Current Legal Paradigm of *Jus ad Bellum* and *In Bello*—Critical Perspectives

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Naples, October 9, 2019

Contemporary Sources of International Public Law

- The current sources of international law are set forth in the Statute of the International Court of Justice (1945), art. 38(1):
- International treaties/conventions;
- International custom (customary law);
- General principles of law, recognized by major legal systems;
- Judicial decisions and teaching of the most qualified international law scholars and lawyers (subsidiary source).

The Law of Armed Conflict—A Fundamental Subset of Public International Law

- *Jus ad bellum* and *Jus in bello; Jus belli*; *Jus post bellum*?
- Distinction between International Armed Conflicts (IACs) and Non-International Armed Conflicts (NIACs);
- No necessity/requirement any longer of 1907 Hague Convention "previous and explicit warning" (declaration of war): Since 1949 common Art. 2 of Geneva Conventions makes the Conventions applicable to any armed conflict between States;
- Aggressive war between States is outlawed since the "Kellogg-Briand Pact" (1928) and, most relevantly, the U.N. Charter (1945)—Ban on "forcible value extension";
- The civil wars problems: a) Not forbidden—*Jus in bello*-related considerations; b) Difficulty to determine the aggressor—aggression as a crucial *jus-ad-bellum* problem (what about non-state-actor aggression such as that by international terrorism)?

The U.N. Charter (*Jus ad Bellum*)

- Ch. I, Art 2(3) requires settlement of disputes by peaceful means, as further specified by Art 33;
- Ch. I, Art 2(4) prohibits use of force and threat of use of force:

  All 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.

The U.N. Charter *Continued* 1

- Under the restrictive reading of art 2(4) only force prohibited is that directed against "territorial integrity and political independence" of any State (textual interpretation)—*inter alia,* arguably, "humanitarian intervention" and "protection of nationals" would be allowed under such reading;
- Under the expansive reading, prohibition is directed to ALL use of force (including aggression below the threshold of "war") except as expressly permitted by the Charter (contextual interpretation—supported by the ICJ: presumption against customary self-help/necessity, and "minimal" use of force?);
- "International Crime of Aggression" defined in UNGA Decision 29/3314 (1974) and in the Rome Statute of the International Criminal Court (2001)--"crime against peace"; Prohibition of territorial acquisition by invasion ("forcible value extension");
- Incorporation of the 1945 "Nuremberg Principles"—War crimes; Crimes against peace; Crimes against humanity.

The U.N. Charter *Continued 2*

- Exceptions—Charter's express authorization to use of force:

  a) Ch VII, Art. 51: Individual or collective self-defense against armed attack;

  b) Ch VII, Art. 39-42, 4: Enforcement actions authorized by the Security Council—Subject to *veto* power;

  c) Ch VII, Art. 52: Lawful action pursuant to regional defense arrangement—such as NATO;
- Implied/Customary Exception: Consent by State to use of force on its territory (*Congo v. Uganda*, ICJ, 168/2005)
- Debate on legitimacy of "minimal" use of force under the threshold of Art 2(4)—Protection of nationals/property; Major issue related to humanitarian intervention—the "responsibility-to-protect" (R2P) conceptual ambiguity and current debate (UK v. US positions).

Self-Defense

- Use of force not falling under one of the above lawful bases are illegal aggression *(aggression armee* in the French version of Art 51)—whether open "attack", secret warfare, terrorism, whether committed by state or non-state actors—thus arguably triggering self-defense exception;
- "Exclusivity" (armed attack already occurred) of Art 51? Or residual customary-law broader right of self-defense retained by States? ICJ *Nicaragua v. US* (1986);
- "Anticipatory" self-defense—To halt imminent attack (*Caroline* principle); How "imminent"? "Instant, overwhelming necessity leaving no choice";
- "Pre-emptive" self-defense—To halt course of action perceived to *shortly* evolve into armed attack;
- "Preventive" self-defense—To halt serious future threat of armed attack (no clarity about where and when attack may emerge): The "temporal continuum" problem;
- "Necessity" and "Proportionality" requirements; "Reprisals" v. "Retorsions";
- Self-defense against terrorism and collateral issues:

  "Armed attack"? (UN Security Council definition of terrorism as "threat to peace"—as distinguished from "peace crime"?); Duration of self-defense.

Civil Wars

- Applicability of Geneva common Art 3 to "armed conflict not of an international character" (NIAC)—Much more limited protection than that provided in international conflicts (IAC);
- Protocol II of 1977 applies to NIACs—Detailed protections but issue is of intensity/extension of hostilities;
- International law does not prohibit civil wars (inapplicability of Charter Art 2 sec 4);
- Crossroad of principles: non-intervention, sovereignty, and self-determination; The "belligerency" threshold;
- Justifications for intervention: Consent; Self-defense (anticipatory?); Counter-intervention (generally unlawful according to the ICJ); "Failed" or "unwilling/unable" state.

Humanitarian Law of Armed Conflict (*Jus in Bello*)

- Hague (1899-1907) and Geneva Conventions (1949), and other international treaties have evolved into customary law—Universal applicability?
- Minimal protection to "combatants" (Hague Convention IV—only some limitation on weapons and tactics);
- Considerable protection to "wounded, sick, shipwrecked combatants" (Hague IV, Geneva I, II—Medical care);
- Extended protection to "prisoners of war" (POW) (Geneva III—Human and decent treatment; Correlated rules (i.e., indefinite detention, right to try POW when indictable for war crimes);
- Extended protection to civilians (Geneva IV—No torture, murder, collective punishment, hostage taking);
- Geneva Conventions allow States to criminally prosecute violations of the Conventions;
- Grave, listed breaches are recognized as war crimes under international law; The "universal jurisdiction" problem.

Humanitarian Law of Armed Conflict *Continued* 1

- Entitlement to "combatant status" and POW status is governed by Geneva III Art 4, which applies to armed forces of a government having legal right to engage in combat operations and "militias and other voluntary corps, *including organized resistance movements, belonging to a party to the conflict*";
- Limitations on combatant's privilege are essential in historic principle of discrimination, or "distinction";
- Same principle of discrimination/non-combatant immunity, while protecting civilians, obligate them to NOT engage in combat operations.

Humanitarian Law of Armed Conflict

Continued 2

- Civilians who engages in combat forfeit their privilege and are not entitled to POW protection if captured;
- "Partisans" v. "guerilla" in early formulations—Partisans must have formal association with governmental forces;
- Hague Convention II, adopted by the 1899 Hague Peace Conference, extended recognition of armed forces to "militia and volunteer corps" fulfilling the following conditions" (adopting Lieber, 1863):
  1. Command by person responsible for subordinates;
  2. Fixed distinctive emblem recognizable at distance;
  3. Carry arms openly;
  4. Conduct operations in accordance with laws/customs of war.

Humanitarian Law of Armed Conflict *Continued* 3

- The Hague Convention II *Martens Clause*—"laws of humanity, requirements of public conscience" as residual principles;
- The *levee en masse* issue—Taking up arms on enemy's approach to defend own territory was deemed to be lawful;
- BUT private citizens continuing resistance to enemy occupation (*levee en masse plus*) were not considered as legal/privileged combatants.

Humanitarian Law of Armed Conflict *Continued* 4

- World War II brought up emergence of State-sponsored, massive organized resistance against German invasion in more than 20 nations;
- This historic experience prompted major change in *levee en masse plus* recognition at 1949 Geneva Diplomatic Conference (the *occupatio bellica*);
- As a result combatant/POW privilege was extended to "organized resistance movements belonging to a party to the conflict", confirming the four traditional requirements—historic criteria of "right authority" were thus preserved—plus:
- Three pre-requisite additional ones (Geneva III, Art 4A(2) in combination with Common Art 2):

  1. There must be a IAC;

  2. Individual to be afforded combatant/POW status must be a member of an organized resistance movement—not of a spontaneous rebellion;

  3. The organized movement must operate under the support of a government that is a party to the conflict—i.e. must have "right authority";
- BUT Geneva Common Art 2 applies only to IACs; therefore private citizens engaging in combat other than in occupied territory have no protection—to the effective exclusion of international terrorist from Geneva protection.

Case Study: U.S. v. Taliban/Al Qaida in Afghanistan, 2001

- Taliban was a faction in a civil war in a "failed State"—i.e., a State with no effective government (no central authority carrying out duties/responsibilities to citizens);
- Taliban had no uniformed military nor formal command/control;
- It was composed of individuals serving as fighters on daily/seasonal basis;
- U.N., E.U. declined recognition of Taliban as the government of Afghanistan (seat at the U.N. remained vacant);
- At time of U.S./coalition commencement of operations (October, 2001), Taliban was not clear victor in control of the country;
- Taliban refused to acknowledge Afghanistan pre-existing international obligations;
- Therefore, Afghanistan under Taliban rule failed to meet the traditional criteria of statehood, AND Taliban did not constitute the de facto nor de iure government of Afghanistan.

Case Study *Continued* 1

- Al Qaida only loosely intertwined with Taliban;
- As Al-Qaida was/is an international terrorist organization there is no law of war basis for its militants/fighters to enjoy combatant status/privilege;
- Taliban were no "Party to the conflict" ("Contracting Party") under the meaning of Geneva III Art 4A(1);
- Even assuming *arguendo* that there was a IAC, Taliban didn't meet any of Art 4A(2) + Common Art 2 criteria to be entitled to POW status;
- Geneva III Art 4A(3) entitles "members of regular armed forces who profess allegiance to a government or authority not recognized by the Detaining Power" to POW status (1944 *La France Libre* as historical point of reference);
- HOWEVER, these armed forces must, as minimum requirements, be associated with a regular belligerent fighting against the Detaining Power AND such belligerent must be recognized by third States, AND its authority should represent one of the Contracting Parties, AND accept the obligations under the Convention;
- Therefore, Taliban did not meet the Art 4A(3) criteria;
- Nor did Taliban meet the criteria for their "resistance" to be considered a *levee en masse* under Art 4A(6);
- Hence, neither Al-Qaida nor Taliban fighters, as private armed groups (as such, lacking "right authority") were entitled to combatant and/or POW status.

Just-War-related Considerations

- Today's law of war developed from amalgamation (Grotius, Gentili) of *ius militaire* (rules of chivalry) and the canon law of *bellum iustum*—"public war" requirement (authorized by "right authority", i.e. a legally competent power);
- Direct lineage from ancient and medieval categories of *Just War* and *Jus Publicum Europaeum* (Carl Schmitt, 1962) to modern *legitimate authority* to wage war (founded on post-Westphalia state-nation sovereignty and current applicable international LOAC—both *jus ad bellum* and *in bello*);
- Natural law; Positivistic v. "liberal" approach in modern international law;
- The immemorial dichotomies or "regular v irregular war" and "legal v illegal" war are still foundational of the contemporary law of the armed conflicts;
- The other "just war categories" (still applicable today—"legitimate war"?):

  Just cause; Warning; Right intention (Waltzer, 1992); Necessity & proportionality; Last resort (Clausewitz, 1834; Pfaff, 2017); Reasonable chance of success; Better state of peace;
- The "proxy wars" complications—escalation; diffusion; "dirty hands";
- Problem of overall moral justification of use of force.

International Law Modern Developments

- Westphalia, 1648—The modern national State virtually becomes the legitimate holder of *jus belli;*
- American War of Independence (1776-1783);
- Spain, 1808-13—*Guerrilla* against Napoleon's regular army; Russian "partisan" resistance against Grand Armee's invasion (1812); *Landsturm* edict in Prussian Berlin (1813);
- Congress of Vienna, 1814-15—Restoration of *jus publicum Europaeum* (*justa causa belli; justus hostis*);
- U.S. Union Army, 1863—Lincoln signs US General Orders No. 100, accepting Prof Lieber's "Instructions for the Government of Armies of the United States in the Field" (The "Lieber Code", first source of distinction between partisans and *guerrilla*);
- Franco-Prussian War front, 1870-71—*Franc tireurs* controversy;

International Law Modern Developments *Continued* 1

- Hague Peace Conference, 1899—Hague Convention II with Respect to the Laws and Customs of War on Land is adopted;
- Hague Convention IV, 1907—*Laws and Customs of War on Land* and the *Martens* clause are adopted;
- Bolshevik Revolution, 1917; Mao' Long March (1934-35);
- San Francisco, 1945—The U.N. Charter comes into force;
- Geneva Diplomatic Conference, 1949—Geneva Conventions I, II, III, IV are adopted; Additional Protocols I, II will be adopted in 1977;
- A "translation" of *jus belli* into the "international community"? Customary law implications.

Just War Conceptual Implications

- Sun Tzu's "The Art of War"—*Cheng* and *Ch'i* categories; Ch. 13 (*Fifth Columns*) (circa VI B.C.);
- Plato's "Politeia" (V, XVI)—*Polemos/Stasis*; *Polemios/Exthos* (*Hostis/Inimicus*);
- From Councils of Piacenza (1095) and Pavia (1096) through Henri de Bracton (circa XIII century), Grotius, Machiavelli, Hobbes, Locke, Bodin, Clausewitz, the Prussian/German doctrine of State and the French administrative law (XIX/XX centuries) to Lenin; New torsions of the "friend/foe" dichotomy (Schmitt, 1963, *justa causa* but not *justus hostis*);
- *Potestas/Auctoritas, Gubernaculum/Jurisdictio,* Legality/Legitimacy immemorial issues.

Just War Conceptual Implications *Continued*

- Constitutional issues: Executive prerogative from Locke to Esmein;
- The Cold War and the new notions of “partisan”; “colonial”, “revolutionary” wars, through Stalin, Mao Ze Tung, Ho Chi Minh, Castro—New torsions/categories of the “civil war” issue?;
- The 2013 “Gerasimov docrine”(*active measures*); the 1999 Chinese “unrestricted warfare”; Russian annexation of Crimea (2014); the contemporary “hybrid war”–the 2016 U.S. DOD “Manual of War” (Ch XVI, *Cyber-Operations*); the NATO Treaty art. 5;
- A “relativist” international law? The “revisionist powers” issue.

Irregular War in the XXI Century

- Theoretical/operational uncertainty of LOAC in adapting to unprecedented high-impact and fast-paced technological developments and fluid geopolitical state of world's affairs;
- Legal and operative responses, constructs, qualifications and definitions, as well as suggested solutions, become blurred or questionable as policy makers, operatives in the field, scholars must face muddled realities of irregular contemporary forms of conflict and use of force (Sun Tzu's "Shapes");
- Irregular, A-symmetric, Hybrid, Cyber, Electromagnetic, Information Warfare(s): Conceptual clarity is wanted;
- Which category would apply to "Skripal affair" (2018) or the drone attack on Saudi oil facility at Abquaiq (2019)?

“Hybrid” Warfare

- Is “Hybrid” warfare to be comprised into the “Irregular war” paradigm? Blend of conventional and non-conventional means;
- Use of “Instruments of Power” (IoP), identified as DIMEFIL (Diplomacy, Information, Military, Economics, Finance, Intelligence; Law Enforcement);
- What does its “cyber” subset consist of? Cyber attacks, hack-leak influence operations, DoS and DDos, false-flag, as low-cost, deniable operations—Internet Research Agency, Wikileaks, social media—directed to undermine Western partnerships, to exacerbate social and political fissures in Western democracies, AND to effectively attack infrastructures and critical sectors;
- Disinformation techniques will continue to evolve: AI already allows “synthetic media” products, such as video and audio manipulations with the capability to manufacture the appearance of reality, such as non-existent but real-looking remarks by a political leader.

The XXI Century Irregular Warfare: Attempting To Set Forth An Elusive Legal Paradigm

- The U.N. Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (UNGA Res 68/243): International law applies to ICT and cyber-space (2013, 2015 Reports); BUT China views cyberspace as a totally different domain necessitating new norms;
- The Tallinn Manual on the International Law Applicable to Cyber Warfare (2013)—under the aegis of NATO Cooperative Cyber Defense Center of Excellence—and its revised "Tallinn 2.0" (2017);
- The U.N. International Law Commission (ILC) "Draft Articles on Responsibility of States for Internationally Wrong Acts" (2001);
- Also in other forums—ASEAN Regional Forum (ARF); Organization for Security and Cooperation in Europe (OSCE)—attempts to establish collective norms on cyberspace have been extensively debated but with no certain normative outcome: Westphalia back with revenge? "Balkanization" of cyberspace? "Soft law"?
- Current/Future scenario: Dual and Military applications of Artificial Intelligence (AI); Autonomous weapons.

Attempting To Set Forth An Elusive Legal Paradigm *Continued* 1

- The "Defense Innovation Board" (a PPP enlisting Silicon valley's potential partners) submitted a tentative set of ethical principles in use of AI in warfare to Pentagon's new Joint Artificial Intelligence Center in July, 2019;
- The Director of National Intelligence has recently released an unclassified multi-pronged AI strategy for the intelligence community (IC) to position itself ahead of competition in an increasingly digital, data-centric world (IoT, IoET) though recognizing that AI algorithms may succeed or fail;
- President Trump signed an Executive Order on AI on Feb 11, 2019; DOD "Joint Center for AI";
- US Air Force released its AI Strategy (Sept '19) as a framework aligning its efforts with the DOD AI Strategy.

Attempting To Set Forth An Elusive Legal Paradigm *Continued 2*

- AI will transform reality and perception of economy and security, including employment, education, public safety, and national security, possibly dictating new strategy, organization, priority, and allocated resources;
- Changes including automation of social engineering attacks, vulnerability, discovery, influence campaigns, terrorist repurposing of commercial AI systems, increased scale of attacks, and manipulation of information availability, all have major digital, physical and political security implications, expanding existing threats, introducing new threats, and changing the character of threats and war; What's "real"?
- Scenarios of "deepfakes" and artificial, undetectable "voices", weaponization of big data—"Authenticity" issue and implications on the kinetic battlefield (Mosul, 2017);
- "Hyper-personalization of war" unprecedented scenarios: What of the traditional principle of discrimination? Distant targeting of civilians?

BIG Unresolved Questions

- The popular refrain "International law applies to cyberspace" is an important declaration of principle but is hitherto not much more that a tautology;
- In fact, in light of all sources and state-of-art debate, **how** precisely a LOAC developed in the 19th and 20th centuries may apply to the day's reality is still elusive;
- When do cyber/electronic/hybrid operations amount to "armed attack" or "use of force" pursuant to UN Charter 2(4) and 51?—Thus triggering the "right to self-defense"? What about so-called "minimal use of force"?
- The "active response", or offensive cyber-operations issue (DOD Manual, US 2019 NDAA, NATO latest stance);
- What about "anticipatory" self-defense?
- What about the "non-interference" principle (UN Charter, 2(7))?

BIG Unresolved Questions *Continued* 1

- When are those engaged in "hybrid" operations "belligerents", as such entitled to traditional "combatant privilege"?
- What about operations conducted by proxy—e.g., involving non-state actors? Are the "effective" and/or "overall control" notions applicable? And is it UN Security Council Res. 1368/01? A "cyber-terrorism" legal framework as a viable option?
- How the realm/reach of "countermeasures" (i.e. sanctions) may be circumscribed/expanded as to prevent kinetic escalation?
- What about ongoing militarization of outer space?

BIG Unresolved Questions *Continued 2*

- Are cyber/hybrid operations subject to national legal regimes or to international law, including State responsibility principles?
- Which legal regimes should be applied in instances like the "Skripal" affair?—Criminal/espionage/sabotage or LOAC? Carrying which geopolitical/strategic/diplomatic consequences? The new "security dilemma";
- What about non-proliferation and export control regimes (dual-use weapons, components)?
- May traditional constructs of "act of war", "use of force", "armed attack", "aggression", "self-defense", "State responsibility" "special force operations", "intelligence operations", allocate the "digital acts of war" concept?
- What about deterrence?
- What about the classic concept of neutrality (*amitie impartiale*)?—DOD construct of "emanating" v. "originating" States as per cyber-attacks.

One BIG Unresolved Question: *Attribution*

- The most challenging and impervious legal and technical issue in relation with cyber- warfare appears to be the standard of certainty of the so-called attribution of specific operations and/or operative patterns;
- While the U.S. appears to enjoy a marked military advantage as per technical attribution, extent of such is largely classified (Leon Panetta's speech, 2012);
- However, **a legally clear-cut evidentiary standard is still doubtful**—even though the cyber-crime investigative model (cyber-forensics), together with extensive multi-federal agencies and PPP efforts, provide distinctive insight;
- Such technical and legal challenges seem to prevent a meaningful application of the international law framework of State responsibility—Tallinn Manual 2.0 arguably went no further in offering a cogent legal solution; A "due diligence" standard, instead?
- Practical issue of degree of cyber-attribution capabilities.

Attribution - *Continued*

- The nature of cyberspace makes attribution of cyber operations difficult but not impossible. Every kind of cyber operation—malicious or not—leaves a trail. The intelligence community (IC) analysts use this information, their knowledge base of previous events and known malicious actors, and their knowledge of how these malicious actors work and the tools that they use, to attempt to trace these operations back to their source;
- An assessment of attribution usually is not a simple statement of who conducted an operation, but rather a series of judgments that describe whether it was an isolated incident, who was the likely perpetrator, that perpetrator's possible motivations, and whether a foreign government had a role in ordering or leading the operation;
- By far and large, attribution "remains an issue of fact and law" (DOD Quadrennial Defense Review, 2014, State Dept R. Strayer, 2019);
- The FBI in November 2017 established the Foreign Influence Task Force ("FITF"), coordinating the Department's counter-foreign influence efforts with other federal agencies, including DHS, the State Department, the NSA, and the CIA (US v. Internet Research Agency, Feb '18).

Reading Suggestions

- Sun Tzu, *The Art of War* (circa 6th century B.C.);
- Plato, *Politeia*, Book V, Ch. XVI (circa 380 B.C.);
- St. Augustine, *De Civitate Dei*, XIX, 13 (circa 426);
- St. Thomas Aquinas, *Summa Theologiae,* II, 2, qu 40; II, 2, qu 123 (1265);
- Henri De Bracton, *De legibus et Consuetudinis Angliae*, (circa 1250);
- Machiavelli, *De Principatibus*, Ch. XIV, Florence (1513);
- Locke, *Second Treatise of Government*, Ch XIV (On Prerogative), London (1690);
- Von Clausewitz, *Vom Kriege*, 1, Ch. II; 3, Ch. 17, Berlin (1834);
- Lenin, *What Has To Be Done*, Moscow (1902);

Reading Suggestions *Continued* 1

- Schmitt, *Politische Theologie, Vier Kapitel zur Lehre der Souveranitat*, Munich (1922);
- Esmein, *Elements de Droit Constitutionnel*, Paris (1928);
- Schmitt, *Der Begriff des Politischen*, Berlin (1932);
- Schmitt, *Theorie des Partisanen*, Berlin (1962);
- Waltz, *Man, the State and War*, New York (1959);
- Aron, *Paix et Guerre entre les Nations*, Paris (1962);
- Walzer, *Just and Unjust Wars*, New York (1992);
- Liang, Xiangsui, *Unrestricted Warfare*, Beijing (1999);
- Moore, *Jus ad Bellum Before the International Court of Justice*, 52 Va. J. Int'l Law 903 (2012);
- Gerasimov, *The Value of Science Is in the Foresight*, Military-Industrial Kurier, Moscow (2013);

Reading Suggestions *Continued 2*

- Dunlap, *The Hyper-Personalization of War. Cyber, Big Data and the Changing Face of Conflict*, Georgetown J. of Int'l Affairs 15, 108-118 (2014) Washington DC;
- US Department of Defense Manual of War, Ch XVI, *Cyber Operations*, Washington DC (last updated May, 2016);
- NATO Center for Cyber Defense, *Tallinn Manual on the International Law Applicable to Cyber Warfare*, ("Tallinn Manual 2.0"), Tallinn (2017);
- Pfaff, *Proxy War Ethics*, Journal of National Security Law, Georgetown University, Washington DC (2017);
- UK Ministry of Defense, *Cyber and Electromagnetic Activities*, London (2018);

Reading Suggestions *Continued* 3

- Piccone, *How Can International Law Regulate Autonomous Weapons?* Brookings Institution (Apr 30, 2018);
- Carlin, Graff, *Dawn of the Code War*, New York (2018);
- Berman, Shapiro, *Small Wars, Big Data: The Information Revolution in Modern Conflict*, Princeton (2018);
- Roberts, *Is International Law International?* Asian J. of International Law, Oxford (2019)

Appendix I
Geneva Conventions Common Art. 2

- Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.
- **Application of the Convention**
- ARTICLE 2

  In addition to the provisions which shall be implemented in peacetime, 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, even if the state of war is not recognized by one of them.
  The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.
  Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Appendix II
Geneva Conventions Common Art. 3

- **Conflicts not of an international character**
- ARTICLE 3

  In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

  (1) Persons 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, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
  To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

Appendix II
Geneva Conventions Common Art. 3 - *Continued*

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
The Parties to the conflict 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 the preceding provisions shall not affect the legal status of the Parties to the conflict.

Appendix III – UN Charter

Chapter VII — Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Art. 41. The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Appendix IV – UN Charter

Chapter VII — Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Art. 42. Should the Security Council consider that measures provided for in Article 41would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Appendix V – UN Charter

Chapter VII — Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Art. 51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defence 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. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Pearls of the Past

Justitia in definitione [belli] non includo;
Inter pacem et bellum nihil est medium
Hugo Grotius, “De Iure Belli ac Pacis” (1625);

Victory should be gained in the shortest possible time, at the least possible cost in lives and effort, with infliction on the enemy of the fewest possible casualties
Sun Tzu, “The Art of War”;

You may not be interested in war, but war is interested in you
Leon Trotsky (1918)