



ICRC

# IHL Academic Articles - 2<sup>nd</sup> trimester 2010 -

Preliminary remarks .....	2
I. General issues .....	3
II. Types of conflicts.....	4
III. Armed forces / Non-state armed groups .....	4
IV. Multinational forces.....	5
V. Private actors .....	6
VI. Protection of persons .....	6
VII. Protection of objects .....	7
VIII. Detention, internment, treatment and judicial guarantees.....	7
IX. Law of occupation .....	9
X. Conduct of hostilities .....	9
XI. Weapons .....	10
XII. Implementation .....	11
XIII. International Human Rights Law .....	12
XIV. International Criminal Law .....	13
XV. Contemporary challenges .....	14


# Preliminary remarks

**Chronology.** This bibliography is based on the acquisitions made by the ICRC library during the 1st<sup>th</sup> trimester of 2010. The ICRC library acquires articles as soon as they are available. However publication date might not coincide with the bibliography period due to various editorial delays.

**Contents.** The bibliography contains English and French articles related to IHL subjects. Monographs will be included in later versions of the bibliography.

**Sources.** The ICRC library monitors a large panel of sources including all 120 journals to which the library subscribes, bibliographical databases, legal databases, legal publishers catalogues, legal research centres, NGOs, etc. It also receives various propositions from the ICRC legal advisers.

**Multiples entries.** Each article is classified under all relevant categories. This allows to consult single subjects of interest without going through the whole bibliography.

**Case Law.** The icon  highlights articles that comment on specific case law decisions.

**Access to document.** Whenever an article is available in full text, a link allows you to access the article directly. Some links only work from within ICRC premises such as the library.

**Library reference number.** At the end of the bibliographic reference, "Cote xxx/xxx" refers to the ICRC library referencing number.

**Abstracts.** When provided by the author or the publisher, the abstract is copied. When not provided, the abstract is elaborated by the legal librarian in charge of the bibliography.

**Disclaimer.** The classification is made by the library and does not necessarily reflect the opinions of the ICRC.

# I. General issues

(General catch-all category, Customary Law)

## Le droit international humanitaire, élément de la politique étrangère et de sécurité commune

Louis Balmond, Josiane Auvret-Finck. - Paris : Pedone, 2010. - p. 17-74. - Chapter in: L'Union européenne et le droit international humanitaire : [colloque, Nice 18-19 juin 2009] – Cote 345.2/817

Contient : Les positions des Etats membres relatives au DIH / Louis Balmond. - L'utilisation du DIH dans les instruments de la PESC / Josiane Auvret-Finck.

## Humanitarian law and literature : from utopia to slaughterhouse-five

Ove Bring - 2009. - p. 3-44. - In: Yearbook of international humanitarian law Vol. 10 (2007)

The article identifies humanitarian law related thought in some works of world literature. A starting point is Thomas More's Utopia (1516). Since Judge T. Meron has dealt extensively with Shakespeare from a similar perspective, the works referred to in the article (except Utopia) are all post-Shakespearean. The exposé ends with Kurt Vonnegut's Slaughterhouse Five (1969) and some dry comments on the bombing of Dresden in that book.

Access only from ICRC :

<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=3576756&fulltextType=RA&fileId=S1389135907000037>

## Les ONG, nouvelles gardiennes des Conventions de Genève ?

François Rubio et Philippe Ryfman - novembre 2009. - p. 12-59. - In: Humanitaire : enjeux, pratiques, débats 23

Contient : Les paradoxes de l'humanitaire contemporain / F. Rubio. - Le droit humanitaire au contact des ONG / V. Harouel-Bureloup. - "Droit d'ingérence" et droit humanitaire : les faux amis / N. Herlemont-Zoritchak. - La responsabilité des multinationales et des chefs d'entreprise : une conséquence inattendue de la Cour pénale internationale / E. Groulx

<http://humanitaire.revues.org/index591.html>

## La participation de l'Union européenne au développement du droit international humanitaire

Stéphane Kolanowski, Michel Veuthey... [et al.] - Paris : Pedone, 2010. - p. 175-289. - Chapter in: L'Union européenne et le droit international humanitaire : [colloque, Nice 18-19 juin 2009] – Cote 345.2/817

Contient : Les lignes directrices de l'Union européenne concernant la promotion du respect du droit international humanitaire et leur mise en oeuvre / Morten Knudsen. - La collaboration de l'Union européenne et du Comité international de la Croix-Rouge / Stéphane Kolanowski. - L'Union européenne et l'obligation de faire respecter le droit international humanitaire / Michel Veuthey. - L'Union européenne et le droit relatif aux moyens de combats / Anne Sophie Millet-Devalle. - L'Union européenne et les juridictions pénales internationales / Isabelle Moullet

## II. Types of conflicts

(Qualification of conflict, international and non-international armed conflict)

### The obligations due to former "protected persons" in conflicts that have ceased to be international : the People's Mujahedin Organization of Iran

Siobhán Wills - Spring 2010. - p. 117-139. - In: Journal of conflict and security law Vol. 15, no. 1

On 28 July 2009, around 1000 Iraqi security personnel entered Camp Ashraf, the demilitarized camp of the People's Mujahedin Organization of Iran (PMOI) in Iraq. Several PMOI members were killed and several hundred wounded. US forces had been surrounding the camp providing protection for seven years from the time they took control of the camp in 2003 until January 2009. During this period the United States repeatedly asserted that the camp's inhabitants were "protected persons" under the Geneva Conventions, even though, in the view of the International Committee of the Red Cross, the conflict ceased to be international in nature on 28 June 2004. Amnesty International also issued public statements in 2008 and 2009, stating that the PMOI remained "protected persons" under international humanitarian law. On 26 November 2009 the Audiencia Nacional of Spain also ruled that Ashraf residents are "protected persons" under the Fourth Geneva Convention. This article explores the potential legal bases of these assertions. If there are sound bases for asserting the "protected person" status of the PMOI after 28 June 2004, these may have implications beyond the political particularities of the United States' relationship with Iran, to the benefit of other former "protected persons" in the ongoing armed conflicts that have ceased to be formally international, in particular for refugees and for detainees.

Access only from ICRC : <http://jcsf.oxfordjournals.org/content/15/1/117.abstract>

## III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

### Leashing the corporate dogs of war : the legal implications of the modern private military company

Hin-Yan Liu - Spring 2010. - p. 141-168. - In: Journal of conflict and security law Vol. 15, no. 1

The modern private military company (PMC) is a company that provides martial services through a corporate legal framework, and as such is the contemporary heir to private force providers of the past. This paper challenges the idea that modern PMCs operate in an alleged legal "vacuum", and instead shows that there is a wide array of potentially applicable instruments. This paper addresses this patchwork of law primarily through the lens of mercenarism, first through proscribing international instruments followed subsequently by utilizing South Africa and the United Kingdom as the poles of their domestic counterpart responses. The rights and obligations of PMCs and its employees are then considered in the context of International Humanitarian Law and Human Rights Law, and tentative steps are taken towards considering their liability for war crimes. An attempt is made to advocate for state responsibility of PMC actions to both control their operational excesses and encourage states to address the phenomenon in a unified fashion. At the same time, the paper acknowledges the fact that state responsibility is not the panacea as claimed by some commentators; an analysis of a case study involving the sale of the Indonesian military's services to private interest shows that the privatization of forces is more than simply about the form of its organizational structure. The paper concludes that the PMC activity should nevertheless be included within the state framework to utilize the strength of both International Humanitarian and Human Rights Law.

Access only from ICRC : <http://jcsf.oxfordjournals.org/content/15/1/141.abstract>

## The requirement of "belonging" under international humanitarian law

Katherine Del Mar - February 2010. - p. 105-124. - In: European journal of international law Vol. 21, no. 1

This article argues that the notion of "belonging to a Party" to an international armed conflict under Article 4A(2) of the Third Geneva Convention is a necessarily low-threshold requirement. It is submitted that the requirement of "belonging" demands no more than a de facto agreement between a state and an irregular armed group to the effect that the latter will fight on the state's behalf against another state. The article critically examines how the ICTY Appeals Chamber in the Tadi case applied the requirement to "belong" under Article 4A(2) not in order to classify persons, but rather to classify the conflict in the former Yugoslavia as "international". The Appeals Chamber also considered that the same test should apply for the purpose of attributing state responsibility. It will be argued that there should be no underlying assumption that the same test applies for different purposes. Rather, it is to be expected that different tests developed for different purposes are different. This heterogeneous content of international law does not mean that international law is fragmented. Rather, an argument is made for the application of tests according to their respective purposes.

Access only from ICRC : <http://ejil.oxfordjournals.org/content/21/1/105>

## Treat them as they deserve ?! : three approaches to armed opposition groups under current international law

Veronika Bílková - 2010. - p. 111-126. - In: Human rights and international legal discourse Vol. 4, no. 1

Armed opposition groups, likewise other non-state actors, confront international law with the challenge of their "otherness". This challenge has been so far met in three different ways, reflecting the diverging degree of participation and acceptability that various armed opposition groups (national liberation movements, insurgent groups in non-international armed conflicts, and criminal and terrorist groups) show. The approaches international law adopts towards these three categories of AOG differ considerably in the extent and content of rights bestowed upon the groups' members. This plurality is made possible by the flexibility of the international legal personality concept, which is not a matter of simple presence and absence but of degree. As such, it helps to ensure the dominance of the state over the "other", but fails to meet the needs of the wider international community. While there is no easy solution to this problem, it is clear that any move forward has to include either a moderation of the goals the legal regime pursues or a reassessment of some of its premises and a more active incorporation of "otherness".

## IV. Multinational forces

### Common article 1 of the 1949 Geneva Conventions : a soap bubble ?

Carlo Focarelli - February 2010. - p. 125-171. - In: European journal of international law Vol. 21, no. 1

Common Article 1 of the 1949 Geneva Conventions is today generally seen as a "quasi-constitutional" international law rule, premised on the doctrine of obligations erga omnes and imposing on all contracting states an obligation to take a variety of measures in order to induce not only state organs and private individuals but also other contracting states to comply with the Conventions. The phrases "ensure respect" and "in all circumstances" contained therein, in particular, have been understood to imply a "state-compliance" meaning, drawing basically upon the ICRC Commentaries to the 1949 Geneva Conventions and to the 1977 Additional Protocols. However, expressions similar to "ensure respect" in human rights treaties, in other provisions of the Geneva Conventions themselves, and in military manuals have been given an exclusive "individual-compliance" meaning. Lists of measures available to contracting states against other contracting states deemed to be in breach of the Conventions have been suggested without investigation of whether such measures were per se lawful or unlawful and whether their adoption was legally required, or authorized, or merely recommended under common Article 1. Measures the adoption of which is expressly required or authorized by ad hoc provisions of the

Geneva Conventions have been redundantly linked to Article 1. The phrase "in all circumstances" too has a variety of meanings already found in ad hoc provisions other than Article 1. Ultimately, the purported "quasi-constitutional" character of common Article 1 has proved a subject of speculation. Common Article 1 is a reminder of obligations, negative and positive, to "respect" the Geneva Conventions (according to the general *pacta sunt servanda* rule) which has progressively been given the meaning of a mere recommendation to adopt lawful measures to induce transgressors to comply with the Conventions.

Access only from ICRC : <http://ejil.oxfordjournals.org/content/21/1/125>

## V. Private actors

### Leashing the corporate dogs of war : the legal implications of the modern private military company

Hin-Yan Liu - Spring 2010. - p. 141-168. - In: Journal of conflict and security law Vol. 15, no. 1

The modern private military company (PMC) is a company that provides martial services through a corporate legal framework, and as such is the contemporary heir to private force providers of the past. This paper challenges the idea that modern PMCs operate in an alleged legal "vacuum", and instead shows that there is a wide array of potentially applicable instruments. This paper addresses this patchwork of law primarily through the lens of mercenarism, first through proscribing international instruments followed subsequently by utilizing South Africa and the United Kingdom as the poles of their domestic counterpart responses. The rights and obligations of PMCs and its employees are then considered in the context of International Humanitarian Law and Human Rights Law, and tentative steps are taken towards considering their liability for war crimes. An attempt is made to advocate for state responsibility of PMC actions to both control their operational excesses and encourage states to address the phenomenon in a unified fashion. At the same time, the paper acknowledges the fact that state responsibility is not the panacea as claimed by some commentators; an analysis of a case study involving the sale of the Indonesian military's services to private interest shows that the privatization of forces is more than simply about the form of its organizational structure. The paper concludes that the PMC activity should nevertheless be included within the state framework to utilize the strength of both International Humanitarian and Human Rights Law.

Access only from ICRC : <http://jcsf.oxfordjournals.org/content/15/1/141.abstract>

### Privatisation and armed conflict

Olga Martin-Ortega, Pini Pavel Miretski, Dewi Williams, Ademola Abass - The Hague : T.M.C. Asser Press, 2010. - p. 187-242. - Chapter in: International law and armed conflict : challenges in the 21st century – Cote 345.2/810

Contents include : Business under fire : transnational corporations and human rights in conflict zones / Olga Martin-Ortega. - The influence of non-governmental actors on compliance with international law : compliance with United Nations Security Council decisions on Angola's conflict diamonds / Pini Pavel Miretski. - Private regulation of private military companies : a potentially private solution to a commercial problem ? / Dewi Williams. - Commentary on : privatisation and armed conflict / Ademola Abass.

## VI. Protection of persons

### Children and armed conflict

Cynthia Chamberlain, Hilly Moodrick-Even Khen, William Schabas - The Hague : T.M.C. Asser Press, 2010. - p. 243-286. - Chapter in: International law and armed conflict : challenges in the 21st century – Cote 345.2/810

Contents include : Children and the international criminal court / Cynthia Chamberlain. - Child terrorists : why and how should they be protected by international law / Hilly Moodrick-Even Khen. - Commentary on : children and armed conflict / William Schabas.

## La définition de la notion de "population civile" dans le cadre du crime contre l'humanité : commentaire critique de l'arrêt Martić

Jérôme de Hemptinne - 2010. - p. 93-104. - In: Revue générale de droit international public T. 114, no 1

La définition de la notion de population civile donnée par le TPIY en référence au Protocole additionnel I est excessivement restrictive. De nombreux arguments juridiques en faveur d'une interprétation plus souple de cette notion, conformément à l'article 3 commun aux Conventions de Genève. L'approche du TPIY paraît d'autant plus critiquable qu'elle entretient une confusion entre les crimes contre l'humanité et les crimes de guerre, les premiers pouvant, à la différence des seconds, être commis aussi bien en temps de guerre qu'en temps de paix.

## The obligations due to former "protected persons" in conflicts that have ceased to be international : the People's Mujahedin Organization of Iran

Siobhán Wills - Spring 2010. - p. 117-139. - In: Journal of conflict and security law Vol. 15, no. 1

On 28 July 2009, around 1000 Iraqi security personnel entered Camp Ashraf, the demilitarized camp of the People's Mujahedin Organization of Iran (PMOI) in Iraq. Several PMOI members were killed and several hundred wounded. US forces had been surrounding the camp providing protection for seven years from the time they took control of the camp in 2003 until January 2009. During this period the United States repeatedly asserted that the camp's inhabitants were "protected persons" under the Geneva Conventions, even though, in the view of the International Committee of the Red Cross, the conflict ceased to be international in nature on 28 June 2004. Amnesty International also issued public statements in 2008 and 2009, stating that the PMOI remained "protected persons" under international humanitarian law. On 26 November 2009 the Audiencia Nacional of Spain also ruled that Ashraf residents are "protected persons" under the Fourth Geneva Convention. This article explores the potential legal bases of these assertions. If there are sound bases for asserting the "protected person" status of the PMOI after 28 June 2004, these may have implications beyond the political particularities of the United States' relationship with Iran, to the benefit of other former "protected persons" in the ongoing armed conflicts that have ceased to be formally international, in particular for refugees and for detainees.

Access only from ICRC : <http://jcsf.oxfordjournals.org/content/15/1/117.abstract>

## VII. Protection of objects

(Environment, cultural property, water, medical mission, emblem, etc.)

## VIII. Detention, internment, treatment and judicial guarantees

### An appraisal of US practice relating to "enemy combatants"

Gabor Rona. - 2009. - p. 232-250. - In: Yearbook of international humanitarian law Vol. 10 (2007)

Following the terrorist attacks of 9/11, the United States sought to establish a framework for detaining, interrogating and possibly prosecuting persons suspected of various degrees of connection to international terrorism. There were several factors militating against reliance on a tried and true law enforcement paradigm of arrest and prosecution in federal courts. Perhaps

the most significant one, as described by then Attorney General Ashcroft and other senior officials in the Department of Justice, was the felt need for a fundamental shift in approach when dealing with terrorist suspects, from prosecution to prevention of future attacks. "you have a right to remain silent and a right to an attorney" (the so-called Miranda warnings) was not the message that the administration wanted to convey.

Access only from ICRC :

<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=3576804&fulltextType=RV&fileId=S1389135907002322>

## Expert meeting on procedural safeguards for security detention in non-international armed conflict

Chatham House and International Committee of the Red Cross. - December 2009. - p. 859-881. - In: International review of the Red Cross Vol. 91, no. 876

While inevitably touching on both criminal and administrative detention/internment in situations of international armed conflict, occupation, and situations of violence below the applicability threshold of international humanitarian law, the debate was focused on security detention in non-international armed conflict. The report therefore covers only that issue; expansions into wider areas of discussion will be mentioned only where directly relevant.

<http://www.icrc.org/Web/eng/siteeng0.nsf/html/review-876-p859>

## Side-stepping Geneva : Japanese troops under British control, 1945-7

Stephen Connor. - April 2010. - p. 389-405. - In: Journal of contemporary history Vol. 45, no. 2

The grave political, humanitarian and economic crises facing Britain in Southeast Asia in August 1945 were first reflected in a remarkable ad hoc policy towards surrendered Japanese. To the alarm of civilian officials in London, the Geneva Convention was effectively suspended. Subsequently, the British used Japanese troops against nationalists and detained other Japanese for use as coolies, in clear breach of the Potsdam Declaration. These extreme measures and frequent pleas for cheap American repatriation shipping underlined Britain's lack of capability and starkly limited options. Nevertheless, Britain's influential status as victor also allowed it to impose controls unilaterally on prisoners, leaving a legacy that continues to reverberate in contemporary warfare.

Access only from ICRC : <http://jch.sagepub.com/content/45/2/389.abstract>

## The requirement of "belonging" under international humanitarian law

Katherine Del Mar. - February 2010. - p. 105-124. - In: European journal of international law Vol. 21, no. 1

This article argues that the notion of "belonging to a Party" to an international armed conflict under Article 4A(2) of the Third Geneva Convention is a necessarily low-threshold requirement. It is submitted that the requirement of "belonging" demands no more than a de facto agreement between a state and an irregular armed group to the effect that the latter will fight on the state's behalf against another state. The article critically examines how the ICTY Appeals Chamber in the Tadi case applied the requirement to "belong" under Article 4A(2) not in order to classify persons, but rather to classify the conflict in the former Yugoslavia as "international". The Appeals Chamber also considered that the same test should apply for the purpose of attributing state responsibility. It will be argued that there should be no underlying assumption that the same test applies for different purposes. Rather, it is to be expected that different tests developed for different purposes are different. This heterogeneous content of international law does not mean that international law is fragmented. Rather, an argument is made for the application of tests according to their respective purposes.

Access only from ICRC : <http://ejil.oxfordjournals.org/content/21/1/105>

## IX. Law of occupation

### Les colonies israéliennes de Cisjordanie en droit international

Ghislain Poissonnier et Pierre Osseland - 2010. - p. 63-92. - In: Revue générale de droit international public T. 114, no 1

Cette chronique se propose d'étudier la légalité des colonies israéliennes de peuplement en Cisjordanie, en ce compris Jérusalem-Est, au regard du droit international public et notamment du droit international humanitaire. Le cadre juridique permettant d'analyser la légalité internationale de ces colonies est fourni par la quatrième Convention de Genève, dont l'applicabilité dans le territoire palestinien occupé ne fait aucun doute, en dépit d'une position israélienne contraire. La politique de colonisation de l'État d'Israël paraît illégale au regard du droit international humanitaire, en ce qu'elle a pour effet d'entraîner un transfert par la puissance occupante d'une partie de la population civile israélienne dans le territoire palestinien occupé en violation de l'article 49§ 6 de la quatrième Convention de Genève. Les conséquences de la construction et de la présence de ces colonies semblent, en outre, contraires tant au droit international humanitaire par l'altération de la configuration géographique, démographique, économique et sociale du territoire palestinien occupé qu'elles impliquent qu'au droit international des droits de l'homme de par ses effets sur la population civile palestinienne. Il s'en suit que les États parties aux Conventions de Genève ont l'obligation de ne pas reconnaître une situation illicite et faire respecter par l'État d'Israël le droit international dans le territoire palestinien occupé.

### The law of occupation revisited : the beginning of an occupation

Marten Zwanenburg - 2009. - p. 99-130. - In: Yearbook of international humanitarian law Vol. 10 (2007)

This article discusses the criteria for establishing the beginning of an occupation. To this end, it analyzes the wording and drafting history of IHL instruments as well as international case law. It also looks at the influence of human rights law, in particular the notion of "jurisdiction" as used in the ICCPR and the ECHR, on the concept of occupation. Given that the IHL instruments on occupation were drafted some time ago, the impact of a number of technological developments in military affairs on the criteria for the beginning of occupation are discussed. The article concludes that the core of the concept of occupation consists of a negative and a positive element. The negative element is that the indigenous authorities of the occupied territory have been rendered incapable of functioning publicly. The positive element is expressed in Article 42 of the Hague Regulations as the requirement that the territory "is actually placed under the authority of the hostile army".

Access only from ICRC :

<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=3576780&fulltextType=RA&fileId=S1389135907000992>

## X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

### A discourse of distinction ? : Palestinians, international law, and the promise of humanitarianism

Michelle L. Burgis - 2009. - p. 41-66. - In: The Palestine yearbook of international law Vol. 15

This article acknowledges the scholarship of those international lawyers intent on 'solving' the 'problem' of the Palestinians, but takes an alternate route in trying to make sense of the legal status of the Palestinian territories. It is argued here that a new approach to understanding the legal construction of the conflict is needed. Palestinians do not need more law of more law enforcement; they need a better way to make sense of the construction of legal discourses so that

perhaps law can be used as a tool of liberation. Rather than blaming the current impasse of interminable occupation on a lack of law, this article argues the opposite: being drenched in a particular discourse of international law, we need a new way of approaching the problem that is the occupied Palestinian territory and the role of the law.

### **Targeted killings in Afghanistan : measuring coercion and deterrence in counterterrorism and counterinsurgency**

Alex S. Wilner - 2010. - p. 307-329. - In: Studies in conflict and terrorism Vol. 33, no. 4. - Photocopies – Cote 345.25/35 (Br.)

This article examines the coercive and deterrent utility of targeting the leaders of violent, non-state organizations with precision force. Building on the literatures on targeted killings and deterrence theory, this article provides a case study analysis of targeted killings in Afghanistan. Relying on publicly available and semi-private sources, the article presents a comparative analysis of four targeted killings conducted against Taliban leaders. Findings suggest that the eliminations degraded Taliban professionalism, diminished the group's success rates, influenced their selection of targets, and weakened morale. These findings speak to the efficacy of targeted killings in counterterrorism and counterinsurgency and to their value as both counter-capability and counter-motivation operations.

### **"Undercover" operations and IHL advocacy in the Occupied Palestinian Territories**

Rotem Giladi - Winter 2009. - p. 393-439. - In: Journal of conflict and security law Vol. 14, no. 3

In this article the author explores how international humanitarian law (IHL) is used in advocacy on 'undercover' operations—the wearing of civilian clothes by Israel's security forces in the Occupied Palestinian Territories (OPT). Assessing applicable legal standards—the duty of combatants to distinguish themselves from the civilian population, and the rule prohibiting perfidy—He shows that legal claims, reporting practices and strategies comprising the advocacy on 'undercover' operations in the OPT make inadequate and inefficient use of IHL. Advocacy on 'undercover' operations does not reference and utilize appropriate legal standards; nor does it ground allegations and strategies in the normative and factual inquiries these standards entail. Such advocacy is insensitive to highly relevant factual, legal and policy specificities of the OPT. Decontextualized, advocacy on 'undercover' operations presents neither a coherent legal argument nor cogent compliance-inducing strategies. It generates inefficient, unpersuasive discourse that more likely undermines than supports the prospects of changing the practices it challenges.

Access only from ICRC : <http://jcsf.oxfordjournals.org/content/14/3/393>

## **XI. Weapons**

### **Enhancing the protection of civilians from armed conflict : precautionary lessons**

Brian Rappert and Richard Moyes - January-March 2010. - p. 24-47. - In: Medicine, conflict and survival Vol. 26, no. 1. - Bibliographie : p. 44-47

Attempts to place limits on the conduct of conflict raise many practical and political concerns. This article asks how debates regarding precautionary approaches to risk might inform discussions about how limits are set for armed conflict. The 2008 Convention on Cluster Munitions (CCM) provides the starting point for this analysis. While the adoption of this convention represents a major achievement in multilateral humanitarian disarmament, its provisions are open to question about their meaning. As argued, the manner in which the CCM was agreed provides an opening for embedding precautionary thinking into its future interpretation. Experiences with precautionary approaches to risk are surveyed with a view to considering what lessons they hold for the central prohibition of cluster munitions in the CCM,

its novel provisions for Victim Assistance, and its possible implications for the use of explosive force. The overall goal is to ask how debates about the precautionary principle might enhance the protection of civilian populations.

Access only from ICRC :

<http://www.informaworld.com/smpp/content-content=a919719269-db=all-jumptype=rss>

## The use of white phosphorus and the law of war

I.J. MacLeod and A.P.V. Rogers - 2009. - p. 75-97. - In: Yearbook of international humanitarian law Vol. 10 (2007)

The controversy surrounding recent uses of white phosphorus (WP) to 'flush-out' suspected insurgents or in attacks against military targets in open ground has led to a renewed media interest in the legal status of WP-based munitions. An inherent public dislike for weapons that cause death or injury by fire is very natural, so one is entitled to ask whether humanity should not prevail when it comes to anti-personnel uses of such weapons. In the absence of a specific treaty dealing with the use of WP, this article, written jointly by a retired military lawyer and a scientist interested in the law, examines the use of such weapons in practice as well as the relevant legal and scientific background before attempting to reach conclusions about their legality. This involves a consideration of the reasons for the development of WP-based munitions, of their usual military uses and of some unconventional uses of such weapons. There follows an examination of the basic principles of customary international law as well as the treaty provisions dealing with incendiary weapons. Furthermore, because of the various harmful physiological interactions of WP, it was necessary to look closely at the legal provisions on poison, gas and chemical weapons. That demanded an interpretation of multiple aspects of the Chemical Weapons Convention before the legal status of WP could be fully determined. The convention is constructed in such a way that what at first sight appears to be a chemical weapon may not be as a matter of law unless it is consciously applied in a prohibited manner.

Access only from ICRC :

<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=3576772&fulltextType=RA&fileId=S138913590700075X>

## XII. Implementation

(ICRC, protecting powers, fact finding commission, other means of preventing violations and controlling respect for IHL, state responsibility)

### Le droit international humanitaire, élément de la politique étrangère et de sécurité commune

Louis Balmond, Josiane Auvret-Finck - Paris : Pedone, 2010. - p. 17-74. - Chapter in: L'Union européenne et le droit international humanitaire : [colloque, Nice 18-19 juin 2009] – Cote 345.2/817

Contient : Les positions des Etats membres relatives au DIH / Louis Balmond. - L'utilisation du DIH dans les instruments de la PESC / Josiane Auvret-Finck.

### Implementation of international humanitarian law

Sascha-Dominik Bachmann, Bill Bowring, Gerd Hankel - The Hague : T.M.C. Asser Press, 2010. - p. 287-315. - Chapter in: International law and armed conflict : challenges in the 21st century – Cote 345.2/810

Contents include : Today's quest for international criminal justice : a short overview of the present state of criminal prosecution of international crimes / Sascha-Dominik Bachmann. - Commentary on : implementation of international humanitarian law / Bill Bowring. - Commentary on : implementation of international humanitarian law / Gerd Hankel.

## **La participation de l'Union européenne au développement du droit international humanitaire**

Stéphane Kolanowski, Michel Veuthey... [et al.] - Paris : Pedone, 2010. - p. 175-289. - Chapter in: L'Union européenne et le droit international humanitaire : [colloque, Nice 18-19 juin 2009] – Cote 345.2/817

Contient : Les lignes directrices de l'Union européenne concernant la promotion du respect du droit international humanitaire et leur mise en oeuvre / Morten Knudsen. - La collaboration de l'Union européenne et du Comité international de la Croix-Rouge / Stéphane Kolanowski. - L'Union européenne et l'obligation de faire respecter le droit international humanitaire / Michel Veuthey. - L'Union européenne et le droit relatif aux moyens de combats / Anne Sophie Millet-Devalle. - L'Union européenne et les juridictions pénales internationales / Isabelle Moulier.

## **La soumission de l'Union européenne au droit international humanitaire, aspects opérationnels**

Frederic Naert, Bruno Nielly, Sonja Boelaert - Paris : Pedone, 2010. - p. 139-171. - Chapter in: L'Union européenne et le droit international humanitaire : [colloque, Nice 18-19 juin 2009] - Cote 345.2/817

Contient : Challenges in applying international humanitarian law in crisis management operations conducted by the EU / Frederic Naert. - Le comité militaire de l'Union européenne et le droit international humanitaire / Bruno Nielly. - Le rôle du DIH dans les programmes communautaires et l'aide humanitaire / Sonja Boelaert.

## **La soumission de l'Union européenne au droit international humanitaire, aspects théoriques**

Valentina Falco, Tristan Ferraro, Aurélie Claeys Bouuaert - Paris : A. Pedone, 2010. - p. 77-136. - Chapter in: L'Union européenne et le droit international humanitaire : [colloque, Nice 18-19 juin 2009] – Cote 345.2/817

Contient : L'applicabilité du droit international humanitaire à l'Union européenne : évolutions normatives / Valentina Falco. - L'applicabilité du droit international humanitaire aux opérations militaires de l'Union européenne / Tristan Ferraro. - Responsabilité pour violations du droit international humanitaire dans le cadre des opérations de l'Union européenne : question de l'attribution du fait internationalement illicite / Aurélie Claeys Bouuaert.

# **XIII. International Human Rights Law**

(Focus on situations of armed conflict and other situations of violence)

## **Human rights and international humanitarian law**

Christian Tomuschat - February 2010. - p. 15-23. - In: European journal of international law Vol. 21, no. 1

It is recognized today that human rights law is not generally displaced in times of armed conflict by international humanitarian law (IHL). Yet in large part this new insight remains to be particularized as to its actual consequences. In particular, IHL is still predominantly under the influence of the concept of military necessity.

Access only from ICRC : <http://ejil.oxfordjournals.org/content/21/1/15>

## **The relationship between international humanitarian law and international human rights law**

Paul Eden... [et al.] - Winter 2009. - p. 441-527. - In: Journal of conflict and security law Vol. 14, no. 3

Contient notamment : Principle or pragmatics ? : the relationship between human rights law and the law of armed conflict / I. Scobbie. - A norm conflict perspective on the relationship between international humanitarian law and human rights law / M. Milanovic. - The interplay of human rights and humanitarian law : the approach of the ICTY / R. Cryer

Access only from ICRC : <http://jcsf.oxfordjournals.org/content/14/3/441>

## XIV. International Criminal Law

### Children and armed conflict

Cynthia Chamberlain, Hilly Moodrick-Even Khen, William Schabas - The Hague : T.M.C. Asser Press, 2010. - p. 243-286. - Chapter in: International law and armed conflict : challenges in the 21st century – Cote 345.2/810

Contents include : Children and the international criminal court / Cynthia Chamberlain. - Child terrorists : why and how should they be protected by international law / Hilly Moodrick-Even Khen. - Commentary on : children and armed conflict / William Schabas.

### La définition de la notion de "population civile" dans le cadre du crime contre l'humanité : commentaire critique de l'arrêt Martić

Jérôme de Hemptinne - 2010. - p. 93-104. - In: Revue générale de droit international public T. 114, no 1

La définition de la notion de population civile donnée par le TPIY en référence au Protocole additionnel I est excessivement restrictive. De nombreux argument juridiques en faveur d'une interprétation plus souple de cette notion, conformément à l'article 3 commun aux Conventions de Genève. L'approche du TPIY paraît d'autant plus critiquable qu'elle entretient une confusion entre les crimes contre l'humanité et les crimes de guerre, les premiers pouvant, à la différence des seconds, être commis aussi bien en temps de guerre qu'en temps de paix.

### Implementation of international humanitarian law

Sascha-Dominik Bachmann, Bill Bowring, Gerd Hankel - The Hague : T.M.C. Asser Press, 2010. - p. 287-315. - Chapter in: International law and armed conflict : challenges in the 21st century – Cote 345.2/810

Contents include: Today's quest for international criminal justice : a short overview of the present state of criminal prosecution of international crimes / Sascha-Dominik Bachmann. - Commentary on : implementation of international humanitarian law / Bill Bowring. - Commentary on : implementation of international humanitarian law / Gerd Hankel.

### Reforming the laws of war

Shane Darcy, Konstantinos D. Magliveras, Gerd Hankel - The Hague : T.M.C. Asser Press, 2010. - p. 317-360. - Chapter in: International law and armed conflict : challenges in the 21st century – Cote 345.2/810

Contents include : Bridging the gaps in the laws of armed conflict ? : international criminal tribunals and the development of humanitarian law / Shane Darcy. - Devising new rules for regulating international terrorism warfare and engaging non-state actors in the negotiations / Konstantinos D. Magliveras. - Commentary on : reforming the laws of war / Gerd Hankel.

### What does "intent to destroy" in genocide mean ?

Kai Ambos - December 2009. - p. 833-858. - In: International review of the Red Cross Vol. 91, no. 876

The prevailing view in the case-law interprets the respective "intent to destroy" requirement as a special or specific intent (*dolus specialis*) stressing its volitional or purpose-based tendency. A

historical, literal, systematic and teleological interpretation of the "intent to destroy" requirement, taking into account the particular structure of the genocide offence and the meaning of "intent" in comparative law, reveals that the traditional view can no longer be maintained.

<http://www.icrc.org/Web/eng/siteeng0.nsf/html/review-876-p833>

## XV. Contemporary challenges

(Terrorism, DPH, cyber warfare, asymmetric war, etc.)

### Reforming the laws of war

Shane Darcy, Konstantinos D. Magliveras, Gerd Hankel - The Hague : T.M.C. Asser Press, 2010. - p. 317-360. - Chapter in: International law and armed conflict : challenges in the 21st century – Cote 345.2/810

Contents include : Bridging the gaps in the laws of armed conflict ? : international criminal tribunals and the development of humanitarian law / Shane Darcy. - Devising new rules for regulating international terrorism warfare and engaging non-state actors in the negotiations / Konstantinos D. Magliveras. - Commentary on : reforming the laws of war / Gerd Hankel.

### Targeted killings in Afghanistan : measuring coercion and deterrence in counterterrorism and counterinsurgency

Alex S. Wilner - 2010. - p. 307-329. - In: Studies in conflict and terrorism Vol. 33, no. 4. - Photocopies – Cote 345.25/35 (Br.)

This article examines the coercive and deterrent utility of targeting the leaders of violent, non-state organizations with precision force. Building on the literatures on targeted killings and deterrence theory, this article provides a case study analysis of targeted killings in Afghanistan. Relying on publicly available and semi-private sources, the article presents a comparative analysis of four targeted killings conducted against Taliban leaders. Findings suggest that the eliminations degraded Taliban professionalism, diminished the group's success rates, influenced their selection of targets, and weakened morale. These findings speak to the efficacy of targeted killings in counterterrorism and counterinsurgency and to their value as both counter-capability and counter-motivation operations.