Week # 2 ➔ Targeting Principles & Human Shields

- MILITARY NECESSITY
- UNNECESSARY SUFFERING
- PROPORTIONALITY
  Military Advantage
  Collateral Damage
- DISTINCTION
  Civilian-Combatant
  Military Objective
  v. Civilian Objects
Legal & Policy Issues in Modern Warfare

- Introduction / Overview of Applicable Precepts
- **Targeting & The Problem of Human Shields**
- Human Rights v. Laws & Customs of Warfare – how has this debate changed the way we fight?
- Drone Law and Policy
- Concerns over Coalition Warfare [Rules of Engagement issues, ISIS, Afghanistan]
- Accountability Mechanisms / Grab-bag
Applications
LAW OF ARMED CONFLICT

- **JUS AD BELLUM**
  - Regulation Of Resort To War

- **JUS IN BELLUM**
  - Regulation Of The Conduct Of Warfare
INTRODUCTION !!
Common Article 3 to the Geneva Conventions of 1949

Common Article 3 prohibits the following acts:

(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, and

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

- MILITARY NECESSITY ➔ STRATEGY ➔ MISSION STATEMENT ➔ ROE & EVALUATIVE STANDARDS
- UNNECESSARY SUFFERING
- DISTINCTION
  Civilian-Combatant 8(2)(b)(1) & (e)(1) ➔ ISIS CANNOT GENERATE COMBATANT STATUS IN ITS OWN RIGHT
- PROPORTIONALITY
  Objective Test Applied Using Subjective Criteria ➔ Military Advantage ANTICIPATED
MINUS + P

DISTINCTION

MILITARY NECESSITY

UN-NECC. SUFFERING

PROPORTIONALITY
PROPORTIONALITY: May not cause suffering, injury or destruction to noncombatants or civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
The following people can be targeted during armed conflict:

(1) **Combatants** who have not surrendered or have not ceased to take part in the fighting
(2) Civilians who are taking a direct part in hostilities
(3) Civilians who are killed or injured as a result of an attack directed at a military objective which was not anticipated to cause disproportionate losses (Collateral Damage)

If the targeting of a person does not fall under the above categories, it is murder and the person can be prosecuted.
General Rules:
- Persons taking no active part in hostilities, including members of armed forces who have laid down their arms, shall in all circumstances be treated humanely.
- Detaining Power is responsible for providing satisfactory living accommodations (safe, sanitary, hygienic) and must inform a person being arrested/detained as to the reasons why.

General Prohibitions:
- Torture, degrading/inhumane treatment, murder, mutilation, detention in unsanitary conditions, etc.
LAWFUL TARGETS

All combatants and objects which by their nature, location, purpose, or use make an effective contribution to military action, and whose total or partial destruction, capture, or neutralization offers a definite military advantage.
PRECAUTIONS IN ATTACK

**GP I, ARTICLE 57**

- Do everything feasible to:
  - verify that the objectives attacked are neither civilians nor civilian objects
  - Avoid excessive collateral damage or incidental injury
  - Warn if circumstances permit
- Based on information reasonably available to the commander at time the decision was made
A destroyed area of the MSF hospital in Kunduz, Afghanistan is visible at first light on 03 October 2015, the morning after the facility was hit by sustained bombing.

- Restrictions in Targeting  
  Does this comply?/
- Duty to Warn and Take Other Measures
- The Dilemmas of Human Shields
GP I, ARTICLE 51

- Indiscriminate attacks prohibited
  - Not directed at specific military objective;
  - Employ method or means which cannot be directed at a specific military objective; or
  - Employ method or means of combat the effects of which can’t be limited;

- AND, consequently, are of a nature to strike military objectives and civilians or civilian objects without discrimination
DANGEROUS FORCES

GP I, ARTICLE 56

- Cannot attack dams, dykes, or electrical generating stations IF “may cause the release of dangerous forces and consequent severe losses among the civilian population”
  - Includes nearby facilities
- US/UK object – apply proportionality
ENVIRONMENTAL DAMAGE

GP I, ARTICLES 35(3) & 55

- Cannot use methods or means of warfare “which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment” (Art.35.3) ... “and thereby to prejudice the health or survival of the population” (Art. 55)

- US Position:
  - Not Unlawful Per Se As Damage
  - Affirmative obligation to avoid damage
  - Key: Proportionality
Questions ??