

BIBLIOGRAPHY

1st Trimester 2013

International Humanitarian Law

International Committee of the Red Cross Library's
acquisitions on international humanitarian law
classified by subjects



ICRC



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April 2013

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Introduction

The ICRC Library

The ICRC endeavors to prevent suffering by promoting and strengthening International Humanitarian Law (IHL) and universal humanitarian principles. The ICRC Library in Geneva contributes to this mission by keeping a strong collection of IHL documents to help ICRC colleagues in their work. While the library was primarily set up to support ICRC staff members, it also takes on its own share of dissemination towards the general public.

To this effect, the library holds a wide collection of specific IHL documents at public disposal: Preparatory documents, reports, records, and final acts of the Diplomatic Conferences having led to the adoption of the main IHL treaties; records of the Red Cross and Red Crescent Movement Conferences during which numbers of questions related to IHL are discussed; every issue of International Red Cross Review from its creation until nowadays; all ICRC publications; rare documents published during the period between the creation of ICRC to the end of World War I and reflecting the effect of Dunant's idea; a unique collection of national legislations and national case law implementing IHL at a domestic level.

The library also acquires as much as possible external IHL publications, at least in English and French. Every journals article, chapter, book, working paper, report... is catalogued separately in order to make the library's online catalogue (<http://www.cid.icrc.org/library/>) one of the most exhaustive place to start researching IHL.

The library is open to the public from Monday to Thursday (9.00 to 17.00 non-stop) and Friday (9.00 to 13.00).

Origin and purpose of the IHL bibliography

At first, the bibliography was initiated at the request of field communication delegates in charge of encouraging universities to offer IHL courses and of giving assistance to professors who teach this subject. The delegates needed a tool they could give their interlocutors to help them develop or update their knowledge in IHL.

According to their needs, it was decided to classify the documents so readers could pick-up only what they needed, access the documents as easily as possible and have abstracts so they could decide whether or not to read a document in entirety.

As it quickly appeared, the bibliography was also helpful to any other researcher, student or legal professional working in the field of IHL. Therefore, the library decided to make the product public.

In sum, the bibliography can be useful to develop and strengthen IHL knowledge, help ICRC delegations, National Societies, schools, universities, research centres ... to feed their library in the field of IHL, keep eyes on IHL hot issues being dealt with by academic authors, help authors in the process of writing articles, books, thesis or legal professionals who work on IHL on a daily basis to see what has been written on a specific IHL subject.

How to use the IHL Bibliography

Part I: Multiple entries for readers who only need to check specific subjects

The first part is tailored for them: fifteen IHL-centred categories have been developed in collaboration with ICRC legal and communication advisors. An additional countries/region category has also been added for a regional approach. Each article, book or chapter is classified under every relevant category. This allows readers to identify as quickly as possible bibliographic references of interest without going through the whole bibliography. In order to avoid too long of a document, this first part only provides bibliographic reference and link to full text (when available). For the abstract, refer to the second part of the bibliography.

Part II: All entries with abstract for readers who need it all

Instead of going through the first part and having references repeating, readers can just skip to the second part where all documents are alphabetically listed (by title) with an abstract. When provided by the author or the publisher, the abstract is copied. When not provided, the abstract is elaborated by the IHL Reference Librarian in charge of the bibliography.

Access to document

Whenever an article is electronically available in full text, a link allows you to access the document directly. Some links only work from within ICRC HQ premises such as the library. All documents are available for loan at the ICRC Library. At the end of the bibliographic heading, "Cote xxx/xxx" refers to the ICRC library call number. In case your local library cannot provide you with some of the documents, requests for copies or scans (in a reasonable amount) can be sent to library@icrc.org

Chronology

This bibliography is based on the acquisitions made by the ICRC library during the past trimester. The ICRC library acquires relevant articles and books as soon as they are available. However publication date might not coincide with the bibliography period due to various editorial delays.

Contents

The bibliography contains English and French 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.

Disclaimer

Classification is made by the library and does not necessarily reflect the opinions of the ICRC.

Subscription and feedback

If you wish to receive each bibliography issue directly by e-mail, requests can be sent to library@icrc.org with the subject "IHL Bibliography subscription".

Questions, Comments and feedback are also welcome at the same e-mail address.

I. General issues

(General catch-all category, Customary Law)

L'applicabilité temporelle du droit international humanitaire

Julia Grignon. - Genève : Faculté de droit de l'Université de Genève, 2012. - 495 p.
- Cote 345.2/909

Civil war, custom and Cassese

Jean-Marie Henckaerts. In: Journal of international criminal justice Vol. 10, no. 5, December 2012, p. 1095-1111

Full text only from ICRC headquarters: <http://jicj.oxfordjournals.org/content/10/5/1095.full.pdf>

The development and principles of international humanitarian law

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - 562 p. - Cote 345.2/904

Droit international humanitaire

Joseph Owona. - Paris : L'Harmattan, 2012. - 210 p. - Cote 345.2/908

Hugo Grotius on the law of war and peace

Hugo Grotius ; ed. and annotated by Stephen C. Neff. - Cambridge [etc.] : Cambridge University Press, 2012. - 508 p. - Cote 345.2/910

International humanitarian law : an anthology

Louis Doswald-Beck, Azizur Rahman Chowdhury, Jahid Hossain Bhuiyan. - Haryana (India) : Lexis Nexis Butterworths Wadhwa Nagpur, 2009. - 352 p. - Cote 345.2/907

An introduction to origin, evolution and development of international humanitarian law

Vaibhav Goel. - Haryana (India) : Lexis Nexis Butterworths Wadhwa Nagpur, 2009. - p. 1-22. - In: International humanitarian law : an anthology. - Cote 345.2/907

The law of armed conflict : an operational approach

Geoffrey S. Corn... [et al.]. - New York : Wolters Kluwer Law & Business, 2012. - 599 p. - Cote 345.22/210

Lincoln's Code : the laws of war in American history

John Fabian Witt. - New York [etc.] : Free Press, 2012. - 498 p. - Cote 94/491

The main epochs of modern international humanitarian law since 1864 and their related dominant legal constructions

Robert Kolb. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 23-71. - In: Searching for a "principle of humanity" in international humanitarian law. - Cote 345.2/906

Principes de droit des conflits armés

par Eric David. - Bruxelles : Bruylant, 2012. - 1151 p. - Cote 345.2/636 (2012)

Reinterpreting competing interpretations of the scope and potential of the Martens clause

Michael Salter. In: Journal of conflict and security law Vol. 17, no. 3, Winter 2012, p. 403-437

Full text only from ICRC headquarters: <http://jcsf.oxfordjournals.org/content/17/3/403.full.pdf>

The scope and applicability of international humanitarian law

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - 508 p. - Cote 345.2/911

Searching for a "principle of humanity" in international humanitarian law

ed. Kjetil Mujezinovic Larsen, Camilla Guldahl Cooper and Gro Nystuen. - Cambridge [etc.] : Cambridge University Press, 2013. - 365 p. - Cote 345.2/906

II. Types of conflicts

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

Abiding by and enforcing international humanitarian law in asymmetric warfare : the case of "operation cast lead"

Andreas Zimmermann. In: Polish yearbook of international law Vol. 31, 2011, p. 47-78. - Cote 345.25/267 (Br.)

Application of international humanitarian law in contemporary armed conflicts : is it "simply" a question of facts ?

Maria-Daniella Marouda. - Athènes : Ant. N. Sakkoulas ; Bruxelles : E. Bruylant, 2009. - p. 201-244. - In: Armed conflicts and international humanitarian law : 150 years after Solferino : acquis and prospects. - Cote 345.2/813

Armed conflict, internal disturbances or something else ? : the lower threshold of non-international armed conflict

Tom Haeck. - Saarbrücken : LAP Lambert Academic Publishing, 2012. - 117 p. — Cote 345.27/124

An Australian perspective on non-international armed conflict : Afghanistan and East Timor

Rob McLaughlin. In: International law studies Vol. 88, 2012, p. 293-319
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The concept of "armed conflict" in international armed conflict

Masahiko Asada. - Leiden ; Boston : M. Nijhoff, 2012. - p. 51-67. - In: What is war ? : an investigation in the wake of 9/11. - Cote 345.2/916

Concluding remarks on non-international armed conflicts

Yoram Dinstein. In: International law studies Vol. 88, 2012, p. 399-421
[https://www.usnwc.edu/Research---Gaming/International-Law/New-International-Law-Studies-\(Blue-Book\)-Series/International-Law-Blue-Book-Articles.aspx?Volume=88](https://www.usnwc.edu/Research---Gaming/International-Law/New-International-Law-Studies-(Blue-Book)-Series/International-Law-Blue-Book-Articles.aspx?Volume=88)

Counterinsurgency law : new directions in asymmetric warfare

William Banks. - Oxford [etc.] : Oxford University Press, 2013. - 287 p. - Cote 345.2/915

Defining non-international armed conflict : a historically difficult task

David E. Graham. In: International law studies Vol. 88, 2012, p. 43-55
<http://www.usnwc.edu/getattachment/328c0d58-b252-40d0-bda6-a179934d761f/Defining-Non-International-Armed-Conflict--A-Histo.aspx>

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<http://www.usnwc.edu/getattachment/9816f8f2-de95-42c7-ad70-1e4c3a09d75a/Detention-in-Non-International-Armed-Conflicts.aspx>

Detention of terrorists in the twenty-first century

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Differences in the law of weaponry when applied to non-international armed conflicts

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The Gaza freedom flotilla : politicizing maritime law in asymmetric contexts

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The Geneva Conventions and the dichotomy between international and non-international armed conflict : curse or blessing for the 'principle of humanity' ?

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The Geneva Conventions in 21st century warfare : how the Conventions should treat civilians' direct participation in hostilities : introduction : targeting in an asymmetrical world

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A global battlefield ? : drones and the geographical scope of armed conflict

Noam Lubell and Nathan Derejko. In: Journal of international criminal justice Vol. 11, no. 1, March 2013, p. 65-88
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Methods and means of naval warfare in non-international armed conflicts

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The status of opposition fighters in a non-international armed conflict

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Traditions of belligerent recognition : the Libyan intervention in historical and theoretical context

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Twenty-first-century challenges : the use of military forces to combat criminal threats

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Will-o'-the-wisp ? : the search for law in non-international armed conflicts

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III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Clearing some of the fog of war over combating terrorists on the frontiers of international law : targeted killing and international humanitarian law

Brian Sang. In: African yearbook on international humanitarian law 2011, p. 1-46

Des combattants, non des bandits : le statut des rebelles en droit islamique

Sadia Tabassum. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/1, p. 105-126
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Command responsibility in irregular groups

Sandesh Sivakumaran. In: Journal of international criminal justice Vol. 10, no. 5, December 2012, p. 1129-1150
Full text only from ICRC headquarters: <http://jicj.oxfordjournals.org/content/10/5/1129.full.pdf>

Direct participation in hostilities as a war crime : America's failed efforts to change the law of war

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<http://scholar.valpo.edu/vulr/vol46/iss3/2>

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by Olivier Bangerter. - Geneva : Small Arms Survey, 2012. - 143 p. - Cote 345.29/183
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Toward a limited consensus on the loss of civilian immunity in non-international armed conflict : making progress through practice

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Traditions of belligerent recognition : the Libyan intervention in historical and theoretical context

Sam Foster Halabi. In: American university international law review Vol. 27, no. 2, 2012, p. 321-389. - Cote 345.2/905 (Br.)

IV. Multinational forces

Multinational peace operations forces involved in armed conflict : who are the parties ?

Ola Engdahl. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 233-271. - In: Searching for a "principle of humanity" in international humanitarian law. - Cote 345.2/906

Security detention in UN peace operations

Peter Vedel Kessing. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 272-303 - In: Searching for a "principle of humanity" in international humanitarian law. - Cote 345.2/906

United Nations peacekeeping and the meaning of armed conflict

Mary Ellen O'Connell and Ania Kritvus. - Leiden ; Boston : M. Nijhoff, 2012. - p. 109-118. - In: What is war ? : an investigation in the wake of 9/11. - Cote 345.2/916

V. Private actors

Privatizing war : private military and security companies under public international law

Lindsey Cameron and Vincent Chetail. - Cambridge [etc.] : Cambridge University Press, 2013. - 720 p. - Cote 345.29/184

La sous-traitance d'activités militaires par l'État au secteur privé : une entorse aux règles du droit international humanitaire ?

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VI. Protection of persons

Child soldiers as victims of "genocidal forcible transfer" : Darfur and Syria as case examples

Sonja Grover. In: The international journal of human rights Vol. 17, no. 3, 2013, p. 411-427. - Cote 362.7/374 (Br.)

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36112.pdf>

Children and armed conflict

by Chaditsa Poulatova. - Newcastle upon Tyne : Cambridge scholars, 2013. - 279 p. - Cote 362.7/373

Climate change and international humanitarian law

Karen Hulme. - Cheltenham ; Northampton : E. Elgar, 2012. - p. 190-218. - In: International law in the era of climate change. - Cote 363.7/133 (Br.)

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36053.pdf>

Does IHL prohibit the forced displacement of civilians during war ?

David James Cantor. In: International journal of refugee law Vol. 24, no. 4, December 2012, p. 840-846. - Cote 325.3/480 (Br.)

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36094.pdf>

Earthquakes and wars : the logic of international reparations

Gabriella Blum and Natalie J. Lockwood. - [Harvard] : Harvard Law School, 2012. - 33 p. - Cote 345.2/914

Forcible displacement throughout the ages : towards an international convention for the prevention and punishment of the crime of forcible displacement

by Grant Dawson and Sonia Farber. - Leiden ; Boston : M. Nijhoff, 2012. - 197 p. - Cote 325.3/478

Legal and policy imperatives for the prevention, protection, assistance and durable solution to the plight of internally displaced persons (IDPs) in Nigeria

Muhammed Tawfiq Ladan. In: African yearbook on international humanitarian law 2011, p. 79-106

The principle of humanity in the development of "special protection" for children in armed conflict : 60 years beyond the Geneva Conventions and 20 years beyond the Convention on the Rights of the Child

Katarina Mansson. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 149-180. - In: Searching for a "principle of humanity" in international humanitarian law. - Cote 345.2/906

La protection de la population civile au cours des conflits armés

by Djamchid Momtaz. - Athens ; Thessaloniki : Sakkoulas Publications, 2010. - p. 301-352. - In: International challenges to peace and security in the new millennium : 2002 international law session. - Cote 345.25/269 (Br.)

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The protection of civilians in armed conflict : four concepts

Hugh Breakey. - Paris [etc.] : United Nations University Press, 2012. - p. 40-61. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Cote 361/592

The protection of journalists in armed conflicts : how can they be better safeguarded ?

Isabel Dusterhöft. In: Merkourios Vol. 29, issue 76, 2013, p. 4-22. - Cote 070/94 (Br.)

<http://www.merkourios.org/index.php/mj/article/viewFile/55/60>

The relationship between international humanitarian law and responsibility to protect : from Solferino to Srebrenica

Helen Durham and Phoebe Wynn-Pope. - Paris [etc.] : United Nations University Press, 2012. - p. 175-196. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Cote 361/592

The responsibility to protect and the protection of civilians in armed conflict : overlap and contrast

Hugh Breakey. - Paris [etc.] : United Nations University Press, 2012. - p. 62-81. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Cote 361/592

Les soins de santé en danger : les responsabilités des personnels de santé à l'oeuvre dans des conflits armés et d'autres situations d'urgence

CICR. - Genève : CICR, décembre 2012. - 111 p. - Cote 356/243 (FRE)

<http://www.cid.icrc.org/library/docs/DOC/icrc-001-4104.pdf>

What have women got to do with peace ? : a gender analysis of the laws of war and peacemaking

Benedetta Faedi Duramy. - Oxford ; Portland : Hart, 2011. - p. 209-232. - In: Law and outsiders : norms, processes and "othering" in the twenty-first century. - Cote 362.8/186 (Br.)

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/35965.pdf>

VII. Protection of objects

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

The Arctic environment and international humanitarian law

Ashley Barnes and Christopher Waters. In: Canadian yearbook of international law Vol. 49, 2011, p. 213-241. - Cote 363.7/131 (Br.)

Climate change and international humanitarian law

Karen Hulme. - Cheltenham ; Northampton : E. Elgar, 2012. - p. 190-218. - In: International law in the era of climate change. - Cote 363.7/133 (Br.)

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XIII. International Human Rights Law

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

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XVI. Countries/Regions

Afghanistan

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Le conflit armé en Afghanistan a-t-il un impact sur les règles relatives à la conduite des hostilités ?

Robin Geiss et Michael Siegrist. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/1, p. 63-104
<http://www.cid.icrc.org/library/docs/DOC/irrc-881-geiss-siegrist-fre.pdf>

Multinational peace operations forces involved in armed conflict : who are the parties ?

Ola Engdahl. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 233-271. - In: Searching for a "principle of humanity" in international humanitarian law. - Cote 345.2/906

Africa

The Convention on Cluster Munitions (2008) : implications for international humanitarian law (IHL) in Africa

Kesolofetse Lefenya. In: African yearbook on international humanitarian law 2011, p. 107-128

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An Australian perspective on non-international armed conflict : Afghanistan and East Timor

Rob McLaughlin. In: International law studies Vol. 88, 2012, p. 293-319
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Bosnia and Herzegovina

The Old Bridge of Mostar and increasing respect for cultural property in armed conflict

by Jadranka Petrovic. - Leiden ; Boston : M. Nijhoff, 2013. - 354 p. - Cote 363.8/74

Canada

Prosecuting genocide, crimes against humanity and war crimes in canadian courts

Fannie Lafontaine. - Toronto : Carswell, 2012. - 405 p. - Cote 344/590

Commonwealth

International Criminal Court (ICC) statute and implementation of the Geneva Conventions

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Promoting international humanitarian law and international disaster response laws, rules and principles within the Commonwealth

Leonard Blazeby and David Fisher. In: Commonwealth Law Bulletin Vol. 36, no. 4, December 2010, p. 709-715. - Cote 345.24/38 (Br.)

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France

La "judiciarisation" des opérations militaires : Thémis et Athéna

Christophe Barthélemy. - Paris : L'Harmattan, 2012. - 269 p. - Cote 355/981

Israel - Palestine

Abiding by and enforcing international humanitarian law in asymmetric warfare : the case of "operation cast lead"

Andreas Zimmermann. In: Polish yearbook of international law Vol. 31, 2011, p. 47-78. - Cote 345.25/267 (Br.)

Beyond occupation : apartheid, colonialism and international law in the Occupied Palestinian Territories

ed. by Virginia Tilley. - London : Pluto press, 2012. - 322 p. - Cote 345.28/97

The Gaza freedom flotilla : politicizing maritime law in asymmetric contexts

Corri Zoli. - Oxford [etc.] : Oxford University Press, 2013. - p. 178-194. - In: Counterinsurgency law : new directions in asymmetric warfare. - Cote 345.2/915

Is there a court for Gaza ? : a test bench for international justice

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par Françoise Dreyfus. - Bruxelles : Bruylant, 2011. - p. 219-229. - In: Mélanges François Julien-Laferrière. - Cote 345.22/212 (Br.)

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The law of belligerent occupation in the Supreme Court of Israel

David Kretzmer. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 207-236

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What have women got to do with peace ? : a gender analysis of the laws of war and peacemaking

Benedetta Faedi Duramy. - Oxford ; Portland : Hart, 2011. - p. 209-232. - In: Law and outsiders : norms, processes and "othering" in the twenty-first century. - Cote 362.8/186 (Br.)

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Libya

International enforcement in non-international armed conflict : searching for synergy among legal regimes in the case of Libya

John Cerone. In: International law studies Vol. 88, 2012, p. 369-395

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Sam Foster Halabi. In: American university international law review Vol. 27, no. 2, 2012, p. 321-389. - Cote 345.2/905 (Br.)

Nigeria

Legal and policy imperatives for the prevention, protection, assistance and durable solution to the plight of internally displaced persons (IDPs) in Nigeria

Muhammed Tawfiq Ladan. In: African yearbook on international humanitarian law 2011, p. 79-106

Norway

Implementation in practice : 60 years of dissemination and other implementation efforts from a Norwegian perspective

Arne Willy Dahl and Camilla Guldahl Cooper. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 319-345. - In: Searching for a "principle of humanity" in international humanitarian law. - Cote 345.2/906

The occupied and the occupier : the case of Norway

Sigrid Redse Johansen. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 206-232. - In: Searching for a "principle of humanity" in international humanitarian law. - Cote 345.2/906

Rwanda

The meaning of armed conflict : non-international armed conflict

Christine Gray. - Leiden ; Boston : M. Nijhoff, 2012. - p. 69-95. - In: What is war ? : an investigation in the wake of 9/11. - Cote 345.2/916

Sierra Leone

What have women got to do with peace ? : a gender analysis of the laws of war and peacemaking

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Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/35965.pdf>

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Challenges of ensuring accountability for international humanitarian law and human rights law violations in post-war situations : a critical appraisal with reference to Sri Lanka

Wasantha Seneviratne. In: Sri Lanka journal of international law Vol. 22, no. 2, 2010, p. 165-189. - Cote 345.26/226 (Br.)

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Child soldiers as victims of "genocidal forcible transfer" : Darfur and Syria as case examples

Sonja Grover. In: The international journal of human rights Vol. 17, no. 3, 2013, p. 411-427. - Cote 362.7/374 (Br.)

Syria

Child soldiers as victims of "genocidal forcible transfer" : Darfur and Syria as case examples

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<http://www.usnwc.edu/getattachment/493524e4-1853-4947-bd8a-84179a76fb91/An-Australian-Perspective-on-NonInternational-Arme.aspx>

United States

Defining non-international armed conflict : a historically difficult task

David E. Graham. In: International law studies Vol. 88, 2012, p. 43-55
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Detention of terrorists in the twenty-first century

William K. Lietzau. In: International law studies Vol. 88, 2012, p. 323-345
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Direct participation in hostilities as a war crime : America's failed efforts to change the law of war

David J.R. Frakt. In: Valparaiso University law review Vol. 46, no. 3, 2012, p. 729-764. - Cote 345.29/181 (Br.)
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Lincoln's Code : the laws of war in American history

John Fabian Witt. - New York [etc.] : Free Press, 2012. - 498 p. - Cote 94/491

Teaching international law, a threat to national security ? : the US Supreme Court's Holder v. humanitarian law project decision

Daniel Wisehart. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 4/2012, p. 210-212

Toward a limited consensus on the loss of civilian immunity in non-international armed conflict : making progress through practice

Stephen Pomper. In: International law studies Vol. 88, 2012, p. 181-193
<http://www.usnwc.edu/getattachment/9586e422-5eaf-4b88-bb72-e31eefe314f3/Toward-a-Limited-Consensus-on-the-Loss-of-Civilian.aspx>

Yugoslavia

The concept of "armed conflict" in international armed conflict

Masahiko Asada. - Leiden ; Boston : M. Nijhoff, 2012. - p. 51-67. - In: What is war ? : an investigation in the wake of 9/11. - Cote 345.2/916

The meaning of armed conflict : non-international armed conflict

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Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/35965.pdf>

All with Abstracts

Abiding by and enforcing international humanitarian law in asymmetric warfare : the case of "operation cast lead"

Andreas Zimmermann. In: Polish yearbook of international law Vol. 31, 2011, p. 47-78. - Cote 345.25/267 (Br.)

"Operation cast lead" undertaken by the Israeli armed forces against Hamas forces in the Gaza strip in 2008/2009 raises a significant number of international legal issues. These issues relate to the nature of the military conflict, the legal status of the Gaza strip under international humanitarian law, but also, more generally, to the applicability and suitability of international humanitarian law in such kinds of asymmetric warfare taking place in densely populated areas. Besides, the article also questions at least some of the findings made by the "Goldstone report" tasked by the United Nations Human Rights Council to investigate alleged violations of international humanitarian law during armed conflict.

L'applicabilité temporelle du droit international humanitaire

Julia Grignon. - Genève : Faculté de droit de l'Université de Genève, 2012. - 495 p. - Cote 345.2/909

L'ambition de ce travail au regard de l'applicabilité ratione temporis des instruments de droit international humanitaire est de dégager, sinon des critères, à tout le moins des indicateurs permettant d'encadrer juridiquement, avec toute la souplesse requise, le temps dans lequel le droit international humanitaire produit des effets, quelle que soit la situation dans laquelle il a vocation à s'appliquer. Pour ce faire et puisque la question à laquelle on entend répondre est celle de savoir à partir de quand et jusqu'à quand le droit international humanitaire s'applique aux situations de conflits armés, il conviendra d'étudier d'abord les éléments permettant de conclure au début de son applicabilité, puis ceux déterminant la fin de son applicabilité.

The application of international humanitarian law and international human rights law in situation of prolonged occupation : only a matter of time ?

Vaios Koutroulis. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 165-205

The article deals with the effect of the time factor in the application of international humanitarian law (IHL) and international human rights law (IHRL) in 'prolonged belligerent occupations'. It demonstrates that IHL applies in its entirety to such situations and that the adjustments necessary can be made through the interpretation of existing IHL norms. As for IHRL, the protracted character of an occupation reinforces the importance of respecting and applying human rights. It cannot, however, be invoked in order to influence the interpretation of the notion of a state of emergency leading to the adoption of derogations from IHRL rules.

<http://www.cid.icrc.org/library/docs/DOC/irrc-885-koutroulis.pdf>

Application of international humanitarian law in contemporary armed conflicts : is it "simply" a question of facts ?

Maria-Daniella Marouda. - In: Armed conflicts and international humanitarian law : 150 years after Solferino : acquis and prospects. - Athènes : Ant. N. Sakkoulas ; Bruxelles : E. Bruylant, 2009. - p. 201-244. - Cote 345.2/813

This article addresses the challenges posed to IHL by the nature of current conflicts and considers how such challenges affect the application of IHL. For example, the new category of transnational wars need to be covered by IHL, but this form of conflict lacks the clear-cut dimensions that are required for the law to be easily applied. The author thus questions whether IHL remains relevant. She considers whether IHL's continued relevance requires a broadening of its scope to adapt to other changes such as the increasing importance of non-state actors in international armed conflict and the rising prevalence of non-international armed conflicts. In order to address this point, the author examines multiple contemporary cases where the hostilities do not fit into the traditional typology of IHL, including the Israel/Palestine conflict and the crisis in Darfur. The author questions whether the theory underpinning IHL can be re-worked to address these new areas of concern without compromising IHL's traditional goals. The author concludes that what is needed is an interpretation of IHL that is less state-centric. Moreover, she argues that this retooling should be done in a way that is "consistent, convincing and respectful" of the roots and traditions of IHL. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

The Arctic environment and international humanitarian law

Ashley Barnes and Christopher Waters. In: Canadian yearbook of international law Vol. 49, 2011, p. 213-241. - Cote 363.7/131 (Br.)

While the law of the sea is rightly viewed as the most suitable international legal regime for the settlement of disputes in the Arctic, the militarisation of this region in an era of climate change is also observable. Yet curiously, scant attention has been paid to the constraints International Humanitarian Law (IHL) would impose on armed conflict in the Arctic, as unlikely as such conflict may be. These include the specific prohibition on causing widespread, long-term and severe environmental damage under Additional Protocol I to the Geneva Conventions; as well as the related obligation to have "due regard" for the natural environment, as referred to in, for example, the San Remo Manual on Naval Warfare. Similarly, environmental factors must play into military assessments of targets based on the general principles of IHL related to targeting. The authors explore how these various legal obligations could be applied in the Arctic context. Referring to the scientific literature, they suggest that, due to the particularly vulnerable nature of this regional environment, many traditional war-fighting techniques would lead to damage that is not legally permissible. This conclusion should provide an additional incentive to policy makers to demilitarize the Arctic and to solve peacefully any disputes which may arise over sovereignty, navigation or resources.

Armed conflict, internal disturbances or something else ? : the lower threshold of non-international armed conflict

Tom Haeck. - Saarbrücken : LAP Lambert Academic Publishing, 2012. - 117 p. - Cote 345.27/124

In this academic but very readable work, the author tries to shed light on the contemporary meaning and legal definition of the concept of "non-international armed conflict", which was originally created to cover situations of "classical" civil wars. In this book, Haeck tries to answer the question when a certain situation can be described as being a "non-international armed conflict". He analyses the answers that have been given by the international case-law and doctrine and creates a working-definition that can be used to determine if a situation can be classified as a non-international armed conflict. Subsequently, he sheds light on the possible reasons one might have to classify something as an armed conflict - or not. To clarify this theoretical and abstract exercise, the author applies his theoretical framework to three contemporary case-studies.

An Australian perspective on non-international armed conflict : Afghanistan and East Timor

Rob McLaughlin. In: International law studies Vol. 88, 2012, p. 293-319

The aim in this short study is to ask how, from a legal perspective, Australia has approached the issue of "NIAC." It seeks to achieve this by examining four discrete issues: conflict characterization, characterization of the opposing force, rules of engagement (ROE) and treatment of captured/detained personnel. The methodology adopted is to examine each of these issues through a broadly comparative prism - a comparison between a high-level non-NIAC operation (East Timor, 1999-2001) and a NIAC operation (Afghanistan, ongoing since 2005). The purpose behind adopting this methodology is to provide a framework for establishing an alternative against which NIAC practice can be compared. It also provides a means of illustrating the degree to which this practice is either consistent or different across the lower threshold of NIAC, that is. between less-than NIAC "peace" operations (law enforcement operations or stabilization/mitigation operations). and NIAC operations themselves. The reasons Australia has taken different characterization paths, and the consequences of these choices, are central to understanding any "Australian approach to NIAC." The underlying premise is that any legal understanding of NIAC and of the threshold between NIAC and less than NIAC is beholden to non-legal influences to a much greater degree than in dear law enforcement or dear IAC contexts.

<http://www.usnwc.edu/getattachment/493524e4-1853-4947-bd8a-84179a76fb91/An-Australian-Perspective-on-NonInternational-Arme.aspx>

Beyond occupation : apartheid, colonialism and international law in the Occupied Palestinian Territories

ed. by Virginia Tilley. - London : Pluto press, 2012. - 322 p. - Cote 345.28/97

Contient les chapitres suivants: 1. Sources of law and key concept 2. The legal context in the Occupied Palestinian Territories 3. Review of Israeli practices relative to the prohibition of colonialism 4. Review of Israeli practices relative to the prohibition of apartheid.

"Bloodless weapons" ? : the need to conduct legal reviews of certain capabilities and the implications of defining them as "weapons"

Duncan Blake, Joseph S. Imburgia. In: Air Force Law Review Vol. 66, 2010, p. 157-203. - Cote 341.67/724 (Br.)

The legal review of new weapons, means or methods of warfare is considered a customary obligation of all states, yet the decision to conduct such a review of some advanced technology capabilities, such as those associated with the space and cyberspace domains, remains a difficult one. This article is divided into four main parts. The first section examines the phrase "weapons, means or methods of warfare" ; what effects, designs or intents must be considered ; and the contexts for review. Of note, this paper will not discuss how that review should occur or the appropriate format. The paper will next consider space and cyberspace capabilities in general, along with a representative sample of specific capabilities. These contexts will form an important foundation for the third part of the paper, which will discuss the thresholds for jus ad bellum concepts like "threat or use of force" and "armed attack", as well as the other implications of characterizing a capability as a "weapon, means or method of warfare" in armed conflict. The paper will also consider whether space and cyberspace capabilities may be characterized as "weapons, means or methods of warfare" in some circumstances but not others.

Challenges of ensuring accountability for international humanitarian law and human rights law violations in post-war situations : a critical appraisal with reference to Sri Lanka

Wasantha Seneviratne. In: Sri Lanka journal of international law Vol. 22, no. 2, 2010, p. 165-189. - Cote 345.26/226 (Br.)

This article examines the need to reach a compromise between prosecuting alleged offenders and fostering reconciliation to Sri Lanka in the aftermath of the armed conflict by balancing the methods of retrospective justice and restorative justice. It evaluates the observations and comments made by the international community in this regard and the responses of the Government of Sri Lanka in the light of relevant provisions of international humanitarian law and human rights law instruments and customary international law principles.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/35756.pdf>

Child soldiers as victims of "genocidal forcible transfer" : Darfur and Syria as case examples

Sonja Grover. In: The international journal of human rights Vol. 17, no. 3, 2013, p. 411-427. - Cote 362.7/374 (Br.)

This article presents an original legal analysis of children appropriated as child soldiers by state or non-state armed groups or forces perpetrating mass atrocities and/or genocide as the victims of the 'genocidal forcible transfer of children'. A distinction is drawn between the genocidal forcible transfer of children as child soldiers versus the recruitment and use of child soldiers more generally by armed groups or forces not engaged in mass atrocities and/or genocide. The markers of genocidal forcible transfer of children as child soldiers are discussed with reference to the armed conflict in Darfur and Syria. Also discussed are certain of the barriers to effectively addressing this issue as well as key steps necessary for the prevention of the 'genocidal forcible transfer of children' as child soldiers during armed conflict and for ending impunity for this grave international crime.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36112.pdf>

Children and armed conflict

by Chaditsa Poulatova. - Newcastle upon Tyne : Cambridge scholars, 2013. - 279 p. - Cote 362.7/373

At a time of escalating global conflict and instability, this book examines international efforts to protect children from the effects of war and armed conflict through the Convention on the Rights of the Child (CRC), especially article 38, and the Convention's Optional Protocol on the involvement of Children in Armed Conflict (OPAC). The principal focus of the book is on the existing UN established machinery for implementing the CRC and OPAC – the Committee on the Rights of the Child and its processes for monitoring states' compliance with the CRC and OPAC. The book exposes major shortcoming in the monitoring process and concludes by examining possible ways in which compliance with the CRC and OPAC, and with human rights conventions in general, might be secured more effectively.

Civil war, custom and Cassese

Jean-Marie Henckaerts. In: Journal of international criminal justice Vol. 10, no. 5, December 2012, p. 1095-1111

Civil war is still the prevalent form of armed conflict today. Nevertheless, its regulation in treaty law remains rudimentary compared to the regulation of international armed conflict. However, under the influence of practice, a number of customary rules regulating this type of conflict have evolved. Antonio Cassese played a prominent role in the identification of these customary rules, first as a scholar and then as a judge at the International Criminal Tribunal for the former Yugoslavia and President of the Independent Commission of Inquiry on Darfur. A study published by the International Committee of the Red Cross in 2005 took this identification process further and provides a comprehensive assessment of these rules. It indicates that the divide between the regulation of internal and international armed conflicts has been narrowed down considerably.

Full text only from ICRC headquarters: <http://jicj.oxfordjournals.org/content/10/5/1095.full.pdf>

Clearing some of the fog of war over combating terrorists on the frontiers of international law : targeted killing and international humanitarian law

Brian Sang. In: African yearbook on international humanitarian law 2011, p. 1-46

This paper begins by clarifying the legal definition of "targeted killing". Subsequently, an examination is made of the applicable international legal framework governing targeted killings in international law, with specific reference being made to the international law of armed conflict. This leads to a review of the requisite "armed conflict" requirement, which is essential to the applicability of international humanitarian law. Thereafter, a discussion on the question regarding the categorisation of military operations against transnational terrorist groups (whether international, non-international or otherwise) follows. Afterwards, the jus in bello principles will be analysed, in turn, in the light of the notion of targeted killing. The paper then turns briefly to additional targeting obligations arising from human rights law before concluding.

Climate change and international humanitarian law

Karen Hulme. - In: International law in the era of climate change. - Cheltenham ; Northampton : E. Elgar, 2012. - p. 190-218. - Cote 363.7/133 (Br.)

This chapter begins with an exploration of how climate change might impact on the waging of armed conflict, including potential effects on both the military fighting it and the civilians caught up in it. The following sections look for gaps in the current laws applicable during armed conflict, including aspects of targeting, civilian protections and weather manipulation. The final section looks to the future and the question of how any necessary changes in this area of law might be brought about.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36053.pdf>

The Club-K anti-ship missile system : a case study in perfidy and its repression

by Robert Clarke. In: Human rights brief Vol. 20, issue 1, Fall 2012, p. 22-28

Secreted inside the ubiquitous intermodal shipping container and placed on the deck of a cargo carrier, the missile system reveals itself only when the container roof opens, and the missile rises from concealment and launches. As footage of test launches and displays at defense exhibitions illustrate, the Club-K's ease of transport and concealment offers obvious advantages for a belligerent in an asymmetric conflict by allowing a readily available launch platform to approach high-value warships unmolested and attack. The weapon's chameleon-like nature and advertised method of employment indicate that it is likely to be used to prepare and execute an attack while feigning civilian status. Such tactics are an example of perfidy, deliberately inducing trust on the part of an adversary in order to injure, kill, or capture them. However, although it may undermine the distinction between warships and civilian vessels, the fact that the Club-K is likely to be used perfidiously would not necessarily inculpate the weapon's manufacturers. In particular, the structural discreteness of the armed forces would make it difficult to prove a mental nexus between the commanders who determine the method of attack and the arms makers who provide the means. Thus, while the protection of civilians requires an institutional separation between them and combatants, such a divide may prevent the repression of civilian activity which imperils that same protection.

<http://www.wcl.american.edu/hrbrief/20/1clarke.pdf>

Des combattants, non des bandits : le statut des rebelles en droit islamique

Sadia Tabassum. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/1, p. 105-126

Le droit islamique relatif à la rébellion constitue un ensemble de normes suffisamment complet pour réglementer la conduite des hostilités dans les conflits armés non internationaux. Ce droit peut être pris pour modèle en vue d'améliorer le régime juridique international aujourd'hui en vigueur. Il offre en effet un critère objectif permettant de déterminer l'existence d'un conflit armé. De plus, il reconnaît le statut de combattant aux rebelles, ainsi que les corollaires nécessaires de l'autorité exercée de facto par les rebelles sur le territoire qu'ils contrôlent. Il contribue ainsi à réduire les souffrances des civils et des citoyens ordinaires pendant les guerres de rébellion et les guerres civiles. Parallèlement, le droit islamique affirme que le territoire se trouvant de facto sous le contrôle des rebelles fait de jure partie de l'État parent : il répond ainsi aux appréhensions de ceux qui craignent que l'octroi du statut de combattant aux rebelles vienne conférer une légitimité à leur lutte.

<http://www.cid.icrc.org/library/docs/DOC/irrc-881-tabassum-fre.pdf>

Command responsibility in irregular groups

Sandesh Sivakumaran. In: Journal of international criminal justice Vol. 10, no. 5, December 2012, p. 1129-1150

This article considers the operation of command responsibility in irregular groups. It analyses the element of command responsibility relating to the obligation of a superior to take the necessary and reasonable measures to prevent crimes of subordinates and punish the perpetrators of those crimes. It focuses on two particular aspects. First, it explores the notion of a duty to take certain measures, in particular asking where that duty emanates from in the context of irregular groups. Second, it ascertains the content of the duty to take measures, considering measures that can be taken by superiors of irregular groups in view of the structure, operation, and workings of irregular groups.

Full text only from ICRC headquarters: <http://jicj.oxfordjournals.org/content/10/5/1129.full.pdf>

The concept of "armed conflict" in international armed conflict

Masahiko Asada. - In: What is war ? : an investigation in the wake of 9/11. - Leiden ; Boston : M. Nijhoff, 2012. - p. 51-67. - Cote 345.2/916

This chapter tries to identify possible parameters with which to determine when the rules applicable in international armed conflicts apply, particularly whether they apply when only low intensity fighting has occurred. It will examine legal texts, State practice and judicial decisions, as well as legal doctrines.

Concluding remarks on non-international armed conflicts

Yoram Dinstein. In: International law studies Vol. 88, 2012, p. 399-421

This closing address focuses on six main themes: the proper definition of a NIAC; the thresholds of armed conflicts; the application of the jus in bello in a NIAC; the various types of recognition relevant to a NIAC; intervention by a foreign country in a NIAC; and the interaction between NIACs and IACs.

[https://www.usnwc.edu/Research---Gaming/International-Law/New-International-Law-Studies-\(Blue-Book\)-Series/International-Law-Blue-Book-Articles.aspx?Volume=88](https://www.usnwc.edu/Research---Gaming/International-Law/New-International-Law-Studies-(Blue-Book)-Series/International-Law-Blue-Book-Articles.aspx?Volume=88)

The conduct of hostilities in international humanitarian law

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - 2 vol. (534, 570 p.) - Cote 345.25/162

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

Le conflit armé en Afghanistan a-t-il un impact sur les règles relatives à la conduite des hostilités ?

Robin Geiss et Michael Siegrist. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/1, p. 63-104

Le conflit armé en cours en Afghanistan depuis 2001 continue de soulever de multiples questions en rapport avec les règles humanitaires relatives à la conduite des hostilités. Comme cela se passe souvent dans les conflits dits asymétriques, les limites géographiques et temporelles du champ de bataille sont de

plus en plus floues en Afghanistan, où l'on voit s'estomper toujours davantage la distinction entre civils et combattants. Le niveau de risque est donc élevé tant pour la population civile que pour les soldats opérant en Afghanistan. Le présent article vise à établir si – et, en ce cas, dans quelle mesure – le conflit armé en Afghanistan a une incidence sur l'application et l'interprétation des principes qui se trouvent au cœur des normes juridiques réglementant la conduite des hostilités, à savoir les principes de distinction, de proportionnalité et de précaution.

<http://www.cid.icrc.org/library/docs/DOC/irrc-881-geiss-siegrist-fre.pdf>

The contribution of the 1907 Hague Convention IV and its regulations to the penalization of breaches of the laws of war

Geert-Jan Alexander Knoops. In: Israel Defense Forces law review Vol. 3, 2007-2008, p. 168-186. - Cote 344/594 (Br.)

Reviewing the legacy of the 1907 Hague Convention IV and its regulations, this article considers the position of these rules, as well as those of the Geneva Conventions of 1949, within contemporary international criminal law. In particular, the article intends to answer the question of whether, and to what extent, these Conventions were imbued with a penalization mechanism for enforcement of their provisions, either domestically or internationally. While examining this issue, the article assesses the prosecutorial and defense implications of this analysis, specifically for the military.

The Convention on Cluster Munitions (2008) : implications for international humanitarian law (IHL) in Africa

Kesolofetse Lefenya. In: African yearbook on international humanitarian law 2011, p. 107-128

The article starts by defining the concept of "cluster munitions and the humanitarian consequences of using them, especially in Africa. It then goes on reviewing how the international humanitarian law treaties dispositions and principles apply to cluster munitions. Describing the Oslo process which culminated in the adoption of the Convention on Cluster Munitions in Dublin on 30 May 2008, the author focuses on how the African continent has been actively involved at every stage of the process and the various regional arrangements on cluster munitions the continent has reached to supplement the international arrangements that have unfolded thus far.

Counterinsurgency law : new directions in asymmetric warfare

William Banks. - Oxford [etc.] : Oxford University Press, 2013. - 287 p. - Cote 345.2/915

Exploration from an interdisciplinary legal and policy perspective the multiple challenges that counterinsurgency operations pose today to the rule of law - international, humanitarian, human rights, criminal, and domestic. Addressing the considerable challenges for the future of armed conflict, each contributor in the book explores the premise that in COIN operations, international humanitarian law, human rights law, international law more generally, and domestic national security laws do not provide adequate legal and policy coverage and guidance for multiple reasons, many of which are explored in this book. A second shared premise is that these problems are not only challenges for the law in post-9/11 security environments-but matters of policy with implications for the international community and for global security more generally.

Crimes de guerre des sociétés : poursuivre le pillage des ressources naturelles

James G. Stewart ; Open Society Justice Initiative. - New York : Open Society Foundations, 2011. - 172 p. - Cote 344/516 (FRE)

Pillage signifie le vol pendant la guerre. Bien que l'interdiction du pillage date de l'Empire romain, piller est un crime des guerres modernes qui peut être poursuivi devant des juridictions pénales internationales et nationales. A la suite de la Seconde Guerre Mondiale, plusieurs hommes d'affaires furent reconnus coupables du pillage commercial de ressources naturelles. Et bien que le pillage ait été poursuivi au cours des dernières années, les acteurs commerciaux sont rarement tenus pour responsables de leur rôle dans l'alimentation du conflit. Ranimer la responsabilité des sociétés en cas de pillage de ressources naturelles ne consiste pas seulement à protéger les droits de propriété durant un conflit, mais peut aussi jouer un rôle important dans la prévention d'atrocités. Depuis la fin de la guerre froide, l'exploitation illicite de ressources naturelles est devenue un moyen répandu de financer le conflit. Dans des pays, comprenant l'Angola, la République démocratique du Congo, le Timor oriental, l'Irak, le Libéria, le Myanmar et la Sierra Leone, le commerce illicite de ressources naturelles dans les zones de conflits n'a pas seulement créé des incitations à la violence, il a aussi fourni aux parties belligérantes les finances nécessaires pour soutenir les hostilités les plus brutales de l'histoire récente.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2171829

Cyber warfare : applying the principle of distinction in an interconnected space

Robin Geiss and Henning Lahmann. In: Israel law review Vol. 45, no. 3, 2012, p. 381-399.
- Cote 345.25/135 (Br.)

While the rules of the *jus in bello* are generally operative in cyberspace, it appears to be problematic to apply the fundamental principle of distinction because of the systemic interconnection of military and civilian infrastructure in the cyber realm. In this regard, the application of the accepted legal definition of military objectives will make various components of the civilian cyber infrastructure a legitimate military objective. In order to avoid serious repercussions for the civilian population that might follow from this inherent interconnectedness, different concepts are analysed that could provide potential solutions for a clearer separation of legitimate military targets and protected civilian installations and networks. The approaches discussed range from the exemption of central cyber infrastructure components that serve important civilian functions, to the creation of 'digital safe havens' and possible precautionary obligations regarding the segregation of military and civilian networks. As a solution, the authors propose a dynamic interpretation of the wording 'damage to civilian objects' within the principle of proportionality of Article 51(5)(b) of Additional Protocol I, an interpretation that would comprise the degradation of the functionality of systems that serve important civilian functions.

Defining non-international armed conflict : a historically difficult task

David E. Graham. In: International law studies Vol. 88, 2012, p. 43-55

This contribution establishes the framework for a broad and comprehensive discussion of NIAC by assessing, historically, the way in which the international community has attempted to define this particular form of conflict, to include the issue of whether there now exist various types of NIAC. It then addresses the U.S. practice with respect to the manner in which the United States has determined whether to designate certain hostilities as NIACs.

<http://www.usnwc.edu/getattachment/328c0d58-b252-40d0-bda6-a179934d761f/Defining-Non-International-Armed-Conflict--A-Histo.aspx>

Detention and occupation in international humanitarian law

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - 539 p. - Cote 345.28/96

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

Detention in non-international armed conflicts

Knut Dörmann. In: International law studies Vol. 88, 2012, p. 347-366

The article focuses on two main issues. It first addresses the applicable legal framework to detention in NIAC and, in particular, the interplay between international humanitarian law (IHL) and international human rights law; and second, present the International Committee of the Red Cross's (ICRC's) analysis of the need to strengthen the law in light of humanitarian problems observed in its field operations and the related normative weaknesses. The concluding remarks will then summarize how the international community has responded to the ICRC's analysis. Before addressing these two issues, some observations on the sources of law applicable in NIAC should be made to set the frame.

<http://www.usnwc.edu/getattachment/9816f8f2-de95-42c7-ad70-1e4c3a09d75a/Detention-in-Non-International-Armed-Conflicts.aspx>

Detention of terrorists in the twenty-first century

William K. Lietzau. In: International law studies Vol. 88, 2012, p. 323-345

The United States used to not think about what law applied in NIAC, particularly with regard to those detained during the conflict. In fact, the United States' last experience with long-term detention was of prisoners of war captured during World War II. The law then was clear—enemy prisoners of war could be held until the end of the conflict. But twenty-first-century conflicts have changed. Now the war is not with another State, but with a non-State actor, al Qaeda. In the early period of this new type of war, the United States was accused of holding detainees indefinitely without providing a means of review to determine whether there was sufficient basis for the detention. Today, newly captured individuals are submitted to a Detainee Review Board. The Board, comprised of three field-grade military officers, reviews each individual's detention for both legality and necessity of continued detention. The detainee receives expert assistance from a U.S. officer who is authorized access to all reasonably available information pertaining to that detainee. This review is repeated periodically after the initial hearing, which must take place

within sixty days of arrival at the internment facility. Now some argue that the pendulum has swung too far, and that the United States is releasing detainees (some of whom have returned to the fight) too quickly. What is unarguable is that an indefinite detention without some form of process in these new wars will not be stomachable.

<http://www.usnwc.edu/getattachment/4d1efce7-6a92-4a22-ac57-8799aa3276c5/Detention-of-Terrorists-in-the-Twenty-first-Century.aspx>

Determining the beginning and end of an occupation under international humanitarian law

Tristan Ferraro. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 133-163

International humanitarian law (IHL) does not provide a precise definition of the notion of occupation, nor does it propose clear-cut standards for determining when an occupation starts and when it ends. This article analyses in detail the notion of occupation under IHL and its constitutive elements, and sets out a legal test for identifying when a situation qualifies as an occupation for the purposes of IHL. It concludes by suggesting an adjustment of the legal test to the specific characteristics of occupation by proxy and occupation by multinational forces.

<http://www.cid.icrc.org/library/docs/DOC/irrc-885-ferraro.pdf>

The development and principles of international humanitarian law

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - 62 p. - Cote 345.2/904

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

Differences in the law of weaponry when applied to non-international armed conflicts

William H. Boothby. In: International law studies Vol. 88, 2012, p. 197-210

It is sensible to pose the question whether there is a meaningful distinction between the weapons law that applies during international armed conflict and that which governs hostilities during a non-international armed conflict. After all, philosophically, it could be argued that there is no rational basis for such a distinction. Why, the rhetorical question would go, should it be legitimate to expose individuals during a civil war to injuring mechanisms that have been found to be unacceptable for employment during wars between States? If this is seen as a plea that the law applicable in these classes of conflict be merged, that is not the purpose of this article. Rather, the intent is to consider whether there are in fact such differences in the law as it is, to identify the precise extent of any such divergences and to ask whether they make sense.

<http://www.usnwc.edu/getattachment/457a8f07-a90d-44bd-9ed7-60c1385dad0b/Differences-in-the-Law-of-Weaponry-When-Applied-to.aspx>

A different sense of humanity : occupation on Francis Lieber's code

Rotem Giladi. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 81-116

Accounts narrating the history of the modern law of occupation display ambivalence to the 1863 Lieber Code. At times, they mark the humanity of its provisions on occupied territories; at others, they find its concept of humanity in occupation limited compared to subsequent developments. A broader reading of the Code against Lieber's published works, teaching, and correspondence reveals a unique – and disconcerting – sense of humanity pervading through its provisions. Lieber's different sense of humanity, not directed at individuals, throws light on the history of the law governing occupied territories today and paves the way for critical reflections on its conceptual bases.

<http://www.cid.icrc.org/library/docs/DOC/irrc-885-giladi.pdf>

The dilemmas of protecting civilians in occupied territory : the precursory example of World War I

Annette Becker. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 117-132

Advances in the law of Geneva and the law of The Hague did not remain a dead letter during the World War I, but this was essentially with regard to the wounded and prisoners of war. Those categories of persons were better protected than civilians by treaty-based humanitarian law, which was still in its infancy. Although the ideal of humanity was realized on a large scale thanks to the efforts of the International Committee of the Red Cross (ICRC) and myriad other charitable, denominational, or non-denominational organizations, none of the belligerents hesitated to infringe and violate the law whenever they could. The various occupied populations, on the Western and Eastern fronts and in the Balkans, served as their guinea pigs and were their perfect victims.

<http://www.cid.icrc.org/library/docs/DOC/irrc-885-becker.pdf>

Direct participation in hostilities as a war crime : America's failed efforts to change the law of war

David J.R. Frakt. In: Valparaiso University law review Vol. 46, no. 3, 2012, p. 729-764. - Cote 345.29/181 (Br.)

This article addresses, in part, the question of what to do with civilian direct participants in hostilities (DPH) who are not killed by opposing armed forces, but are captured. Specifically, the article address the potential criminal prosecution of detained DPHs. The ability to detain provides an opportunity to the detaining power to prosecute the DPH "for an offence arising out of the hostilities." But is it a crime for someone who does not meet the Geneva Convention requirements for POW status to directly participate in hostilities? In other words, are all DPHs criminals? If so, are they war criminals, or, rather, common domestic criminals? The prevailing international view is that direct participation in hostilities in and of itself is not a war crime. Contrary to the prevailing international view, the United States has attempted, through the military commissions of Guantánamo, to treat direct participation in hostilities as a war crime. This article examines that effort, including the prosecutions of David Hicks and Omar Khadr, and the failed prosecution of Mohammed Jawad for alleged direct participation in hostilities. The article concludes that America's effort to convert all fighting against the U.S. by unprivileged enemy belligerents into a war crime has been a failure.

<http://scholar.valpo.edu/vulr/vol46/iss3/2>

Does IHL prohibit the forced displacement of civilians during war ?

David James Cantor. In: International journal of refugee law Vol. 24, no. 4, December 2012, p. 840-846. - Cote 325.3/480 (Br.)

This opinion addresses the question of whether international humanitarian law (IHL) prohibits the forced displacement of civilians during armed conflict. It argues that the relevant rules of IHL do not take as their starting point a general prohibition of displacement. Rather, the author contends that the laws of war depart from an understanding of this phenomenon as a sad and often inevitable fact of war. As a result, only certain forms of forced displacement are directly regulated by this body of rules. The opinion is written in a concise format with the non-specialist humanitarian practitioner in mind.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36094.pdf>

Droit international humanitaire

Joseph Owona. - Paris : L'Harmattan, 2012. - 210 p. - Cote 345.2/908

Cette étude du droit international humanitaire pose trois types de problèmes, celui des sources, règles et principes, celui des institutions d'application et du contrôle d'application de ce droit et celui de la répression de ses violations, tout en ajoutant des observations sur l'Afrique et le droit international humanitaire.

Earthquakes and wars : the logic of international reparations

Gabriella Blum and Natalie J. Lockwood. - [Harvard] : Harvard Law School, 2012. - 33 p. - Cote 345.2/914

International law requires states to compensate victims of war crimes, but not of incidental damage that is lawful under the laws of war. Recently, scholars and advocacy groups have called to expand the duty to repair so as to cover all wartime harm. We inquire into the possible justifications for expanding this duty and test them against a hypothetical expansion of the duty to compensate victims of natural disasters.

The effort is ultimately to inquire whether there is something unique about war – as distinct from all other disasters – which demands special consideration.

Entre sécurité et protection de l'individu : la Convention sur les armes à sous-munitions comme dernier exemple d'un nouveau type de traité - et un modèle pour l'avenir ?

Daniel Rietiker. In: Journal du droit international No 4, 139^e année, octobre-novembre-décembre 2012, p. 1295-1322. - Cote 341.67/725 (Br.)

D'inspiration profondément humanitaire et interdisant toute une catégorie d'armes, la Convention sur les armes à sous-munitions suit largement la logique de la Convention d'Ottawa et, dans une moindre mesure, les Conventions sur les armes biologiques et chimiques. L'occasion de l'entrée en vigueur récent de ce traité mérite l'analyse des traits communs de ces instruments. L'exercice consiste en la comparaison de leurs éléments caractéristiques (obligations générales, intérêts poursuivis, contrôle du respect des obligations, droit de retrait) avec les solutions retenues aux instruments relevant du droit humanitaire et de la protection des droits de l'homme. Il s'avère que ces traités ne se laissent pas facilement classer dans l'une ou l'autre catégorie établie en droit international. Il sera enfin aussi mentionné que l'acquis humanitaire que constitue ce traité est déjà menacé.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/35968.pdf>

Explaining the principle of mala in se

Morten Dige. In: Journal of military ethics Vol. 11, issue 4, December 2012, p. 318-332

Certain methods and weapons are traditionally considered to be "mala in se", i.e. evil in themselves. Examples are mass rape campaigns and land mines. This article examines different interpretations of the principle that belligerents ought not to use such means. Some interpretations are reductionist in the sense that they see the principle as an instance of other principles regulating conduct in war (jus in bello), namely the principles of discrimination and proportionality. The author suggests a horizontal and a vertical dimension of the latter. Resort to violence can then be unjustified if (1) the persons are not liable to be attacked because they bear no (or not enough) responsibility for the relevant threat, (2) the amount of harm is disproportionate compared to what can be achieved by the resort to violent force, or (3) the kind of harm is disproportionate by making individual persons suffer in ways that no one should have to endure. The author defends the vertical dimension of proportionality as a key to understanding the principle of mala in se and consider whether it leads to an absolute prohibition against such means.

Full text only from ICRC headquarters: <http://www.tandfonline.com/doi/full/10.1080/15027570.2012.758404>

The first amendment to the Rome Statute : bringing article 8 of the Rome Statute in line with international humanitarian law

Eve La Haye and Anne-Marie La Rosa. - In: From Rome to Kampala : the first 2 amendments to the Rome Statute. - Bruxelles : Bruylant, 2012. - p. 67-146. - Cote 344/591

The first amendment adopted in Kampala expands the International Criminal Court's existing jurisdiction over war crimes in international armed conflict to non-international armed conflict, by including the following crimes: employing poison or poisoned weapons; employing asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices; and employing bullets which expand or flatten easily in the human body. The adoption of such an amendment initiated a movement towards a greater protection for civilians as well as combatants in non-international armed conflict. The amendment also brought article 8 of the Rome Statute more in line with the content of customary international humanitarian law. This chapter briefly recalls the history behind the weapons amendment. The authors examine the conditions to be fulfilled for a crime to be included in Article 8 of the Statute and study the elements of the crimes covered by the weapons amendment in order to determine more clearly their scope of application. Finally the entry into force of the amendment is tackled.

Forcible displacement throughout the ages : towards an international convention for the prevention and punishment of the crime of forcible displacement

by Grant Dawson and Sonia Farber. - Leiden ; Boston : M. Nijhoff, 2012. - 197 p. - Cote 325.3/478

Forcible displacement transforms cultures and can even lead to their destruction. Beginning with the origins of the human species millions of years ago and ending up in our present day era, this book analyses examples of forcible displacement in order to examine the crime in its many different forms. The legal contours of the crime receive a comprehensive treatment, including the experience of the

international tribunals and decades of scholarly work in the area. The authors suggest that a paradigm shift is needed in order to bring development-induced displacement into the mainstream discourse on forcible displacement. The book concludes with a proposal for a new convention for the prevention and punishment of the crime of forcible displacement.

From Rome to Kampala : the first 2 amendments to the Rome Statute

ed. by Gérard Dive, Benjamin Goes, Damien Vandermeersch. - Bruxelles : Bruylant, 2012. - 174 p. - Cote 344/591

Contient notamment : Definition, elements and entry into force of the crime of aggression / E. David. - The understandings regarding the amendments to the Rome Statute of the International Criminal Court on the crime of aggression / C. Ryngaert. - Exercise of jurisdiction and entry into force of the amendments on the crime of aggression. S. Barriga - History of negotiations : from Rome to Kampala and the future ; the procedure for drafting the amendments, where we stand today / P. Rietjens. - The First Amendment to the Rome Statute : bringing article 8 of the Rome Statute in line with international humanitarian law / E. La Haye and A.-M. La Rosa.

The Gaza freedom flotilla : politicizing maritime law in asymmetric contexts

Corri Zoli. - In: Counterinsurgency law : new directions in asymmetric warfare. - Oxford [etc.] : Oxford University Press, 2013. - p. 178-194. - Cote 345.2/915

This chapter explores the Gaza flotilla incident in 2010 to illustrate the ways in which asymmetric warfare challenges traditional international humanitarian law. It explores the politicization of the incident, and shows how the legal and policy shortcomings of postmodern warfare are especially attenuated when conflicts take place in a maritime environment.

The Geneva Conventions and the dichotomy between international and non-international armed conflict : curse or blessing for the 'principle of humanity' ?

Cecilie Hellestveit. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 86-123. - Cote 345.2/906

In recent years, the dichotomy introduced in the Geneva Conventions between international armed conflicts (IAC) and non-international armed conflicts (NIAC) has come under increased strain due to its perceived impediment to the principle of humanity. This chapter briefly depicts the historical background of the dichotomy, and presents the rationale and efforts in recent years to move towards a unified body of humanitarian law. It then lists seven arguments that support upholding the binary structure of IAC and NIAC, making the case that despite prima facie inadequacies of the rules regulating NIAC, the dichotomy enables and sustains important protective features. It concludes that sixty years on, the dichotomy between international and non-international armed conflicts should be seen as a blessing to be upheld rather than a curse to be dismantled, if the aim is maximising protection and furthering the principle of humanity for persons caught up in armed conflicts.

The Geneva Conventions in 21st century warfare : how the Conventions should treat civilians' direct participation in hostilities : introduction : targeting in an asymmetrical world

D. A. Jeremy Telman. In: Valparaiso University law review Vol. 46, no. 3, 2012, p. 697-728. - Cote 345.25/268 (Br.)

Part I of this Introduction lays out the framework created by the Geneva Conventions ("the Conventions") and their Additional Protocols ("AP I" and "AP II" respectively) within which targeting decisions are made. It also addresses the recent efforts by the International Committee of the Red Cross ("ICRC") to provide guidelines for state actors confronting non-combatants who directly participate in hostilities. In Part II, this Introduction summarizes two contributions to this Issue that highlight ways in which the United States has primarily relied on domestic mechanisms in attempting to devise strategies that can address the problems that have arisen in asymmetrical conflicts—such as those in Iraq and Afghanistan. Finally, in Part III, the Introduction summarizes three contributions to this Issue that propose ways forward through transnational mechanisms that will enable states to address the challenges of the new warfare without violating LOAC principles or compromising national security.

<http://scholar.valpo.edu/vulr/vol46/iss3/1/>

A global battlefield ? : drones and the geographical scope of armed conflict

Noam Lubell and Nathan Derejko. In: Journal of international criminal justice Vol. 11, no. 1, March 2013, p. 65-88

The ever-increasing use of drones in the pursuit of the 'war on terror' has given rise to concerns over the emergence of a global battlefield whereby the entire planet is subject to the application of the laws of armed conflict. These concerns stem from drone strikes frequently occurring outside the 'active battlefields' of Afghanistan and into the border regions of Pakistan and expanding further afield into Yemen and Somalia. In response to emerging practice, a significant body of academic literature has emerged on the legal classification of transnational armed violence. Less attention however, has been given to the geographical scope of the concept of armed conflict itself. This article provides a detailed analysis of the geographical scope of non-international armed conflict under international humanitarian law, and in the context of drone strikes. In particular, it focuses upon the legal implications of the geographical disjunction between the location of drone strikes and primary battlefields from the point-of-view of the application of international humanitarian law.

Full text only from ICRC headquarters : <http://jicj.oxfordjournals.org/content/11/1/65.full.pdf>

Hague Conventions : a compilation of documents

L. de Beer (ed.). - Nijmegen : Wolf Legal Publishers, 2011. - 614 p. - Cote 345.25/156

Two international peace conferences were held just before and after the turn of the 20th century at The Hague, the Netherlands. These conferences shaped modern International (Criminal) Law. The Conventions turned out to be the basic principles of the laws of war into a written document agreed to by a Convention of delegates from all over the world. In this publication the most important documents related to this conference are being presented. The book starts with an introduction explaining the importance of the Conferences and conventions on the development of modern International Law. After the full text documents of both conventions there is a list added of signatory and contracting powers of the Hague Conventions and the Martens Clause is introduced. The Martens clause is highly instructive to the debate and tensions surrounding the laws of war. The results and influence of both Hague conferences on International Law will be described in the second part of this book. The establishing of the Permanent Court of Arbitration is named and both pacific settlements are added. Moreover, the impact of the Geneva Conventions will be discussed and full text documents of those are appended. As a conclusion the dispute regulation, the reduction of armament and Humanitarian (war) Law is reviewed. The development of Humanitarian War Law, started as a core area of (the first) Hague Conference, turned out to be a pillar of today's International Law.

Hugo Grotius on the law of war and peace

Hugo Grotius ; ed. and annotated by Stephen C. Neff. - Cambridge [etc.] : Cambridge University Press, 2012. - 508 p. - Cote 345.2/910

Student edition of this significant work that has influenced international law, international relations, natural law and political thought in general. It contains succinct but thorough introduction outlines the nature of Grotius's contributions to natural law, political theory and international law, extensive annotations explain technical points of law and arguments that are otherwise difficult to follow. Extraneous material were removed from original text.

The Human Rights Council and the convergence of humanitarian law and human rights law

Daphné Richemond-Barak. - In: Counterinsurgency law : new directions in asymmetric warfare. - Oxford [etc.] : Oxford University Press, 2013. - p. 3-23. - Cote 345.2/915

This chapter's contribution lies in its analysis of the Human Rights Council's involvement in International Humanitarian Law (IHL) as a manifestation of the convergence of human rights law and IHL. It begins by examining the circumstances of the Council's creation and its recent forays into international humanitarian law (IHL). It then compares the treatment of IHL by the Council and by other human rights bodies. Unlike the Council, other human rights bodies facing similar challenges have not encroached so directly on the territory of IHL: they have generally been reluctant to address humanitarian law head-on, and have felt compelled to justify any interpretation of application of IHL. While being mindful of the growing convergence of IHL and human rights law, it is argued that the Council has neither the mandate nor the expertise necessary to act as enforcer of IHL. Finally, the consequences of the blurring of the IHL/Human rights divide by the Council is envisaged.

IHL 2.0 : is there a role for social media in monitoring and enforcement ?

Anne Herzberg and Gerald M. Steinberg. In: Israel law review Vol. 45, no. 3, 2012, p. 493-536. - Cote 345.22/211 (Br.)

This article will examine the opportunities and limitations of using social media in the execution of legal duties relating to the monitoring and enforcement of IHL. The article will first provide an overview of social media. Next it will briefly summarise the normative framework of IHL as well as the legal duties of the primary actors and promoters of IHL (for example, states, the UN, NGOs, the International Committee of the Red Cross and courts) to monitor and enforce these rules. The article will then address specific legal obligations relating to IHL monitoring and enforcement and the impact of social media on meeting these requirements. Throughout, the article will use case studies from several conflict zones, including Sudan, Uganda, Mexico, Somalia, Gaza and Libya. The article will conclude that social media can play a critical role in promoting IHL education, and monitoring for potential violations. The benefits of this technology, however, are less clear for carrying out legal obligations related to the enforcement of IHL, such as fact-finding, arrest and prosecution. It is essential, therefore, that clear guidelines for utilising this quickly evolving technology, particularly in official fact-finding and judicial frameworks, be established.

The ILA Use of Force Committee's final report on the definition of armed conflict in international law (August 2010)

International Law Association Committee on the Use of Force. - In: What is war ? : an investigation in the wake of 9/11. - Leiden ; Boston : M. Nijhoff, 2012. - p. 319-367. - Cote 345.2/916

In May 2005, the Executive Committee of the International Law Association approved a mandate for the Use of Force Committee to produce a report on the meaning of war or armed conflict in international law. The report was motivated by the United States' position following the attacks of 11 September 2001 that it was involved in a "global war on terror". The U.S. position was contrary to a trend by states attempting to avoid acknowledging involvement in wars or armed conflicts. The Committee was asked to study the evidence in international law and report on how international law defines and distinguishes situations of war and peace. Given that important aspects of international law turn on whether a situation is properly defined as armed conflict, providing a clear understanding of what counts as armed conflict would support the proper functioning of the law in general. Most fundamentally, it would support the proper application of human rights law.

The implementation and enforcement of international humanitarian law

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - 505 p. - Cote 345.22/209

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

Implementation in practice : 60 years of dissemination and other implementation efforts from a Norwegian perspective

Arne Willy Dahl and Camilla Guldahl Cooper. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 319-345. - Cote 345.2/906

This chapter gives an overview of the Norwegian efforts to implement and disseminate the law of armed conflict, from the ratification of the four 1949 Geneva Conventions to the present. The authors' particular focus is to describe the extent to which references are made, or not made, to a "principle of humanity" or to humanitarian considerations in national implementation and dissemination efforts. They demonstrate how the increased participation of Norway in armed conflicts (such as through the contribution of troops to the ISAF operation in Afghanistan) has led to increased attention to international humanitarian law in general, and also to an increased focus on the humanitarian aspects of these rules. It is suggested that the Norwegian perspective on international humanitarian law is influenced by the lack of armed conflicts involving Norwegian territory and interests.

Initial report of the ILA Use of Force Committee on the definition of armed conflict (2008)

prepared by the International law Association Committee on the Use of Force. - In: What is war ? : an investigation in the wake of 9/11. - Leiden ; Boston : M. Nijhoff, 2012. - p. 275-305. - Cote 345.2/916

In May 2005, the Executive Committee of the International Law Association approved a mandate for the Use of Force Committee to produce a report on the meaning of war or armed conflict in international law. The report was motivated by the United States' position following the attacks of 11 September 2001 that it was involved in a "global war on terror". The U.S. position was contrary to a trend by states attempting to avoid acknowledging involvement in wars or armed conflicts. The Committee was asked to study the evidence in international law and report on how international law defines and distinguishes situations of war and peace. Given that important aspects of international law turn on whether a situation is properly defined as armed conflict, providing a clear understanding of what counts as armed conflict would support the proper functioning of the law in general. Most fundamentally, it would support the proper application of human rights law.

Internal control : codes of conduct within insurgent armed groups

by Olivier Bangerter. - Geneva : Small Arms Survey, 2012. - 143 p. - Cote 345.29/183

Whatever their objectives, armed groups in various contexts tend to rely on similar mechanisms to control their fighters. These include a recruitment process that aims to provide the group with the appropriate human resources in quantity and quality; a socialization process for new recruits (such as through oaths and initiation rituals); and the elaboration of internal regulations—such as codes of conduct—and their dissemination among the rank and file. The past few years have witnessed a surge of interest in codes of conduct, but confusion persists regarding their role and significance. The term 'code of conduct' is a loose concept that lacks a universal definition. Across armed groups, codes of conduct share few commonalities. Some are oral, some are written; some are short and some are very long; some are entitled 'code of conduct' while others have entirely different names, such as 'creed' or 'rules and points for attention'. What they do have in common is that they constitute part of the internal regulations of armed groups, defining the type of behaviour that the leadership expects from all of its members. This Occasional Paper sets out to define more methodically what constitutes a code of conduct, and how it compares to other types of internal regulations known to have been used by armed groups. Using case study analysis, it then reflects on the conditions under which codes of conduct are effective in controlling the behaviour of fighters. Finally, the report examines whether codes of conduct are a potential tool for enhancing respect for humanitarian norms, with a particular focus on weapons control.

<http://www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP31-internal-control.pdf>

International Criminal Court (ICC) statute and implementation of the Geneva Conventions

Commonwealth Secretariat. In: Commonwealth law bulletin Vol. 37, no. 4, December 2011, p. 681-781. - Cote 344/125

Armed conflicts are usually accompanied by the worst atrocities known to mankind, namely, crimes against humanity, war crimes and genocide. The pressing need to bring perpetrators of these atrocities to account has seen the establishment of tribunals culminating in the permanent International Criminal Court (ICC) established by the Rome Statute. Commonwealth governments have consistently pronounced support for the ICC and what it represents, which is consistent with Commonwealth values. The support of the Commonwealth is translated into a variety of technical assistance provided to member countries to ratify and implement the Rome Statute and strengthen national criminal justice systems to enable the domestic prosecution of ICC crimes. A model law was developed in 2004 and revised in 2011 in view of contemporary legal developments. This article presents the revised model law with commentary and among other things notes the impact on international humanitarian law.

International enforcement in non-international armed conflict : searching for synergy among legal regimes in the case of Libya

John Cerone. In: International law studies Vol. 88, 2012, p. 369-395

This article provides an overview of applicable rules of international law through different phases of the situation in Libya and sketches out various modes of enforcement action employed by international organizations to respond to the crisis, analyzing several of the controversial legal issues that arise in that context.

The article concludes with an analysis of the unresolved legal issues implicated by the evolving situation in Libya and by the international community's responses to it.

<http://www.usnwc.edu/getattachment/b88e67c8-37a8-48f8-9a4f-b1e4cbf0679f/International-Enforcement-in-NonInternational-Arme.aspx>

International humanitarian law : an anthology

Louis Doswald-Beck, Azizur Rahman Chowdhury, Jahid Hossain Bhuiyan. - Haryana (India) : Lexis Nexis Butterworths Wadhwa Nagpur, 2009. - 352 p. - Cote 345.2/907

This book is designed to give the reader an authoritative understanding over international humanitarian law. The opening chapter traces the historical development of international humanitarian law from ancient times to our time, and examines its nature, scope and purpose. The book shows the relationship between international humanitarian law and public international law, international criminal law and international human rights law. Topics examined include the concept of combatant; means and methods of warfare; protection of civilians, wounded, sick and shipwrecked, prisoners of war; protection of the natural environment in time of armed conflict; individual criminal responsibility for violation of international humanitarian law; non-international armed conflicts; rebel's status in non-international armed conflict; humanitarian intervention; implementation of international humanitarian law; and effective enforcement of international humanitarian law.

International law, politics and inhumane weapons : the effectiveness of global landmine regimes

Alan Bryden. - Abingdon ; New York : Routledge, 2013. - 173 p. - Cote 341.67/722

Two treaties have emerged under International humanitarian law (IHL) in response to the humanitarian scourge of landmines. However, despite a considerable body of related literature, clear understandings have not been established on the effectiveness of these international legal frameworks in meeting the challenges that prompted their creation. This book seeks to address this lacuna. An analytical framework grounded in regime theory helps move beyond the limitations in the current literature through a structured focus on principles, norms, rules, procedures, actors and issue areas. On the one hand, this clarifies how political considerations determine opportunities and constraints in designing and implementing IHL regimes. On the other, it enables us to explore how and why 'ideal' policy prescriptions are threatened when faced with complex challenges in post-conflict contexts.

An introduction to origin, evolution and development of international humanitarian law

Vaibhav Goel. - In: International humanitarian law : an anthology. - Haryana (India) : Lexis Nexis Butterworths Wadhwa Nagpur, 2009. - p. 1-22. - Cote 345.2/907

This chapter attempts to trace out the origin and development of international humanitarian law from ancient to modern times and examine its nature, scope and purpose, while outlining the profiling of the constantly expanding contours.

Is jus in bello in crisis ?

Jens David Ohlin. In: Journal of international criminal justice Vol. 11, no. 1, March 2013, p. 27-45

It is a truism that new technologies are remaking the tactical and legal landscape of armed conflict. While such statements are undoubtedly true, it is important to separate genuine trends from scholarly exaggeration. The following essay, an introduction to the Drone Wars symposium of the Journal, catalogues today's most pressing disputes regarding international humanitarian law (IHL) and their consequences for criminal responsibility. These include: (i) the triggering and classification of armed conflicts with non-state actors; (ii) the relative scope of IHL and international human rights law in asymmetrical conflicts; (iii) the targeting of suspected terrorists under concept- or status-based classifications that render them subject to lawful attack; (iv) the legal fate of Central Intelligence Agency (CIA) drone operators who participate in armed conflict without the orthodox privilege of combatancy conferred on members of the armed forces; and (v) the principle of proportionality as it applies to drone strikes that produce collateral damage. What emerges from this survey is a portrait of drones as a technological development that has radically escalated pre-existing tensions in IHL that first emerged with manned aerial attacks and artillery. As conflicts with non-state actors proliferate and intensify, these pre-existing tensions will continue to transform, via state practice, the reciprocity usually associated with orthodox IHL.

Full text only from ICRC headquarters: <http://jicj.oxfordjournals.org/content/11/1/27.full.pdf>

Is the law of occupation applicable to the invasion phase ?

Marten Zwanenburg, Michael Bothe and Marco Sassòli. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 29-50

It is not always easy to determine when an invasion has become an occupation and whether or not the law of occupation could already be applied during the invasion phase. In this regard, two main positions are usually put forward in legal literature. Generally it is held that the provisions of occupation law only apply once the elements underpinning the definition set out in Article 42 of the 1907 Hague Regulations are met. However, the so-called 'Pictet theory', as formulated by Jean S. Pictet in the ICRC's Commentary on the Geneva Conventions, proposes that no intermediate phase between invasion and occupation exists and that certain provisions of occupation law already apply during an invasion. Three experts in the field of occupation law have agreed to participate in this debate and to defend three approaches. Marten Zwanenburg maintains that for determining when an invasion turns into an occupation the only test is the one set out in Article 42 of the 1907 Hague Regulations, and therefore rejects the 'Pictet theory'. Michael Bothe, while also rejecting the 'Pictet theory', argues that a possible intermediate situation between invasion and occupation, if there is any at all, would be very short and that, once an invader has gained control over a part of an invaded territory, the law of occupation applies. Finally, Marco Sassòli defends the 'Pictet theory' and argues that, in order to avoid legal vacuums, there is no distinction between an invasion phase and an occupation phase for applying the rules of the Fourth Geneva Convention.

<http://www.cid.icrc.org/library/docs/DOC/irrc-885-zwanenburg-bothe-sassoli.pdf>

Is there a court for Gaza ? : a test bench for international justice

Chantal Meloni, Gianni Tognoni ed.. - The Hague : T. M. C. Asser Press, 2012. - 594 p. - Cote 344/588

The Israeli attack on Gaza of 27 December 2008 - 18 January 2009 (so-called 'Operation Cast Lead') started a critical debate at the international level on the alleged war crimes and possible crimes against humanity committed during and before the operation. The book collects contributions by professors and scholars in the field of international law and puts together official documents that were produced at the international level before and as follow-up to the "Goldstone report". Part 1 brings together selected materials from the international conference "Is there a court for Gaza?", that was held on 22 May 2009 in Rome. Part 2 brings together contributions on the UN fact finding mission on the Gaza conflict and follow-up at the international and domestic level. Part 3 is dedicated to the legal debate on the admissibility of the Palestinian declaration pursuant to article 12(3) of the Rome Statute of the International Criminal Court. Finally part 4 deals with non-judicial responses, more specifically the Russell Tribunal on Palestine.

La "judiciarisation" des opérations militaires : Thémis et Athéna

Christophe Barthélemy. - Paris : L'Harmattan, 2012. - 269 p. - Cote 355/981

La guerre, domaine de l'extraordinaire, est régie par des règles qui lui sont propres. Mais le droit des conflits armés est de plus en plus happé par le droit commun. Le droit des conflits armés prohibe l'excès dans l'emploi de la force armée contre l'ennemi, l'emploi de la force armée contre les non-combattants et les biens culturels, enfin les atteintes à la vie, à l'intégrité corporelle et à la dignité des non combattants. Inversement, le droit interne n'autorise l'emploi de la force qu'en légitime défense ou sous l'empire de l'état de nécessité, même pour les forces de l'ordre. Le problème principal, pour les forces européennes, et avant tout françaises et britanniques, réside ainsi dans l'application de leur droit pénal national et dans la judiciarisation des opérations militaires hors du territoire national qui s'ensuit. Cette problématique devient d'autant plus prégnante que les opérations dans lesquelles elles sont engagées depuis une vingtaine d'années relèvent de plus en plus de la "guerre au milieu des populations". L'analyse porte plus précisément sur les opérations combinant les quatre caractéristiques suivantes: 1. L'emploi de la force armée et l'exercice de la contrainte (y compris à l'égard des prisonniers détenus); 2. L'exécution hors du territoire national, c'est-à-dire en territoire étranger ou en haute mer: en temps de paix, dans les territoires et eaux nationales, le militaire est un citoyen ordinaire et le maintien de l'ordre relève de formations spécialisées et de modes d'action spécifiques, sous l'autorité des préfets et des hauts commissaires; 3. La conduite d'opérations militaires, soit par les objectifs poursuivis, soit par les forces et les modes d'action employés; 4. L'absence d'état de guerre, au sens du code de justice militaire, qui est construit, en application de la Constitution, autour de la distinction cardinale entre le "temps de paix" et le "temps de guerre".

Juger en temps de guerre

par Françoise Dreyfus. - In: Mélanges François Julien-Laferrière. - Bruxelles : Bruylant, 2011. - p. 219-229. - Cote 345.22/212 (Br.)

Ce chapitre analyse deux décisions de la Cour suprême d'Israël siégeant en tant que Haute cour de justice, ayant eu à se prononcer sur deux requêtes relatives à la situation humanitaire résultant des opérations conduites dans la bande de Gaza. Ces recours introduits le 7 et 9 janvier 2009, demandaient à la Cour de donner des injonctions, d'une part, pour permettre l'évacuation des blessés et faire cesser les attaques dont les ambulances et le personnel médical étaient victimes et, d'autre part, pour mettre fin à la coupure d'électricité empêchant, entre autres, les hôpitaux de fonctionner normalement. Le jugement rendu le 19 janvier et rejetant la requête est intéressant à analyser parce qu'il intervient à chaud, alors que les moyens mis en oeuvre pour "mettre un terme aux attaques à la roquette de l'organisation terroriste hamas contre Israël" ont été particulièrement tristes et considérés comme totalement disproportionnés par l'opinion internationale.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36039.pdf>

The law of armed conflict : an operational approach

Geoffrey S. Corn... [et al.]. - New York : Wolters Kluwer Law & Business, 2012. - 599 p. - Cote 345.22/210

This book covers all aspects of the law of armed conflict, explaining the difference between law and policy in regulation of military operations. It provides a complete operational scenario and introduction to the operational organization of United States armed forces. The focus remains on United States law perspective, balanced with exposure to areas where the interpretation of its allied forces diverge. Jus ad bellum and jus in bello issues are addressed at length. The text includes excerpts from treaties and treaty commentaries, domestic and international cases, Department of Defense directives, service field manuals, and regulations implementing legal obligations.

The law of belligerent occupation in the Supreme Court of Israel

David Kretzmer. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 207-236

Since the 1967 War, in the course of which Israel occupied the West Bank and Gaza, the Supreme Court of Israel has considered thousands of petitions relating to acts of the military and other authorities in those territories (OT). This article reviews the contribution to the law of belligerent occupation of the Court's jurisprudence in these cases. After discussing issues of jurisdiction and the applicable norms, the article reviews the way in which the Court has interpreted military needs, the welfare of the local population, changes in the local law, and use of resources; the attitude of the Court to the long-term nature of the occupation and the existence of Israeli settlements, settlers, and commuters in the OT; the introduction of a three-pronged test of proportionality in assessing military necessity; and hostilities in occupied territories. In the final section, I draw some general conclusions on the Court's contribution to the law of occupation.

<http://www.cid.icrc.org/library/docs/DOC/irrc-885-kretzmer.pdf>

The law of command responsibility

M. P. W. Brouwers (ed.). - Nijmegen : Wolf Legal Publishers, 2012. - 245 p. - Cote 344/593

This book elaborates on issues related to the application and development of the law of command responsibility or superior responsibility. It clarifies the evolution and the nature of the law of command responsibility, followed by the elements of command responsibility, such as the "superior-subordinate relationship", the mental elements: "knew or had to know" and the "failure to prevent and punish". A brief comment is also made on the practical application of the law of command responsibility, such as the phases of investigation and prosecution, trial and the conviction and sentence. It primarily draws from the case-law of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone which have taken the lead in the legal development of the law of command responsibility.

The law of military occupation and the role of de jure and de facto sovereignty

Salvatore Fabio Nicolosi. In: Polish yearbook of international law Vol. 31, 2011, p. 165-187. - Cote 345.28/98 (Br.)

This article aims at defining the specific tenets of the doctrine of "military occupation" and assessing how it deals with the issue of "sovereignty", looking at the problem from a historical perspective. Accordingly, after tracing the evolution of belligerent occupation as a legal institution of international law, attention is turned to the concepts of "effectiveness" and "temporariness" and the interplay between de jure and de facto sovereignty in the light of the "occupation zone model", as it has been applied in the course of international practice. Against this background the article discusses the hypothesis that the codification of the "laws of war" and evolution of the doctrine of military occupation as a temporary and limited regime, whose final aim is to restore legitimate sovereignty over the occupied territory, constitutes a paradigm which could and should apply to various unlawful territorial situations today which have arisen as a result of a misapplication of the law of military occupation.

Legal and policy imperatives for the prevention, protection, assistance and durable solution to the plight of internally displaced persons (IDPs) in Nigeria

Muhammed Tawfiq Ladan. In: African yearbook on international humanitarian law 2011, p. 79-106

This paper sets the following objectives: to provide a situation analysis on the causes and impact of internal displacement on internally displaced persons (IDPs) ; to review the current national response to the plight of IDPs through an examination of the country's existing legal, political and institutional frameworks ; to explore the challenges to the development of a national response to the plight of IDPs ; and to present a number of viable options for alleviating the plight of IDPs in Nigeria.

Lincoln's Code : the laws of war in American history

John Fabian Witt. - New York [etc.] : Free Press, 2012. - 498 p. - Cote 94/491

The hidden story of the laws of war in the first century of the United States—and of the extraordinary code that emerged from it to change the course of world history. Lincoln's Code is the story of an idea in American history: the idea that conduct in war can be regulated by law. For many, the very idea of a law for war has seemed like an oxymoron. But with sweep and vitality, this book unfolds the story of the cast of characters who invented the modern laws of war. Washington, Jefferson, and Franklin championed Enlightenment rules for civilized warfare.

Losing humanity : the case against killer robots

Human Rights Watch, International Human Rights Clinic. - [New York] : Human Rights Watch, 2012. - 49 p. - Cote 341.67/186

This report analyzes whether the technology would comply with international humanitarian law and preserve other checks on the killing of civilians. It finds that fully autonomous weapons would not only be unable to meet legal standards but would also undermine essential non-legal safeguards for civilians. The research and analysis strongly conclude that fully autonomous weapons should be banned and that governments should urgently pursue that end.

http://www.hrw.org/sites/default/files/reports/arms1112ForUpload_0_0.pdf

The main epochs of modern international humanitarian law since 1864 and their related dominant legal constructions

Robert Kolb. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 23-71. - Cote 345.2/906

The author distinguishes four main phases of evolution of international humanitarian law. The early phase (1864-1899) saw states produce, construe and deal with IHL essentially as a matter of municipal military law, codified in the international sphere mainly through model rules, where lacunae and subregulations constituted a salient feature. The next phase (1899-1946) saw the evolution of a system where the predominance of sovereignty tended to prevail over the Martens Clause and to enhance the centrality of military necessities. A further phase (1949-1993) developed in which IHL became centred around the concept of humanitarian protection of the victims of war through the introduction of very detailed and non-derogable rules, thereby restricting the freedom of state action, even in non-international armed conflicts. Finally, in the current phase (1993 to date), IHL is becoming progressively "humanised", i.e. "homo-centred" instead of "state-centred", but also increasingly "supplementary", in the sense that it progressively merges with human rights law considerations while being sanctioned and developed through the growing branch of international criminal law. At the same time, military functions

are themselves becoming increasingly diverse and multifunctional, creating a need for further regulation of branches of international law other than IHL.

The meaning and protection of "cultural objects and places of worship" under the 1977 additional protocols

by Marina Lostal Becerril. In: Netherlands international law review Vol. 59, 2012, p. 455-472. - Cote 363.8/76 (Br.)

This article addresses R. O'Keefe's 1999 publication entitled 'The Meaning of "Cultural Property" under the 1954 Hague Convention'. There the author made two points regarding the protection of 'cultural objects and places of worship' in the 1977 Additional Protocols to the Four Geneva Conventions of 1949 that have been commonly shared by legal scholarship and practice. First, he claimed that despite the divergences between the definitions of cultural property in the 1954 Hague Convention and the 1977 Additional Protocols, the spectrum of cultural property they covered was exactly the same. Secondly, he held that the Additional Protocols awarded a higher regime of protection to cultural property for not being subject to imperative military necessity. This article reconsiders and qualifies these statements. It argues that while both instruments tackle objects which represent each party's national heritage, their scope of application differ since the 1954 Hague Convention cannot cover places of worship that constitute the spiritual heritage of peoples per se. This, we will see, has resulted in its own different consequences in international practice. It is erroneous to maintain tout court that the 1954 Hague Convention offers a weaker regime of protection for cultural property. From a closer look at the relationship between the concepts of 'military objectives' and 'imperative military necessity', a distinct and more nuanced conclusion follows: the 1954 Hague Convention offers stricter guarantees against the likelihood of acts of hostility aimed at cultural property. This article continues a scholarly debate initiated by O'Keefe, casts some clarity on issues that seem to trouble the ICTY, and challenges the mainstream interpretation given to the protection of cultural property under the two Additional Protocols.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36095.pdf>

The meaning of armed conflict : non-international armed conflict

Christine Gray. - In: What is war ? : an investigation in the wake of 9/11. - Leiden ; Boston : M. Nijhoff, 2012. - p. 69-95. - Cote 345.2/916

There is a growing perception that the existence of different regimes - one governing international armed conflict and one governing non-international armed conflict, with late and limited provision made for the latter - is not satisfactory, given the humanitarian concerns common to both. Classification is difficult for tribunals - as the author reviewing the cases of the international tribunals and the US Supreme Court - concludes. In theory it is even more difficult for those actually involved in armed conflict, but in practice there is little or no question of classification affecting behaviour. The experience of the International Criminal Tribunal for ex-Yugoslavia indicates that ex post facto decision-making by criminal tribunals is unlikely to increase the effectiveness of international humanitarian law in conflict.

Methods and means of naval warfare in non-international armed conflicts

Wolff Heintschel von Heinegg. In: International law studies Vol. 88, 2012, p. 211-236

The focus of the present article is on the question of whether, and to what extent, the parties to a non-international armed conflict are entitled to exercise belligerent rights under the law of naval warfare. The first part gives a short overview of nations' practice involving the use of methods and means of naval warfare during non-international armed conflicts. The second part addresses the question of a geographical limitation of the hostilities. The third part deals with the conduct of hostilities and the fourth part discusses measures taken by the parties to the conflict that interfere with the shipping and/or aviation of other States. It will be shown that the law of naval warfare can be applied to non-international armed conflicts, albeit partly modified, between the parties to the conflict. If, however, the parties interfere with the shipping and/or aviation of other States beyond the outer limit of the State party's territorial sea or contiguous zone, an additional legal basis for the measures in question must be found.

<http://www.usnwc.edu/getattachment/f624e872-de40-49f7-b47c-30f339092297/Methods-and-Means-of-Naval-Warfare-in-Non-Internat.aspx>

Military occupation of Eastern Karelia by Finland in 1941-1944 : was international law pushed aside?

Lauri Hannikainen. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 183-205. - Cote 345.2/906

This chapter addresses legal issues relating to the Finnish occupation of Eastern Karelia from 1941 to 1944. He provides a most sombre presentation of the circumstances and considerations that led to the invasion, and of the goals and intentions behind it. In describing Finnish efforts to create an ethnically clean Eastern Karelia and to annex the area, the author shows that the occupying forces' treatment of the civilian population involved inhuman acts contrary both to the 1907 Hague Regulations and the Martens Clause, including humanitarian considerations. He also describes, and criticises, the post-war tendency in Finland to present the occupation in a positive light.

Multinational peace operations forces involved in armed conflict : who are the parties ?

Ola Engdahl. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 233-271. - Cote 345.2/906

This chapter addresses the concept of "parties" to an armed conflict in a context of multinational peace operations. This issue is of considerable importance in both international and non-international armed conflicts, not least with regard to questions of responsibility. Using the ISAF operation in Afghanistan as a case study, the author discusses who the "parties" to such a conflict are. He shows that even among like-minded states, the position on the conflict differs with regard to the qualification of that conflict and to the status of troop contributing nations in the conflict, and consequently, to the applicability of international humanitarian law.

Non-international armed conflict in the twenty-first century

Kenneth Watkin and Andrew J. Norris editors. In: International law studies Vol. 88, 2012, 456 p.

From June 21 to 23, 2011, the U.S. Naval War College hosted a conference examining the evolving law in non-international armed conflict (NIAC) in the twenty-first century. Panelists discussed their views on how the law will develop as the world continues to struggle with the changing nature of the threats to national and international security posed by failed and failing States, insurgencies, and transnational criminal and terrorist organizations. The five panels were: 1. Types of NIACs and applicable law; 2. Legal status of actors in NIAC; 3. Means and methods in NIACs; 4. Recent and ongoing NIACs; 5. Detention in NIAC

<http://www.usnwc.edu/getattachment/21b3c656-4160-4090-af57-42fed7f8c6ae/88.aspx>

Non-international armed conflicts in the Philippines

Raymundo B. Ferrer and Randolph G. Cabangbang. In: International law studies Vol. 88, 2012, p. 263-278

This article discusses NIACs in the Philippines and briefly notes the challenges they pose to the security sector in applying the rules of international humanitarian law (IHL). To provide a basic framework in understanding the nature of conflict in the Philippines, an organizational-level analysis of the NIACs is necessary. It must be noted that on the ground, from the individual and operational levels of analysis, it is not so neatly delineated. Civilians can be recruited to work seasonally for an insurgent group and then quickly and seamlessly resume their civilian lives after operations are completed. Added to this complexity are the changing organizational labels civilians effortlessly assume without much question. Some civilians may work for one insurgent group that has an outstanding peace agreement with the government and then on the same day join a command structure of a known terrorist group. Then they very quickly switch to supporting relatives and kin who belong to a group currently in peace negotiations with the government. The NIACs in the Philippines are largely a homegrown phenomenon with some components heavily influenced by foreign elements. Conflicts rooted in ideologies outside the Philippines have been coopted to provide a philosophical justification to a grassroots-driven insurgency. This article will primarily focus on two major NIACs facing the Philippines: the Maoist group and the Moro group.

<http://www.usnwc.edu/getattachment/a8f30074-6e7d-44b2-8d01-445698986206/Non-International-Armed-Conflicts-in-the-Philippin.aspx>

The occupied and the occupier : the case of Norway

Sigrid Redse Johansen. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 206-232. - Cote 345.2/906

This chapter addresses legal issues relating to the German occupation of Norway from 1940 to 1945, with a particular focus on the occupying state's interference in the internal affairs of the occupied state. Norway had a peculiar arrangement during the war, where the appointed 'national' fascist government supported the occupying force. The author uses the example of Norway to demonstrate how requirements of humanity represent a driving force in the development of international humanitarian law, and that even if an occupying force may try to camouflage its actions by legal terms, considerations of morality or humanity may override the positive law.

Of wolves and sheep : a purposive analysis of perfidy prohibitions in international humanitarian law

Mike Madden. In: Journal of conflict and security law Vol. 17, no. 3, Winter 2012, p. 439-463

A combatant in an armed conflict, like a wolf in sheep's clothing, can seek to gain a tactical or strategic advantage by resort to deception and trickery. International Humanitarian Law (IHL), however, distinguishes between permissible ruses of war and illegal acts of perfidy. How, then, should combatants conduct themselves so as to avoid violating IHL's perfidy prohibitions? This article argues that belligerents should interpret prohibitions against perfidy in a purposive manner (looking to causative links that may exist between perfidy and harm) in order to avoid eroding the protection that IHL affords to designated groups. A close analysis of potentially perfidious land, air and sea combat practices will further reveal that some accepted practices may need to be reassessed and/or ceased if States wish to comply with purposively interpreted perfidy prohibitions.

Full text only from ICRC headquarters: <http://jcsf.oxfordjournals.org/content/17/3/439.full.pdf>

The Old Bridge of Mostar and increasing respect for cultural property in armed conflict

by Jadranka Petrovic. - Leiden ; Boston : M. Nijhoff, 2013. - 354 p. - Cote 363.8/74

Although it is precious to all humanity, including future generations, cultural property is targeted wilfully during armed conflict. In the litany of other war crimes the wilful destruction of cultural property is pushed from centre stage. The deliberate destruction of the Old Bridge of Mostar is emblematic of tragedies wrought on priceless cultural objects internationally. Drawing on the relevant rules of international humanitarian law and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, this book analyses the normative implications of the deliberate targeting and destruction of the Old Bridge and also examines enforcement efforts in order to identify issues relating to international legal protection of cultural property arising from this incident.

"One hell of a killing machine" : signature strikes and international law

Kevin Jon Heller. In: Journal of international criminal justice Vol. 11, no. 1, March 2013, p. 89-119

Although the vast majority of drone attacks conducted by the United States have been signature strikes — strikes that target "groups of men who bear certain signatures, or defining characteristics associated with terrorist activity, but whose identities aren't known"—scholars have paid almost no attention to their legality under international law. This article attempts to fill that lacuna. Section 2 explains why a signature strike must be justified under either international humanitarian law (IHL) or international human rights law (IHRL) even if the strike was a legitimate act of self-defence under Article 51 of the UN Charter. Section 3 explores the legality of signature strikes under IHL. It concludes that although some signature strikes clearly comply with the principle of distinction, others either violate that principle as a matter of law or require evidence concerning the target that the United States is unlikely to possess prior to the attack. Section 4 then provides a similar analysis for IHRL, concluding that most of the signature strikes permitted by IHL — though certainly not all — would violate IHRL's insistence that individuals cannot be arbitrarily deprived of their right to life.

Full text only from ICRC headquarters: <http://jicj.oxfordjournals.org/content/11/1/89.full.pdf>

Perfidy in non-international armed conflicts

Richard B. Jackson. In: International law studies Vol. 88, 2012, p. 237-259

The question to be addressed is whether the war crime of perfidy exists in the law of war pertaining to non-international armed conflicts. Is it appropriate to apply this term outside of international armed conflict, where the rules are defined by treaty and customary international law? The Manual on the Law of Non-International Armed Conflict suggests that at least some of the conduct defined as perfidy when occurring during an international armed conflict is also perfidious when occurring during non-international armed conflicts. What are its parameters and how many of the concepts from international armed conflict are to be incorporated into the law of non-international armed conflicts? The law that applies to the conduct of armed forces in a non-international armed conflict is derived from treaty law and customary international law. However, the customary international law status of perfidy in non-international conflict is difficult to establish under the current U.S. view of customary international law. There is little or no evidence of perfidy violations being prosecuted under international law in non-international armed conflicts, nor is there clear opinio juris by States on this matter.

<http://www.usnwc.edu/getattachment/10400035-2d47-4330-9a68-2974ae160c4e/Perfidy-in-Non-International-Armed-Conflicts.aspx>

Preoccupied with occupation : critical examinations of the historical development of the law of occupation

Yutaka Arai-Takahashi. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 51-80

This article examines the historical evolution of the law of occupation from two angles. First, it analyses scholarly discourse and practice with respect to the general prohibition on the Occupying Power making changes to the laws and administrative structure of the occupied country, as embodied in Article 43 of the 1907 Hague Regulations. Many Occupying Powers and scholars have endeavoured to rationalize exceptions to this 'general principle' governing the entire corpus of the law of occupation. Their studies support the contingent nature of the law of occupation, with its interpretation being dependent on different historical settings and social context. The second part of the article focuses on how the law of occupation that evolved as a European project has rationalized excluding the system of colonialism from the framework of that law. The historical assessment of this body of jus in bello would be incomplete and biased if it did not address the narratives of such structural exclusivity.

<http://www.cid.icrc.org/library/docs/DOC/irrc-885-arai-takahashi.pdf>

Present and future conceptions of the status of government forces in non-international armed conflict

Sean Watts. In: International law studies Vol. 88, 2012, p. 145-180

This chapter focuses on the use of status to determine lawfulness of participation in hostilities, or what is sometimes referred to in International armed conflict as combatant status. In particular, this chapter explores the extent to which the international law of non-international armed conflict (NIAC) regulates the status of persons who participate in hostilities on behalf of the State. This chapter begins by addressing the descriptive question whether the international law of NIAC speaks to government forces' status at all. An analytical section accompanies, offering explanations of the likely influences behind the state of the law. A predictive effort follows, addressed to the question whether the law is settled or instead likely to change. This section identifies a number of pressures conspiring to fill the NIAC status void. An argument in favor of imposing status-like limitations on government forces in NIAC is derived from the law-of-war principle of distinction, and then rebutted by logical, structural and operational arguments. The chapter concludes by addressing a series of considerations related to the chapter's opening generalization about international legal voids as an opportunity to reflect more deliberately on an appropriate interpretive approach to the law of NIAC.

<http://www.usnwc.edu/getattachment/c71eb9c4-6e38-4f4d-8d79-abbe1b9e68af/Present-and-Future-Conceptions-of-the-Status-of-Go.aspx>

Principes de droit des conflits armés

par Eric David. - Bruxelles : Bruylant, 2012. - 1151 p. - Cote 345.2/636 (2012)

Cette cinquième édition s'est vue ajouter: une synthèse du Guide interprétatif du CICR sur la participation directe aux hostilités ; une présentation révisée de la notion de conflit armé ; l'intégration des rapports des commissions d'établissement des faits établis à la suite de certains épisodes récents du conflit israélo-palestinien (guerre de Gaza, « flotilles de la paix », guerre du Liban) ; le traitement de la jurisprudence pertinente de ces quatre dernières années, du Harvard Project adopté en 2009 et des travaux de la CDI, notamment ceux relatifs aux effets des conflits armés sur les traités (2011).

The principle of distinction in virtual war : restraints and precautionary measures under international humanitarian law

Jimena M. Conde Jiminián. In: Tilburg law review Vol. 15, 2010, p. 69-91. - Cote 345.25/157 (Br.)

This piece analyzes the notion of virtual war as it is known today. In the first part, the rise, developments, and characteristics of virtual military technology, or hi-tech warfare, and the present practical applications of such technology and combat strategy, will be briefly described. In the second part, the application of the principle of distinction under current treaty and custom-based IHL applicable to virtual war will be analyzed. In doing so, reference will be made to other principles governing the law of armed conflict (LOAC), as well as the possibility of equating the participation of civilians (e.g. roboticists, engineers, computer scientists) with direct participation in hostilities when these actively aid the military in technological projects. The third paragraph will briefly examine the effects resulting when distinction fails in virtual war, as well as the existing restraints and precautionary measures under applicable IHL. Lastly, the key challenges that hi-tech warfare poses to IHL, ethics, morality, and command responsibility, will be outlined.

The principle of humanity in the development of "special protection" for children in armed conflict : 60 years beyond the Geneva Conventions and 20 years beyond the Convention on the Rights of the Child

Katarina Mansson. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 149-180. - Cote 345.2/906

This chapter explores how the duty of humanity towards one of the most vulnerable groups in society has developed into a legal duty of states and other actors under international law, and how that legal duty has, or has not, ensured their "special protection" in times of armed conflict. The intertwining of the 1949 Geneva Conventions and relevant human rights instruments, the 1989 Convention of the Rights of the Child in particular, is at the heart of the discussion. Particular attention is given to the plight of children involved in armed conflict, by exploring the legal provisions seeking to protect children from the recruitment and use in armed forces and armed groups. It aspires to demonstrate how the codification of the protection of children is particularly illustrative of the convergence between international humanitarian law and human rights law.

A "principle of humanity" or a "principle of human-rightism" ?

Kjetil Mujezinovic Larsen. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 124-148. - Cote 345.2/906

This chapter makes an inquiry into the relationship between international humanitarian law (IHL) and international human rights law with a view to examine the current impact of the latter regime on the conduct of hostilities, and to discuss the relevance of that impact for the existence and/or status of a "principle of humanity" in IHL. This chapter addresses these issues primarily through an analysis of the case law from the European Court of Human Rights in cases concerning alleged human rights violations during armed conflicts.

The principle of proportionality

Yoram Dinstein. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 72-85. - Cote 345.2/906

In the author's opinion, the reference to a principle or principles of humanity is rather loose and partly misleading. He argues that it is important not to equate principles of humanity with other principles integrated in positive IHL and legally binding as such, namely the principles of distinction, unnecessary suffering and proportionality. By contrast, the principles of humanity should be viewed not as legal norms but as extra-legal considerations. IHL must be predicated on a subtle balance - and compromise - between conflicting considerations of humanity, on the one hand, and the demands of military necessity, on the other.

Privatizing war : private military and security companies under public international law

Lindsey Cameron and Vincent Chetail. - Cambridge [etc.] : Cambridge University Press, 2013. - 720 p. - Cote 345.29/184

A growing number of states use private military and security companies (PMSCs) for a variety of tasks, which were traditionally fulfilled by soldiers. This book provides a comprehensive analysis of the law that applies to PMSCs active in situations of armed conflict, focusing on international humanitarian law. It examines the limits in international law on how states may use private actors, taking the debate beyond the question of whether PMSCs are mercenaries. The authors delve into issues such as how PMSCs are bound by humanitarian law, whether their staff are civilians or combatants, and how the use of force in self-defence relates to direct participation in hostilities, a key issue for an industry that operates by exploiting the right to use force in self-defence. Throughout, the authors identify how existing legal obligations, including under state and individual criminal responsibility should play a role in the regulation of the industry.

Promoting international humanitarian law and international disaster response laws, rules and principles within the Commonwealth

Leonard Blazeby and David Fisher. In: Commonwealth Law Bulletin Vol. 36, no. 4, December 2010, p. 709-715. - Cote 345.24/38 (Br.)

The purpose of this paper is to update Commonwealth member states on developments in international humanitarian law (IHL) and in international disaster response laws, rules and principles (IDRL) since the Senior Officials of Commonwealth law Ministries meeting in 2007. It also gives some indication of possible future developments and related Commonwealth actions.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/35966.pdf>

Prosecuting genocide, crimes against humanity and war crimes in canadian courts

Fannie Lafontaine. - Toronto : Carswell, 2012. - 405 p. - Cote 344/590

This book explores the manner in which Canada has implemented some of its obligations under the Rome Statute of the International Criminal Court and how it has dealt with its legal and moral obligations in the fight against impunity for genocide, crimes against humanity and war crimes. It presents the historical context of the adoption of the Crimes against Humanity and War Crimes Act and explains the complex relation that Canada has traditionally entertained with war criminals present on its territory. It offers an assessment of the jurisdictional bases available for the prosecution of international crimes before Canadian courts, including universal jurisdiction and the requirement of the presence of the accused on Canada's territory as a precondition to its exercise. It also explores the role of the Attorney General of Canada in the exercise of jurisdiction and the criteria that guide – or should guide – the decision to prosecute, in light of the other (non-criminal) remedies available to ensure that the country does not harbor suspected war criminals. The book further offers an analysis of the general principles that are applicable to all crimes pursuant to the Act, particularly the reliance on customary international law in the crimes' definitions. The study also presents an analysis of the specific definitions of genocide, crimes against humanity and war crimes pursuant to the Act, highlighting potential difficulties in their interpretation or tensions between international law and Canadian criminal and human rights law. It aims at identifying whether the choice made in the Act to rely exclusively on Canadian criminal law to determine individual responsibility may create problems in war crimes prosecutions in Canada and whether the applicable principles might need to be adapted to the particular – collective and massive – nature of crimes against humanity, war crimes and genocide.

Protecting civilians from the effects of explosive weapons : an analysis of international legal and policy standards

Maya Brehm. - New York ; Geneva : United Nations ; Geneva : UNIDIR, 2012. - 169 p. - Cote 341.67/723

The use of explosive weapons (shells, bombs, etc.) in populated areas causes grave humanitarian harm. This study analyses how explosive weapons are regulated in international law and policy, what constraints are placed on the use of explosive weapons, and how civilians are protected against the effects of explosive weapons. It concludes that the dominant legal and policy discourse fails to articulate the serious risk of harm associated with the use of explosive weapons in populated areas in a manner that adequately protects civilians. Systematic characterization of the humanitarian harm, and a detailed assessment of the risk of harm and the measures taken to reduce that risk, could further the elaboration of legal and policy standards that enhance the protection of civilians.

La protection de la population civile au cours des conflits armés

by Djamchid Momtaz. - In: International challenges to peace and security in the new millennium : 2002 international law session. - Athens ; Thessaloniki : Sakkoulas Publications, 2010. - p. 301-352. - Cote 345.25/269 (Br.)

Étude des règles destinées à protéger la population civile contre l'arbitraire des parties aux conflits armés et de celles prévues pour mettre la population civile et les biens de caractère civil à l'abri des dangers qui résultent des opérations militaires elles-mêmes.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/36018.pdf>

The protection of civilians in armed conflict : four concepts

Hugh Breakey. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Paris [etc.] : United Nations University Press, 2012. - p. 40-61. - Cote 361/592

This chapter details the nature of Protection of Civilians (POC) in the contemporary context. It argues that while all POC actors have a broadly shared understanding of the core concerns of POC - the basic rights of non-combatants and the types of violence that threaten them - the different perspectives, resources and powers possessed by separate types of POC actors make those actors develop distinct POC roles and responsibilities.

The protection of journalists in armed conflicts : how can they be better safeguarded ?

Isabel Düsterhöft. In: Merkourios Vol. 29, issue 76, 2013, p. 4-22. - Cote 070/94 (Br.)

The years 2011 and 2012 were among the most deadly for journalists reporting from conflict situations worldwide. The numbers of assaults, arrests and attacks have been on a constant rise and portray a dramatic image of the journalistic profession. In light of the increasing threats in armed conflicts, being a war reporter has become an inherently dangerous task. Journalists are not only at risk of becoming so-called collateral damage during military operations, they are also increasingly targeted. Their role as a watchdog and witness to the horrors of war, in addition to the undeniable power of the word and image they spread, has made them popular targets. It is therefore essential that the international community re-evaluate journalists' de jure and de facto protections in armed conflicts to allow for better safeguards and consequently less casualties in the imminent future. This article examines the current protections afforded to journalists and aims at detecting proposals for enhanced safeguards that are most likely to effectively improve journalists' safety in the field. In this regard, this article will argue that the legal protections are in fact sufficient and hardly amendable and that therefore, a more practical, hands-on approach to implementation of those protections must be the focus of future actions. This goal can only be achieved by a comprehensive mission jointly pursued by governments, militaries, journalists, media, NGOs and society.

<http://www.merkourios.org/index.php/mj/article/viewFile/55/60>

Reinterpreting competing interpretations of the scope and potential of the Martens clause

Michael Salter. In: Journal of conflict and security law Vol. 17, no. 3, Winter 2012, p. 403-437

This article, whose materials are extracted from a wider project on the doctrinal and humanitarian significance of the 1899/1907 Martens Clause, reviews the strengths and limitations of competing interpretations and judicial applications of this Clause. It identifies four distinct, if interrelated, approaches to defining its meaning and scope assessing each in turn. We take issue with recent scholarship that restricts its applicability in various ways that deny its status as a separate and distinct legal principle of direct and independent applicability to organized atrocities against civilians. We also dispute the view that this Clause is best interpreted as an aide to judicial interpretation, rather than as an independent source of international criminal law, by showing that this interpretation is inconsistent with a number of important cases whose authority appears to be well established and unobjectionable. Furthermore, the moral imperatives that clearly shape the language of the Clause and have been realized in many of its accumulated judicial applications, positively require this measure to be interpreted and applied as a freestanding legal norm—albeit one that has to operate as supplement for, rather than alternative to, other more specific legal rules and principles.

Full text only from ICRC headquarters: <http://jcsf.oxfordjournals.org/content/17/3/403.full.pdf>

The relationship between international humanitarian law and responsibility to protect : from Solferino to Srebrenica

Helen Durham and Phoebe Wynn-Pope. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Paris [etc.] : United Nations University Press, 2012. - p. 175-196. - Cote 361/592

The chapter will begin with a discussion on the origins of IHL and responsibility to protect (R2P) and how they both emerged from direct experience of outrages of the treatment of soldiers (IHL) and civilians (R2P) during times of armed conflict and extreme violence. It will then look at how IHL has developed since the early days in the nineteenth century to provide a framework for the conduct of hostilities. In contrast, the principle of R2P emerged only ten years ago, but has developed into a principle which has become widely accepted as a political concept. In conclusion, the chapter will draw IHL and R2P together by looking at their points of similarity and difference, and where each regime is able to support and lend strength to the other.

The relationship between international humanitarian law with public international law, international criminal law and the international human rights law

PS Seema. - In: International humanitarian law : an anthology. - Haryana (India) : Lexis Nexis Butterworths Wadhwa Nagpur, 2009. - p. 23-56. - Cote 345.2/907

An important area of academic understanding and practical application is the evolving interface between the precepts, principles and practices of international humanitarian law with other important branches of public international law, namely international human rights law, international refugee law and international law of warfare. The author takes a historical perspective in tracing out the origin and development of each of these branches and analyses the emerging interface and influence of each branch over the other in providing protection to the affected and at the same time enhancing the network of obligations of State parties at the international plane.

The responsibility to protect and the protection of civilians in armed conflict : overlap and contrast

Hugh Breakey. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Paris [etc.] : United Nations University Press, 2012. - p. 62-81. - Cote 361/592

This chapter investigates the overlap and contrast between the responsibility to protect (R2P) and the protection of civilians (POC), keeping in mind the different versions of these principles detailed in the preceding two chapters : the three pillars of R2P and the four POC concepts.

The scope and applicability of international humanitarian law

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - 508 p. - Cote 345.2/911

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

Searching for a "principle of humanity" in international humanitarian law

ed. Kjetil Mujezinovic Larsen, Camilla Guldahl Cooper and Gro Nystuen. - Cambridge [etc.] : Cambridge University Press, 2013. - 365 p. - Cote 345.2/906

Contient notamment : The main epochs of modern international humanitarian law since 1864 and their related dominant legal constructions / Robert Kolb. - The principle of proportionality / Yoram Dinstein. - The Geneva Conventions and the dichotomy between international and non-international armed conflict : curse or blessing for the "principle of humanity"? / Cecilie Hellestveit. - A 'principle of humanity' or a 'principle of human-rightism'? / Kjetil Mujezinovic Larsen. - The principle of humanity in the development of "special protection" for children in armed conflict : 60 years beyond the Geneva Conventions and 20 years beyond the Convention on the rights of the child / Katarina Mansson. - Multinational peace operations forces involved in armed conflict : who are the parties? / Ola Engdahl. - Security detention in UN peace operations / Peter Vedel Kessing

Security detention in UN peace operations

Peter Vedel Kessing. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 272-303 - Cote 345.2/906

This chapter addresses the competence of UN forces to detain individuals for security reasons during peacekeeping operations. The author describes the legal uncertainties that exist, and attempts to identify minimum detention standards that are applicable in all types of operations. An important premise in the identification of such standards is the humanitarian mandate of UN forces and the corresponding need for a clear legal regime to secure the human rights of detainees.

Self-defense targeting : blurring the line between the jus ad bellum and the jus in bello

Geoffrey S. Corn. In: International law studies Vol. 88, 2012, p. 57-92

This essay will argue that the concept of self-defense targeting does not and cannot provide a substitute for resolving the debate about in bello applicability to transnational counterterror military operations. The reasons for this are multifaceted. First, the jus ad bellum has never been understood as a source of operational or tactical regulation nor a substitute for the law providing that regulation. Indeed, one of the central tenets of the jus belli has always been the invalidity of reliance on the jus ad bellum to define jus in bello obligations. Instead, the de facto nature of tactical execution is the principal factor for assessing applicability of the jus in bello. Second, because the jus ad bellum has never been conceived as a tactical regulatory framework, using it as a substitute for the jus in bello injects unacceptable confusion into the planning and execution of combat operations. Finally, while the principles of necessity and proportionality are central to both branches of the jus belli, the meaning of these principles is not identical in each branch but, in fact, disparate. As a result, the scope of lawful authority to employ force during mission execution will be subtly but unquestionably degraded if ad bellum principles are utilized as a substitute for in bello regulation.

<http://www.usnwc.edu/getattachment/49819df1-6a3f-41f3-b3cd-5dabee41fffa/Self-defense-Targeting--Blurring-the-Line-between-.aspx>

Shooting to kill : socio-legal perspectives on the use of lethal force

ed. by Simon Bronitt, Miriam Gani and Saskia Hufnagel. - Oxford ; Portland : Hart, 2012. - 324 p. - Cote 345/619

This book brings together perspectives from different disciplinary fields to examine the significant legal, moral and political issues which arise in relation to the use of lethal force in both domestic and international law. These issues have particular salience in the counter terrorism context following 9/11, however concerns about the use of excessive force are not confined to the terrorist situation. The essays in this collection examine how the state sanctions the use of lethal force in varied ways : through the doctrines of public and private self-defence and the development of legislation and case law that excuses or justifies the use of lethal force in the course of executing an arrest, preventing crime or disorder or protecting private property. An important theme is how the domestic and international legal orders intersect and continually influence one another. While legal approaches to the use of lethal force share common features, the context within which force is deployed varies greatly. Key issues explored in this volume are the extent to which domestic and international law authorise pre-emptive use of force, and how necessity and reasonableness are legally constructed in this context.

"Small wars" : the legal challenges

Kenneth Watkin. In: International law studies Vol. 88, 2012, p. 3-12

Opening address of the Naval War College Conference "Non-International Armed Conflict in the 21st Century." reviewing the reasons why the law governing NIAC needs to be clarified.

<http://www.usnwc.edu/getattachment/71a10b51-3bc3-4f28-a61c-ddc706737a4f/Small-Wars--The-Legal-Challenges.aspx>

Les soins de santé en danger : les responsabilités des personnels de santé à l'oeuvre dans des conflits armés et d'autres situations d'urgence

CICR. - Genève : CICR, décembre 2012. - 111 p. - Cote 356/243 (FRE)

Ce document d'orientation à l'intention des personnels de santé, explique dans un langage clair et simple quels sont leurs droits et leurs responsabilités pendant un conflit armé ou d'autres situations de violence. Comme le dit un chirurgien qui a relu le document : « C'est ce que j'aurais aimé avoir sur moi la première fois que je suis allé travailler sur le terrain en tant que chirurgien avec le CICR ». Il explique les

responsabilités et les droits des personnels de santé au regard du droit international humanitaire, des droits de l'homme et de la déontologie médicale. Le document contient une série de conseils pratiques sur différents aspects : - La protection des personnels de santé, ainsi que des personnes malades et blessées - Les normes de soins appropriées - Les besoins de santé des personnes particulièrement vulnérables - Les dossiers de santé et la transmission des dossiers médicaux - Les soins de santé « importés » (dont les soins de santé militaires) - La collecte des données et les violations du droit international dont les personnels de santé sont témoins - Les relations avec les médias.

<http://www.cid.icrc.org/library/docs/DOC/icrc-001-4104.pdf>

La sous-traitance d'activités militaires par l'État au secteur privé : une entorse aux règles du droit international humanitaire ?

Anne-Marie Burns. - [S.I.] : [s.n.], 2011. - 163 p. - Cote 345.29/182

Depuis la fin des années 1990, les États confient à des entreprises privées des activités militaires autrefois exercées par l'armée, amenant ces dernières à intervenir dans des conflits armés. Les règles du droit international humanitaire régissant les conflits armés internationaux n'ayant pas été conçues pour ce type d'intervenants, leur application n'est pas sans poser certains problèmes, notamment lorsqu'il s'agit de déterminer quel est le statut des employés d'entreprises militaires privées au regard des Conventions de Genève. Eu égard à la confusion que l'implication d'acteurs au statut incertain ou difficilement déterminable engendre sur l'application du droit international humanitaire, ce travail de recherche vise à déterminer si les États respectent l'ensemble de leurs obligations lorsqu'ils sous-traitent des activités militaires à des entreprises privées. En d'autres termes, il s'agit de déterminer si le respect du principe de distinction entre combattants et personnes civiles ne poserait pas certaines limites à une telle pratique.

<http://www.theses.ulaval.ca/2011/27753/27753.pdf>

The status of opposition fighters in a non-international armed conflict

Michael N. Schmitt. In: International law studies Vol. 88, 2012, p. 119-144

The treaty law applicable to the classification of participants in a non international conflict is limited to Common Article 3 to the 1949 Geneva Conventions and the 1977 Additional Protocol II. Taking the two treaties together, and in light of Common Article 3's customary status, it can be concluded that two broad categories of non-international armed conflict participants lie in juxtaposition: civilians and organized armed groups. The former can be subdivided into those who directly participate in hostilities and those who do not. Organized armed groups consist of a State's armed forces, dissident armed forces or "other" organized armed groups. This chapter examines the three types of "opposition fighters" - dissident armed forces, other organized armed groups and civilians directly participating in hostilities. Assuming a non-international armed conflict (whatever form it takes), it asks how opposition force participants in the conflict are to be classified. The key consequences of classification lie in the law of targeting, for classification determines whether LOAC prohibits an attack on an individual during a non international armed conflict. To the extent no prohibition exists on attacking persons with a particular classification, harm to an individual within that group plays no role in proportionality calculations (except as military advantage) and need not be considered when determining the precautions that attackers are required to take during attacks to avoid harming civilians. As will become apparent, the targetability of the various categories of opposition fighters is a matter of some contention in LOAC circles.

<http://www.usnwc.edu/getattachment/aa1c5744-c02a-4935-8f77-a2f369bb15bf/The-Status-of-Opposition-Fighters-in-a-NonInternat.aspx>

Targeted killings and proportionality in law : two models

Larry May. In: Journal of international criminal justice Vol. 11, no. 1, March 2013, p. 47-63

The author explores three problems. First, how can targeted killings understood on the domestic law enforcement model be conducted without violating due process concerns? If the targeting is based on the conduct or behaviour of the person targeted, then it seems that a judicial determination of the facts is required. And in any event, the killing, rather than the arrest, of the person targeted would rarely be justified on a domestic law enforcement model. Secondly, on the international humanitarian law model, are targeted killings no different from other 'battlefield' killings in war or armed conflict? One of the salient issues here is how to satisfy proportionality, which seems to require that the least lethal means be used consistent with military necessity. Thirdly, under what conditions, if any, would targeted killings be subject to international criminal prosecution? If targeted killings fail to be proportionate, are those who perpetrate them prosecutable under the International Criminal Court's understanding of disproportionate attack?

Full text only from ICRC headquarters : <http://jicj.oxfordjournals.org/content/11/1/47.full.pdf+html>

Teaching international law, a threat to national security ? : the US Supreme Court's Holder v. humanitarian law project decision

Daniel Wisehart. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 4/2012, p. 210-212

The Holder decision of the US Supreme Court exemplifies the tendency of criminalising humanitarian aid when fighting international terrorism. This article shows the incompatibility of the judgment with regard to principles of international humanitarian law and humanitarian aid. The judgment has aroused passionate debates in the American academia, but was barely recognised on the other side of the Atlantic. The present article aims to fill up this gap. The provisions discussed here can be of interest for anyone engaged in the field of humanitarian aid world-wide, since their extraterritorial application is provided for.

Terrorism and the laws of multidimensional warfare

Boaz Ganor. - In: Counterinsurgency law : new directions in asymmetric warfare. - Oxford [etc.] : Oxford University Press, 2013. - p. 141-161. - Cote 345.2/915

Revisiting the international humanitarian law (IHL) problems that accompany conflicts with nonstate actors, this chapter points out that the protections for civilians under IHL are exploited by insurgents and terrorists, where military commanders may thus be compromised in conducting their operations. In response, the author proposes a new international legal framework, "multidimensional warfare", where he defines four categories of actors involved in warfare, each of which has a different status in the conflict.

Toward a limited consensus on the loss of civilian immunity in non-international armed conflict : making progress through practice

Stephen Pomper. In: International law studies Vol. 88, 2012, p. 181-193

This article will touch briefly on the ways in which the conversation about when an individual loses protection from attack through membership in an organized armed group (and related questions of what it means to take direct part in hostilities) have developed in the course of the last several years. In so doing, it will underscore that the development of the law in this area remains for the time being largely in the hands of States, and, in particular, their executive branches. It will also give a sense of where like-minded States with which the U.S. government works particularly closely have reached consensus in this area, as well as identify some areas where there remains a range of views. To keep the scope of this exercise manageable, the paper will keep a narrow focus on the threshold for membership in organized armed groups and direct participation in hostilities on the non-State side of a NIAC. It will not address a number of important related questions that also have a bearing on the question of when individuals lose immunity from being made the object of attack in non-international armed conflict, including questions about the point at which armed violence can be deemed an armed conflict, the level of cohesion that is required in order to deem an organization an "organized armed group," the circumstances under which an organized armed group can be said to be engaged in armed conflict, the geographic scope of armed conflict and the circumstances in which legal rules outside the law of armed conflict may be relevant.

<http://www.usnwc.edu/getattachment/9586e422-5eaf-4b88-bb72-e31eefe314f3/Toward-a-Limited-Consensus-on-the-Loss-of-Civilian.aspx>

Traditions of belligerent recognition : the Libyan intervention in historical and theoretical context

Sam Foster Halabi. In: American university international law review Vol. 27, no. 2, 2012, p. 321-389. - Cote 345.2/905 (Br.)

This article argues that, far from "crazy", these states' decisions to recognize the opposition were largely consistent with historical patterns in the recognition of civil war and how it will be managed by third-party states. While states might extend equal rights to the parties to a civil war before ultimately recognizing a victorious authority, they are just as likely to abruptly switch recognition or otherwise categorize the conflict in a way that advances their interests. [...] This article therefore posits a second thesis : while the customary international law that developed to manage civil wars did not, in fact, effectively regulate state behavior, it did reflect an underlying tendency for states to balance both individual and collective interests in the creation of new states or the change of regime in existing ones.

Treatment of sexual violence in armed conflicts : a historical perspective and the way forward

Kelly Askin. - In: Sexual violence as an international crime : interdisciplinary approaches. - Cambridge, [etc.] : Intersentia, 2012. - p. 19-55. - Cote 344/589

Before looking at major recent developments in international criminal law and procedure, one should not overlook the developments in criminalizing and prosecuting sexual violence prior to the 1990s. Although these developments were not always far-reaching or the prohibitions on sexual violence non-existent or vaguely worded, they did lay the groundwork for recognition of these crimes in the 1990s. This chapter elaborates on these developments up to WWII, while also looking already to the challenges ahead.

Twenty-first-century challenges : the use of military forces to combat criminal threats

Juan Carlos Gomez. In: International law studies Vol. 88, 2012, p. 279-291

The use of military forces by democratic States in the fight against globalized criminal threats (terrorism, illegal trade in drugs, arms, intellectual property,...) is viable and necessary. However, it is important to know when and how military forces may be used legitimately. To do so, it is necessary to understand the transformation of the threat - armed groups, which once challenged governments over ideology, now seek financial gain for themselves. While allegedly espousing ideological politics at both ends of the political spectrum (extreme left and right), these groups have created sinister alliances that ignore geographic and political boundaries. This transformation challenges State security and puts the institutional structures of democratic States at risk. Military forces must develop an understanding of the law that will apply when combating these criminal/terrorist groups. That law will come from human rights law and international humanitarian law. The determination of when each will apply presents new challenges for military forces that have traditionally focused on the law applicable to international armed conflict. This article will explore these issues from a Colombian perspective, a country which has been engaged for decades in an armed struggle with insurgent groups and now also with criminal groups using terrorist tactics for economic gain through the drug trade.

<http://www.usnwc.edu/getattachment/9b98c776-bbca-47e3-bbc0-c9bf6a38e2d4/Twenty-First-Century-Challenges--The-Use-of-Military.aspx>

UNESCO and the protection of cultural property during armed conflict

Sigrid Van der Auwera. In: International journal of cultural policy Vol. 19, no. 1, January 2013, p. 1-19. - Cote 363.8/75 (Br.)

Since the establishment of UNESCO, the organization has engaged in the protection of cultural property during armed conflict. Recently, however, an increased incidence of intentional cultural property destruction and looting has been observed during such conflicts. This article, therefore, evaluates UNESCO activities relating to the protection of cultural property during armed conflicts. It finds that the ineffectiveness of the measures employed is largely due to a lack of adjustment to the nature of contemporary conflicts and to changes in the profiles and motives of the perpetrators. Further problems, such as the slow operation and implementation procedures of the organization and its lack of pre-emptive actions, are also addressed.

United Nations peacekeeping and the meaning of armed conflict

Mary Ellen O'Connell and Ania Kritvus. - In: What is war ? : an investigation in the wake of 9/11. - Leiden ; Boston : M. Nijhoff, 2012. - p. 109-118. - Cote 345.2/916

This paper begins by tracing the evolution of UN peacekeeping and applicable international law. The second part of the paper looks at several national decisions on the application of IHL to wrongdoing by peacekeepers in Bosnia, Somalia and Rwanda.

Unmanned aerial vehicles and the scope of the "combat zone" : some thoughts on the geographical scope of application of international humanitarian law

Robert Heinsch. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 4/2012, p. 184-192

The fight against international terrorism, but also the development of new weapons technologies has led in recent years to the phenomenon that the way hostilities are conducted has changed significantly. The times where wars were fought as a man-to-man battle on a clearly defined battleground with the object to obtain territory seem to be over, especially since nowadays more and more fighting activities take place by using remote controlled drones and other comparable weapons systems. As a result, we now witness an increasing distance between the initiator and the target of an attack, e.g. the targeted killing of potential terrorists in the mountains of Pakistan by US drones which are controlled from an operation centre located in Texas. The questions that arise for international humanitarian law are whether these scenarios have to be seen within the scope of international humanitarian law, and if so, whether the existing rules are still able to deal with this type of weapons, or whether we need a reform of the current international humanitarian law regime. This paper will focus primarily on the first question, and

examines whether we have to think about expanding the concept of the "combat zone" or the geographical scope of international humanitarian law. In addition, we will look briefly on how this issue is related to the application of international human rights, especially in cases of so-called "targeted killings".

Valor's vices : against a state duty to risk forces in armed conflict

Peter Margulies. - In: Counterinsurgency law : new directions in asymmetric warfare. - Oxford [etc.] : Oxford University Press, 2013. - p. 87-107. - Cote 345.2/915

Suppose that state forces have entered an urban area effectively controlled by a terrorist group with a history of civilian attack and cross-border shelling. State forces have entered for the purpose of stopping these attacks. During this incursion, members of the nonstat armed group have shot at state soldiers from within an apartment dwelling overlooking a key thoroughfare. The state has previously warned civilian residents of the dwelling to evacuate. Receiving new fire from inside the dwelling and not wishing to be pinned down, the commander calls in air support. That stops the hostile fire, but also kills civilians who remain inside. Some scholars have argued that military ethics should subject the state to further duties when it uses air power to minimize the risk to its own troops. Under the "duty to risk", the state has a categorical duty to risk its own forces and in this example, it would have an affirmative obligation to mount a ground assault on the apartment dwelling, even when IHL would not require this decision. The author argues that this theory misconceive both IHL and military ethics.

War and peace : where is the divide ?

Charles Garraway. In: International law studies Vol. 88, 2012, p. 93-115

In recent years, the initial threshold of armed conflict has again become relevant. This has been caused to some extent by the success of those who have sought, for humanitarian reasons, to merge the rules relating to international and non-international armed conflict, but also by politicians, who have sought to take advantage of the greater freedom of action normally granted to States in time of war by seeking to apply the laws of war in areas beyond their traditional field. The tensions have led to a debate that has suffered from a seeming inability by different sides to understand where others are coming from. It has become multifaceted and in some cases issues have been lost in confusion over vocabulary. This article will seek to look at how the problems have arisen and whether there is still room for a comprehensive approach that will accommodate to some extent all the competing factions.

<http://www.usnwc.edu/getattachment/2edfcd9c-4925-415b-a0a2-02e2374e9a27/War-and-Peace--Where-Is-the-Divide-.aspx>

War crimes and the requirement of a nexus with an armed conflict

Harmen van der Wilt. In: Journal of international criminal justice Vol. 10, no. 5, December 2012, p. 1113-1128

In order to qualify as a war crime, an offence must have a nexus with an armed conflict. This contextual element serves to distinguish war crimes from both ordinary crimes and other international crimes such as crimes against humanity and genocide. The case law of the international criminal tribunals reveals that this nexus requirement is an open concept, resulting in diverging interpretations by both international and domestic criminal courts. Starting from the assumption that such strong divergences are problematic from the perspective of legal certainty, this article seeks to define the nexus requirement more precisely. Those general theories that predicate the right of intervention by the international community upon the default by a state on its primary obligation to provide a certain basic level of security, offer a sound conceptual framework to identify international crimes. However, such theories are less suitable to define war crimes as a separate category within the realm of international crimes. Instead, the author proposes to reflect upon the quintessential nature of war crimes as serious violations of the laws and customs of war. By considering war crimes as perversions of accepted and legitimate conduct in warfare, it is possible to reconstruct the content and meaning of the nexus requirement.

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What have women got to do with peace ? : a gender analysis of the laws of war and peacemaking

Benedetta Faedi Duramy. - In: Law and outsiders : norms, processes and "othering" in the twenty-first century. - Oxford ; Portland : Hart, 2011. - p. 209-232. - Cote 362.8/186 (Br.)

This chapter offers an engaged analysis of the impact that armed conflicts have on women and the diverse roles women might conceivably play in peacemaking. Recalling the original theories of international law, the first part recounts how historical chronicles and modern authors have depicted women in wartime. Primarily portrayed as victims of brutalisation and sexual violence, women were confined to the private realm and, thus, excluded from the decision-making processes of war and peace. The second part of this

chapter examines the international humanitarian law provisions dealing with women in armed conflict. Commencing with the outrages perpetrated during the two world wars, the analysis follows the evolution of international law pertaining to women in wartime. The third part of this chapter recounts the mass rape and sexual violence atrocities committed against women during the Yugoslavian and Rwandan conflicts in the 1990s. The fourth part reflects the fact that, despite these achievements, women remain in war, as in peace, secluded from decision-making processes. Specifically it recounts the struggle of women for peace in Liberia and Sierra Leone. Finally, the last part suggests lessons that may be drawn from previous women's struggles and experiences in conflict.

Full text ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/35965.pdf>

What is war ? : an investigation in the wake of 9/11

ed. by Mary Ellen O'Connell. - Leiden ; Boston : M. Nijhoff, 2012. - 495 p. - Cote 345.2/916

International law has lacked a widely-accepted definition of armed conflict despite the essential human rights and other rules that depend on such a definition. During armed conflict, government forces have "combatant immunity" to kill without warning. They may detain enemy forces until the end of the conflict without the requirement to provide a speedy and fair trial. Governments may have asylum obligations or neutrality obligations based on the existence of armed conflict. To fill this gap in our knowledge of the law, the International Law Association's Committee on the Use of Force produced a report on the meaning of armed conflict. This book contains the report and papers delivered at an inter-disciplinary conference designed to inform the committee from a variety of perspectives.

Will-o'-the-wisp ? : the search for law in non-international armed conflicts

John F. Murphy. In: International law studies Vol. 88, 2012, p. 15-39

A more precise way to describe the current situation is as a struggle for law in non-international armed conflicts. Some third-party actors (domestic courts, foreign governments and courts, international organizations and tribunals, humanitarian NGOs, and domestic and global civil society) are promoting an agenda that, if adopted as law, could severely restrict the military capacity of the armed forces of States to deal effectively with Al-Qaeda and other non-State actors employing various strategies to negate the military superiority of the States they are fighting against. At least to some extent, these third-party actors have been able to be influential because of the inability of States to reform and develop the law applicable to noninternational armed conflicts through the conclusion of global treaties that would update the law in such a way as to resolve the tension between humanitarian considerations and the need for military efficiency.

<http://www.usnwc.edu/getattachment/36dae2a4-1530-4edc-96a5-6400ad8c4624/Will-o---the-Wisp--The-Search-for-Law-in-Non-Inter.aspx>

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April 2013



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