

Transcript

00:00:00 Speaker 1

In a moment, I'll pass on to Ellen to begin presenting our paper, but before doing so, I want to locate the argument we're responding to within a wider family of lesser evil arguments. These arguments appeal to humanitarian considerations.

00:00:15 Speaker 1

To justify practises that cause human suffering, insisting that the harmful practise is justified because it inflicts less harm on civilians than an alternative course of action.

00:00:27 Speaker 1

This mode of argumentation actually has a long genealogy. It was used, for instance, as a justification for dropping an atomic bomb on Hiroshima, suggesting that a land invasion would have caused more casualties not just to U.S. troops, but also to Japanese civilians.

00:00:44 Speaker 1

The Israeli military has used the same reasoning to justify an array of practises ranging from the nighttime arrests of children in the West Bank to the use of white phosphorus.

00:00:57 Speaker 1

To the use of human Shields, both in Gaza and the West Bank for many years.

00:01:02 Speaker 1

All these modes of operation and others were defended on the grounds that they are allegedly less harmful for Palestinians as well as Israeli soldiers than lawful alternatives.

00:01:15 Speaker 1

Now we see a number of problems with this reasoning. One of the problems is that it assumes that everything is a matter of utilitarian calculus, and while IHL does sometimes call for such calculations, it also draws red lines absolutely prohibiting certain practises.

00:01:34 Speaker 1

And misuse of the lesser evil logic can result in these red lines being crossed.

00:01:40 Speaker 1

Another problem with this reasoning, one perhaps more pertinent to our paper, is that it disregards other, less harmful alternatives sometimes.

00:01:51 Speaker 1

There is a still less evil way of pursuing a military advantage, or even a possibility to avoid evil altogether, and lesser evil reasoning can result in these less harmful alternatives being disregarded so it fails on its own kind of utilitarian logic.

00:02:10 Speaker 1

Our paper addresses a form of lesser evil argument that suggests that causing mass displacement of civilians is permissible and even mandated when it serves to spare them from the harmful effects of hostilities.

00:02:23 Speaker 1

As Ellen will elaborate in a moment, the paper focuses on cases where arguments of this kind are used to justify forcible displacements occurring while hostilities are under way. That said, humanitarian reasoning following the logic of the lesser evil.

00:02:38 Speaker 1

Might be resorted to resorted to in an attempt.

00:02:40 Speaker 1

Justify forcible displacement from other danger zones, including in the aftermath of hostilities.

00:02:48 Speaker 1

This was actually given clear and rather disturbing illustration when the US President recently expressed a vision of mass deportation from Gaza, implying, rather implausibly, in our view, that current conditions of life in the enclave are so harsh.

00:03:04 Speaker 1

That it would be preferable, lesser evil, to deport its entire population elsewhere.

00:03:12 Speaker 1

Well, we don't address this Trumpian plan directly in our paper. We do caution not to rush, to embrace humanitarian justifications for displacement. And we believe that that word of caution is warranted all the more.

00:03:27 Speaker 1

When presented with humanitarian arguments that supposedly justify ethnic cleansing.

00:03:35 Speaker 1

With that, I'll pass the floor to Elin. Thank you.

00:03:40 Speaker 2

Thank you so much.

00:03:42 Speaker 2

And as ITAM mentioned, the forcible relocation of civilians is an example of conduct that inflicts a significant harm on individuals and indeed entire communities, yet is at times put forth as a humanitarian imperative.

00:03:59 Speaker 2

That is required, if not obligated by international humanitarian law or airtl.

00:04:07 Speaker 2

The scenario that we examine is based on Israel's practises.

00:04:10 Speaker 2

During recent hostilities in the Gaza Strip and southern Lebanon.

00:04:14 Speaker 2

In which it issued hundreds of relocation directives to civilian communities ahead of an attack or military operations, resulting in the displacement of more than a million people.

00:04:25 Speaker 2

In our paper, we asked whether or what circumstances I tal protects against such conduct.

00:04:32 Speaker 2

A main thesis is that while I tell in some cases permits or even requires relocating civilians to protect them against the dangers of hostilities.

00:04:42 Speaker 2

The harm that displacement entails must always factor into the analysis of which causes of action are lawfully available to parties to a conflict.

00:04:52 Speaker 2

If all that is needed to render forcible displacement lawful under IHL is to threaten to attack an area where civilians reside.

00:05:00 Speaker 2

Then we argue, IHL has not only failed to protect against unnecessary suffering, it has provided a humanitarian justification for it.

00:05:10 Speaker 2

Now there's space for this kind of misappropriation of humanitarian principles that we have witnessed in the Gaza conflict can be lessened by resolving ambiguities.

00:05:20 Speaker 2

The law.

00:05:21 Speaker 2

We try to address a number of these, including as relates to a the field of application and type of conduct covered by the IHL prohibition of forcible displacement, and B the extent to which the rules on the conduct of hostilities protect against forcible displacement.

00:05:38 Speaker 2

I will share an overview of our arguments relating to part A. While Etan will address Part B.

00:05:47 Speaker 2

So our enquiry into the IHL prohibition of forcible displacement examines 3 questions. First, what is the field of application of the prohibition? Second, does it cover the type of conduct under consideration, namely displacement caused by relocation directive issued ahead of a military operation or attack?

00:06:07 Speaker 2

And 3rd might such conduct constitute a lawful evacuation?

00:06:13 Speaker 2

With respect to the field of application of the prohibition of forceful displacement, Article 49 of the Fourth Geneva Convention and customary IHL prohibit the forcible transfer or deportation of protected persons from occupied territory.

00:06:28 Speaker 2

Unless the security of the civilians or imperative military reasons demand a temporary evacuation.

00:06:34 Speaker 2

In addition to this explicit reference to occupied territory, the applicability of the prohibition is also subject to the general condition that for the 4th Geneva Convention to apply, the affected person must be in the hands of or in the power of control of.

00:06:48 Speaker 2

Hostile party.

00:06:50 Speaker 2

Well, this is widely understood to encompass persons present in the territory of a hostile party or territory occupied by a hostile power. It is doubtful.

00:07:00 Speaker 2

That mere capability to manipulate people's movement in foreign unoccupied territory, including by issuing relocation directives and launching long distance strikes, would suffice to bring the affected persons into the hands of that party.

00:07:15 Speaker 2

Meanwhile, in non international armed conflict, the treaty and customary law versions of the prohibition, for obvious reasons, make no reference to occupied territory, a concept belonging to the legal framework of.

00:07:30 Speaker 2

International armed conflict, but less obviously the prohibition applicable in Non-International Armed Conflict does not include an explicit requirement of effective control over territory or persons.

00:07:41 Speaker 2

In the business case, the International Criminal Court confirmed that territorial control is not necessary to violate the prohibition in a Non-International Armed Conflict or to commit the war crime of ordering the displacement of civilians in the Non-International Armed Conflict.

00:07:54 Speaker 2

This leaves an apparently illogical gap in protection, with a prohibition applicable in Non-International Armed Conflict, an occupied territory but not in International Armed Conflict, outside the context of occupation. From a humanitarian perspective, this conclusion is deeply unsatisfactory as protection will turn on what is often disputed conflict classifications.

00:08:16 Speaker 2

Now, while it is a central feature of IHL that the scope and content of certain obligations hinge on the level of control that a party exercises over territory or over persons, it is far from evident that the prohibition is possible. Displacement should be one of those constraints that only apply to a party in effective control of foreign territory.

00:08:37 Speaker 2

Store capacity to course and prevent forcible displacement is not dependent on territorial control.

00:08:44 Speaker 2

Indeed, there is no reason to expect that persons would be displaced to a lesser extent by state aids conduct in an absent occupation than by the same conduct and not by territory or Anaya. Furthermore, recognition by International Criminal tribunals that forcible displacement can be achieved by means of warfare which do not.

00:09:04 Speaker 2

Total control.

00:09:06 Speaker 2

Suggests that effective control of a territory should not be considered an essential element of the prohibition.

00:09:13 Speaker 2

There's a parent protection gap in unoccupied territory in international armed conflict is somewhat reduced if a functional approach to the law of occupation is endorsed, according to which the applicability of that body of law is not categorical, but it's commensurate with the competencies.

00:09:13

This is.

00:09:31 Speaker 2

Exercised by a power in foreign territory without the local government's consent.

00:09:36 Speaker 2

Still, there are clearly limits to the functional approach, and it might be stretching it too far to hold that state. A involved in an international armed conflict with State B is bound by obligations specific to the law of occupation.

00:09:52 Speaker 2

If state A makes no attempt at invading or controlling foreign territory, and the only control it exercises over civilians in State B is based on remote communication.

00:10:02 Speaker 2

In the.

00:10:03 Speaker 2

Of relocation directives and long distance strikes.

00:10:07 Speaker 2

International human rights law has also been suggested as the missing link in situations where the law of occupation does not apply.

00:10:15 Speaker 2

However, given limits on the extraterritorial applicability of conventional human rights law, it is questionable whether it would bridge.

00:10:21 Speaker 2

Protection gap.

00:10:24 Speaker 2

The limited field of application of the prohibition of force displacement renders our analysis of the rules on the conduct of hostilities in Part B all the more critical.

00:10:35 Speaker 2

But assuming that the prohibition of forceful displacement is applicable, that is, we are in a non international armed conflict or occupied territory. That leaves the question whether it prohibits displacement caused by an instruction to civilians to leave their homes, coupled with a threat of harm from an attack.

00:10:51 Speaker 2

Unless the instruction is complied with, that is the scenario that we are examining that Israel has utilised in in the Basel strike.

00:11:01 Speaker 2

Now, an initial objection draws on the historical distinction in itel between so-called Geneva and Haigl.

00:11:09 Speaker 2

The placement of the prohibition in the Fourth Geneva Convention has been taken by some to imply that it does not regulate conduct, forming part of the hostilities that is subject to so.

00:11:18 Speaker 2

Hague law.

00:11:20 Speaker 2

Accordingly, the prohibition would not apply to displacement caused by warnings issued in connection with an attack.

00:11:28 Speaker 2

Arguably, this objection proceeds from a too simplistic understanding of the relationship between so-called Geneva and Hague, or the applicability of these two strands of IHL is not mutually exclusive, and the occurrence of hostilities and the applicability of the rules on targeting do not release a party from obligations it has to what persons protected under the Geneva.

00:11:50 Speaker 2

Moreover, the prohibition of forcible displacement for seized the temporary evacuation of civilians in situations of hostilities, thereby accommodating implementation of precautionary duties under the targeting rules.

00:12:02 Speaker 2

We would argue that the existence of this exception or permissive rule is itself strong indication that the prohibition continues to apply in situations of abilities, or else it would be supported also to be noted that in Nyack or non international conflicts the placement of the prohibition in additional protocols to pass rendered this argument.

00:12:25 Speaker 2

Turning them to whether the conduct under consideration constitutes a forcible transfer or deportation within the meaning of the prohibition.

00:12:34 Speaker 2

These terms refer to the involuntary movement of civilians within or across territorial borders.

00:12:40 Speaker 2

International Criminal Tribunal for the former Yugoslavia has elaborated that the term forcibly is not restricted to physical force, but maintained threat of force or coercion, such as that caused by fear of violence, duress, attention, psychological oppression or abuse of power.

00:12:57 Speaker 2

Or by taking advantage of aggressive environment.

00:13:01 Speaker 2

Instructing civilians to leave their homes, coupled with the threat of harm from an attack or military operation, the instruction is not heeded foreseeably, deprives the

affected persons of a genuine choice whether to stay or leave, and, prima facie constitutes prohibited conduct.

00:13:16 Speaker 2

The fact that the.

00:13:18 Speaker 2

Civilians might have wanted to leave to save their lives does not imply that the relocation was voluntary. A choice between survival and leaving one's home is not a genuine choice.

00:13:29 Speaker 3

But could the conduct under consideration nonetheless be lawful as an evacuation?

00:13:35 Speaker 3

Some scholars have opposed the applicability of the prohibition of forcible displacement to situations of hostilities on the ground that the prohibition is in conflict with the party's obligations pursuant to the rules on the conduct of hostilities, including the principle precautions.

00:13:51 Speaker 3

However, the concurrent applicability of the prohibition of forcible displacement and the principle precautions does not necessarily generate conflicts.

00:14:00 Speaker 3

This is because of the rules on private displacement expressly permit temporary evacuations subject to certain conditions, including that the relocation is absolutely required by imperative military reasons or the security of the civilians concerned.

00:14:17 Speaker 3

That it respects certain geographical and temporal limits and that it is carried out in safety and dignity, avoiding the separation of families.

00:14:26 Speaker 2

Now regarding the first condition, it has been suggested in academia that if a warning is followed by an attack that in fact places civilians in danger, then the relocation will necessarily be justified by reference to their security.

00:14:41 Speaker 2

However, this would imply that a party can render displacement lawful simply by making it dangerous for civilians to stay in place.

00:14:49 Speaker 2

And we argue that such an interpretation would undermine the very.

00:14:53 Speaker 2

Of the prohibition.

00:14:55 Speaker 3

If the attack.

00:14:56 Speaker 2

In relation to which an instruction to relocate is issued is unlawful or would be unlawful, were it not for the removal of the civilians, the relocation can arguably not be justified based on the security of those affected.

00:15:10 Speaker 2

In such scenario, the danger that civilians seek to avoid by relocating is an unlawful attack that must be suspended or cancelled.

00:15:18 Speaker 2

It is well established that forcible relocations cannot be justified by reference to a danger created by parties own unlawful actions, to the contrary, as the ICTY said.

00:15:29 Speaker 2

Stakich case.

00:15:30 Speaker 2

Parties must prevent displacement caused by their own acts. At least those acts which are prohibited in and of themselves.

00:15:39 Speaker 2

If the planned attack is lawful but the civilians are offered no safe place to relocate to, or their movement constitutes a greater threat to their security than if they stay in place, then again, the displacement cannot be justified by reference to their security.

00:15:54 Speaker 2

If a relocation cannot be carried out safely, the attacking party must consider other precautionary measures to reduce the danger to civilians posed by the planned military operation or attack.

00:16:07 Speaker 2

Now, if instead a party seeks to justify the removal of civilians for imperative military reasons, these reasons must be in pursuit of a lawful military objective. It would, for example, be unlawful to use evacuation measures as a pretext for ethnic cleansing or annexation.

00:16:24 Speaker 2

In addition to be imperative, overriding military considerations must make the transfer absolutely necessary, so it's not enough that the party would gain even a lawful military advantage by removing civilians.

00:16:38 Speaker 2

If there are other feasible, less harmful means to respond to the local reason for the relocation, including other precautionary measures, the party must not resort to relocating civilians and even when relocation is necessary, it must be temporary and to the greatest extent possible, carried out in satisfactory conditions of health and safety.

00:17:00 Speaker 2

The lawful reasons for the transfer limits both the geographical and temporal scope of the relocation. So in addition to the explicit prohibition of moving civilians outside of occupied territory unless materially impossible or national borders in a non international conflict, an instruction to relocate must not be issued for an area larger than.

00:17:21 Speaker 2

Hesitated by the security of the civilians or the imperative military reasons, or for a period longer than that recent demands.

00:17:31 Speaker 2

Enclosing there of this part, there might be a concern that requiring compliance with the conditions of a lawful evacuation to ensure the legality of forcible relocations carried out in connection with military operations could discourage parties from taking precautionary measures that remove civilians from the dangers of hostilities.

00:17:50 Speaker 2

Thereby increasing the risk to civilians.

00:17:53 Speaker 2

However, assigning part of the cost of forcible relocation to the responsible party is arguably critical to reduce the risk of relocation directives being overused to render military operations more convenient or palatable.

00:18:09 Speaker 2

While neglecting the significant harm of displacement, it should also incentivise parties to explore other precautionary measures that reduce the risk to civilians without exposing them to the significant harm of displacement.

00:18:23 Speaker 2

I now hand over to Eytan to explore whether or to what extent data rules on the conduct of hostilities protect against for support displacement.

00:18:32 Speaker 1

Excellent. So as Erin just explained when occurring in occupied territory or in a non international armed conflict forced relocations constitutes an unlawful form of displacement, except when they satisfy the conditions justifying an evacuation.

00:18:51 Speaker 1

As then instead the question I'm going to address is whether the rules on the conduct of hostilities impose additional requirements that a that a belligerent party would have to satisfy to lawfully induce civilians to relocate not only in non international armed conflicts or in the territory it occupies.

00:19:09 Speaker 1

But also in the non occupied territory of an opposing party to an international armed conflict.

00:19:16 Speaker 1

As a first step in this inquiry, it should be acknowledged that the rules on the conduct of hostilities allow and even require belligerence to prompt civilians to relocate in certain circumstances. For one thing, belligerent parties are required to give effective advance warning.

00:19:35 Speaker 1

An impending attack that's done to enable, and indeed to induce civilians to leave the location that is being targeted. Moreover, a belligerent, imposing a siege.

00:19:47 Speaker 1

I had to allow civilians to leave the besieged area.

00:19:51 Speaker 1

So the fact that there are these circumstances in which the law permits relocations to be induced does not imply that the ideal rules on the conduct of hostilities don't impose any restrictions on the circumstances and manner in which belligerence can compel civilians to relocate in these situations.

00:20:10 Speaker 1

The rules on the conduct of hostilities do, after all, seek to reduce human suffering and preserve human dignity in armed conflict and consequently restrict the methods as well as the means.

00:20:21 Speaker 1

Of warfare that may be pursued and contain multiple provisions designed to shield civilians from the harmful effect of hostilities.

00:20:31 Speaker 1

We contend that forcible displacement of the kind are inquiry is concerned with.

00:20:38 Speaker 1

Can cause harm?

00:20:40 Speaker 1

Of the type that IHL seeks to mitigate, including in certain cases, death and serious injury. While there may be instances in which displacement prompted by a warning, for instance.

00:20:54 Speaker 1

Of an impending attack or the imposition of a of a siege that will cause no more than a sort of temporary inconvenience for people, so not serious harm.

00:21:04 Speaker 1

The recent experience in Gaza and elsewhere actually, now we're seeing it in the West Bank as well, have made it painfully evident that such displacements can expose civilians to severe hardships and deprivation, which are likely.

00:21:20 Speaker 1

To cause serious harm. So those are the kinds of cases that we're going to contend.

00:21:25 Speaker 1

In considering how the IHL rules on the conduct of hostilities might address such harmful conduct, we recall that this legal framework seeks to attain a balance between military necessity on the one hand, and humanity on the other.

00:21:39 Speaker 1

This balance is reflected in the contents of the rules and should also inform the interpretation, their interpretation and application.

00:21:48 Speaker 1

The question, of course, is how you strike the right balance, and this can often be challenging. It's not particularly challenging when one of the values is altogether missing from the equation. When you marry, you sort of weighing only on one side.

00:22:03 Speaker 1

So harming civilians when this does not serve a legitimate military or humanitarian purpose is undoubtedly prohibited accordingly.

00:22:15 Speaker 1

Like other provisions that Ellen just mentioned, the rules on the conduct of acidity support the conclusion that it is unlawful to forcibly displace civilians simply to implement a project of ethnic cleansing, to annex foreign territory, to facilitate attacks on civilian objects, or to collectively punish or terrorise the civilian population.

00:22:38 Speaker 1

This is what the law might require in cases where there are legitimate military considerations at play, we turn to the rules establishing protection from harm in military operations, as well as the more specific rules regulating attacks. So I'll begin with the rules.

00:22:57 Speaker 1

A minute regarding military operations.

00:23:00 Speaker 1

With respect to military operations, IHL provides, among other things, that civilians.

00:23:06 Speaker 1

Quote shall enjoy general protection against dangers arising from military operations. Close quote and that quote.

00:23:13 Speaker 1

In the conduct of military operations, constant care shall be taken to spare the civilian populations billions and civilian objects close quote the term military operations, including these provisions, is not defined in ITF treaties, but it is understood to encompass all the movements and activities carried out by the.

00:23:34 Speaker 1

Related to hostilities, that's from the commentary to the additional protocol.

00:23:38 Speaker 1

We argue that actions undertaken during hostilities that cause the displacement of civilians fall within this broad category.

00:23:47 Speaker 1

Certain support for this reading can be derived from the provision explicitly prohibiting actions against objects indispensable to the survival of the civilian population, when such actions can be expected to force the civilian population to move. So there already is a recognition that actions can include actions that force the civilian population to move.

00:24:08 Speaker 1

It might nevertheless be argued that the protections concerning military operations have no constraining effect in cases where displacement is triggered by a warning of an impending attack. Such actions that might be said cannot rightly be described as operations against civilians or endangering civilians.

00:24:27 Speaker 1

Indeed.

00:24:29 Speaker 1

Their purpose is to remove civilians from harm's way, and accordingly, they should they shouldn't be regarded as operations. That's.

00:24:38 Speaker 1

In danger civilians, but rather as operations that benefit civilians.

00:24:43 Speaker 1

We.

00:24:44 Speaker 1

Suggests that this line of thinking, this kind of argument is at odds with the humanitarian purpose of international humanitarian law and with common sense, and that it should of course be rejected, and I'll try to explain it.

00:24:59 Speaker 1

In brief, why we think it doesn't. It doesn't. It's a contrast with the logic of the law.

00:25:06 Speaker 1

Presumption you make is that a body of law that seeks to protect civilians from the harmful effects of hostilities should not be indifferent to the civilian harm caused by displacement occurring during and because of hostilities.

00:25:20 Speaker 1

To maintain that the general protections from harm in military operations do not apply in the situations under considerations is to accept that IHL allows religious, unlimited leeway to pursue actions that expose civilians to foreseeable harm, including significant harm. Mainly because these actions.

00:25:39 Speaker 1

Ostensibly being pursued to avert civilian harm of another kind.

00:25:44 Speaker 1

The idea that actions knowingly exposing civilians to danger will be it to avoid another supposedly greater danger.

00:25:54 Speaker 1

Without constraint also runs Contra to the plain language of the law. So I explained about the the logic of the law, but we think it also is in contradiction to the law. The language of the law. The provisions were requiring belligerence to provide protection.

00:26:09 Speaker 1

Against dangers arising from military operations and to take constant care to spare, civilians are understood to convey an obligation to constantly seek to mitigate feasibly avoidable harm or suffering to civilians.

00:26:25 Speaker 1

This mandate, we posit, that belligerence do more than simply seek out a less harmful alternative course of action, and requires that they instead endeavour to further mitigate any feasibly avoidable harm which that alternative.

00:26:40 Speaker 1

May self cause.

00:26:42 Speaker 1

Well, this formulation clearly conveys that humanitarian considerations must be given weights by a belligerent when conducting military operations that that cause displacement of civilians. It does not provide clear guidance as to how this.

00:26:58 Speaker 1

Considerations ought to be balanced against contrasting considerations of military necessity, so there's some constraints, but how you actually apply them is quite.

00:27:07 Speaker 1

Question. If the belligerent can spare civilians from harmful effects of displacements without compromising its military operations at all.

00:27:16 Speaker 1

Then it is undoubtedly obliged to do so. However, in the likely event that sparing civilians from harm would require the belligerent to implement measures that come at a certain cost to military utility, the picture remains murky.

00:27:33 Speaker 1

We.

00:27:33 Speaker 1

We argue that more detailed rules regulating attacks may be instructive here, either because they apply directly or by way of analogy. So we suggest that turning to the rules of an attack might clear some of this fog.

00:27:47 Speaker 1

With respect to the applicability of the rules concerning attacks, I will note without getting into all the intricacies of our analysis that we argue that these rules apply directly, not because warnings and other measures.

00:28:00 Speaker 1

Inducing civilians to displace in hostilities are attacks in themselves, though there might be some way of arguing that we don't make that argument. We say, rather, that this is because they are closely and causally linked to attacks, while their harmful outcomes.

00:28:16 Speaker 1

Maybe an indirect and inadvertent.

00:28:19 Speaker 1

Collateral consequence of the attack. Such outcomes are likely to include serious civilian harm of the type that the rules on attack seek to mitigate, and they result directly and foreseeably from the displacements which.

00:28:35 Speaker 1

Were intentionally brought about.

00:28:37 Speaker 1

It is therefore in our view, good reason to insist that the attacking party must endeavour to mitigate these foreseeable harms, just as it is required to mitigate the incidental harmful effects.

00:28:48 Speaker 1

Of the related attacks, support for this view derives from growing consensus that incidental civilian harm.

00:28:56 Speaker 1

That must be considered when implementing the rules on proportionality and precautions in attack stands beyond the harm that can be expected to arise immediately in one causal step from an attack, and must also encompass the reasonably foreseeable reverberating effects of the attack.

00:29:15 Speaker 1

In a similar vein, we contend that the reasonably foreseeable harmful effects of measures taken in connection to an attack and affecting displacement should be taken into account.

00:29:26 Speaker 1

The argument that the rules on attack apply by analogy, so some don't accept that they apply directly, but we suggest that they would nevertheless apply. By analogy. This stems in essence from simplifying a bit from the view that these rules represents a concrete articulation of the balance between humanity and necessity.

00:29:46 Speaker 1

Underpinning IHL, or from a general principle of proportionality in armed conflict that some of them just have maintained, exists. The suggestion is that one can establish how these general principles.

00:29:58 Speaker 1

To be applied.

00:30:00 Speaker 1

In the case of military operations from the concrete articulation with respect to attacks.

00:30:07 Speaker 1

Application of the rules regulating attacks, including the foundational principles of distinction and proportionality, and the duty to take precautions in attack, leads to the conclusion that the attacking party must assess whether the harm that the displacement can be expected to cause to civilians.

00:30:24 Speaker 1

Along with the harm expected from the attacks themselves is necessary to attain the legitimate the legitimate military advantage being pursued, or if instead the harm could be further mitigated without compromising the military advantage.

00:30:40 Speaker 1

Unnecessary harm. Meaning harm that exceeds the level necessary to attain the military advantage being pursued must be avoided.

00:30:49 Speaker 1

While effective, advanced warnings may go some way towards avoiding unnecessary harm, even while causing displacement. If the same military advantage can be achieved through still less harmful means, such as implementing the conditions for lawful evacuation.

00:31:05 Speaker 1

These must be implemented.

00:31:08 Speaker 1

Disproportionate harm, too, must be avoided.

00:31:12 Speaker 1

To that end, the attacking party must further ensure that harm expected from the displacements and from the attacks themselves is not excessive in relation to the military advantage anticipated from the attacks.

00:31:26 Speaker 1

Implementing these requirements in the circumstances prevailing during hostilities, when time and information are likely to be short in supply, maybe different.

00:31:36 Speaker 1

The point here is not to suggest that belligerence must engage in an impossible or impractical exercise. Rather, we argue that the foreseeable harm that civilians are likely to incur when they are induced to displace from an attack on is subject to limitations.

00:31:52 Speaker 1

In particular, it must be avoided when it is unnecessary, because the military advantage sought can feasibly be achieved through less harmful means or when it is excessive in relation to the military advantage.

00:32:05 Speaker 1

In pursuit.