



## What is International Humanitarian Law and Do We have to Follow It?

**Speakers:** 

Gianna Borroto, Senior Attorney, Grossman Young & Hammond

Thomas Harper, Senior Counsel, International Humanitarian Law, American Red Cross



#### Meet the Speakers



**Gianna Borroto** is a Senior Attorney with over ten years of experience successfully representing clients in complex matters before the immigration courts, U.S. Citizenship and Immigration Services, the Board of Immigration Appeals, federal courts, and U.S. consulates worldwide. She specializes in humanitarian and international protection issues, such as asylum, unaccompanied children's cases, T and U visas, and removal of INTERPOL Red Notices.

Prior to joining Grossman Young & Hammond, Gianna worked as a litigator with the American Immigration Council and the National Immigrant Justice Center, where she focused on impact litigation and class action lawsuits defending the rights of asylum seekers, immigrant youth, and separated families. Having litigated both in immigration court and before the federal courts, Gianna is skilled at representing clients in all stages of their immigration cases.



**Thomas Harper** serves as the Senior Counsel in International Humanitarian Law (IHL) for the American Red Cross. In that capacity, he leads the Red Cross IHL Program, which carries out the nation's obligation under the Geneva Conventions to educate and inform the American public about the laws of war.

Thomas has spent his adult life in uniform, having originally enlisted in the U.S. Army after high school. He commissioned as an officer via the Army ROTC Program at North Carolina State University. Thomas began serving as a Judge Advocate (military attorney) following law school and has served in that capacity for more than 14 years on active duty and in the Army Reserves. He has served a variety of roles, including as a prosecutor, defense counsel, Special Victim Counsel, and as an Operational Law attorney in Afghanistan, where he advised on IHL in a combat environment. He currently serves in the Army Reserve, where he holds the rank of Major and advises on space domain operations with U.S. Space Command.

Thomas also regularly uses Star Wars, Lord of the Rings, and other movies and television shows to help teach about IHL on national stages, including at San Diego Comic-Con and other large pop culture conventions.





## Agenda

- History of IHL
- How does IHL intersect with immigration law?
- Are IHL and International Refugee Law enforceable?
  - What are the consequences to individuals and to nations of not following IHL or International Refugee Law?
- How can a country dial back (or expand) its commitments under IHL or International Refugee Law?
  - What is the process?
  - What might be the consequences?
- Q&A







# **History of IHL**

# INTERNATIONAL HUMANITARIAN LA WHATISIT?

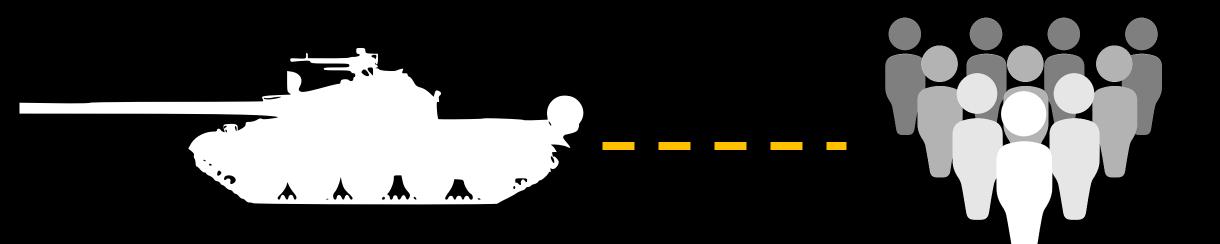
#### INTERNATIONAL HUMANITAF WHATISIT?

## A SET OF RULES THAT SEEK TO LIMIT THE DESTRUCTIVE EFFECTS OF ARMED CONFLICT

## INTERNATIONAL HUMANITARIAN LAW: WHAT IS IT?

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## MITARY NECESSITY

HUMANITY

# INTERNATIONAL HUMANITARIAN THE ORIGINS

#### 1859 SOLFERINO, ITALY THE BATTLE OF SOLFERINO

H. DUNANT

#### AUGUST 1862 NORTHERN VIRGINIA THE BATTLE OF CEDAR MOUNTAIN

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## GENERAL ORDER 100 "THE LIEBER CODE"

THE FIRST GENEVA CONVENTION AUGUST 1864

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## HAGUE CONVENTIONS 1899 & 1907



#### IHL IN THE AFTERMATH OF THE GREAT WAR











#### THE ADDITIONAL PROTOCOLS AUGUST 1977





## INTERNATIONA TREATYLAW

Rules established by formal, legal binding agreements between states.

#### CUSTOMARY RULES

Rules established by general practices that are accepted as binding law.



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# CLASSIFYING ARMED CONF

## CONFLICT CLASSIF WHICHRUIES APPLY?



#### INTERNATIONAL ARMED CONFLICT

#### NON-INTERNATIONAL ARMED CONFLICT

## CONFLICT CLASSIF WHICH RULES APPLY?



#### INTERNATIONAL ARVED CONFLICT



NON-INTERNATIONAL ARMED CONFLICT

## CONFLICT CLASSIFICATION WHICH RUIES APPLY?

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## CONFLICT CLASSIF WHICHRUIES APPLY?



#### INTERNATIONAL ARMED CONFLICT

#### NON-INTERNATIONAL ARMED CONFLICT

# CONFLICT CLASSIF WHICHRUIES APPLY?



NON-INTERNATIONAL ARVED CONFLICT



#### INTERNATIONAL ARMED CONFLICT

## CONFLICT CLASSIF WHICHRUES APPLY?



# NON-INTERNATIONAL **ARMED CONFLICT** COMONARICE3 **ADDITIONAL PROTOCOLII** DOMESTIC LAW APPLIES





## How Does IHL Intersect with Immigration Law?





## Asylum & Refugee Law

- 1948 Universal Declaration of Human Rights
- 1951 Convention Relating to the Status of Refugees
- 1967 Protocol Relating to the Status of Refugees

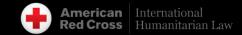




## **Definition of Refugee**

#### Article 1 of the 1951 Refugee Convention, as amended by the 1967 Protocol, defines a refugee as:

A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.





#### **Non-Refoulement**

Article 33 of the 1951 Convention provides "no contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened."





## Asylum Law in the United States

- Immigration and Nationality Act (INA)
- Refugee Act of 1980





## Are IHL and International Refugee Law enforceable?

What are the consequences to individuals and to nations that do not comply?

## INTERNATIONAL HUMANITARIA ENFORCE/ENT

#### INTERNATIONAL HUMANITARIAN LAW: ENFORCEMENT







# INTERNATIONAL HUMANITARIAN LA ENFORCEVENT



WAR CRIMES

#### INTERNATIONAL HUMANITARIAN LAW: ENFORCEMENT



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GENOCIDE

## CRIMINAL ACCOUNTABILITS

INTERNATIONAL HUMANITARIA

#### CRIMINAL ACCUNTABILITY

DOMESTIC MEANS

#### INTERNATIONAL MEANS

INTERNATIONAL HUMANITARI



## DOVESTIC MEANS



#### MILITARY PROCEEDINGS

**CRIMINAL** ACCOUNTABILITY INTERNATIONAL HUMANITARI ENFORCEVENT



## ADHOC TRIBUNALS

## INTERNATIONAL CRIMINALCOURT













#### How can a country dial back (or expand) its commitments under IHL and International Refugee Law?

What is the process? What might be the consequences?

#### INTERNATIONAL HUMANITARIAN LAW WIHDRAWAL & EXPANSION



#### How can a country dial back (or expand) its commitments under IHL or International Refugee Law?

- U.S. Asylum and Refugee Law
  - Asylum bans
  - Change or elimination of particular social group-based asylum
  - Refugee caps

#### Thank you!

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Thomas Harper Senior Counsel, International Humanitarian Law, American Red Cross <u>thomas.harper@redcross.org</u>





#### **Questions?**

#### IHL Training, Events & Volunteer Opportunities

# www.redcross.org/ihl





#### American Red Cross IHL YouTube channel

