International rules, established by treaties or custom, which are specifically intended to solve humanitarian problems arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the rights of Parties to a conflict to use the methods and means of warfare of their choice and protect persons and property that are, or may be, affected by conflict.



#### **Fundamental Rules of IHL**

- **★**Persons hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives and physical and moral integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.
- **\***Who is "hors de combat"?



#### More Rules of IHL

- \*It is forbidden to kill or injure an enemy who surrenders or who is *hors* de combat
- X The wounded/sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and medical supplies. The emblem of the red cross (red crescent) is the sign of such protection and must be respected.



#### **More Rules**

\*Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.

\*What about the right to provide relief?



#### Almost the end of the rules

◆ Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

**Examples of such limits?** 



#### **End of the Rules**

- ♦ Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.
- ♦ The role of military and peacekeepers in uniforms?



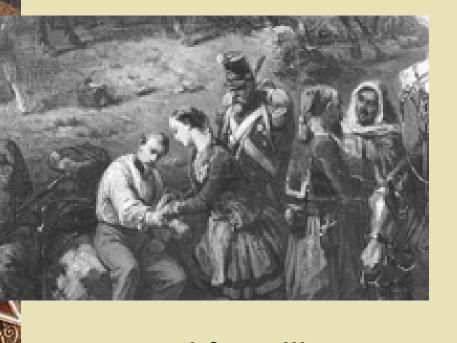


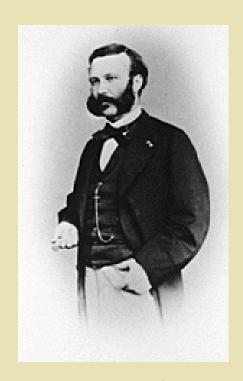
#### EVOLUTION OF HUMANITARIANISM

- COMMUNITIES & SOCIETIES HAVE ALWAYS RESPONDED TO CRISES WITH FORMS OF ASSISTANCE
- COMMUNITIES & SOCIETIES HAVE ALWAYS HAD RULES REGULATING COMBAT AND THE DEFINITION OF PROTECTION
- The first Caliph, <u>Abu Bakr</u>, proclaimed "Do not mutilate. Do not kill little children or old men or women. Do not cut off the heads of palm trees or burn them. Do not cut down fruit trees. Do not slaughter livestock except for food."

Hashmi, Sohail H. (2002). *Islamic political ethics: civil society, pluralism, and conflict*. Princeton, N.J: Princeton University Press. ISBN 0-691-11310-6. p. 211 (via Wikipedia)

#### 1859 Battle of Solferino





- tutti fratelli
- soldiers request families be notified
- lots of amputations
- A Memory of Soferino published 1862



#### ICRC FOUNDING FIVE





#### 5 YEARS LATER...



- THE GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED IN ARMIES IN THE FIELD ADOPTED ON 22 AUGUST 1864 (REVISED 1906, 1929)
- ROOTS OF INTERNATIONAL HUMANITARIAN LAW (IHL)



#### DILEMMAS & FOCUS

- TO MAKE MEDICAL PERSONNEL NEUTRAL? (What is neutrality? Impartiality?)
- ALLOW WOUNDED TO GO HOME?
   (Are they hors de combat?)
- MEANS OF DESTRUCTION GREATER THAN
   MEANS OF PROTECTION => PROHIBITIONS ON
   SOME TYPES OF ARMS

**PEACE** 

AIM: HUMANIZE WAR



## MEANWHILE, BACK IN THE USA...(1860s)

 22,000 WOUNDED AT GETTYSBURG

MEDICAL BUREAU OF UNION ARMY –AWFUL

CLARA BARTON (AND ISSUES OF ACCOUNTABILITY IN HUMANITARIAN ACTION)

Coming on the heels & across the pond - Florence Nightingale & the Crimean War...and peat moss...



#### GERMAN-DANISH WAR OF 1864



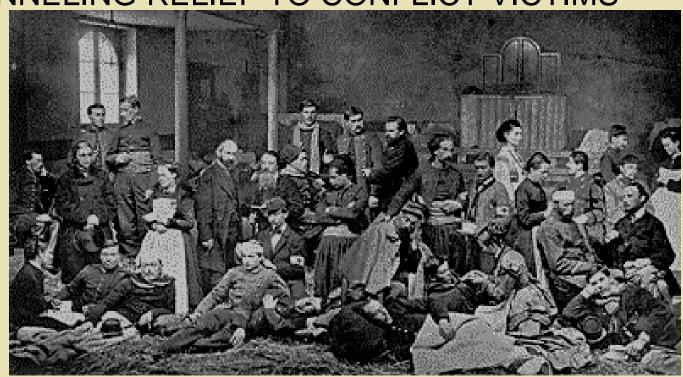
### ASSIST THE WOUNDED

SEE IF GENEVA
IDEAS WORKED
IN WAR



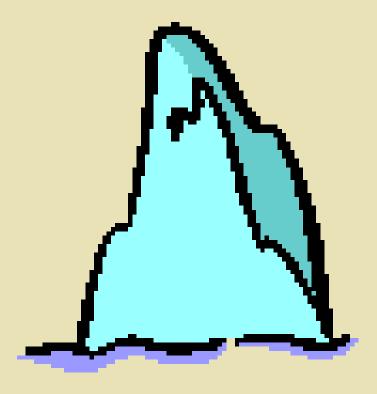
#### FRANCO-PRUSSIA WAR 1870 - 71

- SENDING DELEGATES TO CONFLICT AREAS
- PUBLISHING LISTS OF PRISONERS OF WAR
- REPATRIATING THE WOUNDED
- TRACING MISSING PERSONS
- DELIVERING MESSAGES TO THOSE SEPARATED BY WAR
- CHANNELING RELIEF TO CONFLICT VICTIMS





#### April 20, 1912?



And a Draft Convention on the role of the Red Cross in times of civil war/insurgency submitted to 9<sup>th</sup> International Conference...but not discussed.



#### WORLD WAR I 1914 - 1918

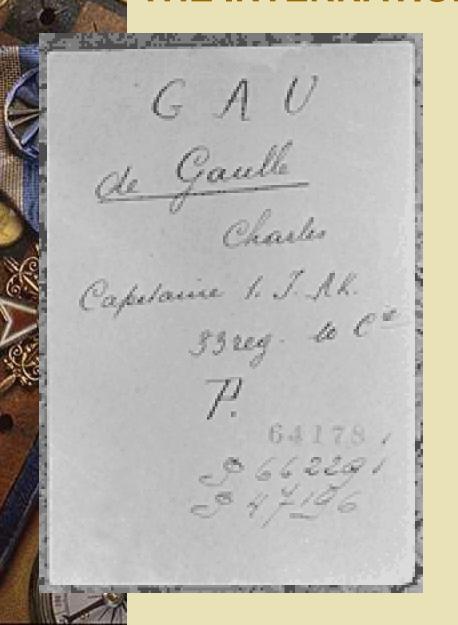
INTERNATIONAL PRISONER OF WAR AGENCY

**CHEMICAL WEAPONS** 





### THE GREAT WAR THE INTERNATIONAL POWS AGENCY



 NEARLY 5 MILLION INDEX CARDS

 NEARLY 2 MILLION PACKAGES

 CLOSED IN 1919 (the year SCF begins)



#### THE GREAT WAR ENDS

- RELIEF MANIPULATED
- RED CROSS ABUSED
- GENEVA, HAGUE CONVENTIONS FLAUNTED
- MASSIVE HUMANITARIAN CRISES --DEATHS EXCEED WW I
- MANY LIVES SAVED
- WOMEN IN NEW ROLES



#### POST WAR PERIOD

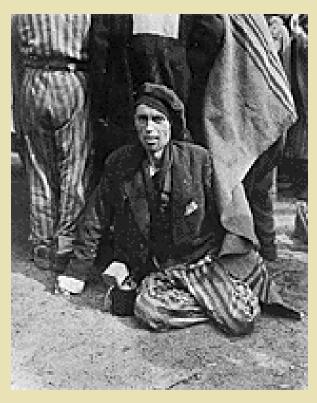


1921 10<sup>th</sup> International
 Conference affirms right of
 relief for victims of civil
 wars/revolutions/
 disturbances, ICRC
 mandated to work in civil
 war, no distinction b/n
 government or rebel sides
 (only resource until 1949)

- Spanish civil war...rebels not recognized
- 1929 Geneva conventions --Japan and Russia don't sign
- by 1933, ICRC aware of Nazi activities
- 1934 Tokyo conference
- National societies politicized
- 1935 Italians in Ethiopia

#### **WORLD WAR II**









## The Four Geneva Conventions of 12 August 1949

- I. Wounded and sick in armed forces in the field.
- II. Wounded, sick & shipwrecked members of armed forces at sea.
- III. Treatment of prisoners of war.
- IV. Protection of civilian persons in time of war.



#### **COMMON ARTICLE 3**

- CONFLICTS OF A NON-INTERNATIONAL CHARACTER IN THE TERRITORY OF ONE OF THE POWERS PARTY TO THE CONVENTION.
- MINIMUM HUMANE TREATMENT OF "PERSONS TAKING NO ACTIVE PART IN HOSTILITIES INCLUDING THOSE WHO ARE *HORS DE COMBAT*"



#### ARTICLE 3, CONTINUED

#### PROHIBITS:

- VIOLENCE TO LIFE AND PERSON, IN
   PARTICULAR MURDER OF ALL KINDS,
   MUTILATION, CRUEL TREATMENT AND
   TORTURE
- TAKING OF HOSTAGES
- OUTRAGES UPON PERSONAL DIGNITY, IN PARTICULAR, HUMILIATING AND DEGRADING TREATMENT
- PASSING SENTENCES/CARRYING OUT
   EXECUTIONS WITHOUT PREVIOUS
   JUDGEMENT PRONOUNCED BY A REGULARLY
   CONSTITUTED COURT



#### ARTICLE 3, CONTINUED

- THE WOUNDED AND SICK SHALL BE COLLECTED AND CARED FOR.
- HUMANITARIAN ORGS, E.G. THE ICRC. MAY OFFER SERVICES TO PARTIES TO A CONFLICT AND THAT THESE PARTIES SHOULD FURTHER ENDEAVOUR TO BRING INTO FORCE, BY MEANS OF SPECIAL AGREEMENTS, ALL OR PART OF THE **OTHER PROVISIONS OF THE PRESENT** CONVENTION. THE APPLICATION OF ARTICLE 3 CONFERS NO LEGAL STATUS TO PARTIES TO A CONFLICT.

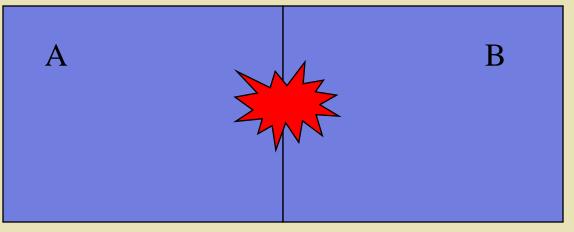


## THE TWO ADDITIONAL PROTOCOLS OF 8 JUNE 1977

- **Protocol I** Additional to the Geneva Conventions of 12 August 1949 relating to the **protection of victims of international armed conflicts.**
- ‡ Protocol II Additional to the Geneva Conventions of 12 August 1949 relating to the protection of victims of non-international armed conflicts.

  (GRSS ratified on 25.1.2013) additional protocol II 1977.pdf

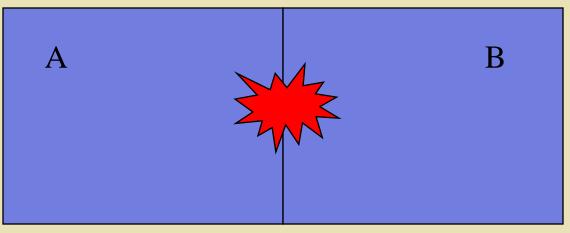




International armed conflicts

- স FOUR GENEVA CONVENTIONS
- **♥ ADDITIONAL PROTOCOL I (IF RATIFIED)**
- **™ ICRC AND OTHER RED CROSS AGENCIES MANDATED TO PERFORM HUMANITARIAN ACTIVITIES**

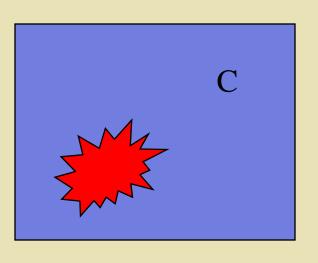




Peace Operations

- **▼ FOUR GENEVA CONVENTIONS** (SOMETIMES)
- **♡ ADDITIONAL PROTOCOL I (IF RATIFIED)**
- **□ ICRC AND OTHER RED CROSS AGENCIES MANDATED TO PERFORM HUMANITARIAN ACTIVITIES**

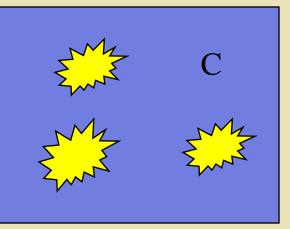




Non-International Armed Conflicts

- & COMMON ARTICLE 3 (APPLIES AUTOMATICALLY)
- & ADDITIONAL PROTOCOL II (IF RATIFIED)
- & ACCEPTANCE OF ICRC AND OTHER RED CROSS ACTIVITIES IS OPTIONAL





Internal Disturbances/Tensions

- **NOT COVERED BY IHL**
- **EXECUTE:** INTERNATIONAL HUMAN RIGHTS LAW APPLIES
- & ACCEPTANCE OF ICRC AND OTHER RED CROSS ACTIVITIES IS OPTIONAL



## Who Determines Which Laws Apply?

- No <u>determining</u> body, standard or internationally accepted method competent to decide whether an armed conflict is international or noninternational.



# HUMANITARIAN WORKER STATUS UNDER IHL (usually)

- EXPATRIATE & LOCAL HUMANITARIANS ARE CIVILIAN NON-COMBATTANTS
- ONLY HAVE RIGHT TO PROVIDE HUMANITARIAN ASSISTANCE IF THEY:
  - BELONG TO AN *IMPARTIAL* RELIEF ORGANIZATION, AND
  - HAVE CONSENT OF A PARTY TO THE CONFLICT



#### OLS 1989 - 2005

- ◆ 1988 famine
- March 1989 "short term" agreement
   "OLS"...that lasted until 2005
- Impact of end of Cold War...
- first UN operation that engaged with a non-state armed group w/out conferring recognition to the rebel movement.
- OLS Ground Rules. Motivated by killing of relief workers.
- Security modalities briefings, assessments, run bags, bunkers
- Misuse of humanitarian assistance



# DEROGATIONS OF HUMAN RIGHTS DURING EMERGENCIES

- Civil and political rights may be derogated from during a state of emergency
- Derogating from human rights means to "limit" the extent to which these obligations apply



#### **DEROGATION**

#### HUMAN RIGHTS LAW

IHL

STATES MAY
 DEROGATE
 (SUSPEND MANY –
 BUT NOT ALL –
 DURING PUBLIC
 EMERGENCIES
 OR WAR)

NON-DEROGABLE
 (BASIC
 PROTECTIONS
 MAY NOT BE
 SUSPENDED)

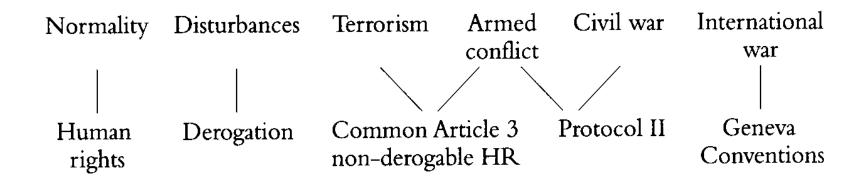


# THESE HUMAN RIGHTS ARE NON-DEROGABLE

- The right to life;
- Freedom from torture;
- Freedom from slavery;
- The prohibition of detention for debt
- Freedom from post facto legislation and other judicial guarantees;
- Right to recognition before the law;
- Freedom of thought, conscience and religion.



### DON'T KNOW WHAT'S "RIGHT"?





THE LAW OF INTERNAL CRISIS AND CONFLICT
BY TOM HADDEN AND COLIN HARVEY



#### **HUMANITARIAN CHARTER**

- Agencies' commitment to principles & Minimum Standards.
- Reflects the rights and duties enshrined in international law
- Concerned with most basic requirements for sustaining the lives & dignity
- Charter + Minimum Standards =
   operational framework for accountability
   in humanitarian assistance efforts.



#### The right to life with dignity

 Entails the right to have steps taken to preserve life where it is threatened, and a corresponding duty on others to take such steps. Implicit in this is the duty not to withhold or frustrate the provision of life-saving assistance.

#### The distinction between combatants and non-combatants

- need to distinguish between those actively engaged in hostilities, and civilians and others (including the sick, wounded and prisoners) who play no direct part.
- The principle of non-refoulement

#### NEUTRALITY

To not take sides and to avoid the appearance of taking sides in hostilities or in controversies based on political, racial, religious or ideological identity (non-partisanship).

- Transparency & accountability are key elements in maintaining neutrality.
- Spirit of principles extends to all emergencies

#### IMPARTIALITY

TO DELIVER AID TO ALL THOSE WHO ARE SUFFERING; THE GUIDING PRINCIPLE IS ONLY THEIR NEED.

- ASSISTANCE IS PROVIDED STRICTLY ACCORDING TO IDENTIFIED/ASSESSED NEEDS
- PROPORTIONALITY IS KEY NEEDS ARE MET ACCORDING TO SEVERITY
- APPROPRIATENESS ASSISTANCE IS PROVIDED BASED ON NEED (RATHER THAN LIMITED BY AVAILABLE RESOURCES)

#### INDEPENDENCE

Though subject to the laws of each respective countries, aid agencies must always maintain their autonomy, and shall endeavor not to be used as instruments of government policy.

## THE HUMANITARIAN IMPERATIVE

TO PREVENT & ALLEVIATE SUFFERING; TO PROTECT LIFE AND HEALTH; AND TO ENSURE RESPECT FOR THE HUMAN BEING.

- IMPLIES BOTH A RIGHT TO RECEIVE AND TO OFFER HUMANITARIAN ASSISTANCE BASED ON PRINCIPLES.
- ALSO IMPLIES AN OVERALL PROTECTION
   APPROACH I.E., RESPECTING IHL AND HUMAN
   RIGHTS LAWS.
- EMPHASIZES DIGNITY



#### Thank you