# Chapter 9. International Humanitarian Law (jus in bello)

## Basic review of the articles, through page 252

### We will go through these on the screen and discuss their application and implications.

### Remember, you do not need to memorize these because you can use your book.

## Notes

### How widely are the basic four1949 Conventions accepted?

#### Every nation in the world has ratified the four 1949 Geneva Conventions.

### What regulates the conduct of war itself?

### What do signatory states agree to do to provide for punishment of grave breaches?

### What is the difference between a grave breach and a war crime, and where would you expect to find a list of war crimes?

### What are examples of US statutes that address grave breaches and war crimes?

### Jurisdiction and Admissibility of the ICC

#### (<http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm>)

#### The Court may exercise jurisdiction over genocide, crimes against humanity and war crimes.  These crimes are defined in detail in the Rome Statute.  In addition, a supplementary text of the “Elements of Crimes” provides a breakdown of the elements of each crime.

#### The Court has jurisdiction over individuals accused of these crimes.  This includes those directly responsible for committing the crimes as well as others who may be liable for the crimes, for example by aiding, abetting or otherwise assisting in the commission of a crime.  The latter group also includes military commanders or other superiors whose responsibility is defined in the Statute.

#### The Court does not have universal jurisdiction.  The Court may only exercise jurisdiction if:

##### The accused is a national of a State Party or a State otherwise accepting the jurisdiction of the Court;

##### The crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the Court; or

##### The United Nations Security Council has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime.

#### The Court’s jurisdiction is further limited to events taking place since 1 July 2002.  In addition, if a State joins the Court after 1 July 2002, the Court only has jurisdiction after the Statute entered into force for that State.  Such a State may nonetheless accept the jurisdiction of the Court for the period before the Statute’s entry into force.  However, in no case can the Court exercise jurisdiction over events before 1 July 2002.

#### Even where the Court has jurisdiction, it will not necessarily act.  The principle of “complementarity” provides that certain cases will be inadmissible even though the Court has jurisdiction.  In general, a case will be inadmissible if it has been or is being investigated or prosecuted by a State with jurisdiction.  However, a case may be admissible if the investigating or prosecuting State is unwilling or unable to genuinely to carry out the investigation or prosecution.  For example, a case would be admissible if national proceedings were undertaken for the purpose of shielding the person from criminal responsibility.  In addition, a case will be inadmissible if it is not of sufficient gravity to justify further action by the Court.

### What grave breaches and war crimes can the ICC address?

### What is a non-international armed conflict?

### Was the Taliban a state army before 9/11?

### Why is that significant in how the U.S. had to treat Taliban members as opposed to Al Qaeda members?

### Was this distinction always respected?

#### How could the US tell the difference?

### What is the status of the Taliban today and why?

### Are domestic riots or rebellions covered?

### What is the dividing line? Think about the Arab spring.

### The 1949 Geneva Conventions did not address issues of targeting, including the core principles of distinction, military necessity, unnecessary suffering, and proportionality. Why do you think the US has not signed onto subsequent agreements that address those issues?

### Which provisions of AP I articulate the principles of distinction, necessity, unnecessary suffering, and proportionality?

### Is this enough guidance for soldiers in the field?

### In 2002, then-White House Counsel Alberto Gonzales wrote that the war on terrorism ‘‘renders obsolete Geneva’s strict limitations on questioning of enemy prisoners and renders quaint some of its provisions.’’

#### What is the rationale for this statement?

#### What are the downsides of the US taking this position?

## B. TARGETING AND PROTECTING CIVILIANS IN ARMED CONFLICT

#### On February 26, 2011, the United Nations Security Council (‘‘UNSC’’) unanimously adopted Resolution 1970 – what did this authorize?

#### Did it authorize armed intervention?

#### What did UNSC Resolution 1973 authorize beyond a no-fly zone?

#### Why was the non-fly zone irrelevant to Libya?

#### What did Obama say Libya need to do to avoid intervention under 1973?

#### What did the US do on March 19, 2011?

#### Why did Obama report to Congress about this?

#### What did his report say were the limitations on his actions?

#### Beyond humanitarian concerns, what were our interests in avoiding a massacre in Libya?

#### Who did we transfer operations to?

#### Is there authority to claim that IHL applies to a UN action?

#### How does this complicate the application of IHL?

#### What about the actions of the rebels, who we claim to be protecting?

#### What did they do to Qadhafi?

#### Was that within IHL?

#### What should we do about it?

#### ‘‘Rule 1. The parties to the conflict must at all times distinguish between civilians and combatants. . . . Attacks must not be directed against civilians.’’ – Why is this especially difficult in places like Libya?

#### Who did we see on the battlefield in Libya?

#### The principle of necessity permits only ‘‘those measures which are indispensable for securing the ends of war, and which are lawful.’’ – Application to Libya?

#### What about proportionality and unnecessary suffering?

## C. TREATMENT OF PRISONERS IN WAR

### Prosecutor v. Delalic (Celebici Case)

#### What is the problem with confining civilians?

#### When may civilians be detained?

#### What are the problems with identifying civilians?

#### What if they have weapons?

#### Why might they have weapons?

#### What about loyalty to their nation?

#### Do you get some time to detain them while you sort them out?

#### What do you have to do justify the time you hold them?

#### Why is this a mess in places like Somalia and Afghanistan and Libya?