Video Transcript

The Law of Armed Conflict – Gleider Hernández

Welcome to my mini-lecture on Chapter 15, The Law of Armed Conflict.

This is an area of the law that is known historically as the ‘law of war’. It's also known as ‘international humanitarian law’ after the many multilateral efforts that have been made to alleviate human suffering. But today the term ‘law of armed conflict’ is increasingly preferred because it recognises the reality that so much of this law seeks to manage, or regulate—rather than eradicate—human suffering. And unfortunately, one of the darker sides of this legal regime is that as much as it seeks to limit and manage human suffering, it does accept that some suffering is unavoidable, or essentially part-and-parcel of armed conflict. That is the story in some respects of this specialised regime of international law, and it's worth remembering that as we go through the chapter.

So, the laws in this area, the law of armed conflict (IHL, in short) grew from a backdrop where armed force was routinely used as a matter of foreign policy. There were as always, rules of the game, rules of chivalry and other such procedures that ritualised armed conflict, ritualised war and minimised unnecessary impact. So war would be declared in a certain way, it would be conducted in a certain way on a battlefield, et cetera. But rapid advances in technology, in particular with respect to artillery, or the use of technology, including chemical weapons and biological weapons, gradually shifted the battlefield, and shifted the modes of combat to a point where humanitarian suffering was itself becoming part of the strategy of armed conflict. And as such, states decided that this had to come to an end. And in series of conferences in The Hague, and later in Geneva, they signed what would become known as The Hague Conventions and The Geneva Conventions, through which the laws of armed conflict were codified and where limitations were imposed and accepted by states in order to minimise human suffering, should war break out, and should war prove to be unavoidable. That is part of the story of the laws of armed conflict—and, again, I must emphasise that for every conduct that they deem to be impermissible or inadmissible, they do leave certain types of conduct to be permissible. So please bear that in mind as we go through the various regimes.

But in short, the major points that the law of armed conflict seeks to cover are the scope of its application; when is an armed conflict triggered? What factual or legal developments have to exist for there to be an armed conflict and the rules

to apply? What happens to other rules of international law when an armed conflict is triggered? These, and other questions, have been addressed, in part, by the international court, by states, through which the laws of armed conflict are not seen as being fully independent, but are seen as a sort of *lex specialis* (we would have discussed this in earlier chapters), that refers to a sort of special regime, an exceptional regime that kicks in in certain circumstances, but does not wholly supplant, for example, international human rights law, or the Law of Treaties. Instead it provides sort of a floor, a base through which states should not go below.

We also look at the various actors in international humanitarian law. Now, the most obvious that might occur to you are participants in the hostilities, ‘combatants’, as we call them; so members of armed forces, people actively fighting on the ground. But there are also mercenaries, who are soldiers for hire, and the use of which has been prohibited under international law; child soldiers, a specific category of protected persons who should not be fighting in armed conflict, but regrettably often do. And so modes of trying to demobilise them and demilitarise them are widespread under international humanitarian law. We also find the protection of various categories of individuals: medical officials; the wounded and the sick (so combatants have become wounded and sick); prisoners of war (so combatants whom have been taken captive, and who are entitled to certain protections, notably the protection from torture, or the protection against having to divulge information about their state of nationality); and of course civilians, that residual category of all people who have no participation in hostilities, and who find themselves very often in the theatre of operations or on the battlefield. In short: in the wrong place at the wrong time.

There are many rules about the conduct of hostilities, the obligations, the precautionary measures, that states need to take in order to ensure that an operation is lawful. There are rules about difficulties in classifications. So, for example, if a building or an installation is being used both for civilian and military purposes, the principle of distinction, which is that cardinal principle that separates when you can target a combatant, versus the non-targeting of a civilian, or another protected category, and other precautions and obligations besides that states have to undertake. It's a technical area of the law. It's an area of the law that is very much based in practice, and in the experiences of states suffering from armed conflict. And I think it's important to bear in mind that although the aspiration of this law is to limit human suffering, it exists in situations where armed conflict has broken out and where human suffering is unfortunately unimaginable, and yet unavoidable. And perhaps it’s a bit of evidence of the

limitations of international law that we can't aim to eradicate it all together, and the best we can do is try to minimise it.

Thank you.