

# Conventional Weapons Convention and IHL



# International Legal Framework

Treaty law (applies only to States party)

- General rules
- Weapon-specific rules

Customary law (applies to all parties)

- General rules
- Weapon-specific rules



# Hague Law

Establishes the rights and obligations of belligerents in the conduct of military operations and limits the means of harming the enemy



# General rules of conduct of hostilities

Both customary and treaty-based

- ▶ Prohibition of **indiscriminate attacks**
- ▶ Prohibition of **indiscriminate weapons**
- ▶ Rule of **proportionality**
- ▶ Rule of “**all feasible precautions**”



# THE BASIS OF CCW – IHL RULES APPLICABLE TO WEAPONS

Humanity

Military Necessity

Distinction

Proportionality / Prohibition  
on indiscriminate attacks

**Prohibition to use  
weapons which cause  
unnecessary suffering or  
superfluous injury**



## DISTINCTION

Individuals:

Civilians / Combatant

Persons who do not take direct part in the hostilities / Persons who do

Objects:

Civilian objects / military objectives

## PROPORTIONALITY

Incidental loss of civilians life /damage expected

v.

Concrete and directed military advantage anticipated



## PROHIBITION ON INDISCRIMINATE ATTACKS

Does not have a specific military objective

Employs a method or means of combat:

- Cannot be directed at a specific military objective

- The effects of which cannot be limited

## PROHIBITION TO USE WEAPONS WHICH CAUSE UNNECESSARY SUFFERING OR SUPERFLUOUS INJURY

Weapons that are considered to cause injury to those participating in the conflict, which is greater than that required to fulfill military objectives, are not allowed



# St. Petersburg Declaration of 1868

- ▶ First agreement prohibiting use of particular weapon in warfare
- ▶ Prohibits use of any projectile under 400 gms that explodes or has inflammable substances
- ▶ Declaration not Convention so no State obligation



# Hague Law

- ▶ 1899 Hague Declaration 2 – prohibits projectiles for diffusion of asphyxiating gases.
- ▶ 1899 Hague Declaration 3 – prohibits projectiles that expand or flatten in the human body
- ▶ 1907 Hague Convention (VIII) – automatic submarine contact mines (restricted)



# Geneva Conventions of 1949

Protection of people from  
effects of armed conflict

All persons not taking part in  
hostile acts shall be respected  
and protected



# Additional Protocol I 1977

## Article 35

Right to choose  
means and methods  
not unlimited



▶ Prohibited to employ weapons that cause **superfluous injury and unnecessary suffering**

▶ Prohibited to use those which intend or may be expected to cause long term and severe damage to the environment



## Article 36

- ▶ Assess the **legality of new weapons**, means or methods of warfare in study, development, acquisition or adoption
- ▶ to determine whether employment would be **prohibited by this Protocol or other rule of IHL**



# Article 57 (2) (a) (ii)

- ▶ Take all **feasible precautions** in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, **incidental loss of civilian life**, injury to civilians and damage to civilian objects;



# Article 57 (2) (a) (iii)

- ▶ Refrain from deciding to launch any attack which may be expected to cause **incidental loss of civilian life**, injury to civilians, damage to civilian objects, or a combination thereof, which would be **excessive** in relation to the concrete and direct military advantage anticipated;



# Article 85

## War Crimes

- ▶ (3) (a) Making civilian population or individual civilians the object of attack
- ▶ (3) (b) Launching an **indiscriminate attack** affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects

