



ICRC

IHL Academic Articles - 1st trimester 2010 -

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Preliminary remarks

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

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

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

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

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

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

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

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I. General issues

(General catch-all category, Customary Law)

International humanitarian law

Elizabeth Griffin and Basak Cali. - Oxford : Oxford University Press, 2010. - p. 234-257. - International law for international relations – Cote 345.2/435 (Br.)

This chapter examines international humanitarian law (IHL), the body of international law that contributes to our understanding of the regulation of violence in international relations. It commences with an examination of the roots of international humanitarian law - that is, the institutional history of IHL and the sources of IHL. It then explores the purpose of IHL which is to regulate the use of deadly force by each and every party to an armed conflict. The chapter particularly focuses on the basic principles of IHL, which aim to strike a balance between military necessity and the principle of humanity during times of armed conflict. It concludes by discussing what reasons states have to comply with IHL and indicators of compliance.

The applicability of IHL in mixed situations of disaster and conflict

Daniela Gavshon. - Summer 2009. - p. 243-263. - Journal of conflict and security law ; Vol. 14, no. 2

There is an increasing number of natural and human-made disasters. There has also been increasing attention given to international disaster response laws. In a recently published study, the International Federation of Red Cross and Red Crescent Societies stated that in mixed situations of disaster and conflict, international humanitarian law will prevail with international disaster response law instruments varying in their applicability. This paper examines whether in fact international humanitarian law is sufficient to deal with mixed situations, in particular, with relief efforts. The author concludes that international humanitarian law is useful as a basis, but other areas of law are essential in filling the gaps, particularly international disaster response laws. As such, the author believes emerging international disaster response law instruments should be encouraged to have a broad scope whereby these instruments include mixed situations too.

Access only from ICRC :

<http://jcsf.oxfordjournals.org/cgi/content/full/14/2/243>

The Geneva Conventions and public international law : British Foreign and Commonwealth Office Conference commemorating the 60th anniversary of the 1949 Geneva Conventions, London, 9 July 2009

address by Theodor Meron. - September 2009. - p. 619-625. - International review of the Red Cross ; Vol. 91, no. 875

With sixty years of hindsight, it seems particularly appropriate to reflect on the trajectory of international humanitarian law (IHL) as shaped by the 1949 Geneva Conventions. The near universal acceptance of the Conventions and their secure integration into the international system can sometimes lead us to underestimate the significance of their impact. It is this transformative impact on public international law which will be the focus of this note.

<http://www.icrc.org/web/eng/siteeng0.nsf/html/review-875-p619>

The ICRC's compilation of the customary rules of humanitarian law

Walter Kälin. - Berlin : Duncker and Humblot, 2009. - p. 417-428. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference. Cote 345/567

The article assesses the ICRC Study on Customary International Humanitarian Law. It addresses some of the issues pointing to inherent difficulties of identifying customary law:

"Specially affected" interests of states. - Expansion of the situational scope of application. - Persistent objectors. - Opinio Juris: subjective will of objective element?

II. Types of conflicts

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

Asymmetric war, symmetrical intentions : killing civilians in modern armed conflict

Michael L. Gross. - November 2009. - p. 320-336. - Global Crime ; Vol. 10, no. 4 – Cote 345.25/31 (Br.)

During asymmetric war, a state actor often faces charges of disproportionate harm while the weaker, nonstate side must defend itself against charges of terrorism. Because the state actor faces an adversary embedded among civilians, and the nonstate actor confronts an opponent whose military targets are often so well protected that only its nonmilitary targets are vulnerable, it is difficult for either side to fight without harming civilians. While humanitarian law tries to protect noncombatants to the greatest extent possible, too strict an interpretation of terrorism and proportionality may unduly restrict either side's ability to pursue political claims by force of arms. To successfully walk the line between protecting civilians during asymmetric war and allowing each side a 'fighting chance', it is necessary to take another look at the idea of intentionality and the definition of combatants. While intentional harm is the hallmark of terrorism, state armies also bring intentional harm if they expect to glean military benefits from causing collateral damage to civilians. A tighter understanding of intentionality can further protect innocent, noncombatant civilians. At the same time, however, the international community must recognise that not all civilians are noncombatants. Many civilians take a direct or indirect role in the fighting. As such, some civilians are vulnerable to lethal harm while others remain subject to nonlethal harm. Asymmetric war expands the range of permissible civilian targets that each side may attack without incurring charges of terrorism or disproportionate harm.

Grave breaches and internal armed conflicts

Lindsay Moir. - September 2009. - p. 763-787. - Journal of international criminal justice ; Vol. 7, no. 4

International law has historically been more concerned with the regulation of international, rather than internal, armed conflict. As an integral part of this regime, aimed specifically at the violation of particular rules relating to international armed conflict, the grave breaches provisions of the Geneva Conventions and Additional Protocol I have no apparent relevance to internal armed conflict. This article argues that the concept of grave breaches has, nonetheless, impacted in a significant way upon both the substantive laws of internal armed conflict and their criminal enforcement against individuals. Whether the law has developed to a point where grave breaches can equally be committed during internal armed conflict, or where violations of the laws of internal armed conflict can be considered grave breaches such that the obligations to investigate those offences and to prosecute or extradite offenders now also apply — either through the adoption of a teleological approach to the Geneva Conventions, or else through the development of a new customary rule to that effect — is rather more dubious.

Access only from ICRC:

<http://jicj.oxfordjournals.org/cgi/content/full/7/4/763>

Identifying an armed conflict not of an international character

Sandesh Sivakumaran. - Leiden ; Boston : Martinus Nijhoff, 2009. - p. 363-380. - The emerging practice of the International criminal court – Cote 344/493

Inherent in article 8(2)(c) and 8(2)(e) is the notion of an "armed conflict not of an international character", an idea that appears in common article 3 of the Geneva Conventions. Quite what is meant by this phrase is the subject of this chapter. Part 2 will seek to give it some meaning,

using factors identified by the ad hoc international criminal tribunals, primarily those of the intensity of the violence and the level of organisation of the armed group. Part 3 will consider whether the threshold of article 8(2)(e) is the same as that of article 8(2)(c), or whether a higher threshold has been created as a result of the requirement in article 8(2)(f) that the armed conflict be "protracted". Regard will be had to how that requirement came to be included in the statute and how it has subsequently been interpreted by a pre-trial chamber of the International Criminal Court.

L'interprétation des notions de "conflit armé interne" et de "violence aveugle" dans le cadre de la protection subsidiaire : le droit international humanitaire est-il une référence obligatoire ?

Jonas Perilleux. - 2009. - p. 113-143. - Revue belge de droit international ; Vol. 42, no 1

En adoptant, le 29 avril 2004, la Directive 2004/83/CE (dite "Directive Qualification"), les Etats membres de l'Union européenne ont mis en place un système de protection novateur, la protection subsidiaire. Celle-ci complète le régime de protection établi par la Convention de Genève du 28 juillet 1951 relative au statut des réfugiés et vise, notamment, à offrir une protection internationale aux personnes qui fuient les situations de conflit armé (article 15(c) de la Directive Qualification). La mise en oeuvre de ce mécanisme par les juridictions des Etats membres a soulevé de nombreux problèmes d'interprétation. Parmi ceux-ci, le présent article se limite à traiter la question de l'interprétation des notions de "conflit armé interne" et de "violence aveugle". Il porte un regard critique sur la solution retenue par une jurisprudence dominante qui consiste à se référer strictement au DIH pour interpréter ces notions. Il est soutenu que ce choix interprétatif a pour effet de réduire indûment le champ d'application du mécanisme de la protection subsidiaire, d'une part, en excluant de la protection des situations qui, sans pouvoir être qualifiées de "conflit armé" en DIH, entraînent la fuite de personnes qui ont un besoin réel de protection internationale, et, d'autre part, en réduisant la notion de "violence aveugle" aux cas de violations du DIH. A travers une analyse approfondie de la Directive Qualification, il est affirmé qu'une mise en oeuvre de la Directive Qualification tenant pleinement compte de l'objet et du but du mécanisme de la protection subsidiaire appelle une interprétation autonome de ces notions basée sur le sens ordinaire des termes de la Directive.

Legalization of civil wars : the legal institutionalization of non-international armed conflicts

Kenneth Ohlenschloeger Buhl. - 2009. - p. 1-33. - Journal on ethno-politics and minority issues in Europe ; Vol. 8, issue 1 – Cote 345.27/14 (Br.)

The article looks at the legal aspects of civil wars with respect to international humanitarian law. The international law is concerned with armed conflicts between states, not civil wars. The article states that civil wars can be more drastic than international armed conflicts thus there is a need to enforce legal regulation on non-international disputes. It elaborates that internal wars have international dimensions as far as international human rights and international humanitarian law are concerned.

The threshold of non-international armed conflict : the Tadic formula and its first criterion intensity



Stefanie Kufner. - 2009. - p.301-311. - Militair-rechtelijk tijdschrift ; Vol. 102, issue 6 – Cote 345.27/13 (Br.)

The study seeks to find an answer as to what the threshold of armed conflict actually is and to develop a framework for the characterization of non-international armed conflict. It especially focuses on the first criterion of the Tadic test, the intensity requirement.

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

The regulation of armed non-state actors : promoting the application of the laws of war to conflicts involving national liberation movements

Noelle Higgins. - Fall 2009. - p. 12-18. - Human rights brief ; Vol. 17, issue 1

This article seeks to investigate how non-state actors, specifically national liberation movements, are and could be regulated by IHL. It seeks to give an overview of the relevant legal provisions and illustrates the difficulties faced by national liberation movements if they do wish to accede to IHL instruments and apply IHL in their conflicts. As it is the aim of IHL to protect both combatants and civilians in armed conflicts, it is important that this body of law is practically applied and implemented in all conflict situations to the greatest extent possible. However, in the past, national liberation movements have encountered difficulties when seeking to apply IHL to their conflicts due to the nature of the legal framework and, indeed, the nature of international law itself.

<http://www.wcl.american.edu/hrbrief/17/1higgins.pdf?rd=1>

The rights and responsibilities of armed non-state actors : the legal landscape and issues surrounding engagement

Andrew Clapham. - Genève : Académie de droits humains, February 2010. - 45 p. – Cote 345.2/441 (Br.)

This paper looks at the international obligations that bind rebel groups in the context of international humanitarian law, international human rights law and international criminal law. The focus is on rebel groups and how to engage with them with regard to norms aimed at the protection of civilians. A number of suggestions are floated in the context of a wider project, aimed at improving respect for such norms by generating a greater sense of ownership over the standards and the monitoring processes.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1569636

IV. Multinational forces

A return to trusteeship ? : a comment on international territorial administration

Gregory H. Fox. - Berlin : Duncker and Humblot, 2009. - p. 383-392. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference – Cote 345/567

Addresses the question of whether the international community has entered into new arrangements that represent "a return to trusteeship", traditionally defined as the external administration of a territory. The article refers to four cases of international territorial administration in the 1990s to answer the question: Bosnia (1995), Eastern Slavonia (1996), Kosovo (1999) and East Timor (1999).

Ensuring respect : United Nations compliance with international humanitarian law

Peter F. Chapman. - Fall 2009. - p. 2-11. - Human rights brief ; Vol. 17, issue 1

This article will begin with an introduction to UN peace operations, highlighting some cases of alleged abuse. The second section will examine the applicability of IHL to the UN. First, the section will examine the nuances of IHL by describing the differences between international, non-international, and internationalized armed conflict. It will then demonstrate that the UN is

bound by IHL. The article will conclude by examining several potential mechanisms to enforce the UN's obligations under IHL: international state responsibility; domestic proceedings in the troop-contributing state; human rights mechanisms; claims commissions; the International Criminal Court (ICC); and ombudspersons. Finally, the article will offer brief recommendations for how the UN can ensure its compliance with IHL while adequately supporting victims' needs.

<http://www.wcl.american.edu/hrbrief/17/1chapman.pdf?rd=1>

Humanitarian intervention, the responsibility to protect and jus in bello

James Pattison. - 2009. - p. 364-391. - Global responsibility to protect ; Vol. 1, no. 3 – Cote 361/3 (Br.)

This article assesses the moral importance of a humanitarian intervener's fidelity to the principles of international humanitarian law or jus in bello (principles of just conduct in war). It begins by outlining the particular principles of jus in bello that an intervener should follow when discharging the responsibility to protect. The second section considers more broadly the moral underpinnings of these principles. It claims that consequentialist justifications of these principles cannot fully grasp their moral significance and, in particular, the difference between doing and allowing. Overall, It argues that these principles are (i) more important and (ii) more stringent in the context of humanitarian intervention.

Prosecuting the crime of attack on peacekeepers : a prosecutor's challenge

Mohamed A. Bangura. - 2010. - p. 165-181. - Leiden journal of international law ; Vol. 23, no. 1 – Cote 344/45 (Br.)

The crime of attack on peacekeepers has gained specific attention in the practice of various international courts and tribunals, including the Special Court for Sierra Leone and the International Criminal Court. This article revisits the historical origins, the foundations, and the main issues from a prosecutorial perspective arising in the interpretation and litigation of this crime. It argues that the crime poses unique challenges in relation to charging practice and evidence.

The Geneva Conventions and United Nations personnel (protocols) act 2009 : a move away from the minimalist approach

Michael Meyer and Charles Garraway. - January 2010. - p. 171-180. - International and comparative law quarterly ; Vol. 59, part 1

Comment on the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 which makes the necessary changes in domestic law to enable the United Kingdom to ratify two treaties. The first treaty, the 2005 Third Additional Protocol to the 1949 Geneva Conventions, establishes an additional distinctive (protective) emblem, the red crystal. The second, the 2005 Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel, extends the legal protection given to personnel involved in two types of UN operations: operations for the purpose of delivering humanitarian, political or development assistance in peacebuilding, and operations for the purpose of delivering emergency humanitarian assistance.

Access only from ICRC:

<http://journals.cambridge.org/action/displayIssue?jid=ILQ&volumeId=59&issueId=01>

V. Private actors

Common article I : a minimum yardstick for regulating private military and security companies

Hannah Tonkin. - 2009. - p. 779-799. - Leiden journal of international law ; Vol. 22, no. 4 – Cote 345.22/160 (Br)

Tens of thousands of contractors work for private military and security companies (PMSCs) during armed conflict and occupation, often hired by states to perform activities that were once the exclusive domain of the armed forces. Many of the obligations and standards that guide states in regulating their armed forces are lacking in relation to PMSCs, raising concerns that states might simply outsource their military policy to PMSCs without taking adequate measures to promote compliance with international humanitarian law (IHL). This article argues that the universally applicable obligation 'to ensure respect' for IHL in Common Article 1 of the Geneva Conventions can provide a key mechanism for addressing these concerns.

The status of mercenaries in international armed conflict as a case of politicization of international humanitarian law

Eliav Lieblich. - Dezember 2009. - p. 115-123. - Bucerius law journal ; H. 3/2009 – Cote 29/145 (Br.)

This article argues that in the way it addressed the issue of mercenarism, contemporary IHL has done just that ; it injected political considerations into one of the core questions of IHL - Who is entitled to the status of combatant.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1538046

VI. Protection of persons

Displacement of civilians during armed conflict in the light of the case law of the Eritrea-Ethiopia claims commission



Allehone Mulugeta Abebe. - 2009. - P. 823-851. - Leiden journal of international law ; Vol. 22, no. 4 – Cote 325.3/191 (Br.)

The awards on liability and damages for violations of international humanitarian law of the Eritrea-Ethiopia Claims Commission uncover both the extent of state responsibility for unlawful displacement and deportation of civilian population resulting from wrongful actions of belligerents under international law and the availability of remedies for victims of such violations. The Commission reached a number of important decisions based on government-to-government claims brought by Ethiopia and Eritrea for injuries, losses, and damage suffered by individuals and groups uprooted by the war. While these decisions bring to light the potential of international humanitarian law in addressing the plight of the displaced, they also expose the limitations of the tribunal's mandate and its interpretation of existing law. The aim of this essay is to analyse the case law of the Commission in the light of international law applicable to situations of displacement of civilians triggered by international armed conflicts, and evaluate the relevance of the Commission's jurisprudence for the development of the law in the field.

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qui, sans pouvoir être qualifiées de "conflit armé" en DIH, entraînent la fuite de personnes qui ont un besoin réel de protection internationale, et, d'autre part, en réduisant la notion de "violence aveugle" aux cas de violations du DIH. A travers un analyse approfondie de la Directive Qualification, il est affirmé qu'une mise en oeuvre de la Directive Qualification tenant pleinement compte de l'objet et du but du mécanisme de la protection subsidiaire appelle une interprétation autonome de ces notions basée sur le sens ordinaire des termes de la Directive.

Unrecognized victims : sexual violence against men in conflict settings under international law

Dustin A. Lewis. - 8/18/2009. - p. 1-49. - Wisconsin international law journal ; Vol. 27, no. 1 – 345.2/434 (Br.)

The article assesses international law pertaining to sexual violence in conflict settings. It demonstrates that international instruments and customary international law have developed in ways that often exclude, whether explicitly or implicitly, men as a class of victims of sexual violence in armed conflict. Nonetheless, it details how prosecutors can use capaciously worded conventional and jurisprudential standards to pursue perpetrators of sexual violence against men in conflict settings, as constituent elements of genocide, crimes against humanity, and war crimes. The article concludes by suggesting that, to further enhance the protection international law provides to all victims of sexual violence, policy-makers should incorporate men explicitly into international instruments pertaining to sexual violence, and promote a jus cogens norm that encompasses all forms of sexual violence against women and men.

<http://hosted.law.wisc.edu/wilj/issues/27/1/lewis.pdf>

Violence on civilians and prisoners of war in the jurisprudence of international criminal tribunals

Fausto Pocar. - 2009. - p. 11-30. - Anuário brasileiro de direito internacional = Brazilian yearbook of international law = Annuaire brésilien de droit international ; 4, vol. 2 – Cote 344/16 (Br.)

During contemporary conflicts, civilians have been frequently focused within the hostilities, and war prisoners are commonly kept mistreated. These are not rare practices and the International Criminal Court for ex-Yugoslavia and Rwanda (ICTY and ICTR) have provided a detailed jurisprudence on the criminal nature of such activities since their establishment. Both Courts judicial decisions tend to converge, and are enriched by Special Court for Sierra Leona (SCSL) judgments. This article analyses the distinct manners in which civilians and war prisoners were mistreated and identifies the means by which these violence perpetrators must be individually taken as responsible in the light of International Criminal Law. Specifically, it proposes a legal and factual discussion on the violence suffered by civilians and detainees - deportation, forced dislocation, torture and rape - as well on the civilians situation during a combat - trench diggers, human shields and children acting as soldiers.

Without order, anything goes ? : the prohibition of forced displacement in non-international armed conflict

Jan Willms. - September 2009. - p. 547-565. - International review of the Red Cross ; Vol. 91, no. 875

At first glance, merely the 'ordering' of displacement seems to be prohibited in noninternational armed conflict. However, after interpreting Article 17(1) AP II and Rule 129(B) of the ICRC Customary Law Study with particular regard to State practice and opinio juris, the author concludes that these norms prohibit forced displacement regardless of whether it is ordered or not. On the other hand, the ICC Elements of Crimes for the crime of forced displacement under Article 8(2)(e)(viii) ICC Statute require an order. It remains to be seen whether the ICC adopts that interpretation in its jurisprudence.

<http://www.icrc.org/web/eng/siteeng0.nsf/html/review-875-p547>

VII. Protection of objects

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

The Geneva Conventions and United Nations personnel (protocols) act 2009 : a move away from the minimalist approach

Michael Meyer and Charles Garraway. - January 2010. - p. 171-180. - International and comparative law quarterly ; Vol. 59, part 1

Comment on the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 which makes the necessary changes in domestic law to enable the United Kingdom to ratify two treaties. The first treaty, the 2005 Third Additional Protocol to the 1949 Geneva Conventions, establishes an additional distinctive (protective) emblem, the red crystal. The second, the 2005 Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel, extends the legal protection given to personnel involved in two types of UN operations: operations for the purpose of delivering humanitarian, political or development assistance in peacebuilding, and operations for the purpose of delivering emergency humanitarian assistance.

Access only from ICRC:

<http://journals.cambridge.org/action/displayIssue?jid=ILO&volumeId=59&issueId=01>

The natural environment in times of armed conflict : a concern for international war crimes law ?

Ines Peterson. - 2009. - p. 325-343. - Leiden journal of international law ; Vol. 22, issue 2 – Cote 363.7/81 (Br.)

Article 8(2)(b)(iv), second alternative, of the Statute of the International Criminal Court lists as a war crime the launching of an attack that may cause excessive damage to the natural environment. The incorporation of this offence into the ICC Statute appears to be a great achievement, as it is the first time that such conduct has expressly been declared to entail individual criminal responsibility under an international treaty. It is, however, submitted that Article 8(2)(b)(iv), second alternative, of the ICC Statute, suffers from a serious lack of definition. In addition, the provision depends on an extremely high damage threshold which further complicates its application in practice.

VIII. Detention, internment, treatment and judicial guarantees

Guantanamo habeas review : are the D.C. district court's decisions consistent with IHL internment standards ?

Laura M. Olson. - 2009. - p. 197-243. - Case western reserve journal of international law ; Vol. 42, no. 1 & 2 – Cote 323.2/565 (Br.)

After the Supreme Court ruled in 2008 in *Boumediene v. Bush* that the detainees at the Guantánamo Bay detention facility are entitled to the privilege of habeas corpus to challenge the legality of their detention, the D.C. District Court started to take action on the hundreds of petitions filed. In these habeas proceedings, the court has faced the threshold legal question of the scope of the government's authority to detain pursuant to the Authorization for Use of Military Force as informed by the law of war. This article reviews how the court has delimited the permissible bounds of the government's detention authority, specifically focusing on whether the court's decisions are consistent with the internment standards under the law of war, international humanitarian law (IHL). This analysis seeks to assess whether the court's application of the Bush Administration's definition of "enemy combatant" or the new definition provided by the Obama Administration is broader or narrower than the IHL standards.

<http://www.case.edu/orgs/jil/afterguan.html>

La prison de Guantanamo : réflexions juridiques sur une zone de "non-droit"

Wanda Mastor. - 2009. - p. 23-44. - Annuaire français de droit international ; 54 (2008)

Les attaques du 11 septembre 2001 ont permis à George W. Bush de justifier la guerre qu'il a déclenchée contre « l'Axe du Mal ». L'adoption d'un arsenal de mesures antiterroristes est d'autant plus inédite qu'elle s'accompagne dans le même temps d'une guerre sur le terrain. La prison de Guantanamo, lieu de détention des « combattants ennemis » de cette guerre si atypique restera à jamais le symbole de la supériorité d'un objectif sur les moyens. Tant le droit international humanitaire que la constitution des États-Unis ont été violés au nom de la priorité de la lutte contre la terreur. L'activisme du pouvoir judiciaire et la volonté du nouveau président permettent d'envisager, malgré de sérieux obstacles, l'hypothèse de la fermeture de cette zone de non-droit.

Practical challenges of implementing the complementarity between international humanitarian and human rights law : demonstrated by the procedural regulation internment in non-international armed conflict

Laura M. Olson. - 2009. - p. 437-431. - Case western reserve journal of international law ; Vol. 40, no. 3 – Cote 345.1/3 (Br.)

This article—using the procedural regulation of internment as an example—outlines some of the practical challenges in assessing the interrelationship between International Humanitarian Law (IHL) and International Human Rights Law (IHRL), in order to draw attention to certain risks so they may be avoided, as well as to stimulate proposals to address these challenges. The international humanitarian treaty law procedurally regulating internment is described briefly. This is followed by an exploration of the relationship between IHL and IHRL. Differences between IHL and IHRL are presented, and, by focusing on the procedural regulation of internment, the way these differences give rise to complications, when attempting to harmonize the two sets of legal norms, is demonstrated. In conclusion, an initiative is proposed that may assist the practitioner in addressing the complementarity between IHL and IHRL in concrete situations, thereby helping to ensure the fullest protection of the law to persons interned.

http://www.case.edu/orgs/jil/security_detention.html

Yes, we can : the authority to detain as customary international law

Robert E. Barnsby. - Winter 2009. - p. 53-90. - Military law review ; Vol. 202

This article argues that, regardless of the type of conflict in which states are engaged, the authority to detain individuals rises to the level of Customary International Law (CIL). It lays out a comprehensive test to determine whether the authority to detain rises to the level of CIL. This test includes not only the typical "state practice" and "opinio juris" prongs of CIL, but also lesser known—yet equally important—aspects of CIL, including "specially affected" states (describing states with more practice than others in a particular aspect of armed conflict) and "permissive rules" (describing state actions that are allowed, but not required, in armed conflict).

http://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/2009.htm

IX. Law of occupation

From trusteeship to self-determination and back again : the role of the Hague regulations in the evolution of international trusteeship, and the framework of rights and duties of occupying powers

Ralph Wilde. - Berlin : Duncker and Humblot, 2009. - p. 333-370. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference – Cote 345/567

The paper argues that the distinction commonly made between trusteeship and occupation is without merit, and that the differences between foreign state and international organization-conducted territorial administration are of much less significance than they have been made out to be. It suggests that a crucial insight to this enquiry is offered by a return to the world view of 1907 and the concept of occupation contained in the Hague Regulations, when that concept is analyzed within a broader historical context.

Les situations de conflits armés ou d'occupation : quelle place pour l'Etat de droit ?

Yves Sandoz. - Paris : Pedone, 2009. - p. 361-383. - L'Etat de droit en droit international – Cote 345.28/80 (Br.)

Il est important de s'appuyer sur la distinction faite entre « l'Etat de droit » (avec majuscule), soit les qualités requises d'un Etat pour être qualifié ainsi; et « l'état de droit » (avec minuscule) à l'échelle internationale, soit le fonctionnement de la communauté internationale dans le respect du droit international. En ce qui concerne ce dernier, l'on doit en outre faire l'analyse à deux niveaux, le droit international humanitaire étant une sorte d'embarcation de secours, un sous-système prévu en cas d'échec du système principal, dont le fonctionnement doit être évalué pour lui-même, sans lien avec le premier, selon le principe, essentiel pour ce droit, de l'indépendance du « jus ad bellum » et du « jus in bello » celui qui viole le premier peut respecter le second et, surtout, celui qui agit conformément au premier n'est pas exempté de respecter le second. Nous allons donc essayer ci-dessous de brièvement analyser les différentes situations de conflit armé et d'occupation selon cette grille d'une part de l'état de droit sur le plan universel et de l'Etat de droit sur le plan national, d'autre part du système général du droit international et du sous-système du droit international humanitaire.

The law on the unilateral termination of occupation

Eyal Benvenisti. - Berlin : Duncker and Humblot, 2009. - p. 371-382. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference – Cote 345/567

In principle there can be four ways for an occupation to end. First, occupation can end by the loss of effective control. Second, it can end by the dissolution of the ousted sovereign. Third, occupation could come to an end by the signing of a peace agreement or an armistice agreement with the ousted government. Fourth, and occupation can end by transferring authority to an indigenous government endorsed by the occupied population through referendum and by international recognition. This note discusses the first type of termination. It seeks to characterize the moment of loss of control and examine.

X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

Asymmetric war, symmetrical intentions : killing civilians in modern armed conflict

Michael L. Gross. - November 2009. - p. 320-336. - Global Crime ; Vol. 10, no. 4 – Cote 345.25/31 (Br.)

During asymmetric war, a state actor often faces charges of disproportionate harm while the weaker, nonstate side must defend itself against charges of terrorism. Because the state actor faces an adversary embedded among civilians, and the nonstate actor confronts an opponent whose military targets are often so well protected that only its nonmilitary targets are vulnerable, it is difficult for either side to fight without harming civilians. While humanitarian

law tries to protect noncombatants to the greatest extent possible, too strict an interpretation of terrorism and proportionality may unduly restrict either side's ability to pursue political claims by force of arms. To successfully walk the line between protecting civilians during asymmetric war and allowing each side a 'fighting chance', it is necessary to take another look at the idea of intentionality and the definition of combatants. While intentional harm is the hallmark of terrorism, state armies also bring intentional harm if they expect to glean military benefits from causing collateral damage to civilians. A tighter understanding of intentionality can further protect innocent, noncombatant civilians. At the same time, however, the international community must recognise that not all civilians are noncombatants. Many civilians take a direct or indirect role in the fighting. As such, some civilians are vulnerable to lethal harm while others remain subject to nonlethal harm. Asymmetric war expands the range of permissible civilian targets that each side may attack without incurring charges of terrorism or disproportionate harm.

Clearing the fog of war ? : the ICRC's interpretive guidance on direct participation in hostilities

Dapo Akande. - January 2010. - p. 180-192. - International and comparative law quarterly ; Vol. 59, part 1

Review of the 2009 ICRC's "Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law". The ICRC's interpretive guidance attempts to answer 3 questions: Who is considered a civilian for the purposes of the principle of distinction? What conduct amounts to direct participation in hostilities? What modalities govern the loss of protection against direct attack? In short when is a person considered as no longer taking a direct part in hostilities, how is that determined and what are the consequences?

Access only from ICRC:

<http://journals.cambridge.org/action/displayIssue?jid=ILQ&volumeId=59&issueId=01>

Counter-insurgency, human rights, and the law of armed conflict

Federico Sperotto. - Fall 2009. - p. 19-23. - Human rights brief ; Vol. 17, issue 1

Recent evolutions in human rights norms, particularly in the jurisprudence of the ECtHR, may serve to fill gaps in IHL as applied to counter-insurgency operations such as those conducted in Afghanistan. The article compares the applicable IHL and human rights rules on a number of sensitive issues regarding the use of lethal force and protection of civilians. These examples illustrate that broader human rights rules may be more applicable to the counter-insurgency context, when IHL rules prove insufficient for the complexities of such irregular warfare.

<http://www.wcl.american.edu/hrbrief/17/1sperotto.pdf>

Law from above : unmanned aerial systems, use of force, and the law of armed conflict

Chris Jenks. - 2009. - p. 649-671. - North Dakota law review ; Vol. 85, no. 3 – Cote 345.25/32 (Br.)

This article examines the permissibility of armed unmanned aerial systems (UAS) strikes through two normative constructs: jus ad bellum, the law governing resorting to force, and jus in bello, the law governing the actual conduct of a UAS strike. How one characterizes the conflict in Pakistan, internally and via the United States, and whether Pakistan has consented to the strikes, trigger different analytical frameworks, but this article asserts the conclusion is the same – that the UAS strikes are lawful.

http://www.law.und.nodak.edu/LawReview/issues/web_assets/pdf/85-3/85NDLR649.pdf

Requirements of military necessity in international humanitarian law and international criminal law

Nobuo Hayashi. - 2010. - p. 39-140. - Boston university international law journal ; Vol. 28, issue 1 – Cote 345.25/34 (Br.)

Understanding military necessity properly involves identifying and distinguishing between the material, normative and juridical contexts within which it appears. Within the juridical context, military necessity functions exclusively as an exceptional clause attached to provisions of the law that envisage its admissibility expressly and in advance. As an exceptional clause, military necessity exempts a measure from certain specific rules of international humanitarian law prescribing contrary action to the extent that the measure was required for the attainment of a military purpose and otherwise in conformity with that law. This definition gives rise to four requirements: (i) that the measure be taken primarily for some specific military purpose, (ii) that the measure be required for the attainment of that purpose, (iii) that the purpose be in conformity with international humanitarian law, and (iv) that the measure itself be otherwise in conformity with that law. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has generated a growing body of jurisprudence on the absence of conditions satisfying exceptional military necessity as an element of several war crimes and crimes against humanity. The ICTY has interpreted military necessity exceptions effectively even in highly complex factual circumstances such as those involving combat-related property destruction in a manner that is broadly consistent with the four requirements just noted. It remains to be seen how the International Criminal Court (ICC) will fare in this regard. The ICC would do well to treat with caution Article 31(1)(c) of its statute, which provides for the exclusion of criminal responsibility for certain acts, including those reasonably taken in defence of property essential to accomplishing a military mission.

<http://www.bu.edu/law/central/jd/organizations/journals/international/documents/39-140.pdf>

Upholding the principle of distinction in counter-terrorist operations : a dialogue

Avery Plaw. - 2010. - p. 3-22. - Journal of military ethics ; Vol. 9, no. 1

Asa Kasher and Amos Yadlin have recently argued for a revised principle of distinction under which states should prioritize the protection of their own soldiers over that of noncombatants in certain combat scenarios. The situations that they envision are those in which a state's army is forced to fight terrorists on terrain which is not under the state's effective control. Kasher dramatizes the argument that the soldiers' safety should be prioritized by setting up a hypothetical conversation between the state and a soldier who asks 'Why should my state prefer an enemy citizen over me?' Kasher challenges his readers to offer the soldier a morally compelling answer. This article responds to Kasher's challenge by presenting a dialogue in which a commander (representing the state) offers the soldier four arguments which together provide a convincing answer. The commander grounds his arguments in differences in the amount of choice exercised by soldiers and civilians, the divergent ways the operation can be expected to impact on them, the different obligations they each have to the state, and the likely consequences of emphasizing the safety of soldiers over civilians. The dialogue provides support for the 'double intention' reading of the principle of distinction championed by Michael Walzer.

Access only from ICRC:

<http://www.informaworld.com/smpp/content~content=a919402520~db=all~jumtype=rss>

XI. Weapons

Conventional disarmament : nothing new on the Geneva front ?

Knut Dörmann. - Berlin : Duncker and Humblot, 2009. - p. 143-166. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference - Cote 345/567

Since 1980, work on restrictions and prohibitions of conventional weapons has happened essentially in the framework of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. This Convention and its annexed Protocols contain elements of disarmament law (e.g. certain transfer prohibitions), most of their contents is, however, based on international humanitarian law, in particular on the rules stemming from the principle of

distinction and the prohibition to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

International humanitarian law in the European Union's common foreign and security policy, in particular the EU code of conduct on arms exports

Christiane Höhn. - Berlin : Duncker and Humblot, 2009. - p. 167-182. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference – Cote 345/567

The paper explains the European Union's guidelines on the promotion of international humanitarian law. It analyses the EU Code of Conduct on Arms Exports as an example of EU policy to ensure respect of international humanitarian and human rights law.

La Convention de 2008 sur les armes à sous-munitions

Eric David. - 2009. - p. 785-804. - Revue générale de droit international public ; T. 113, no 4

Les sous-munitions, petites bombes contenues dans une bombe plus grande, n'explosent pas toujours au moment de leur dispersion ou de leur impact et peuvent rester actives longtemps après la fin des hostilités. Elles ont fait, et continuent à faire, un nombre impressionnant de victimes, le plus souvent civiles et sans aucun rapport avec le conflit armé au cours duquel elles ont été utilisées. Sous la pression de la société civile choquée par cette situation, les Etats ont adopté une convention qui, à bien des égards, apparaît comme une soeur, pas tout à fait jumelle cependant, de la Convention d'Oslo/Ottawa (1997) sur les mines antipersonnel : comme celle-ci, la Convention de Dublin/Oslo (2008) interdit l'emploi des armes à sous-munitions, exige que les Etats parties à la Convention détruisent leurs stocks et nettoient leur territoire si des sous-munitions non explosées s'y trouvent. Originalités (partielles) de la Convention, l'Etat où se trouvent les restes et les victimes de ces armes doit dépolluer son territoire et assister les victimes ainsi que leur famille et leur communauté alors que ces sous-munitions peuvent résulter de l'action d'autres Etats. ; contre-partie de ce programme ambitieux, tous les Etats parties doivent y contribuer.

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Chris Jenks. - 2009. - p. 649-671. - North Dakota law review ; Vol. 85, no. 3 – Cote 345.25/32 (Br.)

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http://www.law.und.nodak.edu/LawReview/issues/web_assets/pdf/85-3/85NDLR649.pdf

The legal status of cluster munitions under international humanitarian law : indiscriminate weapons of war

Jonathan Black-Branch. - 2009. - p. 186-193. - Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict ; Vol. 22, 4/2009

Recent developments regarding the Convention on Cluster Munitions highlight an important shift in thinking relating to the harm caused by cluster munitions, particularly post-military conflict. That said, the Convention will only bind those who ratify it and arguments remain that governments around the world should reassess their positions regarding the legality of using

such weapons. This article argues that cluster munitions are illegal under contemporary international law and their classification as a conventional weapon of war should be reclassified.

The prohibition of cluster munitions : setting international precedents for defining inhumanity

Brian Rappert and Richard Moyes. - July 2009. - p. 237-256. - Nonproliferation review ; Vol. 16, no. 2 – Cote 341.67/668 (Br.)

By the end of 2008, ninety-five states had signed the Convention on Cluster Munitions, which bans the development, production, acquisition, stockpiling, and transfer of cluster munitions; imposes significant obligations for the clearance of unexploded cluster munition remnants; and elaborates novel requirements for so-called victim assistance. This article examines this agreement and the process that led up to it in terms of the precedents it sets for future arguments about weapon technologies and the regulation of armed conflict. Particularly noteworthy was the process for determining what counts as a "cluster munition" under the convention. The definition structure transformed the argument from considerations of what types should be prohibited to demanding justifications for what should be allowed. In other words, rather than the burden of proof resting with those seeking a ban, the presumption became that exclusions from prohibition had to be argued in by proponents of specific submunition-based weapons. This approach contrasts with the manner in which the burden of proof regarding cluster munitions has been handled in international humanitarian law.

With fear and trembling : an ethical framework for non-lethal weapons

Pauline Kaurin. - 2010. - p. 100-114. - Journal of military ethics ; Vol. 9, no. 1

This article augments and enlarges the process of framing a more systematic and holistic ethical approach to non-lethal weapons that also provides caveats and restrictions - along the lines of *jus in bello* principles in the just war tradition - on their use. Rejected as morally impermissible is the use of non-lethal weapons as: (1) a way to circumvent or make irrelevant classical moral distinctions; (2) an 'easy' technological fix to complex moral and strategic problems; and (3) a method to make war more palatable and easier to use as both a military and political option. Non-lethal weapons can be ethical, and in fact may be ethically preferable to conventional weapons, only if they are used consistently with the following criteria (in strict order of priority): (1) to provide the military with more flexible response time and options, allowing them more time and space to carefully make the strategic and ethical judgments necessary in war and to respond with appropriate and proportional force; (2) to reduce unnecessary suffering on the part of non-combatants; (3) to facilitate the eventual restoration of peace; and (4) to minimize combatant casualties.

Access only from ICRC:

<http://www.informaworld.com/smpp/content~content=a919403383~db=all~jumtype=rss>

XII. Implementation

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

Common article I : a minimum yardstick for regulating private military and security companies

Hannah Tonkin. - 2009. - p. 779-799. - Leiden journal of international law ; Vol. 22, no. 4 – Cote 345.22/160 (Br)

Tens of thousands of contractors work for private military and security companies (PMSCs) during armed conflict and occupation, often hired by states to perform activities that were once the exclusive domain of the armed forces. Many of the obligations and standards that guide states in regulating their armed forces are lacking in relation to PMSCs, raising concerns that states might simply outsource their military policy to PMSCs without taking adequate measures to promote compliance with international humanitarian law (IHL). This article argues that the

universally applicable obligation ‘to ensure respect’ for IHL in Common Article 1 of the Geneva Conventions can provide a key mechanism for addressing these concerns.

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Ensuring respect : United Nations compliance with international humanitarian law

Peter F. Chapman. - Fall 2009. - p. 2-11. - Human rights brief ; Vol. 17, issue 1

This article will begin with an introduction to UN peace operations, highlighting some cases of alleged abuse. The second section will examine the applicability of IHL to the UN. First, the section will examine the nuances of IHL by describing the differences between international, non-international, and internationalized armed conflict. It will then demonstrate that the UN is bound by IHL. The article will conclude by examining several potential mechanisms to enforce the UN’s obligations under IHL: international state responsibility; domestic proceedings in the troop-contributing state; human rights mechanisms; claims commissions; the International Criminal Court (ICC); and ombudspersons. Finally, the article will offer brief recommendations for how the UN can ensure its compliance with IHL while adequately supporting victims’ needs.

<http://www.wcl.american.edu/hrbrief/17/1chapman.pdf?rd=1>

Following historical precedent : an argument for the continued use of military professionals as triers of fact in some humanitarian law tribunals

Richard V. Meyer. - March 2009. - p. 43-61. - Journal of international criminal justice ; Vol. 7, no. 1

The military commissions at Guantánamo Bay have properly been the subject of much legal scrutiny and criticism. Their use of military officers as triers of fact, however, merits further consideration. Salim Hamdan may have benefited from having military officers decide his case. His panel was composed of highly educated military professionals who have dedicated their lives in service of the law. Despite their enmity towards the accused, these officers were actually in a better position to be sympathetic and understanding to the Hamdan defence than a civilian jury. The unique aspects of military service and combat experience will also make them excellent partners with professional jurists in future humanitarian law tribunals.

Access only from ICRC:

<http://jicj.oxfordjournals.org/cgi/content/abstract/7/1/43>

Grave breaches and internal armed conflicts

Lindsay Moir. - September 2009. - p. 763-787. - Journal of international criminal justice ; Vol. 7, no. 4

International law has historically been more concerned with the regulation of international, rather than internal, armed conflict. As an integral part of this regime, aimed specifically at the violation of particular rules relating to international armed conflict, the grave breaches

provisions of the Geneva Conventions and Additional Protocol I have no apparent relevance to internal armed conflict. This article argues that the concept of grave breaches has, nonetheless, impacted in a significant way upon both the substantive laws of internal armed conflict and their criminal enforcement against individuals. Whether the law has developed to a point where grave breaches can equally be committed during internal armed conflict, or where violations of the laws of internal armed conflict can be considered grave breaches such that the obligations to investigate those offences and to prosecute or extradite offenders now also apply — either through the adoption of a teleological approach to the Geneva Conventions, or else through the development of a new customary rule to that effect — is rather more dubious.

Access only from ICRC:

<http://jicj.oxfordjournals.org/cgi/content/full/7/4/763>

Identifying an armed conflict not of an international character

Sandesh Sivakumaran. - Leiden ; Boston : Martinus Nijhoff, 2009. - p. 363-380. - The emerging practice of the International criminal court – Cote 344/493

Inherent in article 8(2)(c) and 8(2)(e) is the notion of an "armed conflict not of an international character", an idea that appears in common article 3 of the Geneva Conventions. Quite what is meant by this phrase is the subject of this chapter. Part 2 will seek to give it some meaning, using factors identified by the ad hoc international criminal tribunals, primarily those of the intensity of the violence and the level of organisation of the armed group. Part 3 will consider whether the threshold of article 8(2)(e) is the same as that of article 8(2)(c), or whether a higher threshold has been created as a result of the requirement in article 8(2)(f) that the armed conflict be "protracted". Regard will be had to how that requirement came to be included in the statute and how it has subsequently been interpreted by a pre-trial chamber of the International Criminal Court.

International humanitarian law in the European Union's common foreign and security policy, in particular the EU code of conduct on arms exports

Christiane Höhn. - Berlin : Duncker and Humblot, 2009. - p. 167-182. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference – Cote 345/567

The paper explains the European Union's guidelines on the promotion of international humanitarian law. It analyses the EU Code of Conduct on Arms Exports as an example of EU policy to ensure respect of international humanitarian and human rights law.

La saisine de la Cour internationale de justice pour faits de guerre

Romain Le Boeuf. - 2009. - p. 52-77. - Revue belge de droit international ; Vol. 42, no 1

La Cour internationale de justice est de plus en plus fréquemment saisie de faits en relation avec l'emploi de la force. Il apparaît cependant que la conjonction de ses règles procédurales et de certaines "lacunes" du droit de la guerre la prive de l'essentiel des règles applicables aux situations de ce type. Cet état du droit contraint les requérants à recourir à des instruments juridiques sans rapports avec les faits dont ils souhaitent saisir la Cour, et amène cette dernière à se prononcer sur des affaires tronquées de l'essentiel de leurs caractéristiques. Il en résulte un décalage de l'intégralité du débat judiciaire, comme en témoigne par exemple le différend opposant la Géorgie à la Russie.

Playing by the rules : applying international humanitarian law to video and computer games

Frida Castillo, TRIAL, Pro Juventute. - Geneva : TRIAL ; Zürich : Pro Juventute, October 2009. - 46 p. – Cote 345.24/2 (Br.)

In computer and videogames, little research exists on whether, if they were committed in real life, violent acts in games would lead to violations of rules of international law, in particular

International Humanitarian Law (IHL), basic norms of International Human Rights Law (IHRL) or International Criminal Law (ICL). Various computer and videogames were tested for their compatibility with internationally valid and universally accepted rules of IHL and IHRL. The question they posed themselves was whether certain scenes and acts committed by players would constitute violations of international law if they were real, rather than virtual. The aim of the study is to raise public awareness among developers and publishers of the games, as well as among authorities, educators and the media about virtually committed crimes in computer and videogames, and to engage in a dialogue with game producers and distributors on the idea of incorporating the essential rules of IHL and IHRL into their games which may, in turn, render them more varied, realistic and entertaining. The goal is not to prohibit the games, to make them less violent or to turn them into IHL or IHRL training tools.

http://www.trial-ch.org/fileadmin/user_upload/documents/Evenements_et_manifestations/Playing_by_the_Rule.pdf

Reflections on the iudicare limb of the grave breaches regime

Claus Kress. - September 2009. - p. 789-809. - Journal of international criminal justice ; Vol. 7, no. 4

This article addresses the iudicare limb of the grave breaches regime. While the Hague formula of *aut dedere aut iudicare* must certainly be considered when construing the iudicare limb of the grave breaches regime, this article shows that the iudicare limb applicable to grave breaches is independent of other similar conceptions. Moreover, we see that there is no absolute duty to arrest, nor can there be an absolute duty to prosecute and to punish. What the iudicare limb in fact entails is a duty to investigate and, where so warranted, to prosecute and to convict. In some circumstances, immunities influence this obligation. There are, in addition, certain implications arising from the procedural safeguards implicit in the iudicare limb. Finally, this article concludes with a word of caution concerning amnesties in hybrid accountability systems, querying whether international practice might slowly come to accept a less categorical regime, as it does in the field of war crimes committed in non-international armed conflicts and crimes against humanity. This would perhaps better reflect the political complexities of the transition from armed conflict to peace.

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<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/789>

Shortcomings of the grave breaches regime

Dieter Fleck. - September 2009. - p.833-854. - Journal of international criminal justice ; Vol. 7, no. 4

This contribution reviews shortcomings of the grave breaches system as they have evolved in recent jurisprudence and state practice. It first considers textual problems identified by the International Criminal Tribunal for the former Yugoslavia in this respect and evaluates the solutions applied by the Tribunal. Second, the article will assess shortcomings of law and practice related to the application of universal jurisdiction addressing the question of whether failures are political or legal. In the light of such shortcomings, the article will discuss the issue of universal jurisdiction over war crimes as a permissive rule of customary law. Finally, some conclusions are drawn, with a view to outlining some of the remaining problems for the prosecution of serious violations of international humanitarian law, and developing effective solutions.

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<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/833>

The contribution of the ICTY to the grave breaches regime

Ken Roberts. - September 2009. - p. 743-762. - Journal of international criminal justice ; Vol. 7, no. 4

This article considers the contribution of the International Criminal Tribunal for the former Yugoslavia (ICTY) to the grave breaches regime as the first body to systematically apply these provisions, and argues that the jurisprudence has breathed life into the regime. It has clarified

when grave breaches may apply, through the elucidation of the 'overall control' test in establishing the internationality of a conflict; how the regime may be applied in a practice, through the operation of a nexus requirement; and who may benefit from the protection of the regime, through a modern interpretation of 'protected person'. It is argued that the ICTY has significantly contributed to the definition of underlying grave breaches. With respect to torture, the contribution has been both with respect to the identification of comprised acts, such as rape and other abuses of a sexual nature, as well as in distinguishing the definition from that applied under the Torture Convention. Concerning unlawful confinement, the contribution has focused on interpreting the interaction of different provisions of Geneva Convention IV to bring the breach to life. Ironically, some of these positive contributions may have had the unintended consequence of reducing the role of grave breaches in the charging practices of the Prosecution.

Access only from ICRC:

<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/743>

The future of the grave breaches regime : segregate, assimilate or abandon ?

James G. Stewart. - September 2009. - p. 855-877. - Journal of international criminal justice ; Vol. 7, no. 4

The future of the grave breaches regime is impossible to predict with any degree of accuracy — the grave breaches regime has developed in terms that those who negotiated the Geneva Conventions did not foresee, and we are no better situated to guess how the coming decades will unfold. Nonetheless, three possible futures are plausible. In the first, the grave breaches regime may remain segregated from other categories of war crimes in deference to the historical development of these crimes. This future, however, is one that will see a relatively dramatic decline in the use of grave breaches in practice, primarily because other offences cover the same acts more efficiently. In the second possible future, the grave breaches are entirely abandoned, but this eventuality seems both improbable and undesirable. Even though judicial pragmatism has diminished aspects of the grave breaches regime that were once unique, grave breaches still offer important features over and above all alternatives. The grave breaches regime is therefore unlikely to disappear entirely. A third possible future involves assimilating the grave breaches with other categories of war crimes, ideally through the promulgation of a more coherent treaty regime. In the short term, this proposition appears politically untenable, leaving judges to unify the stark disparities between grave breaches and other war crimes. A future that continues to adopt this course will nonetheless pose serious problems for the discipline in the years to come.

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<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/855>

The Geneva Conventions and United Nations personnel (protocols) act 2009 : a move away from the minimalist approach

Michael Meyer and Charles Garraway. - January 2010. - p. 171-180. - International and comparative law quarterly ; Vol. 59, part 1

Comment on the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 which makes the necessary changes in domestic law to enable the United Kingdom to ratify two treaties. The first treaty, the 2005 Third Additional Protocol to the 1949 Geneva Conventions, establishes an additional distinctive (protective) emblem, the red crystal. The second, the 2005 Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel, extends the legal protection given to personnel involved in two types of UN operations: operations for the purpose of delivering humanitarian, political or development assistance in peacebuilding, and operations for the purpose of delivering emergency humanitarian assistance.

Access only from ICRC:

<http://journals.cambridge.org/action/displayIssue?jid=ILO&volumeId=59&issueId=01>

The grave breaches regime and universal jurisdiction

Roger O'Keefe. - September 2009. - p. 811-832. - Journal of international criminal justice ; Vol. 7, no. 4

The mandating of universal jurisdiction by the grave breaches provisions of the 1949 Geneva Conventions was an innovation in relation to both the penal provisions of prior treaties and the prevailing understanding of the international legal basis for national jurisdiction over war crimes. Despite not having been relied on until the 1990s to ground national prosecutions on the basis of universality, the grave breaches provisions have exerted an influence on the development of both treaty-based and customary rules on universal jurisdiction. In some respects, however, this influence has been as an example of how not to draft jurisdictional provisions in international criminal law conventions.

Access only from ICRC:

<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/811>

The grave breaches regime as customary international law

Jean-Marie Henckaerts. - September 2009. - p. 683-702. - Journal of international criminal justice ; Vol. 7, no. 4

The Geneva Conventions were adopted 60 years ago. Today, they are universally ratified. Notwithstanding their universal adherence as treaty law, the customary nature of the provisions of the Geneva Conventions remains relevant. This article examines the claims that the Geneva Conventions, in general, are part of customary international law. Beyond this level of generality, it argues that the grave breaches regime is part of customary international law, including the definition of the grave breaches as well as the procedural rules governing grave breaches. The latter include the obligation to enact effective penal sanctions in domestic law and the obligation to search for and to try or extradite persons suspected of grave breaches on the basis of universal jurisdiction. The article argues that these rules are not simply 'technical' rules but are 'fundamental to the respect of the human person and [humanity]', a phrase used by the International Court of Justice when examining the customary nature of the Geneva Conventions.

Access only from ICRC:

<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/683>

The history of the grave breaches regime

Yves Sandoz. - September 2009. - p. 657-682. - Journal of international criminal justice ; Vol. 7, no. 4

Criminal punishment for violations of the laws of war date to the earliest formal codifications. In particular, the Lieber Code of 1863 contained a large number of references to criminal punishment, which ultimately influenced a large number of the subsequent treaties. This said, initial codifications of the laws and customs of war after Lieber but before the Geneva Conventions of 1949 made only scant reference to individual criminal liability. Nonetheless, the grave breaches regime emerged in 1949 as an important response to the sufferings of Second World War. The idea behind the regime was that certain offences were sufficiently grave to warrant explicit codifications as war crimes. The development of grave breaches was then continued in 1977, first by the inclusion of further offences within Additional Protocol I, then by inclusion of the grave breaches regime within the Statute of the International Criminal Court. As a general rule, this development has nonetheless involved developing rules to deal with the horrors of the past. Potentially, history will serve as a helpful guide for countering the numerous challenges that face grave breaches in the future.

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<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/657>

The implementation of grave breaches into domestic legal orders

Knut Dörmann and Robin Geiss. - September 2009. - p. 703-722. - Journal of international criminal justice ; Vol. 7, no. 4

States are required to implement grave breaches within their domestic criminal law. The obligation to enact legislation necessary to provide effective penal sanctions in relation to grave breaches lies at the heart of any meaningful prosecution of grave breaches of the Geneva Conventions. Knowing what is required of states and understanding the different models of implementation is essential. Yet, despite its importance, this specific obligation has led a somewhat shadowy existence, often neglected in state practice and academic research. It is against this background that the present contribution aims to bring into focus the scope and precise content of this somewhat ambiguously formulated obligation.

Access only from ICRC:

<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/703>

The prosecution of grave breaches in national courts

Ward Ferdinandusse. - September 2009. - p. 723-741. - Journal of international criminal justice ; Vol. 7, no. 4

This article surveys the prosecution of acts constituting grave breaches of the Geneva Conventions in national courts. In these national prosecutions, international criminal law is not always applied in a uniform manner. Acts constituting grave breaches are not only prosecuted as such, but are also charged as other international crimes (like crimes against humanity or genocide) or ordinary crimes, like murder. The author argues that a divergent national application of international criminal law is not necessarily problematic but can (within the limits posed by international law) be a useful and important motor for the development of the law. A survey of national case law demonstrates the potential of the grave breaches regime to ensure universality of punishment for these war crimes, and also reveals that the grave breaches regime has so far not lived up to its potential.

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<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/723>

The regulation of armed non-state actors : promoting the application of the laws of war to conflicts involving national liberation movements

Noelle Higgins. - Fall 2009. - p. 12-18. - Human rights brief ; Vol. 17, issue 1

This article seeks to investigate how non-state actors, specifically national liberation movements, are and could be regulated by IHL. It seeks to give an overview of the relevant legal provisions and illustrates the difficulties faced by national liberation movements if they do wish to accede to IHL instruments and apply IHL in their conflicts. As it is the aim of IHL to protect both combatants and civilians in armed conflicts, it is important that this body of law is practically applied and implemented in all conflict situations to the greatest extent possible. However, in the past, national liberation movements have encountered difficulties when seeking to apply IHL to their conflicts due to the nature of the legal framework and, indeed, the nature of international law itself.

<http://www.wcl.american.edu/hrbrief/17/1higgins.pdf?rd=1>

XIII. International Human Rights Law

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

Counter-insurgency, human rights, and the law of armed conflict

Federico Sperotto. - Fall 2009. - p. 19-23. - Human rights brief ; Vol. 17, issue 1

Recent evolutions in human rights norms, particularly in the jurisprudence of the ECtHR, may serve to fill gaps in IHL as applied to counter-insurgency operations such as those conducted in Afghanistan. The article compares the applicable IHL and human rights rules on a number of sensitive issues regarding the use of lethal force and protection of civilians. These examples illustrate that broader human rights rules may be more applicable to the counter-insurgency context, when IHL rules prove insufficient for the complexities of such irregular warfare.

<http://www.wcl.american.edu/hrbrief/17/1sperotto.pdf>

Extraterritorial application of human rights : the differing decisions of Canadian and UK courts

Stuart Hendin. - Jan. 2010. - p. 57-86. - Windsor review of legal and social issues = Revue des affaires juridiques et sociales de Windsor ; Vol. 28, Jan. 2010

The courts of two common law jurisdictions, Canada and the United Kingdom, reached opposite results on the issue of extraterritorial application of domestic human rights instruments. The Canadian Court misapprehended the issue of jurisdiction and control as enunciated by the ECHR, and failed to consider in detail that portion of cases from both the English Court of Appeal and House of Lords that applied directly to the extraterritorial application of the Canadian Charter of Rights and Freedoms as it pertains to detainee operations conducted by the Canadian Forces in Afghanistan.

Humanitarian law and human rights : intersecting circles or separate spheres ?

Dagmar Richter. - Berlin : Duncker and Humblot, 2009. - p. 257-322. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference - Cote 345/567

Contains: Rules governing the relationship between norms in international law. - Reference rules. - The applicability of treaty law (HRL and IHL) in situations of armed conflict. - The relationship between HRL and IHL in practice.

Practical challenges of implementing the complementarity between international humanitarian and human rights law : demonstrated by the procedural regulation internment in non-international armed conflict

Laura M. Olson. - 2009. - p. 437-431. - Case western reserve journal of international law ; Vol. 40, no. 3 – Cote 345.1/3 (Br.)

This article—using the procedural regulation of internment as an example—outlines some of the practical challenges in assessing the interrelationship between International Humanitarian Law (IHL) and International Human Rights Law (IHRL), in order to draw attention to certain risks so they may be avoided, as well as to stimulate proposals to address these challenges. The international humanitarian treaty law procedurally regulating internment is described briefly. This is followed by an exploration of the relationship between IHL and IHRL. Differences between IHL and IHRL are presented, and, by focusing on the procedural regulation of internment, the way these differences give rise to complications, when attempting to harmonize the two sets of legal norms, is demonstrated. In conclusion, an initiative is proposed that may assist the practitioner in addressing the complementarity between IHL and IHRL in concrete situations, thereby helping to ensure the fullest protection of the law to persons interned.

http://www.case.edu/orgs/jil/security_detention.html

The rights and responsibilities of armed non-state actors : the legal landscape and issues surrounding engagement

Andrew Clapham. - Genève : Académie de droits humains, February 2010. - 45 p. – Cote 345.2/441 (Br.)

This paper looks at the international obligations that bind rebel groups in the context of international humanitarian law, international human rights law and international criminal law. The focus is on rebel groups and how to engage with them with regard to norms aimed at the protection of civilians. A number of suggestions are floated in the context of a wider project, aimed at improving respect for such norms by generating a greater sense of ownership over the standards and the monitoring processes.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1569636

The Universal Declaration of Human Rights and armed conflicts : from fragmentation to complexity

Xavier Aurey. - 2009. - p. 48-67. - Anuário brasileiro de direito internacional = Brazilian yearbook of international law = Annuaire brésilien de droit international ; 4, Vol. 2 – Cote 345.1/1 (Br.)

Born out of the horror of war, the Universal Declaration of Human Rights seems to leave outside any traces of its bellicose ancestry. As a figure of the intimate relationship between the State and its citizens, Human Rights Law reports to the sole domestic sphere of States. Between a Law of War as the perfect expression of States' sovereignty and an international community still in its infancy, the UDHR seemed to be able to "guide" men and nations only in those periods when the law of armed conflict would not apply. However, the Tadic case shows us that the Declaration has, in practice, played a much more comprehensive role, including the development of the law of armed conflict. The pre-war mainly bilateral scheme was gradually supplanted by a multilateralism which tends to fragmentation, even complexity. Therefore, during the XXth century, the gradual replacement of the "State-sovereignty-oriented approach" by a "human-being-oriented approach" has highlighted the existence of a revolution, a paradigm shift. This new vision of the relationship between human rights and the law of armed conflict enable us to show the existence of a common goal between these two normative corpuses. Therefore we would demonstrate that the Universal Declaration of Human Rights was the anchor of this revolution.

XIV. International Criminal Law

Building on article 8(2)(b)(xx) of the Rome statute of the International Criminal Court : weapons and methods of warfare

Roger S. Clark. - Summer, 2009. - p. 366-389. - New criminal law review ; Vol. 12, no. 3 – Cote 344/42 (Br.)

Article 8(2)(b) of the Rome Statute treats as a war crime in international armed conflict the use of poison or poisoned weapons, of asphyxiating, poisonous or other gases, and of expanding bullets. Early drafts of the Statute included the use of these forbidden weapons in non-international as well as in international armed conflict. They also included as crimes the use of chemical, biological, and nuclear weapons (weapons of mass destruction). Proposals are circulating about revisiting these and other weapons issues at the Review Conference to be held in 2010, or in later reviews. This article examines the history of the negotiations culminating in Rome. It then turns to possibilities for building on the Rome provisions both by expanding the prohibitions to non-international conflict and by adding to the list of prohibited weapons. As well as reconsidering weapons of mass destruction, the author suggests that attention should be given to such items as nondetectable fragments, blinding laser weapons, antipersonnel land mines, and cluster munitions. Ambiguities in the Rome Statute's amendment provisions that affect whether such additions can be made applicable to all parties to the Statute, or only to those who agree specifically to them, are also addressed.

Deffective [effective] control : problems arising from the application of non-military command responsibility by the international criminal tribunal for Rwanda

Sean Libby. - 2009. - p. 201-230. - Emory international law review ; Vol. 23, no. 1 – Cote 344/35 (Br.)

This Comment offers an analysis and critique of the concept of command responsibility as it has been applied to non-military superiors - both government officials and civilians - by the International Criminal Tribunal for Rwanda (ICTR). While a potentially useful tool in allocating blame for violence and encouraging military leaders to actively control their subordinates, command responsibility becomes problematic when the de jure - or legal - authority of a superior is tenuous, and the de facto - or actual - control of an authority is not actually

established. Such a situation is likely to exist when command responsibility is used to try non-military superiors who either lack military authority or do not generally exercise such authority.

<http://www.law.emory.edu/fileadmin/journals/eilr/23/23.1/Libby.pdf>

Identifying an armed conflict not of an international character

Sandesh Sivakumaran. - Leiden ; Boston : Martinus Nijhoff, 2009. - p. 363-380. - The emerging practice of the International criminal court – Cote 344/493

Inherent in article 8(2)(c) and 8(2)(e) is the notion of an "armed conflict not of an international character", an idea that appears in common article 3 of the Geneva Conventions. Quite what is meant by this phrase is the subject of this chapter. Part 2 will seek to give it some meaning, using factors identified by the ad hoc international criminal tribunals, primarily those of the intensity of the violence and the level of organisation of the armed group. Part 3 will consider whether the threshold of article 8(2)(e) is the same as that of article 8(2)(c), or whether a higher threshold has been created as a result of the requirement in article 8(2)(f) that the armed conflict be "protracted". Regard will be had to how that requirement came to be included in the statute and how it has subsequently been interpreted by a pre-trial chamber of the International Criminal Court.

Requirements of military necessity in international humanitarian law and international criminal law

Nobuo Hayashi. - 2010. - p. 39-140. - Boston university international law journal ; Vol. 28, issue 1 – Cote 345.25/34 (Br.)

Understanding military necessity properly involves identifying and distinguishing between the material, normative and juridical contexts within which it appears. Within the juridical context, military necessity functions exclusively as an exceptional clause attached to provisions of the law that envisage its admissibility expressly and in advance. As an exceptional clause, military necessity exempts a measure from certain specific rules of international humanitarian law prescribing contrary action to the extent that the measure was required for the attainment of a military purpose and otherwise in conformity with that law. This definition gives rise to four requirements: (i) that the measure be taken primarily for some specific military purpose, (ii) that the measure be required for the attainment of that purpose, (iii) that the purpose be in conformity with international humanitarian law, and (iv) that the measure itself be otherwise in conformity with that law. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has generated a growing body of jurisprudence on the absence of conditions satisfying exceptional military necessity as an element of several war crimes and crimes against humanity. The ICTY has interpreted military necessity exceptions effectively even in highly complex factual circumstances such as those involving combat-related property destruction in a manner that is broadly consistent with the four requirements just noted. It remains to be seen how the International Criminal Court (ICC) will fare in this regard. The ICC would do well to treat with caution Article 31(1)(c) of its statute, which provides for the exclusion of criminal responsibility for certain acts, including those reasonably taken in defence of property essential to accomplishing a military mission.

<http://www.bu.edu/law/central/jd/organizations/journals/international/documents/39-140.pdf>

The contribution of the ICTY to the grave breaches regime

Ken Roberts. - September 2009. - p. 743-762. - Journal of international criminal justice ; Vol. 7, no. 4

This article considers the contribution of the International Criminal Tribunal for the former Yugoslavia (ICTY) to the grave breaches regime as the first body to systematically apply these provisions, and argues that the jurisprudence has breathed life into the regime. It has clarified when grave breaches may apply, through the elucidation of the 'overall control' test in establishing the internationality of a conflict; how the regime may be applied in a practice, through the operation of a nexus requirement; and who may benefit from the protection of the regime, through a modern interpretation of 'protected person'. It is argued that the ICTY has

significantly contributed to the definition of underlying grave breaches. With respect to torture, the contribution has been both with respect to the identification of comprised acts, such as rape and other abuses of a sexual nature, as well as in distinguishing the definition from that applied under the Torture Convention. Concerning unlawful confinement, the contribution has focused on interpreting the interaction of different provisions of Geneva Convention IV to bring the breach to life. Ironically, some of these positive contributions may have had the unintended consequence of reducing the role of grave breaches in the charging practices of the Prosecution.

Access only from ICRC:

<http://jicj.oxfordjournals.org/cgi/content/abstract/7/4/743>

The natural environment in times of armed conflict : a concern for international war crimes law ?

Ines Peterson. - 2009. - p. 325-343. - Leiden journal of international law ; Vol. 22, issue 2 – Cote 363.7/81 (Br.)

Article 8(2)(b)(iv), second alternative, of the Statute of the International Criminal Court lists as a war crime the launching of an attack that may cause excessive damage to the natural environment. The incorporation of this offence into the ICC Statute appears to be a great achievement, as it is the first time that such conduct has expressly been declared to entail individual criminal responsibility under an international treaty. It is, however, submitted that Article 8(2)(b)(iv), second alternative, of the ICC Statute, suffers from a serious lack of definition. In addition, the provision depends on an extremely high damage threshold which further complicates its application in practice.

The rights and responsibilities of armed non-state actors : the legal landscape and issues surrounding engagement

Andrew Clapham. - Genève : Académie de droits humains, February 2010. - 45 p. – Cote 345.2/441 (Br.)

This paper looks at the international obligations that bind rebel groups in the context of international humanitarian law, international human rights law and international criminal law. The focus is on rebel groups and how to engage with them with regard to norms aimed at the protection of civilians. A number of suggestions are floated in the context of a wider project, aimed at improving respect for such norms by generating a greater sense of ownership over the standards and the monitoring processes.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1569636

Unrecognized victims : sexual violence against men in conflict settings under international law

Dustin A. Lewis. - 8/18/2009. - p. 1-49. - Wisconsin international law journal ; Vol. 27, no. 1 – 345.2/434 (Br.)

The article assesses international law pertaining to sexual violence in conflict settings. It demonstrates that international instruments and customary international law have developed in ways that often exclude, whether explicitly or implicitly, men as a class of victims of sexual violence in armed conflict. Nonetheless, it details how prosecutors can use capacious worded conventional and jurisprudential standards to pursue perpetrators of sexual violence against men in conflict settings, as constituent elements of genocide, crimes against humanity, and war crimes. The article concludes by suggesting that, to further enhance the protection international law provides to all victims of sexual violence, policy-makers should incorporate men explicitly into international instruments pertaining to sexual violence, and promote a jus cogens norm that encompasses all forms of sexual violence against women and men.

<http://hosted.law.wisc.edu/wilj/issues/27/1/lewis.pdf>

Violence on civilians and prisoners of war in the jurisprudence of international criminal tribunals

Fausto Pocar. - 2009. - p. 11-30. - Anuário brasileiro de direito internacional = Brazilian yearbook of international law = Annuaire brésilien de droit international ; 4, vol. 2 – Cote 344/16 (Br.)

During contemporary conflicts, civilians have been frequently focused within the hostilities, and war prisoners are commonly kept mistreated. These are not rare practices and the International Criminal Court for ex-Yugoslavia and Rwanda (ICTY and ICTR) have provided a detailed jurisprudence on the criminal nature of such activities since their establishment. Both Courts judicial decisions tend to converge, and are enriched by Special Court for Sierra Leona (SCSL) judgments. This article analyses the distinct manners in which civilians and war prisoners were mistreated and identifies the means by which these violence perpetrators must be individually taken as responsible in the light of International Criminal Law. Specifically, it proposes a legal and factual discussion on the violence suffered by civilians and detainees - deportation, forced dislocation, torture and rape - as well on the civilians situation during a combat - trench diggers, human shields and children acting as soldiers.

Without order, anything goes ? : the prohibition of forced displacement in non-international armed conflict

Jan Willms. - September 2009. - p. 547-565. - International review of the Red Cross ; Vol. 91, no. 875

At first glance, merely the 'ordering' of displacement seems to be prohibited in noninternational armed conflict. However, after interpreting Article 17(1) AP II and Rule 129(B) of the ICRC Customary Law Study with particular regard to State practice and opinio juris, the author concludes that these norms prohibit forced displacement regardless of whether it is ordered or not. On the other hand, the ICC Elements of Crimes for the crime of forced displacement under Article 8(2)(e)(viii) ICC Statute require an order. It remains to be seen whether the ICC adopts that interpretation in its jurisprudence.

<http://www.icrc.org/web/eng/siteeng0.nsf/html/review-875-p547>

XV. Contemporary challenges

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

Asymmetric war, symmetrical intentions : killing civilians in modern armed conflict

Michael L. Gross. - November 2009. - p. 320-336. - Global Crime ; Vol. 10, no. 4 – Cote 345.25/31 (Br.)

During asymmetric war, a state actor often faces charges of disproportionate harm while the weaker, nonstate side must defend itself against charges of terrorism. Because the state actor faces an adversary embedded among civilians, and the nonstate actor confronts an opponent whose military targets are often so well protected that only its nonmilitary targets are vulnerable, it is difficult for either side to fight without harming civilians. While humanitarian law tries to protect noncombatants to the greatest extent possible, too strict an interpretation of terrorism and proportionality may unduly restrict either side's ability to pursue political claims by force of arms. To successfully walk the line between protecting civilians during asymmetric war and allowing each side a 'fighting chance', it is necessary to take another look at the idea of intentionality and the definition of combatants. While intentional harm is the hallmark of terrorism, state armies also bring intentional harm if they expect to glean military benefits from causing collateral damage to civilians. A tighter understanding of intentionality can further protect innocent, noncombatant civilians. At the same time, however, the international community must recognise that not all civilians are noncombatants. Many civilians take a direct or indirect role in the fighting. As such, some civilians are vulnerable to lethal harm while others remain subject to nonlethal harm. Asymmetric war expands the range of permissible civilian

targets that each side may attack without incurring charges of terrorism or disproportionate harm.

Playing by the rules : applying international humanitarian law to video and computer games

Frida Castillo, TRIAL, *Pro Juventute*. - Geneva : TRIAL ; Zürich : Pro Juventute, October 2009. - 46 p. – Cote 345.24/2 (Br.)

In computer and videogames, little research exists on whether, if they were committed in real life, violent acts in games would lead to violations of rules of international law, in particular International Humanitarian Law (IHL), basic norms of International Human Rights Law (IHRL) or International Criminal Law (ICL). Various computer and videogames were tested for their compatibility with internationally valid and universally accepted rules of IHL and IHRL. The question they posed themselves was whether certain scenes and acts committed by players would constitute violations of international law if they were real, rather than virtual. The aim of the study is to raise public awareness among developers and publishers of the games, as well as among authorities, educators and the media about virtually committed crimes in computer and videogames, and to engage in a dialogue with game producers and distributors on the idea of incorporating the essential rules of IHL and IHRL into their games which may, in turn, render them more varied, realistic and entertaining. The goal is not to prohibit the games, to make them less violent or to turn them into IHL or IHRL training tools.

http://www.trial-ch.org/fileadmin/user_upload/documents/Evenements_et_manifestations/Playing_by_the_Rule.pdf

Sixty years of the Geneva Conventions : learning from the past to better face the future : ceremony to celebrate the 60th anniversary of the Geneva Conventions, Geneva, 12 August 2009

Jakob Kellenberger. - September 2009. - p. 613-618. - International review of the Red Cross ; Vol. 91, no. 875

Address by Jakob Kellenberger, President of the International Committee of the Red Cross on the priority for the ICRC to anticipate and prepare for the main challenges to IHL in the years ahead.

<http://www.icrc.org/web/eng/siteeng0.nsf/html/review-875-p613>

Terrorism and asymmetric conflicts : a role for the Martens clause ?

Hans-Joachim Heintze. - Berlin : Duncker and Humblot, 2009. - p. 429-434. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference – Cote 345/567

The Martens Clause plays an outstanding role even today in debates on the application and development of international humanitarian law and its protective function. One can consider the reference to the "common interests of humanity" or the "common concerns of mankind" in "modern" legal instruments and doctrines as a means of identification of a broad consensus which could form part of international public policy. It seems legitimate to ask what this approach can contribute to the so-called new conflicts, often referred to as "asymmetric wars" due to the fact that the parties involved are no longer exclusively states.

The International Committee of the Red Cross and the challenges of today's armed conflicts

Robert Heinsch. - Berlin : Duncker and Humblot, 2009. - p. 393-415. - A wiser century ? : judicial dispute settlement, disarmament and the laws of war 100 years after the second Hague peace conference – Cote 345/567

Contains: The ICRC's mission in general. - What are today's predominant types of conflicts? - The challenges for international humanitarian law with regard to today's armed conflicts. -

Challenges of asymmetrical warfare and terrorism. - Do we need a revision of the present rules of international humanitarian law?

Upholding the principle of distinction in counter-terrorist operations : a dialogue

Avery Plaw. - 2010. - p. 3-22. - Journal of military ethics ; Vol. 9, no. 1

Asa Kasher and Amos Yadlin have recently argued for a revised principle of distinction under which states should prioritize the protection of their own soldiers over that of noncombatants in certain combat scenarios. The situations that they envision are those in which a state's army is forced to fight terrorists on terrain which is not under the state's effective control. Kasher dramatizes the argument that the soldiers' safety should be prioritized by setting up a hypothetical conversation between the state and a soldier who asks 'Why should my state prefer an enemy citizen over me?' Kasher challenges his readers to offer the soldier a morally compelling answer. This article responds to Kasher's challenge by presenting a dialogue in which a commander (representing the state) offers the soldier four arguments which together provide a convincing answer. The commander grounds his arguments in differences in the amount of choice exercised by soldiers and civilians, the divergent ways the operation can be expected to impact on them, the different obligations they each have to the state, and the likely consequences of emphasizing the safety of soldiers over civilians. The dialogue provides support for the 'double intention' reading of the principle of distinction championed by Michael Walzer.

Access only from ICRC:

<http://www.informaworld.com/smpp/content~content=a919402520~db=all~jumptype=rss>