

# The Law of Armed Conflict in a Domain for Peaceful Purposes

## International Humanitarian Law in Outer Space

inter arma enim silent leges



four geneva conventions +  
other treaties relating to the  
laws of armed conflict

> 1,000 treaty provisions













ihl is the only body of international law that comes into operation upon a violation of international law

Does ihl apply to outer space?

opposing views  
as to the  
applicability of  
ihl to activities  
in outer space

earlier international law applies to novel technology



*Legality on the Use or Threat of Use of Nuclear Weapons (ICJ)*

A wide-angle, high-angle photograph of a large, empty legislative chamber. The room is semi-circular with tiered seating on both sides, facing a central area. The seating consists of rows of desks with chairs. At the front of the chamber, there is a central podium or speaker's desk. Behind the podium, there are two green doors and two circular wall-mounted clocks. The walls are a light blue color, and the ceiling is dark. The overall atmosphere is formal and institutional.

applicability depends on the source of the law

A large, empty, semi-circular conference room with tiered seating and a central table. The room features a central aisle leading to a long table with chairs, surrounded by rows of seats. The walls are light-colored with large windows and a central doorway. The lighting is dim, creating a formal atmosphere.


1907 Hague Convention respecting the Laws and  
Customs of War on Land

1907 Hague Convention concerning Bombardment  
by Naval Forces in Time of War



A large, empty conference room with tiered seating and a central table. The room features a central wooden table with chairs around it, and rows of blue seats facing the center. The walls are light blue with two circular vents. The room is illuminated by overhead lights, and the overall atmosphere is formal and professional.

articles 2 and 3 of the Geneva Conventions, the two provisions defining international armed conflict and non-international armed conflict, respectively, contain express references to the “territory” of State parties.

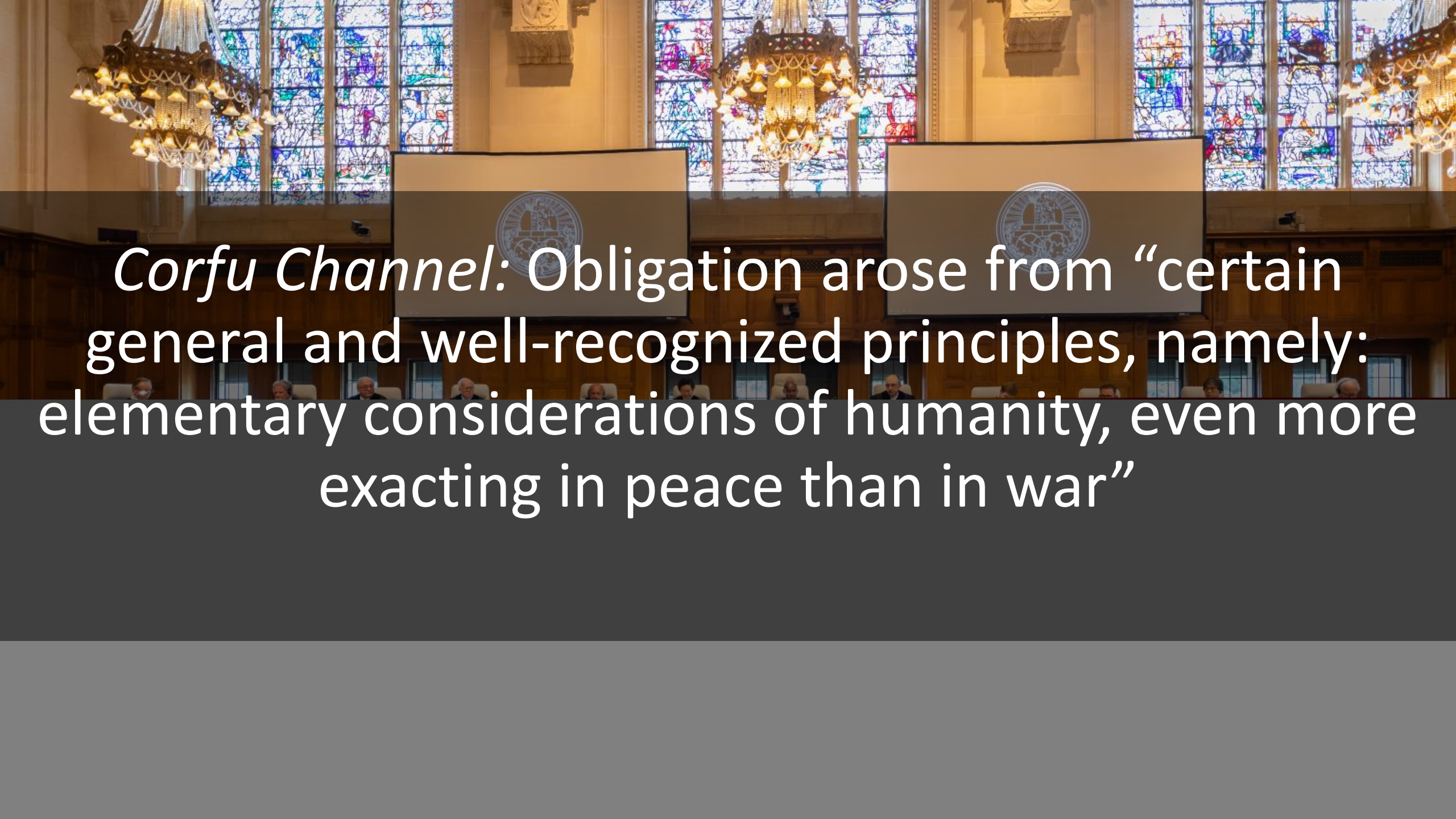
A large, empty, modern conference room with tiered seating and a central table. The room features a central aisle leading to a long table at the front, with rows of desks and chairs on either side. The walls are light-colored with large windows and a central display screen. The overall atmosphere is professional and formal.

Additional Protocol I to the 1949 Geneva Convention  
also refers only to conflict “on land, at sea or in the  
air”



views based on the *Lotus* principle –  
without express rules to the contrary, States are free  
to act as they please

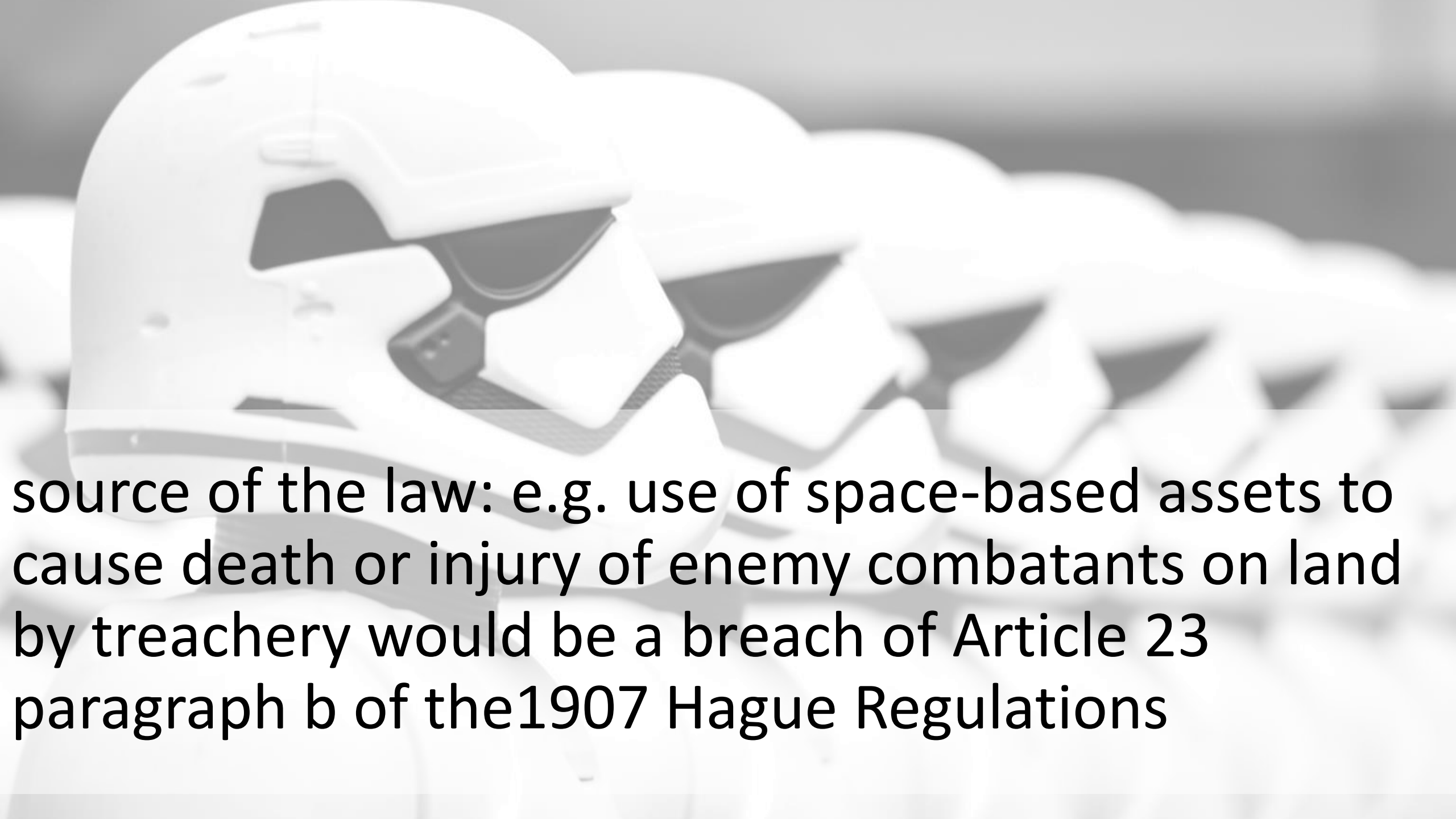
customary ihl rules on the conduct of hostilities  
apply regardless of methods and means of  
warfare



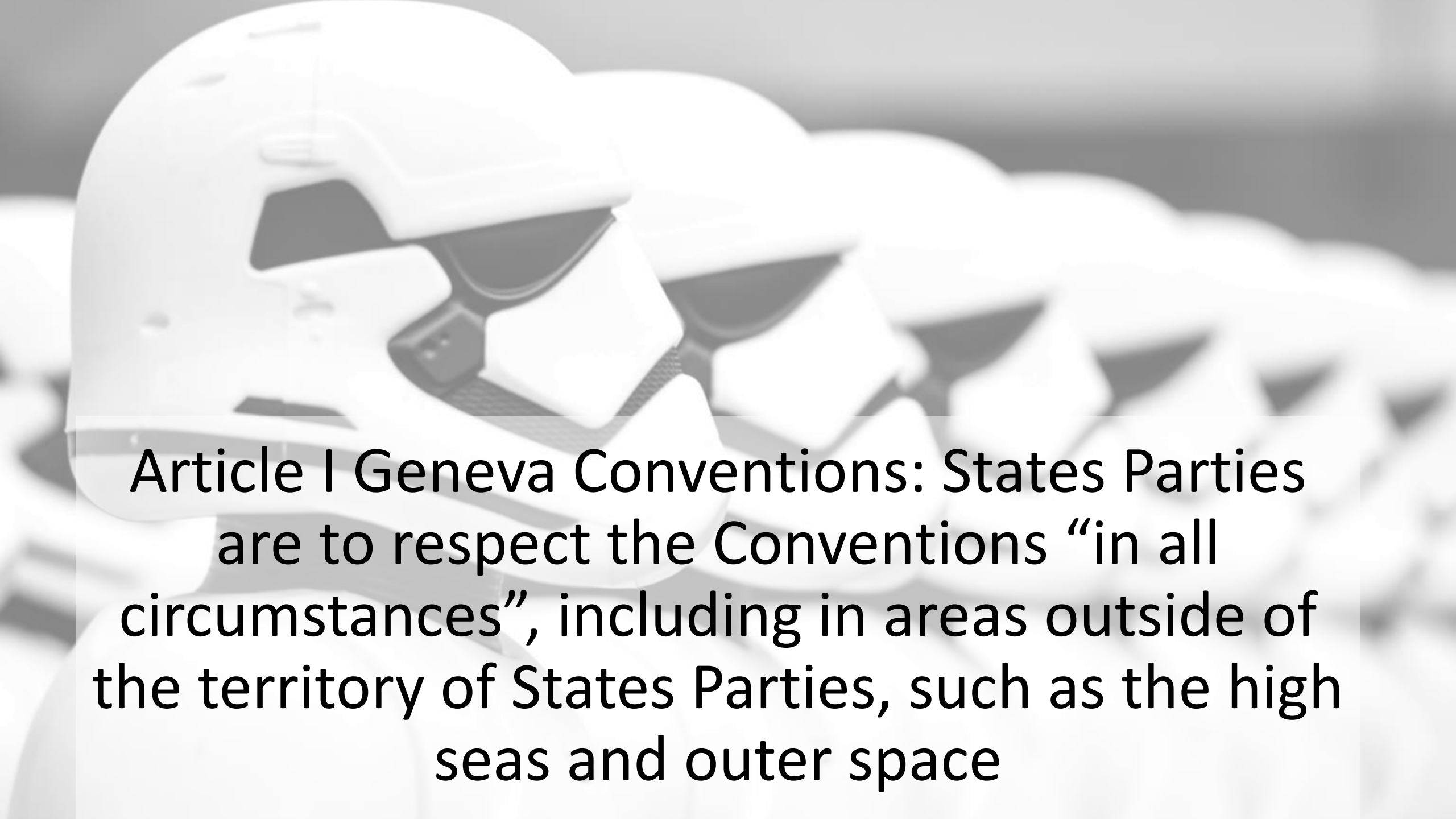
*Corfu Channel:* Obligation arose from “certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war”

# *Use or Threat of Use of Nuclear Weapons*

- Ihl was “permeated” with an “intrinsically humanitarian character”.
- ihl “is the overriding consideration of humanity”.
- Ihl “applies to all forms of warfare and to all kinds of weapons, those of the past, those of the present and those of the future”.



source of the law: e.g. use of space-based assets to cause death or injury of enemy combatants on land by treachery would be a breach of Article 23 paragraph b of the 1907 Hague Regulations



Article I Geneva Conventions: States Parties are to respect the Conventions “in all circumstances”, including in areas outside of the territory of States Parties, such as the high seas and outer space



principles of space law  
relevant to the use of force

# Article III Outer Space Treaty

province of mankind

peaceful purposes

freedom of exploration and use

no appropriation

applicability of international law

maintenance of  
international peace and security



prohibition on nuclear weapons and WMD

state responsibility



any actions undertaken during a conflict are done so with a minimum loss of life, a minimum standard of humanity towards wounded or captured soldiers, and a maximum possible protection of civilians who are not engaged in the conflict

the use of force during a conflict can be justified as indispensable or imperative to the direct aims of the conflict

- distinction between combatants and civilians
- distinction between military and civilian objects

(a) that the object must make an effective contribution to military action, and this must be by virtue of its nature, location, purpose or use; **and**

(b) the total or partial destruction, capture or neutralisation must offer a definite military advantage under the circumstances ruling at the time

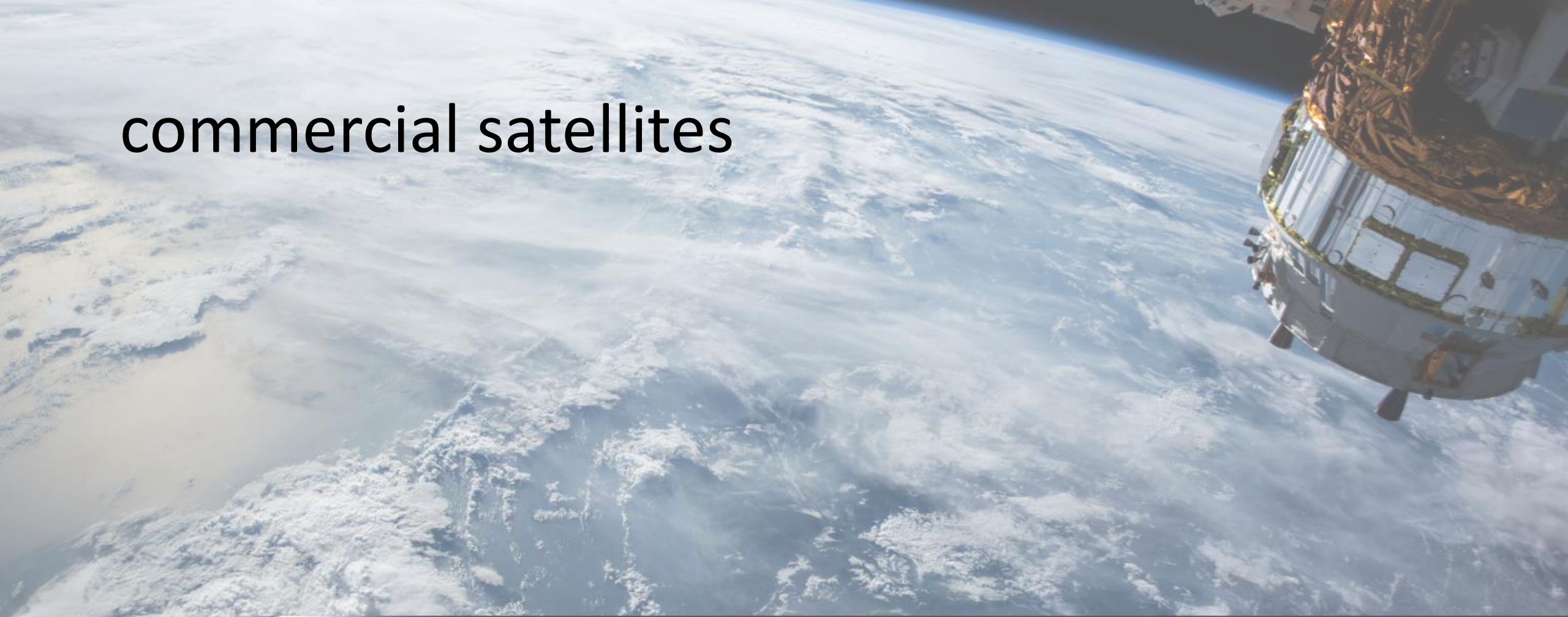
force is proportionate to the aims of military necessity and that no unnecessary suffering is caused by such force

# dual-use space assets

- In general IHL, when a particular object is used for both civilian and military purposes, it becomes a military objective, even if the military use is marginal in relation to civilian use
- all reasonably foreseeable harm, including incidental civilian harm, must be taken into account



commercial satellites



# neutrality

A satellite with gold thermal insulation and a white body is visible in the upper right corner, orbiting Earth. The Earth's surface shows blue oceans, white clouds, and brownish landmasses. The background is the blackness of space.

Under the law of neutrality, while a State would violate its neutrality if it assists a belligerent through the provision of supplies, it is not obligated to stop or control private trade between its nationals and belligerent

A satellite in orbit over Earth's surface. The satellite is on the right side of the frame, with a gold-colored thermal blanket and a white cylindrical body. The Earth's surface is visible below, showing a mix of blue oceans, white clouds, and brownish landmasses. The horizon of the Earth is visible at the top of the frame.

# Article VI Outer Space Treaty

a neutral State would be responsible for its commercial entities and could arguably be obliged to require such entities to terminate the provision of such services

# orbital debris

A satellite with gold-colored insulation and various instruments is visible in the upper right corner, orbiting the Earth. The planet's surface is covered in white clouds and blue oceans, with a thin blue atmosphere visible at the horizon.

- all reasonably foreseeable incidental harm must be taken into consideration under the principles of proportionality and precautions in attack
- impact the choice of means and methods of warfare, with a way to reduce the creation or dissemination of debris

environmental modification

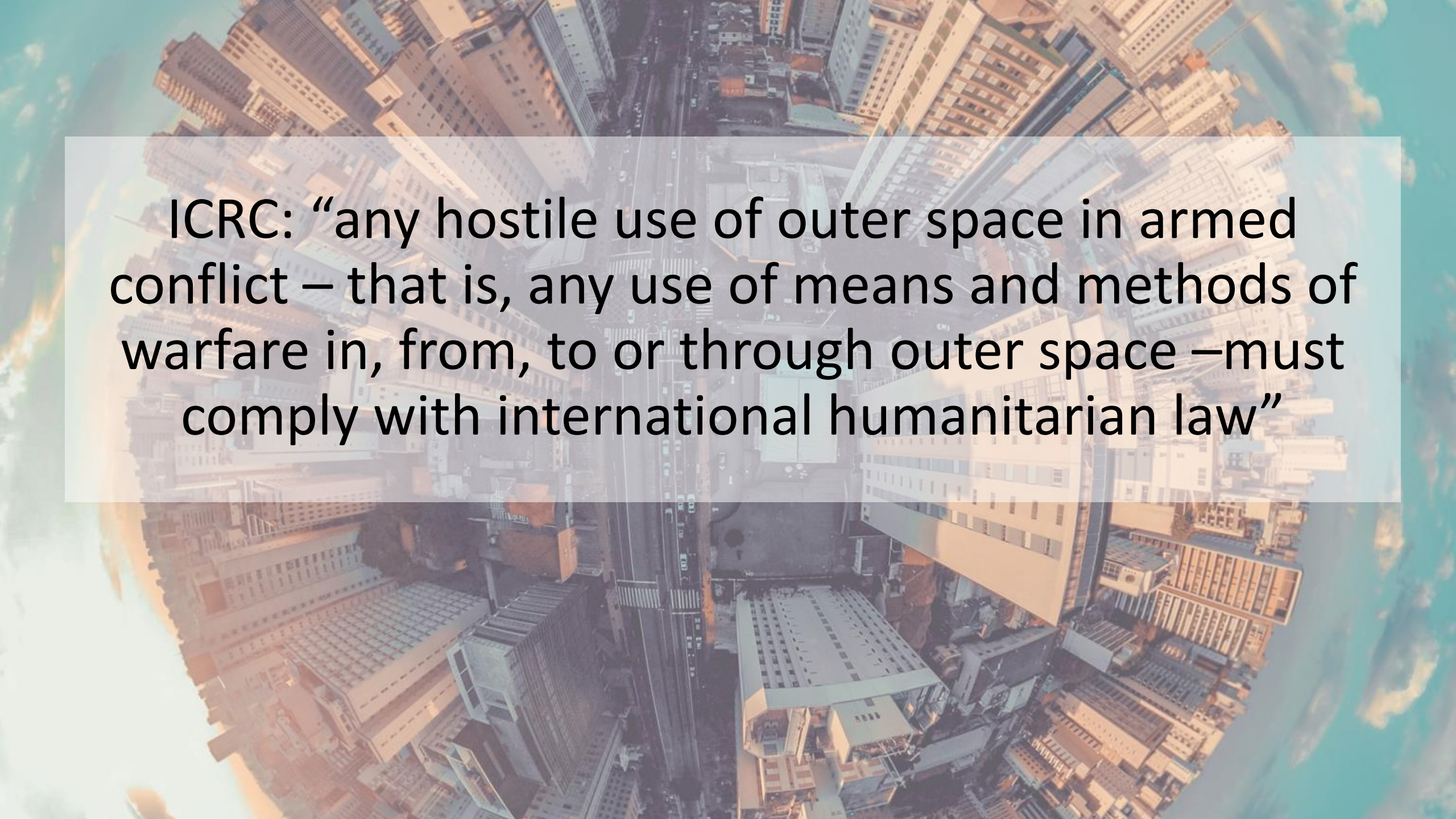


A photograph of a space station or satellite in orbit above Earth. The station is on the right side of the frame, with a large, cylindrical module covered in gold thermal insulation. The Earth's surface is visible below, showing a mix of blue oceans, white clouds, and brownish-green landmasses. The horizon of the planet is visible at the top of the image.

# Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

# other tensions between ihl and space law

- whether an orbit or another specific area of outer space could itself become a military objective by location
- applicability to satellite communication of Art. 8 of 1907 The Hague Convention (V) on neutral states' obligation to restrict or provide the use of telegraphic services to all belligerents equally
- absolute liability for damages caused by space objects under the Liability Convention versus damages caused by lawful acts of war to an enemy belligerent
- ability to intern versus the obligation to return spacecraft personnel who might serve as a combatant during armed conflict

An aerial, wide-angle photograph of a dense urban area, likely a city center, showing numerous high-rise buildings and streets. The image is slightly blurred and has a soft, teal-tinted overlay. A semi-transparent white rectangular box is centered over the image, containing the text.

ICRC: “any hostile use of outer space in armed conflict – that is, any use of means and methods of warfare in, from, to or through outer space – must comply with international humanitarian law”



Dr Gérardine Goh Escolar  
gge@hcch.net