

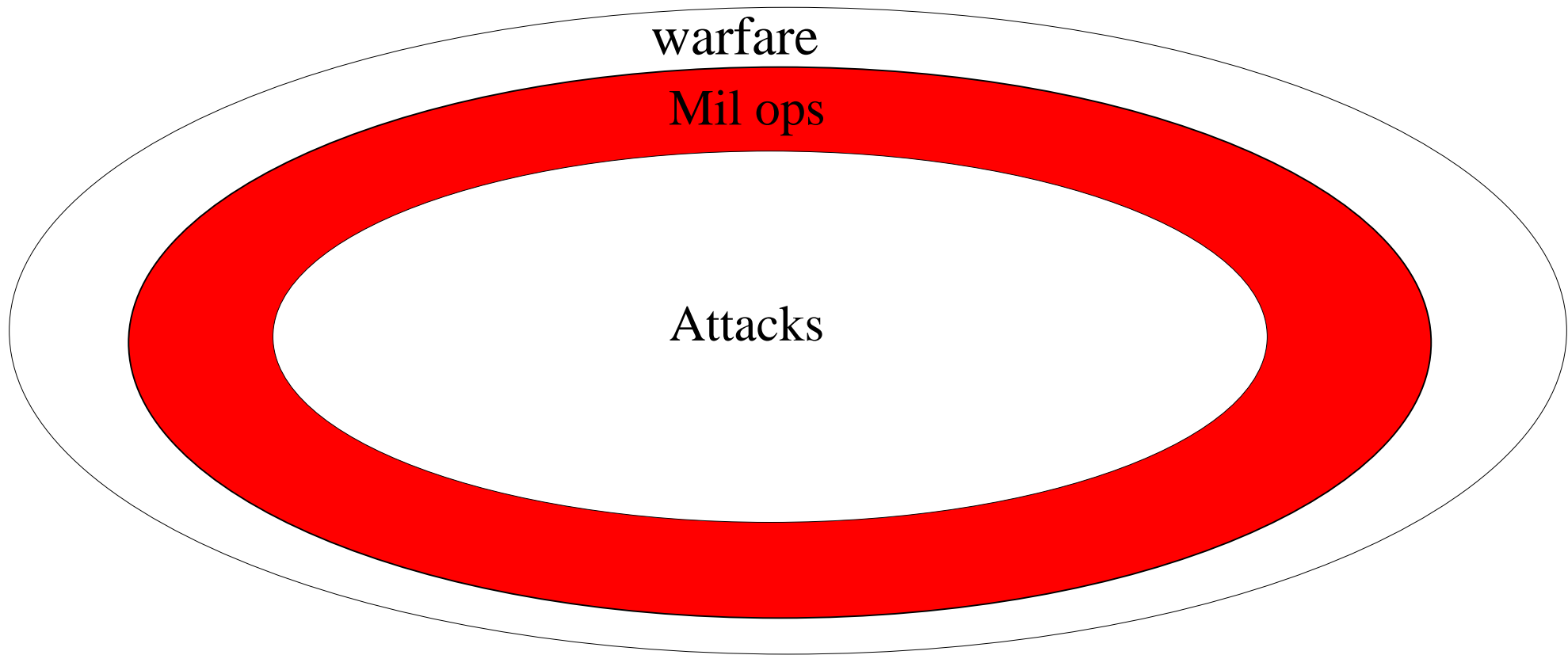
Influencing Without Fighting: Operations Below the Threshold of Attack

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Attacks

- Art. 49 (1) Additional Protocol I

“Attacks” means acts of violence against the adversary, whether in offence or in defence.



warfare

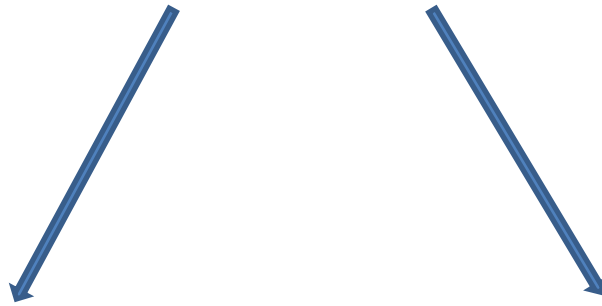
Mil ops

Attacks

LOAC

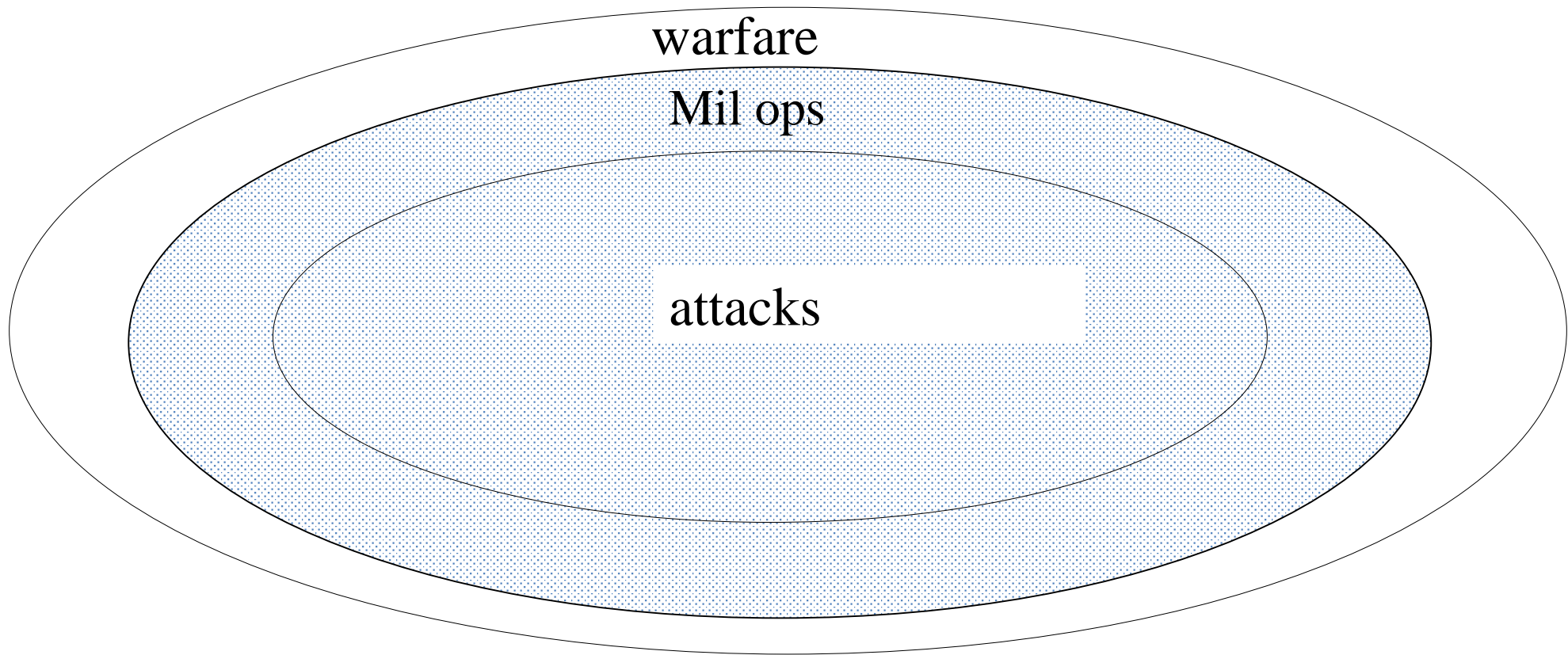
- Law of Armed Conflict:

Legal regime for the conduct of hostilities



Regulating (incl
limiting) methods and
means of hostilities

Protecting certain
persons and objects



warfare

Mil ops

attacks

Military Operation (in LOAC)

- Any action performed within the context of hostilities by military personnel and/or military materiel to reach a (relative) military advantage over the opponent.

Threshold of Attack: Traditional Sense

- Military operations performed within the context of hostilities aimed at, or with foreseeable consequences of, physical injury, death to persons, physical damage or destruction of objects or a combination thereof.

LOAC Rules Applicable Below the Threshold?

- Martens Clause
- Back to the Principles of LOAC

Principles of LOAC applicable below the threshold of attack

- Military necessity yes
- Humanity yes
- Distinction yes but difference persons/objects
- Proportionality yes, balancing neg effects on humanity with pos effects of military advantage
- Chivalry/honor yes but not as a legal obligation

- Military operations that do not have physical consequences are not attacks but when used as a means or method of warfare have to be in compliance with the principles of LOAC

Proportionality “equation”

The negative non-physical effects of a military operation for the civilian population, individual civilians, civilian objects or a combination thereof, may not be out of proportion with the appreciable military advantage anticipated of that military cyberoperation

“Precautionary measures below attacks”

During planning, preparation and execution of a military operation below the threshold of attack, ‘everything feasible’ should be done to exclude that the operation has, will or could have physical consequences.