

# Legal and Diplomatic Resolutions in the Repair of Fault Lines

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# Laying the background

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Which statement is correct:

- Law drives Policy
- Policy drives Law

# Outline

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- Interplay of Law & Policy – understanding it from the perspective of the state of maturity / infancy in the area of International Law
- The special role of lawyers in resolving or repairing fault lines
- Do all fault lines in the law need to be resolved?



# Interplay of Law & Policy – how mature is the state of International Law in that field?

- Geneva Conventions
  - CCW / Ottawa Convention
  - Conflicts at Sea – San Remo Manual
  - IHL in Cyber Space – Tallinn Manual, GGE process
  - International Law applicable to military space activities & operations – Woomera Manual
  - CCW / GGE on Lethal Autonomous Weapons Systems
- More maturity → Less manoeuvre room for policy-makers when it comes to new policies



# The special role of lawyers in repairing fault lines

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- Key role: Advise Policy-makers and operators on what is permitted (or not permitted) under international law
  - Two way relationship of trust is crucial
  - Allows good flow of information, and provision of frank advice, particularly when the intended policy does not line up well with the existing state of the law
  - Policy-makers & operators trust that lawyer will find a way to enable policy & ops that aligns with international law
  - Caveat: process is easier with states where there is a healthy respect for the rule of law

# The special role of lawyers in repairing fault lines

- Beacons advocating for the peaceful resolution of disputes
- When we see fault lines, to facilitate the candid exchange of views, as professionals, in different forums
  - Pay special attention to those who disagree with us
  - Bring these ideas home to shape thinking of policy-makers



## Article 3

The objectives of the association are:

- the study of military law and the law of armed conflict and peace operations;
- the promotion of military law and the law of armed conflict in accordance with the principles of human rights ;
- research into harmonisation of internal systems of law in these respects.



# The special role of lawyers in repairing fault lines

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- Finding the third way out – lawyers using mediation skills to repair fault lines and reconcile positions
  - Borrow a leaf from family law practice
  - Focus on interests, not ‘who is right or wrong’
  - Is there a win-win solution that can be accommodated
  - Keeping the resolution process separate from the politics
  - Occasionally reminding policy-makers about the ‘children’



# Fault Lines – Do they all need to be fixed?

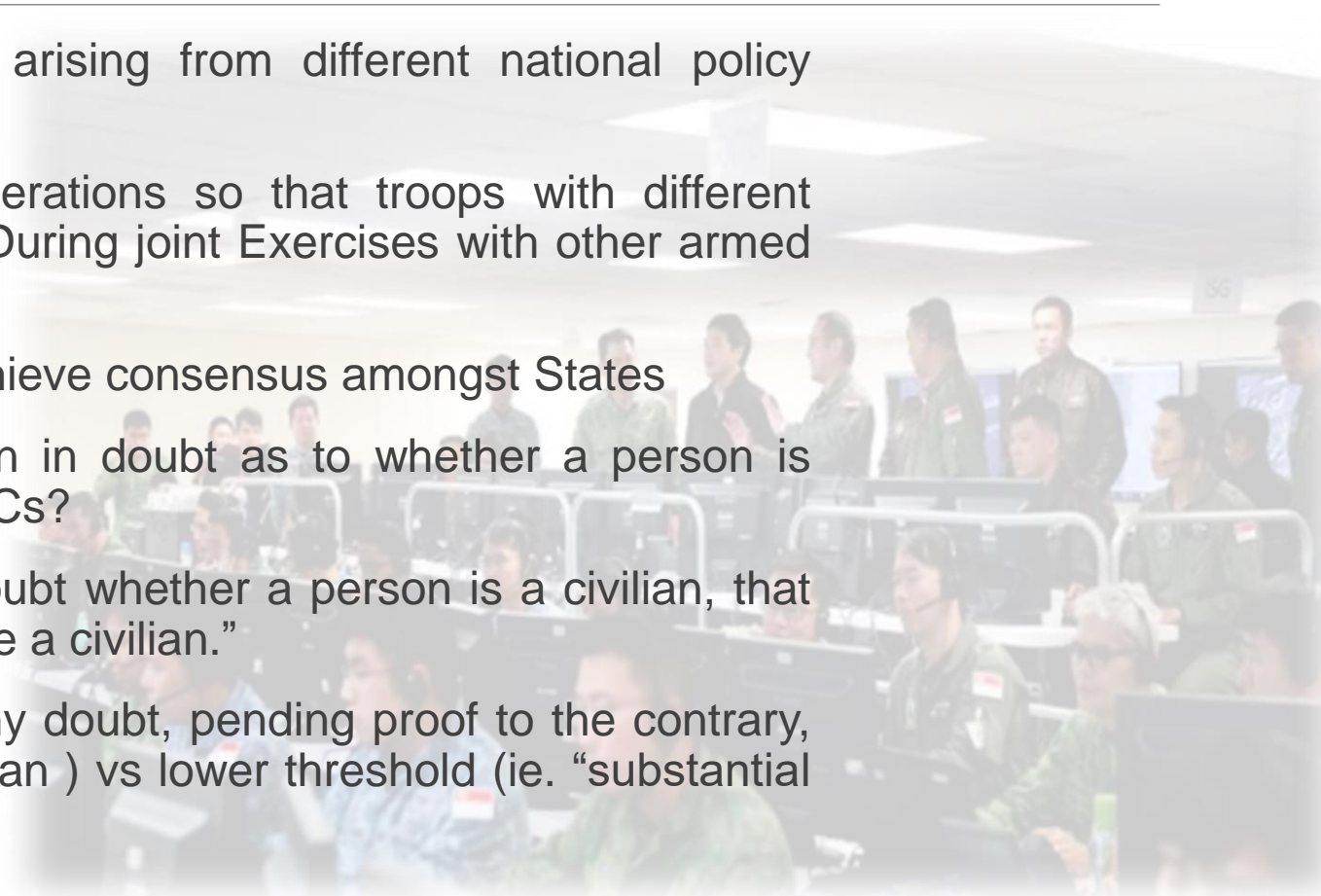
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Operational way to resolve fault lines arising from different national policy positions

- ROE matrix for joint exercises/ operations so that troops with different mandates can work together . Eg. During joint Exercises with other armed forces

Fault lines in law inevitable in order to achieve consensus amongst States

- What is the standard required when in doubt as to whether a person is civilian under Article 50, API to the GCs?
  - Article 50, API “...in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.”
  - High standard (ie. If there is any doubt, pending proof to the contrary, that person is regarded as civilian ) vs lower threshold (ie. “substantial doubt”)





# Concluding Thoughts

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- Fault lines are inherent in international law
- Trust among lawyers, policy-makers and operators
- Special role of lawyers in narrowing the fault lines
  - Promote candid exchange of views qua professionals at various forums
  - Listen to your opponent's views
  - Remember our mediation training – is there a third way out