ICRC

# IHL Bibliography
# - 3rd trimester 2011 -


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# Preliminary remarks

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**Contents**. The bibliography contains English and French writings related to IHL subjects: articles, monographs, chapters and reports or working papers.

**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.

**Access to document**. Whenever an article is electronically 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. All documents are available for loan at the ICRC Library.

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**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)**

## ABC du droit international humanitaire

**Département fédéral des affaires étrangères**. - Berne : Département fédéral des affaires étrangères, 2009. - 43 p. : photogr. ; 21 cm. - Cote 345.2/425 (FRE Br.)

Organisé par mots-clés, l'ABC explique des notions importantes du droit international humanitaire (aussi appelé droit des conflits armés ou droit de la guerre). Brochure enrichie d'un glossaire, elle offre une brève introduction au développement et au champ d'application de cette branche particulière du droit international.

Full text
http://www.eda.admin.ch/etc/medialib/downloads/edazen/doc/publi/publi2.Par.0016.File.tmp/HVR_FRA.pdf

## Aggressors' rights : the doctrine of "equality between belligerents" and the legacy of Nuremberg

**Michael Mandel**. In: Leiden journal of international law Vol. 24, no. 3, 2011, p. 627-650. - Cote 344/547 (Br.)

The moral and legal debate over the separation of jus in bello from jus ad bellum generally assumes that the law of war supports this separation and the concomitant doctrine of 'equality between belligerents', also known as the 'duality' or the 'symmetry' principle. This article examines the Nuremberg-era precedents and legal scholarship, as well as more recent legal and scholarly material, and argues that the general assumption is wrong and that the arguments supporting the radical legal separation of the two jus's are unconvincing.

## The development of international humanitarian law since the 19th century

**Stefanie Schmahl**. - The Hague : Eleven International, 2011. - p. 485-504. - In: Universality and continuity in international law. - Cote 345.2/853 (Br.)

There are diverse reasons for the fact that, in spite of the awful experiences humanity had made in the course of its history, the codifications of international humanitarian law were developed relatively late. Firstly, and for a long time, there was no system of sovereign Statehood that might have created such a universally effective legal system. Secondly, it was only towards the end of the 19th century that international law began to distance itself from the principle of bellum iustum and to give equal status to war and peace. It was this change of paradigm in favor of a neutral self-conception of international law that enabled the emergence of the laws of war for the mitigation of human suffering in war. Finally and this is probably the decisive factor, it was only at this moment that the individual human being was no longer viewed merely as an object of international law, but as a beneficiary itself worthy of protection.

## The distinction and relationship between jus ad bellum and jus in bello

**Keiichiro Okimoto**. - Oxford ; Portland (Oregon) : Hart, 2011. - XL, 389 p. ; 24 cm. - Cote 345.2/848

This book explores the distinction and relationship between two principal branches of international law regulating the use of force: jus ad bellum (international law regulating the resort to force) and jus in bello (international humanitarian law). Two principles traditionally govern the relationship between the two: 1) separation of jus ad bellum and jus in bello and 2) equal application of jus in bello to the conflicting parties. These principles emerged in response to the claim that a conflicting party using force illegally under jus ad bellum should not benefit from the protection for victims of armed conflict under jus in bello, which would completely defeat the humanitarian purpose of jus in bello to protect all victims of armed conflict impartially. There is, however, a third principle: concurrent application of jus ad bellum and jus in bello. Unlike in the past, jus ad bellum now regulates the use of force during a conflict alongside jus in bello and hence, the two are now considered as one set of rules applying during a conflict. The book explores in detail the interaction between jus ad bellum and jus in bello in the light of these three principles. The relationship between the two has been principally discussed in the context of the use of force in self-defence and international armed conflict. However, this book examines the relationship in other contexts of a very different nature, namely the use of force under Chapter VII of the United Nations Charter, non-

international armed conflict, and armed conflict of a mixed character. The book concludes that the three principles governing the relationship are equally valid, with certain variations, in these different contexts.

## Droit international humanitaire dans les conflits armés : le cas rwandais

**Sacké Kouyaté Kaba Diakité ; préf. d'Édouard Koudouno**. - Paris : L'Harmattan, 2011. - 221 p. ; 23 cm. - Cote 345.2/849

En quoi consiste le droit international humanitaire dans les conflits armés ? Pourquoi les instruments juridiques internationaux concernant les droits de l'homme manquent-ils d'une réelle effectivité dans leur application ? Le génocide rwandais peut-il être qualifié de conflit armé interne ? Quel doit être le rôle des Nations unies dans les situations de conflits ? Quel est l'impact réel en termes de sanctions du droit international humanitaire ? Est-il possible d'humaniser la guerre dont la logique profonde est la destruction de l'ennemi ? La préoccupation majeure du droit international humanitaire est d'enlever aux conflits armés, qu'ils soient internes ou internationaux, leur caractère déshumanisant, à travers l'élaboration d'instruments juridiques visant à protéger les victimes de guerre et à sanctionner les responsables de faits particulièrement odieux. C'est aussi un droit généreux s'il est appliqué et respecté. En temps de guerre, il assure aux personnes exposées aux hostilités la jouissance de droits consacrés par diverses conventions internationales telles que les quatre conventions de 1949 et leurs protocoles additionnels de 1977. Leur mise en oeuvre épargnerait inéluctablement l'humanité tout entière de bavures telles que le génocide perpétré au Rwanda en 1994.

## The history of reprisals up to 1945 : some lessons learned and unlearned for contemporary international law

**Olivier Barsalou**. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra Vol. 49, no 3-4, 2010, p. 335-367

The article provides a critical overview of the history, theoretical foundations and rules and principles governing the use of reprisals in international law. One means by which states can enforce international law is through the use of reprisals or countermeasures. In the interwar era, international lawyers sought to design a legal apparatus aimed at governing the use of reprisals in the international society. They recognized that violence could constitute a legitimate source of authority and justice in the international legal system. The post-1945 system of international law incorporated this idea in an attenuated form. This article sheds some light on a number of intricacies that international lawyers have historically had trouble dealing with in the pre-United Nations Charter era and that the contemprary system of coutermeasures seems to ignore, namely the paradoxical position that violence occupies as a source of authority and justice in international law : violence is both necessary and impossible in the international legal system.

## The image before the weapon : a critical history of the distinction between combatant and civilian

**Helen M. Kinsella**. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2011. - XII, 260 p. ; 24 cm. - Cote 345.25/244

Kinsella explores the evolution of the concept of the civilian and how it has been applied in warfare. A series of discourses—including gender, innocence, and civilization— have shaped the legal, military, and historical understandings of the civilian and she documents how these discourses converge at particular junctures to demarcate the difference between civilian and combatant. Engaging with works on the law of war from the earliest thinkers in the Western tradition, including St. Thomas Aquinas and Christine de Pisan, to contemporary figures such as James Turner Johnson and Michael Walzer, Kinsella identifies the foundational ambiguities and inconsistencies in the principle of distinction, as well as the significant role played by Christian concepts of mercy and charity. She then turns to the definition and treatment of civilians in specific armed conflicts: the American Civil War and the U.S.-Indian Wars of the nineteenth century, and the civil wars of Guatemala and El Salvador in the 1980s. Finally, she analyzes the two modern treaties most influential for the principle of distinction: the 1949 IV Geneva Convention Relative to the Protection of Civilian Persons in Times of War and the 1977 Protocols Additional to the 1949 Conventions, which for the first time formally defined the civilian within international law. She shows how the experiences of the two world wars, but particularly World War II, and the Algerian war of independence affected these subsequent codifications of the laws of war.

## The individual in international humanitarian law

**Kate Parlett**. - Cambridge [etc] : Cambridge University Press, 2011. - p. 176-228. - In: The individual in the international legal system : continuity and change in international law. - Cote 345/589

In international armed conflict, rules which limit the conduct of armed forces have the potential to engage individuals in the international legal system. In internal armed conflict, the extension of belligerent rights and obligations to armed opposition groups effectively engages individuals. This chapter surveys the development of international humanitarian law with respect to individuals in both spheres. The extent to which individuals have been engaged in the international legal system will be assessed against the orthodox accounts of the international legal system examined in part I. In recent scholarship it has been suggested that there is convergence in humanitarian law applicable in international and non-international armed conflicts; but in this chapter they are addressed separately for several reasons, including the diversity in the historical development of the applicable rules in each type of conflict.

## International humanitarian law and terrorism

**Andrea Bianchi and Yasmin Naqvi**. - Oxford ; Portland (Oregon) : Hart, 2011. - XLIX, 403 p. ; 24 cm. - Cote 303.6/197

This book carefully and thoroughly analyses the legal questions raised by the phenomenon of terrorism, and past and recent efforts to fight it, from the perspective of international humanitarian law (IHL). While due heed is paid to doctrinal debates, particular emphasis is placed on the practice of social actors, particularly, although not exclusively, States. The analysis of their actual conduct as well as their expectations about the interpretation and application of the law is crucial to establishing an interpretive consensus on when and how IHL is relevant to regulate acts of terrorism. The reader will find the relevant rules of IHL and other legal regimes as regards terrorism, but also the debates over their application, the contradictions in State practice and the impact these may have upon IHL's evolution and implementation.

## International humanitarian law : theory, practice, context

**Daniel Thürer**. - [The Hague] : Hague academy of international law, 2011. - 500 p. ; 18 cm. - Cote 345.2/851

Daniel Thürer deals with war and the means by which international law attempts to contain and, as it were, "humanize" organized violence. But the ambitions of the author go beyond the battlefield. The book explores the many complex ways in which law functions to regulate warfare, in theory and in practice. The author looks into treaties and other sources of international law, but he also tries to step outside the boundaries of "black-letter law" to deal broadly with such matters as the influence of culture in shaping the norms on war, the institutions that develop those norms and work for their universal acceptante, the networks of humanitarian actors in this area and the legal procedures in which the law of war and its various institutions are embedded. The book demonstrates that even wars are, in various ways, conducted in the "shadow of the law".

## The islamic law of war : justifications and regulations

**Ahmed Al-Dawoody**. - Basingstoke ; New York : Palgrave Macmillan, 2011. - X, 338 p. : tabl. ; 23 cm. - Cote 297/149

The author examines the justifications and regulations for going to war in both international and domestic armed conflicts under Islamic law. Examined are the various kinds of use of force by both state and non-state actors in order to determine the nature of jihad, the Islamic law of war, and specifically whether Islamic law sanctions “holy war,” offensive war, or only defensive war. It also investigates the permissibility under Islamic law of resorting to the use of force to overthrow the governing regime and discusses the Islamic treatment of terrorism and the punishment of terrorists and their accomplices. This timely work answers the questions of why and how Muslims resort to the use of force.

## Norm conflicts, international humanitarian law, and human rights law

**Marko Milanovic**. - Oxford [etc.] : Oxford University Press, 2011. - p. 229-261. - In: Extraterritorial application of human rights treaties : law, principles, and policy. - Cote 345.1/589

This chapter explores the relationship between the two bodies of law, and makes several broad propositions. First, that there is a need for a change in perspective, from examining the relationship of the

two regimes as such, to the interaction of particular norms that regulate specific situations. Second, that this interaction will frequently result in a norm conflict, and that we have numerous tools at our disposal for either avoiding or resolving these conflicts. Third, that lex specialis is at best a fairly limited tool of norm conflict avoidance, and that it most certainly cannot be used to describe the relationship between human rights and humanitarian law as a whole. Finally, that there are situations where all of our tools will fail us, where a norm conflict will be both unavoidable and unresolvable due to a fundamental incompatibility in the text, object and purpose, and values protected by the interacting norms, and where the only possible solution to the conflict will be a political one. The chapter identifies three such possible situations of unresolvable antinomy - targeted killings, preventive security detention, and positive obligations during occupation, and addresses recent cases with a norm conflict component, such as Al-Jedda, Behrami, and Al-Saadoon. Though in most cases harmony between human rights and humanitarian law is possible, and indeed desirable, we should not underestimate the practical and political relevance of situations of true norm conflict, which no amount of academic exposition will be able to fix.

## On the doctrinal origins of ius in bello : from rights of war to the laws of war

**Peter Haggenmacher**. - The Hague : Eleven international, 2011. - p. 325-358. - In: Universality and continuity in international law. - Cote 345.210/26 (Br.)

Jus in bello, humanitarian law or law of armed conflict are the three expressions that are used interchangeable to designate the law applicable in warfare although their import is not quite the same. The author takes a look back on classical writings on the law of armed conflict to explain the notions each expression entails and how they were developed.

## Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the treatment of terrorist combatants (Protocol IV) : a proposal

**Erin Creegan**. In: California western international law journal Vol. 41, issue 2, Spring 2011, p. 345-396. - Cote 303.6/16 (Br.)

After exploring the background and development of the Geneva Conventions of 1949 and the Additional Protocols of 1977, this article finds that the current body of law does not address the problem of terrorist combatants. Identifying the harm that has been caused by a lack of clear guidance on the law of armed conflict and terrorism, the article lays out the most important features and decisions that must be made in a new protocol for combating terrorism.

Full text
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1690269

## The role of the Committee on the Rights of the Child in interpreting and developing international humanitarian law

**David Weissbrodt, Joseph C. Hansen, and Nathaniel H. Nesbitt**. In: Harvard human rights journal Vol. 24, issue 1, Summer 2011, p. 115-153

This article finds that the CRC has incorporated the corpus of IHL into the Children's Convention and argues that it has an important role to play in interpreting international humanitarian law. The Children's Convention is the only core international human rights treaty that discusses humanitarian law explicitly and has an interpretive body to monitor its implementation. As a result, the CRC is the only human rights treaty body with a substantial existing humanitarian law jurisprudence. Further, the CRC considers reports from States under the Optional Protocol on Children in Armed Conflict, which recalls in its preamble the obligation of States parties “to abide by the provisions of international humanitarian law.” These features suggest that the CRC has unique institutional potential to interpret humanitarian law. Yet while the CRC offers analysis of IHL, its analysis is implicit. It is possible, by assembling various pronouncements in the Concluding Observations, to find examples of States parties’ obligations under IHL as they relate to respect for and protection of children. Nonetheless, the Committee’s structure and mandate prevent it from performing fact-specific and potentially precedential analysis. Still, we argue that the Committee may be able to modify slightly the format of its Concluding Observations in order to provide more explicit links from IHL to the Convention. Moreover, through its consistent pronouncements as to certain mandatory protections for children in situations of armed conflict, the Committee may be developing and solidifying norms of customary international humanitarian law.

Full text
http://harvardhrj.com/wp-content/uploads/2009/09/115-154.pdf

## Some remarks on the continuity of human rights and international humanitarian law treaties

**Fausto Pocar**. - p. 279-293. - In: The law of treaties beyond the Vienna convention. - Cote 345.2/852 (Br.)

Several problems of state succession in respect of treaties have arisen under international law as a result of such fragmentation of, or separation from, state entities. Since the beginning of the last decade of the twentieth ventury, several international fora, including international courts and other international bodies, have given special consideration to the treatment of international obligations entered into by the predecessor state under human rights and humanitarian law treaties. In particular, they have expressed concern that such events might lead to a decrease in the existing level of adherence to these types of treaties and respect for the standards enshrined therein on the territory of the newly independent states. The need arose, therefore, to determine whether the people living in the successor states would continue to benefit from the protections afforded to them.

# II. Types of conflicts

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

## Computer network operations and the law of armed conflict

**Katharina Ziolkowski**. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra Vol. 49, no 1-2, 2010, p. 47-90

The Internet has become the most essential means of communication and information. This results in a high dependency upon reliable operations of Internet based communication systems, especially thos supporting critical infrastructure systems. Given the shortcomings of the Internet with regard to security, the vulnerability of computer systems has become a significant matter of (national or collective security to many states as well as to NATO. The potential conduct of "computer network operations" (CNO), i.e. military defensive or offensive actions taken by the means of the Internet or other computer networks, presents some legal challenges. This survey first examines the nature of CNO and discusses the difficulties of identification of the origin and of atribution of a malicious action carried out via or in the cyberspace to a certain actor. After the presentation of some criteria for the qualification of CNO as "use of armed force" (in the ius in bello meaning), the survey argues that the laws of armed conflict, including the over hundred years old principles and provisions of neutrality, do apply to CNO. A the same time, it demonstrates that the provisions offer a level of humanitarian protection comparable to that applicable to the use of conventional weapons.

## Droit international humanitaire dans les conflits armés : le cas rwandais

**Sacké Kouyaté Kaba Diakité ; préf. d'Édouard Koudouno**. - Paris : L'Harmattan, 2011. - 221 p. ; 23 cm. - Cote 345.2/849

En quoi consiste le droit international humanitaire dans les conflits armés ? Pourquoi les instruments juridiques internationaux concernant les droits de l'homme manquent-ils d'une réelle effectivité dans leur application ? Le génocide rwandais peut-il être qualifié de conflit armé interne ? Quel doit être le rôle des Nations unies dans les situations de conflits ? Quel est l'impact réel en termes de sanctions du droit international humanitaire ? Est-il possible d'humaniser la guerre dont la logique profonde est la destruction de l'ennemi ? La préoccupation majeure du droit international humanitaire est d'enlever aux conflits armés, qu'ils soient internes ou internationaux, leur caractère déshumanisant, à travers l'élaboration d'instruments juridiques visant à protéger les victimes de guerre et à sanctionner les responsables de faits particulièrement odieux. C'est aussi un droit généreux s'il est appliqué et respecté. En temps de guerre, il assure aux personnes exposées aux hostilités la jouissance de droits consacrés par diverses conventions internationales telles que les quatre conventions de 1949 et leurs protocoles additionnels de 1977. Leur mise en oeuvre épargnerait inéluctablement l'humanité tout entière de bavures telles que le génocide perpétré au Rwanda en 1994.

## Internationalization of armed conflicts

**Jakub Macák**. - Master Thesis, Faculty of law, Oxford University, 2010. - XIII, 89 p. ; 30 cm. - Cote 345.27/58 (Br.)

To establish what behaviour is permitted to the soldiers and what protection is bestowed upon the victims, one needs to determine the legal nature of the conflict, i.e. whether the conflict is international or non-international. The reality of international relations after 1945 suggests that very few situations of armed violence fall neatly into either of these two categories. With a handful of important exceptions (for example, the clearly international 1980-1988 Iran-Iraq war or the 1994 Rwandan civil war), most contemporary conflicts break out in the territory of one State, but gradually come to contain a mélange of international and non-international elements. To paraphrase Clausewitz, the war of our 'own' age is the internationalized armed conflict. Conceptually, then, it is important to determine the accumulation of which international elements effectuates the change in the legal qualification of an internal armed conflict. In other words, how does a non-international armed conflict develop into an international armed conflict? That is the principal research question of this study. The study advances and defends a particular understanding of this process of internationalization of armed conflicts. It proposes that international law contemplates several conceptually different modalities of conflict internationalization and devotes a chapter to each of the four main modalities, demonstrating how and when the internationalizing effect comes about.

## The law on asymmetric warfare

**Eyal Benvenisti**. - Leiden ; Boston : M. Nijhoff, 2011. - p. 931-950. - In: Looking to the future : essays on international law in honor of W. Michael Reisman. - Cote 345.2/854 (Br.)

This essay asserts that it is time to recognize that asymmetric warfare is a distinct phenomenon that is, and should be, subject to a distinct set of substantive norms and not only to different modalities of enforcement. Conscious of Toni Pfanner's provocative challenge-"If wars between States are on the way out, perhaps the norms of international law that were devised for them are becoming obsolete as well"-this essay argues that it is in fact already possible to discern new norms for asymmetric warfare, both internal and international. It is further suggested that once we grasp that asymmetric warfare is a very different beast, we will be able to explore the potential for improving the protection of non-combatants by treating the law on asymmetric warfare as distinct from the law applied in traditional symmetric conflicts. Part II begins by noting the changing norms of war and explaining this evolution as a response to the challenge of asymmetric warfare. Part III then explores potential areas in which the law on asymmetric warfare can and should further depart from traditional symmetric warfare law. Part IV concludes with a call to recognize asymmetric warfare as a distinct type of conflict that should be free of the confines of a law that was designed to address the traditional wars of past. Humanity would be better served were this type of warfare to have its own carefully tailored set of norms.

## The Mavi Marmara incident and blockade in armed conflict

**Douglas Guilfoyle**. In: British yearbook of international law Vol. 81, 2011, 41 p.. - Cote 347.799/135 (Br.)

This article examines Israel's enforcement of a maritime blockade against the Gaza Strip implemented in the course of an 'armed conflict' with Hamas. The first question is the legal characterisation of this conflict and whether it is one to which the laws of naval warfare apply. The conclusion of this article is that, irrespective of the status of the Gaza Strip as an occupied territory, at the relevant time Israel was at best involved in a non-international armed conflict (NIAC) with Hamas. There is only limited support for the proposition that blockade is available in NIACs, and then only in conflicts reaching a high level of intensity. On this basis, Israel had no applicable right of blockade. In the alternative, the article considers the requirements of lawful blockade and concludes they were not met in the present case. The central issue is proportionality. The maritime blockade was part of a comprehensive closure regime that had disproportionate effects on the civilian population of Gaza. A maritime blockade in support of other measures causing disproportionate damage must itself be disproportionate. In the further alternative, the article assesses whether Israel could have justified its actions on the basis of other belligerent rights. Finally, the article considers the law governing the use of force during maritime interdiction operations under the laws of naval warfare. It concludes that a 'policing' paradigm of force is applicable. The law of individual self-defence and war crimes is also considered.

Full text : only from ICRC headquarters
https://ext.icrc.org/library/docs/ArticlesPDF/31455.pdf

## Terrorism and armed conflict : insights from a law and literature perspective

**Andrea Bianchi**. In: Leiden Journal of International Law Vol. 24, no.1, 2011, p. 1-21. - Cote 303.6/199 (Br.)

This article examines some selected issues relating to terrorism and international humanitarian law (IHL): the characterization of the nature of armed conflicts in which armed groups, qualified as 'terrorist', are involved; terrorism as a war crime; and the determination of the status and treatment (including detention) of terrorist suspects apprehended in the course of an armed conflict. The analysis emphasizes the importance of legal categories and legal qualifications of factual situations for the purpose of determining the applicable law as well as the crucial importance of taking societal practice into account when evaluating the state of the law in any given area. The main focus of the article, however, is on providing a few basic insights, drawn from the law & literature movement, on international humanitarian law and terrorism. Short of any epistemological ambition, literature is used as a remainder that the law is not a set of neutral rules, elaborated and applied independently of context and historical background; that the human condition remains central; and that legal regulation cannot be oblivious to it. Finally, mention is made of interpretive techniques, developed in the field of literary studies, that may help establish social consensus on the interpretation of IHL grey areas.

# III. Armed forces / Non-state armed groups

**(Combatant status, compliance with IHL, etc.)**

## Conceptions of war and paradigms of compliance : the "new war" challenge to international humanitarian law

**Nicolas Lamp**. In: Journal of conflict and security law Vol. 16, no. 2, Summer 2011, p. 225-262

The article argues that the so-called "new wars" pose a fundamental challenge to international humanitarian law (IHL). Although not historically new, this type of war differs in crucial respects from the conception of war that underlies the traditional paradigm of compliance of IHL. At the heart of this paradigm lie certain assumptions: that IHL embodies a compromise between the interests of the warring parties and humanitarian concerns, and that the warring parties face a number of incentives to comply with the law. The article argues that these assumptions lose their plausibility under the circumstances of the "new wars". As a result, the traditional enforcement mechanisms of IHL invariably fail in these conflicts. The second part of the article discusses the international legal response to the "new wars". In particular, it considers international criminal prosecutions, the activities of the International Committee of the Red Cross and measures by the United Nations Security Council. In the common elements of these measures the article identifies the contours of a new paradigm of compliance in IHL that shifts the emphasis from voluntary compliance to external enforcement.

Full text : only from ICRC headquarters
http://jcsl.oxfordjournals.org/content/16/2/225.full.pdf

## International law and armed non-state actors in Afghanistan

**Annyssa Bellal, Gilles Giacca, and Stuart Casey-Maslen**. In: International review of the Red Cross Vol. 93, no. 881, March 2011, p. 47-79

An effective legal regime governing the actions of armed non-state actors in Afghanistan should encompass not only international humanitarian law but also international human rights law. While the applicability of Common Article 3 of the 1949 Geneva Conventions to the conflict is not controversial, how and to what extent Additional Protocol II applies is more difficult to assess, in particular in relation to the various armed actors operating in the country. The applicability of international human rights law to armed non-state actors – considered by the authors as important, particularly in Afghanistan – remains highly controversial. Nevertheless, its applicability to such actors exercising control over a population is slowly becoming more accepted. In addition, violations of peremptory norms of international law can also directly engage the legal responsibility of such groups.

Full text
http://www.cid.icrc.org/library/docs/DOC/irrc-881-bellal-giacca-casey-maslen.pdf

## The Layha for the Mujahideen : an analysis of the code of conduct for the Taliban fighters under Islamic law

**Muhammad Munir**. In: International review of the Red Cross Vol. 93, no. 881, March 2011, p. 81-120

The following article focuses on the Islamic Emirate of Afghanistan Rules for the Mujahideen to determine their conformity with the Islamic jus in bello. This code of conduct, or Layha, for Taliban fighters highlights limiting suicide attacks, avoiding civilian casualties, and winning the battle for the hearts and minds of the local civilian population. However, it has altered rules or created new ones for punishing captives that have not previously been used in Islamic military and legal history. Other rules disregard the principle of distinction between combatants and civilians and even allow perfidy, which is strictly prohibited in both Islamic law and international humanitarian law. The author argues that many of the Taliban rules have only a limited basis in, or are wrongly attributed to, Islamic law.

Full text
http://www.cid.icrc.org/library/docs/DOC/irrc-881-munir.pdf

## Levée en masse : a nineteenth century concept in a twenty-first century world

**Emily Crawford**. - [S.l.] : [S.n.], May 2011. - [18] p. ; 30 cm. - Cote 345.29/160 (Br.)

Levée en masse – the spontaneous uprising of the civilian population against an invading force – has long been a part of the modern law of armed conflict with regards to determining who may legitimately participate in armed conflict. The concept originated during the French Revolution, and was internationalized with its inclusion in the rules of armed conflict adopted by the Union Army during the American Civil War. Levée en masse continued to be included in the major international law of armed conflict documents from that time on, including The Hague Regulations of 1907 and the Geneva Conventions of 1949. However, since that time, there have been few, if any, instances of levée en masse. This article examines the historical and legal development of the concept of levée en masse, charting its evolution from a general and sustained call to arms to the civilian population to the more strict 19th and 20th century legal categorization of civilians attempting to fend off an invading force. This article also examines the few instances of levee en masse in State practice, and, in doing so, assesses whether the concept retains any utility in 21st century armed conflict.

Full text
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1851947

## Mercenaries in Libya : ramifications of the treatment of "armed mercenary personnel" under the arms embargo for private military company contractors

**Hin-Yan Liu**. In: Journal of conflict and security law Vol.16, no. 2, Summer 2011, p. 293-319

The inclusion of "armed mercenary personnel" within the terms of the arms embargo imposed upon Libya in SC Resolution 1970, and further elaborated in SC Resolution 1973, although largely unnoticed, holds three significant implications. First, there is the apparent reduction of mercenary personnel from the category of combatancy to that of a method or means of warfare. This may have the subtle effect of reducing or eliminating the human dimension in any such persons. Secondly, there is an implicit departure from the notoriously restrictive definition of "mercenary" under international law. While this may have the welcomed effect of reinvigorating the stigmatising appellation and renew its potential utility such an inference may not only be subject to a semantic explanation but further obfuscate what objectionable characteristics are being targeted. Thirdly, the explicit use of the broader term ‘armed mercenary personnel’ is likely to include a significant category of contractors working for Private Military Companies (PMCs). The effect of this is not only to deny armed PMC contractors access to Libyan territory, but crucially illuminates their close proximity to the stigmatised individual mercenary, as defined under international law; the result will be to elucidate the contrived and artificial nature of the legal distinction between the traditional mercenary and the armed PMC contractor. This proximity questions the appropriateness of recent British suggestions of employing PMCs to aid Libyan rebels and may act as a yardstick by which to gauge contemporary regulation frameworks.

Full text : only from ICRC headquarters
http://jcsl.oxfordjournals.org/content/16/2/293.full.pdf

## The South Asian military law systems

**U.C. Jha**. - New Dehli : Knowledge world, 2010. - XII, 268 p. : tabl. ; 25 cm. - Cote 345.2/847

This book is a comparative study of the military law systems of the five South Asian countries: Bangladesh, India, Nepal, Pakistan and Sri Lanka. It also considers those aspects of international human rights laws and international humanitarian laws which are relevant to the activities of the armed forces, while they are deployed in the armed conflicts, in the peacekeeping missions or when they are in barracks. This book examines minor punishments, describes step-by-step court martial process, and offers an overview of the constitutional and statutory rights available to armed forces personnel in South Asia. It also critically examines special emergency laws under which armed forces are deployed in the internal security duties in South Asia. The author is of the view that respect for human rights and fundamental freedoms for all, including armed forces personnel, is not just a moral obligation. It is part of international human rights law, and the South Asian countries are obliged to respect and protect the rights of personnel serving in their armed forces. This is a timely study in South Asia, in the light of allegations of human rights violations against the armed forces personnel.

## Thinking the unthinkable : has the time come to offer combatant immunity to non-state actors ?

**Geoffrey S. Corn**. In: Stanford law and policy review Vol. 22, no. 1, 2011, p. 253-294. - Cote 345.29/158 (Br.)

This article will explore this question by focusing on both these proposed analytical elements. It will begin with a review of the origins of the lawful/unlawful enemy combatant dichotomy. It will then discuss the ostensible effects the United States desires to achieve by applying this dichotomy to transnational non-state actors. Ultimately, it will question whether the unthinkable – extending the opportunity to qualify for the privileged combatant's immunity – might actually offer a greater likelihood of achieving these effects than clinging to the current lawful/unlawful combatant dichotomy.

Full text
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1659824

## The "war on terror" and the principle of distinction in international humanitarian law

**Noëlle Quénivet**. In: Anuario Colombiano de derecho internacional Vol. 3, num. especial, 2010, p. 155-186. - Cote 345.29/159 (Br.)

New security threats, which have surfaced in the past few years, are seriously jeopardizing the relevance and implementation of international humanitarian law. This paper investigates the impact of the war on terror on the principle of distinction in international humanitarian law, examining in particular whether the practices of some States, notably the US, have led to the emergence of new rules in relation to the principle of distinction. For this it looks at the principle from two separate, yet correlated, perspectives: a targeting and a detention perspective.

Full text
http://www.anuariocdi.org/anuario3a-capitulos-pdf/04_art.pdf

## What's in a name ? : the categorisation of individuals under the laws of armed conflict

**Noam Lubell**. In: Die Friedens-Warte : journal of international peace and organization Bd. 86, H. 3-4, 2011, p. 83-110

This article seeks to examine matters relating to the categorisation of individuals under the laws of armed conflict, with particular reference to issues that have been at the centre of attention in the past decade, and often linked with the so called "war on terror". Notably, during these same years the IHL community has been virtually transfixed by the process of expert meetings and documents that culminated with a publication by the International Committee of the Red Cross (ICRC) on direct participation in hostilities. Both the "war on terror" and the ICRC process have together provided much of the ammunition in the lively confrontations of contrasting legal opinions on individual status under IHL. The focus of this article is on the actual effects of categorisation of individuals -particularly in the conduct of hostilities- and whether the controversies over the labels used are in fact a major concern or, perhaps, more of a distracting smokescreen.

## Wise men and shepherds : a case for taking non-lethal action against civilians who discover hiding soldiers

**Stephen Deakin**. In: Journal of military ethics Vol. 10, issue 2, June 2011, p. 110-119

Soldiers hiding in enemy territory that are discovered by civilians face acute ethical problems as to what to do about them. The law of armed conflict forbids harming civilians, yet if they are released they may well betray the soldiers and alert enemy forces that will kill or capture the soldiers. This is not just a theoretical problem; there are recent documented accounts of British and American soldiers who have found themselves in such a position and who have died because they released the civilians. This paper argues that the ethical imperative here is to save the lives of both the soldiers and the civilians and that this should be the guiding principle in such cases. To this end, where possible, non-lethal means of restraint should be used on civilians to incapacitate them while the soldiers escape.

Full text : only from ICRC headquarters
http://www.tandfonline.com/doi/pdf/10.1080/15027570.2011.593713

# IV. Multinational forces

**N/A**

# V. Private actors

## Corporate accountability to human rights : the case of the Gaza strip

**Dana Weiss and Ronen Shamir**. In: Harvard human rights journal Vol. 24, issue 1, Summer 2011, p.155-183

This article discusses the human rights obligations of corporations that operate in bilateral zones of conflict. It analyzes the commercial activity of Israeli corporations in the Palestinian Gaza Strip from within the framework of the evolving jurisprudence on the human rights obligations of corporations. In recent years, greater attention has been paid to the role of commercial entities in violent contexts whose activities may, directly or indirectly, implicate issues of human rights or international humanitarian law. International human rights law establishes a set of norms and obligations that are mainly enforced in relations among states or between states and their citizens. Unlike states, private commercial corporations are generally not treated mas bearing direct human rights obligations under international law; human rights law applies only in a limited way to these corporations. Similarly, international humanitarian law, although increasingly applied to non-state actors, has yet to be applied directly to privately-owned companies.

Full text
http://harvardhrj.com/wp-content/uploads/2009/09/155-184.pdf

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Full text : only from ICRC headquarters
http://jcsl.oxfordjournals.org/content/16/2/293.full.pdf

# VI. Protection of persons

## Assessing civil liability for harms to women during armed conflict : the rulings of the Eritrea-Ethiopia claims commission

**Lucy Reed**. In: International criminal law review Vol. 11, issue 3, 2011, p. 589-605

This article provides a descriptive account of rulings of the Eritrea-Ethiopia Claims Commission (EECC) related to harms inflicted during the Ethiopia-Eritrea armed conflict that disproportionately affected women. Following the introduction, it presents a brief overview of the creation of the EECC and its jurisdiction, procedure and rulings. It then discusses the EECC's rulings on sexual violence, describing the special considerations for applying its standard and quantum of proof in relation to liability and damages in rape claims. The next part focuses on the import of the EECC's rulings in relation to expelled and other displaced civilians (including internally displaced persons), who were largely women and other vulnerable populations. Although the EECC did not, for the most part, find displacement itself to be a violation of the jus in bello, it did award significant amounts of compensation for harms suffered by expelled and displaced civilians and for relief provided to such persons, who were predominantly women and other vulnerable populations, as well as for Eritrea's violation of the jus ad bellum.

Full text : only from ICRC headquarters
http://www.ingentaconnect.com/content/mnp/icla/2011/00000011/00000003/art00018

## Enforced displacement of civilian populations in war : a potential new element in crimes against humanity

**Jennifer Leaning**. In: International criminal law review Vol. 11, issue 3, 2011, p. 445-462

It is argued in this paper that the phenomenon of forced migration in war constitutes, in itself, a serious violation of international humanitarian law. The agency of government or military command is behind the military or political action that provokes population flight; the short and long-term mortality and morbidity always associated with forced migration occurs disproportionately and indiscriminately to civilian non combatants; and the dissolution of identity, the assault on dignity, the destruction of personal and community records, and the sweeping loss of livelihoods occasioned by war-induced forced migration represent in themselves war crimes or on a grand scale crimes against humanity. This paper presents evidence to substantiate the claim that forced migration in war inflicts intense and extended suffering on civilian populations. Reference is made to Hague and Geneva law, the two international human rights covenants (ICCPR and ICESCR) and to the Refugee Convention to find elements of what should arguably be advanced as the constituent basis for defining forced migration in war as a distinct and independent crime in international criminal law. In much of international humanitarian law, empirically grounded recognition of a new class of grievous injuries or a new category of people to protect leads to an expansion of a preexisting framework (civilian protection) or an entirely new treaty or convention (cluster munitions). The suggestion made here is that forced migration in war be considered within that historical continuum—not as a prevalent and (largely) unavoidable process but as a newly recognised crime.

Full text : only from ICRC headquarters
http://www.ingentaconnect.com/content/mnp/icla/2011/00000011/00000003/art00009

## First victims then perpetrators : child soldiers and international law

**Claudia Morini**. In: Anuario colombiano de derecho internacional Vol. 3 especial, 2010, p. 187-208. - Cote 362.7/343 (Br.)

This article examines the issue of the position of child soldiers under international law. After preliminary remarks on the approach of international human rights and humanitarian law to the protection of children involved in armed conflicts, the article discusses the prohibitions on recruiting children and the individual criminal responsibility of recruiters. Case-law on the child soldiers' recruitment is considered. In the fourth part the position of the child soldiers as perpetrators is discussed and the retributive approach to the issue is explored. The last section offers an overview of the restorative justice-oriented solution to the dilemma of the criminal responsibility of child soldiers adopted in the context of the post-conflict situation in Sierra Leone.

Full text
http://www.anuariocdi.org/anuario3a-capitulos-pdf/05_art.pdf

## Human shields in modern armed conflicts : the need for a proportionate proportionality

**Amnon Rubinstein and Yaniv Roznai**. In: Stanford law and policy review Vol. 22, no. 1, 2011, p. 93-127. - Cote 345.25/91 (Br.)

The authors call for a refocus of the international community's attention toward the responsibility of the shielding party's obligations to keep civilians safe. The party which deploys civilians as human shields is committing a grievous war crime and must be held personally accountable before international criminal tribunals. Moreover, the authors propose a practical formula for adjusting the proportionality requirement's application in circumstances involving human shields when either (i) the use of human shields is part of the enemy's widespread or systematic policy or (ii) the enemy's fire poses clear and present danger to the impeded party's population or troops. The adjusted application of the proportionality requirement would assist in restoring international law's credibility, realign the balance between the two conflicting principles of humanity and military necessity, and make the laws of war compatible with modern warfare.

Full text
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1861161

## Improving the protection of women and girls during armed conflict : workshop report

**Geneva Call, Appel de Genève**. - Geneva : Geneva Call, 2010. - 21 p. : photogr. ; 30 cm. - Cote 362.8/153 (Br.)

Geneva Call brought together 23 participants, representing eight armed non-State actors (ANSAs) from Myanmar/Burma, Philippines and India, over four days in December 2010, to discuss the prevention and prohibition of sexual and gender-based violence linked to armed conflict. It was the first time that such a meeting of ANSA representatives has taken place to discuss this topic, and to seek to take steps towards concrete, practical solutions.

Full text
http://www.genevacall.org/resources/conference-reports/f-conference-reports/2001-2010/GC_2011_GEND_WKS_RPT_LIGHT.pdf

## The individual in international humanitarian law

**Kate Parlett**. - Cambridge [etc] : Cambridge University Press, 2011. - p. 176-228. - In: The individual in the international legal system : continuity and change in international law. - Cote 345/589

In international armed conflict, rules which limit the conduct of armed forces have the potential to engage individuals in the international legal system. In internal armed conflict, the extension of belligerent rights and obligations to armed opposition groups effectively engages individuals. This chapter surveys the development of international humanitarian law with respect to individuals in both spheres. The extent to which individuals have been engaged in the international legal system will be assessed against the orthodox accounts of the international legal system examined in part I. In recent scholarship it has been suggested that there is convergence in humanitarian law applicable in international and non-international armed conflicts; but in this chapter they are addressed separately for several reasons, including the diversity in the historical development of the applicable rules in each type of conflict.

## The international campaign to prohibit child soldiers : a critical evaluation

**Jay Williams**. In: The international journal of human rights Vol. 15, no. 7, October 2011, p. 1072-1090. - Cote 362.7/345 (Br.)

The use of child soldiers has been universally condemned as abhorrent and inhumane and has been declared a war crime under the Rome Statute of the International Criminal Court 1998, (ICC) and the Optional Protocol 2000. Yet over the last decade, hundreds of thousands of children have fought and died in conflicts around the world. In 2006, the UN estimated that more than 300,000 children were actively involved in armed conflict. Given this, in an historic moment in the prosecution of child soldiering, on March 17, 2006, Thomas Lubanga was the first person arrested under warrant by the International Criminal Court (ICC) for war crimes against children, charged with enlisting and conscripting children under the age of 15 years to participate in hostilities in the mineral rich, North Eastern Ituri district of the

Democratic Republic of Congo (DRC) between September 2002 and August 2003. The major finding of this article is that there is an abject lack of international support for the major international instruments prohibiting child soldiering, especially by the United States, China and Russia; that many demobilisation, disarmament and reintegration programmes (DDR) face a serious lack of funding, with many girl soldiers falling outside DDR programmes and that the current minimum age of 15 is too low. This article recommends that an international summit be convened and all relevant international instruments be amended to set a new minimum age of 18 for voluntary recruitment, 21 for active combat service and a new international commitment to be made to prohibit and prevent the use of child soldiers.

## The legal obligation to record civilian casualties of armed conflict

**Susan Breau, Rachel Joyce**. - [S.l.] : Oxford Research Group, June 2011. - 35 p. : tabl. ; 30 cm. - Cote 345.22/177 (Br.)

The Oxford Research Group's (ORG) Recording of Casualties of Armed Conflict (RCAC) Programme has concluded a research project on identifying the international legal obligation to record civilian casualties of armed conflict. As a result of extensive research into international customary humanitarian law and the treaties that embody obligations for states in International Humanitarian Law and International Human Rights Law, the research team has identified the elements of the international legal obligation. The various sources of law drawn upon to identify this right include the Geneva Conventions; the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and other human rights instruments; reports and statements of the United Nations; case law of the European Court of Human Rights and the Inter-American Court of Human Rights; and the principles of customary international law. When placed in the context of casualty recording, the principles spread amongst these instruments and sources come together naturally to form a binding obligation on states. The findings of this report indicate that a move towards establishing a systematic mechanism of casualty recording in all theatres of armed conflict is necessary and required by law.

Full text
http://www.oxfordresearchgroup.org.uk/sites/default/files/1st%20legal%20report%20formatted%20FINAL.pdf

## The Mavi Marmara incident and blockade in armed conflict

**Douglas Guilfoyle**. In: British yearbook of international law Vol. 81, 2011, 41 p.. - Cote 347.799/135 (Br.)

This article examines Israel's enforcement of a maritime blockade against the Gaza Strip implemented in the course of an 'armed conflict' with Hamas. The first question is the legal characterisation of this conflict and whether it is one to which the laws of naval warfare apply. The conclusion of this article is that, irrespective of the status of the Gaza Strip as an occupied territory, at the relevant time Israel was at best involved in a non-international armed conflict (NIAC) with Hamas. There is only limited support for the proposition that blockade is available in NIACs, and then only in conflicts reaching a high level of intensity. On this basis, Israel had no applicable right of blockade. In the alternative, the article considers the requirements of lawful blockade and concludes they were not met in the present case. The central issue is proportionality. The maritime blockade was part of a comprehensive closure regime that had disproportionate effects on the civilian population of Gaza. A maritime blockade in support of other measures causing disproportionate damage must itself be disproportionate. In the further alternative, the article assesses whether Israel could have justified its actions on the basis of other belligerent rights. Finally, the article considers the law governing the use of force during maritime interdiction operations under the laws of naval warfare. It concludes that a 'policing' paradigm of force is applicable. The law of individual self-defence and war crimes is also considered.

Full text : only from ICRC headquarters
https://ext.icrc.org/library/docs/ArticlesPDF/31455.pdf

## The role of the Committee on the Rights of the Child in interpreting and developing international humanitarian law

**David Weissbrodt, Joseph C. Hansen, and Nathaniel H. Nesbitt**. In: Harvard human rights journal Vol. 24, issue 1, Summer 2011, p. 115-153

This article finds that the CRC has incorporated the corpus of IHL into the Children's Convention and argues that it has an important role to play in interpreting international humanitarian law. The Children's Convention is the only core international human rights treaty that discusses humanitarian law explicitly and has an interpretive body to monitor its implementation. As a result, the CRC is the only human rights treaty body with a substantial existing humanitarian law jurisprudence. Further, the CRC considers reports from States under the Optional Protocol on Children in Armed Conflict, which recalls in its preamble the

obligation of States parties "to abide by the provisions of international humanitarian law." These features suggest that the CRC has unique institutional potential to interpret humanitarian law. Yet while the CRC offers analysis of IHL, its analysis is implicit. It is possible, by assembling various pronouncements in the Concluding Observations, to find examples of States parties' obligations under IHL as they relate to respect for and protection of children. Nonetheless, the Committee's structure and mandate prevent it from performing fact-specific and potentially precedential analysis. Still, we argue that the Committee may be able to modify slightly the format of its Concluding Observations in order to provide more explicit links from IHL to the Convention. Moreover, through its consistent pronouncements as to certain mandatory protections for children in situations of armed conflict, the Committee may be developing and solidifying norms of customary international humanitarian law.

Full text
http://harvardhrj.com/wp-content/uploads/2009/09/115-154.pdf

## Wise men and shepherds : a case for taking non-lethal action against civilians who discover hiding soldiers

**Stephen Deakin**. In: Journal of military ethics Vol. 10, issue 2, June 2011, p. 110-119

Soldiers hiding in enemy territory that are discovered by civilians face acute ethical problems as to what to do about them. The law of armed conflict forbids harming civilians, yet if they are released they may well betray the soldiers and alert enemy forces that will kill or capture the soldiers. This is not just a theoretical problem; there are recent documented accounts of British and American soldiers who have found themselves in such a position and who have died because they released the civilians. This paper argues that the ethical imperative here is to save the lives of both the soldiers and the civilians and that this should be the guiding principle in such cases. To this end, where possible, non-lethal means of restraint should be used on civilians to incapacitate them while the soldiers escape.

Full text : only from ICRC headquarters
http://www.tandfonline.com/doi/pdf/10.1080/15027570.2011.593713

# VII. Protection of objects

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

## Environmental justice in situations of armed conflict

**Phoebe Okowa**. - Cambridge [etc.] : Cambridge university press, 2009. - p. 231-252. - In: Environmental law and justice in context. - Cote 363.7/104 (Br.)

Within the environmental justice debate, the central question addressed in this chapter, is one of the extent to which the enforceable content of the law of armed conflict requires states to ensure that their military operations conform with national and international law for the protection of the environment. It is an enquiry into what procedures and opportunities are in place for the public to challenge planned military action on the basis of the potential environmental risk that they entail. Secondly, it evaluates the normative content of jus in bello, and the extent to which its regulatory content is directed at the protection of the environment. It examines the extent to which environmental values permeate decision-making in military operations, in particular, in the calculation of what are acceptable risks or not. Thirdly, it involves an assessment of the extent to which existing institutional frameworks address the question of responsibility for environmental damage. This involves an inquiry into the distribution of war-related environmental losses and methods of calculating them. But it also involves an inquiry into criminal processes that may be in place for dealing with transgressions. It is suggested that it is only in relation to the last two incidents that the law of war attempts to incorporate in any meaningful way the concept of corrective or remedial justice.

## Schools and armed conflict : a global survey of domestic laws and state practice protecting schools from attack and military use

**Human Rights Watch**. - New York [etc.] : Human Rights Watch, 2011. - 159 p. : photogr., tabl. ; 27 cm. - Cote 363.8/66

This report examines—in three separate chapters—law and state practice relevant to three issues: (1) protecting civilian objects (buildings and other infrastructure) from intentional attack; (2) protecting education buildings from intentional attack, and (3) deterring education facilities from being used or occupied by government security forces and non-state armed groups. Each chapter begins by examining the relevant international law, including both the international treaties that bind states that have ratified them, and what is known as customary international law, which is binding on all states. The report then analyzes how different countries are applying protections for education facilities within their own domestic law, especially within criminal law and military law. Finally, each chapter examines relevant examples of state behavior in providing these protections. Such examples can be particularly useful because state practice—specially when carried out in a way that indicates that the country accepts that it is legally required to act in a certain way—can be influential in understanding and developing customary international law.

Full text
http://www.hrw.org/sites/default/files/reports/crd0711webwcover.pdf

# VIII. Detention, internment, treatment and judicial guarantees

## America's longest held prisoner of war : lessons learned from the capture, prosecution, and extradition of General Manuel Noriega

**Geoffrey S. Corn, Sharon G. Finegan**. In: Louisiana law review Vol. 71, issue 4, Summer 2011, p. 1111-1146. - Cote 431/86 (Br.)

As America's longest held Prisoner of War (POW), Noriega's capture, detention, prosecution, and ultimate extradition provide many important lessons in the balance between the protection of POWs and the flexibility afforded to detaining States to address pre-capture misconduct committed by these captives. It is therefore somewhat ironic that in the post-September 11th debates over the relative merits of extending POW status to captured al Qaeda and Taliban personnel, so little attention has been paid to the plight of General Noriega. His ouster from power, capture, trial, conviction, twenty years of incarceration, and most recent efforts to block extradition offer a fascinating insight into the intersection of national security and law, both domestic and international. What was his status upon capture? If a POW, what was the scope of his lawful immunity, and what was his status upon conviction in a domestic criminal court? How did Congress criminalize his conduct in Panama? Did an invasion to bring him to justice implicate due process concerns? Would his extradition violate the Geneva Prisoner of War Convention, and if so, what remedy did the Convention provide for the General? Through General Noriega's journey, this article will survey each of these legal issues and the law relied on to resolve them. While the authors do not intend to suggest that lessons from Noriega case mandate reconsideration of the status of captured al Qaeda and Taliban personnel, it does indicate the fallacy of asserting that extending POW status (or perhaps only combatant immunity) to such enemy belligerents will disable the ability of the nation to address their pre-capture misconduct.

Full text
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1762898

## Captured in war : a study of the criteria under international law for lawful internment in armed conflict

**Els Elisabeth Debuf**. - Thesis, Institut des hautes études internationales et du développement, Université de Genève, 2011. - 718 p. : tabl. ; 30 cm. - Cote 323.2/580

Who can be interned on the basis of existing international humanitarian law, for what reasons and for how long? By answering those questions, the author wishes to contribute to the academic efforts aimed at clarifying the international legal framework for internement in armed conflict. Moreover, in the process of answering our specific research questions, the author also hopes to contribute to a number of other debates in international law, in particular that on the interaction between simultaneously applicable norms of international humanitarian law and international human rights law.

## Protecting prisoners of war : the Mrkšic et al. appeal judgment

**Giulia Pinzauti**. In: Journal of international criminal justice Vol. 8, no. 1, March 2010, p. 199-219

The article deals with some of the new legal issues arising in the Mrkšic et al. Appeal Judgment, with particular regard to the responsibility of the accused Veselin Šljivancanin for his role in the attack against Croat prisoners of war (POWs) that occurred in Ovcara, Croatia, in 1991. The ICTY Appeals Chamber shed light on the nature and scope of the individual duty to protect POWs under Articles 12 and 13 of Geneva Convention III and held that an agent of the Detaining Power entrusted with custody and control over POWs is under the duty to ensure their safe transfer even when he no longer has custody and control over them. In convicting Šljivancanin for his failure to protect the POWs, the Appeals Chamber also clarified the elements of aiding and abetting by omission. However, the Appeals Chamber's failure both to characterize the armed conflict in Croatia and to clarify on what legal grounds the captured Croats were entitled to POW status is open to criticism.

Full text : only from ICRC Headquarters
http://jicj.oxfordjournals.org/content/8/1/199.full.pdf

## The protective scope of common article 3 : more than meets the eye

**Jelena Pejic**. In: International review of the Red Cross Vol. 93, no. 881, March 2011, p. 189-225

Non-international armed conflicts are not only prevalent today, but are also evolving in terms of the types that have been observed in practice. The article sets out a possible typology and argues that Common Article 3 to the Geneva Conventions may be given an expanded geographical reading as a matter of treaty law. It also suggests that there is a far wider range of rules – primarily of a binding nature, but also policybased – that apply in Common Article 3 armed conflicts with regard to the treatment of persons in enemy hands and the conduct of hostilities.

Full text
http://www.cid.icrc.org/library/docs/DOC/irrc-881-pejic.pdf

## Something more than a three-hour tour : rules for detention and treatment of persons at sea on U.S. naval warships

**Winston G. McMillan**. In: Army Lawyer February 2011, p. 31-45. - Cote 347.799/134 (Br.)

United States naval warships travel the seas executing missions vital to U.S. national interests. During periods of armed conflict and in peacetime, U.S. naval warships may occasionally detain persons in order to accomplish the mission and to provide security on the seas. For example in May 2009, when Somali pirates attacked a container vessel, the Maersk Alabama, and held the ship's captain, Richard Phillips hostage on a small lifeboat. In response, the United States sent an amphibious assault ship, the USS Boxer (LHD-4), a destroyer, the USS Bainbridge (DDG-96), and a frigate, the USS Halyburton (FFG-40) to rescue the hostage. A U.S. Navy SEAL team from the USS Boxer killed three of the pirates. The remaining pirate surrendered and was detained aboard the Bainbridge. Piracy on the high seas is not the only peacetime scenario which can lead to detaining persons at sea. Illegal narcotics trafficking, international terrorism, asylum-seekers, and refugees are on the rise and can present similar challenges for our naval forces. These circumstances require a thorough understanding of the rules for detention of persons at sea for the judge advocate advising commanders within the sea services.

Full text
http://www.loc.gov/rr/frd/Military_Law/AL-2011.html

## Thinking the unthinkable : has the time come to offer combatant immunity to non-state actors ?

**Geoffrey S. Corn**. In: Stanford law and policy review Vol. 22, no. 1, 2011, p. 253-294. - Cote 345.29/158 (Br.)

This article will explore this question by focusing on both these proposed analytical elements. It will begin with a review of the origins of the lawful/unlawful enemy combatant dichotomy. It will then discuss the ostensible effects the United States desires to achieve by applying this dichotomy to transnational non-state actors. Ultimately, it will question whether the unthinkable – extending the opportunity to qualify for the privileged combatant's immunity – might actually offer a greater likelihood of achieving these effects than clinging to the current lawful/unlawful combatant dichotomy.

Full text
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1659824

## The "war on terror" and the principle of distinction in international humanitarian law

**Noëlle Quénivet**. In: Anuario Colombiano de derecho internacional Vol. 3, num. especial, 2010, p. 155-186. - Cote 345.29/159 (Br.)

New security threats, which have surfaced in the past few years, are seriously jeopardizing the relevance and implementation of international humanitarian law. This paper investigates the impact of the war on terror on the principle of distinction in international humanitarian law, examining in particular whether the practices of some States, notably the US, have led to the emergence of new rules in relation to the principle of distinction. For this it looks at the principle from two separate, yet correlated, perspectives: a targeting and a detention perspective.

Full text
http://www.anuariocdi.org/anuario3a-capitulos-pdf/04_art.pdf

# IX. Law of occupation

## Economic warfare : the case of Gaza

**Tamar Meisels**. In: Journal of military ethics Vol. 10, issue 2, June 2011, p. 94-109

This paper reflects on the highly contested Israeli restrictions on the importation of civilian goods into the Gaza Strip, with reference to a wide range of principled questions within military ethics regarding sieges, sanctions and blockades. Beginning with Israel's unilateral withdrawal from the Gaza Strip and culminating in its recent easing of sanctions, the paper attempts to bring out the central issues of principle embedded in the political polemic: unilaterally terminated occupation; the responsibilities of a former, though recent, occupier; the semantic distinction between siege and sanction and their respective ramifications; harm to civilians; necessity and proportionality. Overall, it argues in the specific case that Israel's restrictions on Gaza were not indefensible from the start as a first attempt to halt terrorism while avoiding full-scale conflict. In view of their ineffectiveness in achieving these goals, however, the harm they inflicted on civilians increasingly proved unnecessary and therefore excessive. There could then be no justification for continuing to restrict the flow of civilian goods into Gaza, as Israel itself eventually recognized. Nonetheless, Israel retains the right to search and regulate the passage of all relief supplies into Gaza, whether by land or by sea, as well as to secure its own borders for the safety of its citizens.

Full text : only from ICRC headquarters
http://www.tandfonline.com/doi/pdf/10.1080/15027570.2011.593712

## The Mavi Marmara incident and blockade in armed conflict

**Douglas Guilfoyle**. In: British yearbook of international law Vol. 81, 2011, 41 p.. - Cote 347.799/135 (Br.)

This article examines Israel's enforcement of a maritime blockade against the Gaza Strip implemented in the course of an 'armed conflict' with Hamas. The first question is the legal characterisation of this conflict and whether it is one to which the laws of naval warfare apply. The conclusion of this article is that, irrespective of the status of the Gaza Strip as an occupied territory, at the relevant time Israel was at best involved in a non-international armed conflict (NIAC) with Hamas. There is only limited support for the proposition that blockade is available in NIACs, and then only in conflicts reaching a high level of intensity. On this basis, Israel had no applicable right of blockade. In the alternative, the article considers the requirements of lawful blockade and concludes they were not met in the present case. The central issue is proportionality. The maritime blockade was part of a comprehensive closure regime that had disproportionate effects on the civilian population of Gaza. A maritime blockade in support of other measures causing disproportionate damage must itself be disproportionate. In the further alternative, the article assesses whether Israel could have justified its actions on the basis of other belligerent rights. Finally, the article considers the law governing the use of force during maritime interdiction operations under the laws of naval warfare. It concludes that a 'policing' paradigm of force is applicable. The law of individual self-defence and war crimes is also considered.

Full text : only from ICRC headquarters
https://ext.icrc.org/library/docs/ArticlesPDF/31455.pdf

## State responsibility in disputed areas on land and at sea

**Enrico Milano, Irini Papanicolopulu**. In: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht = Heidelberg journal of international law 3/2011, 71. Jahrg., p. 587-640

Departing from the observation that traditionally the law of State responsibility has hardly interacted with the law of territory, the article examines how these two fields of international law may relate in the case of State action in contested areas, be they terrestrial or marine. Assessing recent international practice, particularly the case law of the International Court of Justice and arbitral tribunals, and differentiating between land and maritime disputes, it identifies the primary obligations incumbent upon States when acting in contested areas - relating to State sovereignty and sovereign rights, ius ad bellum, ius in bello, procedural obligations pending the final settlement of the dispute - and it examines the consequences of the breach of those primary norms, in terms of secondary obligations, as well as third States' duties and obligations. The legal framework specifically created for disputed maritime areas by Art. 74 para. 3 United Nations Convention on the Law of the Sea (UNCLOS) and Art. 83 para. 3 UNCLOS, including its implications for land disputes, is specifically analysed. The authors submit that, at a time of increasingly pro-active policies and robust actions taken by States in contested areas, more attention should be devoted to the extent to which the law of State responsibility, especially with regard to relevant forms of reparation, has to adapt to the content and scope of primary norms applicable to that specific context.

# X. Conduct of hostilities

**(Distinction, proportionality, precautions, prohibited methods)**

## Civilian or combatant ? : a challenge for the twenty-first century

**Anicée Van Engeland**. - Oxford [etc.] : Oxford University Press, 2011. - XIX, 172 p. ; 24 cm. - Cote 345.25/245

Anicee Van Engeland describes how the practice and evolution of warfare have turned international humanitarian law into an enigmatic law that is complex to understand, interpret, and enforce. Van Engeland identifies the challenges that advocates of international humanitarian law face, which range from genocide, asymmetrical warfare, and terrorism to rape as a weapon. The events of 9/11 and the aftermath have put this branch of international law, in particular, the distinction between civilians and combatants, to the test. Van Engeland describes how some analysts have both questioned whether international law can adapt to these issues and challenged international humanitarian law on the basis that it cannot meet today's warfare realities. Van Engeland responds to these critics, reminding readers that international humanitarian law was not drafted to rule on war, but rather to protect victims of war, in particular civilians. Consequently, Van Engeland demonstrates that this branch of international law is in constant evolution. Through a thorough and illustrated analysis, Van Engeland explains how civilians and combatants are still distinguishable, as well as how international humanitarian has been stretched to meet these challenges.

## Computer network operations and the law of armed conflict

**Katharina Ziolkowski**. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra Vol. 49, no 1-2, 2010, p. 47-90

The Internet has become the most essential means of communication and information. This results in a high dependency upon reliable operations of Internet based communication systems, especially thos supporting critical infrastructure systems. Given the shortcomings of the Internet with regard to security, the vulnerability of computer systems has become a significant matter of (national or collective security to many states as well as to NATO. The potential conduct of "computer network operations" (CNO), i.e. military defensive or offensive actions taken by the means of the Internet or other computer networks, presents some legal challenges. This survey first examines the nature of CNO and discusses the difficulties of identification of the origin and of atribution of a malicious action carried out via or in the cyberspace to a certain actor. After the presentation of some criteria for the qualification of CNO as "use of armed force" (in the ius in bello meaning), the survey argues that the laws of armed conflict, including the over hundred years old principles and provisions of neutrality, do apply to CNO. A the same time, it demonstrates that the provisions offer a level of humanitarian protection comparable to that applicable to the use of conventional weapons.

## Constraints on the waging of war : an introduction to international humanitarian law

**Frits Kalshoven, Liesbeth Zegveld**. - Cambridge [etc.] : Cambridge University Press, 2011. - XI, 295 p. ; 23 cm. - Cote 345.2/415 (2011 ENG)

This fully revised fourth edition of Constraints on the waging of war considers the development of the principal rules of international humanitarian law from their origins to the present day. It particularly focuses on the rules governing weapons, and the legal instruments through which respect for the law can be enforced. Combining theory and actual practice, this book appeals to specialists as well as to students turning to the subject for the first time.

## "Direct participation in hostilities" : a legal and practical road test of the International Committee of the Red Cross's guidance through Afghanistan

**Damien van der Toorn**. In: Australian international law journal Vol. 17, 2010, p. 7-28. - Cote 345.25/55 (Br.)

The increasing difficulty in distinguishing between peaceful civilians and irregular forces in modern conflicts has necessitated closer legal analysis of the phrase 'direct participation in hostilities' as used in the Geneva Conventions and Additional Protocols. The International Committee of the Red Cross's ('ICRC') 'Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law', published in June 2009, undertakes such an analysis. The Guidance may well have a significant influence on international and national tribunals considering the meaning of direct participation in hostilities, as well as the framing and implementation of rules of engagement by states for current and future operations. This article offers a critique of the Guidance both in terms of its process and nature, as well as its substantive legal analysis of the phrase. It also evaluates whether the ICRC's interpretation strikes a reasonable balance between the ability to achieve legitimate military objectives and the protection of civilians. Finally, it considers whether the interpretation results in a 'level legal playing field' for all parties to a conflict.

Full text : only from ICRC Headquarters
http://heinonline.org/HOL/Page?handle=hein.journals/austintlj2010&id=7&collection=journals&index=journals/austintlj

## Has the armed conflict in Afghanistan affected the rules on the conduct of hostilities ?

**Robin Geiss and Michael Siegrist**. In: International review of the Red Cross Vol. 93, no. 881, March 2011, p. 11-46

The armed conflict in Afghanistan since 2001 has raised manifold questions pertaining to the humanitarian rules relative to the conduct of hostilities. In Afghanistan, as is often the case in so-called asymmetric conflicts, the geographical and temporal boundaries of the battlefield, and the distinction between civilians and fighters, are increasingly blurred. As a result, the risks for both civilians and soldiers operating in Afghanistan are high. The objective of this article is to assess whether – and if so how much – the armed conflict in Afghanistan has affected the application and interpretation of the principles of distinction, proportionality, and precaution – principles that form the core of legal rules pertaining to the conduct of hostilities.

Full text
http://www.cid.icrc.org/library/docs/DOC/irrc-881-geiss-siegrist.pdf

## The history of reprisals up to 1945 : some lessons learned and unlearned for contemporary international law

**Olivier Barsalou**. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra Vol. 49, no 3-4, 2010, p. 335-367

The article provides a critical overview of the history, theoretical foundations and rules and principles governing the use of reprisals in international law. One means by which states can enforce international law is through the use of reprisals or countermeasures. In the interwar era, international lawyers sought to design a legal apparatus aimed at governing the use of reprisals in the international society. They recognized that violence could constitute a legitimate source of authority and justice in the international legal system. The post-1945 system of international law incorporated this idea in an attenuated form. This article sheds some light on a number of intricacies that international lawyers have historically had trouble dealing with in the pre-United Nations Charter era and that the contemprary system of coutermeasures seems to ignore, namely the paradoxical position that violence occupies as a source of authority and justice in international law : violence is both necessary and impossible in the international legal system.

## Human shields in modern armed conflicts : the need for a proportionate proportionality

**Amnon Rubinstein and Yaniv Roznai**. In: Stanford law and policy review Vol. 22, no. 1, 2011, p. 93-127. - Cote 345.25/91 (Br.)

The authors call for a refocus of the international community's attention toward the responsibility of the shielding party's obligations to keep civilians safe. The party which deploys civilians as human shields is committing a grievous war crime and must be held personally accountable before international criminal tribunals. Moreover, the authors propose a practical formula for adjusting the proportionality requirement's application in circumstances involving human shields when either (i) the use of human shields is part of the enemy's widespread or systematic policy or (ii) the enemy's fire poses clear and

present danger to the impeded party's population or troops. The adjusted application of the proportionality requirement would assist in restoring international law's credibility, realign the balance between the two conflicting principles of humanity and military necessity, and make the laws of war compatible with modern warfare.

Full text
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1861161

## The image before the weapon : a critical history of the distinction between combatant and civilian

**Helen M. Kinsella**. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2011. - XII, 260 p. ; 24 cm. - Cote 345.25/244

Kinsella explores the evolution of the concept of the civilian and how it has been applied in warfare. A series of discourses—including gender, innocence, and civilization— have shaped the legal, military, and historical understandings of the civilian and she documents how these discourses converge at particular junctures to demarcate the difference between civilian and combatant. Engaging with works on the law of war from the earliest thinkers in the Western tradition, including St. Thomas Aquinas and Christine de Pisan, to contemporary figures such as James Turner Johnson and Michael Walzer, Kinsella identifies the foundational ambiguities and inconsistencies in the principle of distinction, as well as the significant role played by Christian concepts of mercy and charity. She then turns to the definition and treatment of civilians in specific armed conflicts: the American Civil War and the U.S.-Indian Wars of the nineteenth century, and the civil wars of Guatemala and El Salvador in the 1980s. Finally, she analyzes the two modern treaties most influential for the principle of distinction: the 1949 IV Geneva Convention Relative to the Protection of Civilian Persons in Times of War and the 1977 Protocols Additional to the 1949 Conventions, which for the first time formally defined the civilian within international law. She shows how the experiences of the two world wars, but particularly World War II, and the Algerian war of independence affected these subsequent codifications of the laws of war.

## Judicial lawmaking, discourse theory, and the ICTY on belligerent reprisals

**by Milan Kuhli and Klaus Günther**. In: German law journal Vol. 12, no. 5, 2011, p. 1261-1278. - Cote 345.2/583 (Br.)

Without presenting a full definition, it can be said that the notion of judicial lawmaking implies the idea that courts create normative expectations beyond the individual case. A judiciary might engage in lawmaking without formally presenting arguments of a justificatory sort; a court could, for example, simply announce a new norm. But where a court does engage in norm justification, it is always engaging in or at least shading into lawmaking. Norm identification, by contrast, although it has a creative element, is not essentially creative. The article is divided into four main parts. Part B highlights the history of the establishment of the ICTY and the content of the ICTY Statute. This background will prove indispensable in comprehending the ICTY's lawmaking character. Part C probes the theoretical background of the norm justification/identification distinction. Part D provides a case study of the ICTY engaging in a discourse of norm justification: The case against Zoran, Mirjan, and Vlatko Kupreškic from 14 January 2000, concerning the issue of belligerent reprisals. We will show that in this case, the ICTY did not identify particular norms of international customary law, but rather determined the validity of those norms—a justificatory form of discourse. Part E takes up the question of the legitimacy of judicial lawmaking.

Full text
http://www.germanlawjournal.com/pdfs/Vol12-No5/PDF_Vol_12_No_05_1261-1278_Beyond%20Disptue%20Special_Kuhli%20%20Gunther%20FINAL.pdf

## The law on asymmetric warfare

**Eyal Benvenisti**. - Leiden ; Boston : M. Nijhoff, 2011. - p. 931-950. - In: Looking to the future : essays on international law in honor of W. Michael Reisman. - Cote 345.2/854 (Br.)

This essay asserts that it is time to recognize that asymmetric warfare is a distinct phenomenon that is, and should be, subject to a distinct set of substantive norms and not only to different modalities of enforcement. Conscious of Toni Pfanner's provocative challenge-"If wars between States are on the way out, perhaps the norms of international law that were devised for them are becoming obsolete as well"-this essay argues that it is in fact already possible to discern new norms for asymmetric warfare, both internal and international. It is further suggested that once we grasp that asymmetric warfare is a very different beast, we will be able to explore the potential for improving the protection of non-combatants by treating the law on asymmetric warfare as distinct from the law applied in traditional symmetric conflicts. Part II

begins by noting the changing norms of war and explaining this evolution as a response to the challenge of asymmetric warfare. Part III then explores potential areas in which the law on asymmetric warfare can and should further depart from traditional symmetric warfare law. Part IV concludes with a call to recognize asymmetric warfare as a distinct type of conflict that should be free of the confines of a law that was designed to address the traditional wars of past. Humanity would be better served were this type of warfare to have its own carefully tailored set of norms.

## The Layha for the Mujahideen : an analysis of the code of conduct for the Taliban fighters under Islamic law

**Muhammad Munir**. In: International review of the Red Cross Vol. 93, no. 881, March 2011, p. 81-120

The following article focuses on the Islamic Emirate of Afghanistan Rules for the Mujahideen to determine their conformity with the Islamic jus in bello. This code of conduct, or Layha, for Taliban fighters highlights limiting suicide attacks, avoiding civilian casualties, and winning the battle for the hearts and minds of the local civilian population. However, it has altered rules or created new ones for punishing captives that have not previously been used in Islamic military and legal history. Other rules disregard the principle of distinction between combatants and civilians and even allow perfidy, which is strictly prohibited in both Islamic law and international humanitarian law. The author argues that many of the Taliban rules have only a limited basis in, or are wrongly attributed to, Islamic law.

Full text
http://www.cid.icrc.org/library/docs/DOC/irrc-881-munir.pdf

## The protective scope of common article 3 : more than meets the eye

**Jelena Pejic**. In: International review of the Red Cross Vol. 93, no. 881, March 2011, p. 189-225

Non-international armed conflicts are not only prevalent today, but are also evolving in terms of the types that have been observed in practice. The article sets out a possible typology and argues that Common Article 3 to the Geneva Conventions may be given an expanded geographical reading as a matter of treaty law. It also suggests that there is a far wider range of rules – primarily of a binding nature, but also policybased – that apply in Common Article 3 armed conflicts with regard to the treatment of persons in enemy hands and the conduct of hostilities.

Full text
http://www.cid.icrc.org/library/docs/DOC/irrc-881-pejic.pdf

# XI. Weapons

## Drone attacks, international law, and the recording of civilian casualties of armed conflict

**Susan Breau, Marie Aronsson, Rachel Joyce**. - [S.l.] : Oxford Research Group, June 2011. - 31 p. : tabl. ; 30 cm. - Cote 345.22/176 (Br.)

The Oxford Research Group's (ORG) Recording of Casualties of Armed Conflict (RCAC) Programme has concluded a research project on identifying the international legal obligation to record civilian casualties of armed conflict. As a result of extensive research into international customary humanitarian law and the treaties that embody obligations for states in international humanitarian law and international human rights Law, the research team has identified the elements of the international legal obligation. The various sources of law drawn upon to identify this right include the Geneva Conventions; the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and other human rights instruments; reports and statements of the United Nations; case law of the European Court of Human Rights and the Inter-American Court of Human Rights; and the principles of customary international law. When placed in the context of casualty recording, the principles spread amongst these instruments and sources come together naturally to form a binding obligation on states. The findings of this report indicate that a move towards establishing a systematic mechanism of casualty recording in all theatres of armed conflict is necessary and required by law.

Full text
http://www.oxfordresearchgroup.org.uk/sites/default/files/1st%20legal%20report%20formatted%20FINAL.pdf

## Nuclear weapons and compliance with international humanitarian law and the nuclear non-proliferation treaty

**Charles J. Moxley, John Burrough, and Jonathan Granoff**. In: Fordham international law journal Vol. 34, issue 4, April 2011, p. 595-696. - Cote 341.67/684 (Br.)

This article addresses the requirements of IHL and the NPT and applies those requirements to contemporary state practice. It discusses IHL in Part I and the NPT in Part II. The result, the article concludes, is that such practice falls far short of the legal requirements. In short, review of the matter reveals that the use of nuclear weapons would violate IHL and that the threat of such use, including under the policy of nuclear deterrence, similarly violates such law. Analysis further reveals that the nuclear weapon states' existing obligation to bring their policies into compliance with IHL is reinforced by the NPT disarmament obligation as spelled out by the 2010 NPT Review Conference, in particular by its declaration of the need to comply with IHL. The most fundamental implication of the incompatibility of the threat or use of nuclear weapons with IHL is the energetic and expeditious fulfillment of the NPT obligation to achieve the global elimination of nuclear weapons through good-faith negotiations.

Full text
http://lcnp.org/wcourt/Fordhamfinaljoint.pdf

# XII. Implementation

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

## Assessing civil liability for harms to women during armed conflict : the rulings of the Eritrea-Ethiopia claims commission

**Lucy Reed**. In: International criminal law review Vol. 11, issue 3, 2011, p. 589-605

This article provides a descriptive account of rulings of the Eritrea-Ethiopia Claims Commission (EECC) related to harms inflicted during the Ethiopia-Eritrea armed conflict that disproportionately affected women. Following the introduction, it presents a brief overview of the creation of the EECC and its jurisdiction, procedure and rulings. It then discusses the EECC's rulings on sexual violence, describing the special considerations for applying its standard and quantum of proof in relation to liability and damages in rape claims. The next part focuses on the import of the EECC's rulings in relation to expelled and other displaced civilians (including internally displaced persons), who were largely women and other vulnerable populations. Although the EECC did not, for the most part, find displacement itself to be a violation of the jus in bello, it did award significant amounts of compensation for harms suffered by expelled and displaced civilians and for relief provided to such persons, who were predominantly women and other vulnerable populations, as well as for Eritrea's violation of the jus ad bellum.

Full text : only from ICRC headquarters
http://www.ingentaconnect.com/content/mnp/icla/2011/00000011/00000003/art00018

## Conceptions of war and paradigms of compliance : the "new war" challenge to international humanitarian law

**Nicolas Lamp**. In: Journal of conflict and security law Vol. 16, no. 2, Summer 2011, p. 225-262

The article argues that the so-called "new wars" pose a fundamental challenge to international humanitarian law (IHL). Although not historically new, this type of war differs in crucial respects from the conception of war that underlies the traditional paradigm of compliance of IHL. At the heart of this paradigm lie certain assumptions: that IHL embodies a compromise between the interests of the warring parties and humanitarian concerns, and that the warring parties face a number of incentives to comply with the law. The article argues that these assumptions lose their plausibility under the circumstances of the "new wars". As a result, the traditional enforcement mechanisms of IHL invariably fail in these conflicts. The second part of the article discusses the international legal response to the "new wars". In particular, it considers international criminal prosecutions, the activities of the International Committee of the Red Cross and measures by the United Nations Security Council. In the common elements of these measures the article identifies the contours of a new paradigm of compliance in IHL that shifts the emphasis from voluntary compliance to external enforcement.

Full text : only from ICRC headquarters
http://jcsl.oxfordjournals.org/content/16/2/225.full.pdf

## Corporate civil liability for war crimes in Canadian courts : lessons from Bil'in (Village Council) v. Green Park International Ltd.

**James Yap**. In: Journal of international criminal justice Vol. 8, no. 2, May 2010, p. 631-648

In many cases of alleged war crimes, a civil action may be an attractive alternative to criminal proceedings, for political, logistical or other reasons. This is particularly so with respect to corporate conduct, where the mens rea requirements and custodial penal sentences that are hallmarks of typical criminal justice systems transpose poorly to the corporate context. However, while the universality principle is by now well-established with respect to criminal prosecutions in national courts, the picture with respect to civil claims in one country for war crimes committed in another is substantially less clear. In this spirit, the author analyses the recent Superior Court of Quebec decision in the case of Bil'in (Village Council) v. Green Park International Ltd. There, the plaintiffs sought to claim against two Quebec corporations and their sole director for participating in war crimes allegedly committed in the West Bank. After a careful examination of the decision, it becomes apparent that such claims may face significant legal and practical hurdles in Canada.

Full text : only from ICRC Headquarters
http://jicj.oxfordjournals.org/content/8/2/631.full.pdf

## Droit international humanitaire dans les conflits armés : le cas rwandais

**Sacké Kouyaté Kaba Diakité ; préf. d'Édouard Koudouno**. - Paris : L'Harmattan, 2011. - 221 p. ; 23 cm. - Cote 345.2/849

En quoi consiste le droit international humanitaire dans les conflits armés ? Pourquoi les instruments juridiques internationaux concernant les droits de l'homme manquent-ils d'une réelle effectivité dans leur application ? Le génocide rwandais peut-il être qualifié de conflit armé interne ? Quel doit être le rôle des Nations unies dans les situations de conflits ? Quel est l'impact réel en termes de sanctions du droit international humanitaire ? Est-il possible d'humaniser la guerre dont la logique profonde est la destruction de l'ennemi ? La préoccupation majeure du droit international humanitaire est d'enlever aux conflits armés, qu'ils soient internes ou internationaux, leur caractère déshumanisant, à travers l'élaboration d'instruments juridiques visant à protéger les victimes de guerre et à sanctionner les responsables de faits particulièrement odieux. C'est aussi un droit généreux s'il est appliqué et respecté. En temps de guerre, il assure aux personnes exposées aux hostilités la jouissance de droits consacrés par diverses conventions internationales telles que les quatre conventions de 1949 et leurs protocoles additionnels de 1977. Leur mise en oeuvre épargnerait inéluctablement l'humanité tout entière de bavures telles que le génocide perpétré au Rwanda en 1994.

## Drone attacks, international law, and the recording of civilian casualties of armed conflict

**Susan Breau, Marie Aronsson, Rachel Joyce**. - [S.l.] : Oxford Research Group, June 2011. - 31 p. : tabl. ; 30 cm. - Cote 345.22/176 (Br.)

The Oxford Research Group's (ORG) Recording of Casualties of Armed Conflict (RCAC) Programme has concluded a research project on identifying the international legal obligation to record civilian casualties of armed conflict. As a result of extensive research into international customary humanitarian law and the treaties that embody obligations for states in international humanitarian law and international human rights Law, the research team has identified the elements of the international legal obligation. The various sources of law drawn upon to identify this right include the Geneva Conventions; the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and other human rights instruments; reports and statements of the United Nations; case law of the European Court of Human Rights and the Inter-American Court of Human Rights; and the principles of customary international law. When placed in the context of casualty recording, the principles spread amongst these instruments and sources come together naturally to form a binding obligation on states. The findings of this report indicate that a move towards establishing a systematic mechanism of casualty recording in all theatres of armed conflict is necessary and required by law.

Full text
http://www.oxfordresearchgroup.org.uk/sites/default/files/1st%20legal%20report%20formatted%20FINAL.pdf

## International and local enforcement measures in response to serious violations of IHL during the Gaza military operations in December 2008-January 2009 : the Goldstone report and subsequent developments

**Alon Margalit**. In: Yearbook of islamic and middle eastern law Vol. 15, 2009-2010, p. 79-93. - Cote 345.22/181 (Br.)

The allegations regarding serious violations of international humanitarian law (IHL) during the three weeks of hostilities in the Gaza strip from late December 2008, some of them cited in the Goldstone report, require both parties to the conflict to initiate a domestic enforcement process. International law directs Israel, as well as the Hamas government in Gaza, to open criminal investigations into serious allegations of grave breaches of the Fourth Geneva Convention, to prosecute and punish the perpetrators when evidence so demands and to compensate the victims where appropriate. This short paper describes and evaluates the enforcement efforts taken both at international and domestic levels. So far, various reports suggest that local enforcement procedures do not meet international standards. However, a close and persistent involvement of the international community in the domestic process may still lead to improved results in terms of accountability and justice for the victims.

## Law promotion beyond law talk : the Red Cross, persuasion, and the laws of war

**Steven R. Ratner**. In: European journal of international law = Journal européen de droit international Vol. 22, no.2, May 2011, p. 459-506

The International Committee of the Red Cross casts itself as both a unique protector of individual victims of war and a special guardian of the body of international humanitarian law. It manages and reconciles these two roles through a complex, unconventional strategy that includes secret communications with warring parties, ambiguity in conveying its legal views to them, and, at times, a complete avoidance of legal arguments when persuading actors to follow international rules. This modus operandi not only challenges some standard views about the methods used by actors seeking to convince law violators to comply with norms; it also opens the door to a richer theoretical understanding of legal argumentation in that process of persuasion. The resulting construct consists of a matrix of inputs that determine how a persuading entity will deploy legal arguments and outputs that convey the dimensions of the resulting argumentation. Both the theory and the ICRC's work suggest that entities concerned with compliance would often do best to settle for a target to act consistently with a norm rather than to internalize it. They also raise difficult moral questions about whether compliance with international law is the optimal goal if it has adverse consequences for the values an institution seeks to uphold.

Full text : only from ICRC headquarters
http://ejil.oxfordjournals.org/content/22/2/459.full.pdf

## The legal obligation to record civilian casualties of armed conflict

**Susan Breau, Rachel Joyce**. - [S.l.] : Oxford Research Group, June 2011. - 35 p. : tabl. ; 30 cm. - Cote 345.22/177 (Br.)

The Oxford Research Group's (ORG) Recording of Casualties of Armed Conflict (RCAC) Programme has concluded a research project on identifying the international legal obligation to record civilian casualties of armed conflict. As a result of extensive research into international customary humanitarian law and the treaties that embody obligations for states in International Humanitarian Law and International Human Rights Law, the research team has identified the elements of the international legal obligation. The various sources of law drawn upon to identify this right include the Geneva Conventions; the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and other human rights instruments; reports and statements of the United Nations; case law of the European Court of Human Rights and the Inter-American Court of Human Rights; and the principles of customary international law. When placed in the context of casualty recording, the principles spread amongst these instruments and sources come together naturally to form a binding obligation on states. The findings of this report indicate that a move towards establishing a systematic mechanism of casualty recording in all theatres of armed conflict is necessary and required by law.

Full text
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## Reparation for victims of armed conflict

**Natalino Ronzitti... [et al.]**. In: Report of the Seventy-Fourth Conference [International law association], The Hague, 2010, p. 291-345

Work of the Committee on Reparation for Victims of Armed Conflict on the drafting of a declaration of international law principles on reparation for victims of armed conflict. Preliminary remarks by Rainer Hoffmann (co-Rapporteur) and text of the draft Declaration.

## Schools and armed conflict : a global survey of domestic laws and state practice protecting schools from attack and military use

**Human Rights Watch**. - New York [etc.] : Human Rights Watch, 2011. - 159 p. : photogr., tabl. ; 27 cm. - Cote 363.8/66

This report examines—in three separate chapters—law and state practice relevant to three issues: (1) protecting civilian objects (buildings and other infrastructure) from intentional attack; (2) protecting education buildings from intentional attack, and (3) deterring education facilities from being used or occupied by government security forces and non-state armed groups. Each chapter begins by examining the relevant international law, including both the international treaties that bind states that have ratified them, and what is known as customary international law, which is binding on all states. The report then analyzes how different countries are applying protections for education facilities within their own domestic law, especially within criminal law and military law. Finally, each chapter examines relevant examples of state behavior in providing these protections. Such examples can be particularly useful because state practice—specially when carried out in a way that indicates that the country accepts that it is legally required to act in a certain way—can be influential in understanding and developing customary international law.

Full text
http://www.hrw.org/sites/default/files/reports/crd0711webwcover.pdf

## State immunity and war crimes : the Polish Supreme Court on the Natoniewski case

**Marcin Kaldunski**. In: Polish Yearbook of International Law Vol. 30, 2010, p. 235-262. - Cote 345.22/182 (Br.)

The article critically assesses the decision of the Polish Supreme Court in Natoniewski v. Federal Republic of Germany. It argues that the decision as such reflects contemporary international law practice. Consequently, the holding of the Supreme Court that State immunity is applicable to acts de iure imperii committed on the territory of the forum State during an armed conflict even tough they may amount to war crimes seems to be correct. This conclusion also means that the Court refused to engage in law-making activity by declining to endorse interpretation, which would permit to reject State immunity by attaching superior importance to human rights. Although the article recognizes that the reasoning of the Supreme Court as well as the choice of arguments is well-balanced and convincing, it also identifies certain instances in which the Court is not entirely persuasive. In the opinion of the author, one of the most important drawbacks in the reasoning relates to the characterization of State immunity as a procedural, rather than substantive, issue.

# XIII. International Human Rights Law

**(Focus on situations of armed conflict and other situations of violence, relation between IHL and IHRL)**

## Corporate accountability to human rights : the case of the Gaza strip

**Dana Weiss and Ronen Shamir**. In: Harvard human rights journal Vol. 24, issue 1, Summer 2011, p.155-183

This article discusses the human rights obligations of corporations that operate in bilateral zones of conflict. It analyzes the commercial activity of Israeli corporations in the Palestinian Gaza Strip from within the framework of the evolving jurisprudence on the human rights obligations of corporations. In recent years, greater attention has been paid to the role of commercial entities in violent contexts whose activities may, directly or indirectly, implicate issues of human rights or international humanitarian law. International human rights law establishes a set of norms and obligations that are mainly enforced in relations among states or between states and their citizens. Unlike states, private commercial corporations are generally not treated mas bearing direct human rights obligations under international law; human rights law applies only in a limited way to these corporations. Similarly, international humanitarian law, although increasingly applied to non-state actors, has yet to be applied directly to privately-owned companies.

Full text
http://harvardhrj.com/wp-content/uploads/2009/09/155-184.pdf

## Humanitarian law and human rights law : the politics of distinction

**Alejandro Lorite Escorihuela**. In: Michigan state journal of international law Vol. 19, issue 2, 2011, p. 299-407. - Cote 345.1/76 (Br.)

The author proceeds first to boiling down both bodies of rules to what could arguably be seen as their respective animating principles: distinction for humanitarian law, and non-discrimination for human rights. These separate and apparently contradictory principles are both rooted in the same political liberal tradition, which the author evokes through the use of loose social contract imagery in the description of both distinction and non-discrimination. He revisits some judicial encounters with the relationship between human rights and humanitarian law. Starting with the canonical moment when the International Court of Justice suggested the interpretive principle of lex specialis as a panacea, the author moves to an examination of the respective case law related to humanitarian law in the three regional human rights systems-Europe, the Americas and Africa. Paying close technical attention to that practice will serve to give some depth, through the variety of situations and particular position of human rights bodies, to the implicit connection between lex specialis and jurisdiction, that is, formal sovereignty. Once the political form of sovereignty is put back in place as the basis for the lex generalis / lex specialis trope-and therefore also the argumentative line between peace and war-concluding thoughts will follow concerning the political message of defragmentation.

Full text : only from ICRC Headquarters
http://heinonline.org/HOL/Page?handle=hein.journals/mistjintl19&id=303&collection=journals&index=journals/mistjintl

## Norm conflicts, international humanitarian law, and human rights law

**Marko Milanovic**. - Oxford [etc.] : Oxford University Press, 2011. - p. 229-261. - In: Extraterritorial application of human rights treaties : law, principles, and policy. - Cote 345.1/589

This chapter explores the relationship between the two bodies of law, and makes several broad propositions. First, that there is a need for a change in perspective, from examining the relationship of the two regimes as such, to the interaction of particular norms that regulate specific situations. Second, that this interaction will frequently result in a norm conflict, and that we have numerous tools at our disposal for either avoiding or resolving these conflicts. Third, that lex specialis is at best a fairly limited tool of norm conflict avoidance, and that it most certainly cannot be used to describe the relationship between human rights and humanitarian law as a whole. Finally, that there are situations where all of our tools will fail us, where a norm conflict will be both unavoidable and unresolvable due to a fundamental incompatibility in the text, object and purpose, and values protected by the interacting norms, and where the only possible solution to the conflict will be a political one. The chapter identifies three such possible situations of unresolvable antinomy - targeted killings, preventive security detention, and positive

obligations during occupation, and addresses recent cases with a norm conflict component, such as Al-Jedda, Behrami, and Al-Saadoon. Though in most cases harmony between human rights and humanitarian law is possible, and indeed desirable, we should not underestimate the practical and political relevance of situations of true norm conflict, which no amount of academic exposition will be able to fix.

## The role of the Committee on the Rights of the Child in interpreting and developing international humanitarian law

**David Weissbrodt, Joseph C. Hansen, and Nathaniel H. Nesbitt**. In: Harvard human rights journal Vol. 24, issue 1, Summer 2011, p. 115-153

This article finds that the CRC has incorporated the corpus of IHL into the Children's Convention and argues that it has an important role to play in interpreting international humanitarian law. The Children's Convention is the only core international human rights treaty that discusses humanitarian law explicitly and has an interpretive body to monitor its implementation. As a result, the CRC is the only human rights treaty body with a substantial existing humanitarian law jurisprudence. Further, the CRC considers reports from States under the Optional Protocol on Children in Armed Conflict, which recalls in its preamble the obligation of States parties "to abide by the provisions of international humanitarian law." These features suggest that the CRC has unique institutional potential to interpret humanitarian law. Yet while the CRC offers analysis of IHL, its analysis is implicit. It is possible, by assembling various pronouncements in the Concluding Observations, to find examples of States parties' obligations under IHL as they relate to respect for and protection of children. Nonetheless, the Committee's structure and mandate prevent it from performing fact-specific and potentially precedential analysis. Still, we argue that the Committee may be able to modify slightly the format of its Concluding Observations in order to provide more explicit links from IHL to the Convention. Moreover, through its consistent pronouncements as to certain mandatory protections for children in situations of armed conflict, the Committee may be developing and solidifying norms of customary international humanitarian law.

Full text
http://harvardhrj.com/wp-content/uploads/2009/09/115-154.pdf

## Some remarks on the continuity of human rights and international humanitarian law treaties

**Fausto Pocar**. - p. 279-293. - In: The law of treaties beyond the Vienna convention. - Cote 345.2/852 (Br.)

Several problems of state succession in respect of treaties have arisen under international law as a result of such fragmentation of, or separation from, state entities. Since the beginning of the last decade of the twentieth ventury, several international fora, including international courts and other international bodies, have given special consideration to the treatment of international obligations entered into by the predecessor state under human rights and humanitarian law treaties. In particular, they have expressed concern that such events might lead to a decrease in the existing level of adherence to these types of treaties and respect for the standards enshrined therein on the territory of the newly independent states. The need arose, therefore, to determine whether the people living in the successor states would continue to benefit from the protections afforded to them.

## The South Asian military law systems

**U.C. Jha**. - New Dehli : Knowledge world, 2010. - XII, 268 p. : tabl. ; 25 cm. - Cote 345.2/847

This book is a comparative study of the military law systems of the five South Asian countries: Bangladesh, India, Nepal, Pakistan and Sri Lanka. It also considers those aspects of international human rights laws and international humanitarian laws which are relevant to the activities of the armed forces, while they are deployed in the armed conflicts, in the peacekeeping missions or when they are in barracks. This book examines minor punishments, describes step-by-step court martial process, and offers an overview of the constitutional and statutory rights available to armed forces personnel in South Asia. It also critically examines special emergency laws under which armed forces are deployed in the internal security duties in South Asia. The author is of the view that respect for human rights and fundamental freedoms for all, including armed forces personnel, is not just a moral obligation. It is part of international human rights law, and the South Asian countries are obliged to respect and protect the rights of personnel serving in their armed forces. This is a timely study in South Asia, in the light of allegations of human rights violations against the armed forces personnel.

# XIV. International Criminal Law

## Aggressors' rights : the doctrine of "equality between belligerents" and the legacy of Nuremberg

**Michael Mandel**. In: Leiden journal of international law Vol. 24, no. 3, 2011, p. 627-650. - Cote 344/547 (Br.)

The moral and legal debate over the separation of jus in bello from jus ad bellum generally assumes that the law of war supports this separation and the concomitant doctrine of 'equality between belligerents', also known as the 'duality' or the 'symmetry' principle. This article examines the Nuremberg-era precedents and legal scholarship, as well as more recent legal and scholarly material, and argues that the general assumption is wrong and that the arguments supporting the radical legal separation of the two jus's are unconvincing.

## Corporate civil liability for war crimes in Canadian courts : lessons from Bil'in (Village Council) v. Green Park International Ltd.

**James Yap**. In: Journal of international criminal justice Vol. 8, no. 2, May 2010, p. 631-648

In many cases of alleged war crimes, a civil action may be an attractive alternative to criminal proceedings, for political, logistical or other reasons. This is particularly so with respect to corporate conduct, where the mens rea requirements and custodial penal sentences that are hallmarks of typical criminal justice systems transpose poorly to the corporate context. However, while the universality principle is by now well-established with respect to criminal prosecutions in national courts, the picture with respect to civil claims in one country for war crimes committed in another is substantially less clear. In this spirit, the author analyses the recent Superior Court of Quebec decision in the case of Bil'in (Village Council) v. Green Park International Ltd. There, the plaintiffs sought to claim against two Quebec corporations and their sole director for participating in war crimes allegedly committed in the West Bank. After a careful examination of the decision, it becomes apparent that such claims may face significant legal and practical hurdles in Canada.

Full text : only from ICRC Headquarters
http://jicj.oxfordjournals.org/content/8/2/631.full.pdf

## Droit international humanitaire dans les conflits armés : le cas rwandais

**Sacké Kouyaté Kaba Diakité ; préf. d'Édouard Koudouno**. - Paris : L'Harmattan, 2011. - 221 p. ; 23 cm. - Cote 345.2/849

En quoi consiste le droit international humanitaire dans les conflits armés ? Pourquoi les instruments juridiques internationaux concernant les droits de l'homme manquent-ils d'une réelle effectivité dans leur application ? Le génocide rwandais peut-il être qualifié de conflit armé interne ? Quel doit être le rôle des Nations unies dans les situations de conflits ? Quel est l'impact réel en termes de sanctions du droit international humanitaire ? Est-il possible d'humaniser la guerre dont la logique profonde est la destruction de l'ennemi ? La préoccupation majeure du droit international humanitaire est d'enlever aux conflits armés, qu'ils soient internes ou internationaux, leur caractère déshumanisant, à travers l'élaboration d'instruments juridiques visant à protéger les victimes de guerre et à sanctionner les responsables de faits particulièrement odieux. C'est aussi un droit généreux s'il est appliqué et respecté. En temps de guerre, il assure aux personnes exposées aux hostilités la jouissance de droits consacrés par diverses conventions internationales telles que les quatre conventions de 1949 et leurs protocoles additionnels de 1977. Leur mise en oeuvre épargnerait inéluctablement l'humanité tout entière de bavures telles que le génocide perpétré au Rwanda en 1994.

## Enforced displacement of civilian populations in war : a potential new element in crimes against humanity

**Jennifer Leaning**. In: International criminal law review Vol. 11, issue 3, 2011, p. 445-462

It is argued in this paper that the phenomenon of forced migration in war constitutes, in itself, a serious violation of international humanitarian law. The agency of government or military command is behind the military or political action that provokes population flight; the short and long-term mortality and morbidity always associated with forced migration occurs disproportionately and indiscriminately to civilian non combatants; and the dissolution of identity, the assault on dignity, the destruction of personal and community records, and the sweeping loss of livelihoods occasioned by war-induced forced migration

represent in themselves war crimes or on a grand scale crimes against humanity. This paper presents evidence to substantiate the claim that forced migration in war inflicts intense and extended suffering on civilian populations. Reference is made to Hague and Geneva law, the two international human rights covenants (ICCPR and ICESCR) and to the Refugee Convention to find elements of what should arguably be advanced as the constituent basis for defining forced migration in war as a distinct and independent crime in international criminal law. In much of international humanitarian law, empirically grounded recognition of a new class of grievous injuries or a new category of people to protect leads to an expansion of a preexisting framework (civilian protection) or an entirely new treaty or convention (cluster munitions). The suggestion made here is that forced migration in war be considered within that historical continuum—not as a prevalent and (largely) unavoidable process but as a newly recognised crime.

Full text : only from ICRC headquarters
http://www.ingentaconnect.com/content/mnp/icla/2011/00000011/00000003/art00009

## First victims then perpetrators : child soldiers and international law

**Claudia Morini**. In: Anuario colombiano de derecho internacional Vol. 3 especial, 2010, p. 187-208. - Cote 362.7/343 (Br.)

This article examines the issue of the position of child soldiers under international law. After preliminary remarks on the approach of international human rights and humanitarian law to the protection of children involved in armed conflicts, the article discusses the prohibitions on recruiting children and the individual criminal responsibility of recruiters. Case-law on the child soldiers' recruitment is considered. In the fourth part the position of the child soldiers as perpetrators is discussed and the retributive approach to the issue is explored. The last section offers an overview of the restorative justice-oriented solution to the dilemma of the criminal responsibility of child soldiers adopted in the context of the post-conflict situation in Sierra Leone.

Full text
http://www.anuariocdi.org/anuario3a-capitulos-pdf/05_art.pdf

## The International criminal tribunal for the former Yugoslavia : paving the way for modern international humanitarian law enforcement

**Andrew Woodcock**. In: Northern Ireland legal quarterly Vol. 62, no. 1, Spring 2011, p. 119-136. - Cote 344/545 (Br.)

This paper considers the circumstances giving rise to the establishment of the ICTY, and the criticisms which have been raised in respect to the alleged delays and inactivity. It is contended that, in fact, the criticisms are somewhat unwarranted, as these states were simply endeavouring to deal with genuine practical difficulties confronting them; these were the same difficulties facing their predecessors after both world wars. It is also submitted that, ultimately, these obstacles were effectively overcome and a credible judicial body was created. The value of this institution lies not simply in its own contribution to justice in the region, but in its status as a template for subsequent international humanitarian courts.

## Kononov v. Latvia : a partisan and a criminal : the European Court of Human Rights takes a controversial stance on war crimes

**Mariya S. Volzhskaya**. In: Tulane journal of international and comparative law Vol. 19, issue 2, 2011, p. 651-668. - Cote 344/57 (Br.)

The ECHR decision in the noted case is a big step forward in the continuing efforts to incentivize those working to bring war criminals to justice. The ECHR's holding that Latvia's conviction of Kononov was not barred by the statute of limitations is a testament to the powerful principle that war crimes charges are not subject to time limits in international law. The ECHR's affirmation of Latvia's conviction of Kononov, a former Allied soldier, is perhaps also evidence that the ECHR is ready to branch out from the one-sided approach of Nuremberg. It is difficult to predict whether more cases like Kononov's will be brought as an aftermath to the noted case given Russia's heavy involvement and its tendency to put political pressure on its neighbors. However, the ECHR took a strong stance in applying contemporaneous law to the facts without regard to Kononov's status as a former Allied soldier, a stance that serves to depoliticize the not-so-distant past of WWII.

Full text : only from ICRC headquarters
http://heinonline.org/HOL/Page?handle=hein.journals/tulicl19&id=665&collection=journals&index=journals/tulicl

## Prosecuting the war crime of collective punishment : is it time to amend the Rome Statute ?

**Shane Darcy**. In: Journal of international criminal justice Vol. 8, no. 1, March 2010, p. 29-51

Recent judgments of the Special Court for Sierra Leone comprise the most significant judicial consideration of collective punishment by an international court since the trials conducted after the Second World War. The Special Court's conviction of several individuals for the war crime of collective punishment are the first of their kind, although at times the judgments involved strained judicial reasoning on the meaning, scope and rationale of the war crime of collective punishment. In considering the status of collective punishment as an international crime, the author draws on the Special Court's jurisprudence and explores the customary and conventional law basis of the war crime of collective punishment and the challenge of defining the elements of such a crime. The omission of the war crime of collective punishment from the Rome Statute of the International Criminal Court questions the place of the offence in contemporary international criminal law, particularly in light of the possibility that underlying acts might be adequately addressed by other established war crimes.

Full text : only from ICRC Headquarters
http://jicj.oxfordjournals.org/content/8/1/29.full.pdf

## Protecting prisoners of war : the Mrkšic et al. appeal judgment

**Giulia Pinzauti**. In: Journal of international criminal justice Vol. 8, no. 1, March 2010, p. 199-219

The article deals with some of the new legal issues arising in the Mrkšic et al. Appeal Judgment, with particular regard to the responsibility of the accused Veselin Šljivancanin for his role in the attack against Croat prisoners of war (POWs) that occurred in Ovcara, Croatia, in 1991. The ICTY Appeals Chamber shed light on the nature and scope of the individual duty to protect POWs under Articles 12 and 13 of Geneva Convention III and held that an agent of the Detaining Power entrusted with custody and control over POWs is under the duty to ensure their safe transfer even when he no longer has custody and control over them. In convicting Šljivancanin for his failure to protect the POWs, the Appeals Chamber also clarified the elements of aiding and abetting by omission. However, the Appeals Chamber's failure both to characterize the armed conflict in Croatia and to clarify on what legal grounds the captured Croats were entitled to POW status is open to criticism.

Full text : only from ICRC Headquarters
http://jicj.oxfordjournals.org/content/8/1/199.full.pdf

## War crimes

**by Alette Smeulers and Fred Grünfeld**. - Leiden ; Boston : M. Nijhoff, 2011. - p. 39-83. - In: International crimes and other gross human rights violations : a multi- and interdisciplinary textbook. - Cote 344/549

The chapter starts in section two with a brief definition of war crimes. Section three of this chapter will deal with international humanitarian law which entails the rules regulating warfare. The fourth section will describe the social context of war, give insight into soldiers' experiences and offer a better understanding of what war is really about. It will explain how the myths of masculinity and heroism are often shattered by the horrors of war, and how these horrors can easily lead to, abuse, violations of the rules and regulations of warfare and ultimately war crimes. In the fifth section, several examples of war crimes, such as the Rape of Nanking (China) and the massacre at My Lai (Vietnam), will be presented in order to grasp the dynamics at play. Overall the chapter aims to provide insight into the various types of war crimes and when and why such crimes are committed.

# XV. Contemporary challenges

**(Terrorism, DPH, cyber warfare, asymetric war, etc.)**

## Civilian or combatant ? : a challenge for the twenty-first century

**Anicée Van Engeland**. - Oxford [etc.] : Oxford University Press, 2011. - XIX, 172 p. ; 24 cm. - Cote 345.25/245

Anicee Van Engeland describes how the practice and evolution of warfare have turned international humanitarian law into an enigmatic law that is complex to understand, interpret, and enforce. Van Engeland identifies the challenges that advocates of international humanitarian law face, which range from genocide, asymmetrical warfare, and terrorism to rape as a weapon. The events of 9/11 and the aftermath have put this branch of international law, in particular, the distinction between civilians and combatants, to the test. Van Engeland describes how some analysts have both questioned whether international law can adapt to these issues and challenged international humanitarian law on the basis that it cannot meet today's warfare realities. Van Engeland responds to these critics, reminding readers that international humanitarian law was not drafted to rule on war, but rather to protect victims of war, in particular civilians. Consequently, Van Engeland demonstrates that this branch of international law is in constant evolution. Through a thorough and illustrated analysis, Van Engeland explains how civilians and combatants are still distinguishable, as well as how international humanitarian has been stretched to meet these challenges.

## "Direct participation in hostilities" : a legal and practical road test of the International Committee of the Red Cross's guidance through Afghanistan

**Damien van der Toorn**. In: Australian international law journal Vol. 17, 2010, p. 7-28. - Cote 345.25/55 (Br.)

The increasing difficulty in distinguishing between peaceful civilians and irregular forces in modern conflicts has necessitated closer legal analysis of the phrase 'direct participation in hostilities' as used in the Geneva Conventions and Additional Protocols. The International Committee of the Red Cross's ('ICRC') 'Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law', published in June 2009, undertakes such an analysis. The Guidance may well have a significant influence on international and national tribunals considering the meaning of direct participation in hostilities, as well as the framing and implementation of rules of engagement by states for current and future operations. This article offers a critique of the Guidance both in terms of its process and nature, as well as its substantive legal analysis of the phrase. It also evaluates whether the ICRC's interpretation strikes a reasonable balance between the ability to achieve legitimate military objectives and the protection of civilians. Finally, it considers whether the interpretation results in a 'level legal playing field' for all parties to a conflict.

Full text : only from ICRC Headquarters
http://heinonline.org/HOL/Page?handle=hein.journals/austintlj2010&id=7&collection=journals&index=journals/austintlj

## Drone attacks, international law, and the recording of civilian casualties of armed conflict

**Susan Breau, Marie Aronsson, Rachel Joyce**. - [S.l.] : Oxford Research Group, June 2011. - 31 p. : tabl. ; 30 cm. - Cote 345.22/176 (Br.)

The Oxford Research Group's (ORG) Recording of Casualties of Armed Conflict (RCAC) Programme has concluded a research project on identifying the international legal obligation to record civilian casualties of armed conflict. As a result of extensive research into international customary humanitarian law and the treaties that embody obligations for states in international humanitarian law and international human rights Law, the research team has identified the elements of the international legal obligation. The various sources of law drawn upon to identify this right include the Geneva Conventions; the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and other human rights instruments; reports and statements of the United Nations; case law of the European Court of Human Rights and the Inter-American Court of Human Rights; and the principles of customary international law. When placed in the context of casualty recording, the principles spread amongst these instruments and sources come together naturally to form a binding obligation on

states. The findings of this report indicate that a move towards establishing a systematic mechanism of casualty recording in all theatres of armed conflict is necessary and required by law.

Full text
http://www.oxfordresearchgroup.org.uk/sites/default/files/1st%20legal%20report%20formatted%20FINAL.pdf

## International humanitarian law and terrorism

**Andrea Bianchi and Yasmin Naqvi**. - Oxford ; Portland (Oregon) : Hart, 2011. - XLIX, 403 p. ; 24 cm. - Cote 303.6/197

This book carefully and thoroughly analyses the legal questions raised by the phenomenon of terrorism, and past and recent efforts to fight it, from the perspective of international humanitarian law (IHL). While due heed is paid to doctrinal debates, particular emphasis is placed on the practice of social actors, particularly, although not exclusively, States. The analysis of their actual conduct as well as their expectations about the interpretation and application of the law is crucial to establishing an interpretive consensus on when and how IHL is relevant to regulate acts of terrorism. The reader will find the relevant rules of IHL and other legal regimes as regards terrorism, but also the debates over their application, the contradictions in State practice and the impact these may have upon IHL's evolution and implementation.

## The law on asymmetric warfare

**Eyal Benvenisti**. - Leiden ; Boston : M. Nijhoff, 2011. - p. 931-950. - In: Looking to the future : essays on international law in honor of W. Michael Reisman. - Cote 345.2/854 (Br.)

This essay asserts that it is time to recognize that asymmetric warfare is a distinct phenomenon that is, and should be, subject to a distinct set of substantive norms and not only to different modalities of enforcement. Conscious of Toni Pfanner's provocative challenge-"If wars between States are on the way out, perhaps the norms of international law that were devised for them are becoming obsolete as well"-this essay argues that it is in fact already possible to discern new norms for asymmetric warfare, both internal and international. It is further suggested that once we grasp that asymmetric warfare is a very different beast, we will be able to explore the potential for improving the protection of non-combatants by treating the law on asymmetric warfare as distinct from the law applied in traditional symmetric conflicts. Part II begins by noting the changing norms of war and explaining this evolution as a response to the challenge of asymmetric warfare. Part III then explores potential areas in which the law on asymmetric warfare can and should further depart from traditional symmetric warfare law. Part IV concludes with a call to recognize asymmetric warfare as a distinct type of conflict that should be free of the confines of a law that was designed to address the traditional wars of past. Humanity would be better served were this type of warfare to have its own carefully tailored set of norms.

## The Mavi Marmara incident and blockade in armed conflict

**Douglas Guilfoyle**. In: British yearbook of international law Vol. 81, 2011, 41 p.. - Cote 347.799/135 (Br.)

This article examines Israel's enforcement of a maritime blockade against the Gaza Strip implemented in the course of an 'armed conflict' with Hamas. The first question is the legal characterisation of this conflict and whether it is one to which the laws of naval warfare apply. The conclusion of this article is that, irrespective of the status of the Gaza Strip as an occupied territory, at the relevant time Israel was at best involved in a non-international armed conflict (NIAC) with Hamas. There is only limited support for the proposition that blockade is available in NIACs, and then only in conflicts reaching a high level of intensity. On this basis, Israel had no applicable right of blockade. In the alternative, the article considers the requirements of lawful blockade and concludes they were not met in the present case. The central issue is proportionality. The maritime blockade was part of a comprehensive closure regime that had disproportionate effects on the civilian population of Gaza. A maritime blockade in support of other measures causing disproportionate damage must itself be disproportionate. In the further alternative, the article assesses whether Israel could have justified its actions on the basis of other belligerent rights. Finally, the article considers the law governing the use of force during maritime interdiction operations under the laws of naval warfare. It concludes that a 'policing' paradigm of force is applicable. The law of individual self-defence and war crimes is also considered.

Full text : only from ICRC Headquarters
https://ext.icrc.org/library/docs/ArticlesPDF/31455.pdf

## Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the treatment of terrorist combatants (Protocol IV) : a proposal

**Erin Creegan**. In: California western international law journal Vol. 41, issue 2, Spring 2011, p. 345-396. - Cote 303.6/16 (Br.)

After exploring the background and development of the Geneva Conventions of 1949 and the Additional Protocols of 1977, this article finds that the current body of law does not address the problem of terrorist combatants. Identifying the harm that has been caused by a lack of clear guidance on the law of armed conflict and terrorism, the article lays out the most important features and decisions that must be made in a new protocol for combating terrorism.

Full text
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1690269

## Terrorism and armed conflict : insights from a law and literature perspective

**Andrea Bianchi**. In: Leiden Journal of International Law Vol. 24, no.1, 2011, p. 1-21. - Cote 303.6/199 (Br.)

This article examines some selected issues relating to terrorism and international humanitarian law (IHL): the characterization of the nature of armed conflicts in which armed groups, qualified as 'terrorist', are involved; terrorism as a war crime; and the determination of the status and treatment (including detention) of terrorist suspects apprehended in the course of an armed conflict. The analysis emphasizes the importance of legal categories and legal qualifications of factual situations for the purpose of determining the applicable law as well as the crucial importance of taking societal practice into account when evaluating the state of the law in any given area. The main focus of the article, however, is on providing a few basic insights, drawn from the law & literature movement, on international humanitarian law and terrorism. Short of any epistemological ambition, literature is used as a remainder that the law is not a set of neutral rules, elaborated and applied independently of context and historical background; that the human condition remains central; and that legal regulation cannot be oblivious to it. Finally, mention is made of interpretive techniques, developed in the field of literary studies, that may help establish social consensus on the interpretation of IHL grey areas.

## The "war on terror" and the principle of distinction in international humanitarian law

**Noëlle Quénivet**. In: Anuario Colombiano de derecho internacional Vol. 3, num. especial, 2010, p. 155-186. - Cote 345.29/159 (Br.)

New security threats, which have surfaced in the past few years, are seriously jeopardizing the relevance and implementation of international humanitarian law. This paper investigates the impact of the war on terror on the principle of distinction in international humanitarian law, examining in particular whether the practices of some States, notably the US, have led to the emergence of new rules in relation to the principle of distinction. For this it looks at the principle from two separate, yet correlated, perspectives: a targeting and a detention perspective.

Full text
http://www.anuariocdi.org/anuario3a-capitulos-pdf/04_art.pdf

## What's in a name ? : the categorisation of individuals under the laws of armed conflict

**Noam Lubell**. In: Die Friedens-Warte : journal of international peace and organization Bd. 86, H. 3-4, 2011, p. 83-110

This article seeks to examine matters relating to the categorisation of individuals under the laws of armed conflict, with particular reference to issues that have been at the centre of attention in the past decade, and often linked with the so called "war on terror". Notably, during these same years the IHL community has been virtually transfixed by the process of expert meetings and documents that culminated with a publication by the International Committee of the Red Cross (ICRC) on direct participation in hostilities. Both the "war on terror" and the ICRC process have together provided much of the ammunition in the lively confrontations of contrasting legal opinions on individual status under IHL. The focus of this article

is on the actual effects of categorisation of individuals -particularly in the conduct of hostilities- and whether the controversies over the labels used are in fact a major concern or, perhaps, more of a distracting smokescreen.


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