

# 2016 Informal meeting of experts on LAWS

## «Criminal responsibility for IHL breaches by (the use) of LAWS»

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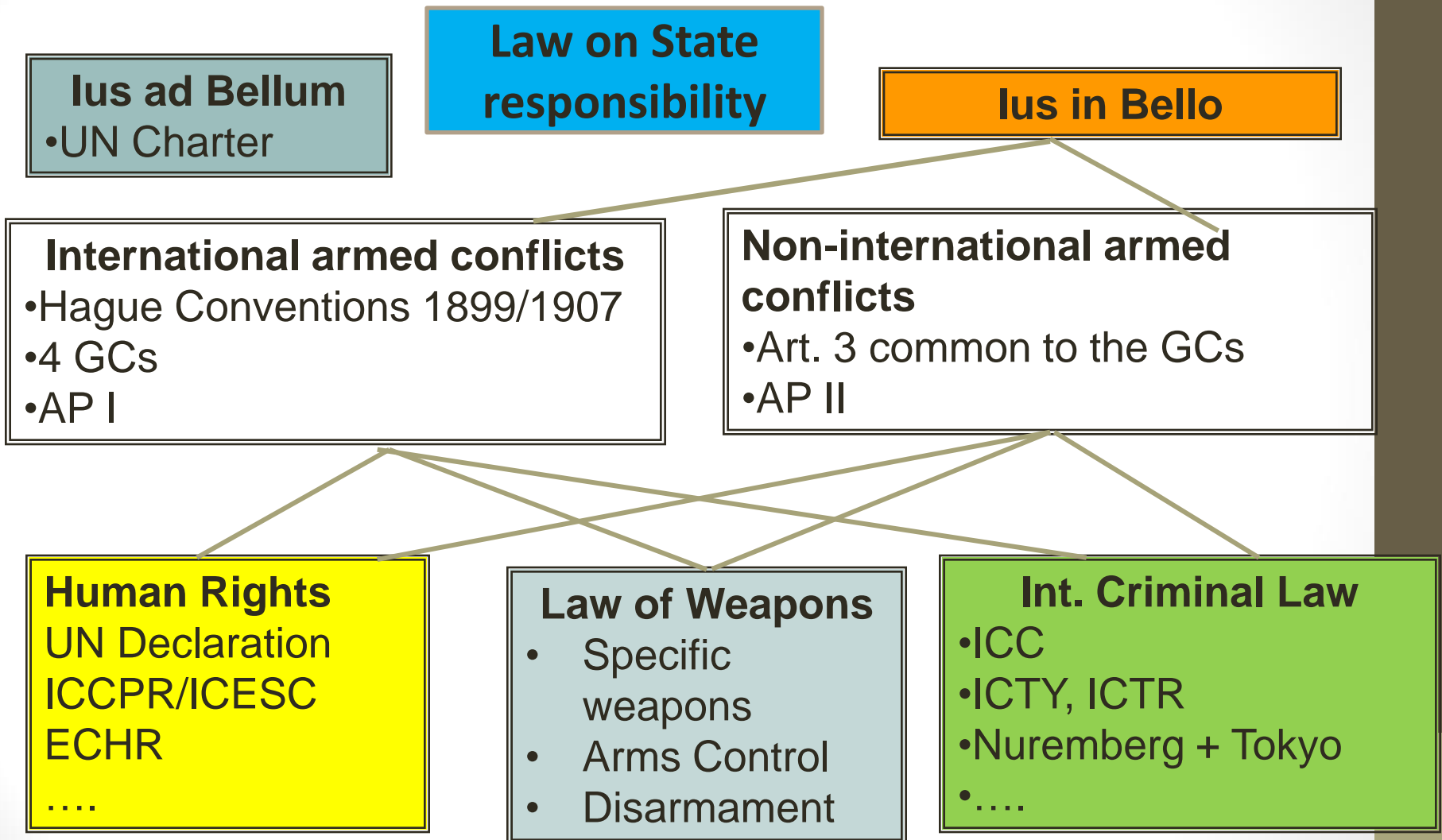


# 3 key questions

1. Role of ICL within the international legal framework?
2. Any LAWS-specific issues under ICL?
3. Need for new rules?



# Overview of legal regimes under int. Law



# Crimes under International Criminal Law

- **War crimes**
- Crimes against humanity
- Genocide
- Aggression



# Alleged challenges to the applicability of ICL

## 1. LAWS are machines:

- They cannot qualify as an “individual”
- They cannot have a “mens rea”
- They cannot be “guilty” or “culpable” of something
- Criminal sanctions do not have the required impact on LAWS

→ Evidentiary problems

→ No legal problem with regard to attribution!

# Solutions under criminal law

## Individual (direct) responsibility

As long as there is a *man in the loop*, either:

- the **programmer**
- the **deployer, or**
- the **operator**

can be held accountable for the (mis-)use of LAWS.

# Solutions under criminal law

## Command responsibility

**Commanders + other superiors** can be criminally responsible for **war crimes**

- committed by their **subordinates**
- if they **knew, or had reason to know,**
- that the subordinates were about to commit or were committing such crimes
- **and** did not take all necessary and reasonable measures in their power to **prevent** their commission,
- **or** if such crimes had been committed, to **punish** the persons responsible.

# Conclusions

- ICL is one viable option within the framework of int. law
- The legal challenges are not specific to LAWS (eg. evidence)
- ICL will always apply as long as there is a man in the loop
- There is no need for new rules, under ICL.