Counter-terrorism and CVE: law of armed conflict implications

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Encouraging armed group LOAC compliance
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- LOAC expressly prohibits most acts labelled as “terrorist”
- LOAC recognizes lawful acts of violence in an armed conflict
- In contrast, treaties and domestic law criminalize any act deemed as “terrorist”
- LOAC principle of equality of belligerents
- Being party to a non-international armed conflict has no effect on legal status / legitimacy
Encouraging armed group LOAC compliance

• Dialogue with armed groups
  ▶ Principle of State sovereignty
  ▶ Problem of “material support” legislation

• Carrots and sticks
  ▶ Ownership of obligations
  ▶ No combatant status
  ▶ Compliance = legitimacy?
  ▶ Amnesty? art. 6(5) AP II

• Religion and IHL

• Summary execution

• Detention and internment by armed groups

• Trial by armed groups

• Accountability
Encouraging State LOAC compliance in counter-terror operations
Encouraging State LOAC compliance

- Treaty ratification
- Domestic implementation of IHL
- Recognizing an "armed conflict"
- Integrating the law into military practice
  - Policy, doctrine, education, field training, op orders, rules of engagement, discipline, justice
- Respecting humanitarian space
Encouraging State LOAC compliance

• Western-model CT warfare:
  ▶ **Air campaign**
    ▪ Targeting: countering expansive views of armed group membership
      – “minimizing civcas” is a relative term
  ▶ **Train, advise and assist** existing parties to armed conflict
    ▪ “Ensure respect” in LOAC
    ▪ Law of State responsibility
    ▪ War by proxy?
  ▶ **Detention**
    ▪ *Non-refoulement*
Geographic scope of the battlefield