BIBLIOGRAPHY 2012

INTERNATIONAL HUMANITARIAN LAW

NEW ACQUISITIONS ON INTERNATIONAL HUMANITARIAN LAW, CLASSIFIED BY THEME, AT THE INTERNATIONAL COMMITTEE OF THE RED CROSS LIBRARY

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TABLE OF CONTENTS

Introduction 2

I. General issues 5

II. Types of conflicts 11

III. Armed forces / Non-state armed groups 17

IV. Multinational forces 23

V. Private entities 27

VI. Protection of persons 31

VII. Protection of objects 37

VIII. Detention, internment, treatment and judicial guarantees 41

IX. Law of occupation 45

X. Conduct of hostilities 49

XI. Weapons 57

XII. Implementation 61

XIII. International human rights law 67

XIV. International criminal law 71

XV. Contemporary challenges 75

XVI. Countries/Regions 83

Full list with abstracts 99

INTRODUCTION

THE INTERNATIONAL COMMITTEE OF THE RED CROSS LIBRARY

The International Committee of the Red Cross (ICRC) endeavours to prevent suffering by promoting and strengthening international humanitarian law (IHL) and universal humanitarian principles. The ICRC Library in Geneva contributes to this mission by maintaining an extensive collection of IHL documents to help ICRC colleagues in their work. While the Library was set up primarily to serve ICRC staff members, it also takes on its own share of IHL-promotion work with the general public.

To this end, the Library holds a wide collection of specific IHL documents that can be consulted by the public: preparatory documents, reports, records and minutes of Diplomatic Conferences where the main IHL treaties were adopted; records of Red Cross and Red Crescent Movement conferences, during which many IHL matters are discussed; every issue of the International Review of the Red Cross since it was founded; all ICRC publications; rare documents published in the period between the founding of ICRC and the end of the First World War and charting the influence of Dunant's ideas; and a unique collection of legislation and case law implementing IHL at domestic level.

The Library also acquires as many external IHL publications as possible, with those produced in English and French being the priority. Each journal article, chapter, book, working paper, report etc. is catalogued separately, making the Library's online catalogue (http://www.cid.icrc.org/library/) one of the most exhaustive resources for IHL research.

The Library is open to the public from Monday to Thursday (9 a.m. to 5 p.m. non-stop) and on Friday (9 a.m. to 1 p.m.).

ORIGIN AND PURPOSE OF THE IHL BIBLIOGRAPHY

The bibliography was first produced at the request of field communication delegates, who were in charge of encouraging universities to offer IHL courses and of assisting professors who taught this subject. The delegates needed a tool they could give their contacts to help them develop or update their IHL knowledge.

Given their needs, it was decided to classify the documents so readers could pinpoint what they needed, access the documents easily and use abstracts to decide whether or not to read a document in full.

It quickly emerged that the bibliography was also helpful to other researchers, students and legal professionals working in the field of IHL. The Library therefore decided to produce a compilation of this quarterly electronic tool as an official annual publication.

In short, the bibliography can be useful for developing and strengthening IHL knowledge, helping ICRC delegations, National Societies, schools, universities, research centres etc. to build up their library's IHL collection, and keeping track of topical IHL issues being tackled by academics. It is also useful for authors in the process of writing articles, books and theses and legal professionals who work on IHL on a daily basis to see what has been written on a specific IHL subject.

HOW TO USE THE IHL BIBLIOGRAPHY

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

The first part is tailored for such readers, with 15 IHL categories that have been identified in conjunction with ICRC legal and communication advisers. An additional "Countries/Regions" category has been added for a regional approach. Each article, book and chapter is classified under every relevant category. This enables readers to swiftly identify references of interest without trawling through the whole bibliography. To avoid making the document too long, this first part only provides bibliographic references. For the abstract, please refer to the second part of the bibliography.

Part II: All entries (containing abstracts) for readers who need full information

Rather than going through the first part and coming across repeated references, readers can skip to the second part where all the documents are listed alphabetically (by title), together with an abstract. The abstract is either that produced by the author or the publisher, where provided, or is drawn up by the IHL reference librarian responsible for the bibliography.

Chronology

This bibliography is based on the acquisitions made by the ICRC Library over the past year. The Library acquires relevant articles and books as soon as they become available. However, the publication date may not coincide with the period supposedly covered by the bibliography due to publishing delays.

Contents

The bibliography lists English and French writings (e.g. articles, monographs, chapters, reports and working papers) on IHL subjects.

Sources

The ICRC Library monitors a wide range of sources, including all 120 journals to which the Library subscribes, bibliographical databases, legal databases, legal publishers' catalogues, legal research centres and non-governmental organizations. It also receives suggestions from the ICRC legal advisers.

Disclaimer

Acquisitions are made by the Library and do not necessarily reflect the opinions of the ICRC.

SUBSCRIPTION AND FEEDBACK

This publication is a compilation of a quarterly electronic bibliography. If you wish to receive the quarterly electronic bibliography directly by e-mail, please send your request to library@icrc.org with the subject heading "IHL bibliography subscription".

Feel free to send your questions, comments and feedback to the same e-mail address.

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XIV. INTERNATIONAL CRIMINAL LAW

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MEASURE TWICE, SHOOT ONCE : HIGHER CARE FOR CIA-TARGETED KILLING

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THE ECTHR'S JUDGMENT IN AL-JEDDA AND ITS IMPLICATIONS FOR INTERNATIONAL HUMANITARIAN LAW

Maral Kashgar. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 24, 4/2011, p. 229-233

THE EUROPEAN COURT OF HUMAN RIGHTS' AL-JEDDA JUDGMENT : THE OVERSIGHT OF INTERNATIONAL HUMANITARIAN LAW

Jelena Pejic. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 837-851

THE INTERACTION BETWEEN INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW AND THE CONTRIBUTION OF THE ICJ

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INVESTIGATING VIOLATIONS OF INTERNATIONAL LAW IN ARMED CONFLICT

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IRAQ (2003 ONWARDS)

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TAKING ARMED CONFLICT OUT OF THE CLASSROOM : INTERNATIONAL AND DOMESTIC LEGAL PROTECTIONS FOR STUDENTS WHEN COMBATANTS USE SCHOOLS

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UNITED STATES

ADDENDUM FOR THE WAR ON TERROR : SOMEWHERE IN SWITZERLAND, DILAWAR REMEMBERED, AND WHY THE MARTENS CLAUSE MATTERS

Wm. C. Peters. In: Social justice Vol. 37, no. 2-3, 2010-2011, p. 99-122

THE ART OF ARMED CONFLICTS : AN ANALYSIS OF THE UNITED STATES' LEGAL REQUIREMENTS TOWARDS CULTURAL PROPERTY UNDER THE 1954 HAGUE CONVENTION

Elizabeth Varner. In: Creighton law review Vol. 44, 2011, p. 1185-1243

BEYOND OCCUPATION : PROTECTED PERSONS AND THE EXPIRATION OF OBLIGATIONS

Tom Syring. In: ILSA Journal of international and comparative law Vol. 17, no. 2, Spring 2011, p. 417-435

CAN THE LAW OF ARMED CONFLICT SURVIVE 9/11 ?

Charles Garraway. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 383-390

THE CHEMICAL WEAPONS CONVENTION AND RIOT CONTROL AGENTS : ADVANTAGES OF A "METHODS" APPROACH TO ARMS CONTROL

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CIVILIAN INTELLIGENCE AGENCIES AND THE USE OF ARMED DRONES

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COLOMBIA

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CONTROLLING THE USE OF FORCE IN CYBER SPACE : THE APPLICATION OF THE LAW OF ARMED CONFLICT DURING A TIME OF FUNDAMENTAL CHANGE IN THE NATURE OF WARFARE

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COUNTER-INSURGENCY OPERATIONS IN AFGHANISTAN : WHAT ABOUT THE "JUS AD BELLUM" AND THE "JUS IN BELLO" : IS THE LAW STILL ACCURATE ?

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CYBER WAR INC. : THE LAW OF WAR IMPLICATIONS OF THE PRIVATE SECTOR'S ROLE IN CYBER CONFLICT

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DETERMINING A LEGITIMATE TARGET : THE DILEMMA OF THE DECISION-MAKER

Amos N. Guiora. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 315-336

DO WE NEED NEW REGULATIONS IN INTERNATIONAL HUMANITARIAN LAW ? : ONE AMERICAN'S PERSPECTIVE

Charles J. Dunlap. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 3/2012, p. 120-128

DOMESTIC INVESTIGATION OF SUSPECTED LAW OF ARMED CONFLICT VIOLATIONS : UNITED STATES PROCEDURES, POLICIES AND PRACTICES

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DROIT DE L'OCCUPATION ET RECONSTRUCTION DE L'ETAT IRAKIEN : LE DROIT DE L'OCCUPATION MILITAIRE À L'ÉPREUVE DE LA RECONSTRUCTION DE L'ETAT PAR LES PUISSANCES OCCUPANTES EN IRAK

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DRONE ATTACKS UNDER THE JUS AD BELLUM AND JUS IN BELLO : CLEARING THE "FOG OF LAW"

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DRONES AND THE BOUNDARIES OF THE BATTLEFIELD

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ENEMY STATUS AND MILITARY DETENTION : NEUTRALITY LAW AND NON-INTERNATIONAL ARMED CONFLICT, MUNICIPAL NEUTRALITY STATUTES, THE U.N. CHARTER, AND HOSTILE INTENT

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EXTRATERRITORIAL LAW ENFORCEMENT OR TRANSNATIONAL COUNTERTERRORIST MILITARY OPERATIONS : THE STAKES OF TWO LEGAL MODELS

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THE FIRST AMENDMENT'S BORDERS : THE PLACE OF HOLDER V. HUMANITARIAN LAW PROJECT IN FIRST AMENDMENT DOCTRINE

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THE FOG OF WAR REFORM : CHANGE AND STRUCTURE IN THE LAW OF ARMED CONFLICT AFTER SEPTEMBER 11

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FORMULATING A NEW ATROCITY SPEECH OFFENSE : INCITEMENT TO COMMIT WAR CRIMES

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GUARDING THE GUARDS IN THE WAR ON TERRORISM

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HOBBES FACE À KANT : LA JUSTICE MILITAIRE AMÉRICAINE ET LA DOCTRINE DE LA RESPONSABILITÉ DU SUPÉRIEUR HIÉRARCHIQUE SUITE À ABU GHRAIB

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THE IMPLICATIONS OF DRONES ON THE JUST WAR TRADITION

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"JOUSTING AT WINDMILLS" : THE LAWS OF ARMED CONFLICT IN AN AGE OF TERROR-STATE ACTORS AND NONSTATE ELEMENTS

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THE LAW OF NEUTRALITY DOES NOT APPLY TO THE CONFLICT WITH AL-QAEDA, AND IT'S A GOOD THING, TOO : A RESPONSE TO CHANG

Kevin Jon Heller. In: Texas international law journal Vol. 47, no. 1, Fall 2011, p. 115-141

LAW OF WAR MANUALS AND WARFIGHTING : A PERSPECTIVE

Charles J. Dunlap. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 265-276

LEGACY OF 9/11 : CONTINUING THE HUMANIZATION OF HUMANITARIAN LAW

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LEGAL, POLITICAL AND ETHICAL DIMENSIONS OF DRONE WARFARE UNDER INTERNATIONAL LAW : A PRELIMINARY SURVEY

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LEX LACUNAE : THE MERGING LAWS OF WAR AND HUMAN RIGHTS IN COUNTERINSURGENCY

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LIVING IN THE "NEW NORMAL" : MODERN WAR, NON-STATE ACTORS, AND THE FUTURE OF LAW

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MEASURE TWICE, SHOOT ONCE : HIGHER CARE FOR CIA-TARGETED KILLING

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PRIVATE MILITARY AND SECURITY COMPANIES AND THE "CIVILIANIZATION OF WAR"

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PROPRIETY OF SELF-DEFENSE TARGETINGS OF MEMBERS OF AL QAEDA AND APPLICABLE PRINCIPLES OF DISTINCTION AND PROPORTIONALITY

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PROTECTION OF TERRORISM SUSPECTS UNDER INTERNATIONAL HUMANITARIAN LAW : A CASE STUDY OF GUANTANAMO BAY

Prosper Tegamaisho. - Saarbrücken : Lambert Academic Publishing, 2010. - 72 p.

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SOME HOLDS BARRED : EXTENDING EXECUTIVE DETENTION HABEAS LAW BEYOND GUANTANAMO BAY

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UNMANNED COMBAT AIRCRAFT SYSTEMS AND INTERNATIONAL HUMANITARIAN LAW : SIMPLIFYING THE OFT BENIGHTED DEBATE

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THE WAR (?) AGAINST AL-QAEDA

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WESTERN SAHARA

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YEMEN

CAN THE LAW OF ARMED CONFLICT SURVIVE 9/11 ?

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THE WAR (?) AGAINST AL-QAEDA

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WHO MAY BE KILLED ? : ANWAR AL-AWLAKI AS A CASE STUDY IN THE INTERNATIONAL LEGAL REGULATION OF LETHAL FORCE

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YUGOSLAVIA

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L'EMPLOI DE CIVILS ET DE PRISONNIERS DE GUERRE À DES FINS MILITAIRES DEVANT LE TPIY

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MILITARY OPERATIONS, BATTLEFIELD REALITY AND THE JUDGMENT'S IMPACT ON EFFECTIVE IMPLEMENTATION AND ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW

[Laurie R. Blank]. - [Atlanta] : International Humanitarian Law Clinic at Emory University School of Law, 2012. - 17 p.

WAR CRIMES AND INTERNATIONAL CRIMINAL LAW

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FULL LIST WITH ABSTRACTS

THE 26/11 TERRORIST ATTACKS AND THE APPLICATION OF THE LAWS OF ARMED CONFLICT

Rishi Gulati. In: ISIL yearbook of international humanitarian and refugee law Vol. 10, 2010, p. 91-113

This paper considers whether the 26/11 terrorist attack carried out in Mumbai is capable of independently and/or in its overall context constituting an international armed conflict (IAC), thus triggering the application of international humanitarian law ? That question is answered by analyzing whether the facts of 26/11 are capable of satisfying the criteria necessary before a terrorist attack can be considered to of an IAC. The discussion makes its necesssary to briefly highlight any potential international responsibility for 26/11, and a consideration of the test relevant to determine whether a conflict is internationalized if an armed attack is carried out by private proxies. This paper only considers whether 26/11 constitutes an IAC. It does not consider the rules of international humanitarian law applicable should an IAC be in existence.

ADDENDUM FOR THE WAR ON TERROR : SOMEWHERE IN SWITZERLAND, DILAWAR REMEMBERED, AND WHY THE MARTENS CLAUSE MATTERS

Wm. C. Peters. In: Social justice Vol. 37, no. 2-3, 2010-2011, p. 99-122

This essay focuses on the murder of an Afghan taxi driver at Bagram Air Base by U.S. soldiers in December of 2002. When this brutal mistreatment was reported, a junior enlisted soldier who asked whether his unit was acting in accordance with the Geneva Conventions. The noncommissioned officer glibly responded that “Geneva was somewhere in Switzerland.” Regardless of a proper characterization of U.S. intervention in Afghanistan under international law, and whether any of the four Geneva Conventions of 1949 fully applied to the conflict at that time, physical abuse of detainees hors de combat is a war crime in violation of long settled principles of the law of armed conflict (LOAC), as well as domestic U.S. law under the umbrella of the Constitution's Supremacy Clause. First appearing in a resolution at the Hague Convention conference of 1899, and the later 1907 convention to which the United States is a party, the Martens Clause requires that in situations arising in war and occupations not covered by existing conventions, “the inhabitants and belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience.” Early U.S. Army commanders in Afghanistan placed little emphasis on enforcing international law applicable to detainees held at the Bagram Control Point (BCP). Judge advocate staff officers for the command were likely unaware of all aspects of the handling and interrogation techniques applied by BCP personnel. Still, they profoundly misunderstood basic provisions of international law that should have guided U.S. actions and failed to implement proper LOAC training regimes and legal oversight of operations.

ADJUDICATING ARMED CONFLICT IN DOMESTIC COURTS : THE EXPERIENCE OF ISRAEL'S SUPREME COURT

Galit Raguan. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 61-95

This Article will focus on how the Israeli Supreme Court has gradually incorporated the Law of Armed Conflict into its judgments when reviewing the Executive’s policies, and will trace the historical circumstances and legal developments which have contributed to and enabled the creation of such jurisprudence. It will also address the question of whether the Israeli experience can be utilized by other jurisdictions. Part II of this Article will provide a brief overview of the status of international law in domestic Israeli courts and the legal framework that applies to executive action in Judea and Samaria and the Gaza Strip. Part III will describe the transition in Israel to an armed conflict paradigm with respect to the Israeli hostilities with Palestinian armed groups, while Part IV will focus on recent Israeli case law in this regard. These cases illustrate the gradual move by the Court toward adjudicating questions which relate more and more closely to the battlefield. Part V will follow with an analysis of the circumstances which have led to this transition in the Israeli context. It will also discuss whether the Israeli experience is comparable to courts in other jurisdictions which encounter similar legal dilemmas.

AFGHANISTAN 2001-2010

Françoise J. Hampson. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 242-279

This chapter critically examins the classification of the conflict in Afghanistan, subdividing the 2001-2010 period in two: from October 2001 to the installation of Hamid Karzai and from then to the present. The author reaches the conclusion that the legal problems encountered in the course of the hostilities against and within Afghanistan did not result from difficulties in classifying the conflicts but that the phase of non-international armed conflict does, however, exemplify a situation where formal classification does not always help with the problems on the ground, particularly in relation to operations the conduct of which varies not according to the legal classification of the conflict, but according to the nature of the task and

the constraints of policy. It was the gap in international humanitarian law relating to non-international armed conflict, controversies with regard to the scope of applicability of international human rights law, and multiple participants with different views of the law and policy which caused most of the problems in practice.

AFTER "TOP GUN" : HOW DRONE STRIKES IMPACT THE LAW OF WAR

Laurie R. Blank. In: University of Pennsylvania journal of international law Vol. 33, no. 3, Spring 2012, p. 675-718

The first section will address foundational questions regarding the application of the law of armed conflict to drones, including the legality of armed drones as a weapons system and their use in accordance with the key law of armed conflict requirements of distinction, proportionality, and precautions in attack. Although many argue that the "joystick mentality" of remotely piloted aircraft and weapons can lead to desensitization and a decreased likelihood of adherence to international norms, the examination below demonstrates that drones indeed offer extensive and enhanced opportunities for compliance with the law of armed conflict. In the second section, this article will explore how the burgeoning use of armed drones raises new questions for some traditional concepts and categories within the law of armed conflict, such as the status of persons and the geographical locus of attacks and hostilities, and potentially new challenges in the implementation of distinction and proportionality.

THE AL-JEDDA AND AL-SKEINI CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

F. Naert... [et al.]. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review 50, 3-4, 2011, p. 315-446

Agora on the Al-Jedda and Al-Skeini judgments from the European Court of Human Rights on the conduct of UK forces in Iraq. Al-Jedda concerns detention by UK forces and address several issues such as: (1) was the conduct of these forces attributatble to the UK or the United Nations? (2) did UN Security Council Resolution 1546 justify/permit detention in circumstances not covered by article 5 ECHR on deprivation of liberty and therefore displace, qualify, or derogate from this ECHR provision? Al-Skeini concerns the death of six Iraquis during the period of British occupation giving rise to the following questions: (1) the scope of extraterritorial application of the ECHR; (2) the scope and extent of the duty to investigate possible breaches of article 2 ECHR on the right to life as a consequence of the conduct of armed forces in an occupied territory, where international humanitarian law applies.

ALL NECESSARY MEANS TO PROTECT CIVILIANS : WHAT THE INTERVENTION IN LIBYA SAYS ABOUT THE RELATIONSHIP BETWEEN THE JUS IN BELLO AND THE JUS AD BELLUM

Julian M. Lehmann. In: Journal of conflict and security law Vol. 17, no. 1, Spring 2012, p. 117-146

This article scrutinizes the phrase ‘all necessary means to protect civilians under threat of attack’, contained in the United Nations (UN) Security Council Resolution 1973 (2011) authorizing military force in the Libyan Arab Jamahiriya (Libya). It assesses both the meaning of this phrase and the legal regime pursuant to the resolution. That regime challenges the teleological separation but concurrent application of the law on the use of force (the jus ad bellum), and the law applicable in international and non-international armed conflict [the jus in bello or international humanitarian law (IHL)]. Security Council Resolution 1973, and its understanding of the term ‘civilian’, should be read in accordance with other international law norms; prima facie conflict of the resolution with IHL on the issue of targeting can be resolved. The resolution was however ambiguous on when force can be used. It is suggested that Resolution 1973 required a demonstrable risk of indiscriminate attack to civilians, per se necessity and jus ad bellum proportionality, the latter exceeding IHL’s concept of proportionality because of the specificity of the resolution’s aim. In examining the concurrent application of the jus ad bellum and the jus in bello in the context of specific interventions in Libya, the criticism that some states contributing coalition forces overstretched their mandate is corroborated. A combination of the resolution’s ambiguity and political considerations lie at the heart of that overstretch. In developing international law for analogous situations, the intervention is likely to exacerbate existing quarrels over future council action to protect civilians.

APPLICABILITY AND APPLICATION OF THE LAWS OF WAR TO MODERN CONFLICTS

Daphne Richemond-Barak. In: Florida Journal of International Law Vol. 23, no. 3, December 2011, p. 327-357

The article examines if, and how, the laws of war apply to conflicts involving non-state actors - whether they are guerilla groups, terrorist organizations or private military contractors. Non-state actors, which are not party to treaty-based norms regulating the conduct of war, cannot be assumed to operate on the basis of reciprocity. Given that reciprocity is the assumption underlying this entire body of law, the question arises of whether, in the absence of reciprocity, the law continues to apply. I answer this question in the affirmative. I argue that the involvement of non-state actors in warfare does not, in and of itself, affect the applicability of the laws of war. The only situation in which a state may not be bound by all of humanitarian law is when an opposing non-state party repeatedly violates international humanitarian law in an international armed conflict. Having established the applicability of most, if not all, of international

humanitarian law to most conflicts involving non-state actors, I analyze the application of the law to these actors. I argue for a more expansive interpretation of the concept of "combatant" - one which allows for the greater application of international humanitarian law to these actors, an easier implementation of the principle of distinction, and improved protection of civilian population. I review the historical evolution of the principle of distinction, how it became fundamental to international humanitarian law, and how the concept of "combatant" evolved over time from an activity-based to a membership-based designation. I then examine the substance of the law as stated in the Geneva Conventions, which diverge, I argue, from both earlier and subsequent characterizations of combatant status. I conclude by offering an interpretation of combatant status which would allow more non-state actors to accede to combatant status.

THE APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW TO ORGANIZED ARMED GROUPS

Jann K. Kleffner. In: International review of the Red Cross Vol. 93, no. 882, June 2011, p. 443-461

While it is generally accepted today that international humanitarian law (IHL) is binding on organized armed groups, it is less clear why that is so and how the binding force of IHL on organized armed groups is to be construed. A number of explanations for that binding force have been offered. The present contribution critically examines five such explanations, namely that organized armed groups are bound via the state on whose territory they operate; that organized armed groups are bound because their members are bound by IHL as individuals; that norms of IHL are binding on organized armed groups by virtue of the fact that they exercise de facto governmental functions; that customary IHL is applicable to organized armed groups because of the (limited) international legal personality that they possess; and that organized armed groups are bound by IHL because they have consented thereto.

THE APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW TO THE CONFLICT IN LIBYA

Kubo Macák and Noam Zamir. In: International community law review Vol. 14, no. 4, 2012, p. 403-436

The purpose of this article is to examine the applicability of international humanitarian law to the 2011 conflict in Libya in its consecutive phases. We argue that the situation in Libya rose to the level of non-international armed conflict between the government forces and insurgents united by the National Transitional Council by the end of February 2011. The military intervention by a multi-state coalition acting under the Security Council mandate since March 2011 occasioned an international armed conflict between Libya and the intervening States. We consider and reject the arguments in favour of conflict convergence caused by the increased collaboration between the rebels and NATO forces. Similarly, we refute the propositions that the Gaddafi government's gradual loss of power brought about conflict de-internationalisation. Finally, we conclude that both parallel conflicts in Libya terminated at the end of October 2011. The article aspires to shed light on the controversial issues relating to conflict qualification in general and to serve as a basis for the assessment of the scope of responsibility of the actors in the Libyan conflict in particular.

L'APPLICATION EXTRATERRITORIALE DE LA CONVENTION EUROPÉENNE DES DROITS DE L'HOMME EN IRAK : COUR EUROPÉENNE DES DROITS DE L'HOMME, ARRÊT AL-SKEINI E.A. ET AL-JEDDA C. ROYAUME UNI, 7 JUILLET 2011

par Ioannis K. Panoussis. In: Revue trimestrielle des droits de l'homme 23ème année, no 91, juillet 2012, p. 647-670

Les arrêts Al Skeini et Al-Jedda sont fondamentaux pour cerner la question de l'étendue géographique d'application de la Convention européenne des droits de l'homme. La Cour européenne revisite plusieurs questions importantes : celle du concept de "juridiction" au sens de l'article 1er de la Convention, celle de la responsabilité des Etats agissant en dehors de leur territoires sur le fondement d'une résolution du Conseil de sécurité des Nations Unies et celle des relations entretenues entre la Convention et ces mêmes résolutions. En permettant l'application extraterritoriale de la Convention en Irak, la Cour fait ainsi évoluer sa jurisprudence antérieure tout en laissant encore quelques zones d'ombre, qui devront être élucidées à l'avenir.

APPLYING A SOVEREIGN AGENCY THEORY OF THE LAW OF ARMED CONFLICT

Eric Talbot Jensen. In: Chicago journal of international law Vol. 12, Winter 2012, p. 685-727

The current bifurcated conflict classification paradigm for applying the Law of Armed Conflict (LOAC) has lost its usefulness. Regulation of state militaries was originally based on the principle that the armed forces of a state were acting as the sovereign agents of the state and were granted privileges and given duties based on that grant of agency. These privileges and duties became the bases for the formulation of the modern LOAC. During the twentieth century, the LOAC became bifurcated, with the complete LOAC applying only to armed conflicts between sovereigns and only few provisions of the law applying to armed conflicts that were not between sovereigns. This bifurcation has led to a lack of clarity for the sovereign's agents in LOAC application and given states the ability to manipulate which law applies to application of force through their agents. The applicability of the LOAC should no longer be based on the manipulable and unclear conflict classification paradigm, but should instead return to its foundations in the sovereign's

grant of agency. Thus, anytime a sovereign applies violent force through its armed forces, those armed forces should apply the full LOAC to their actions, regardless of the type or of the conflict.

ARMED CONFLICT AND DISPLACEMENT : THE PROTECTION OF REFUGEES AND DISPLACED PERSONS UNDER INTERNATIONAL HUMANITARIAN LAW

Mélanie Jacques. - Cambridge [etc.] : Cambridge University Press, 2012. - 277 p.

With 'displacement' as the guiding thread, the purpose of this study is two-fold. Firstly, it derives from the relevant provisions of international humanitarian law a legal framework for the protection of displaced persons in armed conflict, both from and during displacement. It contains a case-study of Israeli settlements in the Occupied Palestinian Territory and the recent Advisory Opinion on the Separation Wall, and addresses such issues as humanitarian assistance for displaced persons, the treatment of refugees in the hands of a party to a conflict and the militarization of refugee camps. Secondly, it examines the issue of displacement within the broader context of civilian war victims and identifies and addresses the normative gaps of international humanitarian law, including the inadequacy of concepts such as 'protected persons' and the persistence of the dichotomy between international and non-international armed conflicts, which is at odds with the realities of contemporary armed conflicts.

ARMED CONFLICT IN ASYLUM LAW : THE "WAR-FLAW"

Hugo Storey. In: Refugee survey quarterly Vol. 31, no. 2, 2012, p. 1-32

This article charts the difficulties refugee law – and more widely the legal regime governing international protection – has encountered from the outset in dealing with asylum-related claims by persons fleeing armed conflict. It analyses the origins of the prevailing "exceptionality approach", which regards such claims as unable to succeed unless they can make out a special case. It explains why its opposite, the "normalcy approach", equally does not resolve underlying problems. The "war-flaw" is seen to consist in the failure of international protection to analyse claims by persons fleeing armed conflict by reference to the correct international law framework. Whilst the development within refugee law of a human rights approach has been a major achievement, its inability to deal effectively with armed conflict-related claims is located in its conspicuous failure, or unwillingness, to recognize that international law regards international humanitarian law as the lex specialis in situations of armed conflict. Curiously, despite the increasing acknowledgment of the complementarity of international human rights law and international humanitarian law by human rights bodies, the human rights paradigm remains stuck trying to analyse such situations exclusively in international human rights law terms. It is argued that this "war flaw" afflicts not only contemporary refugee law but also current human rights jurisprudence dealing with problems of refoulement, and regional protection schemes such as subsidiary protection within the European Union. Tentative suggestions are made as to how the prevailing international human rights law paradigm can be revised to take account of international humanitarian law and as to how the two branches of international law can be applied in tandem.

ARMED VIOLENCE IN MANIPUR AND HUMAN RIGHTS

Oinam Jitendra Singh. In: The Indian journal of political science Vol. 72, no. 4, Oct.-Dec. 2011, p. 997-1006

The structural violence in Manipur has led to various forms of secondary violence. Gross human rights violations including torture, extra-judicial detention, rape and enforced disappearance have become endemic. The situation in Manipur is a clear case of an "internal disturbance" or non-international armed conflict requiring invocation of Article 355 of the Constitution (Chapter XVIII dealing with emergency powers) and not of a "public order" problem. In such situation both the parties to the conflict should at the minimum follow the common article 3 of the Geneva Conventions and strictly follow the rules of engagement under the relevant international humanitarian laws.

ARMS CONTROL AND INTERNATIONAL HUMANITARIAN LAW

Carlo Trezza. - In: Global violence : consequences and responses. - Milano : Franco Angeli : International Institute of Humanitarian Law, 2011. - p. 129-132

Until the 20th century, the attention was mainly concentrated on conventional weapons since they were the only weapons available. But even today humanitarian disarmament is principally focused on conventional weapons since they are the ones being used in current international and domestic conflicts and cause practically all the victims and sufferings. But the casualties and sufferings caused by chemical weapons during the WWI were the determining factor that led to the Geneva Protocol of 1925 prohibiting the use of chemical/biological weapons in armed conflict, thus opening the chapter of humanitarian disarmament with regard to weapons of mass destruction.

THE ART OF ARMED CONFLICTS : AN ANALYSIS OF THE UNITED STATES' LEGAL REQUIREMENTS TOWARDS CULTURAL PROPERTY UNDER THE 1954 HAGUE CONVENTION

Elizabeth Varner. In: Creighton law review Vol. 44, 2011, p. 1185-1243

Following the looting of the Iraqi National Museum in 2003 countries and scholars around the world called upon the United States of America to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Scholars and the media wrote articles indicating the ratification of the 1954 Hague Convention would prevent another looting incident such as the one at the Iraqi National Museum because the United States would have a legal requirement to protect cultural property from third parties, including civilians. Still, other scholars claimed customary international law already imparted a legal requirement upon the United States to protect cultural property from third parties. Some sources, however, indicated that the United States did not have a legal requirement to protect cultural property from third parties under the 1954 Hague Convention. Ambiguities in the 1954 Hague Convention have fostered these inconsistencies in views of the protections afforded to cultural property under the Convention. On March 13, 2009, the United States Senate ratified the 1954 Hague Convention. Now that the Senate has ratified the Convention, this discrepancy in views of the United States' legal requirements under the 1954 Hague Convention has taken on increased relevance. This article outlines the 1954 Hague Convention and defines cultural property under the Convention. This article also considers States' legal requirements towards cultural property before and during armed conflict and illuminates discrepancies in views of the States' legal requirements towards cultural property during armed conflict. Then, while analyzing key provisions in the 1954 Hague Convention that imparts legal requirements towards cultural property during occupation, this article highlights discrepancies in views of the States' legal requirements towards cultural property during occupation. Finally, this article analyzes if there should be a duty to protect cultural property from third parties during armed conflict and occupation and if the United States could have a legal requirement outside the 1954 Hague Convention to protect cultural property from third parties during armed conflict and occupation.

L'ARTICULATION ENTRE LE DROIT INTERNATIONAL HUMANITAIRE COUTUMIER ET CONVENTIONNEL

par Paul Tavernier. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 87-113

Cette contribution présente en premier lieu, la problématique classique qui se traduit par un va-et-vient constant entre le droit coutumier et le droit conventionnel. Si dans un premier temps, les auteurs et les praticiens mettaient l'accent sur la supériorité de la règle conventionnelle sur la règle coutumière, on s'est aperçu et on s'aperçoit de plus en plus, que les deux corps de règles ne s'excluent nullement et qu'au contraire, ils s'enrichissent mutuellement. En deuxième lieu, elle constate que la problématique de l'articulation entre le droit coutumier et le droit conventionnel a été renouvelée du fait de l'entrée en scène de nouveaux acteurs du droit humanitaire, notamment les organisations internationales, les ONG, les acteurs non étatiques et même les individus. Cela se traduit par une participation non négligeable de ces nouveaux acteurs à l'élaboration des normes, tant conventionnelles que coutumières, du droit international humanitaire, mais cela pose aussi la question de l'applicabilité et de l'application des normes humanitaires à ces nouveaux acteurs, ou à certains d'entre eux -, qui sont de plus en plus impliqués dans les conflits armés.

ASPECTS CRITIQUES DES NOUVEAUX CONCEPTS SUR LA SÉCURITÉ HUMAINE

Raffaella Diana. - In: Les conflits et le droit. - Paris : Choiseul, 2011. - p. 81-96

Il est souvent fait mention que les Etats seraient confrontés à un nouveau type de troubles de la sécurité, pour lesquels le paradigme du maintien de l'ordre ne serait plus approprié. Selon cette position, le droit international des conflits armés, ou droit international humanitaire (DIH), ne serait pas non plus adapté pour faire face à ces situations. En effet, parce qu'elle ne s'oppose pas des Etats, cette violence ne répond pas à la définition de "conflit armé international". Par ailleurs, parce qu'elle se déroule dans une zone géographique qui déborde les frontières nationales, elle ne correspondrait pas non plus à un conflit interne. Or affirmer que, par leur nature, ces situations rendraient le droit existant inapplicable, rend la marge de manoeuvre des Etats très grande, multipliant les possibilités de restrictions arbitraires des libertés. Il suffit de penser aux législations antiterroristes adoptées par plusieurs gouvernements au lendemain du 11 septembre, à certaines adaptations du DIH proposant de nouvelles catégories juridiques ou encore la résurgence du débat sur l'acceptabilité de la torture. Mais pouvons-nous affirmer que les conflits contemporains sont dépourvus de cadre légal? Quels sont les critères qui permettent de définir un conflit armé et de déterminer quel droit est applicable à une situation de violence?

AN ASSESSMENT OF THE GAZA REPORT'S CONTRIBUTION TO THE DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

Susan Breau. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 271-292

Breau examines the criticisms of the UN Fact-Finding Mission and subsequent report that have dogged it since its inception, and finds that there is much to commend in the report. Considering the charges of bias against the mission, and despite the criticisms of Israel made by one of its members, she argues that the report was not biased against Israel. She concedes that improvements might have been made to the mission's methodology, particularly in allowing closed-session interviews of Palestinian witnesses, but argues that this does not introduce a fatal flaw into the report ; rather, the mission's ability to produce findings was made far more difficult by Israel's refusal to cooperate. But, above all, and particularly in respect of humanitarian law regarding blockades, targeting and weaponry, Breau argues that the report helps to advance and clarify the laws applicable to armed conflict.

ASYMMETRICAL WARFARE AND CHALLENGES TO INTERNATIONAL HUMANITARIAN LAW

Wolff Heintschel von Heinegg. - In: Global violence : consequences and responses. - Milano : Franco Angeli : International Institute of Humanitarian Law, 2011. - p. 83-95

Asymmetric warfare clearly constitutes a challenge to the international legal order and to its underlying values. While it does not justify a deviation from well-established rules and principles of the law of armed conflict, it necessary to strengthen that law by offering incentives, especially to non-State actors, to comply with that law if it is applicable ratione materiae. Since, however, such incentives will very often prove futile, because asymmetric actors will not abandon the options opened by a deliberate violation of the law of armed conflict, a thorough investigation/fact-finding by a neutral and respected international commission will be the first step that could contribute to repressing such conduct. A second step is criminal prosecution - either under domestic or under international criminal law.

AT THE FAULT-LINES OF ARMED CONFLICT : THE 2006 ISRAEL-HEZBOLLAH CONFLICT AND THE FRAMEWORK OF INTERNATIONAL HUMANITARIAN LAW

Andrew Yuile. In: Australian international law journal Vol. 16, issue 1, 2009, p. 189-218

The laws of armed conflict, or international humanitarian law (HL), divide armed conflict into two categories, international and non-international, with far fewer rules applicable to the latter. The conflicts of today, however, increasingly blur the lines between the two, often involving non-State parties with military capabilities on a par with States, and wreaking the same destruction as conflicts between States. One such example was the conflict in 2006 between Israel and Hezbollah. This article examines whether the conflict in Lebanon was international or non-international, and asks which laws applied to that conflict. The article argues that the 2006 conflict was non-international, and concludes that only the bare minimum treaty protection, as well as relevant customary laws, applied. In doing so, the article explores the legal problems created by modern conflicts with powerful non-State actors like Hezbollah. It argues for an expansion in the application of the laws applicable to international armed conflict in order to fill the lacuna, and calls for an independent international body to make determinations on the classification of conflicts until the gap between the rules of international and non-international armed conflict can be closed.

AUTONOMOUS WEAPONS SYSTEMS AND THE APPLICATION OF IHL

Daniel Reisner. In: Collegium No. 41, Automne 2011, p. 71-77

The author discusses the following question: Can we take the rules of IHL and apply them to robots in the battlefield? In the case of the principle of distinction, three characteristics help us distinguish between an enemy and a non-combatant: the physical element, such as the uniform and whether they are carrying a weapon. Then there are the behaviour characteristics, which is the type of movement. Then the geographical characteristics: where are they in relation to the military target? Although a technical challenge, it is feasable to train a machine to learn these three characteristics. However, the question is whether it will be done or not, because it will cost a lot of money and it will be very complicated. It might also create a situation where robot makers may have more information than they want to. It could be that they do not want to know so much about their weapon systems on the battlefield, because then, they could be liable. Proportionality can be broken down to two principles: Distinction and the balance between military advantage and collateral damage. If we want to teach a robot, we will have to develop a formula or a system for them to mimic our decision-making process. These are things that we have been working on for fifty years and we are not there yet.

BELLIGERENT OCCUPATION : A PLEA FOR THE ESTABLISHMENT OF AN INTERNATIONAL SUPERVISORY MECHANISM

Orna Ben-Naftali. - In: Realizing utopia : the future of international law. - Oxford : Oxford University Press, 2012. - p. 538-552

Three main lessons can be drawn from some recent cases (the occupation of Gaza and that of Iraq) : (i) an occupation is not an either/or situation - the decisive fact of "effective control" (potential and actual) rather than the tag "occupation" should determine the applicability of the law of occupation ; (ii) the scope of the obligations of the foreign power which exercises effective control should derive from and relate to the scope of the control actually exercised ; and (iii) an authoritative characterization of the situation by the Security Council - which took place in the case of Iraq but not in the case of Gaza - may often be required to delineate respective legal obligations and ensure no void in governance, including during transitional periods. It is undisputed that effective control by foreign military forces suspends, but does not transfer, sovereignty. The prohibition on annexation of an occupied territory is the normative consequence of this principle. Major shortcomings of the present legal regimes are : (i) the lack of a rule setting time limits on the duration of an occupation and the attendant failure to determine the illegality of an indefinite occupation and (ii) the lack of congruence between self-determination and transformative objectives pursued by the occupant. While it is neither feasible nor desirable to renegotiate the law of belligerent occupation in order to rectify its shortcomings, the sine qua non for enabling some advancement of this law is the establishment of an international supervisory mechanism equipped with the means to fulfil a number of tasks.

BEYOND OCCUPATION : PROTECTED PERSONS AND THE EXPIRATION OF OBLIGATIONS

Tom Syring. In: ILSA Journal of international and comparative law Vol. 17, no. 2, Spring 2011, p. 417-435

Under certain circumstances, stateless persons, for example, may find themselves in a situation akin to refugees, but due to occupation, have no (in any case not anymore) country of their own, and not being able to cross borders they would not qualify as persons fleeing their country of origin in terms of the 1951 Refugee Convention and its 1967 Protocol. On the other hand, being confined to an occupied territory and thus being prevented from moving, they would not fit the description of Internally Displaced Persons (IDPs) either. "Climate refugees" are a special sort of migrant, akin to IDPs when displaced within their own country due to catastrophic conditions. However, climate change knows no frontiers and hence, "climate refugees" often have to cross into another country in order to escape from life threatening conditions. Yet, once crossing an international border, they are no longer IDPs, but neither are they refugees under the Refugee Convention, as "climate" today is not a (Refugee) Convention ground of persecution. Even where the Convention's refugee definition applies, or where, for example, a legitimate claim to designation as protected persons under the Fourth Geneva Convention (Geneva IV) may be made, the rules governing the granting of the respective status, its duration, and the expiration of such obligations are at best blurry. This article has a main focus on state responsibility for convention refugees in times of-and beyond-occupation; juxtaposing their designation and states' post-conflict obligations with the ones accorded to protected persons under Geneva IV as the two groups of "persons to be protected" perhaps the most directly affected by, and depending on, actions by foreign states.

BEYOND THE GRAVE BREACHES REGIME : THE DUTY TO INVESTIGATE ALLEGED VIOLATIONS OF INTERNATIONAL LAW GOVERNING ARMED CONFLICTS

Amichai Cohen and Yuval Shany. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 37-84

The purpose of the present article is to critically evaluate the contemporary international law obligation to investigate military conduct in times of conflict and to identify relevant normative trends. It first discusses the breadth of the duty to investigate and shows that the duty to investigate is far broader than the Geneva grave breaches regime encompassing alleged violation of many other norms of IHL and IHRL and engaging the responsibility of both military and civilian officials. After discussing the main legal standards governing military investigations — genuineness, effectiveness, independence and impartiality, promptness and transparency, the article addresses trends in international legislation and state practice concerning the maintenance of independence under the challenging conditions featured in many military investigations. Finally, it explains the reasons supporting the move away from criminal enforcement in some cases and sketches a possible solution to some of the practical problems identified in this article— the establishment of a permanent commission of inquiry for evaluating IHL compliance in military operations.

BOLSTERING THE PROTECTION OF CIVILIANS IN ARMED CONFLICT

Nils Melzer. - In: Realizing Utopia : the future of international law. - Oxford : Oxford University Press, 2012. - p. 508-518

In virtually all contemporary armed conflicts a staggering 90 per cent of all victims are civilians. A comprehensive and constructive clarification of international law relating to the protection of civilians in armed conflict requires that both academics and practicioners take a step back from an overly technical,

political or positivist analysis of the law and look as the questions presenting themselves through the prism of general, well-established principles of law, most notably the principles of : (i) necessity ; (ii) proportionality ; (iii) precaution ; and (iv) humanity, which underlie the entire normative framework governing the use of force. A major problem arises with regard to the lack of any incentive for rebels to comply with international humanitarian law. A viable alternative to the introduction of a full combatant privilege for non-state belligerents would require a two-pronged approach. In accordance with the respective logic of the jus in bello and the jus ad bellum, the conduct of hostilities and the exercise of power and authority over persons in compliance with international humanitarian law should be encouraged and legitimized (first objective), whereas the initiation of, or participation in, an armed conflict in contravention of domestic law should be discouraged (second objective).

CAN THE 1954 HAGUE CONVENTION APPLY TO NON-STATE ACTORS ? : A STUDY OF IRAQ AND LIBYA

Zoë Howe. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 403-425

For the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) to effectively protect cultural property, it must apply to non-state actors in non-international armed conflicts. To achieve this goal, the Hague Convention's application to non-state actors must be strengthened and clarified. This Note examines the 1954 Hague Convention, focusing particularly on the application of the Convention to non-state actors. Part I outlines the development of laws protecting cultural property. Part II examines the important provisions of the 1954 Hague Convention and its Protocols, while Part III discusses the weaknesses of the Convention. The second half of the Note addresses the application of the Hague Convention to non-state actors, looking particularly at the looting of the Iraqi National Museum and the armed conflict in Libya. Part IV(A) examines whether the United States had a duty to prevent the looting of the National Museum of Iraq. Part IV(B) discusses the legal framework for applying the Hague Convention to non-state actors, and Part IV(C) uses an analysis of the armed conflict in Libya to further explore the implications of extending duties under the Hague Convention to non-state actors.

CAN THE LAW OF ARMED CONFLICT SURVIVE 9/11 ?

Charles Garraway. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 383-390

Although for many, the key issue is the strain placed on the laws of armed conflict, or international humanitarian law, to the author "9/11" has challenged the very framework of international law itself, revealing a schism that has been there for some decades but which has been masked by other more demanding issues. The author talks about the interrelationship between the law of war and the law of peace. Where does peace stop and war start and do the legal boundaries correspond?

THE CHEMICAL WEAPONS CONVENTION AND RIOT CONTROL AGENTS : ADVANTAGES OF A "METHODS" APPROACH TO ARMS CONTROL

Benjamin Kastan. In: Duke journal of comparative and international law Vol. 22, no. 2, Winter 2012, p. 267-290

Analysis of how the CWC (Chemical Weapons Convention) affects how the U.S. may use RCAs (Riot Control Agents) in a war zone and compares the result to that from a more basic review guided by the principles of the Law of Armed Conflict (LOAC)—a review grounded in the methods, rather than the means of warfare. The most significant differences between the means-based CWC approach and the methods-based LOAC approach are in the weapons available for use against combatants, not the impact on civilians. Nevertheless, the author does not advocate withdrawal of the U.S. from the CWC regime because history suggests that using chemical NLW (Non-lethal Weapons) on the battlefield may make war no more humane than before. However, the example of RCAs within the means-based CWC regime demonstrates the limitations and the unintended consequences of an arms control regime focused on the "means" of warfare. A more basic LOAC approach that focuses on the methods of warfare, rather than the means, may better balance the humanitarian interests than flat weapons bans. Thus, the U.S. should consider pursuing (1) new treaties to focus and elaborate on the rules governing methods of warfare rather than the means and (2) stronger internal reviews of new weapons systems around the world. By using widely-accepted standards, the international humanitarian system may prove better able to adapt to ever-changing technological realities.

CHILD SOLDIER VICTIMS OF GENOCIDAL FORCIBLE TRANSFER : EXONERATING CHILD SOLDIERS CHARGED WITH GRAVE CONFLICT-RELATED INTERNATIONAL CRIMES

Sonja C. Grover. - Heidelberg [etc.] : Springer, 2012. - 302 p.

This book provides an original legal analysis of child soldiers recruited into armed groups or forces committing mass atrocities and/or genocide as the victims of the genocidal forcible transfer of children. Legal argument is made regarding the lack of criminal culpability of such child soldier "recruits" for conflict-related international crimes and the inapplicability of currently recommended judicial and non-judicial accountability mechanisms in such cases. The book challenges various anthropological accounts of child soldiers' alleged "tactical agency" to resist committing atrocity as members of armed groups or forces

committing mass atrocity and/or genocide. Also provided are original interpretations of relevant international law including an interpretation of the Rome Statute age-based exclusion from prosecution of persons who were under 18 at the time of perpetrating the crime as substantive law setting an international standard for the humane treatment of child soldiers.

CHILD SOLDIERS : A REFERENCE HANDBOOK

David M. Rosen. - Santa Barbara [etc.] : ABC-Clio, 2012. - 323 p.

This book exposes the role of children in war, describing where, why, and how children are deployed, the attempts made by international organizations to protect children, and the underlying political and cultural issues that make this such a thorny issue. In conflict-torn countries such as Myanmar and Uganda, the use of child soldiers in military and paramilitary operations continues to occur despite widespread condemnation and the efforts of organizations such as the Coalition to Stop the Use of Child Soldiers. Child Soldiers: A Reference Handbook traces the evolution of child soldiers from approximately 1940 onwards, covering important historical to modern conflicts. The subject is discussed from a global perspective, with particular attention given to areas where the use of child soldiers is most prevalent. The book covers the complex underlying reasons for the continued use of child soldiers in the modern world, examines the political and psychological consequences of using children—both male and female—in military and paramilitary organizations, and describes how this subject has been addressed by international law and various human rights organizations.

CHILDREN AS DIRECT PARTICIPANTS IN HOSTILITIES : NEW CHALLENGES FOR INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL CRIMINAL LAW

Hilly Moodrick-Even Khen. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 133-149

This chapter addresses two major challenges arising from the issue of child terrorists. The first is how contemporary humanitarian law deals with incidents of children participating in terrorist activities. The second issue addressed here is the criminalization of acts of terrorism carried out by children.

CIVILIAN INTELLIGENCE AGENCIES AND THE USE OF ARMED DRONES

Ian Henderson. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 133-173

The use of drones to conduct lethal strikes by the United States against people associated with the Taliban and al Qaeda has been the subject of many recent publications. The Chairman of the US House of Representatives Subcommittee on National Security and Foreign Affairs recently identified, among others, three main questions on the use of armed drones: a. Who can be a legitimate target? b. Where can that person be legally targeted? c. Does it make a difference if the military carries out an attack, or whether other civilian government entities may legally conduct such attacks? The focus of this article is on the third question. However, the answer to any one of these questions might vary based on the answers to any other of the questions. While the discussion has tended to focus on US activities, and particularly those of the CIA in Pakistan and other regions (e.g., Yemen), the purpose of this article is to discuss the legal issues in a more general context.

CIVILIAN VULNERABILITY IN ASYMMETRIC CONFLICT : LESSONS FROM THE SECOND LEBANON AND GAZA WARS

Michael L. Gross. - In: Civilians and modern war : armed conflict and the ideology of violence. - London ; New York : Routledge, 2012. - p. 146-164

This chapter provides a critical study of two wars of military asymmetry in which the Israeli Defense Force fought engaged guerrilla fighters. In the Second Lebanon and Gaza Wars, guerrilla fighters were entwined in various sectors of civil society, seeking safe haven in civilian society, garnering support in the basic needs for survival, and drawing upon the social institutions - medical, legal, even financial. Some of this support is directly linked to military operations - providing arms, sanctuary, and even recruits for guerrilla forces. According to the author, when civilian participate directly in such support of guerrilla forces, civilians lose their right of immunity, based on international humanitarian law. The principle of noncombatant immunity does not protect civilians working for the institutions that sustain guerilla organization. Furthermore, in both wars guerrilla troops resorted to the draconian tactic of positioning noncombatants as human shields in the line of enemy fire. Under such conditions, the IDF cannot be required to withhold their fire against enemy forces; the author advocates the use of nonlethal weapons that disable, but not kill, the targeted individuals.

CIVILIANS UNDER THE LAW : INEQUALITY, UNIVERSALISMS, AND INTERSECTIONALITY AS INTERVENTION

Susan F. Hirsch. - In: Civilians and modern war : armed conflict and the ideology of violence. - London ; New York : Routledge, 2012. - p. 251-271

In this chapter the author explores the role of international law in protecting some civilians and failing to protect others. In so doing she addresses a central question taken up in the volume as a whole : how and why do international institutions contribute to lethal and non-lethal civilian devastation ? Although it has not always been applied uniformly, IHL guides the protection of civilians through a body of customary law, treaties such as the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949, and the related Additional Protocols of 1977, which include the Principle of Distinction. More recently, developments in International Criminal Law (ICL) have also shaped the treatment of civilians through treaties, statutes, and case decisions. Most notable are those related to the ad hoc criminal tribunals following mass violence, specifically the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), as well as the International Criminal Court (ICC) established in 1998.

CLASSIFICATION IN FUTURE CONFLICTS

Michael N. Schmitt. - In: International law and the classification of conflict. - Oxford : Oxford University Press, 2012. - p. 455-477

This chapter examines the legal issue of classification of conflict in light of one vision of future warfare, that of the United Kingdom. It seeks to pinpoint those aspects of future conflict that are most likely to pose challenges for those charged with classifying a particular conflict. Three occupy center stage: cyber warfare, transnational terrorisme and the complexity of the battlespace. Anticipation of such challenges will surely enhance the quality of legal input into strategic decision-making. Since the relationship between war and law is synergistic, the chapter concludes by highlighting likely normative trends in classification which may influence conflict.

CLASSIFICATION OF ARMED CONFLICTS : RELEVANT LEGAL CONCEPTS

Dapo Akande. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 32-79

This chapter examines the history of the distinction between international and non-international armed conflict, the consequences of the distinction and whether it still has validity. The chapter then discusses legal concepts relevant to the two categories, including the differences between a non-international conflict and other violence, extraterritorial hostilities by one State against a non-state armed group and conflicts in which multinational forces are engaged.

CLASSIFICATION OF CYBER CONFLICT

Michael Schmitt. In: Journal of conflict and security law Vol. 17, no. 2, Summer 2012, p. 245-260

This article examines the classification of conflicts consisting of only cyber operations under international humanitarian law. ‘International armed conflicts’ are those that are ‘armed’ and ‘international’. The article contends that the former criterion is met when cyber operations amount to an ‘attack’ because they injure individuals or damage objects, whereas the latter requires that the operations be between or attributable to States. ‘Non-international armed conflict’ occurs when hostilities between a State and an ‘organized’ armed group reach a particular level of intensity. To be sufficiently intense, such cyber operations must be ‘protracted’; isolated incidents do not suffice. Intensity also requires that the level of violence exceed that of riots or civil disturbances. Injury or damage is not alone sufficient. Cyber operations conducted by individuals cannot qualify because they are insufficiently ‘organized’. Groups organized on-line may be assessed on a case-by-case basis, but the traditional organization criteria render it difficult for them to qualify. The article concludes that while cyber exchanges may sometimes amount to international armed conflict, classification as non-international armed conflict is problematic.

CLOSING THE GAP : SYMBOLIC REPARATIONS AND ARMED GROUPS

Ron Dudai. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 783-808

The question of whether non-state armed groups could and should provide reparations to their victims has been largely overlooked. This article explores this gap, with a particular focus on symbolic reparations, such as acknowledgement of the truth and apologies. It argues that, while the question is fraught with legal, conceptual, and practical difficulties, there are some circumstances in which armed groups are capable of providing measures of reparations to their victims. The article identifies the issue of attacks on informers as one potential area for armed groups to provide such measures, and demonstrates that in a few cases armed groups have already engaged in actions that could be seen as analogous to symbolic reparations. The article’s main case study is provided by recent actions by the Irish Republican Army (IRA) in relation to its past attacks against suspected informers.

CLUSTER MUNITIONS AND INTERNATIONAL LAW : DISARMAMENT WITH A HUMAN FACE ?

Alexander Breitegger. - London ; New York : Routledge, 2012. - 271 p.

This book offers a comprehensive argument for why pre-existing international law on cluster munitions was inadequate to deal with the full scope of humanitarian consequences associated with their use. The book undertakes an interdisciplinary legal analysis of restraints and prohibitions on the use of cluster munitions under international humanitarian law, human rights law, and international criminal law, as well as in relation to the recently adopted Convention on Cluster Munitions (CCM). The book goes on to offer an in-depth substantive and procedural analysis of the negotiations which led to the 2008 CCM, in part based on the author's experiences as an adviser to Cluster Munitions Coalition-Austria.

A COLLECTION OF CODES OF CONDUCT ISSUED BY ARMED GROUPS

compiled by Olivier Bangerter ; assembled and introduced by Nelleke van Amstel. In: International review of the Red Cross Vol. 93, no. 882, June 2011, p. 483-501

Several authors in this edition of the Review discuss the importance of codes of conducts for understanding and engaging with armed groups. The Review has thus decided to include a collection of codes of conduct, or relevant extracts thereof. All materials in this collection are publicly available. They originate from various geographic areas and time periods – from China in 1947 to Libya in 2011 – and provide an insight into different armed groups' views of and appreciation of humanitarian norms.

COLOMBIA

Felicity Szesnat and Annie R. Bird. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 203-241

Colombia continues to experience the longest running and constantly evolving armed conflict in the world today. There has been a great deal of fluctuation both in the intensity of the fighting, and the range and organization of the actors involved over nearly half a century of hostilities. Analysing all of the issues raised by so many years of conflict in-depth is impossible within the constraints of this chapter. Therefore, the authors look briefly at its origins and evolution, but concentrate on the period from 1994 to the present day, this being the period of the greatest intensity in fighting, with the greatest number of actors involved, and raising the most controversial issues in relation to the classification of conflicts. These issues include: whether criminal violence can ever be classified as being an armed conflict to which international humanitarian law is applicable; whether recognition of belligerency is still a viable concept in international law today; under what circumstances the acts of paramilitary groups may be attributed to the State in which they operate; and finally, in what circumstances hostilities carried out by one State in the territory of another State qualify as an international or a non-international armed conflict.

LE CONCEPT DE "RÉGIME SPÉCIAL" DANS LES RAPPORTS ENTRE DROIT HUMANITAIRE ET DROIT DE L'ENVIRONNEMENT

J. E. Viñuales. - Geneva : The Graduate Institute, Centre for International Environmental Studies, 2012. - 20 p.

Une partie de la doctrine a accueilli de manière peu critique le concept de "régime spécial", au point même que les interactions normatives sont parfois conceptualisées en termes de rapports entre des "sous-systèmes" ou des "régimes spéciaux", tels que le droit humanitaire ou le droit de l'environnement. Une analyse des techniques régissant l'applicabilité de normes potentiellement concurrentes dans une situation donnée montre, cependant, que le droit international positif fait peu de cas de telles étiquettes. Ces rapports sont, pour l'essentiel, aménagés au niveau des normes, traités ou systèmes de traités juridiquement liés. L'appartenance d'une norme ou d'un traité à un ensemble descriptif tel que le droit humanitaire ou le droit de l'environnement n'a de portée juridique qu'exceptionnellement et, même dans ces cas, cette portée ne va pas de soi. D'une manière plus générale, le chapitre souligne la nécessité d'utiliser de manière nuancée des catégories telles que le droit humanitaire ou le droit de l'environnement, dont l'existence en tant que réalité juridique reste à démontrer.

CONFLICT CLASSIFICATION AND THE LAW APPLICABLE TO DETENTION AND THE USE OF FORCE

Jelena Pejic. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 80-116

This chapter examines two of the main 'baskets' of rules making up international humanitarian law: the norms governing the deprivation of liberty of persons and those regulating the use of force, with a view to identifying —in summary form— what the existing law is and where it may be lacking in the face of 'new' conflict classifications. In each section of this chapter, the interplay between international humanitarian law and human rights law is also discussed. Part 2 provides an overview of the principal sources of law applicable to armed conflict and to other situations of violence that do not meet that treshold. Part 3 focuses on the rules governing detention in armed conflict, with a particular emphasis on procedural safeguards in internment, as well as the legal and practical issues related to the transfer of detainees. Part 4 outlines the rules governing the use of force in armed conflict and outside of it, highlighting especially the

issue of the interface between international humanitarian law and human rights law. Part 5 offers some concluding remarks.

CONFRONTING TERRORISM : HUMAN RIGHTS LAW, OR THE LAW OF WAR ?

Juan Carlos Gómez Ramírez. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 215-227

Today, most wars faced by states are with enemies who, like criminals, operate in small groups and in ways that are nebulous and covert. Such enemies engage in armed actions within the civilian population and, more frequently, against them. Human rights law and international humanitarian law are the legal tools society currently uses to face any criminal or otherwise hostile manifestation. By some accounts, however, terrorists and their actions do not fit within or deserve the legal guarantees established by HR treaties and conventions, while yet not always meeting the minimum requirements for the application of IHL that permit and expand the possibility of use of force by states and international organizations to prevent and contain extremely hostile actions.

THE CONTEMPORARY LAW OF BLOCKADE AND THE GAZA FREEDOM FLOTILLA

Andrew Sanger. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 397-446

In the early hours of 31 May 2010, Israel intercepted six vessels on the high seas carrying humanitarian aid to Gaza justifying its actions by invoking its right to enforce the blockade and prevent contraband from reaching the territory. This paper examines the interception from the perspective of international law by considering three pivotal sets of questions: (1) can Israel invoke a prima facie right to blockade Gaza? What is the legal basis for this right? What effect, if any, does the characterisation of the Israeli-Hamas conflict have? (2) If Israel does have a prima facie right to blockade Gaza, is the blockade legally constituted and maintained? What factors must be taken into consideration? Finally, (3) can Israel lawfully intercept vessels on the high seas without permission of the flag-state? In what circumstances, and under what conditions, can Israel undertake such an operation? Did Israel act lawfully when it intercepted the Flotilla vessels? The paper concludes that although it is likely that Israel's blockade on Gaza is not prima facie unlawful, to the extent that the blockade starves the civilian population or prevents that population from receiving supplies necessary for its survival, it is undoubtedly illegal under international law.

LA CONTRIBUTION DE L'ORGANISATION DES NATIONS UNIES AU DÉVELOPPEMENT DU DROIT INTERNATIONAL HUMANITAIRE

Djamchid Momtaz. In: Anuário brasileiro de direito internacional Vol. 1, no. 8, 2010, p. 49-67

Depuis que l'Organisation des Nations Unies a inclus le droit international humanitaire dans sa sphère de compétence, ce corpus de droit a connu un développement sans précédent. Il est désormais acquis que les parties à un conflit armé doivent respecter les règles fondamentales du droit international des droits de l'homme indépendamment de la nature juridique des territoires qu'elles contrôlent. En se fondant sur les prérogatives que la Charte lui reconnaît dans le cadre du chapitre VII, le Conseil de sécurité s'est engagé à recourir le cas échéant à des mesures coercitives pour assurer le respect du droit international humanitaire en vue de garantir la paix et la sécurité internationale. Ces prérogatives lui ont également permis de créer des tribunaux pénaux internationaux ad hoc en vue de réprimer les violations du droit international humanitaire, les statuts et la jurisprudence de ces tribunaux ayant à leur tour favorisé la criminalisation des violations graves du droit international humanitaire commises lors de conflits armés non internationaux.

CONTROLLING THE USE OF FORCE IN CYBER SPACE : THE APPLICATION OF THE LAW OF ARMED CONFLICT DURING A TIME OF FUNDAMENTAL CHANGE IN THE NATURE OF WARFARE

Todd C. Huntley. In: Naval law review Vol. 60, 2010, p. 1-40

The majority of cyber attacks conducted today do not rise to the level of an armed attack or a use of force. A state that found itself the victim of a cyber attack equivalent to a use of force, but not an armed attack, would be prohibited from using force to defend itself but cyber espionage might cause much greater damage to the national security of the U.S. than the physical destruction of a weapons system or military facility. The application of traditional jus ad bellum and jus in bello principles can be seen as creating an incentive for parties to engage in cyberwarfare by reducing the potential risk of retribution. The author considers that the continued application of a law of armed conflict paradigm to modern conflict, one which is fundamentally different from that by which it was formed, will not only fail to protect the national security of the United States, but will also fail to protect the very interests it was designed to protect.

CONVERGENCES ENTRE DROIT INTERNATIONAL HUMANITAIRE ET DROIT INTERNATIONAL DES DROITS DE L'HOMME : VERS UNE ASSIMILATION DES DEUX CORPS DE RÈGLES ?

par Gérard Aivo. In: Revue trimestrielle des droits de l'homme 21ème année, no 82, avril 2010, p. 341-370

L'existence de convergences entre droit international humanitaire et droit international des droits de l'homme, tant au niveau des droits intangibles que sur le plan de la protection juridique de catégories spécifiques telles que les femmes et les enfants, ne fait aujourd'hui aucun doute. Le rapprochement de ces deux branches du droit international, apparaît encore plus pertinent dans les cas confus et de plus en plus fréquents de conflits armé-terrorisme et d'occupation militaire d'un Etat tiers. Mais ces convergences réelles et souhaitables, qui se concrétisent dans la jurisprudence de nombreuses juridictions, permettent-elles d'envisager une assimilation globale des deux corps de règles ? Celle-ci est-elle nécessaire ?

THE COPENHAGEN PROCESS ON THE HANDLING OF DETAINEES IN INTERNATIONAL MILITARY OPERATIONS : THE COPENHAGEN PROCESS : PRINCIPLES AND GUIDELINES.

[S.l.] : [s.n.], 2012. - 25 p.

The Copenhagen Process was a five-year, multi-stakeholder effort to develop principles and good practices for states and international organizations that detain persons in the course of military operations in situations of non-international armed conflict. Twenty-four countries from Europe, Asia, Africa, and North and South America participated in the Copenhagen Process, and five international organizations participated as observers. The Process was conceived (in 2007) and led by the Danish Government. The principles are accompanied by a Chairman's Commentary (not officially endorsed by the participants) that provides some additional gloss.

COUNTER-INSURGENCY OPERATIONS IN AFGHANISTAN : WHAT ABOUT THE "JUS AD BELLUM" AND THE "JUS IN BELLO" : IS THE LAW STILL ACCURATE ?

Chris De Cock. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 97-132

The nature of contemporary operations in Afghanistan reflect the complexities of their environment, particularly in the field of terrorism and insurgency and the reaction of states in combating those (new) forms of violence, generally referred to as counterterrorism (hereinafter CT) and counterinsurgency (hereinafter COIN). Whereas the complexity of this new environment is well recognized, there is however disparity in the international community on how to respond to those threats, varying from law enforcement (preventing, detecting and bringing terrorists to justice) to full scale war, or a combination thereof. Nevertheless, recognizing that terrorism constitutes one of the most serious threats against peace and security, the UN Security Council has recalled on different occasions the need to combat terrorism in accordance with applicable international law, including international humanitarian law and international human rights law. The aim of this paper is to analyze the rules applicable in COIN operations in Afghanistan.

CRIMINALIZING THE VICTIM : WHY THE LEGAL COMMUNITY MUST FIGHT TO ENSURE THAT CHILD SOLDIER VICTIMS ARE NOT PROSECUTED AS WAR CRIMINALS

Sara A. Ward. In: Georgetown journal of legal ethics Vol. 25, no. 3, Summer 2012, p.821-839

Part I establishes a foundation by defining who child soldiers are, discussing the responsibilities of adolescent militants, describing the different manners in which children become members of armies, and examining the number of countries which currently exploit children soldiers, among other pertinent information. It also offers a brief synopsis of war crime tribunals and the manner in which the UN Protocols and Conventions address child warfare, emphasizing the way in which those who advocate for prosecuting children soldiers could potentially violate the Protocols. Part II discusses and refutes arguments favoring the prosecution of children soldiers as war criminals. Part III explores alternatives to charging children as war criminals. Part IV addresses how the American Bar Association Standards and UN Protocols would benefit from amendments that specifically limit attorneys' ability to prosecute children soldiers. The Note concludes by stressing that prosecuting children soldiers as war criminals is tantamount to punishing the victim and by emphasizing how updating the American Bar Association Standards and the UN Protocols could serve as an effective deterrent to the proliferation of prosecutions like that of Omar Khadr.

A CRITICAL APPRAISAL OF THE AIR AND MISSILE WARFARE MANUAL

Jordan J. Paust. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 277-291

This article offers a critical appraisal of the Manual on International Law Applicable to Air and Missile Warfare (AMW Manual). Although the AMW Manual was adopted by consensus after "extensive consultations" among a notable group of experts over a six-year period and allegedly "restates current applicable law," there are a number of provisions that do not reflect current international law (especially the laws of war), are highly problematic and, if actually implemented, could result in war crime

responsibility. Additionally, there are a number of provisions that are too limiting in their reach or focus or too inattentive to developments in the laws of war.

THE CUMULATIVE REQUIREMENTS OF JUS AD BELLUM AND JUS IN BELLO IN THE CONTEXT OF SELF-DEFENSE

Keiichiro Okimoto. In: Chinese Journal of International Law Vol. 11, no. 1, March 2012, p. 45-75

It is sometimes suggested that even if certain measures in self-defense violate jus in bello (international humanitarian law), such measures can be continued by justifying them on the basis of jus ad bellum (international law regulating the resort to force), in particular by justifying that the measures were necessary and proportionate in relation to the initial armed attack. However, State practice, decisions of international courts and arbitration, and opinions of experts indicate the contrary, that if the measures in self-defense violate jus in bello, those violations cannot be ignored or nullified by justifying the measures as necessary and proportionate self-defense. Once the measures in self-defense violate jus in bello, they must be ceased immediately.

CURBING THE MENACE OF CHILD SOLDIERS : AN UNSOLVED RIDDLE OF INTERNATIONAL HUMANITARIAN LAW

Vijay A. Chavan. In: ISIL yearbook of international humanitarian and refugee law Vol. 10, 2010, p. 282-295

The issues before international humanitarian law regarding children involved in armed conflict are the core of this paper. The attempt has been made to know the reasons of participation by children as a combatant and how to oprevent the same, the position of international humanitarian law with respect to child as combatant and to study certain unsolved problems of international humanitairan law regarding child soldiers.

CURRENT CHALLENGES IN THE LEGAL REGULATION OF THE METHODS OF WARFARE

Théo Boutruche. In: Collegium No. 41, Automne 2011, p. 21-31

This presentation focuses on technological developments that raise challenges to IHL. Challenges also relate to whether technology is not creating greater obligations for parties to a conflict which have advanced technology in their arsenal. The increasing resort to Unmanned Combat Aerial Vehicles raise serious issues such as the question of assigning responsibility in case of violations because of pilot's absence from the cockpit, or the ability of human operators to base the identification of targets on information and intelligence gathered though UCAV's systems, miles away from the field of operations, and consequently to assess IHL legal parameters based on this information. Deriving from the principle of precaution, there is also a debate on whether States have an obligation to either acquire precision- guided munitions or to use such weapons when they possess them in their arsenal. The increasing resort to non-lethal technology has potential implication on the notion of "hors de combat" as some non-lethal weapons are designed to temporary incapacitate or immobilize.

CURRENT CHALLENGES TO THE LEGAL REGULATION MEANS OF WARFARE

Jann Kleffner. In: Collegium No. 41, Automne 2011, p. 13-20

This contribution first addresses the conceptual challenge of what is meant by 'means of warfare' or 'weapons' in the broadest sense. Indeed, to clarify that notion is vital in determining the regulatory ambit of the law of armed conflict as it relates to 'means of warfare'. Secondly, It addresses a normative challenge, namely the regulation in the law of armed conflict of effects of weapons that may only materialise after a considerable lapse of time. Thirdly, it addresses the challenge to legal regulation that emanates from processes of moral disengagement induced by an increasing number of new technologies.

CYBER ATTACKS AND THE LAWS OF WAR

by Michael Gervais. In: Berkeley journal of international law Vol. 30, no. 2, 2012, p. 525-579

In the past few decades, cyber attacks have evolved from boastful hacking to sophisticated cyber assaults that are integrated into the modern military machine. As the tools of cyber attacks become more accessible and dangerous, it's necessary for state and non-state cyber attackers to understand what limitations they face under international law. This paper confronts the major law-of-war issues faced by scholars and policymakers in the realm of cyber attacks, and explores how the key concepts of international law ought to apply. This paper makes a number of original contributions to the literature on cyber war and on the broader subject of the laws of war. I show that many of the conceptual problems in applying international humanitarian law to cyber attacks are parallel to the problems in applying international humanitarian law to conventional uses of force. The differences are in degree, not of kind. Moreover, I explore the types of cyber attacks that states can undertake to abide by international law, and which ones fall short.

LES CYBER-OPÉRATIONS ET LE JUS IN BELLO = CYBER OPERATIONS AND JUS IN BELLO

Nils Melzer. In: Forum du désarmement = Disarmament forum 4, 2011, p. 3-18, 3-17

This article analyzes the applicability of International humanitarian law (IHL) to cyber operations. The author argues that the phenomenon of cyberwarfare does not exist in a legal vacuum but is subject to well-established rules and principles of international. However, transposing these rules and principles to the new domain of cyberspace encounters certain difficulties and raises a number of important questions. Some of these questions can be resolved through classic treaty interpretation and common sense; others will require a unanimous policy decision by the international community of states.

CYBER SANCTIONS : EXPLORING A BLIND SPOT IN THE CURRENT LEGAL DEBATE

Marco Benatar and Kristof Gombeer. - [S.l.] : European Society of International Law, 2011. - 23 p.

This article aims to bring to attention the prospective use of a novel category of coercive methods, cyber sanctions. Whilst acknowledging their untapped potential as a means available to international institutions, in particular the United Nations Security Council (UNSC), for targeting and pressurizing (non-)state actors, we maintain that there are several legal concerns surrounding their utilization that deserve closer attention. As regards the UN Charter, we discuss the growing acknowledgment that cyberspace is an area of conflict warranting UNSC action, the appropriate legal basis for executing measures travelling through cyberspace, as well as the competences of regional organizations in this regard. Furthermore, we contemplate to what extent UNSC is bound by other norms if it chooses to utilize these digital methods. More precisely, we look into some possible normative constraints emanating from human rights law and international humanitarian law. Having addressed these various juridical aspects we conclude that whereas the law as it stands today appears able to partially accommodate cyber sanctions, as is often the case, new technology stretches old law, sometimes to the breaking point.

[CYBER WAR AND INTERNATIONAL LAW]

Mary Ellen O'Connell... [et al.]. In: Journal of conflict and security law Vol. 17, no. 2, Summer 2012, p. 183-297

Contient notamment: Cyber security without cyber war / M.E. O'Connell. - Classification of cyber conflict / M. Schmitt. - The principle of distinction and cyber war in international armed conflicts / Y. Dinstein. - Cyber warfare and the notion of direct participation in hostilities / D. Turns

CYBER WAR INC. : THE LAW OF WAR IMPLICATIONS OF THE PRIVATE SECTOR'S ROLE IN CYBER CONFLICT

Hannah Lobel. In: Texas international law journal Vol. 47, no. 3, Spring 2012, p. 617-640

Part I, briefly characterizes how scholars have mapped the law of war onto cyber conflict generally, considering both jus ad bellum and jus in bello regimes. This analysis is key to understanding how the ambiguities plaguing the application of the law of war to cyber conflict are further complicated when the private sector plays a role. Part II, considers the Obama administration’s proposal to foster public-private partnerships as a means of combating cyber attacks, as well as a few current models proposed by legal scholars to address this dilemma. The article points out law of war blind spots in these political and scholarly proposals and argue that how these issues are resolved will have important implications for the development of customary international law in cyber conflicts. The primary concerns in this regard are the erosion of the state’s monopoly on the use of force and the eroding standard for imputation of non-state actor conduct to states. The last section offers a brief conclusion.

CYBER WARFARE AND THE LAWS OF WAR

Heather Harrison Dinniss. - Cambridge [etc.] : Cambridge University Press, 2012. - 331 p.

This book analyses the status of computer network attacks in international law and examines their treatment under the laws of armed conflicts. The first part of the book deals with the resort to force by states and discusses the threshold issues of force and armed attack by examining the permitted response against such attacks. The second part offers a comprehensive analysis of the applicability of international humanitarian law to computer network attacks.

CYBER WARFARE AND THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES

David Turns. In: Journal of conflict and security law Vol. 17, no. 2, Summer 2012, p. 279-297

The domain of cyber warfare being relatively new, it is not yet matched by any comparatively novel international legal paradigm; the cyber conflicts of the present and (probably) the future therefore fall to be regulated under the existing lex lata. This article, assuming a scenario of international armed conflict, seeks as a specific example to apply the notion of direct participation in hostilities from Additional Protocol I (1977) to cyber war. This aspect of the topic is likely to assume particular importance in light of the contemporary tendency in many developed, Western armed forces to outsource technical specialist work (like information technology) to civilians. Whether or not such civilians can be said to be directly

participating in hostilities—based on the accepted constitutive elements of threshold of harm, direct causation and belligerent nexus identified in the International Committee of the Red Cross' Interpretive Guidance (2005)— will also have implications for the objects and places that could lawfully be targeted in future cyber conflicts.

CYBER WARFARE AS ARMED CONFLICT

Noam Lubell. In: Collegium No. 41, Automne 2011, p. 41-46

In the context of international law, one of the pressing questions is whether cyber warfare fulfils the definition of armed conflict. Unquestionably, there need to be parties to the conflict. But if we have no knowledge of the source of a cyber attack, then we may be obstructed from determining the conflict, from applying the rules, and most importantly, from having any form of accountability. We then still need to identify the existence of force between States, which is usually understood to mean armed force. Under ius ad bellum and depending on their precise nature and consequences, cyber attacks may be a violation of the prohibition on use of force or of non-intervention, but this may be too low a threshold to necessarily determine existence of armed conflict. Under ius in bello, the law makes reference to 'hostilities' and to 'attacks'. Hostilities can encompass more than single acts of violence, but the latter are usually expected to be part of the situation. As for 'attacks', these are traditionally understood to include an element of armed violence. However, it seems fair to assume that the primary focus was on the fact that the attacks were acts designed to cause physical harm, whether human casualties or physical damage and destruction. As such, it could be argued that cyber warfare which has these same effects, could be considered as equivalent to the type of violence envisaged to exist under the ius in bello.

CYBER WARFARE : CHALLENGES FOR THE APPLICABILITY OF THE TRADITIONAL LAWS OF WAR REGIME

Jenny Döge. In: Archiv des Völkerrechts Vol. 48, no. 4, 2010, p. 486-501

The concept of cyberwar poses some unique challenges to the traditional laws of war regime. The recent discovery of the virus Stuxnet in Iran spurred a new discussion about cyberwar and the possibilities to protect a nation against this new type of warfare. This article considers the general applicability of the laws of war to cyberwar and questions the need for a new treaty regime to deal with cyberwar. Furthermore, it highlights some problems that are unique to cyberwar, but also identifies possible advantages of cyberwar in comparison with traditional warfare.

CYBERTHREATS AND INTERNATIONAL LAW

Georg Kerschischnig. - The Hague : Eleven International Publishing, 2012. - 365 p.

This publication revolves around the public international law aspects of the destructive use of cyberspace by state actors and non-state actors, encompassing cyberwar, cyberterrorism, and hacktivism, but excluding cybercrime. For the purpose of delimitation, the book also addresses cyberespionage and political activism in cyberspace. Starting by providing an overview of the technical background, the author explains the vulnerabilities of critical infrastructure. Then he outlines notable cyberincidents that have occured so far and analyzes pertinent state practice and policies. Turning to the legal analysis, the primary focus is on the contemporary jus ad bellum and jus in bello, exploring whether concepts like the use of force or self-defense are applicable to cyberattacks, despite their lack of physicality, or whether state responsibility and the principles of International Humanitarian Law are applicable to cyberspace, in particular in the light of an evident civilization of battlespace in this area. Furthermore, the book encompasses destructive cyberterrorism and opposes it to the use of cyberspace for terrorist purposes, and puts this into context with human rights aspects of political activism in cyberspace. Finally, juridictional pitfalls borne in cyberspace are looked into. The final chapter is dedicated to providing recommendations to the international community, in order to address cyberthreats in a political process.

THE DAY AFTER : PROSECUTING INTERNATIONAL CRIMES COMMITTED IN LIBYA

Marina Mancini. In: The Italian yearbook of international law Vol. 21, 2011, p. 85-109

In 2011, Libya was a theatre of atrocious crimes. Ensuring that those involved do not go unpunished is now a major challenge fo the new Libyan Government and the international community. The first part of this article surveys the crimes against humanity and war crimes that were reportedly committed by both the Gaddafi forces and the insurgents. It also considers the NATO air strikes which resulted in civilian casualties or damage to civilian objets and might amount to war crimes. The second part of the article discusses the available mechanisms for prosecuting the aforementioned crimes. Firstly, the Security Council rreferral of the Libyan situation to the International Criminal Court and its limitations are examined, and subsequent developments are explored, including the warrants against Muammar Gaddafi, his son Saif Al-Islam and Al-Senussi, their capture and Libya's admissibility challenge of 1 May 2012. Secondly, the article considers the prospects for national proceedings against the alleged criminals. The author argues that proceedings before Libyan courts are the only practically available option to ensure the punishment of the bulk of perpetrators. She also emphasises the importance of investigations and prosecutions being given equal weighting, whether they are of Gaddafi loyalists or revolutionaries.

DE LA THÉORIE DU DROIT À LA RÉALITÉ DU TERRAIN : L'HUMAIN AU COEUR DES CONFLITS

Emmanuel Goffi. - In: Les conflits et le droit. - Paris : Choiseul, 2011. - p. 127-146

Aujourd'hui, inscrire l'action militaire dans le droit est un impératif pour tout militaire. Il permet, outre de garantir au militaire le bénéfice de la protection prévue par les textes de droit des conflits armés (DCA), d'offrir un garde-fou contre les risque de dérives. Cependant, pour appliquer ce droit efficacement, il est bien entendu nécessaire d'en connaitre le fondement et le contenu. C'est au travers de ce prisme que doivent être comprises les contraintes juridiques imposées par les textes de DCA. Cette importance de l'humain dans les conflits se retrouve tout au long de l'histoire du phénomène guerrier. L'auteur revient sur l'histoire du DCA ainsi que sur les nombreux débats qui se sont fait jour autour de l'universalité des Conventions de Genève. Les armées françaises, comme de nombreuses autres armées de par le monde, ont toujours eu à coeur de préserver l'humain. Cela étant, les formes de conflictualités contemporaines ne sont que très rarement propices à une application aisée des principes du DCA.

THE DEMOCRATIC REPUBLIC OF THE CONGO 1993-2010

Louise Arimatsu. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 146-202

This chapter subdivides Congo's history of violence into four key periods: 1) the period prior to the First Congo War extending from the spring of 1993 until summer 1996; 2) the period starting with the outbreak of the First Congo War in July 1996 until the summer of 1998; 3) the period spanning the Second Congo War until the establishment of the transitional government in July 2003; and finally 4) the period since the end of the Second Congo War during which time large-scale fighting has continued to dominate life in the eastern provinces. Each section begins with a cursory overview of the history of the conflicts and identifies the main protagonists. This is followed by a critical examination of the legal framework within which both external observers and those involved in the hostilities claimed was applicable. Whether the categorization of the specific armed conflict under consideration altered the behaviour of the parties in respect of the rules on opening fire and those relating to capture and detention are examined to ascertain what legal and practical problems were —and still are— encountered with the bifurcation of the law.

DESTRUCTION OF ENVIRONMENT DURING AN ARMED CONFLICT AND VIOLATION OF INTERNATIONAL LAW : A LEGAL ANALYSIS

Rishav Banerjee. In: Asian yearbook of international law Vol. 15, 2009, p. 145-188

This Article examines, in light of the recent events (Case studies) and commentary, current legal protections for the environment during an armed conflict such as Article 35(3) and Article 55 of the Additional Protocol I to the Geneva Conventions, 1977 or the Convention on the Prohibition of Environmental Modification (ENMOD) Techniques etc., which prohibits environmental destruction during war. After outlining existing rules and exploring some of the criticisms levelled against their effectiveness, this Article considers potential consequences arising from possible violations of these provisions. Finally, it proposes how current rules can be modified and calls for a new law to provide more effective protection of the environment during times of armed conflict. Indeed, it concludes that the strongest protections are contained in the non-environment-specific provisions of the laws of armed conflict.

DETERMINING A LEGITIMATE TARGET : THE DILEMMA OF THE DECISION-MAKER

Amos N. Guiora. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 315-336

Discussion regarding the Manual on International Law Applicable to Air and Missile Warfare (AMW Manual) is particularly relevant to the legitimate target discussion. After all, air and missile warfare is related directly to the legitimate target dilemma. Any analysis of air and missile warfare must include discussion regarding defining a legitimate target and then, subsequently, determining when the individual defined as a legitimate target is, indeed, a legitimate target. In that context, the link between the definition of a legitimate target and the AMW Manual is inexorable. With the primary focus on who is a legitimate target and when the target is legitimate, this Article is organized as follows: Section I offers a “word of caution” in an age of uncertainty; Section II discusses operational counterterrorism; Section III offers a survey of how the term legitimate target has been defined historically and applied in the battlefield; Section IV focuses on the non-state actor and international law; Section V discusses defining the legitimate target; Section VI focuses on the practical application of the legitimate target definition from the commander’s perspective; and the conclusion proposes a road map for both the definition of legitimate target and its application.

DID LOAC TAKE THE LEAD ? : REASSESSING ISRAEL'S TARGETED KILLING OF SALAH SHEHADEH AND THE SUBSEQUENT CALLS FOR CRIMINAL ACCOUNTABILITY

Alon Margalit. In: Journal of conflict and security law Vol. 17, no. 1, Spring 2012, p. 147-173

The recent report of an Israeli Inquiry Committee that examined the 2002 targeted killing of Salah Shehadeh, the commander of Palestinian armed group Hamas, provides a valuable opportunity to reassess the legality of this highly controversial incident. The attack on Shehadeh by Israeli forces caused the death of 13 innocent civilians and the injury of dozens of others. While Israel refused to open a criminal investigation following the attack, several attempts in Israel and elsewhere were made in order to initiate criminal proceedings and to hold those involved accountable. It seems however that the allegations of 'an Israeli war crime' neglected the normative framework which governs the incident. This article analyses the lawfulness of the Israeli operation under the law of armed conflict (LOAC) by discussing the legitimacy of the selected target and the issues of proportionality and precautions in attack. It also considers the relationship between LOAC and human rights law. As the calls for criminal measures may be resumed in light of the Inquiry Committee's findings, the article recalls the supremacy of LOAC when assessing behaviour in the context of high-intensity hostilities. In the absence of a LOAC violation which triggers individual criminal responsibility, human rights law may play a role in relation to a post-incident remedy, namely, a review of the attack and, in some cases, compensation for victims. Yet, allegations of war crimes cannot be based on human rights law when there is no case to answer under LOAC.

DIRECT PARTICIPATION IN HOSTILITIES : A CONCEPT BROAD ENOUGH FOR TODAY'S TARGETING DECISIONS

Eric Talbot Jensen. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 85-105

The first section offers a brief history of the development of the applicable standards for combatants, lawful and unlawful, and civilians, those who take a direct part in hostilities and those who do not. The second section analyzes how these standards apply to targeting during military operations and the potential results for civilians. It further describes how these standards and their effect on targeting operations have come under severe criticism in the current war against transnational terrorist organizations, leading some call for a revision of the law. The third section explains why such a revision is unnecessary and proposes a contemporary understanding of the definition of direct participation in hostilities that reconciles necessity and humanity.

DISCRIMINATE WARFARE : THE MILITARY NECESSITY-HUMANITY DIALECTIC OF INTERNATIONAL HUMANITARIAN LAW

Michael N. Schmitt. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 85-102

Schmitt is concerned with issues surrounding the protection of civilians when military operations are under way. He argues that no principle is more central to the content and understanding of international humanitarian law (IHL) than military necessity ; it has informed the law since its modern inception in the nineteeth century. Yet the principle has also been the subject of misinterpretation and abuse. Schmitt's contribution examines the relation of the principle of military necessity to the countervailing principle of humanity. Their coexistence serves to balance humanitarian law in a way that best protects individuals and property while allowing states sufficient leeway to conduct military operations effectively. He further examines how the principles are being applied by courts, non-governmental organizations and others involved in the legal assessment of armed conflict, and offers thoughts on wether the trend is positive or negative.

DISCRIMINATION AND NON-LETHAL WEAPONS : ISSUES FOR THE FUTURE MILITARY

Stephen Coleman. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 215-229

Stephen Coleman observes that there are many situations where it would be extremely useful for military personnel to have access to non-lethal weapons (NLWs), especially in humanitarian, peacekeeping and counterinsurgency operations, and in other situations where the distinction between combatants and non-combatants tends to be blurred. There are, however, also some obvious problems with the use of such weapons, including the fact that some NLWs might violate existing conventions on chemical or biological weapons and that there might be a temptation for personnel equipped with such weapons to use them inappropriately.

DO SOLDIERS' LIVES MATTER ? : A VIEW FROM PROPORTIONALITY

Reuven (Ruvi) Ziegler and Shai Otzari. In: Israel law review Vol. 45, no. 1, 2012, p. 53-69

A military operation is about to take place during an ongoing international armed conflict; it can be carried out either by aerial attack, which is expected to cause the deaths of enemy civilians, or by using ground troops, which is expected to cause the deaths of fewer enemy civilians but is expected to result in more deaths of compatriot soldiers. Does the principle of proportionality in international humanitarian law impose a duty on an attacker to expose its soldiers to life-threatening risks in order to minimise or avert risks of incidental damage to enemy civilians? If such a duty exists, is it absolute or qualified? And if it is a qualified duty, what considerations may be taken into account in determining its character and scope? This article presents an analytic framework under the current international humanitarian law (IHL) legal structure, following a proportionality analysis. The proposed framework identifies five main positions for addressing the above queries. The five positions are arranged along two 'axes': a value 'axis', which identifies the value assigned to the lives of compatriot soldiers in relation to lives of enemy civilians; and a justification 'axis', which outlines the justificatory bases for assigning certain values to lives of compatriot soldiers and enemy civilians: intrinsic, instrumental or a combination thereof. The article critically assesses these positions, and favours a position which attributes a value to compatriot soldiers' lives, premised on a justificatory basis which marries intrinsic considerations with circumscribed instrumental considerations, avoiding the indeterminacy and normative questionability entailed by more expansive instrumental considerations.

DO WE NEED NEW REGULATIONS IN INTERNATIONAL HUMANITARIAN LAW ? : ONE AMERICAN'S PERSPECTIVE

Charles J. Dunlap. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 3/2012, p. 120-128

The purpose of this article is to provide the author's personal view as to whether certain possible proposals for LOAC additions genuinely serve US interests, and, even if so, whether it is probable that they - or any - proposed changes could garner the necessary US domestic public and political support. This essay attempts to provide context for considering - and anticipating - American approaches to these questions. In general, this paper will conclude that the answer to both queries is no. It takes the position that existing law adequately serves US interests, even if American interpretations of LOAC do not always find consensus in the international community.

DOCUMENTS OFFICIELS : CONFÉRENCE DIPLOMATIQUE SUR L'ADOPTION DU TROISIÈME PROTOCOLE ADDITIONNEL AUX CONVENTIONS DE GENÈVE DU 12 AOÛT 1949 RELATIF À L'ADOPTION D'UN SIGNE DISTINCTIF ADDITIONNEL (PROTOCOLE III), 5-8 DÉCEMBRE 2005, GENÈVE, SUISSE

Confédération Suisse, Département fédéral des affaires étrangères DFAE. - Berne : Département fédéral des affaires étrangères, 2012. - 134 p.

Contient notamment: Projet de Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à l'adoption d'un signe distinctif additionnel (Protocole III). - Acte final et ses annexes. - Allocutions liminaires. - Comptes-rendus des séances plénières de la Conférence Diplomatiques. - Amendements soumis par le Pakistan et le Yémen qui ont été proposés par les Etats de l'Organisation de la Conférence islamique. - Résultat du vote sur l'adoption du Protocole III additionnel. - Liste des délégués et des participants à la Conférence

THE DOMESTIC IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW : A MANUAL

ICRC. - Geneva : ICRC, [2011]. - 439 p.

This manual is a practical tool to assist policy-makers, legislators and other stakeholders worldwide in ratifying international humanitarian law (IHL) instruments. Drawing on the ICRC Advisory Service's 15 years of experience, the manual offers guidelines to help States implement IHL and meet all their obligations under IHL, particularly the repression of serious violations of it.

DOMESTIC INVESTIGATION OF SUSPECTED LAW OF ARMED CONFLICT VIOLATIONS : UNITED STATES PROCEDURES, POLICIES AND PRACTICES

Sean Watts. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 85-105

This Comment will briefly outline the investigative procedures available under current United States domestic law for suspected LOAC violations. Formal and informal procedures available under both civil and military justice systems will be explored. Investigative jurisdiction is often tied to prosecutorial jurisdiction and thus aspects of the latter will be presented to the extent required to understand the former. Special attention will be given to evidence that U.S. investigative procedures, policies, and protocols are influenced by or are functions of perceived international legal obligations. s Comment concludes by offering a few brief observations concerning the U.S. system and the likely direction of future scrutiny.

DOMESTIC, LEGAL OR OTHER PROCEEDINGS UNDERTAKEN BY BOTH THE GOVERNMENT OF ISRAEL AND THE PALESTINIAN SIDE

Ivana Vuco. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 327-336

Taking as its starting point United Nations General Assembly Resolution 64/254, the United Nations Human Rights Council's committee of independent experts in international humanitarian and human rights laws was convened to monitor and assess the domestic legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, with an eye to their conformity with international standards.

UN DROIT DANS LA GUERRE ? : [CAS, DOCUMENTS ET SUPPORTS D'ENSEIGNEMENT RELATIFS À LA PRATIQUE CONTEMPORAINE DU DROIT INTERNATIONAL HUMANITAIRE]

Marco Sassòli, Antoine A. Bouvier et Anne Quintin ; avec la collab. de Juliane Garcia. - Genève : CICR, mars 2012. - 3 vol. (3030 p.)

Outil de référence sur la pratique du droit international humanitaire, cet ouvrage est destiné aux professeurs et aux étudiants en droit international ou en sciences politiques, ainsi qu'aux juristes en exercice. Son objectif principal est de démontrer la pertinence du droit international humanitaire dans les conflits contemporains et de présenter les réponses qu'il apporte aux problèmes humanitaires que ces conflits provoquent.

DROIT DE L'OCCUPATION ET RECONSTRUCTION DE L'ETAT IRAKIEN : LE DROIT DE L'OCCUPATION MILITAIRE À L'ÉPREUVE DE LA RECONSTRUCTION DE L'ETAT PAR LES PUISSANCES OCCUPANTES EN IRAK

Laura Barjot. - Saarbrücken : Éditions universitaires européennes, 2012. - 149 p.

La tendance aux occupations transformatrices observée depuis la Seconde Guerre mondiale est illustrée par l'occupation de l'Irak par les Etats-Unis et le Royaume-Uni d'avril 2003 à mai 2004. L'auteur souligne qu'il existe une contradiction évidente entre le comportement de l'occupant tel que prescrit par le droit dans le Règlement de la Haye de 1907 et la IVe Convention de Genève de 1949 et la pratique de l'Autorité provisoire de la coalition en Irak. En effet, les principes conservateurs du droit, le respect du statu quo ante bellum et des structures politiques et économiques en place ont été ignorés dans cette entreprise de reconstruction de l'Etat de grande ampleur. En l'absence de base légale satisfaisante pour les réformes menées, l'auteur pose la question de l'opportunité d'une réforme du droit de l'occupation telle qu'envisagée par les spécialistes.

LE DROIT DES DROITS DE L'HOMME ET LE DROIT HUMANITAIRE DANS LES CONCEPTS PROFESSIONNELS DES FORCES DE MAINTIEN DE L'ORDRE : [POINTS ESSENTIELS DU MANUEL SERVIR ET PROTÉGER]

Comité international de la Croix-Rouge. - Genève : CICR, janvier 2012. - 35 p.

Cette brochure destinée aux audiences impliquées dans des activités de maintien de la loi résume les points essentiels du manuel Servir et protéger. Elle traite des principes et des règles des droits de l'homme et du droit international humanitaire se rapportant aux pratiques professionnelles utilisées pour l'application des lois dans les contextes démocratiques.

DROIT HUMANITAIRE

Mario Bettati. - Paris : Dalloz, 2012. - 321 p.

Ce livre distingue d'abord ce que l'on appelle le droit de La Haye, qui s'organise autour de principes qui ont pour objet d'établir des seuils de tolérance, de déterminer ce qui est nécessaire à la conduite des combats et ce au-delà de quoi les affrontements ne doivent pas aller afin de maintenir ces derniers dans des limites humanitairement décentes. Il expose ensuite ce qu'on désigne sous l'expression droit de Genève. Dans les conflits armés, ce droit vise à la protection des personnes qui sont au pouvoir de l'adversaire, en imposant un certain nombre de normes qui exigent de les traiter humainement. Cet ouvrage présente enfin les différents procédés de mise en œuvre du DIH et notamment les sanctions de ses violations par les juridictions pénales internes et internationales. Ce qu'on appelle le droit de New York.

DROIT INTERNATIONAL ET PRISONNIERS DE GUERRE OCCIDENTAUX LORS DE LA GRANDE GUERRE

Heather Jones. - In: La captivité de guerre au XXe siècle : des archives, des histoires, des mémoires. - Paris : A. Colin : Ministère de la défense et des anciens combattants, 2012. - p. 48-58

Dans quelle mesure le droit international protégea-t-il les prisonniers de guerre durant la Première Guerre mondiale? Cette contribution propose de réexaminer cette question en considérant brièvement le traitement des prisonniers de guerre en Grand-Bretagne, en France, et en Allemagne, afin de voir comment le droit internaitonal a réagi, lorsqu'il fut mis à l'épreuve du premier conflit total industrialisé. On examinera d'abord dans quelle mesure le droit a offert une protection effective aux prisonniers durant les années 1914-1918, avant de s'intéresser à l'influence que le conflit a eu, pendant l'entre-deux-guerres, sur

le droit international réglementant le traitement. Le but de ce texte est de préciser en quoi leur droit international a été en mesure de réglementer le traitement des prisonniers et de déterminer les pratiques en temps de guerre.

LE DROIT INTERNATIONAL HUMANITAIRE, À LA MERCI DES ENTREPRISES MILITAIRES ET DE SÉCURITÉ PRIVÉES ?

Marie-Ève Lapointe. In: Revue québécoise de droit international Vol. 24.1, 2011, p. 69-104

La multiplication des entreprises militaires et de sécurité privées ainsi que leur implication croissante au sein des conflits armés soulèvent de nombreuses interrogations au-delà de la (complexe) question du statut de ces compagnies au regard du droit international humanitaire. Nous chercherons ici à déterminer l'impact de cette « privatisation de la guerre » sur l'évolution du droit international public et, tout particulièrement, sur le droit international humanitaire. Plus précisément, est-il envisageable que le DIH soit appelé à se conformer graduellement aux exigences d'un marché de la guerre? À cet égard, nous tenterons de démontrer que la logique commerciale qui prévaut présentement quant à la régulation des entreprises militaires et de sécurité privées s'inscrit dans un parcours historique à l'intérieur duquel les acteurs privés agissant en période de conflits armés se sont vus accorder une légitimité fluctuant au gré des intérêts étatiques. Ce travail sera divisé en trois parties. Nous aborderons tout d'abord la question de la présence d'acteurs « privés » au sein des conflits armés dans une perspective historique, afin de démontrer que la perception de la violence légitime en tant qu'apanage de l'État est une construction récente. En second lieu, nous analyserons les causes sous-jacentes à l'apparition, puis à la multiplication des entreprises militaires et de sécurité privées, pour ensuite voir comment ces dernières s'articulent avec le droit international humanitaire. En dernier lieu, nous proposons une réflexion sur l'impact de la « privatisation de la guerre » sur le droit international public et sur le droit international humanitaire plus particulièrement.

DROIT INTERNATIONAL HUMANITAIRE COUTUMIER : BILAN DE L'ÉTUDE DU CICR

par Jean-Marie Henckaerts. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 27-47

En 1995, le Groupe intergouvernemental d'experts pour la protection des victimes de la guerre proposa que le CICR entreprenne une étude sur les règles coutumières de droit international humanitaire applicables dans les conflits armés internationaux et non internationaux. Après 10 ans de recherche et de consultations, l'étude a été publiée en 2005. La pratique de plus de 150 États est actuellement mis à jour par un projet mené par la Croix-Rouge Britannique et le CICR. Ce chapitre analyse l'impact et l'utilisation de l'étude, examine certains éléments de la méthode employée et expose brièvement les travaux du projet CRB/CICR, selon le plan suivant: 1. impact de l'études; 2. méthode suivie pour l'études; 3. mise à jour de l'étude.

LE DROIT INTERNATIONAL HUMANITAIRE FACE AUX DÉFIS DU XXIE SI[È]CLE

sous la dir. de Abdelwahab Biad et Paul Tavernier. - Bruxelles : Bruylant, 2012. - 325 p.

L'ouvrage s'interroge sur la pertinence des règles du droit international humanitaire. Ces règles permettent-elles de répondre aux problèmes apparus depuis leur adoption et qui constituent autant de défis à leur pertinence au XXIe siècle ? La multiplication des conflits dits « déstructurés » dans les États « défaillants », ainsi que l'extension des guerres asymétriques ont révélé le rôle croissant d'acteurs non étatiques sur fond de « privatisation de la sécurité ». Ainsi, la prolifération de groupes armés non étatiques (« terroristes » et « mercenaires ») agissant aux limites des règles du droit international humanitaire vient compliquer la notion de « participation directe aux hostilités » destinée à assurer la protection des civils. Parallèlement, les « guerres asymétriques » (Irak, Afghanistan, Liban et Gaza) sont pleines d'enseignements pour ce qui est des méthodes et moyens de guerre. Elles illustrent sous un nouveau jour la complexité de l'application des Conventions de Genève dans un contexte d'asymétrie des capacités militaires. Tout en mettant à rude épreuve les règles régissant la conduite des hostilités, ces conflits révèlent ainsi les défis posés par les nouvelles technologies militaires (« drones de combat », bombes à sous-munitions, armes au phosphore blanc ou à uranium enrichi) en termes de protection des civils.

LE DROIT INTERNATIONAL HUMANITAIRE PROTÈGE-T-IL ASSEZ LA DIGNITÉ DES FEMMES ? : L'EXEMPLE DU CONFLIT ISRAÉLO-PALESTINIEN

Katy Sakina Frattina. In: Revue canadienne droit et société Vol. 26, no 1, 2011, p. 51-67

Comment définir et protéger la dignité de la femme en période de conflit armé ? Cette étude tentera de saisir les enjeux et dilemmes du droit à la dignité et des questions de diversité en droit international humanitaire, en prenant pour exemple le conflit israélo-palestinien. L'auteure proposera une autre approche possible du droit à la dignité, celle-ci étant dans le cadre légal du droit international humanitaire, essentiellement associée à la sexualité de la femme. Cette approche permettra d'engager plus en avant des débats occultés par les diversités sociales en périodes de guerre.

DROIT INTERNATIONAL HUMANITAIRE : THÈMES CHOISIS

Jean d'Aspremont, Jérôme de Hemptinne. - Paris : Pedone, 2012. - 508 p.

Avec l'objectif d'offrir un éclairage global et critique sur les principes régissant la conduite de la guerre, cet ouvrage s'articule autour de quatorze thématiques portant sur les sources, les règles matérielles et la mise en œuvre du droit international humanitaire. Il examine plusieurs développements récents dont les hostilités transnationales, le statut et la détention des combattants dits « illégaux », l'administration internationale de territoires et les moyens et méthodes de combat non conventionnels.

LE DROIT INTERNATIONAL, LES CONFLITS ARMÉS ET LES CATASTROPHES ÉCOLOGIQUES

Olivier Mazaudoux. - In: Les catastrophes écologiques et le droit. - Bruxelles : Bruylant, 2012. - p. 105-116

Un conflit armé a ainsi toujours un impact sur l'environnement, impact plus ou moins important et plus ou moins délibéré, mais toujours réel, même s'il semble parfois difficilement quantifiable. Si le phénomène a toujours coexisté avec les conflits eux-mêmes, il s'est avéré pour l'opinion publique depuis la guerre du Viet Nam, où le milieu a été alors érigé en arme de guerre (1ère partie). L'interdiction de cette pratique n'a pas réussi à régler le problème de l'évaluation des impacts des conflits et de la prévention des catastrophes (2ème partie), potentiellement porteuses de nouveaux conflits.

DROIT INTERNATIONAL PÉNAL

sous la dir. de Hervé Ascensio, Emmanuel Decaux, Alain Pellet. - Paris : A. Pedone, 2012. - 1279 p.

Après un titre préliminaire consacré à la formation du droit international pénal, les trois parties présentent les nombreuses infractions définies internationalement, puis les formes de responsabilité susceptibles de résulter de leur commission, enfin le système international de justice pénale, compris comme un ensemble cohérent d'organes internationaux et nationaux d'enquête, de poursuite et de jugement.

LE DROIT INTERNATIONAL PUBLIC RELATIF AUX GROUPES ARMÉS NON ÉTATIQUES

Zakaria Daboné. - Genève : Schulthess, 2012. - 419 p.

De par leur présence dans la plupart des conflits armés récents ou actuels, les groupes armés non étatiques représentent incontestablement un défi majeur pour le droit international. Partant de ce constat, l'objectif de cet ouvrage est d'offrir une étude approfondie et globale des groupes armés non étatiques en droit international. En application de critères issus du droit international public façonné par l'étatisme, l'ouvrage définit ainsi les notions de groupe armé non étatique et de membre de celui-ci dans un contexte marqué par la multiplicité des entités non étatiques. Sur la base des notions de sources du droit, de responsabilité, de jus in bello, de jus ad bellum et des droits de l'homme, il permet de saisir la nature et l'intensité des rapports entre le droit international public et les groupes armés non étatiques. Il met ainsi en lumière le conflit gouvernant lesdits rapports qui illustre la tension entre l'intérêt humain et l'intérêt étatique.

DROIT INTERNATIONAL, SOCIÉTÉS MILITAIRES PRIVÉES ET CONFLIT ARMÉ : ENTRE INCERTITUDES ET RESPONSABILITÉS

Marie-Louise Tougas. - Bruxelles : Bruylant, 2012. - 370 p.

Il semble y avoir un certain décalage entre la réalité de l'activité des SMP dans les zones de conflit et le cadre normatif régissant ces conflits que l'ampleur du phénomène ne permet pas d'occulter. Cet ouvrage, qui se focalise sur le droit des conflits armés, cherche à apporter des réponses aux questions juridiques soulevées par les activités des SMP. Le droit des conflits armés ne suit pas uniquement une logique de sanction et d'imputabilité, mais cherche d'abord à limiter les dommages causés lors des conflits et à en protéger les victimes. Pour ce faire, il délimite les droits et obligations des acteurs impliqués. Ainsi, les règles applicables doivent permettre aux acteurs concernés d'adopter le comportement requis et de connaître a priori ce que le droit leur commande. Elles doivent aussi leur offrir une protection adéquate. Elles ne peuvent donc être principalement appliquées a posteriori par une cour de justice ou suite à l'analyse poussée d'un juriste. C'est donc cette distinction entre règles applicables a priori et mécanismes de mise en oeuvre intervenant a posteriori qui constitue la structure de cet ouvrage et lui permet de jeter un éclairage nouveau sur cette problématique.

DRONE ATTACKS UNDER THE JUS AD BELLUM AND JUS IN BELLO : CLEARING THE "FOG OF LAW"

Michael N. Schmitt. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 311-326

As the war in Afghanistan and the fight against transnational terrorism wage on with no immediate end in sight, US forces have increasingly turned to drone (technically labelled an unmanned aircraft system or UAS) strikes to target Taliban insurgents and Al Qaeda terrorists, especially in Pakistan's tribal areas of North and South Waziristan. Despite their evident military utility, controversy has erupted over the operations. Most legal criticism focuses on two issues—the use of drones in other states' territory and the incidental civilian deaths caused by the drone attacks. The former derives from the jus ad bellum, that aspect of international law restricting the resort to force by states, whereas the latter is based in the jus in

bello (international humanitarian law), which governs how combat operations may be conducted. Unfortunately, discourse over these and related issues has evidenced serious misunderstanding of the strictures of international law. This brief article explores both the jus ad bellum and jus in bello implications of drone attacks. It is intended to clear the 'fog of law' that surrounds the operations, much of it resulting from either misunderstanding of the weapon system or misinterpretation of the applicable law. The article concludes that there is little reason to treat drones as distinct from other weapons systems with regard to the legal consequences of their employment. Nor is there a sound basis for heightened concern as to their use. On the contrary, the use of drones may actually, in certain cases, enhance the protections to which various persons and objects are entitled under international humanitarian law (IHL).

DRONES AND THE BOUNDARIES OF THE BATTLEFIELD

Michael W. Lewis. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 293-314

While drones have been criticized for causing a disproportionate number of civilian casualties or for merely sending the wrong message about American power, the most serious legal challenges to the use of drones in the modern combat environment involve questions of where such unmanned aircraft may be legally employed. It is contended that drone strikes in places like Yemen and Pakistan violate international law because there is currently no armed conflict occurring in these nations. Although theoretically the limitations imposed by this view of the boundaries of the battlefield are not specifically directed at the use of drones and apply with equal force to any use of the tools of armed conflict, from a practical standpoint the view that the boundaries of the battlefield are strictly defined by geopolitical lines has a particularly significant impact on the use of drones.This Article briefly discusses drone use in the combat environment and explains why the debate about the boundaries of the battlefield is of particular importance to the employment and development of drones. It will then describe the geographically limited scope of International Humanitarian Law (IHL) proposed by commentators critical of drone use in areas like Pakistan and Yemen. This view of the boundaries of the battlefield will be compared with the historical understanding of where the laws of armed conflict apply in international armed conflicts and the role that geography has traditionally played in restricting IHL's scope. It concludes by arguing that the more traditional view of IHL's scope of application should apply with even more force to transnational armed conflicts because any other interpretation threatens to undermine the basic theoretical underpinnings upon which IHL is constructed.

L'EAU ET LA GUERRE : ÉLÉMENTS POUR UN RÉGIME JURIDIQUE

Mara Tignino. - Bruxelles : Bruylant, 2011. - 489 p.

Les enjeux économiques et sociaux autour de l'eau, cette ressource vitale mais vulnérable, s'affirment en même temps qu'émerge un droit humain à l'eau. Le droit international a progressivement créé un régime particulier de règles applicables à cette ressource en temps de conflit armé. En résultent plusieurs principes, règles et régimes spécifiques applicables pendant un conflit armé. Le présent ouvrage se propose de recomposer le puzzle des principes et règles applicables à l'eau par des regards croisés sur un objet complexe du droit international. Par une lecture globale et systémique des normes applicables de droit international, l'étude dresse une synthèse des règles applicables en temps de conflit armé, mais également lors des phases précédant un conflit et durant les phases post-conflictuelles. L'angle d'approche est l'analyse des articulations entre les divers corpus de normes applicables. En soulignant les liens étroits entre le droit international humanitaire, le droit international relatif aux droits humains et le droit international des cours d'eau internationaux, l'ouvrage plaide pour une lecture harmonieuse des normes qui régissent la protection de l'eau en temps de conflit armé.

L'EAU ET LE DROIT HUMANITAIRE

par Philippe Weckel. - In: L'eau en droit international. - Paris : Pedone, 2011. - p. 369-383

L'eau constitue un objet du droit international humanitaire depuis fort longtemps et bénéficie même d'une protection particulière dans les deux Protocoles de 1977 aux Conventions de Genève. Le régime de l'eau varie en fonction de l'usage auquel elle est destinée. Ainsi elle apparaît même comme une arme dans le cadre du droit de la guerre.

THE ECTHR'S JUDGMENT IN AL-JEDDA AND ITS IMPLICATIONS FOR INTERNATIONAL HUMANITARIAN LAW

Maral Kashgar. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 24, 4/2011, p. 229-233

On 7 July 2011, the European Court of Human Rights (the Court) rendered its judgment in the case Al-Jedda v. The United Kingdom. The judgment focuses on two main issues: the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to the acts of military forces acting under a United Nations Chapter VII mandate and the scope of application of Article 5 ECHR in armed conflict situations. It concerns several fundamental issues with respect to Human Rights Law and its relation to International Law such as the question of conflicts between obligations arising under the Convention on the one hand, and obligations arising under the UN Charter as well as under International

Humanitarian Law (IHL) on belligerent occupation on the other. Interestingly, Al-Jedda is one of the very rare cases in which the Court explicitly examined the content of IHL provisions which sheds some light on the Court's case law on human rights in times of armed conflict. This case comment focuses on those aspects which are particularly relevant for IHL after having briefly introduced the reasoning of the Court.

EDUCATING FOR ETHICAL BEHAVIOUR ? : PREPARING MILITARY LEADERS FOR ETHICAL CHALLENGES

David W. Lovell. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p 141-157

At a fundamental level, Rules of Engagement (ROE) must be applied and - just as crucially - understood by soldiers. David Lovell examines the ways in which we educate officers for the challenges of ethical combat. Because Lovell believes that a philosophical approach to ethics alone is insufficient, he advocates a broad education in history and literature in order that officers might have some sense of what is like on the battlefield ; and because the battlefield itself, as others report it, is chaotic, frightening, exhilarating and exhausting, the intellectual appreciation of it alone might not be enough. Lovell argues that combatants making ethically appropriate decisions in the theatre of war is important both for their own sense of proper purpose and for the ultimate resolution of a war, which is more than simply military, especially where the conflict is an insurgency. Drawing on the experience of recent conflicts, his chapter examines the preparedness of Australian officers for the ethical dilemmas of combat.

L'EMPLOI DE CIVILS ET DE PRISONNIERS DE GUERRE À DES FINS MILITAIRES DEVANT LE TPIY

Fausto Pocar. - In: Perspectives of international law in the 21st century = Perspectives du droit international au 21e siècle : liber amicorum professor Christian Dominicé in honour of his 80th birthday. - Leiden ; Boston : M. Nijhoff, 2012. - p. 371-382

C'est une donnée bien connue des conflits armés contemporains que les civils sont fréquemment la cible principale des hostilités et que les prisonniers de guerre, ainsi que les détenus civils, sont souvent l'objet de mauvais traitements dans le cadre des opérations militaires. Tandis que ces traitements constituent souvent des formes de violence exercée a l'encontre de ces non-combattants en violation du droit international humanitaire — tels que déportation, transfert force, torture, viol — ils peuvent également s'exprimer dans l'emploi forcé des personnes concernées dans la conduite des hostilités et pour le but de celle-ci, soit pour l'édification de structures de défense soit aux fins de protection d'installations militaires ou de l'armée de l'autorité qui détient ces individus. Les remarques contenues dans ce chapitre visent a mettre en valeur la criminalisation de ces comportements et leur prise en compte par la jurisprudence du Tribunal pénal international pour l'ex-Yougoslavie (TPIY). Ce dernier a eu en effet au cours de son mandat l'occasion de se prononcer sur la nature criminelle de ces comportements dans le cadre de procès instaurés contre leurs auteurs, en établissant ainsi, pour la première fois, une jurisprudence internationale dans ce domaine, qui a contribué a la clarification des éléments de ces crimes de guerre sur la base du droit international humanitaire coutumier et conventionnel.

L'EMPLOI DES ROBOTS SUR LE CHAMP DE BATAILLE À L'ÉPREUVE DU DROIT INTERNATIONAL HUMANITAIRE

Philippe Frin. - In: Les robots au coeur du champ de bataille : rencontres sur le thème de : la robotisation du champ de bataille : aspects éthiques et juridiques. - Paris : Economica, 2011. - p. 177-184

L'émergence de nouveaux acteurs robotisés aux cotés des acteurs traditionnels bouscule les règles du DIH. Une robotisation du champ de bataille ferait voler "en éclat", certaines notions fondamentales du DIH (combattant et non combattant, objectif militaire et bien civil...) et certains principes majeurs (proportionnalité, discrimination, nécessité...). Après avoir exposé dans un première partie les éléments du DIH, il sera présenté dans un seconde partie, les incidences juridiques du développement de la robotisation des théâtres d'opération.

ENEMY STATUS AND MILITARY DETENTION IN THE WAR AGAINST AL-QAEDA

Karl S. Chang. In: Texas international law journal Vol. 47, no. 1, 2011, p. 1-73

This article presents "enemy" as a concept for defining the legal limits on military detention in the United States' campaign against al-Qaeda. Existing frameworks have sought to define the governments's military detention authority in terms of "combatant", a concept drawn from jus in bello-international law governing how enemies fight one another. Although helpful for informing who may be detained under the government's war powers, "combatant" is not the correct legal concept for defining the limits of that authority. Instead, the correct legal concept is "enemy," a concept that has been defined in the international law of neutrality—a species of jus ad bellum. Unlike jus in bello, which specifies the relations between opposing belligerents, neutrality law specifies the relations between belligerents and neutrals—those outside the conflict. Neutrality law explains when non-hostile persons, organizations, and states forfeit their neutral immunity and acquire enemy status. Neutrality law's role in defining who belligerents may treat as enemies in war is important not only as a matter of international law, but also domestic law. Interpreting the war powers conferred by Congress to be informed by the framework of duties and

immunities in neutrality law balances, on the one hand, giving the President the full range of authority necessary to wage war successfully and, on the other, ensuring that the President uses the powers Congress grants only for the war that Congress has authorized. Lastly, this Article uses neutrality law's framework of duties and immunities to describe who may be detained as an enemy in the ongoing war against al-Qaeda.

ENEMY STATUS AND MILITARY DETENTION : NEUTRALITY LAW AND NON-INTERNATIONAL ARMED CONFLICT, MUNICIPAL NEUTRALITY STATUTES, THE U.N. CHARTER, AND HOSTILE INTENT

Karl S. Chang. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 381-401

In "Enemy Status and Military Detention in the War Against Al-Qaeda," the author proposed that the concept of "enemy" and the standards for construing "enemy" that have been developed in the law of neutrality provide the appropriate legal framework for construing the limits of detention authority in U.S. military operations against al-Qaeda. The author proposed the concept of "enemy" as a legal theory that would bridge domestic and international law. This theory could provide principles to address the hard cases and define the edges of the authority that the U.S. government may exercise to prosecute its war against al-Qaeda. And, unlike attempts to craft law anew, this theory draws from the rich principles and practice that states have developed in the law of neutrality. In this vein, Rebecca Ingber and Kevin Jon Heller have written responses to "Enemy Status and Military Detention," which accompanied it in the first issue of the forty-seventh volume of the Texas International Law Journal. Ingber and Heller have raised some important issues to which the author would like to reply. Below, he discusses : (1) the law of neutrality and non-international armed conflict; (2) using municipal neutrality statutes to interpret international law; (3) the effect of the U.N. Charter on the law of neutrality; and (4) using hostile intent to distinguish between violations of neutral duties and conversion of a neutral to an enemy.

ENERGY AS A HUMAN RIGHT IN ARMED CONFLICT : A QUESTION OF UNIVERSAL NEED, SURVIVAL, AND HUMAN DIGNITY

Jenny Sin-hang Ngai. In: Brooklyn journal of international law Vol. 37, no. 2, 2012, p. 579-622

This article sets out to examine the individual's entitlement to access modern energy services in one of the most complex and pervasive long-lasting problems facing human existence today: armed conflict. In exploring the role of energy in realizing basic human needs, this article will show how energy is at the center of humansurvival and development. A substantial part of the discussion will be dedicated to the merits of recognizing access to energy as a human right and its implications on the international obligations of States. This analysis will examine the existing norms concerning energy under international humanitarian law and human rights law, as well as emerging international practice in support of a case for energy rights. It will then attempt to identify the content of the right and the legal obligations it entails. Finally, concluding remarks will be delivered on the status of the right to energy as a universal human right, its applicability in armed conflict, future challenges, and recommendations for the way forward.

ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW

Manoj Kumar Sinha. In: ISIL yearbook of international humanitarian and refugee law Vol. 9, 2009, p. 97-119

The article presents the mechanisms such as the protecting powers, the international fact finding commission and the universal jurisdiction set up by IHL to safeguard interests of the parties in times of armed conflict, to conduct investigations into alleged breaches while the conflict is going on and to ensure respect for conventions in all circumstances.

ENGAGING ARMED NON-STATE ACTORS TO PROTECT CHILDREN FROM THE EFFECTS OF ARMED CONFLICT: WHEN THE STICK DOESN'T CUT THE MUSTARD

Jonathan Somer. In: Journal of human rights practice Vol. 4, no. 1, March 2012, p. 106-127

This policy and practice note describes the methodology of the non-governmental organization (NGO) Geneva Call to engage armed non-state actors (ANSAs) in protecting children from the effects of armed conflict. ANSAs cannot take part in the development of, or become party to, international treaties, so Geneva Call has developed an innovative mechanism, the 'Deed of Commitment', by which ANSAs subscribe to specific norms. Efforts to engage ANSAs on protection of children built on Geneva Call's earlier experience and the trust built up with ANSAs in developing and implementing a Deed of Commitment banning the use of anti-personnel (AP) mines. The Deed of Commitment on children and armed conflict, however, is more complex, having to take account of the agency of children, a more convoluted legal framework, and the existing United Nations (UN) Monitoring and Reporting Mechanism on children and armed conflict (MRM). The Deed of Commitment on children and armed conflict – similar to its predecessor banning AP mines – includes provisions on implementation and verification by both external monitoring and self-monitoring. Challenges to monitoring and verification include those posed by states which deny or obstruct access to ANSAs or territories where they operate. Complex problems such as protecting children from the effects of armed conflict require a range of responses. While the MRM – a political and process-driven mechanism based on an essentially punitive approach – will continue to be a key mechanism, it is important to have complementary approaches to engage ANSAs in committing to and

complying with norms for child protection in armed conflict. The text of the Deed of Commitment is included as an appendix.

ENHANCING AND ENFORCING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW BY NON-STATE ARMED GROUPS : AN INQUIRY INTO SOME MECHANISMS

Cedric Ryngaert and Anneleen Van de Meulebroucke. In: Journal of conflict and security law Vol. 16, No. 3, Winter 2011, p. 443-472

As international humanitarian law (IHL) is binding on non-state armed groups (NSAGs) without their having participated in its development and adoption, for effective compliance it is key that NSAGs give their actual consent to be bound by IHL norms. Various legal instruments are, and can be, used to this effect: unilateral declarations, codes of conduct, special (bilateral) agreements and multilateral agreements. All these instruments have their advantages and drawbacks. The most important drawback is probably that NSAGs use these instruments to curry favour with the international community, without their having internalized the norms or having provided for a rigorous system of monitoring compliance with the norms laid down in the instruments. However, some outside actors have made commendable efforts to engage NSAGs with a view to improving compliance, such as the ICRC, Geneva Call (an NGO) and the UN Security Council. Given the nature of NSAGs—they are often ragtag bands whose goals determine their means—it is not always self-evident to draw their attention to compliance with IHL norms. International actors have to tread carefully, but sanctions should not be eschewed in case of persistent breaches of IHL. Such sanctions may include travel bans, and prosecution of both NSAGs and their leaders under international criminal law.

ENHANCING CIVILIAN PROTECTION FROM USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS : BUILDING A POLICY AND RESEARCH AGENDA

John Borrie and Maya Brehm. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 809-836

Every day, and in a range of contexts, the use of explosive weapons in populated areas harms civilians. Evidence is growing that elevated levels of civilian harm fit a recurrent pattern, suggesting that more coherent and effective humanitarian responses are needed to enhance civilian protection, especially changes in behaviour of users of explosive weapons. This article describes the effects of explosive violence, critically examines how the existing humanitarian law regime tends to address this issue and explores some current developments in building a research and policy agenda to try to reduce civilian harm from the use of explosive weapons.

LES ENJEUX ET DIFFICULTÉS LIÉS À LA QUALIFICATION DE CONFLIT ARMÉ EN DROIT INTERNATIONAL HUMANITAIRE

Isabelle Fouchard. - In: Les menaces contre la paix et la sécurité internationales : aspects actuels. - [Paris] : Institut de recherche en droit international et européen de la Sorbonne, [2010]. - p. 55-71

La doctrine juridique et les discours politiques font apparaître diverses expressions destinées à décrire les nouvelles formes de conflits armés contemporains. Elles traduisent les difficultés croissantes d'appréhender les conflits armés contemporains et diverses situations de violence actuelles au travers des qualifications traditionnelles admises par le droit international humanitaire, qui se limitent aux conflits armés internationaux et conflits armés non internationaux. L'objet de cette étude tend à montrer qu'avant d'envisager de nouvelles qualifications de conflits armés, ou de remettre en question l'adéquation des normes de droit international humanitaire aux situations actuelles, il serait avant tout souhaitable, pour une plus grande sécurité juridique, de préciser les critères de qualification les plus objectifs possibles, des conflits armés traditionnels, afin de clarifier les conditions de déclenchement de l'application du droit international humanitaire.

ENVIRONMENTAL PROTECTION IN ARMED CONFLICT

Karen Hulme. - In: Research handbook on international environmental law. - Cheltenham [etc.] : E. Elgar, 2010. - p. 586-604

In the past 30 years since the adoption of the Protocols, States have continuously added to their humanitarian law commitments in negotiating limitations or prohibitions on certain weapons and in creating an International Criminal Court to oversee compliance and prosecute breaches. Furthermore, the Customary Humanitarian Law Study by Henckaerts and Doswald-Beck (2005) may work to garner even wider support and acceptance of core humanitarian law norms, including those designed to protect the environment during armed conflict. Environmental protections in war are undoubtedly predicated on a balance between the demands of military necessity to attack a particular environmental component and the principle of humanity in ensuring a viable environment for civilians- both during and beyond the period of conflict. International humanitarian law clearly demonstrates a strong acceptance by States of wartime obligations of environmental protection, but 30 years after adoption, the threshold at which that protection applies remains vague and rather meaningless. The Study is a valuable tool in provoking State comment

and scholarly dialogue, and may have a norm-crystallizing effect. However, as possibly the most important comment on the environmental provisions since their inception, the Study falls short in a number of ways. Most importantly, while there is no objection to the application to the environment of the foundational humanitarian principles, in abstracting customary norms (Rule 43), the Study serves to confuse and misquote existing provisions. The authors of the Study go even further in Rule 44 by recognizing as applicable in war a principle of environmental law origin without adequate evidence in either area of law as to its acceptance by States. Leaving the Study to one side, developments in humanitarian law have also been witnessed for certain environmentally destructive weapons. Many governments are taking positive steps to eradicate the more controversial models of cluster weapons from their arsenals, and are abandoning or choosing alternatives to depleted uranium weapons. Finally, looking to the future, while humanitarian laws ensure a degree of protection to environmental resources during armed conflict, it is lamentable that it is the scarcity of such environmental resource that is often at the heart of many conflicts. Lamentably more so is the fact that most of these resource conflicts will be extremely localized or possibly civil wars, which are regulated by the least sophisticated body of law.

ESSAYS ON LAW AND WAR AT THE FAULT LINES

Michael N. Schmitt. - The Hague : T. M. C. Asser Press ; Berlin ; Heidelberg : Springer, 2012. - 637 p.

This collection of essays by Professor Michael N. Schmitt, Chairman of the International Law Department at the United States Naval War College, draws together those of his articles published over the past two decades that have explored particular fault lines in the law of armed conflict. As such, they examine the complex interplay between warfare and law, seeking to identify where the law and warfare appear to diverge, and where such apparent divergence can be accommodated through contextual interpretation of the law. Each essay examines a particular issue in either the jus ad bellum (the law governing resort to force) or jus in bello (international humanitarian law) that has proven contentious in terms of applying extant norms to the evolving face of armed conflict. Among the topics addressed are counter-terrorism, cyber operations, asymmetrical warfare, assassination, environmental warfare and the participation of civilians in hostilities. The essays brought together in this book, dealing with the most complex and controversial issues of International Humanitarian Law and the use of force, form a unique collection of often cited works, used as a foundation for subsequent work in the area.

THE EUROPEAN COURT OF HUMAN RIGHTS' AL-JEDDA JUDGMENT : THE OVERSIGHT OF INTERNATIONAL HUMANITARIAN LAW

Jelena Pejic. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 837-851

The European Court of Human Rights' judgment in the Al-Jedda case dealt with the lawfulness of UK detention practice in Iraq under the European Convention on Human Rights. The Court's opinion could, however, be read as having broader implications for the ability of states parties to that treaty to conduct detention operations in situations of armed conflict. This article analyzes what the Court did – and did not say – about the application of international humanitarian law.

THE EUROPEAN COURT OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

by Jean-Paul Costa and Michael O'Boyle. - In: La Convention européenne des droits de l'homme, un instrument vivant = The European Convention on Human Rights, a living instrument : mélanges en l'honneur de/essays in honour of Christos L. Rozakis. - Bruxelles : Bruylant, 2011. - p. 107-129

The Court is being called, with increasing frequency, to find violations of principles of IHL or to interpret the European Convention of Human Rights against the background of such principles or to make detailed assessments of the state of principles of IHL at a given historical moment. The Court's competence appears to be limited to applying only the provisions of the Convention and its protocols if one considers articles 1, 19 and 32. However, these instruments also form part of general public international law and the Court made it clear that they are to be interpreted against the background of either international treaty law or customary international law. This chapter analyses how international law generally sees the relationship between the two branches of law, what the Convention itself says about IHL and what approach the Court has taken to issues of IHL that have arisen in cases before it.

EVALUATING THE USE OF FORCE DURING THE ARAB SPRING

Annyssa Bellal and Louise Doswald-Beck. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 3-35

The legal questions raised by the Arab Spring are almost as numerous and as complex as the scenarios that occurred. In Libya, for instance, the late Colonel Qaddafi, in response to civil protests in the east of the country, launched armed attacks against protesters, and then later plunged the country into an armed conflict of a non-international character with groups that became organised and armed, thereby triggering the application of international humanitarian law (IHL). This had the paradoxical consequence under IHL of allowing the Libyan government to use force against persons participating directly in hostilities, who could also be tried for having taken up arms against the regime. The evaluation of the use of force in such contexts needs to start with an analysis of the right to protest under international law and to its regulation.

May a government use force to limit or control mass protest, and if so, what is its scope? In particular, what does public international law have to say, if anything, about armed civil resistance against oppressive political regimes? Can a State commit the equivalent of aggression against its own people and, were this the case, is there a collective right to self-defence for a population in danger? Would this change the applicable law?

EXPLORING HUMANITARIAN LAW : EDUCATION MODULES FOR YOUNG PEOPLE

ICRC. - Geneva : ICRC, April 2012

Exploring Humanitarian Law (EHL) is an education programme that introduces young people between 13 and 18 years of age to the basic rules and principles of international humanitarian law (IHL). The teaching methods used in EHL require students to play an active role in the process of learning. This enables them to develop a "humanitarian" perspective and to understand a subject as seemingly dry, and complicated, as IHL. This leaflet presents in brief the objectives and goals for EHL.

EXPLORONS LE DROIT HUMANITAIRE : MODULES D'ÉDUCATION POUR LES JEUNES

CICR. - Genève : CICR, avril 2012

Explorons le droit humanitaire (EDH) est un programme éducatif destiné à sensibiliser les jeunes de 13 à 18 ans aux règles et aux principes essentiels du droit international humanitaire (DIH). Les méthodes d'enseignement utilisées exigent des élèves qu'ils participent activement au processus d'apprentissage. Cela leur permet d'acquérir une "perspective humanitaire" et de bien appréhender une matière aussi austère et complexe que peut le paraître le DIH. Ce dépliant donne un bref aperçu des objectifs du programme EDH.

EXTRATERRITORIAL LAW ENFORCEMENT OR TRANSNATIONAL COUNTERTERRORIST MILITARY OPERATIONS : THE STAKES OF TWO LEGAL MODELS

Geoffrey S. Corn. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 23-44

This chapter challenges the dominant theory that military operations against transnational terrorist groups that do not fall neatly within statecentric conflict categories must be treated as extraterritorial law enforcement activities. It argues that international humanitarian law is the more appropriate and logical regulatory framework for military operations involving the use of combat power based on an inherent invocation of the principle of military objective, including those beset by regulatory uncertainty when they fall outside accepted law-triggering categories derived from Articles 2 and 3 of the Geneva Conventions. The second stage in the argument for extending the law-of-war framework to counterterror military operations invokes an important but little-known U.S. military policy based on an exemplary use of humanitarian-law principles - even when the enemy is a nonstate entity with no link to the state in which it operates.

A "FIGHTING CHANCE" OR FIGHTING DIRTY ? : IRREGULAR WARFARE, MICHAEL GROSS AND THE SPARTANS

Cian O'Driscoll. In: European journal of political theory Vol. 11, no. 2, p. 112-130

Among the most vexed moral issues in contemporary conflict is the matter of whether irregular forces waging wars of national liberation should be expected to abide by the same jus in bello rules as state actors, even though these rules may prejudice their cause. Is it, in other words, reasonable to demand that irregular forces, including guerrilla groups and national liberation movements, should comport themselves like state armies, even in cases where this would stymie their capacity to effectively pursue their military goals? This article examines Michael Gross's recent provocative response to this question. Taking Article 44 of the 1977 Additional Protocol I to the Geneva Conventions as his point of departure, Gross contends that the laws governing battlefield conduct should be revised to allow irregular forces waging an otherwise just war greater leeway to pursue their cause. Controversially, he extends this concession to the use of qualified terrorist tactics. Focusing on Gross's use of the notion of a "right to a fighting chance" as a normative grounding for this far-reaching proposition, this article draws on specific historical cases that arose in the context of Ancient Greek warfare to challenge Gross's position. On a broader note, this article concludes with some remarks to the effect that this foray into the world of Ancient Greek warfare is demonstrative of the critical potential of a historical approach to the ethics of war.

THE FIRST AMENDMENT'S BORDERS : THE PLACE OF HOLDER V. HUMANITARIAN LAW PROJECT IN FIRST AMENDMENT DOCTRINE

David Cole. In: Harvard law and policy review Vol. 6, no. 1, Winter 2012, p. 147-177

In Holder v. Humanitarian Law Project, decided in 2010, the Supreme Court addressed the constitutionality of punishing speech and association on the ground that they might further violence. The particular speech in question in Humanitarian Law Project (HLP) advocated only nonviolent, lawful ends; the plaintiffs principally sought to advocate for human rights and peace to and with the Kurdistan Workers'

Party, a Kurdish organization in Turkey that the Secretary of State had designated as a “foreign terrorist organization.” They did not intend to further the organization’s illegal ends; indeed, they sought to dissuade it from violence, and to urge it to pursue lawful ends through peaceful means. Yet the Court held, by a vote of 6-3, that the First Amendment permitted criminal prosecution of such speech. The HLP decision has potentially grave repercussions. Most immediately, nongovernmental organizations working to resolve conflict or to provide humanitarian assistance may well be unable to operate where designated “terrorist organizations” are involved, because any advice or assistance they provide could be criminally prohibited. Still more troubling, however, are the decision’s potential consequences for First Amendment doctrine more generally. Part I summarizes the case and its treatment by the Supreme Court. Part II details the grave consequences for First Amendment doctrine that the Court’s analysis portends if it applies generally. Part III asks whether HLP can be limited in ways that would preserve First Amendment protection for other speech and association disputes involving national security in the future.

FIRST DO NO HARM : REFUGEE LAW AS A RESPONSE TO ARMED CONFLICT

Penelope Mathew. - In: Protecting civlians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 159-181

The problem of refugees has become an extremely important one in recent times, especially as conflicts increase the numbers fleeing for their safety and as places that might be considered safe havens - Australia and Europe, for example - suffer an internal political backlash against the arrival of large numbers of refugees. Against this background, Penelope Mathew argues that the cardinal principle of non-refoulement or non-return is arguably the first line of defence for people fleeing armed conflict. As many internal armed conflicts reflect racial, ethnic and religious cleavages, the definition of a refugee contained in the 1951 Convention Relating to the Status of Refugees is capable of responding to the needs of many persons displaced by armed conflict. Some persons, however, will be determined not to be refugees as they have fled "generalized violence". It is possible to meet the compelling protection needs of such war refugees through expanded refugee definitions (as in the African and American regions) or the notion of "complementary protection" (as in Europe). Using examples from recent and ongoing conflicts, Mathew explores the argument in favour of surrogate protection for these war refugees, the relevance of international humanitarian law to the allocation of protection responsibilities and the uncomfortable division of labour in human rights protection that is imposed by the state system in which all remain formally sovereign despite huge substantive inequalities.

THE FIRST JUDGMENT OF THE INTERNATIONAL CRIMINAL COURT (PROSECUTOR V. LUBANGA) : A COMPREHENSIVE ANALYSIS OF THE LEGAL ISSUES

Kai Ambos. In: International criminal law review Vol. 12, issue 2, 2012, p. 115-153

On 14 March 2012, Trial Chamber I (hereinafter ‘the Chamber’) of the International Criminal Court (‘ICC’ or ‘the Court’) delivered the long awaited first judgment of the Court (‘the judgment’). This comment focuses exclusively on the legal issues dealt with in the judgment but pretends to do this comprehensively. It critically analyses the following five subject matters with the respective legal issues: definition and participation of victims; presentation and evaluation of evidence; nature of the armed conflict; war crime of recruitment and use of children under fifteen years (Article 8(2)(e)(vii) ICC Statute); and, last but not least, co-perpetration as the relevant mode of responsibility, including the mental element (Articles 25, 30). While this article follows the order of the judgment for the reader’s convenience and to better represent the judgment’s argumentative sequence, the length and depth of the inquiry into each subject matter and the respective issues depend on their importance for the future case law of the Court and the persuasiveness of the Chamber’s own treatment of the issue. The article concludes with some general remarks on aspects of drafting, presentation and referencing.

THE FOG OF WAR REFORM : CHANGE AND STRUCTURE IN THE LAW OF ARMED CONFLICT AFTER SEPTEMBER 11

Peter Margulies. In: Marquette law review Vol. 95, issue 4, Summer 2012, p. 1417-1489

Since the attacks of September 11, 2001, the law of armed conflict (LOAC) has been locked in a bitter conflict between utilitarians, who generally defer to state power, and protective theorists, who seek to shield civilians by curbing official discretion. However, protective theorists’ scrutiny of states is burdened by hindsight bias. Failing to recognize the challenges faced by states, protective theorists have ignored the risk to civilians posed by violent non-state actors such as terrorist networks. Because of this blind spot, protective theorists have embraced changes such as the ICRC’s Guidance on Direct Participation in Hostilities that exacerbate LOAC’s asymmetries, creating a “revolving door” that shields terrorist bomb makers while permitting continuous targeting of state forces. Holistic signaling requires the United States to support the law of armed conflict, even when adversaries such as Al Qaeda reject that framework. Applying the structural test, a state can use a sliding scale of imminence and necessity to justify targeting Al Qaeda-affiliated terrorists in states unwilling or unable to apprehend those operatives. However, the material support charges against Hamdan signal a troubling turn to victors’ justice that will ultimately harm counterterrorism efforts. Stressing a linear time horizon and holistic signaling defuses rhetoric and sharpens deliberation about post-9/11 LOAC changes.

FORCES DES NATIONS UNIES ET RESPECT DU DROIT INTERNATIONAL HUMANITAIRE : DE L'IMPORTANCE DE LA NOTION DE PARTICIPATION AUX HOSTILITÉS

par Philippe Lagrange. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 291-311

La position dominante aujourd'hui, tant des praticiens que de la doctrine, est de considérer que les forces des Nations Unies amenées à combattre, quelle que soit leur forme, doivent respecter les règles du droit international humanitaire. Un certain nombre d'interrogation demeure cependant, s'agissant notamment des principes applicables - ceux propres au droit des conflits armés international ou ceux prévus en cas de conflits armés non internationaux - et surtout du seuil d'effectivité des combats à prendre en considération pour admettre qu'il y a participation aux hostilités.

FORGIVEN AND FORGOTTEN : THE REPUBLIC OF CHINA IN THE UNITED NATIONS WAR CRIMES COMMISSION

Wen-Wei Lai. In: Columbia journal of Asian law Vol. 25, no. 2, 2012, p.306-336

The United Nations War Crimes Commission (UNWCC) was set up in London during the Second World War to discuss war crimes-related issues. China, keen to have a say in any major issues of the war, actively participated in its work. To prove its status as one of the major powers among the Allies, China was particularly interested in establishing a sub-commission in China and extending the jurisdiction of the UNWCC to crimes committed by Japan before the war erupted in Europe in 1939. In Chungking, the Chinese-chaired Sub-commission discussed the treatment of Japanese war crimes, while the Chinese National Office was responsible for gathering relevant evidence. Although the UNWCC is generally thought to be of little relevance to the final arrangement of war crimes trials in Nuremberg, Tokyo, and elsewhere, it is of historical importance in that it was the first forum where war crimes issues were extensively discussed.

FORMULATING A NEW ATROCITY SPEECH OFFENSE : INCITEMENT TO COMMIT WAR CRIMES

Gregory S. Gordon. In: Loyola University Chicago law journal Vol. 43, no. 2, Winter 2012, p. 281-316

Since the time of the Pharaohs, certain military commanders have sought to demonize the enemy in speeches given to troops before sending them into battle. Depending on the words used by the commanding officer in these situations, such speech would not necessarily amount to “orders” given to the troops. In a genocidal context, the officer’s words alone might be actionable as “incitement to genocide.” But curiously, under the current state of international humanitarian law, the speech itself would not permit an incitement prosecution of the commander. This Article proposes filling the speech gap in international humanitarian law by creating a new inchoate offense—direct incitement to commit war crimes. The Article proceeds in five parts. Part II chronicles instances where both military commanders and prominent civilians have exhorted soldiers and militia to commit atrocities but the civilians’ use of such facilitating language was not punished as a violation of the law of war. Part III examines the existing law related to speech crimes in the mass atrocity context and its extremely limited scope in the current laws and customs of war and applicable treaties, including the Geneva and Hague Conventions. Part IV suggests ways in which incitement could be incorporated into the existing framework of both international humanitarian law and international criminal law. Finally, Part V will demonstrate that while the new offense may raise free-expression and operational concerns, it will not run afoul of military individual liberty norms or institutional prerogatives.

FROM "MERCENARIES" TO "PRIVATE SECURITY CONTRACTORS" : THE (RE)CONSTRUCTION OF ARMED SECURITY PROVIDERS IN INTERNATIONAL LEGAL DISCOURSES

Elke Krahmann. In: Millennium Journal of International Studies Vol. 40, no. 2, 2012, p. 343-363

The proliferation of armed security contractors in Iraq and Afghanistan has led to widespread criticism of their insufficient control through international laws and conventions. This article suggests that one reason for this omission has been the (re)construction of actors who provide armed force for profit in international legal discourses. During most of the 20th century, armed persons who participated in foreign conflicts for monetary gain were identified as ‘mercenaries’. They were outlawed through international legal documents such as the United Nations (UN) Convention on Mercenarism and given restricted rights in the First Additional Protocol to the Geneva Conventions. Today, the same types of actors are increasingly defined as ‘private security contractors’, and new discourses and international agreements are emerging that attribute to them legality and legitimacy. The aim of this article is to examine the changing legal constructions of armed security providers since the 1970s and the consequences with respect to their control. The article argues that the (re)construction of actors who supply armed force for money in international legal discourses has been made possible by three main discursive strategies: the distinction between persons and corporations providing armed force for profit, the changing focus from the motivations of these actors to their relationship to a ‘responsible command’, and the shift from a concern about the actors to one about certain activities.

A FUNCTIONAL APPROACH TO TARGETING AND DETENTION

Monica Hakimi. In: Michigan law review Vol. 110, no. 8, 2012, p. 1365-1420

The international law governing when states may target to kill or preventively detain nonstate actors is in disarray. This article puts much of the blame on the method that international law uses to answer that question. The method establishes different standards in four regulatory domains: (1) law enforcement, (2) emergency, (3) armed conflict for civilians, and (4) armed conflict for combatants. Because the legal standards vary, so too may substantive outcomes; decisionmakers must select the correct domain before determining whether targeting or detention is lawful. This article argues that the "domain method" is practically unworkable and theoretically dubious. Practically, the method breeds uncertainty and subverts the discursive process by which international law adapts to new circumstances and holds decisionmakers accountable. Theoretically, it presupposes that the domain choice, rather than shared substantive considerations embedded in the domains, drives legal outcomes. This article argues, to the contrary, that all targeting and detention law is and ought to be rooted in a common set of core principles. Decisionmakers should look to those principles to assess when states may target or detain nonstate actors. Doing so would address the practical problems of the domain method. It would narrow the uncertainty about when targeting and detention are lawful, lead to a more coherent legal discourse, and equip decisionmakers to develop the law and hold one another accountable.

GAZA

Iain Scobbie. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 280-316

This chapter concentrates on the structural issues of classification of the conflict in Gaza rather than specific operations and incidents. The author argues that the attempt to classify this conflict is complicated both by the unique nature of Gaza and by Israel's manipulation, and probably conscious manipulation, of legal categories. He concludes that weighing the factors that the conflict in Gaza presents, on balance it appears that Israel continues to occupy the territory, with the consequence that the conflict should be classified as an international armed conflict. On the whole it might be doubted whether classification has a practical impact on how this continuing conflict should be conducted, given the convergence of customary law rules regulating international and non-international conflict. The principal issue where a difference is apparent is in relation to the treatment of detainees. Much more serious, however, are the consequences of Israel's denial that it continues to occupy Gaza in relation to the implementation of the occupant's duties to provide, and facilitate the provision of, humanitarian relief.

THE GAZA MISSION : IMPLICATIONS FOR INTERNATIONAL HUMANITARIAN LAW AND UN FACT-FINDING

Zeray Yihdego. In: Melbourne journal of international law Vol. 13, no. 1, June 2012, p. 1-59

The Report of the United Nations Fact-Finding Mission on the Gaza Conflict was published more than two years ago. The UN Human Rights Council and the UN General Assembly endorsed the recommendations of the Report and requested both parties to undertake investigations on alleged violations, inter alia, of international humanitarian law. The parties to the conflict and two recent UN expert committees have published follow-up reports to the fact-finding. Nonetheless, in April 2011, the chair of the UN Fact-Finding Mission, Judge Goldstone, "retracted" from or "amended", some of the Report's conclusions, in particular the allegations against Israel concerning its "policy" of deliberate and indiscriminate attacks against Palestinian civilians and their objects. The remaining members of the UN Fact-Finding Mission stood firm on their original findings and conclusions. This article looks at the credibility of this fact-finding process and the wider implications of the whole exercise to civilian immunity and UN fact-finding in light of subsequent developments and the core features of UN fact-finding. It particularly enquires into the doubts raised about the appropriateness and effectiveness of the use of UN fact-finding in such complex and long-standing cases including, in this case, where there is lack of genuine will to act by the parties concerned or a lack of binding mandate from the UN Security Council. It also explores the substantive and institutional implications of the exercise in enhancing and promoting civilian immunity during armed conflict in cases where the parties are unwilling to cooperate fully but may be subject to legal obligations owed to the international community as a whole.

GLOBAL VIOLENCE : CONSEQUENCES AND RESPONSES

ed. by Marco Odello, Gian Luca Beruto. - Milano : Franco Angeli : International Institute of Humanitarian Law, 2011. - 224 p.

The book contains the proceedings of the 33rd San Remo Round Table marking the 40th Anniversary of the Institute held in Sanremo from 9 to 11 September 2011. It offers a stimulating review of the legal and practical challenges posed by contemporary armed conflicts and other situations of violence, the book focuses on a broad range of critical situations, including the problems of deprivation of liberty, detention and judicial guarantees in armed conflicts.

THE GOLDSTONE REPORT : POLITICIZATION OF THE LAW OF ARMED CONFLICT AND THOSE LEFT BEHIND

Joshua L. Kessler. In: Military law review Vol. 209, Fall 2011, p. 69-121

This article addresses the legal issues specifically pertaining to Operation Cast Lead in Gaza, and the United Nations Human Rights Council fact-finding mission's troubling analysis thereof. Ultimately, the article concludes that the Mission's one-sided analysis of Operation Cast Lead overshadows the very real and pressing effects of war on the civilian populations of both Israel and Gaza. By superimposing a capabilitiesbased paradigm on international humanitarian law—holding the attacker to a higher legal standard than the defender in an armed conflict—the Mission creates an environment that encourages non-state actors to circumvent the law, while rendering adherence to the law for nationstates nearly impossible. First, a historical context of the conflict and the applicable law is reviewed, providing a backdrop for the military operation and its causes. This background is followed by a discussion of the legal standards that apply to Operation Cast Lead under IHL. The article then addresses the Goldstone Report's strengths and weaknesses, to include a critique of select findings of the Mission as they relate to the IHL. Finally, this article concludes with a discussion of the value of the Goldstone Report as a whole, rejecting the politicization of asymmetric warfare (epitomized in the Goldstone Report) as counter-productive to achieving the intent of the IHL: to respect a nation-state's military necessities while at the same time protecting non-combatants caught between adversaries on the field of battle.

GOOD TIME FOR A CHANGE : RECOGNIZING INDIVIDUALS' RIGHTS UNDER THE RULES OF INTERNATIONAL HUMANITARIAN LAW ON THE CONDUCT OF HOSTILITIES

Giulia Pinzauti. - In: Realizing utopia : the future of international law. - Oxford : Oxford University Press, 2012. - p. 571-582

Given the current state of international law and international relations, in the near future it would be impossible, though highly desirable, to improve the situation of all civilians adversely affected by the outbreak of an armed conflict. It is, however, both necessary and realistic to address the condition of at least those individuals who suffer damage as a result of violations of the rules of jus in bello on the conduct of hostilities (the so-called "Hague law"). A belligerent violating international humanitairan law (IHL) bears the responsibility for the breach of such rules and is liable to make reparation for the consequences thereof. Arguably, the time is ripe for recognizing that the rules of the Hague law also protect individuals' rights, and that injured individuals are therefore entitled to remedy and reparation for the wrong suffered. The shift from the traditional paradigm of inter-state responsability to responsibility of the state vis-à-vis individuals could be achieved through the creation of ad hoc international mechanisms (such as claims commissions) for the processing of individual complaints. In addition, the task of making a major breakthrough would fall to domestic courts and human rights supervisory bodies, which have ample potential for affirming the existence of individuals' rights under the rules of IHL regulating means and methods of warfare.

LA "GRAVITÉ" DANS LA JURISPRUDENCE DE LA COUR PÉNALE INTERNATIONALE À PROPOS DES CRIMES DE GUERRE

Rosmerlin Estupiñan Silva. In: Revue internationale de droit pénal = International review of penal law = Revista internacional de derecho penal 82e année, 3/4 trim., 2011, p. 541-558

Le Statut de Rome qui définit les fonctions et les pouvoirs de la Cour pénale internationale constitue la « règle du jeu » dont la portée est censée être dévoilée par la jurisprudence de la Cour. Dans ce cadre, les éléments constitutifs des crimes de guerre se développent au-delà des approches classiques à travers l'activité jurisprudentielle de la Cour pénale internationale. La présente analyse s'efforce de dégager un certain nombre de particularités quant au rôle de la gravité dans la poursuite des crimes de guerre sur le plan international.

GUARDING THE GUARDS IN THE WAR ON TERRORISM

Yuval Shany. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 99-131

A debate on the propriety of any counterterrorism strategy should arguably address not only the substantive merits of specific acts pursued under the existing policy - that is, wether the targeted killing of dangerous terrorists, or the torture of terrorists under "ticking bomb scenarios" can ever be justified - but also the policy's institutional or second-order implications. Part I will identify three principal institutional settings in which key decisions on the war on terror are reviewed and discussed ; it is claimed that in all of those settings the executive branch is subject to insufficient oversight and that, as a result, given the executive's structural incentives, an improper application of counterterrorism norms can be expected to occur. Part II describes some of the political dynamics that cause the executive to perform inadequate right balancing, and which limit the the ability of other branches of government to correct such decisions and actions. Part III then discusses the possibility of remedying the inadequate oversight procedures which are currently in place by way of strenghtening international supervision over counterterrorism

policies, clarifying the law governing counterterrorism policies - in particular, norms governing the invocation of the "armed conflict paradigm".

A HANDBOOK ON ASSISTING INTERNATIONAL CRIMINAL INVESTIGATIONS

by Maria Nystedt (ed.), Christian Axboe Nielsen and Jann K. Kleffner. - Stockholm : Folke Bernadotte Academy : Swedish National Defence College, 2011. - 93 p.

This handbook is designed to enable readers to assist domestic and international criminal courts and tribunals. These institutions perform the challenging work of investigating and prosecuting the most serious crimes of concern to the international community: crimes against humanity, war crimes and genocide (hereafter international crimes). This handbook aims to facilitate a clearer understanding of these institutions and their work so that persons based in field operations, or who are otherwise present in areas where these crimes happen, can better cooperate with criminal investigations. Although the predominant focus will be on rendering assistance to international criminal investigations, the guidance offered will also be of use to those who are in a position to assist national criminal investigations, human rights organizations and truth and reconciliation commissions.

HARMONISING THE INDIVIDUAL PROTECTION REGIME : SOME REFLECTIONS ON THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW IN THE LIGHT OF THE RIGHT TO LIFE

Vera Gowland-Debbas. - In: The diversity of international law : essays in honour of professor Kalliopi K. Koufa. - Leiden ; Boston : M. Nijhoff, 2009. - p. 399-418

We find a considerable literature on the links which are being forged not only between human rights and humanitarian law, but also with refugee law, disarmament or arms control, environmental law and international peace and security, all areas of which in the past were hermetically sealed off from one another. This trend has raised its own set of problems for there are important collisions and tensions between such fundamental interests and values, but the problems are gradually being ironed out in practice and in the courts though not always in a totally satisfactory manner. This contribution first highlights the points of divergence and convergence between human rights and humanitarian law then turn to the applicability of human rights law in time of armed conflict and its interplay with humanitarian law.

THE HISTORY OF THE INTER-AMERICAN SYSTEM'S JURISPRUDENCE AS REGARDS SITUATIONS OF ARMED CONFLICT

Christina M. Cerna. In: Journal of international humanitarian legal studies Vol. 2 (2011), p. 3-52

Faced with insurgencies and situations of internal armed conflict in a number of Organization of American States (OAS) member states, some states called upon the Inter-American Commission on Human Rights (IACHR) to take into account the operations of irregular armed groups when assessing the situation of human rights in their countries. The IACHR responded that only assessment of state actions had been included within its mandate and that the OAS member states should amend the IACHR's Statute if they wished to expand its mandate. The OAS member states failed to do so. In 1996, the International Court of Justice (ICJ), in its Advisory Opinion on Nuclear Weapons, set forth its view on the relationship between international human rights law (IHRL) and international humanitarian law (IHL). In 1997, following the ICJ's Opinion, the IACHR began to apply IHL as the lex specialis in its assessments of the situation of IHRL and IHL to cases involving situations of armed conflict and continued to do so until the Inter-American Court of Human Rights (IACtHR) declared the IACHR incompetent to apply IHL. This article submits that the IACtHR erred in its judgment on the Preliminary Objections in Las Palmeras v. Colombia.

HOBBES FACE À KANT : LA JUSTICE MILITAIRE AMÉRICAINE ET LA DOCTRINE DE LA RESPONSABILITÉ DU SUPÉRIEUR HIÉRARCHIQUE SUITE À ABU GHRAIB

Radidja Nemar. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review 50, 3-4, 2011, p. 447-515

L'article propose une analyse des enquêtes, des débats parlementaires et des poursuites entamées par les juridictions militaires américaines suite au scandale des cas d'abus commis par des soldats américains sur des détenus du camp d'Abu Ghraib en Irak. Comment les juridictions militaires américaines traitent-elles de la responsabilité du chef lorsque des actes de torture, qualifiables de violation grave des lois et coutumes de la guerre, ont été commis par leurs subordonnés? Assiste-t-on à l'émergence de multiples standards juridiques selon l'autorité de poursuite et la personne poursuivie? l'approche est-elle différente lorsque les poursuites sortent du champ militaire pour être menées par des juridictions civiles?

HOW TO IMPROVE UPON THE FAULTY LEGAL REGIME OF INTERNAL ARMED CONFLICTS

Sandesh Sivakumaran. - In: Realizing utopia : the future of international law. - Oxford : Oxford University Press, 2012. - p. 525-537

There is a growing view that human rights law offers greater protection to the individual and should therefore replace international humanitarian law (IHL) in the regulation of internal armed conflict, at least

when the violence is below the threshold of Protocol II. However, the consequences of a shift from regulation through IHL to regulation through human rights law have not been fully explored. For example, one would need to turn attention to wether, and in what circumstances, armed groups have human rights obligations. There would also need to be a forum before which these obligations could be enforced. Another problem is the methodological approach by which the international law of internal armed conflict has developed. The development has taken place primarily by analogy to the law of international armed conflict. Yet there are important differences between internal armed conflicts and their international counterparts, principal among which are the actors that take part in each of them. A study needs to be undertaken to determine wether all rules now applicable in internal armed conflicts are within the capacity of armed groups. To improve upon the current condition greater regard should be had to the ad hoc regulation of internal armed conflict through unilateral declarations, bilateral agreements, and the like, which is more prevalent that may be thought.

HUMAN RIGHTS AND HUMANITARIAN LAW IN PROFESSIONAL POLICING CONCEPTS : [HIGHLIGHTS FROM THE BOOK TO SERVE AND TO PROTECT]

International Committee of the Red Cross. - Geneva : ICRC, January 2012. - 35 p.

This brochure intended for audiences involved in law-enforcement functions summarizes the main points of the manual entitled To serve and to protect. It addresses the principles and rules of human rights and humanitarian law relevant to professional law enforcement in democratic contexts.

HUMAN RIGHTS AND THE LAW OF WAR : THE GENEVA CONVENTIONS OF 1949

William I. Hitchcock. - In: The human rights revolution : an international history. - New York : Oxford University Press, 2012. - p. 93-112

Do the Geneva Conventions of 1949-the cornerstone of international humanitarian law-belong in the history of human rights? It seems not: most surveys of human rights history neglect the Conventions entirely. Historians rarely place Geneva alongside other founding documents of the "human rights revolution" of the 1940s. To be sure, historians of human rights will argue that the Geneva Conventions do not figure prominently in their work because the Conventions form part of the laws of war. Yet this defense-that Geneva does not belong in the human rights "story"-has of late been fatally undermined. Powerful forces have combined to bring Geneva to the forefront of human rights debates. Scholars of international humanitarian law have recently noted that during the post-1945 period, the laws of war and human rights converged. Today, legal scholars-if not historians-generally consider the Geneva Conventions as one of a series of international treaties that form part of the human rights regime, and that compel states to recognize and respect the inalienable right of individuals to exist in freedom, security, and dignity.

HUMAN RIGHTS, POSITIVE OBLIGATIONS, AND ARMED CONFLICT : IMPLEMENTING THE RIGHT TO EDUCATION IN OCCUPIED TERRITORIES

Jonathan Horowitz. In: Journal of international humanitarian legal studies Vol. 1, issue 2, 2010, p. 304-328

In three cases, the International Court of Justice (ICJ) has held that States must apply their human rights treaty obligations extraterritorially during times of occupation. International human rights law and international humanitarian law (IHL), under which occupation law exists, were not constructed in formal consultation with one another. But their ability to co-exist is logical enough, with human rights law emerging from, and IHL expanding after, World War II with the similar aim of committing governments to protect the most basic notions of humanity. Tensions between the two regimes do, however, exist. Occupation law largely works to restrict Occupying Powers from tampering with the laws and institutions of the occupied territory, whereas significant portions of human rights law press States to amend or change laws and develop infrastructure to accommodate the welfare of the population under their control. With a focus on the positive human rights obligations contained within the right to education, this article looks at the compatibility of these two regimes, points out tensions, and proposes ways for easing their co-existence.

HUMAN RIGHTS, THE LAWS OF WAR, AND RECIPROCITY

Eric A. Posner. - Chicago : The University of Chicago, September 2010. - 25 p.

Human rights law does not appear to enjoy as high a level of compliance as the laws of war, yet is institutionalized to a greater degree. This paper argues that the reason for this difference is related to the strategic structure of international law. The laws of war are governed by a regime of reciprocity, which can produce self-enforcing patterns of behavior, whereas the human rights regime attempts to produce public goods and is thus subject to collective action problems. The more elaborate human rights institutions are designed to overcome these problems but fall prey to second-order collective action problems. The simple laws of war institutions have been successful because they can exploit the logic of reciprocity. The paper also suggests that limits on military reprisals are in tension with self-enforcement of the laws of war. The U.S. conflict with Al Qaeda is discussed.

HUMANITARIAN ACCESS IN SITUATIONS OF ARMED CONFLICT : HANDBOOK ON THE NORMATIVE FRAMEWORK

Federal Department of Foreign Affairs. - Bern : FDFA, 2011. - 63 p.

In light of the challenges in securing and sustaining humanitarian access and the central role access plays in contributing to the protection of civilians, Switzerland launched an initiative in 2009 to develop two practical resources on humanitarian access in situations of armed conflict: this Handbook on the normative framework on humanitarian access and an accompanying Field Manual. These products contribute directly to the fulfillment of the objectives of the Swiss Federal Department of Foreign Affairs (FDFA) Strategy on the Protection of Civilians in Armed Conflict (2009 – 2012) pertaining to humanitarian access. The purpose of this Handbook is to lay out the existing normative framework regulating humanitarian access in situations of armed conflict. It is hoped that it serves as a useful reference source for humanitarian practitioners and therefore enhances better access to civilian populations in need. The Handbook on the normative framework on humanitarian access was elaborated by the FDFA, the International Committee of the Red Cross (ICRC), the UN Office for the Coordination of Humanitarian Affairs (OCHA) and Conflict Dynamics International.

HUMANITARIAN AND SECURITY LAW : A COMPENDIUM OF INTERNATIONAL AND EUROPEAN INSTRUMENTS

Jan Wouters and Philip De Man. - Cambridge [etc] : Intersentia, 2012. - 998 p.

Humanitarian and Security Law: A Compendium of International and European Instruments presents a comprehensive and easily accessible compilation of the most important legal instruments that pertain to armed conflicts and security threats and which are of use and interest to practitioners and researchers working in the areas of international and European humanitarian and security law. It is the first compendium that methodically compiles all relevant instruments both at the international and the European level.

HUMANITARIAN ENGAGEMENT UNDER COUNTER-TERRORISM : A CONFLICT OF NORMS AND THE EMERGING POLICY LANDSCAPE

Naz K. Modirzadeh, Dustin A. Lewis and Claude Bruderlein. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 623-647

This article identifies two countervailing sets of norms – one promoting humanitarian engagement with non-state armed groups (NSAGs) in armed conflict in order to protect populations in need, and the other prohibiting such engagement with listed 'terrorist' groups in order to protect security – and discusses how this conflict of norms might affect the capacity of humanitarian organizations to deliver life-saving assistance in areas under the control of one of these groups. Rooted in international humanitarian law (IHL), the first set of norms provides a basis for humanitarian engagement with NSAGs in non-international armed conflict for the purpose of assisting populations under their control and promoting compliance with the rules of IHL. The second set of rules attempts to curtail financial and other forms of material support, including technical training and co-ordination, to listed 'terrorist' organizations, some of which may qualify as NSAGs under IHL. The article highlights counter-terrorism regulations developed by the United States and the United Nations Security Council, though other states and multilateral bodies have similar regulations. The article concludes by sketching ways in which humanitarian organizations might respond to the identified tensions.

HUMANITARIAN LAW IN ACTION WITHIN AFRICA

Jennifer Moore. - Oxford [etc.] : Oxford University Press, 2012. - 360 p.

In Humanitarian law in action within Africa, Jennifer Moore studies the role and application of humanitarian law by focusing on African countries that are emerging form civil wars. Moore offers an overview of international law, and describes four particular subfields relevant to the resolution of armed conflict : international humanitarian law, international human rights law, international criminal law, and international refugee law. Building on this legal foundation, Moore considers practical mechanisms to implement international humanitarian law, focusing specifically on the experience of Uganda, Sierra Leone, and Burundi. Through the case studies of these countries, Moore identifies three fundamental components of transitional justice : criminal, social, and historical. Although the African continent has gone through some of the world's greatest humanitarian emergencies, issues such as violence against women, child soldiers, and genocide are not unique to Africa, and as such, the study of humanitarian law by examining Africa's experience is important to conflict resolution and reconstruction throughout the world.

HUMANITY'S LAW

Ruti Teitel. - Oxford [etc.] : Oxford University Press, 2011. - 304 p.

In Humanity's Law, Ruti Teitel offers an account of one of the central transformations of the post-Cold War era: the profound normative shift in the international legal order from prioritizing state security to protecting human security. As she demonstrates, courts, tribunals, and other international bodies now rely on a

humanity-based framework to assess the rights and wrongs of conflict; to determine whether and how to intervene; and to impose accountability and responsibility. Cumulatively, the norms represent a new law of humanity that spans the law of war, international human rights, and international criminal justice. Teitel explains how this framework is reshaping the discourse of international politics with a new approach to the management of violent conflict. She maintains that this framework is most evidently at work in the jurisprudence of the tribunals-international, regional, and domestic-that are charged with deciding disputes that often span issues of internal and international conflict and security. The book demonstrates how the humanity law framework connects the mandates and rulings of diverse tribunals and institutions, addressing the fragmentation of global legal order.

HUMANIZING IRREGULAR WARFARE : FRAMING COMPLIANCE FOR NONSTATE ARMED GROUPS AT THE INTERSECTION OF SECURITY AND LEGAL ANALYSES

Corri Zoli. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 190-211

This chapter begins by showing how new challenges of regulating nonstate armed groups in armed conflict has eroded the original balance at the core of humanitarian law between state's national security interests and humanitarian priorities to reduce unnecessary suffering for all victims of conflict. It then explores how nonstate armed groups, by adopting an asymmetric strategy calculus that treats compliance with the law as a tactical vulnerability, have succeeded in leveraging compliance in their favor and, in turn, co-opted conventional incentives for increasing compliance, such as relaxed combatant status in Additional Protocol I.

ICRC'S INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW : AN OVERVIEW

Aftab Alam. In: ISIL yearbook of international humanitarian and refugee law Vol. IX, 2009, p. 47-77

This article takes stock of the different merits and critics of the ICRC's interpretive guidance on the notion of direct participation in hostilities under international humanitarian. The merits include the fact that it does not only seek to protect the civilian population from the dangers of warfare, it equally takes into consideration the interests of armed forces. It will also provide an important and useful tool for national and international tribunals when they are called upon to consider the issue of direct participation. However, there are certain areas where the balance seems to be not maintained: it drastically limits the scope of targeting by members of State armed forces, risking the document to be dubbed as impractical and seriously undermining respect for, and observance of, IHL by State armed forces. The "continuous combat function" test for membership in organized armed group also gives regularly participating civilians a privileged, unbalanced, and unjustified status of protection in comparison to members of the opposing armed forces, who are continuously targetable. The concept of "revolving door" of civilian protection is also subject to critics especially with regard to protection of civilians who have repeatedly participated in the past and who is also likely to participate again directly.

IHL SUPPLEMENT FOR USE IN COURSES IN INTERNATIONAL CRIMINAL LAW

Beth Van Schaack. - [S.l.] : Santa Clara University School of Law, March 2012. - 52 p.

This is a teaching supplement on the interface of international humanitarian law (IHL) and international criminal law (ICL). It is designed for use primarily in a course on ICL, but could also be assigned in an IHL course as well. It is part of a series being generated by the Emory International Humanitarian Law Clinic and the International Committee of the Red Cross to enable the teaching of the law of armed conflict in other substantive courses.

IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW IN THE SOUTH ASIAN COUNTRIES

U. C. Jha. In: ISIL yearbook of international humanitarian and refugee law Vol. 9, 2009, p. 151-173

The author reviews the state of implementation of IHL in South Asian countries (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka). After taking stock of the ratification status of IHL treaties for each country, he focuses on the challenges faced by South Asian countries ahead. More specifically, the following implementation measures: the setting up of national committees for the implementation of IHL, the protection of Emblems, the dissemination of IHL among the armed forces, training in IHL, modernization of military laws and the separation between advisory and judicial duties for legal advisors in the armed forces.

THE IMPLICATIONS OF DRONES ON THE JUST WAR TRADITION

Daniel Brunstetter and Megan Braun. In: Ethics and International Affairs Vol. 25, no. 3, 2011, p. 337-358

Increasingly, the United States has come to rely on the use of drones to counter the threat posed by terrorists. Drones have arguably enjoyed significant successes in denying terrorists safe haven while limiting civilian casualties and protecting U.S. soldiers, but their use has raised ethical concerns. The aim

of this article is to explore some of the ethical issues raised by the use of drones using the just war tradition as a foundation. We argue that drones offer the capacity to extend the threshold of last resort for large-scale wars by allowing a leader to act more proportionately on just cause. However, they may be seen as a level of force short of war to which the principle of last resort does not apply; and their increased usage may ultimately raise jus in bello concerns. While drones are technically capable of improving adherence to jus in bello principles of discrimination and proportionality, concerns regarding transparency and the potentially indiscriminate nature of drone strikes, especially those conduced by the Central Intelligence Agency (CIA), as opposed to the military, may undermine the probability of success in combating terrorism.

INDIVIDUAL CRIMINAL RESPONSIBILITY IN INTERNATIONAL LAW

Elies van Sliedregt. - Oxford [etc.] : Oxford University Press, 2012. - 337 p.

This book examines the concept of individual criminal responsibility for serious violations of international law, i.e. aggression, genocide, crimes against humanity and war crimes. Such crimes are rarely committed by single individuals. Rather, international crimes generally connote a plurality of offenders, particularly in the execution of the crimes, which are often orchestrated and masterminded by individuals behind the scene of the crimes who can be termed 'intellectual perpetrators'. For a determination of individual guilt and responsibility, a fair assessment of the mutual relationships between those persons is indispensable. By setting out how to understand and apply concepts such as joint criminal enterprise, superior responsibility, duress, and the defence of superior orders, this work provides a framework for that assessment. It does so by bringing to light the roots of these concepts, which lie not merely in earlier phases of development of international criminal law but also in domestic law and legal doctrine. The book also critically reflects on how criminal responsibility has been developed in the case law of international criminal tribunals and courts. It thus illuminates and analyses the rules on individual responsibility in international law.

INDIVIDUAL REMEDIES FOR VICTIMS OF ARMED CONFLICTS IN THE CONTEXT OF MASS CLAIMS SETTLEMENTS

Eyal Benvenisti. - In: Coexistence, cooperation and solidarity : liber amicorum Rüdiger Wolfrum, vol. 2. - Leiden [etc.] : M. Nijhoff, 2012. - p. 1085-1105

The emerging law on the peaceful resolution of armed conflicts has to address, among other issues, the resolution of claims of individual victims of violations of the law during the conflict. The question is wether - and, if so, how - international law should limit the discretion of parties to the conflict when they negotiate a comprehensive settlement of all the outstanding claims. This essay sets out to explore this question. The essay envisages negotiations towards a comprehensive settlement of all outstanding issues. This settlement will ultimately be part of a peace treaty in a case of an international armed conflict, or part of an internal agreement following an internal armed conflict, or both. The questions are similar : to what extend should the discretion of these parties be constrained by international law ? Does the law at present empower individual victims to seek reparations in courts for violations of international humanitarian law ?

THE INTERACTION BETWEEN INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW AND THE CONTRIBUTION OF THE ICJ

Djamchid Momtaz and Amin Ghanbari Amirhandeh. - In: The ICJ and the evolution of international law : the enduring impact of the "Corfu Channel" case. - London ; New York : Routledge, 2012. - p. 256-263

Writers hold that the Court's contribution to the relationship between the two branches of International Humanitarian Law (IHL) and Human Rights Law (HRL) can be expressed in a single term, namely the principle as an integral part of a strong lex specialis regime or self-contained regime. The question of the interrelation between IHL and HRL owes its credibility to the recognition given in the Corfu Channel Judgment to the principle of 'elementary considerations of humanity' around which rules of HRL and IHL as branches of the law, revolve.

INTERNATIONAL CIVIL TRIBUNALS AND ARMED CONFLICT

Michael J. Matheson. - Leiden ; Boston : M. Nijhoff, 2012. - 382 p.

This book explore the greatly increased involvement of the International Court of Justice and other international civil tribunals in conflict situations during the past three decades, and assesses their impact on the law relating to armed conflict. Part I is an introduction to the question of the involvement of international civil tribunals in cases concerning armed conflict. It includes a general review of the history of the involvement of international civil tribunals in armed conflicts. Part II considers the process by which international civil tribunals deal with cases involving armed conflict. Part III considers the effect that the decisions of these tribunals have had on the substantive law. It includes a chapter dealing with international humanitarian law, in particular the tribunals' findings on the applicability of the relevant agreements, the conduct of military operation, the treatment of persons, and responsibility for the actions of others.

THE INTERNATIONAL CRIMINAL COURT AND CHILD SOLDIERS : AN APPRAISAL OF THE LUBANGA JUDGEMENT

Roman Graf. In: Journal of international criminal justice Vol. 10, No. 4, September 2012, p. 945-969

This contribution analyses the first judgment rendered by the International Criminal Court (ICC) in the Lubanga case, specifically focusing on those sections of the judgment dealing with the recruitment of child soldiers. After a brief enquiry into the reasons for the prosecutorial decision to charge Thomas Lubanga Dyilo with only one crime, the article examines the legal findings of the Trial Chamber on various aspects of the offence, including its chapeau elements. These findings are then compared with analysis carried out by the Special Court for Sierra Leone in similar instances. The article specifically addresses concerns of the potential danger presented by the ambiguous findings of the Trial Chamber with respect to the use of children in hostilities and offers a way of reading the judgment that reconciles the wording of the ICC Statute with the need to enhance protection of children in hostilities.

INTERNATIONAL CRIMINAL JUSTICE AND JUS POST BELLUM : THE CHALLENGE OF ICC COMPLEMENTARITY : A CASE-STUDY OF THE SITUATION IN UGANDA

par Cedric Ryngaert et Lauren Gould. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht Vol. 44, 2011-1/2, p. 91-121

In 2004, the Government of Uganda referred the situation in northern Uganda - where the Government was embroiled in an armed conflict with the rebels of the Lord's Resistance Army - to the International Criminal Court. Lately, the Government has embarked on a transitional justice process to deal with the effects of the conflict internally. This raises the question wether the ICC should defer to the Government's efforts on the basis of the complementarity principle, notably with respect to its arrest warrants against the LRA commanders. In this contribution, it is argued that the Court's admissibility determination should be informed by grassroots perceptions regarding appropriate transitional justice approaches towards reconciliation. The Court may want to critically engage with preconceived Western notions of accountability and retribution in post bellum situations, and possibly countenance "alternative" or somewhat more "lenient" sentencing of LRA leaders in the interest of peace and reconciliation.

INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW IN RUSSIAN COURTS

Sergei Yu. Marochkin and Vladimir A. Popov. In: Journal of international humanitarian legal studies Vol. 2, issue 2, 2011, p. 216-249

The paper investigates the implementation of the norms of international humanitarian and human rights law in the Russian courts. It may be viewed as a specific feature that these two categories are considered close in part of the Russian doctrine and, as we will see below, in some judicial cases. Since the adoption of the Constitution of the Russian Federation in 1993 international law has been granted a specific status and significance in the Russian legal system. According to the Constitution and legislation, Russian courts have had the opportunity to play a special role in the implementation of international humanitarian and human rights law. That being said, judicial practice relating to the implementation and the application of these norms is different from that of other international law norms. It is, however, explained, in particular, by the fact, that there are not many cases which either mention directly or use humanitarian law. Often, courts make abstract or general references to international treaties or make decisions only on the basis of the national law, though the considered cases fall directly under the regulation of international humanitarian or human rights law. In conclusion, at present the practice of Russian courts is rather diverse and needs further unification.

INTERNATIONAL HUMANITARIAN LAW A DECADE AFTER SEPTEMBER 11 : DEVELOPMENTS AND PERSPECTIVES

Dieter Fleck. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 349-360

The contributor critically reviews the opinions he had expressed years ago, in the immediate aftermath of 9/11. Emphasizing the need for strict compliance with international humanitarian law, human rights law, national constitutional law and rules of due process, in order to convincingly meet the challenge terrorism poses to democratic societies, he had called for a culture of compliance in which incentives for faithful implementation of humanitarian law should be developed to make the expectation of reciprocity a realistic possibility rather than contemplating restraints of humanitarian protection and derogations of human rights. Developments went in a different direction: the world has witnessed an unlimited practice of operational detentions; habeas corpus was, and still is, denied in military operations; and prisoners have been tortured as part of deliberately planned activities. At the same time organized terrorist movements continue to plan and execute attacks while hiding among civilian populations; the number of suicide attacks has increased rather than decreased; and distinctive emblems protected under the Geneva Conventions are deliberately targeted by Taliban fighters. He focuses on the jus in bello, starting with the applicability threshold of the principles and rules of international humanitarian law and their relevance in a wider sense then addresses differences and similarities in the legal paradigms of law enforcement and the conduct of hostilities, discusses their effects on peacebuilding and consider the role of civil society in implementing relevant

legal obligations. He concludes by stressing the need to concentrate on jus post bellum and to develop the proper structure, contents and implementation mechanisms of this evolving branch of international law.

INTERNATIONAL HUMANITARIAN LAW AND BOMBING CAMPAIGNS : LEGITIMATE MILITARY OBJECTIVES AND EXCESSIVE COLLATERAL DAMAGE

Christine Byron. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 175-211

Despite the introduction and increasing use of 'smart' bombs, recent bombing campaigns in Iraq, Afghanistan and Serbia, formerly known as the Federal Republic of Yugoslavia (FRY), have resulted in what some commentators consider to be an unacceptably high level of civilian casualties, especially when compared with the low level of combatant casualties in the attacking force. This paper will focus on the law which applies during international armed conflicts to aerial bombardment or missiles launched from warships in the context of individual criminal responsibility for such bombardment. This necessitates a focus on the rules of aerial bombardment as set out in Additional Protocol I (API) which have been developed by the International Criminal Tribunal for the former Yugoslavia (ICTY) and by the definitions in the Rome Statute of the International Criminal Court (ICC) and in its Elements of Crime, although some comment will also be made as to the duties of non-state parties to API. In this context, first the principle of distinction between civilians and military and civilian objects and military objectives will be considered. Secondly, the principle of proportionality, that is, the duty not to cause excessive civilian casualties, will be examined and will look at questions such as whether long term collateral damage should be taken into account in the proportionality equation. Finally, the application of this law to non-international armed conflicts will be briefly assessed.

INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW IN PEACE OPERATIONS AS PARTS OF A VARIABLE IUS POST BELLUM

by Frederik Naert. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht Vol. 44, 2011-1/2, p. 26-37

This article addresses the application of international humanitarian law (IHL) and human rights law (IHRL) in peace operations and how this is relevant to the ius post bellum. The author first highlights the challenges in defining the ius post bellum as a legal concept, in particular as regards scope of application, relationship with other areas of international law and content. He advocates a ius post bellum comprising variable rules resulting from the applicability and interaction of other fields of law. The author then analyzes relevant questions of the applicability of IHL and IHRL in peace operations. He submits that each peace operation has a distinct legal framework, which may include IHL and/or IHRL, and that the challenge is forging agreement on which rules apply when and how they interact and should be applied in peace operations. The author concludes that IHL and IHRL are important parts of what one could call a variable ius post bellum.

INTERNATIONAL HUMANITARIAN LAW, NEW FORMS OF ARMED VIOLENCE AND THE USE OF FORCE

Robert James McLaughlin. - In: Global violence : consequences and responses. - Milano : Franco Angeli : International Institute of Humanitarian Law, 2011. - p. 115-123

IHL is manifesting in new ways within the context of use of force in relation to non-international armed conflict. This contribution centres upon a recent amendment to the 19[9]8 Rome Statute of the International Criminal Court to incorporate a new provision within article 8 which makes it an offence to employ in non-international armed conflicts bullets which expand or flatten easily in the human body. What was old and settled in IHL is new and novel again. This example clearly illustrates the complexities of the relationship between IHL and human rights law. This is particularly evident in the fact that the prohibition exists in one context, but does not apply in the other.

INTERNATIONAL LAW AND SEXUAL VIOLENCE IN ARMED CONFLICTS

by Chile Eboe-Osuji. - Leiden ; Boston : M. Nijhoff, 2012. - 354 p.

Sexual violence is a particular brand of evil that women has endured - more than men - during armed conflicts, through the ages. It is a menace that has continued to challenge the conscience of humanity - especially in our times. At the international level, basis laws aimed at preventing it are not in short supply. What is needed is a more conscious determination to enforce existing laws. This book explores ways of doing just that; thereby shoring up international legal protection of women from sexual violence in armed conflicts.

INTERNATIONAL LAW AND THE CLASSIFICATION OF CONFLICTS

ed. by Elizabeth Wilmshurst ; Steven Haines... [et al.]. - Oxford : Oxford University Press, 2012. - 531 p.

This book comprises contributions by leading experts in the field of international humanitarian law on the subject of the categorisation or classification of armed conflict. It is divided into two sections: the first aims to provide the reader with a sound understanding of the legal questions surrounding the classification of

hostilities and its consequences; the second includes ten case studies that examine practice in respect of classification. Understanding how classification operates in theory and practice is a precursor to identifying the relevant rules that govern parties to hostilities. With changing forms of armed conflict which may involve multi-national operations, transnational armed groups and organized criminal gangs, the need for clarity of the law is all-important. The case studies selected for analysis are Northern Ireland, DRC, Colombia, Afghanistan (from 2001), Gaza, South Ossetia, Iraq (from 2003), Lebanon (2006), the so-called war against Al-Qaeda, and future trends. The studies explore the legal consequences of classification particularly in respect of the use of force, detention in armed conflict, and the relationship between human rights law and international humanitarian law. The practice identified in the case studies allows the final chapter to draw conclusions as to the state of the law on classification.

INTERNATIONAL LAW : ARMED GROUPS IN A STATE-CENTRIC SYSTEM

Zakaria Daboné. In: International review of the Red Cross Vol. 93, no. 882, June 2011, p. 395-424

What is the position of non-state armed groups in public international law, a system conceived for and by states? This article considers the question, mainly in the light of jus ad bellum and jus in bello. It shows that, while armed groups essentially trigger the application of jus ad bellum, they are not themselves endowed with a right to peace. Jus in bello confers rights and obligations on armed groups, but in the context of an unequal relationship with the state. This inequality before the law is strikingly illustrated by the regulation of detention practised by armed groups in non-international armed conflicts. Despite the significant role that they play in modern-day conflicts, armed groups constitute an 'anomaly' in a legal system that continues to be state-centric.

INTERNATIONAL LAW ISSUES RAISED BY THE TRANSFER OF DETAINEES BY CANADIAN FORCES IN AFGHANISTAN

Marco Sassoli and Marie-Louise Tougas. In: McGill law journal = Revue de droit McGill Vol. 56, no. 4, June 2011, p. 959-1010

The transfer of Afghan detainees to Afghan authorities by Canadian forces raised concerns in public opinion, in Parliament, and was the object of court proceedings and other enquiries in Canada. This article aims to explore the rules of international law applicable to such transfers. The most relevant rule of international humanitarian law (IHL) applies to prisoners of war in international armed conflicts. However, the conflict in Afghanistan, it is argued, is not of an international character. The relevant provision could nevertheless apply based upon agreements between Canada and Afghanistan and upon unilateral declarations by Canada. In addition, international human rights law (IHRL) and the very extensive jurisprudence of its mechanisms of implementation on the obligations of a state transferring a person to the custody of another state where that person is likely to be tortured or treated inhumanely will be discussed, including the standard of care to be applied when there is an alleged risk of torture. While IHL contains the rules specifically designed for armed conflicts, IHRL may in this respect also clarify as lex specialis the interpretation of concepts of IHL. Finally, the conduct of Canadian leaders and members of the Canadian forces is governed by international criminal law (ICL). This article thus demonstrates how IHL, IHRL, and ICL are intimately interrelated in contemporary armed conflicts and how the jurisprudence of human rights bodies and of international criminal tribunals informs the understanding of IHL rules.

THE INTERNATIONAL LAW OF OCCUPATION

Eyal Benvenisti. - Oxford [etc.] : Oxford University Press, 2012. - 383 p.

This thoroughly revised edition of the 1993 book traces the evolution of the law of occupation from its inception during the 18th century until today. It offers an assessment of the law by focusing on state practice of the various occupants and reactions thereto, and on the governing legal texts and judicial decisions. The underlying thought that informs and structures the book suggests that this body of laws has been shaped by changing conceptions about war and sovereignty, by the growing attention to human rights and the right to self-determination, as well as by changes in the balance of power among states. Because the law of occupation indirectly protects the sovereign, occupation law can be seen as the mirror-image of the law on sovereignty. Shifting perceptions on sovereign authority are therefore bound to be reflected also in the law of occupation, and vice-versa.

INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT

United Nations, Office of the High Commissioner for Human Rights. - New York ; Geneva : United Nations, 2011. - 119 p.

This publication provides a thorough legal analysis and guidance to State authorities, human rights and humanitarian actors and others on the application of international human rights law and international humanitarian law for the protection of persons in armed conflict. It addresses, in particular, the complementary application of these two bodies of law. Chapter I outlines the legal framework within which both international human rights law and international humanitarian law apply in situations of armed conflict, identifying some sources of law, as well as the type of legal obligations imposed on the different parties to armed conflicts. It explains and compares the principles of both branches and also analyses who the duty

bearers are of the obligations flowing from international humanitarian law and international human rights law. Chapter II analyses the formal requirements for the concurrent application of international human rights law and international humanitarian law, particularly from the perspective of the existence of an armed conflict and its territorial scope. It also deals with their limitations in such circumstances and discusses the problems resulting from their concurrent application. Chapter III deals with accountability and explores the legal framework determining State and individual responsibility for violations of international human rights and humanitarian law. It also presents victims' rights in the event of such violations. Finally, it gives an overview of the non-judicial forms of justice which can accompany (or in some cases be a substitute for) criminal justice. Chapter IV examines selected United Nations practice in applying international human rights and humanitarian law in situations of armed conflict, including practice by the Security Council, the Human Rights Council and its special procedures, the Secretary-General, and the Office of the High Commissioner for Human Rights. This chapter shows that the United Nations has a well-established practice of simultaneously applying international human rights law and international humanitarian law to situations of armed conflict, including in protection mandates for field activities, and provides numerous examples.

THE INTERNATIONAL PROTECTION OF JOURNALISTS IN TIMES OF ARMED CONFLICT AND THE CAMPAIGN FOR A PRESS EMBLEM

Emily Crawford. - Sydney : The University of Sydney, August 2012. - [30] p.

War correspondents have long been vulnerable to violence, by dint of their profession. Embedded amongst military units, or else unilaterally venturing into war zones, journalists who seek to cover events in conflict areas knowingly place themselves at risk of injury or death by their acts. The Geneva Conventions and Additional Protocol I – both of which regulate international armed conflicts – offer some protections for journalists during times of international armed conflict, but the increasingly amorphous character of twenty-first century armed conflicts has meant that journalists most often find themselves reporting on non-international armed conflicts, or conflicts that do not meet the threshold of armed conflict under international law. Recently, an international campaign, emanating from journalist advocacy organizations, has argued for the introduction of an internationally protected and recognized emblem, similar to the Red Cross emblem, as a means by which journalists can be identified as persons deserving special protection. The Press Emblem would be part of a larger convention geared towards the protection of journalists in armed conflict situations. Therefore, this article will examine the reasons behind the call for special protections, analyze and examine the current legal protections for journalists, and the perceived deficiencies of those protections, for media personnel who operate in conflict zones. This article will examine the substance of the prototype convention for the protection of journalists and analyze whether such a convention is indeed a necessary and useful addition to the law of armed conflict.

INTERNATIONAL TERRITORIAL ADMINISTRATIONS AND POST-CONFLICT REFORMS : REFLECTIONS ON THE NEED OF A JUS POST BELLUM AS A LEGAL FRAMEWORK

by Eric De Brabandere. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht Vol. 44, 2011-1/2, p. 69-90

It has become trite to claim that the increasing attention to post-conflict reconstruction and the creation of international administrations to oversee this process has resulted in a "legal void" in the transition from war or conflict to peace. The author will challenge this idea. The article will particularly focus on the suggested normative implications of the use of international territorial administration as a post-conflict reconstruction device. It will more specifically focus on the legal authority in post-conflict situations and on the existing rules on responsibility for post-conflict reconstruction, namely the laws of occupation and the role of the Security Council. The author will then discuss the adequacy and usefulness of existing conceptions of jus post bellum as a legal notion.

THE INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES : A CRITICAL ANALYSIS

Michael N. Schmitt. In: Harvard national security journal Vol. 1, 2010, p. 5-44

International humanitarian law seeks to infuse the violence of war with humanitarian considerations. However, it must remain sensitive to the interest of states in conducting warfare efficiently, for no state likely to find itself on the battlefield would accept norms that place its military success, or its survival, at serious risk. As a result, IHL represents a very delicate balance between two principles: military necessity and humanity. This dialectical relationship undergirds virtually all rules of IHL and must be borne in mind in any effort to elucidate them. It is in this regard that the Interpretive Guidance falters. Although it represents an important and valuable contribution to understanding the complex notion of direct participation in hostilities, on repeated occasions its interpretations skew the balance towards humanity. Unfortunately, such deviations from the generally accepted balance will likely cause states, which are ultimately responsible for application and enforcement of the law, to view the Interpretive Guidance skeptically.

INTO THE CAVES OF STEEL : PRECAUTION, COGNITION AND ROBOTIC WEAPON SYSTEMS UNDER THE INTERNATIONAL LAW OF ARMED CONFLICT

Jonathan David Herbach. In: Amsterdam law forum Vol. 4, no. 3, 2012, p.3-20

The pace of development with respect to robotic weapons systems is staggering. Often formulated in the context of a desire of the "haves" States to minimize battlefield casualties and to reduce monetary costs, technological advancement holds a number of ramifications for the law of armed conflict. Specifically, as technology introduces the possibility of increasingly autonomous forms of robotic weapon systems, the implications of augmenting precision while removing, for all intents and purposes, direct control by or involvement of human beings ("in the loop") must be examined, along with differentiated responsibilities of the "haves" versus the "have-nots". The present article takes as a foundation the international humanitarian law principle of precaution, as codified in Article 57 of Additional Protocol I, to assess various aspects of the applicability of the relevant provisions to these new weapons systems, and in particular draws conclusions as to how precaution could influence future developments.

INVESTIGATING VIOLATIONS OF INTERNATIONAL LAW IN ARMED CONFLICT

Michael N. Schmitt. In: Harvard national security journal Vol. 2, no. 1, 2011, p. 31-84

Part I lays out requirements under IHL to investigate and prosecute war crimes, covering the obligations of states under both treaties and customary international law. Part II examines how different courts have addressed requirements to investigate violations of human rights instruments within the context of armed conflicts and the lex specialis of IHL, finding that human rights investigations must be independent, effective, prompt, and impartial. In Part III, the author notes the practice of Canada, Australia, the United Kingdom, and the United States in order to assess how these states have fleshed out the requirements and implemented the provisions of international law noted in the previous Parts. Drawing upon these case studies, the article generates twenty-three conclusions indicating the common characteristics of investigations into alleged violations of international law on the battlefield. Finally, in Part IV the article concludes that standards for investigations must consider IHL as lex specialis and the special circumstances of armed conflict in conducting investigations, and should remain practical given the context for situations in which investigations will take place.

IRAQ (2003 ONWARDS)

Michael N. Schmitt. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 356-386

This chapter examines the phases of the hostilities in Iraq with the goal of determining their normative basis and any effect that the transition between them had on operations. It begins with an extended discussion of the various phases and their corresponding classification. The views of the parties to the conflict are also discussed, although the fact that there was little controversy about classification during the different phases of the hostilities renders this discussion a brief one. The chapter also explores the topic of how classification of the conflict affected operations and addresses more specifically the issues of rules on opening fire and detention. Since the case of Iraq offers a unique example of relatively clear transition through the stages of conflict, other legal issues deriving from classification, such as the activities of occupants, are also highlighted.

IS THERE A RIGHT TO DETAIN CIVILIANS BY FOREIGN ARMED FORCES DURING A NON-INTERNATIONAL ARMED CONFLICT ?

Peter Rowe. In: International and comparative law quarterly Vol. 61, part 3, July 2012, p. 697-711

This article considers whether there is any lawful authority for foreign armed forces assisting a territorial State during a non-international armed conflict to arrest and detain civilians. Taking the backdrop of Iraq and Afghanistan it considers relevant UN Security Council resolutions including Resolution 1546 (2004) relating to Iraq which authorized the multi-national force (MNF) ‘to take all necessary measures’ and provided for the internment, for imperative reasons of security, of civilians. In respect of Afghanistan, a number of resolutions authorized the International Assistance Stabilisation Force (ISAF) to ‘take all necessary measures’. It challenges the notion that the positive rights under international humanitarian law applicable to an international armed conflict apply, mutatis mutandis, to a non-international armed conflict, where national law (including human rights law having extra-territorial effect) is of primary (although not of exclusive) significance. It also considers which body of national law, that of the sending or that of the receiving State, applies to determine the lawfulness of detention of foreign civilians. The article recognizes that the arrest and detention of civilians may be necessary during a non-international armed conflict but concludes that the lawful justification for doing so needs to be clearly established.

ISRAEL, TURKEY, AND THE GAZA BLOCKADE

Daniel Benoliel. In: University of Pennsylvania Journal of International Law Vol. 33, no. 2, Winter 2011, p. 615-662

This Article provides a critical assessment of the crisis between Israel and Turkey, the two most prominent military powers in the Eastern Mediterranean region. It concerns the Israeli blockade over the Gaza Strip. This Article critically analyzes the Turkish-led position that has been adopted by governments worldwide, including Arab governments, human rights NGOs, and several organs of the United Nations, in their joint critique of the Israeli blockade or siege policy towards Gaza. This topic is especially pertinent given the backdrop of Israel's recent litigious enforcement of its naval blockade in international waters. The Article separately evaluates both countries' behaviors in these recent events. It also admits the need to discretely assess Israel's blockade policy over Gaza at land, air, and sea. The Article cautions against Turkey's rather weak legal reasoning in framing Israel's legal regime, ab initio, as belligerent occupation law, absent armed conflict towards Hamas-led Gaza, thereby missing the opportunity to assess Israel's adherence to the laws of armed conflicts more accurately. This Article unveils Turkey's oblique denial of Israel's lawful right to self defense by failing to correctly analyze Israel's application of the laws of armed conflicts towards Hamas.

ISRAELI CIVILIANS VERSUS PALESTINIAN COMBATANTS ? : READING THE GOLDSTONE REPORT IN LIGHT OF THE ISRAELI CONCEPTION OF THE PRINCIPLE OF DISTINCTION

Jean-Philippe Kot. In: Leiden Journal of International Law Vol. 24, issue 4, December 2011, p. 961-988

Goldstone's recent retraction can leave the reader of the report that bears his name somewhat perplexed. Indeed, if the deliberate intent to target civilians could be discussed in some specific attacks listed, such a report nevertheless describes a pattern of behaviour that cannot be swept aside without disregarding the order of priorities set by the Israeli legal system itself. Through analysis of the new Israeli military code of ethics as well as the Israeli Supreme Court case law, this paper examines how civilians in Gaza were deliberately put at risk by a specific interpretation breaking down the flat rule of civilian immunity into a more complex construction opposing the Israeli soldiers' right to life to the rights of an "enemy population".

THE ISRAELI MILITARY COMMANDER'S POWERS UNDER THE LAW OF OCCUPATION IN RELATION TO QUARRYING ACTIVITY IN AREA C

by Iain Scobbie and Alon Margalit. - [London] : SOAS University of London, July 2012. - 11 p.

Under the law of occupation, every occupation is temporary and the Occupant does not have sovereignty over the occupied territory. The Military Commander, holding only administration powers of the territory, is required to preserve the state of affairs existing in the eve of occupation and to refrain from introducing changes in the occupied territory. This notion prevents the Occupant from colonising the territory for its own market and from depriving the indigenous population of their right to enjoy local natural resources. During a prolonged occupation, such as the Israeli occupation of the oPt, there is some legal uncertainty in relation to the exact scope of the Occupant's authority to introduce new policies in the occupied territory. But even a more flexible interpretation of this authority determines that changes that are not compelled by security needs must serve the benefit of the local population. Contrary to the view taken by the Israeli High Court in its 2011 Judgment, the interest of the local population - which must guide the Military Commander - does not include the interest of Israeli settlers as they are not entitled to the status of protected persons, and since the establishment of settlements in the oPt is in violation of international law. Further, taking into account settlers' interests may frustrate the minimum protections granted to Palestinians under the law of occupation. Given the long-term effects of quarrying which depletes the stone deposits in Area C, the burden imposed on the Israeli Military Commander to show that such activity is consistent with the interest of the local population is substantial. In the present case, the Israeli High Court implemented legal norms in a distorted manner, legitimising practices in the West Bank that seem to be exploitative. The Court thus allowed quarrying activity that benefits primarily the Israeli market and Israeli nationals rather than the Palestinian population.

ISRAELI SOLDIERS' PERCEPTIONS OF PALESTINIAN CIVILIANS DURING THE 2009 GAZA WAR

Neta Oren. - In: Civilians and modern war : armed conflict and the ideology of violence. - London ; New York : Routledge, 2012. - p. 130-145

While the suffering of Palestinian civilians in the 2009 Gaza War can be explained in part by the type of war it was and the ambiguity of civilian identity and relationship with the combatants, such suffering also finds its source in a shared mind set among Israeli soldiers about the identity of civilians, what are their relations to enemy combatants, and how they should be treated in times of war. And the ambiguities of the written set of rules that govern the relationship between soldiers and civilians may in some cases result in the indiscriminate use of violence and provide justification to kill civilian non-combatants. The chapter thus focuses on Israeli Rules of Engagement adopted during the 2009 Gaza War and highlights some challenges regarding the practicality of these rules and their interpretation by soldiers in the field that may

explain why, despite a strong pro-civilian focus of the International Humanitarian law, civilians continue to suffer and die in far greater numbers than combatants in today's conflicts.

THE ISRAELI SUPREME COURT AND THE INCREMENTAL EXPANSION OF THE SCOPE OF DISCRETION UNDER BELLIGERENT OCCUPATION LAW

Guy Harpaz and Yuval Shany. In: Israel Law Review Vol. 43, no. 3, 2010, p. 514-550

On December 29, 2009, the Israeli Supreme Court, sitting as the High Court of Justice, delivered its judgment in Abu Safiya v. The Minister of Defense, annulling an order issued by an Israeli Military Commander, which completely barred Palestinians from travelling on Route 443, a major road in the West Bank. This note criticizes the Abu Safiya judgment as indicative, notwithstanding its specific outcome, of the Supreme Court's ongoing willingness to expand the ratione materiae and ratione personae of occupation law and to allow the military authorities to protect the interests of Israelis in the West Bank, even at the expense of the stronger rights conferred upon the local Palestinian population by the lex specialis — the laws of belligerent occupation.

IT'S NOT WRONG, IT'S ILLEGAL : SITUATING THE GAZA BLOCKADE BETWEEN INTERNATIONAL LAW AND THE UN RESPONSE

Noura Erakat. In: UCLA journal of islamic and near eastern law Vol. 11, 2011-2012, p. 37-84

This article examines the Gaza blockade from the perspective of international law and argues that the blockade is unlawful. In making this argument, the article also offers an analysis of the current international status of the Gaza strip and determines that it remains occupied territory - albeit under a new permutation of occupation - and that the legality of the blockade is determined by the international law of belligerent occupation. Accordingly, by maintaining its blockade, Israel also challenges the existing legal order. Namely Israel challenges the scope of legal self-defense as well as the permissible use of force under the law of occupation. This legal challenge has the consequence of weakening legal protections that should be afforded to civilians during armed conflict. Rather than resist this critical attempt to shift the law, the United Nation's Security Council has done little to clarify the law, thereby undermining its UN uphold the rule of law and restore its legitimacy by responding substantively to Israel's behavior and structurally to its own procedural mechanisms that have facilitated such an outcome.

"JOUSTING AT WINDMILLS" : THE LAWS OF ARMED CONFLICT IN AN AGE OF TERROR-STATE ACTORS AND NONSTATE ELEMENTS

David M. Crane and Daniel Reisner. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 67-84

This chapter focuses on the status, rights, and obligations of nonstate entities within the framework of international humanitarian law. More specifically, it describes the existing rules and paradigms of international law, including some recent examples of state practices in this regard, to present a new framework for the treatment of nonstate members within an armed conflict.

LE JUGE COMBATTANT

par Rafaëlle Maison. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 114-132

Le juge dit "international", en l'occurrence un juge sans expérience combattante, est-il compétent pour se substituer à la personne qu'il juge, le combattant, dans l'appréciation des options militaires qui se trouvaient à sa disposition? Quelle est sa légitimité à connaître d'un combat où il ne fut pas impliqué? En somme, comment le juge pénal international, qui n'a plus de lien direct avec les guerres dont il est saisi, peut-il en juger les acteurs? Certaines affaires récentes soulèvent directement ce type de questions. Elles invitent à penser l'apport de la justice pénale internationale au droit des conflits armés contemporains. Elles invitent aussi à mesurer les possibilités de comprendre l'étrangeté: l'étrangeté des pratiques et de cultures de guerre par rapport au modèle d'abord posé par les Conventions de Genève, mais aussi l'étrangeté de la guerre pour le juge "international".

LE JUS POST BELLUM REMET-IL EN CAUSE LES RÈGLES TRADITIONNELLES DU JUS CONTRA BELLUM ?

par Olivier Corten. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht Vol. 44, 2011-1/2, p. 38-68

L'apparition des théories du jus post bellum coïncide historiquement avec les difficultés rencontrées pour justifier certaines occupations contemporaines de territoires (Yougoslavie, Afghanistan, Irak) au regard, d'une part, du jus in bello et, d'autre part, du jus contra bellum. Dans les deux cas, une partie de la doctrine a été amenée à identifier un nouveau corps de règles apte à combler les lacunes du droit international positif par une revitalisation des théories jusnaturalistes de la guerre juste. A l'analyse, on peut toutefois se demander si les "lacunes" du jus contra bellum sont bien réelles. Ce dernier a en effet

pour vocation à s'appliquer de manière continue et à interdire non seulement le déclenchement mais aussi la poursuite de la guerre et de l'occupation susceptible d'en résulter. En même temps, les compétences élargies conférées au Conseil de sécurité permettent de moduler l'application de ces règles en fonction des particularités de chacune des situations envisagées. Il est vrai que ces règles ne sont pas toujours effectivement appliquées, en raison des rapports de force qui président à leur mise en oeuvre. La création d'un hypothétique jus post bellum ne semble cependant pas à même de résoudre pareil problème, qui renvoie en réalité aux limites de tout ordre juridique en général et de l'ordre juridique international en particulier. Au contraire, en tendant à limiter le champ d'application du jus contra bellum et du jus in bello, ou encore à assouplir ou éluder certaines de ses règles bien établies, le jus post bellum semble avoir davantage pour vocation d'aligner le droit sur une pratique qui lui est contraire que, à l'inverse, de permettre de condamner cette pratique au nom du droit existant.

JUS POST BELLUM : VIEILLE ANTIENNE OU NOUVELLE BRANCHE DU DROIT ? : SUR LE MYTHE DE L'ORIGINE VÉNÉRABLE DU JUS POST BELLUM

par Gregory Lewkowicz. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht Vol. 44, 2011-1/2, p. 11-25

Depuis quelques années, un mouvement doctrinal cherche à fonder l'existence d'un "droit après la guerre" à côté ou en creux des règles traditionnelles du jus in bello et du jus ad bellum. Outre les arguments normatifs et tirés de la pratique, les partisans de ce mouvement doctrinal cherchent à conférer à leur propre construction une légitimité tirée de l'Histoire du droit des gens. Dans cette contribution, l'auteur examine la pertinence de cette thèse. Au terme d'une analyse de plusieurs auteurs centraux de la littérature du droit des gens, l'auteur conclut qu'il n'existe pas dans cette tradition de droit de la transition du conflit à la paix.

JUST WAR, JUST PEACE AND THE JUS POST BELLUM

Inger Österdahl. In: Nordic journal of international law Vol. 81, no. 3, 2012, p. 271-293

Justice after war is becoming an increasingly pressing concern. The cases of Afghanistan, Iraq and most recently Libya illustrate the importance of as well as the difficulties involved in the efforts to manage the outcome of armed conflict in a constructive way. The jus post bellum is meant to serve as the normative framework for the efforts to stabilise the post-conflict situation. The jus post bellum also has the future peaceful and arguably democratic and human rights respecting development of the post-conflict society in view. This article aims at drawing the conceptual and substantive contours of the jus post bellum and to discuss its relationship with other parts of international law, primarily the other bodies of law making up the law of armed conflict. Depending on one’s perspective the jus post bellum can be claimed not yet to exist, to exist already or irrespective of which to be superfluous as a separate category of law. The article recognises the apparent need for a comprehensive post-conflict law to serve as a bridge between war and stable peace. What way the international community should take in order to arrive at a just and useful normative framework for building peace is far from certain, however.

THE JUST WAR TRADITION AND ITS MODERN LEGACY : JUS AD BELLUM AND JUS IN BELLO

David Boucher. In: European journal of political theory Vol. 11, no. 2, 2011, p. 92-111

The relationship between jus ad bellum and jus in bello has been characterized differently throughout European history. There have been three main positions exemplified by Hugo Grotius, Samuel von Pufendorf and Emer de Vattel. They are, first, both the cause and the conduct of warfare must be just ; second, the cause must be just, but the conduct of the war is unconstrained in order to achieve the goal of peace ; and, third, we must assume justice on both sides, and concentrate on ensuring just conduct in armed conflict. Each attempted to distil customary practices, which they saw in some relation to Natural Law, the ultimate source of moral obligation. Customary international law now serves the function of Natural Law in that even if treatises in which it is articulated lapse the customary constraining precepts remain, and are equally obligatory. It is contended that the relationship between just war and just conduct in war during the 20th and 21st centuries has mirrored the three classic positions, and since 9/11, with the advent of new dimensions to warfare in the war against terror, the relationship is in flux. Since 9/11 there has been a growing emphasis on jus ad bellum and a relative silence on the principles of jus in bello. Implicitly, there is an informal acceptance of something like Pufendorf's position in which outlaw combatants are deemed to place themselves outside of the protection of customary law.

THE KILLING OF OSAMA BIN LADEN AND ANWAR AL-AULAQI : UNCHARTED LEGAL TERRITORY

Beth van Schaack. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 255-325

The killing of Osama bin Laden in Pakistan in May 2011 and Anwar al-Aulaqi in Yemen in September 2011 both raise the question of when the killing of an identified individual posing a threat to a nation-state is lawful. Although it has not yet been forced to publicly defend either killing in any great detail, the Obama Administration has insisted on the legality of both operations by deploying an amalgam of legal and

rhetorical arguments that explicitly or implicitly invoke multiple bodies of law. As an administration spokesperson stated in connection with the Bin Laden operation.

THE LAW OF ARMED CONFLICT AND INTERNATIONAL HUMAN RIGHTS LAW : SOME PARADIGMATIC DIFFERENCES AND OPERATIONAL IMPLICATIONS

Rob McLaughlin. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 213-243

Debate over the degree to which International Human Rights Law (IHRL) should legitimately inform and alter the interpretation of the Law of Armed Conflict (LOAC) is increasing in intensity. It is not a new debate—G.I.A.D. Draper was considering the issue in 1971, and there have been numerous general statements by the UN recognizing that there is indeed interplay between the two bodies of law. Yet despite a long formative period, the debate—which is now beginning to attract much greater attention jurisprudentially, operationally, and academically—is still being conducted in a procedurally flawed manner. This flawed procedure has two characteristics. First, it is characterized by a process of reverse engineering. By this the author means it is characterized by reasoning from a limited number of particular instances to arrive at a general thesis, followed by the subsequent re-application of this apparent general thesis to other instances. The second procedural characteristic is that the debate is substantially in the form of a one-way argument. The author will briefly elaborate on both.

THE LAW OF CYBER-ATTACK

Oona A. Hathaway... [et al.]. In: California law review Vol. 100, no. 4, 2012, p. 817-885

This article begins by clarifying what cyber-attacks are and how they already are regulated by existing bodies of law, including the law of war, international treaties, and domestic criminal law. This review makes clear that existing law effectively addresses only a small fraction of potential cyber-attacks. The law of war, for example, provides a useful framework for only the very small number of cyber-attacks that amount to an armed attack or that take place in the context of an ongoing armed conflict. This article concludes that a new, comprehensive legal framework at both the domestic and international levels is needed to more effectively address cyber-attacks. The United States could strengthen its domestic law by giving domestic criminal laws addressing cyber-attacks extra-territorial effect and by adopting limited, internationally permissible countermeasures to combat cyber-attacks that do not rise to the level of armed attacks or that do not take place during an ongoing armed conflict. Yet the challenge cannot be met by domestic reforms alone. International cooperation will be essential to a truly effective legal response. New international efforts to regulate cyber-attacks must begin with agreement on the problem — which means agreement on the definition of cyber-attack, cyber-crime, and cyber-warfare.

THE LAW OF NEUTRALITY DOES NOT APPLY TO THE CONFLICT WITH AL-QAEDA, AND IT'S A GOOD THING, TOO : A RESPONSE TO CHANG

Kevin Jon Heller. In: Texas international law journal Vol. 47, no. 1, Fall 2011, p. 115-141

In his Article “Enemy Status and Military Detention in the War Against Al-Qaeda,” Karl Chang addresses the critical problems of the scope of a state’s detention authority in non-international armed conflict (NIAC). He rejects the idea that the scope of detention in NIAC is determined by the distinction between “combatants” and “civilians”. Instead, he argues that “the legal limit on military detention is ‘enemy,’ a concept that has been defined in the law of neutrality.” This article is a response divided into three sections. Part I criticizes Chang’s assertion that the law of neutrality applies to the conflict between the United States and al-Qaeda, explaining why neutrality law would apply only if the United States or third states recognized al-Qaeda as a legitimate belligerent, a status that the United States would desperately want to avoid. Part II demonstrates that the power to detain is far more limited under the law of neutrality than Chang believes and that permitting states to declare neutrality would undermine the United States’ counterterrorism efforts. Finally, Part III explains why, contrary to Chang’s claim, the law of neutrality no longer determines the limits of the jus ad bellum, its rules having been effectively supplanted by the U.N. Charter’s prohibition on the use of force.

THE LAW OF NON-INTERNATIONAL ARMED CONFLICT

Sandesh Sivakumaran. - Oxford : Oxford University Press, 2012. - 657 p.

This book brings together and critically analyzes the disparate conventional, customary, and soft law relating to non-international armed conflict. All the relevant bodies of international law are considered, including international humanitarian law, international criminal law, and international human rights law. The book traces the changes to the legal framework applicable to non-international armed conflict from ad hoc regulation in the nineteenth and early twentieth century, to systematic regulation through the 1949 Geneva Conventions and 1977 Additional Protocols, to the transformation of the law in the mid-1990s. Armed conflicts ranging from the US civil war, the Algerian War of Independence, and the attempted secession of Biafra, through to the current conflicts in the Colombia, Philippines, and Sudan are all considered. The identification and analysis of the law is complemented by a consideration of the practice, allowing both

violations of, and respect for, the law, to be ascertained. Given that non-international armed conflicts are fought between states and non-state armed groups, or between armed groups, particular attention is paid to the oft-neglected views of armed groups. This is done through an analysis of hundreds of statements, unilateral declarations, internal regulations, and bilateral agreements issued by armed groups. Equivalent material emanating from states parties to conflicts is also considered. The book is thus an essential reference point for the law and practice of non-international armed conflicts.

THE LAW OF OPERATIONAL TARGETING : VIEWING THE LOAC THROUGH AN OPERATIONAL LENS

Geoffrey S. Corn and Gary P. Corn. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 337-380

Understanding how air and missile warfare is planned, executed, and regulated requires more than just an understanding of relevant LOAC provisions. In U.S. practice (and that of many other countries), air and missile warfare is one piece of a broader operational mosaic of law and military doctrine related to the joint targeting process. How operational commanders select, attack, and assess potential targets and how the LOAC reflects the logic of military doctrine related to this process is therefore the objective of this Article. To achieve this objective, the authors focus on a recent decision by the International Criminal Tribunal for the Former Yugoslavia (ICTY), Prosecutor v. Gotovina. Although the military operation at the center of this case involved only limited use of air and missile warfare, the ICTY's extensive focus on the use of artillery and rocket attacks provides a useful and highly relevant illustration of why understanding the interrelationship between law and military doctrine is essential for the logical and credible development of the law. The authors therefore seek to "exploit" this case as an opportunity to expose the reader to this interrelationship, an interrelationship equally essential to the effective evolution of the law of air and missile warfare.

THE LAW OF TARGETING

William H. Boothby. - Oxford : Oxford University Press, 2012. - 603 p.

This book offers the definitive and comprehensive statement of all aspects of the law of targeting. It is a 'one-stop shop' that answers all relevant questions in depth. It has been written in an open, accessible yet comprehensive style, and addresses both matters of established law and issues of topical controversy. The text explains the meanings of such terms as 'civilian', 'combatant', and 'military objective'. Chapters are devoted to the core targeting principles of distinction, discrimination, and proportionality, as well as to the relationship between targeting and the protection of the environment and of objects and persons entitled to special protection. New technologies are also covered, with chapters looking at attacks using unmanned platforms and a discussion of the issues arising from cyber warfare. The book also examines recent controversies and perceived ambiguities in the rules governing targeting, including the use of human shields, the level of care required in a bombing campaign, and the difficulties involved in determining whether someone is directly participating in hostilities. This book will be invaluable to all working in this contentious area of law.

LAW OF WAR MANUALS AND WARFIGHTING : A PERSPECTIVE

Charles J. Dunlap. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 265-276

This short essay is intended to provide some perspectives on the role the Air and Missile Warfare Manual can play in the future. It aims to provide special emphasis on the practical issues associated with air and missile operations. It assesses the potential of the manual to turn the norms it promotes into accepted practice among nations, if not into customary international law.

LAW ON THE BATTLEFIELD

A.P.V. Rogers. - Manchester ; New York : Manchester University Press, 2012. - 402 p.

This book explains the law relating to the conduct of hostilities and provides guidance on difficult or controversial aspects of the law. It covers who or what may legitimately be attacked and what precautions must be taken to protect civilians, cultural property, or the natural environment. It deals with the responsibility of commanders and how the law is enforced. There are also chapters on internal armed conflicts and the security aspects of belligerent occupation. This third edition has been brought up to date in the light of recent conflicts, especially the occupation Iraq by allied forces in the period 2003-04. Also included are the more recent judgments and opinions of the International Criminal Tribunal for the former Yugoslavia, the International Court of Justice and the European Court of Human RIghts, the comprehensive work of the ICRC with regard to customary international humanitarian law and the meaning of "direct participation in hostilities", the Harvard University air and missile warfare project, the San Remo Manual on non-international armed conflicts, the UK Law of Armed Conflict Manual of 2004 and several excellent monographs.

THE LAW THAT TURNED AGAINST ITS DRAFTERS : GUERRILLA-COMBATANTS AND THE FIRST ADDITIONAL PROTOCOL TO THE GENEVA CONVENTIONS

Ariel Zemach. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 1-40

This chapter explores the effect of the First Additional Protocol's provisions on customary international law, both with regards to the question of entitlement to prisoner-of-war status and with regard to the application of the principle of distinction in the conduct of warfare. At the heart of the argument lies the proposition that state practice may have a destructive effect on customary norms that exceeds its constitutive effect. This is precisely what has happened with the Protocol. While the Protocol's provisions regarding guerilla insurgency failed to acquire a status of customary norms, they nonetheless undermined the customary status of preexisting rules. The implications of this are twofold and - from the perspective of the Protocol's drafters, who intended to give additional protections to groups fighting against state adversaries in irregular conflicts - sadly ironic. First, the Protocol failed to expand the category of guerillas entitled to POW status under customary law. Second the Protocol eroded much of the protection against attack previously afforded to guerillas under the customary law principle of distinction. Hence, from the perspective of guerilla fighters, the Protocol had only adverse consequences in terms of its influence on the state of customary international law.

LAWFUL MURDER : UNNECESSARY KILLING IN THE LAW OF WAR

Samuel G. Walker. In: Canadian journal of law and jurisprudence Vol. 25, no. 2, 2012, p. 417-446

An unrestrained right to kill might, in fact, be justified. The first and historically most important justification is grounded in a view of the individual at war as no human at all, but an agent of the state, a disposable molecule of a greater being. The author attempts to trace that idea through history, concluding that IHL is needlessly shackled to it despite the modem consensus that there is a human right to life that ought to be respected at all times. A second normative theory justifying unnecessary killing is the idea that soldiers are 'guilty' and, therefore, deserve what befalls them in war which the author finds unconvincing. The third strand of thought that has justified the unnecessary death of combatants is pragmatism. This argument in effect begs the question by countering that there is no such thing as the 'unnecessary' death of a combatant in war-any rules outlawing such killing would be utopian and impractical. Any prohibition against gratuitous violence, it is said, would be ignored or, worse, undermine respect for the law of war as a whole. This proposition is much more persuasive, but ultimately flawed. Finding that the law's permissive approach to unnecessary killing cannot be justified, the author proposes a reform to the law of war that would incorporate the principle of necessity into rules governing the use of force against combatants.

LAWMAKING BY NONSTATE ACTORS : ENGAGING ARMED GROUPS IN THE CREATION OF INTERNATIONAL HUMANITARIAN LAW

Anthea Roberts and Sandesh Sivakumaran. In: Yale journal of international law Vol. 37, issue 1, 2012, p. 107-152

This article considers whether non-state armed groups can, do and should play a role in the creation of international humanitarian law applicable in non-international armed conflicts. Focusing on non state armed groups, it is possible to move away from the traditional statist approach to sources, which denies armed groups any role in law creation, without moving to the extreme position of giving such groups complete control over their obligations or equal lawmaking powers with states. To this end, the author suggest various mechanisms (unilateral declarations, hybrid treaties, and possibly quasi-custom) for giving armed groups an opportunity to recognize existing obligations or undertake new ones, while reducing the risk of placing them on par with states or downgrading international humanitarian protections. These mechanisms could provide a way to involve non state armed groups in the creation of international humanitarian law while respecting the crucial and primary role of states.

LAWS OF WAR AND 21ST CENTURY CONFLICT

E.L. Gaston, editor. - New York [etc.] : International Debate Education Association, 2012. - 226 p.

The laws of war and 21st century conflict explores how international law considers and confronts the so-called new warfare. To many, modern conflict appears unlike any we have known before. A modern battlefield might as easily be found in an urban shopping mall or in the frontline trenches of a failed state. Weaponry that once populated science fiction novels and movies is now a reality, with unmanned aerial drones used against military targets in several countries and automated robots replacing some soldiers on the battlefield. Globalization and the diffusion of technology have eroded state controls and empowered other actors, from terrorist groups to mercenaries. Now, the most deadly threats might be activated by the push of a cell-phone button or from a computer hacker's screen on the other side of the world. Yet, despite how different modern warfare appears on its face, is it so fundamentally different from wars of the past? Many of the most prevalent forms of conflict, including terrorism and guerrilla warfare, have long existed. Even if modern warfare does not present such unique or unparalleled challenges as we might at first

conclude, can the same international rules that have been developed and used since the mid-19th century still apply to 21st century warfare? This anthology explores some of the critiques of the framework of the laws of war, presents suggestions for reform, and explores persistent grey areas in the regulation of armed conflict.

LEBANON 2006

Iain Scobbie. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 387-420

In this chapter the difficulties arising in the classification of the conflicts in Lebanon 2006 lay in the States parties' unwillingness to classify the conflict expressly, and the ambiguity of the positions they adopted. The author argues that the conflict had a dual character: that there existed an international armed conflict between Israel and Lebanon, and a parallel extraterritorial non-international armed conflict between Israel and Hezbollah. He analyses the consequences arising from this dual character, mainly in regard to targeting decisions and the status of captured Hezbollah operatives. The author concludes that whatever the classification of the hostilities, there was a failure to implement the law of armed conflict during the Lebanon 2006 conflict.

LEGACY OF 9/11 : CONTINUING THE HUMANIZATION OF HUMANITARIAN LAW

Vijay M. Padmanabhan. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 419-430

The influence of human rights law on the war fighting domain - once thought solely the province of IHL - will continue to grow. Non-traditional conflicts appear to be on the rise. The human rights community, including many scholars, is committed to the application of human rights principles to warfare. And the lack of a clear boundary between IHL and human rights law means that the door is open to application of human rights to areas where it hitherto had no application. The controversy over the killing of Osama bin Laden and the U.S. drone campaign in Pakistan and Yemen suggests that targeting will be the next growth area for human rights.

THE LEGAL FRAMEWORK OF HUMANITARIAN ACCESS IN ARMED CONFLICT

Felix Schwendimann. In: International review of the Red Cross Vol. 93, no. 884, December 2011, p. 993-1008

Obtaining and maintaining humanitarian access to populations in need by humanitarian actors is a challenge. A wide range of constraints on humanitarian access exist, including ongoing hostilities or an otherwise insecure environment, destruction of infrastructure, often onerous bureaucratic requirements, and attempts by parties to armed conflict to block access intentionally. The difficulties that these constraints present to humanitarians are frequently compounded by a lack of familiarity – on the part of states, non-state armed groups, and humanitarian relief organizations – with the legal framework. The main purpose of this article is to lay out the existing international legal framework regulating humanitarian access in situations of armed conflict.

LEGAL-POLICY CONSIDERATIONS AND CONFLICT CHARACTERISATION AT THE THRESHOLD BETWEEN LAW ENFORCEMENT AND NON-INTERNATIONAL ARMED CONFLICT

Rob McLaughlin. In: Melbourne journal of international law Vol. 13, no. 1, June 2012, p. 1-28

When characterising a conflict situation as an international armed conflict, states and other analysts traditionally consider the "facts on the ground". When determining whether a situation is one of civil disturbance and riot, or has risen to the level of a non-international armed conflict ("NIAC"), there is much greater latitude for legal-policy considerations to influence, and indeed direct, the characterisation decision. This article explores three aspects of legal-policy concern for states dealing with conflict characterisation at this lowest law of armed conflict ("LOAC") threshold between less-than-NIAC law enforcement and NIAC: a general outline of three elements of legal-policy discretion that are clearly assumed and inherent within LOAC; legal defensibility, a discourse that is fundamentally governed by the tension between applicable law and policy objectives; and utility, a concern that focuses upon the balance to be struck between the legal argument employed to justify conflict characterisation and the capacity of the state to retain some degree of context control.

LEGAL, POLITICAL AND ETHICAL DIMENSIONS OF DRONE WARFARE UNDER INTERNATIONAL LAW : A PRELIMINARY SURVEY

Geert-Jan Alexander Knoops. In: International criminal law review Vol. 12, no. 4, 2012, p. 697-720

This article delves into the advent of drone warfare and the international (criminal) law, political and ethical dimensions thereof. Fundamental questions to be addressed in this article are: who is accountable if decisions leading to lethal force are left up to computers? And under what legal regime may lethal forces by drones been administered? The U.S. policy, advocating that drone attacks are permissible under international and U.S. law, is outlined; as are the pitfalls of this policy. The implications of CIA operatives

carrying out drone attacks are assessed. Finally, political and ethical dimensions of drone attacks will conclude this article.

LEGAL RAMIFICATIONS OF THE WAR IN GAZA

Johan D. van der Vyver. In: Florida journal of international law Vol. 21, no. 3, December 2009, p. 403-448

The purpose of this Article is to highlight the major rules of international (humanitarian) law that have been implicated by the war in Gaza.The first section of this Article is devoted to the international status of Gaza. Although Israel in 2005 officially withdrew from the Gaza Strip, there are compelling grounds for maintaining that Gaza is de facto still subject to Israeli occupation. If that is found to be the case, resistance to Israeli occupation would qualify as a war of liberation, which in terms of Protocol I to the Geneva Conventions of 12 August 1949 is subject to the rules of international humanitarian law applying to international armed conflicts. That is the focus of the second part of this Article. The legality and legitimacy of a war of liberation do not afford a right to freedom fighters to conduct hostilities by all conceivable means, and especially do not exonerate the belligerents from attacking civilians or civilian targets. Hamas conducted its militant operations from within a civilian environment. The consequences of doing that is analyzed in the fourth section of this essay. The possibility of this amounting to using civilians as a human shield is discussed at some lengths. In the fifth section, focus shifts to Israel. It is there argued that Israel had every right to defend itself against the armed attack orchestrated by Hamas. However, the ways and means of doing that are again not without far-reaching limitations. Section six again turns attention to Hamas. The law relating to the inherent right of individual or collective self-defense does not apply to Hamas, since the hardships suffered by Gaza residents in consequence of Israeli control measures did not amount to an armed attack as required by Article 51 of the U.N. Charter.

THE LEGAL REGULATION OF CYBER ATTACKS IN TIMES OF ARMED CONFLICT

Robin Geiss. In: Collegium No. 41, Automne 2011, p. 47-53

The law of armed conflict is flexible enough to accommodate new technological developments. The various rules and prohibitions arising, for example, out of the principle of distinction do not depend on the type of weapon or the specific method used. There should thus be no doubt that fundamental humanitarian rules and principles apply to cyber operations. However, it must be noted that the military potential of cyberspace, as well as corresponding State practice, is only starting to emerge. It remains to be seen above which threshold States will consider ‘cyber-attacks’ as triggering an armed conflict. For the time being it is difficult to assess how realistic or likely the theoretical worst-case scenarios that are contemplated in the literature, e.g., the manipulation of a nuclear power plant via cyberspace, really are. More significantly, the discussion as to which kind of military cyber operations would qualify as an ‘attack’ in the humanitarian legal sense is a controversial one, but one of crucial importance. Operations with less tangible consequences, such as the temporary disruption of certain networks and online services. If such denial-of-service attacks would not amount to an ‘attack’ in the legal sense, they could be carried out indiscriminately and could arguably also be directed against civilian installations.

LEGAL REGULATION OF THE MILITARY USE OF OUTER SPACE : WHAT ROLE FOR INTERNATIONAL HUMANITARIAN LAW ?

Steven Freeland. In: Collegium No. 41, Automne 2011, p. 87-97

Outer space is now increasingly being used as part of the ‘active’ conduct of armed conflict.Principles of international humanitarian law are, in theory, applicable to the military use of outer space. Given the unique nature of outer space, the principles of international humanitarian law – developed to regulate terrestrial warfare and armed conflict – are probably neither sufficiently specific nor entirely appropriate for military action in outer space. The non-military uses of space have become vital aspects of any community’s survival and many of the satellites providing these civilian services are dual-use, in that they are also utilised for military and strategic purposes. This raises difficult questions about the ‘status’ of such assets under the rules of war – particularly as to whether they may, under certain circumstances, be regarded as legitimate military objectives.

LEGAL REMEDIES FOR HUMAN RIGHTS VIOLATIONS IN THE ARMED CONFLICT IN CHECHNYA : THE APPROACH OF THE EUROPEAN COURT OF HUMAN RIGHTS IN CONTEXT

Kirill Koroteev. In: Journal of international humanitarian legal studies Vol. 1, issue 2, 2010, p. 275-303

The article discusses the efficacy of the remedies offered to successful applicants by the European Court of Human Rights in the cases coming from the armed conflict in the Chechen Republic of the Russian Federation. It submits, firstly, that proper establishment of facts constitutes a remedy in itself for victims of human rights violations in an armed conflict. It then analyses the establishment of facts by the Court in the Chechen cases and argues that the assessment of evidence under the Court's burden of proof 'beyond reasonable doubt' was applied unevenly in different cases. The paper suggests that the Court obtains evidence proprio motu, which it has never done in the Chechen cases. Secondly, this paper evaluates the European Court's practice to limit the just satisfaction by monetary awards and to consistently deny the applicants' requests for non-monetary awards. It then discusses the developments in the international law

on reparations for human rights violations under the ECHR and in the Inter-American and UN systems, and argues for a need to enhance the European Court's awards of just satisfaction. Finally, the paper assesses the supervision of the execution of judgments in the Chechen cases, finds it ineffective, and suggests that more actions are required from the Court in order to deal effectively with alleged human rights violations arising from armed conflicts.

THE LEGALITY OF USING DRONES TO UNILATERALLY MONITOR ATROCITY CRIMES

Diana E. Schaffner. In: Fordham international law journal Vol. 35, issue 4, May 2012, p. 1121-1163

This Note focuses on the legality of employing unmanned aerial vehicles ("UAVs"), often referred to as "drones," to gather information about the commission of atrocities in another state without that state's consent. The relevance of UAVs to the collection and dissemination of visual evidence of atrocity crimes is acute. As states reduce their citizens' free access to technology as a means of retaining power, the resulting difficulty in receiving reliable data on ongoing atrocities will likely increase the value of intermediary mechanisms. UAVs may, therefore, constitute a legitimate intermediary humanitarian interference mechanism, given their ability to provide useful atrocity response services without recourse to force. Because of this, greater attention should be paid to delineating the legal limits surrounding the use of UAVs to deter atrocity crimes.

LESSONS FOR THE LAW OF ARMED CONFLICT FROM COMMITMENTS OF ARMED GROUPS : IDENTIFICATION OF LEGITIMATE TARGETS AND PRISONERS OF WAR

Sandesh Sivakumaran. In: International review of the Red Cross Vol. 93, no. 882, June 2011, p. 463-482

Armed groups frequently issue ad hoc commitments that contain a law of armed conflict component. These commitments detail the obligation of the relevant armed group to abide by international humanitarian law, the Geneva Conventions, or particular rules set out in the commitment. They commit the group to abide by international standards, sometimes exceed international standards, or in certain respects violate international standards. Although these commitments are often overlooked, they offer certain lessons for the law of armed conflict. This article considers the commitments of armed groups with respect to two specific areas of the law that are either of contested interpretation or seemingly inapplicable to noninternational armed conflicts, namely the identification of legitimate targets and the prisoners of war regime.

LEX LACUNAE : THE MERGING LAWS OF WAR AND HUMAN RIGHTS IN COUNTERINSURGENCY

Iain D. Pedden. In: Valparaiso University law review Vol. 46, no. 3, spring 2012, p. 803-842

This article first examines the historical underpinnings and evolution of the laws of war and human rights. The expansion of human rights norms into armed conflict is viewed through the lens of counterinsurgency, arguing that current operations in Afghanistan have set a baseline of state practice, which may ripen into customary law. The last part takes note of recent presidential action, which may cement this transference of human rights norms in armed conflict, and proposes domestic and international approaches toward reconciling these two competing branches of the law.

LES LIMITES DU DROIT INTERNATIONAL PÉNAL ET DE LA JUSTICE PÉNALE INTERNATIONALE DANS LA MISE EN OEUVRE DU DROIT INTERNATIONAL HUMANITAIRE

par Marco Sassòli et Julia Grignon. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 133-154

Pour formidable que soit l'essor du droit international pénal et de la justice pénale internationale depuis deux décennies, il ne doit pas masquer les difficultés qui en découlent pour la mise en oeuvre du droit international humanitaire. D'une part du fait du fonctionnement du droit international pénal et de la justice pénale internationale: en particulier, ils peuvent décrédibiliser le droit international humanitaire, occulter d'autres modes de mise en oeuvre tout aussi importants et efficaces, donner l'impression que tout ce qui n'est pas criminalisé est licite et accentuer la méfiance à l'égard de tout mécanisme d'établissement des faits. D'autre part, du fait d'interprétation spécifiques reflétées par quatre exemples: l'introduction du caractère prolongé du conflit comme élément de définition du conflit armé non international, l'émergence de règles irréalistes lorsqu'il s'agit de les opposer à ceux qui combattent, l'apparition de la notion d'allégeance dans la définition des personnes protégées et la conception extensive de la notion d'entreprise criminelle commune.

LIMITS OF THE RIGHTS OF EXPROPRIATION (REQUISITION) AND OF MOVEMENT RESTRICTIONS IN OCCUPIED TERRITORY : EXPERT OPINION

submitted by Michael Bothe. - Frankfurt/Main : [s.n.], 2012. - 8 p.

Can the expropriation and/or movement restrictions relating to an area of land in occupied territory for the purpose of operating a military training zone be justified under international law? Does the protection provided by the rules referred to in the first question depend on the persons affected being permanent

residents in the area, in particular in cases of forcible evictions or destruction of their property located in the area? In order to give an answer to these questions, a short overview of the rights and duties of an occupying power will first be given. These rules will then be applied to the situation of the Fire Zone 918, particularly in the light of the State's reply dated 19 July 2012 to petitions submitted to the Israeli Supreme Court in IHCJ 517/00 and IHCJ 1199/00.1

LIVING IN THE "NEW NORMAL" : MODERN WAR, NON-STATE ACTORS, AND THE FUTURE OF LAW

Christopher A. Ford. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 229-304

In many regards, the advent of modern irregular conflict - especially in its specifically counterterrorist (CT) incarnation - has indeed led to some growth in the power in the Executive Branch. But this has not occurred willy-nilly, or without attendant dynamics of bargained adjustment. Indeed, rather than being a process that could be likened to the swing of a pendulum back and forth between extremes, the intra-governmental dynamics of CT war and legality in the United States have looked more like a process of punctuated evolution. Expedient single-branch executive responses to crisis have been to some extent adjusted as the courts and Congress have stepped in - and as successive presidents have taken office - but there has been much more ratification than retrenchements in these respects, and more continuity than change in CT policy since the first phase of the U.S. response after 9/11.

LOUDER THAN WORDS : AN AGENDA FOR ACTION TO END STATE USE OF CHILD SOLDIERS : REPORT PUBLISHED TO MARK THE TENTH ANNIVERSARY YEAR OF ENTRY INTO FORCE OF THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Child Soldiers International. - London : Child Soldiers International, 2012. - 160 p.

This report examines the record of states in protecting children from use in hostilities by their own forces and by state-allied armed groups. It finds that, while governments' commitment to ending child soldier use is high, the gap between commitment and practice remains wide. Research for the report shows that child soldiers have been used in armed conflicts by 20 states since 2010, and that children are at risk of military use in many more. The report argues that ending child soldier use by states is within reach but that achieving it requires improved analysis of "risk factors", and greater investment in reducing these risks, before the military use of girls and boys becomes a fact. Real prevention means tackling risk where it begins – with the recruitment of under-18s. A global ban on the military recruitment of any person below the age of 18 years – long overdue – must be at the heart of prevention strategies, but to be meaningful it must be backed by enforcement measures that are applied to national armies and armed groups supported by states. The report contains detailed analysis of the laws, policies and practices of over 100 "conflict" and "non-conflict" states providing examples of good practice and showing where flaws in protection put children at risk. It also shows how states can do more to end child soldier use globally via policies and practices on arms transfers and military assistance, and in the design of security sector reform programs. On the basis of this analysis a "10-Point Checklist" is included to assist states and other stakeholders in assessing risk and identifying the legal and practical measures needed to end child soldier use by government forces and state-allied armed groups.

MARGIN OF ERROR : POTENTIAL PITFALLS OF THE RULING IN THE PROSECUTOR V. ANTE GOTOVINA

Walter B. Huffman. In: Military law review Vol. 211, spring 2012, p. 1-56

On April 15, 2011, the International Criminal Tribunal for the Former Yugoslavia (ICTY) sentenced Croatian General Ante Gotovina to twenty-four years in prison on charges stemming from his actions during Operation Storm, the 1995 Croatian military campaign to reclaim territory from the self-proclaimed Republic of Serbian Krajina (RSK). While General Gotovina was formally charged with participating in a joint criminal enterprise to drive ethnic Serbs out of the Krajina region, the case against him was based largely on allegations that he ordered unlawful artillery and rocket attacks on four towns during conventional combat operations against RSK Serbian forces. Because very few judicial opinions apply the law of war to tactical artillery operations, the Trial Chamber's judgement raises issues of significant legal and operational importance and will command the attention of scholars, courts, and military professionals worldwide. This article critically examines the court's reasoning and concludes that in the interests of justice, the coherent development of international humanitarian law, and the protection of innocent civilians in future wars, the Gotovina judgement should be set aside.

MEASURE TWICE, SHOOT ONCE : HIGHER CARE FOR CIA-TARGETED KILLING

Afsheen John Radsan, Richard Murphy. In: University of Illinois law review Vol. 2011, no. 4, p. 1201-1241

To rein in the killer drones, this Article looks to foundational IHL principles to develop limits on the CIA's campaign in Pakistan and on the possible extension of that campaign to other countries outside the United States. In particular, this Article argues that IHL's requirements of distinction and military necessity generally require the CIA to achieve a very high level of certainty that a targeted person is a legitimate object of attack before carrying out a drone strike. To capture this level of certainty, one might borrow the

"beyond reasonable doubt" standard from the criminal law, the "clear and convincing" standard from civil law, or create some new phrase. Also, to honor the principle of precaution, the CIA's Inspector General must review every CIA drone strike, including the agency's compliance with a checklist of standards and procedures for the drone program. The results of these reviews should be made as public as consonant with national security. These controls are, in the language of IHL, "feasible precautions" for the remote-control weapons of the new century.

LES MENACES CONTRE LA PAIX ET LA SÉCURITÉ INTERNATIONALES : ASPECTS ACTUELS

Hélène Hamant... [et al.]. - [Paris] : Institut de recherche en droit international et européen de la Sorbonne, [2010]. - 224 p.

Cet ouvrage collectif est le fruit du travail d'un groupe de chercheurs rassemblés au sein du projet MARS (Nouvelles menaces contre la paix : actions, règles et sécurité internationales), 2007-2010.

MILITARY OPERATIONS, BATTLEFIELD REALITY AND THE JUDGMENT'S IMPACT ON EFFECTIVE IMPLEMENTATION AND ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW

[Laurie R. Blank]. - [Atlanta] : International Humanitarian Law Clinic at Emory University School of Law, 2012. - 17 p.

On November 4, 2011, the International Humanitarian Law Clinic at Emory Law School convened a group of military operational law experts to analyze the broader legal issues in and implications of the recent judgment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the case of Prosecutor v. Gotovina, which focused on Operation Storm, the Croatian operation to re-take the Kraijina region in the summer of 1995.The report sets forth the experts' consensus views and concerns regarding the application of the law in the judgment, highlighting four key areas: the imposition of what amounts to a strict liability standard imposed on commanders who attack lawful military objectives in populated areas; the flawed application of the principle of proportionality; the failure to consider or apply Article 58(b) of Additional Protocol I and its obligations for defending parties to take precautions; and the failure to properly recognize and rest the legal analysis on the operational complexity inherent in the targeting process. The report also emphasizes a range of institutional concerns and second order effects resulting from the judgment: the effect on future military operations; the consequences for the respect for and development of international law; and specific overarching concerns regarding the role of the commander and the role of legal advisers during military operations.

MINI EXPLORING HUMANITARIAN LAW : THE ESSENCE OF HUMANITARIAN LAW

ICRC. - Geneva : ICRC, June 2012. - 42 p.

This resource kit introduces young people to the principles and basic rules of international humanitarian law (IHL). It provides 5 x 45 minutes of sequential learning activities designed for both formal and non-formal education settings for young people and other interested groups. It can be used in the framework of a half-day workshop or over the course of five individual sessions. Mini EHL was developed by the ICRC on the basis of the Exploring Humanitarian Law (EHL) education programme and includes new exercises and source materials. The learning materials are based on real-life situations and show how IHL aims to protect life and human dignity during armed conflict and to prevent and reduce the suffering and the devastation caused by war. By studying the behaviour of actual persons and the dilemma they experience, young people develop a new perspective and begin to understand the need for rules during war as well as the complexity of their application.

MINI EXPLORONS LE DROIT HUMANITAIRE : L'ESSENTIEL DU DROIT HUMANITAIRE

CICR. - Genève : CICR, juin 2012. - 42 p.

Ce nouveau dossier pédagogique vise à sensibiliser le jeune public aux principes et aux règles essentielles du droit international humanitaire (DIH). Il consiste en cinq activités pédagogiques séquentielles, chacune d'une durée de 45 minutes, qui peuvent être utilisées dans un cadre scolaire ou non scolaire pour des jeunes ou autres groupes intéressés. Ces activités peuvent être regroupées en un atelier d'une demi-journée ou réparties en cinq sessions distinctes. Le Mini-EDH a été élaboré par le CICR sur la base du programme pédagogique Explorons le droit humanitaire (EDH). Il contient de nouveaux exercices et de nouvelles sources. Le contenu pédagogique s'inspire de situations réelles et montre en quoi le DIH vise à protéger la vie et la dignité humaine lors de conflits armés, ainsi qu'à prévenir ou atténuer les souffrances et les ravages causés par la guerre. En étudiant le comportement de personnes réelles et les situations auxquelles elles sont confrontées, les jeunes voient peu à peu les choses sous un jour différent et commencent à comprendre la nécessité d'avoir des règles à appliquer en temps de guerre, mais aussi la complexité de leur mise en œuvre.

MODERN MEANS OF WARFARE : THE NEED TO RELY UPON INTERNATIONAL HUMANITARIAN LAW, DISARMAMENT, AND NON-PROLIFERATION LAW TO ACHIEVE A DECENT REGULATION OF WEAPONS

Natalino Ronzitti. - In: Realizing utopia : the future of international law. - Oxford : Oxford University Press, 2012. - p. 553-570

The problem with traditional criteria for restricting the use of certain weapons is that they are unclear and thus unable to set a prohibition, or that they are obsolete, since they regulate weapons no more in use or of no specific military value. At present disarmament and international humanitarian law (IHL) employ two different techniques for regulating weapons. While disarmament prohibits the build-up and stock-piling of weapons, IHL regulates their use. A topical issue is that of the use of drones. They should be operated in conformity with rules of IHL and kept under control. With regard to possible future changes, it must be said that IHL is not the only way to achieve decent regulations of weapons. Arms control, non-proliferation, and disarmament intruments should be used to achieve a more suitable result. The choice of instruments available is also important. The indeterminacy and lacunae of customary international law makes it ill-suited for disarmament. Treaties are necessary for IHL, that is, for prohibiting the use of specific weapons. However, one should also rely on soft law for managing non-proliferation regimes and even arms control.

MODERN WARFARE : ARMED GROUPS, PRIVATE MILITARIES, HUMANITARIAN ORGANIZATIONS, AND THE LAW

ed. by Benjamin Perrin. - Vancouver : UBC Press, 2012. - 395 p.

The face of modern warfare is changing as more and more humanitarian organizations, private military companies, and non-state groups enter complex security environments such as Iraq, Afghanistan, and Haiti. Although this shift has been overshadowed by the legal issues connected to the War on Terror and intervention in countries such as Rwanda and Sudan, it has caused some to question the relevance of the laws of war. To bridge the widening gap between the theory and practice of the law, Modern Warfare brings together both scholars and practitioners who offer unique, and often divergent, perspectives on four key challenges to the law's legitimacy: how to ensure compliance among non-state armed groups; the proliferation of private military and security companies and their use by humanitarian organizations; tensions between the idea of humanitarian space and counterinsurgency doctrines; and the phenomenon of urban violence. The contributors do not simply consider settled legal standards -- they widen the scope to include first principles, related bodies of law, humanitarian policy, and the latest studies on the prevention and mitigation of violence.

MOHAMMED JAWAD AND THE MILITARY COMMISSIONS OF GUANTÁNAMO

David J.R. Frakt. In: Duke law journal Vol. 60, issue 6, 2011, p. 1367-1411

The military commission of U.S. v. Mohammed Jawad, (in which the author served as lead defense counsel) perhaps more clearly than any other case demonstrated that the government was relying on its ability to use coerced evidence to earn convictions, even for invented war crimes. In this notorious case, which the New York Times called “emblematic of everything that is wrong with Guantanamo Bay” the prosecution repeatedly took extreme and unsupportable positions in litigation before the commission in an effort to preserve its ability to use coerced evidence and to convict detainees for non-existent war crimes. Even with all the advantages afforded to the government by the MCA and MMC, the prosecution was unable to make its case against Mr. Jawad and was ultimately forced to dismiss the charges and release him when a federal judge granted his petition for a writ of habeas corpus. Through the story of Mohammed Jawad and the disintegration of the case against him we can see the larger narrative of the abject failure of the military commissions of the Bush Administration.

MONITORING ARMED NON-STATE ACTOR COMPLIANCE WITH HUMANITARIAN NORMS : A LOOK AT INTERNATIONAL MECHANISMS AND THE GENEVA CALL DEED OF COMMITMENT

Pascal Bongard and Jonathan Somer. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 673-706

Armed non-state actors are involved in most armed conflicts today, yet international law provides few mechanisms to ensure that they comply with humanitarian norms applicable to them. In particular, monitoring and verification mechanisms that address the conduct of armed non-state actors rarely appear in multilateral treaties, and, even when they do, are weak and not applied in practice. Over the past few years, a number of alternative mechanisms have been developed to better monitor respect of humanitarian norms during internal armed conflicts and verify allegations of violations. This article examines the strength of these various mechanisms and then focuses on the Deed of Commitment, an innovative instrument developed by the Swiss-based non-governmental organization Geneva Call, to hold armed non-state actors accountable. Experience with the Deed of Commitment on the prohibition of anti-personnel mines shows that these alternative mechanisms can be effective in ensuring better compliance with at least some humanitarian norms.

THE MONTREUX DOCUMENT ON PRIVATE MILITARY AND SECURITY COMPANIES : PROCEEDINGS OF THE REGIONAL WORKSHOP FOR LATIN AMERICA : SANTIAGO, CHILE, 12-13 MAY 2011 = EL DOCUMENTO DE MONTREUX SOBRE LAS EMPRESAS MILITARES Y DE SEGURIDAD PRIVADAS : ACTAS DEL SEMINARIO REGIONAL PARA AMÉRICA LATINA : SANTIAGO, CHILE, 12 Y 13 DE MAYO DE 2011

Geneva Centre for the Democratic Control of Armed Forces. - Geneva : DCAF, 2012. - 57, 26, 58, 30 p.

The workshop was held to discuss the "Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict" and its relevance for the Latin American region.

THE MONTREUX DOCUMENT ON PRIVATE MILITARY AND SECURITY COMPANIES : PROCEEDINGS OF THE REGIONAL WORKSHOP FOR NORTH EAST AND CENTRAL ASIA : ULAANBAATAR, MONGOLIA, 12-13 OCTOBER, 2011

Geneva Centre for the Democratic Control of Armed Forces. - Geneva : DCAF, 2012. - 62, [26], 78, [34] p.

The workshop was held to discuss the "Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict" and its relevance for the North East and Central Asia region.

THE MOTTLED LEGACY OF 9/11 : A FEW REFLECTIONS ON THE EVOLUTION OF THE INTERNATIONAL LAW OF ARMED CONFLICT

Charles J. Dunlap. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 431-442

This essay contends that while the increasing influence of law on armed conflict since 9/11 generally operates to diminish the human suffering that warfare traditionally occasions, there are nevertheless some disturbing trends that deserve considered attention. Among the concerns are misplaced actions that encourage behaviors that may, over time, prove profoundly inimical to the fundamental purposes of International law of armed conflict (ILOAC). In particular, this article contends that ILOACs efforts to grapple with the challenge of non-state actors engaged in armed conflict and terroristic acts is too often having the perverse effect of seeming to reward noncompliance with ILOAC, and thus—paradoxically—incentivizing further violations of the law. All the same, this article will also point out positive evolutions such as the increasing importance of military lawyers, and their growing ability to influence military operations. Finally, the essay will offer some predictions as to the direction of the law in the next decade and beyond.

THE MOVE TO SUBSTANTIVE EQUALITY IN INTERNATIONAL HUMANITARIAN LAW : A REJOINDER TO MARCO SASSÒLI AND YUVAL SHANY

René Provost. In: International review of the Red Cross Vol. 93, no. 882, June 2011, p. 437-442

For this first debate, the Review asked two members of its Editorial Board, Professor Marco Sassòli and Professor Yuval Shany, to debate on the topic of equality of states and armed groups under international humanitarian law. Professor René Provost comments on this debate, adding a third dimension to the discussion. The crucial question is whether it is realistic to apply the current legal regime to non-state armed groups. How can armed groups, with sometimes very limited means and low levels of organization, meet the same obligations as states? What are the incentives for armed groups to respect rules that their opponents have enacted? Why should they respect any rules when the very fact of taking arms against the state already makes them 'outlaws'?. - Contient : Introducing a sliding-scale of obligations to address the fundamental inequality between armed groups and states ? / M. Sassòli. - A rebuttal to Marco Sassòli / Y. Shany.

MULTILEVEL REGULATION OF MILITARY AND SECURITY CONTRACTORS : THE INTERPLAY BETWEEN INTERNATIONAL, EUROPEAN AND DOMESTIC NORMS

ed. by Christine Bakker and Mirko Sossai. - Oxford ; Portland : Hart, 2012. - 625 p.

The outsourcing of military and security services is the object of intense legal debate. States employ private military and security companies (PMSCs) to perform functions previously exercised by regular armed forces, and increasingly international organisations, NGOs and business corporations do the same to provide security, particularly in crisis situations. Much of the public attention on PMSCs has been in response to incidents in which PMSC employees have been accused of violating international humanitarian law. Therefore initiatives have been launched to introduce uniform international standards amidst what is currently very uneven national regulation. This book analyses and discusses the interplay between international, European, and domestic regulatory measures in the field of PMSCs. It presents a comprehensive assessment of the existing domestic legislation in EU Member States and relevant Third States, and identifies implications for future international regulation. The book also addresses the crucial questions whether and how the EU can potentially play a more active future role in the regulation of PMSCs to ensure compliance with human rights and international humanitarian law.

NECESSITY, PROPORTIONALITY, AND DISTINCTION IN NONTRADITIONAL CONFLICTS : THE UNFORTUNATE CASE STUDY OF THE GOLDSTONE REPORT

Elizabeth Samson. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 195-213

This chapter highlights the challenges of applying the international humanitarian law principles of military necessity, proportionality, and distinction to nontraditional armed conflicts, exploring these issues through an examination of the Report of the United Nations Fact-Finding Mission on the Gaza Conflict, also known as the "Goldstone Report".

NEW BATTLEFIELDS, OLD LAWS : CRITICAL DEBATES ON ASYMMETRIC WARFARE

edited by William C. Banks. - New York : Columbia University Press, 2011. - 308 p.

Recognizing that many of today's conflicts are low-intensity, asymmetrical wars fought between disparate military forces, William C. Banks's collection debates nonstate armed groups and irregular forces (such as terrorist and insurgent groups, paramilitaries, child soldiers, civilians participating in hostilities, and private military firms) and their challenge to international humanitarian law. Banks and others believe gaps in the laws of war leave modern battlefields largely unregulated, and governing parties suffer without guidelines for responding to terrorism, transnational armed forces, and asymmetrical tactics, such as the targeting of civilians. These gaps also embolden weaker, nonstate combatants to exploit forbidden strategies and violate the laws of war. Attuned to the contested nature of post-9/11 security and policy, this collection juxtaposes diverse perspectives on existing laws and their application in contemporary conflict. They set forth a legal definition of new wars, describe the status of new actors, chart the evolution of the twenty-first-century battlefield, and balance humanitarian priorities with military necessity. Though they contest each other, these contributors ultimately reestablish the legitimacy of a long-standing legal corpus and rehumanize an environment in which the most vulnerable targets, civilian populations, are themselves becoming weapons against conventional power.

THE NEW CYBER FACE OF BATTLE : DEVELOPING A LEGAL APPROACH TO ACCOMODATE EMERGING TRENDS IN WARFARE

Stephenie Gosnell Handler. In: Stanford journal of international law Vol. 48, no. 1, 2012, p. 209-237

This Note addresses an emerging form of cyberspace operations, and adapts existing threshold approaches to this new type of warfare first executed during the Russian-Georgian War of 2008 : the use of non-kinetic cyberattacks to facilitate kinetic effects and the use of non-kinetic effects as a substitute for conventional operations. This Note is divided into four parts. The first part provides a basic introduction to the terminology used in this note and a brief discussion of the legal paradigms that may apply to cyberspace operations. Part II continues with a proposal to consider cyberspace operations as an armed attack when non-kinetic cyberattacks are used in connection with other conventional weapons to achieve kinetic effects or to supplant the need for kinetic effects. This proposal is significant because it will impact the legal response a state can take in an armed conflict. Part II also introduces two case studies in which cyberspace operations were used in connection with conventional military attacks. The first is the 2007 Israeli raid on the suspected Syrian nuclear reactor; the second is the Russian-Georgian War of 2008. Part III discusses the different tests that have been proposed to determine when a cyberspace operation meets the threshold to be declared an armed attack. After reviewing existing literature, a proposal is made to adopt a modified effects-based approach to better address the unique nature of cyberattacks and their interaction with conventional arms to achieve kinetic outcomes. Part IV provides concluding thoughts and discusses what future steps should be taken with regards to developing a legal framework that is better-suited to the distinct challenges of cyberattacks.

"NEW RULES FOR NEW WARS" : INTERNATIONAL LAW AND JUST WAR DOCTRINE FOR IRREGULAR WAR

George R. Lucas. In: Case western reserve journal of international law Vol. 43, no. 3, 2011, p. 677-705

This article traces the increasing pressures exerted upon international law and international institutions from two sources: the humanitarian military interventions (and failures to intervene) in the aftermath of the Cold War during the decade of the 1990s; and the “global war on terror” and wars of counterinsurgency and regime change fought during the first decade of the 21st century. Proposals for legal and institutional reform in response to these challenges emerge from two distinct and largely independent sources: a “publicist” or theoretical discussion among scholars in philosophy, law, and international relations; and a formal or procedural discussion among diplomats and statesmen, both focusing upon what the latter group defines as a “responsibility to protect”. This study concludes with recommendations for reform of international humanitarian law (or Law of Armed Conflict), and for reformulations of professional ethics and professional military education in allied militaries, both of which will be required to fully address the new challenges of “irregular” or hybrid war.

A NEW TWIST ON AN OLD STORY : LAWFARE AND THE MIXING OF PROPORTIONALITIES

Laurie R. Blank. In: Case western reserve journal of international law Vol. 43, no. 3, 2011, p. 707-738

The claim that a just cause erases any wrongs committed in war is an old story, just like the opposite claim that an unjust cause renders all acts unlawful. International law has traditionally reinforced a strict separation between jus ad bellum - the law governing the resort to force - and jus in bello - the law governing the conduct of hostilities and protection of persons during conflict. Nonetheless, we see today a new twist on this old story that threatens the separation between jus ad bellum and jus in bello from the opposite perspective. In essence, there is an ever-louder claim that excessive civilian deaths under jus in bello proportionality render an entire military operation unjust under jus ad bellum. Protection of civilians is a central purpose of international humanitarian law (IHL) and media coverage of conflict and civilian deaths is critical to efforts to minimize human suffering during war. However, insurgent groups and terrorists exploit this greater focus on civilian casualties to their own advantage through tactics often termed "lawfare," such as human shields, perfidy, and other unlawful tactics. Not only do they seek greater protection for their fighters, but they also use the resulting civilian casualties as a tool of war. This article analyzes the growing use of alleged violations of jus in bello proportionality to make claims of disproportionate force under jus ad bellum. In doing so, it highlights the strategic and operational ramifications for combat operations and the impact on investigations and analyses of IHL compliance and accountability. Ultimately, this new twist on an old story has significant consequences for the application of IHL, for decisions to use force, and for the implementation of strategic, operational, and tactical goals during conflict. Most of all, it places civilians in increasing danger because it encourages tactics and strategies that directly harm them.

NONSTATE ACTORS IN ARMED CONFLICTS : ISSUES OF DISTINCTION AND RECIPROCITY

Daphné Richemond-Barak. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 106-129

This chapter follows an unconventional approach to reading the Geneva Conventions and their Protocols, by drawing on an expanded body of sources to inform our understanding of the principle of distinction. The chapter reviews the historical evolution of the principle, how it became so fundamental to the laws of war, and how the concept of "combatant" evolved over time from an activity-based to a membership-based designation. The substance of the law, as stated in the Geneva Conventions, is then examined. On the issue of reciprocity, this chapter argues that the involvement of nonstate actors in warfare does not, in and of itself, affect the applicability of the laws of war.

NORTHERN IRELAND 1968-1998

Steven Haines. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 117-145

The first section of this chapter gives a general description of the events that unfolded between 1968 and 1998 and starts with a brief description of the 'rival forces', both government and non-state actors, before moving on to provide a summary of the principal phases of the conflict. Following this essential background, it asks whether there was at any time an armed conflict in the Province and it discusses how this should be categorized if there was. It then addresses in turn the application of force and detention. Finally, it deals with whether or not the existing rules of international humanitarian law are problematic and what consequences might have resulted from a difference in the way the conflict was categorized.

NOT ALL CIVILIANS ARE CREATED EQUAL : THE PRINCIPLE OF DISTINCTION, THE QUESTION OF DIRECT PARTICIPATION IN HOSTILITIES AND EVOLVING RESTRAINTS ON THE USE OF FORCE IN WARFARE

Trevor A. Keck. In: Military law review Vol. 211, spring 2012, p. 115-178

This article is divided into three parts. First, it reviews the legal obligation to distinguish between combatants and noncombatants in war, the historical evolution of this principle, and the challenge state militaries face in observing this norm in asymmetric conflicts. The second section analyses criteria developed by the International Committee of the Red Cross (ICRC) for distinguishing between combatants, civilians participating in hostilities and civilians protected against direct attack. Such criteria were developed for and published in the ICRC's 2009 report entitled "Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law." The final section analyses restraints on the use of force during asymmetric conflicts between sophisticated state militaries and poorly trained and equipped non-state actors. In doing so, this article will demonstrate the logic of more restrictive restraints on lethal force during irregular warfare. In particular, this article contends that international human rights law should control lethal force during occupations or non-international armed conflicts where a party controls significant territory. Such a change would require that security forces exhaust non-lethal measures before resorting to deadly force, which could result in fewer noncombatant casualties at little additional risk to security forces.

NOTION DE PARTICIPATION DIRECTE AUX HOSTILITÉS : INTERPRÉTATION DU COMITÉ INTERNATIONAL DE LA CROIX-ROUGE

par Stéphane Ojeda. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 247-257

Cette contribution se propose de présenter brièvement les principaux éléments de l'interprétation du CICR de la notion complexe de participation directe aux hostilités, pour ensuite en approfondir un aspect particulier, celui de la fonction de combat continue en conflit armé non international, une des nouveautés majeures du Guide interprétatif suscitant chez certains experts quelques réactions auxquelles ce chapitre amène quelques éléments de réponse.

OBEYING RESTRAINTS : APPLYING THE PLEA OF SUPERIOR ORDERS TO MILITARY DEFENDANTS BEFORE THE INTERNATIONAL CRIMINAL COURT

Christopher K. Penny. In: Canadian yearbook of international law = Annuaire canadien de droit international Vol. 48, 2010, p. 3-38

This article addresses the content and ramifications of the unique plea of superior orders, illustrating the complexities of absolving wartime behaviour on this basis as well as the legitimate rationale for doing so in certain cases. The article discusses the general legal obligations for soldiers to obey commands ; outlines the historical development and legal content of the corresponding plea of superior orders ; and assesses the potential future application by the International Criminal Court of this specialized "mistake of law" doctrine. The author argues that in light of its moral and practical ramifications it should be considered by the court as both a full defence and a factor in mitigation of sentence, in a manner conceptually distinct from duress. However, the author cautions that the ICC must be careful to encourage, rather than discourage, individual moral autonomy, to the extent possible. A full defence should remain open to soldiers only when they have acted under a reasonable albeit mistaken belief in the legality of their orders. Especially on the modern battlefield, soldiers must continue to act and be judged as "reasoning agents" and not as mere automatons.

THE OBJECTIVE QUALIFICATION OF NON-INTERNATIONAL ARMED CONFLICTS : A COLOMBIAN CASE STUDY

Guillermo Otálora Lozano and Sebastián Machado. In: Amsterdam Law Forum Vol. 4, no. 1, Winter 2012, p. 58-77

Armed conflict has raged in Colombia since at least the 1960s, involving governmental forces, rebel groups and paramilitary forces. The government of Álvaro Uribe (2002-2010) declared that Colombia was not in a ‘state of armed conflict’ but was rather facing a ‘terrorist threat.’ This declaration was done in fear of conferring a political status to the armed groups and, most particularly, in fear that a recognition of armed conflict would open the possibility of endowing the Revolutionary Armed Forces of Colombia (FARC) with ‘belligerency status’. From a legal point of view, the government’s fears were unfounded, since contemporary international humanitarian law does not require formal recognition for a situation to qualify as armed conflict. During the Uribe administration, efforts were made by the Ministry of Defence to identify operational rules of engagement with precision, violations of international humanitarian law were publicly denounced and the apex courts adjudicated on issues of international humanitarian law. This seemingly paradoxical situation illustrates the importance of the objective definition of armed conflict, which has been an essential characteristic of international humanitarian law since 1949.

OCCUPATION AND OTHER FORMS OF ADMINISTRATION OF FOREIGN TERRITORY : EXPERT MEETING : REPORT

prepared and ed. by Tristan Ferraro. - Geneva : ICRC, April 2012. - 147 p.

This report, a major outcome of the ICRC project on occupation and other forms of administration of foreign territory, aims only to document the debates that took place during three meetings of experts. This document is divided in two parts. The first part summarizes the main results of the discussions among experts. The second part consists of a more detailed report by the ICRC of the proceedings of the three meetings. It also includes the agenda of each meeting, the list of the participants, and some expert's written contributions.

OFFICIAL DOCUMENTS : DIPLOMATIC CONFERENCE ON THE ADOPTION OF A THIRD PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE ADOPTION OF AN ADDITONAL DISTINCTIVE EMBLEM (PROTOCOL III), 5-8 DECEMBER 2005, GENEVA, SWITZERLAND

Confédération Suisse, Federal Department of Foreign Affairs FDFA. - Bern : Federal Department of Foreign Affairs, 2012. - 132 p.

Include: Draft of the Protocol Additional to the Geneva Conventions of 12 August 1948, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III). - Final Act and Annexes. - Introductory Speeches. - Record of the Plenary Sessions of the Diplomatic Conference. - Amendments submitted by Pakistan and Yemen which were proposed by the States of the Organisation of the Islamic Conference. -

Result of the vote for the adoption of the Third Additional Protocol. - Detailed list of delegates and participants in the Conference

AN OLD DEBATE REVISITED : APPLICABILITY OF ENVIRONMENTAL TREATIES IN TIMES OF INTERNATIONAL ARMED CONFLICT PURSUANT TO THE INTERNATIONAL LAW COMMISSION'S "DRAFT ARTICLES ON THE EFFECTS OF ARMED CONFLICT ON TREATIES"

Adrian Loets. In: Review of European Community and international environmental law Vol. 21, no. 2, 2012, p. 127-136

The law of war relating to the protection of the environment is ineffective and fragmented. This article argues that the application of international environmental law during such times could significantly reduce the environmental toll of armed conflict. The applicability of peacetime agreements between belligerent States has remained controversial for decades. In November 2011, the United Nations General Assembly's Legal Committee adopted the International Law Commission's "Draft Articles on the effects of armed conflict on treaties". These contain a presumption of continuation for a number of subject matters, including environmental law. The contribution analyzes the systematic structure of the ILC Draft Articles in relation to the prevailing case law, State practice and doctrine and provides an interpretation. In a second step, subject matters containing an environmental notion are presented and discussed. It is concluded that although the Draft Articles represent an important milestone, further regulation of wartime environmental damage is needed.

OPERATION UNIFIED PROTECTOR AND THE PROTECTION OF CIVILIANS IN LIBYA

Chris De Cock. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 213-235

This paper focuses on the following issues: the mandate of the Security Council and its implication for the use of force under the jus ad bellum and current challenges in targeting under the jus in bello. Under the jus ad bellum and in accordance with the Charter, the Council shall determine that a threat to international peace and security exists. Only then can the Council decide to take coercive measures to restore international peace and security. This raises three questions. Firstly, what where the factual circumstances giving rise to a determination by the Council that such a threat existed? Only then could the Security Council impose decisions (or recommendations) to cope with the situations. Interestingly, no direct reference to a threat to international peace and security can be identified in UNSCR 1970. Secondly, how did UNSCR 1973 affect the applicable jus in bello? Did the Council restrict the use of force to the protection of the civilian population and the enforcement of the No Fly Zone and the arms embargo? Thirdly, did the hostilities amount to an armed conflict triggering the applicability of the law of armed conflict? In the second part, some targeting issues are covered briefly, more particularly the validity of military targets, such as the Tripoli broadcasting facility, mercenary staging points, and police stations as legitimate military objectives. The complexity of the decision making process, especially in the context of deliberate targeting and the neccesity to adapt the targeting process in view of the rapidly changing situation on the ground will be assessed.

OPTING OUT OF THE LAW OF WAR : COMMENTS ON WITHDRAWING FROM INTERNATIONAL CUSTOM

David Luban. In: The Yale law journal online Vol. 120, 2010, p. 151-167

This paper is a response to Curtis A. Bradley & Mitu Gulati, Withdrawing from International Custom, Yale Law Journal, Vol. 120 p. 202 (2010), which argues against the Mandatory View (according to which states are bound by customary international law with no possibility of opting out), and in favor of a Default View, which permits states to opt out of international custom unilaterally. The response offers the following arguments: (1) Currently, the most significant contested issue about customary international law in U.S. discourse concerns the laws of war - a topic that Bradley and Gulati treat only briefly and incidentally. Their proposal would make it possible for the United States to withdraw unilaterally from customary law-of-war limitations. (2) Part of Bradley and Gulati's case for the Default View is that it actually represents the historical norm until the twentieth century. Luban argues that their sources don't adequately support this claim. Their main source, Vattel, thought that states can opt out only of a customary rule that is indifferent in itself - a category that excludes many important rules of customary international law, including the jus in bello rules of the law of war. He discusses other sources as well. (3) Bradley and Gulati believe that the Mandatory View was a colonialist invention to lock new nations into old rules, but the history they cite does not support this diagnosis. (4) Turning from history to policy, permitting states to opt out of the law of war would likely have immediate dangerous effects on the ground as the U.S. military rewrites its manuals and retrains officers and troops to respond to changes in law. The result of a U.S. opt-out is more likely to be an unraveling of the law of war than a helpful revision leading to better rules.

LES ORGANES DE CONTRÔLE DU DROIT INTERNATIONAL DES DROITS DE L'HOMME ET LE DROIT INTERNATIONAL HUMANITAIRE

par Sébastien Marmin. In: Revue trimestrielle des droits de l'homme Vol. 23, no 92, octobre 2012, p. 815-836

Le droit international des droits de l'homme et le droit international humanitaire sont complémentaires. Pourtant, on peut se demander si les organes de contrôle du premier ne pourraient pas assurer la supervision du second. Aussi louable que soit cette perspective, elle semble "a priori" devoir être écartée. Il ne faut toutefois pas exclure toute possibilité d'un contrôle indirect du respect des règles humanitaires par ces organes.

THE PALMER REPORT AND THE LEGALITY OF ISRAEL'S NAVAL BLOCKADE OF GAZA

Russel Buchan. In: International and comparative law quarterly Vol. 61, part 1, January 2012, p.264-273

On 3 January 2009 Israel deployed a naval blockade against Gaza in order to prevent materials entering or leaving Gaza that could be used by Hamas in its ongoing armed conflict with Israel. With the humanitarian crisis in Gaza worsening, on 31 May 2010 a flotilla of vessels carrying humanitarian aid expressed its intention to violate the naval blockade and deliver the aid to Gaza. Before violating the blockade and whilst still on the high seas, Israel sought to enforce its blockade and capture the vessels. This occurred largely without incident except in relation to the Mavi Marmara, which resisted capture by the Israeli Special Forces and continued to sail in the direction of Gaza. As Israel Special Forces boarded the Mavi violence ensued, with nine crew members of the Mavi being killed and dozens of others injured. Israel eventually assumed control of the ship and the crew members were detained and the vessel and its cargo confiscated. Whether or not Israel's interdiction of the Mavi was permissible under international law has caused considerable controversy. Indeed, three high profile reports have been published examining the legality of the incident. Most recently, in September 2011 the Palmer Report was published (named after the Chair of the four members Panel, Sir Geoffrey Palmer). All in all, the Panel finds that Israel's blockade of Gaza was lawful. However, the Panel also concludes that the enforcement of the blockade against the Mavi on 31 May 2010 was unlawful and that Israel's treatment of the crew members whilst they were detained was in violation of international human rights law. In this commentary the author will assess the accuracy of the Panel's interpretation and application of the international law of naval blockade to Israel's blockade of Gaza.

PARTICIPATION OF ARMED GROUPS IN THE DEVELOPMENT OF THE LAW APPLICABLE TO ARMED CONFLICTS

Sophie Rondeau. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 649-672

The topic of participation of armed groups in the development of legal instruments binding them is particularly important and needs to be addressed urgently. Many scholars and organizations have advocated recently for the participation of armed groups in the development of legal instruments binding them, with a view to ensuring their adhesion to the law. However, practical and legal considerations seem to make this participation extremely difficult in practice. Creative solutions have to be found. After reviewing five main reasons why armed groups should be involved in the advancement of the law governing armed conflicts, this article offers a brief overview of selected means by which armed groups should be engaged in the creation of future norms, as well as in the interpretation and contextualization of existing norms.

LES PERSONNELS HUMANITAIRES

par Arnaud de Raulin. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 157-179

La problématique de la protection du personnel humanitaire trouve-t-elle une réponse efficace et adaptée à travers la législation et les textes existants? Sur le plan juridique, est-ce que le droit est un instrument pertinent et efficace pour protéger le personnel humanitaire? D'un point de vue logistique, est-ce que les conditions d'intervention des humanitaires sont encadrées et appuyées par des moyens de sécurité suffisants?

PERSPECTIVE AND THE IMPORTANCE OF HISTORY

W. Hays Parks. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 361-382

In the wake of the al Qaeda 9/11 attacks and ensuing Coalition military operations in Afghanistan, Iraq, and Yemen, government officials, military members, academicians, and international lawyers referred to the "changing character of war" while characterizing the conflicts as "asymmetric" warfare, as if this was the first time in which opposing armed forces with dissimilar capabilities, strategic goals, and tactical choices faced one another: that is, 9/11 was the first time the international community faced asymmetric threats of global acts of terror by armed non-State actors. History suggests otherwise as shown in this contribution. Ignorance of history leads to the argument that there has been a change in the character of war and may tempt military and civilian leaders to argue that the law of war does not apply, or cannot be

applied. This was seen in Bush Administration reactions to the 11 September 2001 al Qaeda attacks on New York and Washington. Its mistakes were numerous. International lawyers, and others, owe it to their belief in the rule of law to study and understand history in understanding the law and its application over the past decade.

POISON, GAS AND EXPANDING BULLETS : THE EXTENSION OF THE LIST OF PROHIBITED WEAPONS AT THE REVIEW CONFERENCE OF THE INTERNATIONAL CRIMINAL COURT IN KAMPALA

Robin Geiss. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 337-352

Responses to the recent extension of the list of prohibited weapons at the Review Conference of the International Criminal Court (ICC) in Kampala, Uganda have been rather mixed. Some have hailed the amendments to Article 8 of the Rome Statute as a milestone development. Others speak of a blatant manifestation of the Rome Statute's inability to deal with prohibited weapons in a meaningful and up-to-date manner. Certainly, the list of prohibited weapons has been extended in Kampala. But as constructed, does it adequately capture the realities of contemporary armed conflicts? In the pursuance of this question, in a first step, this contribution focuses on what actually happened in Kampala and why it had not already happened in Rome in 1998. In a second step, some light will be shed on what did not happen in Kampala. As is well known, initial proposals for the extension of the list of prohibited weapons had been far more extensive than the list that was ultimately adopted. Thirdly, in a final step this Comment concludes with an assessment of whether the Rome Statute's list of prohibited weapons in its amended form now better corresponds to the realities of contemporary armed conflicts.

POLITICS AND THE WORLD OF HUMANITARIAN AID

Wolf-Dieter Eberwein. - In: The Ashgate research companion to non-state actors. - Farnham ; Burlington : Ashgate, 2011. - p. 363-375

The term 'humanitarian action' is generally used to characterize all types of assistance to people in need: old people or orphans, poor people or victims of natural disasters and armed conflicts. A very precise and restrictive definition of concern in this chapter exists as well: life-saving activities in armed conflicts and war. This restricted definition refers to its specification in international humanitarian law (IHL). IHL does not include humanitarian action in natural disasters, which is regulated by national legislation even though for humanitarian actors the same principles apply as in the case of armed conflicts. IHL specifies the rights and obligations of the parties to armed conflicts. The basic documents are the four Geneva Conventions (1949) and the two Additional Protocols (1977). Whereas states are well defined, this is not the case for armed groups, and even less so for non-governmental humanitarian actors. Anybody may define themselves as humanitarian workers, any organization may call itself a humanitarian organization and every humanitarian organization may interpret differently the principles guiding their interventions in armed conflicts. This absence of well-defined and applied universal standards is a crucial issue given amounts spent on life-saving activities. This chapter will describe the evolution of the relevant legal framework defining the principles and norms, that is to say the theory, the practice and its evolution over time. In doing so it will indicate that theory and practice do not always come into line due to the changing role of humanitarian action as a recognized political issue area and the profound changes have occurred since the end of the Cold War. The review of the main elements of the present structure of the international humanitarian system and the adaptation processes that have been taking place will be discussed followed by an analysis of some of the core issues non-governmental humanitarian organizations are confronted with.

THE POLITICS OF CIVILIAN IDENTITY

Daniel Rothbart. - In: Civilians and modern war : armed conflict and the ideology of violence. - London ; New York : Routledge, 2012. - p. 115-129

In the arena of IHL civilian noncombatants are treated as war's innocents, and thus situated outside of the realm of military objectives. Yet, the principle of proportionality is so shallow in meaning that it fosters a dizzying array of incompatible interpretations and applications by field commanders. Because of its lack of clarity, excessive vagueness, and conceptual impoverishment regarding the meaning of proportionate killing, the principle allows for highly arbitrary judgments by military leaders, many of which prioritize the military mission, strategy, and tactics at the expense of humanitarian protections of civilians. Commanders often "fill in" the principle's content with their own, possibly idiosyncratic, understanding of proportionality that is linked to their sense of balance of competing moral commitments.

POST-WAR DEVELOPMENTS OF THE MARTENS CLAUSE : THE CODIFICATION OF "CRIMES AGAINST HUMANITY" APPLICABLE TO ACTS OF GENOCIDE

Michael Salter and Maggi Eastwood. In: Journal of international humanitarian legal studies Vol. 2, issue 2, 2011, p. 250-280

The Martens Clause continues to provide resources for a free-standing norm of customary law prohibiting acts of genocide that are free from many of the restrictions concerning, for example, protected groups

contained in the original 1948 Genocide Convention's definition. This article addresses post-war developments of the Martens Clause and the codification of crimes against humanity applicable to acts of genocide. It suggests an alternative way of examining how the idea of humanity originated from the Nuremberg and post-Nuremberg developments. We also explore the historical developments of the 1948 Genocide Convention, and its application within ad hoc tribunals that have adopted a narrow definition and application. Finally, we conclude that through an expansive and sympathetic judicial interpretation and legislative reception, the Martens Clause has operated as one of the key milestones along the path that culminated in the international criminalisation of genocide.

PREVENTIVE DETENTION IN THE LAW OF ARMED CONFLICT : THROWING AWAY THE KEY ?

Diane Webber. In: Journal of national security law and policy Vol. 6, no. 1, 2012, p. 167-205

More than ten years after 9/11, the “clear legal framework for handling alleged terrorists” promised by President Obama in 2009 is still undeveloped and “the country continues to hold suspects indefinitely, with no congressionally approved mechanism for regular judicial review.” Should terrorists be treated as criminals, involving traditional criminal law methods of detection, interrogation, arrest and trial? Or should they be treated as though they were involved in an armed conflict, which would involve detention and trial in accordance with a completely different set of rules and procedures? Neither model is a perfect fit to deal with twenty-first century terrorism. This paper reviews the framework to detain suspected terrorists preventively under the law of armed conflict together with the detention provisions of the NDAA of 2012. The paper concludes that the law relating to detention is still unclear, with many unanswered questions and the current law of armed conflict does not provide an adequate blueprint to deal with current and future detention challenges.

PREVENTIVE DETENTION OF INDIVIDUALS ENGAGED IN TRANSNATIONAL HOSTILITIES : DO WE NEED A FOURTH PROTOCOL ADDITIONAL TO THE 1949 GENEVA CONVENTIONS ?

Gregory Rose. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 45-63

This chapter argues that renewed development of international legal norms is necessary to address transnational armed conflict with nonstate entities, and it tentatively explores the generative role of national laws in developing the basis for new international law. The chapter provides a comparative analysis of laws in Australia, Israel and the United States, focusing on their legal processes for preventive detention relating to national security.

THE PRINCIPLE OF DISTINCTION AND CYBER WAR IN INTERNATIONAL ARMED CONFLICTS

Yoram Dinstein. In: Journal of conflict and security law Vol. 17, no. 2, Summer 2012, p. 261-277

Computer Network Attacks (CNAs) do not automatically come within the framework of the definition of ‘attack’ in conformity with the law of armed conflict (LOAC). Consequently, some so-called CNAs (especially, those used only as means of intelligence gathering) do not qualify as ‘attacks’ in the sense of LOAC. Only CNAs entailing ‘violence’ do. CNAs constituting ‘attacks’, in the LOAC sense, are governed by the same rules that apply to kinetic attacks. In particular, they are subject to the application of the cardinal principle of distinction between combatants/military objectives and civilians/civilian objects. Consequently, deliberate attacks against civilians/civilian objects are prohibited, and so are indiscriminate attacks. An important extrapolation of the principle of distinction is the principle of proportionality, whereby—when lawful targets are attacked—collateral damage to civilians/civilian objects must not be expected to be ‘excessive’ compared with the military advantage anticipated. This is a complex construct, applying to CNAs as much as to other attacks. Feasible precautions must be taken prior to any attack, including a CNA. When a civilian is engaged in any form in a CNA, the act constitutes direct participation in hostilities and the actor loses civilian protection from attack.

THE PRINCIPLE OF HUMANITY UNDER INTERNATIONAL HUMANITARIAN LAW IN THE "IS/OUGHT" DICHOTOMY

Yutaka Arai-Takahashi. In: Japanese yearbook of international law Vol. 54, 2011, p. 333-364

The paper starts with two main premises: first, that much more saliently than in other fields of international law, interpretation of International Humanitarian Law (IHL) rules is, through the overarching principle of humanity, contingent on different subjective values derived from the metaphysical world, the world beyond our concrete, verifiable, social sphere; second, that while the principle of humanity is often associated with "ought"-driven, deductive methodology, the principle of military necessity has a penchant for inductive reasoning based on rigorous empirical data and accuracy. The paper's analysis turns to the time-honoured philosophical theme on the dichotomy between the law as it is and the law as it ought to be to obtain guidelines for explaining how to flesh out the "posited moral" concept of humanity when construing IHL. In that process, the paper teases out schematically implications drawn from different strands of legal thought on the separation or unification of this division. After undertaking such theoretical inquiries, it suggests that Ronald Dworkin's theory on interpretation be applied to acquire analytical insight into the mechanism of distilling and feeding moral values into the normative framework of IHL.

THE PRINCIPLE OF PROPORTIONALITY : "FORCE PROTECTION" AS A MILITARY ADVANTAGE

Robin Geiss. In: Israel law review Vol. 45, no. 1, 2012, p. 71-89

"Force protection" is a primary concern of every military commander. Undoubtedly, it is an important and legitimate factor in the planning of every attack. However, when it comes to the humanitarian proportionality principle there is considerable controversy over the question to what extent "force protection" can be factored into the humanitarian proportionality calculus as a relevant military advantage to be weighed against expected civilian casualties, injuries and damage. This question is pursued in this article.

PRINCIPLE OF PROPORTIONALITY : THE CRITICIZED COMPROMISING FORMULA OF INTERNATIONAL HUMANITARIAN LAW

W.A.D.J. Sumanadasa. In: ISIL yearbook of international humanitarian and refugee law Vol. 10, 2010, p. 21-39

The principle of proportionality looms very large in the law of armed conflict as it works as the compromising formula which balances the two competing interests; namely, humanity and military necessity. This has become a conventional rule after the Geneva Conventions, while it has also been identified as a customary international law principles for years. Though the principle plays a vital role in IHL in reducing the calamities of warfare, there is another side to the same issue because that has been vividly criticized. In this context, the objective of this article is to identify the conceptual and conventional foundation of the principle of proportionality and its pratical application, specially relating to the means and methods of warfare, terrorism and the protection of environment in times of warfare. It will also address the contemporary challenges and existing gaps and conclude with possible suggestions.

THE PRINCIPLE OF PROPORTIONALITY UNDER INTERNATIONAL HUMANITARIAN LAW AND OPERATION CAST LEAD

Robert P. Barnidge. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 171-189

This chapter critically examines the principle of proportionality under international humanitarian law and contextualizes its vulnerabilities by looking at Israel's actions during Operation Cast Lead in the Gaza strip between December 27, 2008 and January 18, 2009. It begins by providing a black-letter law overview of the principle. The second half of this chapter looks at the largely negative international reaction to Israel's actions during Operation Cast Lead.

PRISONERS OF THE INTERNATIONAL COMMUNITY : THE LEGAL POSITION OF PERSONS DETAINED AT INTERNATIONAL CRIMINAL TRIBUNALS

Denis Abels. - The Hague : T. M. C. Asser Press, 2012. - 847 p.

This book addresses a specific aspect of international criminal law. It describes the legal position and conditions of persons detaines under the jurisdiction of international criminal tribunals, particularly as regards their internal legal position, their rights and duties inside the remand facility. Central to the book is the understanding that the circumstances surrounding these persons' detention are different from a domestic context.

PRIVATE MILITARY AND SECURITY COMPANIES AND THE "CIVILIANIZATION OF WAR"

Andrew Alexandra. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 183-197

Andrew Alexandra's chapter begins from the observation that Private Military and Security Companies (PMSCs) have come to play an increasingly important role in the military activities of states, especially of the United States. The functions of PMSCs cover the range of combat operations, training programs and logistical support, but while in the latter two roles they might formally be considered non-combatants (given their separation from the military chain of command) their activities in recent conflicts have created problems for the viability of the distinction between combatants and non-combatants. Alexandra explores the issues surrounding this "civilianization" of warfare, focusing on the congruence (or otherwise) of interests between PMSCs and the states that employ them, a relationship in which the interests of the states are sometimes put at risk. Alexandra urges that, given the unlikelihood of the role of PMSCs being curtailed, their position in conflict zones should be regularized by falling under the military chain of command, and becoming unequivocally lawful combatants.

PRIVATE MILITARY CONTRACTORS AND CHANGING NORMS FOR THE LAWS OF ARMED CONFLICT

Renée De Nevers. - In: New battlefields, old laws : critical debates on asymmetric warfare. - New York : Columbia University Press, 2011. - p. 150-168

First, this chapter lays out humanitarian law's classifications of different actors and discuss how PSCs (Private Security Companies) fit within this framework by examining how their status, who they work for, and the jobs they do affect PSC employees' standing under humanitarian law. It then examines the

implications of reliance on PSCs given the increased likelihood of asymmetric conflicts and concludes with a discussion of the similarities and differences in the challenges for law and policy presented by contractors and children on the battlefield.

PRIVATIZED MILITARY FIRMS' IMPUNITY IN CASES OF TORTURE : A CRIME OF HUMANITY ?

Jose Serralvo. In: International community law review Vol. 14, no. 2, 2012, p. 117-135

Over the past few years privatized military firms (PMFs) have allegedly committed all kind of war crimes, including torture. Prisoners' abuses at Abu Ghraib or indiscriminate firing against civilian vehicles to the rhythm of Elvis Presley's "Runaway Train" are but a couple of examples of the excesses revealed by the public media. Nonetheless, members of PMFs have hardly been held accountable. "Lawlessness" and "weak laws" have been blamed for these striking cases of impunity. Emphasizing the crime of torture, this article explores the legal framework applicable to PMFs, both from a domestic and an international perspective, and sheds light on ways in which these alleged crimes could be investigated, prosecuted, and tried. The Article concludes by questioning the reasons behind the impunity of members of a PMF, even in cases in which their military counterparts were tried and condemned.

PRIVILEGING ASYMMETRIC WARFARE (PART III) ? : THE INTENTIONAL KILLING OF CIVILIANS UNDER INTERNATIONAL HUMANITARIAN LAW

Samuel Estreicher. In: Chicago journal of international law Vol. 12, Winter 2012, p. 589-603

The overarching objective of the law of armed conflict is the minimization of harm to civilians during such conflicts. Yet, at least in some circles, there is a reluctance to make evaluative judgments about non-state groups who, in a variety of contexts, intentionally target civilians as a tactic in pursuing their political or military objectives. The focus of this paper is on Common Article 3 of the Geneva Conventions of 1949 - the strongest, least debatable basis for applying certain IHL principles to those who kill noncombatants during internal armed conflict. It seeks to demonstrate that Common Article 3 binds both the state and those seeking its violent overthrow. The binding force of Common Article 3 flows both from the positive premise that states can legislate on behalf of all those within its territory, even its armed opponents, and from the fact that Common Article 3 reflects customary international law.

LA PROBLÉMATIQUE DE L'ADVERSAIRE IRRÉGULIER

par Pierre Ferran. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 259-266

Si l'adversaire irrégulier est un acteur ancien de l'histoire militaire, il s'est toutefois au travers des guérillas et des guerres de libération nationale du XIXè et surtout XXè siècle profondément renouvelé. L'adversaire irrégulier cherche à tirer profit de l'asymétrie du conflit qui l'oppose à une force régulière. Si le droit des conflits armés pose une distinction claire entre les conflits armés non internationaux et les autres formes de violence, en pratique cependant cette distinction n'a souvent qu'une faible portée opératoire dans le contexte des conflits asymétriques. Cette contribution passe en revue les trois types de problèmes qui peuvent être distingués: la "guerre contre le terrorisme", la définition du niveau de violence et la distinction entre civil et combattant.

PROCEEDINGS OF THE FOURTH INTERNATIONAL HUMANITARIAN LAW DIALOGS, AUGUST 30-31, 2010 AT CHAUTAUQUA INSTITUTION

ed. by Elizabeth Andersen and David M. Crane. - Washington, DC : The American Society of International Law, 2011. - 314 p.

Contient : Honoring Whitney R. Harris and his legacy : never retreat / L. Sadat. - Remembering departed "Nurembergers" / J. Q. Barret. - Aggressive war : the biggest crime against humanity / B. J. Ferencz. - From Nuremberg to Kampala : reflections on the crime of aggression. - H.-P. Kaul. - International justice and the use of force / S. J. Rapp. - International criminal law year in review : 2009-2010 / V. Oosterveld. - Freedom from fear, human rights, and the crime of aggression / W. Schabas. - The complex crime of aggression under the Rome Statute / D. Scheffer. - Impunity watch essay : what I can do / Kelsie Flynn.

PROHIBITED WEAPONS AND THE MEANS AND METHODS OF WARFARE IN THE ROME STATUTE

Hennie Strydom. In: South African yearbook of international law Vol. 35, 2010, p. 97-110

Included in the Rome Statute's definition of war crimes are acts committed in international armed conflicts and which involve the use of poison or poisoned weapons; asphyxiating, poisonous or other gases; bullets which expand or easily flatten in the human body; or weapons, projectiles and material and methods of warfare which cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict. The applicability of this last category is made subject to two conditions: firstly, the weapons etcetera, must be the subject of a 'comprehensive prohibition' and, secondly, must be included in an annex to the Statute which must be effected by an amendment of the Statute in accordance with articles 121 and 123 thereof. These provisions do not create new rules of

international humanitarian law. Instead, for purposes of the Rome Statute, their function is to criminalise prohibitions that already exist under either conventional or customary international law. The net result of the above provisions is that with regard to the means and methods of warfare, a set of traditional and contemporary norms now exists which have consequences not only for international law on state responsibility in case of non-compliance, but also for individual criminal responsibility where a war crime is shown to have been committed.

PROHIBITION ON THE USE OF CHILD SOLDIERS : HOW REAL ?

Ranjana Ferrao. In: ISIL yearbook of international humanitarian and refugee law Vol. 9, 2009, p. 279-299

"Armed conflict" is an umbrella term for a variety of scenarios in which children can be directly or indirectly harmed. Children have played a variety of combat-related roles throughout history. The denial of humanitarian access to children in conflict areas is often a great concern. Children, both girls and boys, even under the age of 15 are cynically included and used as cheap and expendable tools of war, and too many are also exposed to sexual abuse and exploitation in the context of armed groups. This paper briefly introduces the practice of using children as soldiers and the phenomenon of displacement within the context of human security. In then explores some of the links between child soldiering and displacement. International law and standards for protecting children in these situations is described, and hoped to be followed.

THE PROPORTIONALITY PRINCIPLE IN OPERATION : METHODOLOGICAL LIMITATIONS OF EMPIRICAL RESEARCH AND THE NEED FOR TRANSPARENCY

Aaron Fellmeth. In: Israel law review Vol. 45, no. 1, 2012, p. 125-150

The principle of proportionality, notoriously obscure in application and subjective in interpretation, has been enforced so rarely as to call into question its potency as a meaningful international legal standard. Nonetheless, international criminal tribunals, academics, and the ICRC's monumental study on customary international humanitarian law all confidently proclaim the principle as embedded in the customary international law applicable to both international and non-international armed conflicts. To assess whether these claims are accurate, and to flesh out how states interpret the principle in practice, the author and a colleague have undertaken a long-term, multinational empirical study of state practice in interpreting and enforcing the proportionality principle. This article discusses the methodological options available and explains the one chosen for the proportionality study. The limitations of the study, in spite of its deliberate methodology, suggest that the debilities of the proportionality principle may not be conceptual as much as a byproduct of unnecessary military secrecy. This article concludes that greater transparency in state compliance with the rule of discrimination and the principle of proportionality would, at least, facilitate an understanding of how the hitherto obscure principle operates in practice and, at best, could create systemic effects that would decrease the dangers to civilians in armed conflicts.

PROPORTIONALITY UNDER JUS AD BELLUM AND JUS IN BELLO : CLARIFYING THEIR RELATIONSHIP

Raphaël van Steenberghe. In: Israel law review Vol. 45, no. 1, 2012, p. 107-124

Proportionality is a condition provided under both jus ad bellum and jus in bello. Based on a particular interpretation of state practice and international case law, recent legal literature argues that the two notions of proportionality are interrelated in that proportionality under jus in bello is included in the assessment of proportionality under jus ad bellum. This article seeks to refute such a position and, more generally, to clarify the relationship between the two notions of proportionality. The main argument of the article is in line with the traditional position regarding the relationship between jus ad bellum and jus in bello. It is argued that, although sharing common features and being somewhat interconnected, the notions of proportionality provided under these two separate branches of international law remain independent of each other, mainly because of what is referred to in this article as the "general versus particular" dichotomy, which characterises their relations. Proportionality under jus ad bellum is to be measured against the military operation as a whole, whereas proportionality under jus in bello is to be assessed against individual military attacks launched in the framework of this operations. This article nonetheless emphasises the risk of overlap between the assessments of the two notions of proportionality when the use of force involves only one or a few military operations. Indeed, in such situations, the "general versus particular" dichotomy, which normally enables one to make a distinct assessment between the two notions of proportionality, is no longer applicable since it becomes impossible to distinguish between the military operation as a whole and the individual military attacks undertaken during this operation.

PROPRIETY OF SELF-DEFENSE TARGETINGS OF MEMBERS OF AL QAEDA AND APPLICABLE PRINCIPLES OF DISTINCTION AND PROPORTIONALITY

Jordan J. Paust. In: ILSA journal of international and comparative law Vol. 18, 2011-2012, p. 565-580

This short article provides detailed disclosure why the United States cannot be at war with al Qaeda under international law. It also recognizes that, nonetheless, targetings of members of al Qaeda in the theatre of

a real war with the Taliban is lawful and that such targetings are also lawful under the law of self-defense if members of al Qaeda are directly participating in ongoing attacks on the United States, its military, and/or other U.S. nationals. In particular, permissibility of the targeting of Anwar al-Awlaki in Yemen as a direct participant in armed attacks (DPAA) is addressed.

PROTECTING AND RESPECTING CIVILIANS : CORRECTING THE SUBSTANTIVE AND STRUCTURAL DEFECTS OF THE ROME STATUTE

Adil Ahmad Haque. In: New Criminal Law Review Vol. 14, no. 4, Fall 2011, p. 519-575

The Rome Statute of the International Criminal Court fails to fully enforce four core principles of humanitarian law designed to protect civilians: distinction, discrimination, necessity, and proportionality. As a result, it is possible for a combatant with a culpable mental state, without justification or excuse, and in violation of humanitarian law, to kill civilians, yet escape criminal liability under the Rome Statute. The Rome Statute also ignores or misapplies three fundamental criminal law distinctions : between conduct offenses and result offenses, between material elements and mental elements, as well as between offenses and defenses. The purpose of this article is to expose these defects and propose a way to overcome them. This article proposes a redefined offense of Willful Killing that fully incorporates the principles of distinction and discrimination as well as a new affirmative defense that fully incorporates the principles of necessity and proportionality. Only by adopting such an approach can international criminal law provide civilians the legal protection and moral recognition they deserve. The recent adoption of an operative definition of the crime of aggression during a Review Conference in June 2010 suggests that further reform of the Rome Statute is achievable.

PROTECTING CIVILIANS DURING VIOLENT CONFLICT : THEORETICAL AND PRACTICAL ISSUES FOR THE 21ST CENTURY

ed. by David W. Lovell, Igor Primoratz. - Farnham ; Burlington : Ashgate, 2012. - 350 p.

There is almost unanimous agreement that civilians should be protected from the direct effects of violent conflict, and that the distinction between combatant and non-combatant should be respected. But what are the fundamental ethical questions about civilian immunity? Are new styles of conflict making this distinction redundant? Eloquently combining theory and practice, leading scholars from the fields of political science, law and philosophy have been brought together to provide an essential overview of some of the major ethical, legal and political issues with regard to protecting civilians caught up in modern inter- and intra-state conflicts. In doing so, they examine what is being done, and what can be done, to make soldiers more aware of their responsibilities in this area under international law and the ethics of war, and more able to respond appropriately to the challenges that will confront them in the field. 'Protecting Civilians During Violent Conflict' presents a clear-eyed look at the dilemmas facing regular combatants as they confront enemies in the modern battlespace, and especially the complications arising from the new styles of conflict where enemy and civilian populations merge.

PROTECTING CIVILIANS IN ARMED CONFLICT THROUGH RULES OF ENGAGEMENT

Rob McLaughlin. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 119-140

The presumption of protecting civilians is basic to the rules of engagement (ROE) under which regular armed forces operate. Rob McLaughlin, formerly a senior Australian military officer charged with the oversight of the ROE, demonstrates that there are some inherent limitations and that ROE need to be understood in the round to appreciate what they can and cannot achieve. Using the International Institute of Humanitarian Law's Rules of Engagement Handbook as a framework, McLaughlin examines the means by which protection of civilians in armed conflict - through the application of both the applicable law and the policy aims of the state or coalition of states engaged in a particular operation - can be built into rules of engagement.

PROTECTING THE "HELPERS" : HUMANITARIANS AND HEALTH CARE WORKERS DURING TIMES OF ARMED CONFLICT

Helen Durham and Phoebe Wynn-Pope. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 327-346

This article aims to examine the existing rules and principles contained within the international humanitarian law (IHL) legal framework, in particular the protections afforded to humanitarian workers and health care workers under the 1949 Geneva Conventions and their 1977 Additional Protocols. It commences with an examination of the definition of relief workers, moves to discuss the implications of the increased political use of humanitarian aid and then reviews the legal framework within which this sector is located. The multi-dimensional nature of current conflicts, in particular as they pertain to health care workers, requires an examination of both human rights and IHL. In conclusion this paper argues that for the effective protection of affected communities much more should be done by all those engaged in conflict including ending impunity for attacks on humanitarian relief workers and material, and medical personnel, supplies and facilities, as well as the encouragement of further debate and discussion on the topic.

PROTECTING THE SILENT VICTIM FORM IRREGULAR ACTORS : IMPROVING NON-STATE COMPLIANCE WITH THE INTERNATIONAL LAW OF ENVIRONMENTAL PROTECTION IN ARMED CONFLICT

Catriona L. MacKay, Donald K. Anton. In: ANU college of law research paper No. 12-18, 2012, [52] p.

International humanitarian law has often been lacking, particularly in relation to environmental protection, and in its ability to regulate armed non-state actors (ANSAs). As a result, significant environmental harm has occurred throughout modern conflicts which increasingly involve actors who cannot be easily regulated under formal law. This paper, submitted as a law honours thesis in the ANU School of law under the supervision of Professor Don Anton, explores the limitations of the current legal regime, both formally and in its ability to practically protect the environment from the acts of ANSA's in armed conflict. It goes on to consider the ways in which this system might be improved ; through greater clarification and codification of existing law, increased informal mechanisms and institutional support for engagement with and monitoring of ANSA compliance with this law, and development of criminal liability for environmental war crimes. An holistic approach to implementation of these factors would allow greater opportunity for the protection of the environment in armed conflict and for sustainable post-conflict recovery.

LA PROTECTION DE L'ENFANCE DANS LES CONFLITS ARMÉS : PERSPECTIVES DE MISE EN OEUVRE DES NORMES DU DROIT INTERNATIONAL HUMANITAIRE ET DU DROIT INTERNATIONAL DES DROITS DE L'HOMME

par Antoine Meyer. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 219-243

Cette présentation s'attache aux développements récents et aux perspectives en matière de protection de l'enfance dans les conflits armés, avec un éclairage particulier sur la question des enfants associés aux forces et aux groupes armés. Elle vise un bref exposé des enjeux de protection et du cadre normatif de référence liant droit international humanitaire et droit international des droits de l'homme ; une mise en perspective des leviers juridiques et politiques de mise en oeuvre de ces normes et de réponse à l'"impératif humanitaire" reconnu dans l'engagement du Conseil de Sécurité des Nations Unies. Elle dégage enfin quelques priorités pour la protection des enfants associés aux forces et aux groupes armés, dans une approche globale fondée sur les droits de l'enfant.

LA PROTECTION DE L'ENVIRONNEMENT EN TEMPS DE CONFLIT ARMÉ

Séverine Borderon, Virginie Linder. - In: Les menaces contre la paix et la sécurité internationales : aspects actuels. - [Paris] : Institut de recherche en droit international et européen de la Sorbonne, [2010]. - p. 185-204

La protection de l'environnement repose sur un arsenal juridique hétérogène mis en oeuvre par une pluralité d'acteurs (États, organisations internationales, ONG, secteur privé...). Cette recherche a conduit à faire le constat de l'inefficacité de cet ensemble normatif et à envisager de nouvelles pistes de travail. Élaboration et/ou clarification des instruments juridiques, renforcement de la prise en compte de l'environnement dans le cadre opérationnel du conflit (planification - évaluation environnementale), réduction de l'empreinte écologique des équipements militaires, "gestion environnementale" du post-conflit sont autant de propositions envisagées dans le présent rapport.

THE PROTECTION OF CIVILIANS DURING THE ISRAELI-HAMAS CONFLICT : THE GOLDSTONE REPORT

Richard D. Rosen. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 251-269

Arising from the UN Fact-Finding Mission on the armed conflict between Israel and Hamas fought in Gaza strip in December 2008 and January 2009, the Goldstone report examined allegations of human rights and international humanitarian law (IHL) violations during the conflict. Rosen, as a critic of the report, sees it as a missed opportunity to reflect on the IHL implications for the dynamic of contemporary asymmetrical warfare in which some combatants - particularly members of insurgent and terrorist organizations - discard any attempt to distinguish themselves from civilians and conduct combat operations from civilian population centres. For him, the Gaza conflict is emblematic of this dynamic, with Hamas using live civilians to shield or screen operations and dead civilians as props in an information war to portray adversaries as indiscriminate and "heavy-handed" in their use of force. Thus the report delivers an anti-Israeli polemic without dealing with the issues central to the Hamas strategy of placing civilians in danger.

THE PROTECTION OF CIVILIANS FROM VIOLENCE AND THE EFFECTS OF ATTACKS IN INTERNATIONAL HUMANITARIAN LAW

Hitoshi Nasu. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 65-83

There is a substantial body of law - international humanitarian law (IHL) - dedicated to protecting civilians during violent conflict. There are three groups of such laws : a) rules for the protection of civilians in the conduct of military operations ; b) rules for the protection of civilians under the control of the adversary against violence or arbitrary acts ; and c) rules for the protection of civilians from the effects of military

operations. Hitoshi Nasu explores the last two. Nasu first provides a useful overview of the different types of armed conflict - international armed conflict, military occupation and non-international armed conflict - and the rules of IHL that apply to each. The Fourth Geneva Convention, and its additional protocols, prescribes that warrying parties not simply refrain from doing violence against civilians, but that they also protect civilians from the effects of attacks. Yet Nasu observes that there are uncertainties about the scope of this precautionary obligation.

PROTECTION OF MILITARY MEDICAL PERSONNEL IN ARMED CONFLICTS

Peter de Waard and John Tarrant. In: University of Western Australia law review Vol. 35, no. 1, September 2010, p. 157-183

Medical personnel are entitled to protection in armed conflicts under international law. However, that protection will be lost unless such personnel strictly comply with the requirements set out in the relevant conventions. The authors examine the protection regime available to medical personnel including the regime applicable to hospital ships and medical aircraft. The authors argue that any permanent military medical personnel who engage in hostile acts without being correctly re-assigned permanently from their medical role could be liable for their conduct under the criminal law because they do not possess combatant immunity. The difficulty in re-assigning personnel from medical to non-medical roles and vice versa is examined against the background of the concept of civilians directly participating in hostilities. The authors examine the interpretive guidance issued by the International Committee of the Red Cross and the significant criticism of that guidance.

PROTECTION OF TERRORISM SUSPECTS UNDER INTERNATIONAL HUMANITARIAN LAW : A CASE STUDY OF GUANTANAMO BAY

Prosper Tegamaisho. - Saarbrücken : Lambert Academic Publishing, 2010. - 72 p.

This study focuses on the protection of terrorism suspects under International Humanitarian Law. This study makes Guantanamo Bay in Cuba a case study. The central themes of this study is the question on whether Guantanamo bay detainees are entitled for prisoners of war status or and also this study deals with the legal position for detainees suspected of terrorism acts during peacetime. These are main issues the field study has attempted to address. The study has revealed that every component of the war on terrorism , every situation in which persons held in Guantánamo were involved and every individual detained there has to be qualified separately. Many persons held in Guantánamo are not at all covered by international humanitarian law (IHL). Others benefit from the fundamental guarantees of International Humanitarian Law of non-international armed conflicts, which do not offer a legal basis for their detention an issue dealt with by domestic law. The study has also shown that those persons who were arrested in Afghanistan are protected by International Humanitarian Law of international armed conflicts

A QUALIFIED DEFENSE OF AMERICAN DRONE ATTACKS IN NORTHWEST PAKISTAN UNDER INTERNATIONAL HUMANITARIAN LAW

Robert P. Barnidge. In: Boston university international law journal Vol. 30, no. 2, Summer 2012, p. 409-447

Since the terrorist attacks of September 11, 2001, international law has had to grapple with the fundamental challenges that large-scale violence carried out by non-State actors poses to the traditional inter-State orientation of international law. Questions related to the "adequacy" and "effectiveness" of international humanitarian law, international human rights law and the law related to the use of force have been particularly pronounced. This paper focuses on the international humanitarian law implications of American drone attacks in northwest Pakistan. A highly-advanced modality of modern warfare, armed drones highlight the possibilities, problems, prospects and pitfalls of high-tech warfare. How is the battlefield to be defined and delineated geographically and temporally? Who can be targeted, and by whom? Ultimately, this paper concludes that American drone attacks in northwest Pakistan are not unlawful as such under international humanitarian law, though, like any tactical decision in the context of asymmetric warfare, they should be continuously and closely monitored according to the dictates of law with sensitivity to facts on the ground.

QUESTIONS SUR LA GUERRE EN LIBYE ET LE DROIT INTERNATIONAL HUMANITAIRE

Daniel Lagot. - In: Responsabilité de protéger et guerres "humanitaires" : le cas de la Libye. - Paris : L'Harmattan, 2012. - p. 101-108

Amnesty, Human Rights Watch et d'autres organisations ont dénoncé à juste titre les violations des droits de l'homme pendant de longues années sous le régime de Kadhafi, et celles des droits de l'homme et du droit international humanitaire pendant le conflit armé récent. Leurs analyses conduisent cependant à plusieurs questions concernant les crimes des insurgés, les bombardements occidentaux, les attaques généralisées contre la population, les attaques indiscriminées et emploi de mines antipersonnel et d'armes à sous munitions, la présence militaire dans les villes,

REASONS WHY ARMED GROUPS CHOOSE TO RESPECT INTERNATIONAL HUMANITARIAN LAW OR NOT

Olivier Bangerter. In: International review of the Red Cross Vol. 93, no. 882, June 2011, p. 353-384

The decision to respect the law – or not – is far from automatic, regardless of whether it is taken by an armed group or a state. Respect for international humanitarian law (IHL) can only be encouraged, and hence improved, if the reasons used by armed groups to justify respect or lack of it are understood and if the arguments in favour of respect take those reasons into account. Among the reasons for respecting the law, two considerations weigh particularly heavily for armed groups: their self-image and the military advantage. Among the reasons for non-respect, three are uppermost: the group's objective, the military advantage, and what IHL represents according to the group.

RECORDING AND IDENTIFYING EUROPEAN FRONTIER DEATHS

Stefanie Grant. In: European journal of migration and law Vol. 13, no. 2, 2011, p. 135-156

Migrant deaths at EU maritime borders have more often been seen in the context of national border control, than in terms of migrant protection and human rights. The 2009 Stockholm Programme accepted the need for action to avoid tragedies at sea, and to `record' and `identify' migrants trying to reach the EU. But it did not specify how this should be done. There are parallels between these migrant deaths, and deaths which occur in conflict and humanitarian disaster. The principles of human rights and humanitarian law which apply in these situations should be developed to create legal and policy frameworks for use in the case of migrants who are missing or who die on EU sea frontiers. The purpose would be to enable evidence of identity to be preserved, to protect the rights of families to know the fate of their relatives, and to create common national and international procedures.

RÈGLES D'ENGAGEMENT : PROTÉGER LES CIVILS À TRAVERS UN DIALOGUE AVEC LES ACTEURS ARMÉS NON ÉTATIQUES

Académie de droit international humanitaire et de droits humains à Genève. - Genève : Académie de droit international humanitaire et de droits humains, 2011. - 98 p.

Le rapport Règles d'engagement. Protéger les civils à travers un dialogue avec les acteurs armés non étatiques, est un document de référence essentiel pour les acteurs de l'humanitaire et de la médiation qui cherchent à engager un dialogue humanitaire avec des acteurs armés non étatiques (AANE). Ce rapport vise à répondre à certains des défis majeurs auxquels est confrontée la communauté internationale (c'est-à-dire les États, les organisations internationales, les ONG travaillant dans ce domaine) face au manque de respect par les AANE des normes internationales. La partie principale de ce rapport présente les conclusions et constatations centrales du projet, en s'appuyant sur des exemples concrets de pratiques actuelles. Il propose également une analyse des problèmes d'ordre juridique - dans le cadre du droit national et international - auxquels sont confrontés tous les acteurs qui cherchent à améliorer le respect du droit international par les AANE.

REGULATING THE IRREGULAR : INTERNATIONAL HUMANITARIAN LAW AND THE QUESTION OF CIVILIAN PARTICIPATION IN ARMED CONFLICTS

Emily Crawford. In: University of California Davis journal of international law and policy Vol. 18, no. 1, 2011, p. 163-190

This paper will review the history of international humanitarian law and regulation of irregular participation in armed conflict as a case study to demonstrate the increasingly difficult task of achieving international consensus on the rule of law during armed conflict. From the first provisions in the Hague Regulations regarding levée en masse, to the Geneva Conventions and the Additional Protocols, this paper will look at how nonconventional combatancy has been regulated, and examine the debates surrounding the expansion of the legal category of "combatant." This paper will culminate in an analysis of the International Committee of the Red Cross (ICRC) Expert Process on Direct Participation in Hostilities, finding both the final Interpretive Guidance, and the controversy leading up to and surrounding its publication, are demonstrative of the obvious stumbling blocks facing any new treaties regarding participation in armed conflict.

REGULATORY APPROACHES TO UNMANNED NAVAL SYSTEMS IN INTERNATIONAL LAW OF PEACE AND WAR

Robert Frau. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 2/2012, p. 84-91

This article evaluates unmanned military systems deployed in naval warfare. Even more than unmanned aerial systems, unmanned naval systems (UNS) pose a challenge to the law applicable in armed conflict. Thus, the status of such systems as well as the legal consequences that arise out of that classification will be analysed. However, as of today no agreed classification exists. Therefore it is argued that states should classify UNSs as warships. Thus, they would be entitled to sovereign immunity and passage rights under international law of the sea. Additionally, under international humanitarian law they would be entitled to

exercise belligerent rights, most importantly to engage in attack. As a downside, they may be lawfully targeted anytime during an armed conflict.

RELIEF WORKERS : THE HAZARDS OF OFFERING HUMANITARIAN ASSISTANCE IN THE THEATRE OF WAR

Shannon Bosch. In: South African yearbook of international law Vol. 35, 2010, p. 56-79

In this piece the author will unpack the legal status of relief workers under international humanitarian law (IHL) deployed to the theatre of international armed conflicts. In undertaking this investigation, the author will begin with a brief discussion of the definitional requirement of neutrality, and explore the legal implications and limitations that default civilian status might have for relief workers. She considers, briefly, the unsuccessful attempts at granting relief workers special protection by virtue of international treaty law. She then turns to explore the issue of whether the actions of relief workers might in fact amount to unlawful, direct participation in hostilities, and what consequences might flow from this possible conclusion in light of the 'ICRC's Interpretive guide on direct participation in hostilities'. In conclusion, she examines the risk of detention and prosecution in when belligerents detain relief workers on the suspicion that they might be participating directly in hostilities.

REMOTE-CONTROLLED WEAPONS SYSTEMS AND THE APPLICATION OF IHL

Jack Beard. In: Collegium No. 41, Automne 2011, p. 57-61

As they continue to evolve and variants multiply, unmanned systems are allowing military forces to project power on an unprecedented scale and have introduced a new era of remote-controlled killing. In so doing, they are raising profound questions for international humanitarian law. However, these technologies may also be unexpectedly and somewhat ironically giving unprecedented traction, transparency and relevance to jus in bello principles protecting civilians from the effects of hostilities – and may ultimately force States and individuals to confront revitalised and new duties to avoid causing harm to civilian populations. In addition to the transparency that comes with the persistent surveillance provided by unmanned systems, many of the factors that have been cited as excuses or justifications for incidental civilian casualties in the past are profoundly affected or even eliminated by these systems.

RESPONSABILITÉ DE PROTÉGER ET GUERRES "HUMANITAIRES" : LE CAS DE LA LIBYE

sous la dir. de Nils Andersson et Daniel Lagot. - Paris : L'Harmattan, 2012. - 155 p.

La Charte des Nations Unies affirme le principe de non-ingérence dans les affaires intérieures d'un État, y compris de la part de l'ONU elle-même. Plusieurs de ses résolutions dans l'histoire récente, en particulier dans les années 2000, ont cependant mis en avant l'idée qu'une intervention, le cas échéant armée, peut s'imposer en cas de crise humanitaire ou de graves violations des droits humains dans un pays. De nombreuses questions, apparues à nouveau au grand jour avec la guerre en Libye, restent cependant posées au niveau du droit, de la manière dont il est appliqué, et sur le fond. Ce livre, issu d'une conférence de l'ADIF, Association pour le droit international humanitaire, présente les analyses de juristes, représentants d'organisations humanitaires et spécialistes des relations internationales. S'il y a consensus pour condamner les violations des droits humains, une majorité exprime une grande méfiance envers les guerres "humanitaires", des points de vue différents étant cependant présentés par les représentants d'Amnesty International et Human Rights Watch. Les auteurs espèrent ainsi contribuer à la réflexion collective sur ces problèmes.

LA RESPONSABILITÉ DES ENTREPRISES MULTINATIONALES POUR VIOLATION DU DROIT INTERNATIONAL HUMANITAIRE

Régis Bismuth. - In: Les menaces contre la paix et la sécurité internationales : aspects actuels. - [Paris] : Institut de recherche en droit international et européen de la Sorbonne, [2010]. - p. 129-143

Compte tenu de la conduite croissante d'activités économiques dans des zones de conflits armés, la responsabilité des entreprises multinationales pour violation du droit international humanitaire est une question d'importance majeure. Alors que l'attention s'est davantage focalisée sur la responsabilité pénale individuelle, il se développe plusieurs mécanismes rendant possible ou envisageable la responsabilité des personnes morales pour de telles violations. Ce rapport vise à montrer qu'en dépit de l'absence de mécanismes de mise en oeuvre à l'encontre de ces entités au niveau international, il se développe, d'une façon certes encore timide, une responsabilité sociale des entreprises aux échelons nationaux. Ces mécanismes souffrent toutefois de plusieurs lacunes qu'il conviendra de mettre en perspective.

RETHINKING THE LAW OF ARMED CONFLICT IN AN AGE OF TERRORISM

Christopher A. Ford and Amichai Cohen. - Lanham [etc.] : Lexington Books, 2012. - 325 p.

This book brings together a range of interdisciplinary experts to examine the problematic encounter between international law and challenges presented by conflicts between developed states and non-state actors, such as international terrorist groups. Through examinations of the counter-terrorist experiences of the United States, Israel, and Colombia—coupled with legal and historical analyses of trends in international humanitarian law—the authors place post-9/11 practice in the context of the international

legal community's broader struggle over the substantive content of international rules constraining state behavior in irregular wars and explore trends in the development of these rules. From the beginning of international efforts to rewrite the laws of armed conflict in the 1970s, the legal rules to govern irregular conflicts of the "state-on-nonstate" variety have been contested terrain. Particularly in the wake of the 9/11 attacks, policymakers, lawyers, and scholars have debated the merits, relevance, and applicability of what are said to be competing "war" and "law enforcement" paradigms of legal constraint—and even the degree to which international law can be said to apply to counter-terrorist conflicts at all. Ford & Cohen's volume puts such debates in historical and analytical context, and offers readers an insight into where the law has been headed in the fraught years since September 2001. The contributors provide the reader with differing perspectives upon these questions, but together their analyses make clear that law-governed restraint remains a cardinal value in counter-terrorist war, even as the law stands revealed as being much more contested and indeterminate than many accounts would have it.

RETHINKING THE REGULATION OF PRIVATE MILITARY AND SECURITY COMPANIES UNDER INTERNATIONAL HUMANITARIAN LAW

Joseph C. Hansen. In: Fordham international law journal Vol. 35, no. 3, 2011, p. 698-736

Presumptively treating the vast majority of Private Military and Security Companies (PMSC) personnel as civilians, although consistent with a general IHL presumption in favor of civilian status, is overinclusive and leads to legal and practical difficulties : it fails to recognize the truly military-like operations of some PMSCs (indeed, some are contracted to perform direct military operations) ; the indeterminacy of the nature and temporal scope of direct participation may prove unworkable in practice ; and personnel taking an active part in the hostilities are chargeable with unprivileged belligerency for duties they may have been hired to perform. PMSC personnel contracted to engage specifically in the type of activity that constitutes direct participation in hostilities should be categorically presumed to be members of organized armed forces and should be required to abide by the requirements of Article 4(A)(2) of the Third Geneva Convention. If contracting States hired PMSCs to engage in contractor combatant activities, a proposed treaty provision would presume the PMSC personnel to be combatants and contracting States would be required to ensure that such contractors abided by the requirements of Article 4(A)(2).

REVITALIZING THE ANTIQUE WAR CRIME OF PILLAGE : THE POTENTIAL AND PITFALLS OF USING INTERNATIONAL CRIMINAL LAW TO ADDRESS ILLEGAL RESOURCE EXPLOITATION DURING ARMED CONFLICT

Larissa van den Herik and Daniëlla Dam-De Jong. In: Criminal law forum Vol. 22, no. 3, September 2011, p. 237-273

This article explores the potential of international criminal law in addressing the problem of illegal exploitation of natural resources in conflict areas, with a specific focus on the war crime of pillage and the prospective role of the International Criminal Court. It discusses whether the war crime of pillage can adequately capture the phenomenon of illegal exploitation of natural resources during armed conflict, or whether alternative tools or crime definitions might be more useful to address this negative phenomenon. The article examines the practice of international courts in relation to pillage charges and explores their role in prosecuting the illegal exploitation of natural resources. It concludes with some thoughts on whether the revival of the crime of pillage should be perceived as the panacea to the problem of "resource conflicts" or whether it is rather an empty shell.

THE RIGHT OF CHILD VICTIMS OF ARMED CONFLICT TO REINTEGRATION AND RECOVERY

JA Robinson. In: Potchefstroom electronic law journal Vol. 15, no. 1, 2012, p. 46-101

Article 39 of the Convention on the Rights of the Child provides for the right to recovery and reintegration of child victims of armed conflict. In this publication an explanation is tendered of when children are considered to be victims of armed conflict. Specific reference is made to the question of whether or not a former child soldier may be viewed as such a child victim. In addition the question is addressed of how a monist or dualist approach in terms of which treaty law is incorporated into municipal law influences the rights of child victims in terms of article 39 of the Convention of the Rights of the Child. Thirdly, article 39 is discussed against the background of the international human rights instrument, the Convention on the Rights of the Child.

THE RIGHT TO EDUCATION FOR CHILDREN IN EMERGENCIES

Allison Anderson, Jennifer Hofmann and Peter Hyll-Larsen. In: Journal of international humanitarian legal studies Vol. 2 (2011), p. 84-126 32479

This paper presents the key international legal instrument relevant for education, their use and links with policy frameworks and tools being developed by the humanitarian community to address education rights of children in conflict and emergencies. It describes the current thinking around the right to education in emergencies and why education is a central right to uphold from the onset of a crisis. It gives a brief introduction to how education can meet the international legal standards, as well as the international policy frameworks, such the Millennium Development Goals and Education for All. A continuous case study

focuses on Cote d'Ivoire and how the right to education fared in the conflict of that country between 2000 and 2010. The paper looks at issues of enforceability and applicability of the right to education in emergencies, highlighting challenges and mechanisms at national, regional and international levels. The role of the InterAgency Network for Education in Emergencies' (INEE) Minimum Standards for Education as well as the Inter-Agency Standing Committee's (IASC) Education Cluster is discussed, again with specific reference to Cote d'Ivoire, and the centrality of existing monitoring and reporting mechanisms for child rights violations are highlighted. Bringing together all of these elements in one place and making a strong case for the use of both humanitarian and human rights law in securing the right to education in emergencies is what this article brings to the discussion, arguing that the Convention of the Rights of the Child must be seen as the most central instrument.

THE RIGHT TO REPARATION IN INTERNATIONAL LAW FOR VICTIMS OF ARMED CONFLICT

Christine Evans. - Cambridge [etc.] : Cambridge University Press, 2012. - 277 p.

In this evaluation of the international legal standing of the right to reparation and its practical implementation at the national level, Christine Evans outlines state responsibility and examines the jurisprudence of the International Court of Justice, the Articles on State Responsibility of the International Law Commission and the convergence of norms of different branches of international law, notably human rights law, humanitarian law and international criminal law. Case studies of countries in which the United Nations has played a significant role in peace negotiations and post-conflict processes allow her to analyse to what extent transnational justice measures have promoted state responsibility for reparations, interacted with human rights mechanisms and prompted subsequent elaboration of domestic legislation and reparations policies. In conclusion, she argues for an emerging customary right for individuals to receive reparations for serious violations of human rights and a corresponding responsibility of states.

ROBOTS IN THE BATTLEFIELD : ARMED AUTONOMOUS SYSTEMS AND ETHICAL BEHAVIOUR

Ronald Arkin. In: Collegium No. 41, Automne 2011, p. 62-70

The contributor reports on the result of a three year program granted by the Departement of Defence to study the application of ethics in these autonomous systems. The premise of the research was to explore whether robots could outperform soldiers with respect to collateral damage. Could they be ultimately more human than humans? Robots are already stronger, faster and smarter than us in many cases. Therefore, it is a relatively low bar to create autonomous systems that can perform more ethically in the battlefield. Part of this research program was to program a robot for the right of refusal of an order. It can also provide on-the-ground reporting on the ethical behaviour of soldiers which may have the ability to cause human soldiers to behave better. What was tried in the prototype software was to incorporate international humanitarian law and rules of engagement which are required to be consistent with that.

THE ROGUE CIVIL AIRLINER AND INTERNATIONAL HUMAN RIGHTS LAW : AN ARGUMENT FOR A PROPORTIONALITY OF EFFECTS ANALYSIS WITHIN THE RIGHT TO LIFE

Robin F. Holman. In: Canadian yearbook of international law = Annuaire canadien de droit international Vol. 48, 2010, p. 39-96

Existing theoretical approaches to international human rights law governing the state's duty to respect and ensure the right not to be arbitrarily deprived of life fail to provide a satisfactory analytical framework within which to consider the problem of a rogue civil airliner - a passenger-carrying civil aircraft under the effective control of one or more individuals who intend to use the aircraft itself as a weapon against persons or property on the surface. A more satisfactory approach is provided by the addition of a norm of proportionality of effects that is analogous to those that have been developed within the frameworks of international humanitarian law, moral philosophy, and modern constitutional rights law. This additional norm would apply only where there is an irreconcilable conflict between the state's duties in respect of the right to life such that all of the courses of action available will result in innocent persons being deprived of life

THE ROLE AND RESPONSIBILITIES OF LEGAL ADVISORS IN THE ARMED FORCES : EVOLUTION AND PRESENT TRENDS (CELEBRATION OF THE MILITARY LAW AND THE LAW OF WAR REVIEW'S 50TH ANNIVERSARY)

Thomas E. Randall... [et al.]. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review 50, 1-2, 2011, p. 17-126

Contient : The evolving role of the legal advisor in support of military operations / T. E. Randall. - Legal officers in the Australian defence force : functions by rank and competency level, along with a case-study on operations / I. Henderson. - Legal advice in the conduct of operations in the Israeli defenses forces / L. A. Libman. - "Giving" operational legal advice : context and method / R. Mc Laughlin

ROLE OF INTERNATIONAL HUMANITARIAN INSTITUTIONS IN ENSURING THAT "ARMED NON STATE ACTORS" AUGMENT THE FUNDAMENTAL NOTIONS OF INTERNATIONAL HUMANITARIAN LAW ! : A CRITIQUE !

V. Seshaiah Shasthri. In: ISIL yearbook of international humanitarian and refugee law Vol. 10, 2010, p. 114-133

Implementation of international humanitarian law continues to centre round the interests of civilians. "Armed rebel groups", as they continue to be labeled despite their concern and struggle for the welfare of group of people to whom they are committed to, find little role in the implementation of international humanitarian law. The present article examines at length the requirements as often spoken in terms of their identity but most importantly, analyzes the indispensible role of the armed non state actors in the humanitarian law and calls for a greater role of international humanitarian organizations in relooking at the role of the least recognized groups in the implementation of IHL.

THE ROLE OF THE SWISS ARMED FORCES IN THE PROTECTION OF CULTURAL PROPERTY

Stephan Zellmeyer. - In: Archeology, cultural property and the military. - Woodbridge (Royaume-Uni) : Rochester (Etats-Unis) : Boydell, 2010. - p. 159-166

Cultural property has increasingly become the target of choice in civil and ethnic conflicts, a development which the Swiss Peace Corps has seen for itself during its mission in Kosovo. In security circles, there is a growing concern that cultural property could be a potentially attractive target also for terrorist groups. This chapter presents the protection of cultural property model adopted by the Swiss armed forces and the changes it already has undergone and conjectures on the further changes that may be required in the future.

RULE SELECTION IN THE CASE OF ISRAEL'S NAVAL BLOCKADE OF GAZA : LAW OF NAVAL WARFARE OR LAW OF THE SEA ?

James Kraska. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 367-395

On 27 September 2010 the UN Human Rights Council in Geneva released its analysis of the 31 May 2010 boarding of the large passenger liner, Mavi Marmara, by forces of the Israeli Navy. The ship was interdicted in the eastern Mediterranean Sea by Israeli commandoes, who rappelled vertically onto the top deck of the ship from a helicopter. The boarding incident and ensuing melee that unfolded on the deck of the ship left several Israeli military members seriously injured and resulted in the death of nine Turkish nationals. The event ignited a firestorm of controversy in international humanitarian law. These sad and unfortunate results raise interdisciplinary questions concerning both fact selection — determining what actually happened, or whose version of the facts are accepted — and rule selection — what was the legal relationship between Israel and the vessel Mavi Marmara. The overriding legal issues lay at the intersection of the international law of the sea and the law of naval warfare, which is a subset of international humanitarian law (IHL). Dissecting the legal elements of the raid is important for a better understanding of what happened — and how to prevent a reoccurrence.

THE RULES GOVERNING THE CONDUCT OF HOSTILITIES IN ADDITIONAL PROTOCOL I TO THE GENEVA CONVENTIONS OF 1949 : A REVIEW OF RELEVANT UNITED STATES REFERENCES

George Cadwalader. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 133-171

There is no single authoritative reference detailing those provisions of AP I the US accepts as an accurate restatement of customary international law or other legal obligations, or that it follows as a matter of policy during armed conflict. This paper seeks to partially address that lacuna through a systematic review of official US policies, directives, publications, treaty obligations, laws, and proclamations pertinent to those provisions of AP I governing the conduct of hostilities. This paper will not opine whether any of these official materials are conclusive proof that the US accepts any specific provision of AP I as customary international law. Nor will it evaluate the merits of the US position with regard to the instrument. Rather, it will furnish a consolidated resource for the researcher who contemplates these questions. More practically, it will provide military operational law practitioners with US references that embrace, modify, or contradict provisions of AP I as they pertain to the conduct of hostilities.

RULES OF ENGAGEMENT : PROTECTING CIVILIANS THROUGH DIALOGUE WITH ARMED NON-STATE ACTORS

Geneva Academy of International Humanitarian Law and Human Rights. - Geneva : Academy of International Humanitarian Law and Human Rights, 2011. - 88 p.

The report Rules of engagement, protecting civilians through dialogue with armed non-state actors is an essential reference document for humanitarian and mediation practitioners dedicated to humanitarian engagement with armed non-state actors (ANSAs). This report aims to address some of the key challenges faced by the international community (e.g. states, international organizations, NGOs working in the field) when dealing with lack of compliance with international norms by ANSAs. The main body of the report sets out the main conclusions and finding of the project, with supporting illustrations from current

practice as well as a review of the legal challenges - under national as well as international law - that confront anyone seeking to improve respect for international law by ANSAs.

SCHOOLCHILDREN AS PROPAGANDA TOOLS IN THE WAR ON TERROR : VIOLATING THE RIGHTS OF AFGHANI CHILDREN UNDER INTERNATIONAL LAW

Sonja C. Grover. - Heidelberg [etc.] : Springer, 2012. - 279 p.

This book explores in what ways both sides involved in the so-called war on terror are using schoolchildren as propaganda tools while putting the children's security at grave risk. The book explores how terrorists use attacks on education to attempt to destabilize the government while the government and the international aid community use increases in school attendance as an ostensible index of largely illusory progress in the overall security situation and in development. The book challenges the notion that unoccupied civilian schools are not entitled under the law of armed conflict to a high standard of protection which prohibits their use for military purposes. Also examined are the potential violations of international law that can occur when government and education aid workers encourage and facilitate school attendance, as they do, in areas within conflict affected states such as Afghanistan where security for education is inadequate and the risk of terror attacks on education high.

SECTION IX OF THE ICRC INTERPRETIVE GUIDANCE ON DIRECT PARTICIPATION IN HOSTILITIES : THE END OF JUS IN BELLO PROPORTIONALITY AS WE KNOW IT ?

Jann K. Kleffner. In: Israel law review Vol. 45, no. 1, 2012, p. 35-52

Section IX of the ICRC Interpretive Guidance on Direct Participation in Hostilities asserts: 'In addition to the restraints imposed by international humanitarian law on specific means and methods of warfare, and without prejudice to further restrictions that may arise under other applicable branches of international law, the kind and degree of force which is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances'. The present article scrutinises arguments that have been, or can be, advanced in favour of and against a 'least harmful means' requirement for the use of force in situations of armed conflict as suggested in Section IX. The principal aim of the article is to examine the question whether such an additional proportionality requirement forms part of the applicable international lex lata.

SHORT CONSIDERATIONS ON THE INTERNATIONAL CRIMINAL LIABILITY IN THE CONTEXT OF ARMED CONFLICT IN THE CONTEMPORARY PERIOD

Valentin Stelian Badescu. In: Studii de drept romanesc = Romanian law studies review Year 23 (56), no. 2, April-June 2011, p. 187-202

This article addresses issues of international criminal responsibility from a dual perspective, an analysis regarding international criminal responsibility for infringements of international humanitarian law and another on liability for environmental damage in case of armed conflict.

SHOULD CHILD SOLDIERS BE PUNISHED FOR WAR CRIMES ? : INSPIRED BY THE CASE OF OMAR KHADR

Victor Roman. - Saarbrücken : Lap Lambert Academic, 2011. - 69 p.

This paper takes a theoretical approach to examining the justification for punishing child soldiers for war crimes. The author uses a wide range of academic literature from the field of Politics, Philosophy, Sociology, Media, Law and Psychology to explain this very complex issue surrounding child soldiers. The author is inspired by Omar Khadr's case, a young soldier who has been detained since he was at the age of 15, November 2002, in Guantanamo Bay and tried for alleged war crimes. The paper analyses this apparent breach of international law through an ethical lens with the hope that it can find a real justification for punishing child soldiers who commit atrocities. The author goes through controversial issues such as childhood being a social construct and children being rational moral agents, the diffusion of combatant's responsibility for war crimes and the moral justification of punishment. The aim of this paper is to launch an in-depth debate on a topic which might have been considered straightforward, but as the author proves, it deserves the full attention of scholars in the field of Political Science and Law.

SHOULD REBELS BE TREATED AS CRIMINALS ? : SOME MODEST PROPOSALS FOR RENDERING INTERNAL ARMED CONFLICTS LESS INHUMANE

Antonio Cassese. - In: Realizing utopia : the future of international law. - Oxford : Oxford University Press, 2012. - p. 519-524

Governments against whom rebels fight regard them as persons engaging in seditious action hence as criminals deserving to be punished. As a result rebels, knowing that in any case upon capture they will be punished not only for any war crime they may have committed but also for the simple fact of taking up arms against the government, have no incentive to comply with humanitarian law rules, in spite of recent trends to the contrary and the imperative stemmings for the whole body of international humanitarian law (IHL). No international customary rule exists suppressing or curtailing the freedom of every state to treat

as it pleases its own nationals and other individuals participating in a civil strife. However, a customary rule is gradually crystallizing. Two conditions should be met for rebels to acquire a special status under customary IHL : (i) such status should only be granted when the insurgent group is (a) organized ; (b) shows some degree of stability ; (c) conducts sustained and concerted military operations ; with the consequence that (d) the hostilities are not sporadic or short-lived. It is also necessary (ii) for the rebels to distinguish themselves from the civilian population when engaging in an attack or in a military operation reparatory of an attack. In addition, rebels as a group must comply with the rules of IHL.

SHOULD THE OBLIGATIONS OF STATES AND ARMED GROUPS UNDER INTERNATIONAL HUMANITARIAN LAW REALLY BE EQUAL ?

Marco Sassòli and Yuval Shany. In: International review of the Red Cross Vol. 93, no. 882, June 2011, p. 425-436

For this first debate, the Review asked two members of its Editorial Board, Professor Marco Sassòli and Professor Yuval Shany, to debate on the topic of equality of states and armed groups under international humanitarian law. Professor René Provost comments on this debate, adding a third dimension to the discussion. The crucial question is whether it is realistic to apply the current legal regime to non-state armed groups. How can armed groups, with sometimes very limited means and low levels of organization, meet the same obligations as states? What are the incentives for armed groups to respect rules that their opponents have enacted? Why should they respect any rules when the very fact of taking arms against the state already makes them 'outlaws'?. - Contient : Introducing a sliding-scale of obligations to address the fundamental inequality between armed groups and states ? / M. Sassòli. - A rebuttal to Marco Sassòli / Y. Shany.

SILENT ENIM LEGES INTER ARMA, BUT BEWARE OF BACKGROUND NOISES : DOMESTIC COURTS AS AGENTS OF DEVELOPMENT OF THE LAWS OF ARMED CONFLICT

Yaël Ronen. - Jerusalem : International Law Forum of the Hebrew University of Jerusalem Law Faculty, October 2011. - 30 p.

Attempts to bring issues related to the laws of armed conflict before domestic courts encounter numerous procedural and substantive obstacles. As a result, there is almost no domestic jurisprudence dealing directly with the law on the conduct of hostilities as a matter of state responsibility. Domestic courts have nonetheless contributed to the development of this law through decisions concerning international criminal law and the law of occupation (and through it, international human rights law). Since each of these spheres of the laws of armed conflict is characterized by different fundamental principles, the limits of reliance on this jurisprudence in developing the law on the conduct of hostilities must be acknowledged, lest the latter be reshaped in a manner which is inconsistent with its basic tenets.

SIXTIETH ANNIVERSARY OF THE GENEVA CONVENTIONS : LESSONS FROM THE PAST

B. C. Nirmal. In: ISIL yearbook of international humanitarian and refugee law Vol. 9, 2009, p. 1-46

This article reflects on the strengths and weaknesses of International Humanitarian Law in the light of developments in this branch of public international law since the adoption of the Geneva Conventions in 1949. It dwells particularly on the codification and progressive development of IHL applicable in non-international armed conflicts, the relationship of IHL and international human rights law, the State responsibility for violations of international humanitarian law, IHL and international criminal justice, the interface between customary and conventional IHL and implementation and enforcement of IHL. It then examines whether and to what extent IHL is capable of addressing and overcoming new challenges and risks that lie ahead.

SMALL ARMS AND LIGHT WEAPONS : THE CURRENT REGIME IS INSUFFICIENT AND INEFFECTIVE : WHAT DO WE NEED ?

Thyla Fontein. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 2/2012, p. 92-102

Small arms and light weapons have many devastating impacts on human security. Most states regulate small arms and light weapons in their domestic legislation, but this is done in a non-uniform manner, allowing the continued use and transfer of weapons. At the international level, various aspects with regard to small arms and light weapons are regulated. Therefore, treaty law with a focus on international humanitarian law will be considered first. This body of law regulates the use of these weapons to a certain extent, but not exhaustively. In a second step, customary international law with regard to such weapons is assessed, particularly focusing on the practice of international and regional initiatives. Recent and current initiatives such as the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, and the Arms Trade Treaty will be considered. Furthermore, there will be a critical discussion on the needs for future regulation, especially reflecting on the idea of a comprehensive small arms and light weapons treaty.

LES SOCIÉTÉS MILITAIRES ET DE SÉCURITÉ PRIVÉES

Florence Parodi. - In: Les menaces contre la paix et la sécurité internationales : aspects actuels. - [Paris] : Institut de recherche en droit international et européen de la Sorbonne, [2010]. - p. 145-161

Depuis les années 1990, les sociétés militaires et de sécurité privées se sont imposées à beaucoup de professionnels qui ont vocation à évoluer sur le théâtre d'hostilités. Outre les Etats et leurs armées, les organisations internationales, les organisations non gouvernementales, mais aussi les entreprises, ont eu l'occasion de côtoyer ces nouveaux acteurs, voire de travailler avec eux. Il importe donc dans ce rapport de préciser le statut de ces sociétés au regard de certaines règles de droit international. Il s'agit de souligner à partir des réponses réunies sur la base d'un questionnaire adressé à différents professionnels les difficultés à faire rentrer ces nouveaux acteurs dans un cadre juridique suffisamment effectif au regard de la particularité de leur activité, et voir dans quelle mesure certaines de ces difficultés peuvent être dépassées. L'objectif de ce rapport est en effet de fournir à travers des recommandations certains outils pour appréhender au mieux les sociétés militaires et de sécurité privées d'un point de vue juridique.

SOME HOLDS BARRED : EXTENDING EXECUTIVE DETENTION HABEAS LAW BEYOND GUANTANAMO BAY

Ashley E. Siegel. In: Boston university law review Vol. 92, no. 4, July 2012, p. 1405-1430

Part I reviews habeas law from its historical roots to its modern application in executive detention cases brought about by the United States detention of aliens at Guantanamo Bay. Part II examines alien detention abroad apart from the habeas context. Part III explores the likelihood and appropriateness of extending the Boumediene line of cases to scenarios of alien detainees held abroad by foreign governments at the behest of the United States. The Supreme Court has recently demonstrated a greater willingness to exert its power in the national security realm, no longer giving broad deference to the Executive's wartime powers. The Supreme Court in this realm appears to take a functionalist, case-by-case approach that leaves open the possibility that the Court will exert itself in different executive detention contexts. Given the vital, fundamental individual rights implicated by executive detention, the Supreme Court should continue to actively review the actions of the legislative and executive branches. Further, based on the reasoning supporting its past precedents, the Court should extend jurisdiction to detainees held by foreign nations at the behest of the U.S. government.

SOUTH AFRICAN PRIVATE SECURITY CONTRACTORS ACTIVE IN ARMED CONFLICTS : CITIZENSHIP, PROSECUTION AND THE RIGHT TO WORK

S. Bosch, M. Maritz. In: Potchefstroom electronic law journal Vol. 14, no. 7, 2011, p. 71-125

South Africa has arguably the most aggressive regime of domestic legislation aimed at regulating the activities of PSCs, which is not surprising after it inadvertently found that it was a major exporter of PSCs. South Africa appears to be alone in its mission to adopt such an aggressive stance towards regulating the private security industry. It is unlikely that a few pieces of domestic legislation, like those adopted by South Africa, will have any noticeable effect on the presence of PSCs as a feature of current and future armed conflicts. The unique situation posed by South Africa's legislation poses some interesting questions which the authors explore. They begin by looking at the role played by PSCs in armed conflicts, and the status afforded them by international humanitarian law (IHL). They turn then to the issue of prohibited mercenarism, investigating if the actions of PSCs serve to group them with mercenaries (as defined by Additional Protocol I [AP I] and the two international Mercenary Conventions). The article then shifts its focus to the South African situation and discusses the ambit of application of the two main regulations, exploring how these two pieces of legislation measure up to international law obligations regarding mercenarism. They discuss whether or not it is likely that these regulations might be successfully used to prosecute PSCs, and what penalties PSCs might face.

SOUTH OSSETIA (2008)

Philip Leach. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 317-355

This chapter analyses the 2008 South Ossetian armed conflict, involving the States of Georgia and Russia, and the armed forces of the de facto authorities of South Ossetia. Classifying the conflict is not unproblematic. Was it an international armed conflict or a non-international armed conflict? Accordingly, as regards the law of armed conflict, this chapter raises wider questions about the relationship between conflicts. This chapter also discusses the increasingly complex relationship between Hague law, Geneva law and human rights law, and the growing tensions between these various systems of law.

SOVEREIGNTY AND NEUTRALITY IN CYBER CONFLICT

Eric Talbot Jensen. In: Fordham international law journal Vol. 35, no. 3, 2012, p. 815-841

Cyber activities in general, and cyber warfare in particular, place stress on the traditional notions of sovereignty, challenging both belligerent nations and neutral nations in the application of law to cyber

operations during international armed conflict. Therefore, a neutral state must not knowingly allow acts of cyber warfare to be launched from cyber infrastructure located in its territory or under its exclusive control. Upon arrival at the computer in State H, the malicious malware from the shipboard computer combines with the cyber tool at the beacon and creates cyber malware that is then forwarded to a computer in State X to which State G has previously gained access. In other words, considering the modified scenario, turning the nonparty state into a neutral provides another legal paradigm (along with domestic criminal law) by which the nonparty state could prevent or punish the actions of both the nonstate actor and potentially the state party to the NIAC for cyber operations that violated its neutrality. Cyber activities in general and cyber conflict in particular place stress on traditional LOAC notions, challenging both belligerent nations and neutral nations in the application of law to cyber operations. For example, recognizing that Internet traffic that traverses the computer infrastructure of a neutral nation is not a violation of that nation's neutrality provides greater clarity to states planning cyber operations of desiring to maintain neutrality.

SPLENDID ISOLATION : INTERNATIONAL HUMANITARIAN LAW, LEGAL THEORY AND THE INTERNATIONAL LEGAL ORDER

Aoife O'Donoghue. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 107-131

To consider the role played by IHL in contemporary legal debate, this paper will first give a brief account of how this body of law interacts with other aspects of international law. As with other specialist fields, IHL is not absolutely settled; nevertheless, it is possible to broadly outline its place within the international legal order. This article aims to set a firm basis for considering what current discussions on the future of public international law can tell us about IHL and vice versa. Following an examination of the interplay between IHL and international law, this piece will turn to two thematic approaches that dominate current international legal discourse, namely, fragmentation and constitutionalisation. A brief outline of the parameters of both approaches is followed by an assessment of how each has engaged with IHL. The article concludes with some thoughts on how IHL could make a contribution to these debates. Ultimately, this article will discuss and propose how engagement from both ends of the spectrum would benefit international law and suggest why such connections should be encouraged.

A SQUARE PEG IN A ROUND HOLE : STRETCHING LAW OF WAR DETENTION TOO FAR

Laurie R. Blank. In: Rutgers Law Review Vol. 63, no. 4, Summer 2011, p. 1169-1193

This Article highlights three problems with the past and newly proposed indefinite detention of terrorist suspects, problems that expose how this system stretches the traditional notion of law of war detention beyond its limits. For many reasons, the system poses severe challenges to fundamental American principles of adjudication of individual accountability and granting individuals their "day in court." These broader questions concerning the morality of indefinite detention, the appropriate system for prosecution of terrorist suspects, and the lawfulness generally of detention in the context of counterterror operations are beyond the scope of this Article and are addressed in numerous law review articles, newspaper articles, and opinion pieces. This Article does not purport to analyze the full scope of detention options for persons captured within the context of the conflict with al-Qaeda and other terrorist groups. Rather, this Article will focus on the problems created by affixing the label of "law of war" or "under the laws of war" to the indefinite detention ongoing and further contemplated in Executive Order 13,567 and in the Terrorist Detention Review Reform Act : problems of definition, problems of purpose, and problems of posture.

SQUARE PEGS AND ROUND HOLES : MEXICO, DRUGS, AND INTERNATIONAL LAW

Craig A. Bloom. In: Houston journal of international law Vol. 34, no. 2, 2012, p. 345-414

The drug-related violence in Mexico has become so ubiquitous that President Calderon is using the Mexican Army to fight the drug cartels. This paper argues that this situation rises to the level of a non-international armed conflict and discusses the international legal obligations and rights that arise from that designation under international humanitarian law. Under international humanitarian law, to qualify as a non-international armed conflict, there must be protracted armed violence involving at least one sufficiently organized non-state party. This requirement does not give any guidance on how to answer the threshold question of how much or what kind of organization is sufficient. The paper proposes a bright line test for determining the existence of a non-international armed conflict based on the text of the Geneva Conventions. This paper addresses the non-international armed conflict taking place between Mexico and the drug cartels, and then proposes options that Mexico and the international community can undertake to curb the violence and ensure compliance with its international humanitarian law obligations. These options include referral of these violations to the International Criminal Court, the United States conditioning funding for Mexican anti-narcotics efforts on compliance with international humanitarian law, and ICRC engagement with Mexico and the cartels to promote compliance and protect civilians.

STANDARDS OF PROOF IN INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS FACT-FINDING AND INQUIRY MISSIONS

by Stephen Wilkinson. - [S.l.] : [s.n.], [2011]. - 69 p.

As human rights and humanitarian commissions of inquiry and other fact-finding mechanisms gain influence in international society, a key question that has not yet been fully addressed is whether such bodies need to apply a minimum formal standard of proof (or degree of certainty) when they adjudicate on such serious matters. This report starts to address that question.

STILL SEARCHING FOR SOLUTION : FROM PROTECTION OF INDIVIDUAL HUMAN RIGHTS TO INDIVIDUAL CRIMINAL RESPONSIBILITY FOR SERIOUS VIOLATIONS OF HUMANITARIAN LAW

Timothy F. Yerima. In: ISIL yearbook of international humanitarian and refugee law Vol. 10, 2010, p. 40-67

In order "to reaffirm faith in fundamental human rights, in dignity and worth of the human person, in the equal rights of men and women", the United Nations has embarked on criminalization of acts constituting massive violations of human rights and humanitarian law. Today, in evaluating UN efforts in the protection and promotion of human rights, both its activities in the fields of international human rights and international criminal law need be considered pari pasu. The crux of this paper is to consider and make a comparative analysis of the Nuremberg Charter, Statutes of the International Criminal Tribunal for the former Yugoslavia and for Rwanda.

THE STRANGE PRETENSIONS OF CONTEMPORARY HUMANITARIAN LAW

Jeremy Rabkin. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 41-70

What's new in today's world is not the effort to persevere in attempts to restrain the violence of war. The most remarkable novelty is the notion that such restraints can be insisted upon, even when one side ignores them, and even when noncompliant fighters gain systematic advantage from their disregard of the agreed-upon standards. Four general claims will be elaborated in this chapter. First : the seeming premise of today's international humanitarian law - that this law binds the conduct of military operations, regardless of circumstances or consequences - is not the culmination of a time-honored tradition, as sometimes portrayed, but is, in fact, a recent and radical innovation. Second : the current standards were, to a large extent, the products of efforts by anti-Western governments and movements, seeking to change previously accepted standards to their own advantage. Third : advocacy organisations such as the International Red Cross, Human Rights Watch and Amnesty International have strong incentives to embrace an anti-Western view of the relevant standards, albeit one disguised as a neutral or internationalist view. Fourth : many Western governments now give credibility to such efforts, because they no longer expect to engage in actual military operations of their own.

STUXNET AS CYBERWARFARE : APPLYING THE LAW OF WAR TO THE VIRTUAL BATTLEFIELD

John Richardson. In: The John Marshall journal of computer and information law Vol. 29, no. 1, Fall 2011, p. 1-27

This paper focuses on a recent event known as Stuxnet, a computer virus that infected and damaged a nuclear research facility in Natanz, Iran. Reflecting on this particular cyber attack, did it rise to the level of an armed attack within the meaning of IHL? If so, did it adhere to the two core principles of IHL, namely distinction and proportionality? From this analysis, it is hoped that a better understanding of what is a cyber war will emerge.

STUXNET : LEGAL CONSIDERATIONS

Katharina Ziolkowski. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 3/2012, p. 139-147

The worm Stuxnet was programmed to affect computer systems of five nuclear facilities located in Iran. The media reported the worm as being the first "cyber-weapon" used and were speculating that certain States might have been the creators of the malware - suspecting in particular the involvement of USA and Israel within a long-term operation code-named "Olympic Games". The discovery of Stuxnet showed the possibility of malicious infections of computer systems of a State's critical infrastructure, even if disconnected from the Internet, and changed the perception of danger in the context of national security considerations. Legally assessing the implications of the creation, installation and control of Stuxnet is especially challenging because of the lack of detailed and reliable information relating to its origin and the physical effects it (indirectly) caused outside the targeted computer systems. Based on the assumption that one or more States created, installed and controlled the worm, the present public international law analysis shows that Stuxnet can be considered a "legal masterpiece".

SUPERIOR RESPONSIBILITY AND THE PRINCIPLE OF LEGALITY AT THE ECCC

Rehan Abeyratne. In: George Washington international law review Vol. 44, no. 1, 2012, p. 39-78

This article examines two recent decisions of the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in the broader context of whether it is fair to impose criminal liability on Khmer Rouge leaders for acts committed between 1975 and 1979. Since international criminal law was not as fully developed in the 1970s, some of the accused Khmer Rouge leaders argue that the principle of legality ("nullem crimen sine lege") bars many of the charges brought against them. In particular, they have argued that superior responsibility--a mode of liability that holds superiors responsible for the criminal acts of their subordinates--had not crystallized into a norm of customary international law by the 1970s. The Pre-Trial Chamber in two rulings in early 2011 dismissed the defendants' arguments and held that from 1975 to 1979 international law had recognized superior responsibility as a mode of criminal liability in a form sufficiently developed and accessible to the accused so as to satisfy the principle of legality. These decisions, though correctly decided, are based on a flimsy legal foundation. The Pre-Trial Chamber relied on the jurisprudence of post-World War II tribunals, which are notorious for their lack of clarity. These tribunals have also been plagued with allegations of "victor's justice," for finding German and Japanese commanders guilty of capacious, poorly-defined crimes that were arguably only recognized as crimes after the end of the war. For these reasons, this article argues that the ECCC should have based its decisions on Additional Protocol I to the Geneva Conventions of 1949 (1977), which more clearly defines superior responsibility and reflects broad consensus on the state of international law in the 1970s. Moreover, Additional Protocol I commenced an evolution in the law of superior responsibility--that has continued through the United Nations ad hoc tribunals and the International Criminal Court --toward greater protection of defendants from the sort of arbitrary justice imposed in the post-WWII cases. Counter-intuitively, relying on more recent statements of the law of superior responsibility would not only comply with the principle of legality, but would benefit the accused. Going forward, this approach would bolster the ECCC's legal stature and reputation for reasoned, impartial decision-making in light of persistent allegations of bias and corruption.

SYMPOSIUM : THE 2009 AIR AND MISSILE WARFARE MANUAL : A CRITICAL ANALYSIS

Claude Bruderlein (introd.) ; Charles J. Dunlap... [et al.]. In: Texas international law journal Vol. 47, no. 2, Spring 2012, p. 261-425

This issue of the Texas International Law Journal focuses on the Manual on International Law Applicable to Air and Missile Warfare (AMW Manual) produced by the Program on Humanitarian Policy and Conflict Research at Harvard University (HPCR). The 2011 Symposium organized in Austin by the editorial team of the Texas International Law Journal represents a first opportunity to reflect on the nature and goals of the AMW Manual and to formulate a critical appraisal of its content.

TAKING ARMED CONFLICT OUT OF THE CLASSROOM : INTERNATIONAL AND DOMESTIC LEGAL PROTECTIONS FOR STUDENTS WHEN COMBATANTS USE SCHOOLS

Bede Sheppard and Kennji Kizuka. In: Journal of international humanitarian legal studies Vol. 2, issue 2, 2011, p. 281-324

Schools around the world are being used for military purposes by State security forces and non-state armed groups. A review of conflicts in 23 countries since 2006 reveals that military use of schools often disrupts, or altogether halts, children's education and places students and schools at increased risk of abuse and attack. While international humanitarian law does not prohibit the military use of schools, failing to evacuate students from partially occupied schools, which have become military objectives subject to attack, may violate humanitarian law. Moreover, where military use impedes education, States may also violate international human rights obligations to ensure the right to education. Despite these negative consequences and the international legal framework restricting this practice, few States have enacted national prohibitions or restrictions to regulate the military use of schools explicitly. However, the experiences of countries heavily affected by conflict - Colombia, India, and the Philippines - indicate that States can counter opposition armed groups while completely prohibiting the military use of schools. This article argues that States should adopt and implement national legislation and military laws that restrict the military use of schools to better comply with their existing international obligations to protect schoolchildren and ensure the right to education.

TAKING DISTINCTION TO THE NEXT LEVEL : ACCOUNTABILITY FOR FIGHTERS'S FAILURE TO DISTINGUISH THEMSELVES FROM CIVILIANS

Laurie R. Blank. In: Valparaiso University law review Vol. 46, no. 3, spring 2012, p. 765-802

This article explores how the failure to hold persons accountable for perfidy and other violations of the obligation to distinguish between combatants and civilians will continue to undermine the ability of the law to provide maximum protection to innocent civilians during armed conflict. The first section of this article sets forth the parameters of the principle of distinction and how the law of armed conflict (LOAC)

implements this fundamental principle. In addition, the first section explores the challenges and complexities of contemporary warfare, specifically with relation to the obligations of distinction. The second section addresses current trends and efforts in the implementation and enforcement of the principle of distinction. Finally, this article highlights LOAC's untapped potential, a gap resulting from the failure to enforce distinction on both sides of the coin.

TAKING PRISONERS : REVIEWING THE INTERNATIONAL HUMANITARIAN LAW GROUNDS FOR DEPRIVATION OF LIBERTY BY ARMED OPPOSITION GROUPS

Deborah Casalin. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 743-757

While detention by armed opposition groups in non-international armed conflict is a reality that is foreseen and not prohibited by international humanitarian law, the grounds upon which it may take place are not defined. This article looks more closely at the customary international humanitarian law prohibition on arbitrary deprivation of liberty, and how it can apply to armed opposition groups in a manner that makes compliance realistic. It focuses on the legal bases upon which armed opposition groups may detain persons who are taken into custody in order to remove them from hostilities or for security purposes. An approach to detention by armed opposition groups based on the principles of international humanitarian law applicable to international armed conflicts is explored and its limitations defined.

TARGETED KILLING : THE ISRAELI EXPERIENCE

Steven R. David. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 71-98

In this chapter, it is argued that targeted killing is fully consistent with Israeli law. Israel's use of targeted killing also fits with traditional Just War doctrine, in that it is both discriminate and proportionate. By meting out punishment to the guilty, targeted killing also meets the retributive demands of the Israeli population. While the policy of targeted killing makes sense for Israel, however, it is argued that it can be improved upon. Israel should be forthright and unapologetic about its policy of targeted killing, for it is a moral and legal imperative in light of the situation Israel faces. The following pages will explain these points in more detail.

TARGETED KILLINGS AND INTERNATIONAL LAW : WITH SPECIAL REGARDS TO HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

Roland Otto. - Heidelberg [etc.] : Springer, 2012. - 661 p.

Existing international law is capable to govern the “war on terror” also in the aftermath of September 11, 2001. The standards generally applicable to targeted killings are those of human rights law. Force may be used in order to address immediate threats, preventive killings are permitted under strict preconditions but targeted killings are prohibited. In the context of armed conflicts, these standards are complemented by international humanitarian law as lex specialis. Civilians may only be targeted while directly taking part in hostilities and posing a threat to the adversary. Also in Israel and the Occupied Territory, these standards apply. Contrary to the Israeli Supreme Court’s view, international humanitarian law is not complemented by human rights law, but human rights law is – to some degree – complemented by international humanitarian law. According to these standards, many killings which would be legal according to the Israeli Supreme Court violate international law.

TARGETED KILLINGS : LAW AND MORALITY IN AN ASYMMETRICAL WORLD

ed. by Claire Finkelstein, Jens David Ohlin, Andrew Altman. - Oxford [etc.] : Oxford University Press, 2012. - 496 p.

The questions raised by targeted killing are not going away any time soon : they are at once timely and enduring. This volume is the first appearance in print of a collection that brings together scholars from across disciplines for a sustained and reasoned discussion of these questions. In this introduction are provided material intended to orient readers, coming as they will from a broad range of academic and non-academic backgrounds. Section I explains what is meant by "asymmetric" armed conflict and how terrorism is connected to such conflict. Section II examines the term, "terrorism", sketching and defending a concept of terrorism that informs the various contributions to this volume. Section III describes the two main approaches to assessing the legality and morality of targeted killing : the law-enforcement and the armed-conflict models. Section IV summarizes each subsequent chapter, drawing contrasts and remarking on similarities among them, and Section V offers some brief concluding thoughts.

TARGETED STRIKES : THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS

Laurie R. Blank. In: William Mitchell law review Vol. 38, no. 5, 2011-2012, p. 1655-1700

Targeted strikes – predominantly using drones – have become the operational counterterrorism tool of choice for the United States. For the past several years, the United States has relied on both armed conflict and self-defense as legal justifications for targeted strikes outside of the zone of active combat in

Afghanistan. Challenging questions arise from the use of both justifications at the same time, without careful distinction delimiting the boundaries between when one applies and when the other applies. This article will focus on the consequences of the United States consistently blurring the lines between the armed conflict paradigm and the self-defense paradigm as justifications for the use of force against designated individuals. In particular, there are four primary categories in which the use of both paradigms without differentiation blurs critical legal rules and principles: geographical issues surrounding the use of force; the obligation to capture rather than kill; proportionality; and the identification of individual targets, namely the conflation of direct participation in hostilities and imminence. On a broader level, there are three areas in which this blurring of legal justifications and paradigms has significant contemporary and future consequences for the application of international law in situations involving the use of force. In particular, this blurring undermines efforts to fulfill the core purposes of the law, whether the law of armed conflict or the law governing the resort to force, hinders the development and implementation of the law going forward, and risks complicating or even weakening enforcement of the law.

TARGETING, COMMAND JUDGMENT, AND A PROPOSED QUANTUM OF INFORMATION COMPONENT : A FOURTH AMENDMENT LESSON IN CONTEXTUAL REASONABLENESS

Geoffrey S. Corn. In: Brooklyn law review Vol. 77, issue 2, Winter 2012, p. 437-498

The principle of distinction requires belligerents to constantly distinguish between lawful objects of attack and all other persons, places, and things. While the principle of distinction is a manifestation of the balance between military necessity and humanity, it is also an expression of perhaps an even more central tenet of the Law of Armed Conflict (LOAC) : the assumption that the only legitimate object of war is to weaken enemy forces. Accordingly, the legal regulation of targeting is based on a conclusive presumption that the deliberate infliction of death or destruction to civilians or civilian property will never contribute to this objective, thereby obligating belligerents to limit their destructive efforts to military objectives only. The framework for determining what is and is not a lawful target of attack is known as the military objective test. This article proposes a quantum of information framework to facilitate the effective implementation of the military objective test. In support of this proposal, the article will provide a comparative analysis of United States constitutional Fourth Amendment jurisprudence, focused specifically on the relationship between several distinct quantum of proof standards for assessing reasonableness and the interests they were developed to balance. Part I of this article addresses the relationship between the LOAC and the military targeting process. Part II discusses the concept of reasonableness as it relates to that process and to U.S. criminal search and seizure law. Part III outlines the contextual reasonableness equation, which is based on the proportional relationship between the nature of the intrusion on a protected interest and the quantum of information required to render that intrusion reasonable. Parts IV and V propose a framework for application to the military targeting process, and then the article concludes.

TARGETING THE "TERRORIST ENEMY" : THE BOUNDARIES OF AN ARMED CONFLICT AGAINST TRANSNATIONAL TERRORISTS

Kelisiana Thynne. In: Australian international law journal Vol. 16, 2009, p. 161-187

Following the terrorist attacks of 11 September 2001, the US declared Al-Qaeda and its associates as "the terrorist enemy". Under the previous and current administrations, the US's security strategies have focused on combating this "terrorist enemy" in various ways including the so-called "war on terror" or "war with Al-Qaeda" : an armed conflict against transnational terrorists to which international humanitarian law ("IHL") supposedly applies. This article considers the notion of targeting transnational terrorists under IHL. The article addresses the issue of whether an armed conflict against terrorists exists and what sort of armed conflict it may be. It then examines whether terrorists are legitimate targets in and outside an armed conflict, drawing on the recent "Interpretive guidance on direct participation in hostilities" by the International Committee of the Red Cross. The article concludes that terrorist attacks in general do not give rise to armed conflict ; that there is no legitimate war against transnational terrorists ; and therefore, that military targeting of such transnational terrorists can only occur in limited circumstances.

TECHNOLOGICAL CHALLENGES FOR THE HUMANITARIAN LEGAL FRAMEWORK : PROCEEDINGS OF THE 11TH BRUGES COLLOQUIUM, 21-22 OCTOBER 2010 = LES DÉFIS TECHNOLOGIQUES POSÉS AU CADRE JURIDIQUE HUMANITAIRE : ACTES DU 11ÈME COLLOQUE DE BRUGES, 21-22 OCTOBRE 2010

CICR , Collège d'Europe. In: Collegium No. 41, Automne 2011, 130 p.

Ce colloque permet d'examiner les nouvelles technologies présentes sur le champ de bataille et les défis qu'elles posent quant à la réglementation des méthodes et moyens de combats. Il aborde ensuite le très vaste et difficile domaine de la guerre cybernétique. L'utilisation de l'espace cybernétique à des fins hostiles offre en effet un immense potentiel de nuisance dont il est difficile d'imaginer, aujourd'hui, tous les contours. Les armes télécommandées et automatiques sont ensuite abordées avant d'explorer dans quelle mesure l'espace extra-atmosphérique pourrait devenir un théâtre de conflit armé. Enfin ce colloque se termine par une table ronde dont le but est de discuter de la manière dont ces nouvelles technologies vont défier le DIH dans les décennies à venir.

THE TECHNOLOGY OF OFFENSIVE CYBER OPERATIONS

Herbert Lin. In: Collegium No. 41, Automne 2011, p. 33-40

This piece introduces the technology and effectors of an offensive attack: access, vulnerability and payload. It then describes the two types of offensive cyber operation: cyber attack and cyber exploitation. Cyber attacks are destructive in nature and cause adversary computer systems and networks to become unavailable or untrustworthy and therefore less useful to the adversary. Cyber exploitations are non-destructive, as they seek to obtain information resident on or transiting through an adversary's computer systems or networks, information that would otherwise be kept confidential. After going through the key characteristics, operational considerations and possible goals for an offensive cyber operations, the contributor raises some IHL ambiguities and fundamental questions posed by these operations.

TEMPORALITY AND TERRORISM IN INTERNATIONAL HUMANITARIAN LAW

Matthew C. Waxman. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 411-417

Most of the discussion on the United States' armed conflict against al Qaida and its allies—if it is legally an armed conflict at all—focuses on the nature of the actors, actions, and geography of this conflict—who, how, and where issues—because modern jus ad bellum and jus in bello regimes grew out of a long history of states or locally-confined armed groups waging violence in particular ways. In addition to resulting perplexities involving who, how, and where this conflict is waged, there are highly unusual temporal features of this conflict—and, therefore, when issues—that characterize it. It is difficult to discern when this conflict began (recognizing that it began at least as far back as the 9/11 attacks, though perhaps earlier than that), and even more difficult to assess even hypothetically its endpoint. The temporal aspects of the conflict have strained application of IHL, some would argue to the breaking point and others would argue necessitating legal or policy adaptation to meet the demands of 21st century warfare.

"TERRORISM" AS A CENTRAL THEME IN THE EVOLUTION OF MARITIME OPERATIONS LAW SINCE 11 SEPTEMBER 2011

Rob McLaughlin. In: Yearbook of international humanitarian law Vol. 14, 2011, p. 391-409

The aim of the author is to briefly examine the ways in which he believes the focus upon terrorism has influenced, or is beginning to influence, the development of maritime operations law. To do this, he focuses upon four sub-themes within the overall terrorism chapeau: terrorism from the sea; terrorism at sea; terrorism supported from the sea; and terrorist groups as subjects within the law of naval warfare. The first three sections briefly outline some examples of the types of threats emanating from this particular manifestation of terrorism, and then offer a short account of some (but by no means all) of the legal responses prompted by these threats. The fourth section offers general comments on an emerging debate.

LE "TERRORISTE" ET LE DROIT INTERNATIONAL HUMANITAIRE

par Philippe Ch.-A. Guillot. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 267-289

Le terrorisme international - ou plutôt transnational - est caractéristique des nouvelles formes de conflictualités qui se "démilitarisent" dans le sens où elles ne sont plus combattues uniquement par des soldats et qu'elles ne sont plus dirigées principalement contre des cibles militaires. En découle-t-il pour autant une obsolescence du droit international humanitaire? Assurément, non. Le phénomène terroriste ne remet nullement en cause la pertinence du "droit de Genève" qui se révèle adaptable et adapté. Tout d'abord, parce que les Conventions et les Protocoles prohibent les actes terroristes; ensuite, parce que la pratique des États en lutte contre des mouvements terroristes démontre que des solutions "nouvelles" ne sont pas nécessaires pour faire efficacement face à cette menace; enfin, la jurisprudence admet que "Confronting the dangers of terrorism constitutes a part of international law dealing with armed conflicts of international character". Non seulement le droit humanitaire est adapté à la lutte contre le terrorisme, mais encore, la lutte contre le terrorisme doit s'adapter au droit international humanitaire lorsqu'elle prend la forme d'un conflit armé.

THÉORIES ET RÉALITÉS DU DROIT INTERNATIONAL HUMANITAIRE : CONTRIBUTION À L'ÉTUDE DU DROIT DES CONFLITS ARMÉS EN AFRIQUE NOIRE CONTEMPORAINE

Saïdou Nourou Tall. - Saarbrücken : Éditions universitaires européennes, 2012. - 591 p.

Le droit international humanitaire repose sur le sentiment d'humanité et la protection de la personne humaine en période de conflit armé. Ses fondements éthiques et moraux sont aujourd'hui solidifiés par une normativité de moins en moins contestée. Toutefois, si les Etats africains ont majoritairement adhéré au DIH, il n'en demeure pas moins que certaines spécificités africaines en rendent sa réception difficile et sa mise en œuvre malaisée. Traumatisée par la traite négrière et la colonisation, l'Afrique noire est en proie à de nombreux conflits armés aux multiples causes mais aux conséquences toujours dramatiques : régression économique, flux de réfugiés et de déplacés internes, mercenariat, participation d'enfants-soldats, génocide, etc. Il en découle un décalage entre la théorie du DIH et les réalités africaines. De

nombreux obstacles liés à un usage du DIH en fonction d'intérêts étatiques et à un usage immodéré du principe de souveraineté grèvent fortement la mise en œuvre du DIH. A cela, s'ajoutent l'insuffisance d'information de la population civile et l'ignorance du DIH par ses principaux destinataires.

TO TRANSFER OR NOT TO TRANSFER : IDENTIFYING AND PROTECTING RELEVANT HUMAN RIGHTS INTERESTS IN NON-REFOULEMENT

Vijay M. Padmanabhan. In: Fordham law review Vol. 80, no. 1, October 2011, p. 73-123

Human rights law imposes upon States an absolute duty not to transfer an individual to another State where there are substantial grounds for believing he or she will be tortured or subjected to cruel, inhuman or degrading treatment. In recent years the obligation to provide non-refoulement protection has run into conflict with the State's obligation to protect its public from aliens suspected of involvement in terrorism. Expulsion is the traditional tool available to States to mitigate the threat posed by dangerous aliens. With this tool removed, States often lack an alternative route to mitigate this threat, with criminal prosecution and indefinite detention pending deportation not available for various reasons. The result has been numerous cases where States have been forced either to release dangerous aliens back into their State, consistent with international law, or to find alternative means to deal with the threat in the shadow of human rights law. This Article argues that human rights law should recognize the important clash of human rights duties that arises in these transfer situations: the State's duty to protect aliens from post-transfer mistreatment clashes with its duty to protect members of the public from rights violations committed by dangerous private persons within society. Recognition of this rights competition is important for two reasons. First, for too long human rights scholars and bodies have dismissed the security consequences of non-refoulement as outside the concern of human rights. Second, once a rights competition is accepted, human rights law prescribes a methodology for mediating between conflicting rights: balancing. A balancing approach would allow States a margin of appreciation to determine in the first instance how to choose between competing duties. The role of human rights apparatus, including national courts, international institutions and non-governmental organizations is to monitor this balance and to push States where the balance chosen appears over or under rights protective.

TOO ROUGH A JUSTICE : THE ETHIOPIA-ERITREA CLAIMS COMMISSION AND INTERNATIONAL CIVIL LIABILITY FOR CLAIMS FOR RAPE UNDER INTERNATIONAL HUMANITARIAN LAW

Ryan S. Lincoln. In: Tulane journal of international and comparative law Vol. 20, issue 2, Spring 2012, p. 385-419

The developments in international law prohibiting rape during armed conflict have grown at a rapid pace in recent decades. Whereas rape had long been considered an inevitable by-product of armed conflict, evolution in international humanitarian law (IHL) has relegated this conception mostly to the past. The work of international criminal tribunals has been at the forefront of this change, developing the specific elements of the international crime of rape, and helping to change the perception of rape in international law. Violations of IHL, however, also give rise to civil liability. Despite the advances with respect to rape made in the international criminal law context, non-criminal adjudication of claims for rape has been rare. Recently, the Ethiopia-Eritrea Claims Commission completed eight years of work, making numerous damage awards for civil claims based on violations of IHL that occurred during the war between those two states. Among the claims it heard were several claims for rape, brought by both parties. Thus, the completed work of the Ethiopia-Eritrea Claims Commission represents an important opportunity to examine civil adjudication of claims for rape under IHL. This Article asks whether the work of the Commission has helped to extend the protections afforded by IHL, and whether its treatment of the claims for rape is in line with the progress made within IHL regarding the conceptualization of rape. It locates and analyzes the work of the Commission within the broader changes that have occurred within IHL with respect to rape, outlines the work of the Commission, and analyzes its substantive and procedural decisions. This Article argues that, while the Commission contributed certain substantive and procedural advances to IHL, it may have simultaneously created certain gaps in the IHL regime and hindered the conceptualization of rape within IHL.

THE TOOLS TO COMBAT THE WAR ON WOMEN'S BODIES : RAPE AND SEXUAL VIOLENCE AGAINST WOMEN IN ARMED CONFLICT

Kas Wachala. In: The international journal of human rights Vol. 16, no. 3, March 2012, p. 533-553

Without doubt since the 1990s inroads have been made in the development of international law in the sphere of sexual violence and armed conflict. Due to the progress made in international law itself and the tribunals of the former Yugoslavia and Rwanda, international law can now be seen to have an array of tools with which to combat and prosecute perpetrators of sexual violence. These tools include humanitarian law, the Genocide Convention, crimes against humanity, customary international law, in particular the rules of jus cogens and the Rome Statute. An analysis will be made in this article of the effectiveness of these tools and how they can be utilised in order to prevent the on-going onslaught on women's bodies. It will be seen that the gradual acknowledgement of rape and sexual violence as an international crime has the potential of empowering women and can give them the ability to use

international law as a powerful tool to redress violence perpetrated against them in armed conflict. This article will then examine whether this potential is in fact a reality for women who have suffered sexual abuse in armed conflict or have the developments merely paid lip service to these crimes and not been as progressive as was first hoped.

"TOUT EST POSSIBLE À CELUI QUI CROIT" ? (MARC, 9:23) : LA RÉGLEMENTATION DE LA VIE RELIGIEUSE DANS LES CAMPS DE PRISONNIERS DE GUERRE DE LA SECONDE GUERRE MONDIALE

Delphine Debons. - In: La captivité de guerre au XXe siècle : des archives, des histoires, des mémoires. - Paris : A. Colin : Ministère de la défense et des anciens combattants, 2012. - p. 69-79

Si la peur des représailles et le principe de réciprocité de traitement sont généralement évoqués pour expliquer le respect - ou le non-respect - des Conventions de Genève, ce seul raisonnement paraît simpliste. Il est intéressant de resserrer le point de vue historique sur une captivitié donnée ou un point particulier des Conventions. Ce chapitre pose un premier jalon dans ce sens en se concentrant sur les logiques qui président aux réglementations du droit à la pratique religieuse parmi les prisonniers de guerre français et britanniques détenus par le IIIème Reich et les captivités des militaires allemands en mains françaises et britanniques. Il s'attache à préciser les motifs qui déterminent le degré d'application des traités internationaux par les belligérants, sans établir toutefois une hiérarchisation claire.

LES TPI ET LE DROIT INTERNATIONAL HUMANITAIRE : LA RESPONSABILITÉ DU COMMANDEMENT

Stéphane Bourgon. - In: Les conflits et le droit. - Paris : Choiseul, 2011. - p. 171-184

S'il est souhaitable qu'un commandant qui a manqué à son devoir de contrôle et à son obligation de supervision puisse être tenu pénalement responsable de violations commises par un subordonné, il doit y avoir un mécanisme objectif - connu et appliqué uniformément - qui permet d'évaluer la responsabilité des commandants militaires. Il faut éviter que ces derniers ne deviennent les boucs émissaires de toutes les violations commises par les membres des forces armées en opérations. C'est pourquoi les tribunaux pénaux internationaux ont consacré beaucoup de temps, d'énergie et de ressources à comprendre, baliser et appliquer la doctrine de la responsabilité du commandement de façon juste et équitable au cours des dernières années. C'est justement de ces efforts et de la jurisprudence relative des tribunaux internationaux dont il est question dans ce chapitre.

TRANSCENDING, BUT NOT ABANDONING THE COMBATANT-CIVILIAN DISTINCTION : A CASE STUDY

Alec Walen. In: Rutgers Law Review Vol. 63, no. 4, Summer 2011, p. 1149-1168

The distinction between combatants and civilians determines who can be prosecuted for using force, who can be subjected to long-term preventive (as opposed to punitive) detention, and who can be killed even when they do not pose an imminent threat. The traditional law of war uses the first issue as the key to understanding the second two. Many argue for a more functional definition of a combatant, such that if a person is part of a group that uses military levels of force, then he is a combatant. The conflict between these two models - the traditional law of war model and the functionalist model - is at the heart of the recent five-to-four decision of the Fourth Circuit in al-Marri v. Pucciarelli. Both models, however, are inadequate. The functionalist approach is insufficiently respectful of basic civil rights, and the traditional approach is too dismissive of the problems presented by using traditional criminal law techniques when fighting enemies who use military levels of force. In this paper, the author describes the two sides, as developed in al-Marri and argues that we should transcend the combatant-civilian distinction. He argues that the traditional combatant category, at least as applied to aliens, successfully marks out people who can be justifiably be subject to long term detention without trial. The category of combatants should not be taken to arise in some sort of fundamentally different legal regime. Rather, the law with regard to combatants should be viewed as grounded in a deeper liberal, constitutional legal order that is committed to respecting autonomy. Within that deeper legal order, some, but not all, suspected members of groups like al-Qaeda can justifiably be detained for long periods of time without trial. Ultimately, the most important questions, as I have argued at length elsewhere, are not limited to whether an individual is a combatant in the traditional sense; they also include (a) whether he can be held accountable for any future use of force against the state, and (b) whether the detaining state has an obligation to release and police him if it cannot or chooses not to try to convict him for a past crime.

TRANSFORMATIONS OF CONFLICT STATUS IN LIBYA

Katie A. Johnston. In: Journal of conflict and security law Vol. 17, no. 1, Spring 2012, p. 81-115

The qualification of a conflict as international or non-international is of key importance in determining the legal regime to be applied under the law of armed conflict. Despite recent developments suggesting an increasing convergence of the law applied in international armed conflicts and non-international armed conflicts, there remain a number of significant differences between the minimum protections of Common Article 3 and the comprehensive regulation of the Common Article 2 regime. The fact pattern of the 2011 civil war in Libya is complex, and there have been allegations of breaches of international humanitarian law by all parties. This article will track the transformations of conflict status in Libya, arguing that the initial

internal uprising rose to the level of a non-international armed conflict, triggering the application of Common Article 3, and was then transformed by foreign intervention into an international armed conflict, governed by the stricter standards of Common Article 2. This international conflict was then 're-internalized' by international recognition of the National Transitional Council as the legitimate government of Libya in mid-July. It is hoped that, by clarifying the legal regimes applicable to actors over the course of the conflict, this article will help make it possible to reach sound judgments as to the legality of the actions of those taking part in hostilities. These transformations also expose a certain arbitrariness in the Geneva system, as conflict status shifts in response to political events, rather than humanitarian concerns.

LES TROIS LIVRES SUR LE DROIT DE LA GUERRE

Alberico Gentili ; trad., introduction et notes de Dominique Gaurier. - Limoges : Pulim, 2012. - 659 p.

Alberico Gentili est un jurisconsulte, professeur royal italien du 17e siècle qui a mis en place une réflexion sur le droit de la guerre au niveau international. Sa démarche est de faire valoir des solutions valides pour son époque, à partir de situations contemporaines. De 1588 à 1589, trois ouvrages sur le droit de la guerre virent le jour et furent remaniés et publiés dans le De jure belli Libri tres en 1598, réédité en 1612. La présente traduction s'appuie sur cette réédition. Cet ouvrage a déjà fait l'objet de deux traductions, en anglais et en italien. Une nouvelle traduction s'avérait nécessaire car les deux précédentes présentaient de trop nombreuses libertés prises avec le texte original, un manque de rigueur dans la vérification des sources, des passages entièrement réécrits dans une langue plus lyrique, plus littéraire. La présente traduction, si elle se montre plus rude sur le plan littéraire, reste néanmoins fidèle à l'écriture de Gentili. Le traducteur a pris soin de présenter les sources romaines qui ont inspiré ce texte afin de donner aux lecteurs toutes les clés de compréhension. Cette nouvelle traduction tient donc de référence absolue pour les travaux sur le droit de la guerre d'Alberico Gentili. C'est à ce jour la traduction la plus riche, la plus complète et la plus fidèle à la pensée de l'auteur. De plus, le cd-rom accompagnant le recueil présente en fac-similé le texte original en langue latine de l'édition de 1612.

LE TROISIÈME PROTOCOLE ADDITIONNEL AUX CONVENTIONS DE GENÈVE DU 12 AOÛT 1949 ET LE CRISTAL ROUGE

par François Bugnion. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 49-86

La question réglée par le protocole III est un sujet d'étonnement pour tous ceux qui découvraient ce problème, que de voir qu'une question en apparence aussi anodine, était restée aussi longtemps sans solution. Pour comprendre la négociation qui conduisit à l'adoption du Protocole III, il faut saisir les enjeux sous-jacents à la question de l'emblème et, pour comprendre ces enjeux, un détour par l'histoire est indispensable. En effet, la problématique de l'emblème est issue d'une succession de décisions prises à des moments différents, donc chacune avait sans doute une rationalité au moment où elle avait été adoptée, mais dont la somme débouchait sur une situation qui défiait la raison et qui paraissait injuste et discriminatoire. Ce chapitre retrace ces différentes décisions et leurs conséquences.

TWO SIDES OF THE COMBATANT COIN : UNTANGLING DIRECT PARTICIPATION IN HOSTILITIES FROM BELLIGERENT STATUS IN NON-INTERNATIONAL ARMED CONFLICTS

Geoffrey Corn and Chris Jenks. In: University of Pennsylvania Journal of International Law Vol. 33, no. 2, Winter 2011, p. 313-362

The Article begins by discussing the law of armed conflict's categorization of civilians and belligerents (combatants in International Armed Conflict), and how a lack of an explicit treaty definition of combatant in the Non International Armed Conflict context (NIAC) is an obstacle to acknowledging analogous categorization in NIAC. The Article then explores organizational membership and how subordination to command and control is the fundamental difference between belligerents and civilians in any armed conflict. It will explain the difference between status and conduct based targeting and why a focus on conduct to assess belligerent status is merely a permutation of traditional status recognition analysis. The Article then contrasts that approach by examining why the use of conduct undermines the extension of the Direct Participation in Hostilities (DPH) rule to define enemy belligerent forces. These problems result in the [ICRC] DPH Study's problematic and arguably schizophrenic imposition of a minimum force requirement even when targeting those engaged in Continuous Combat Function (CCF). The Article will then address why treating all non-state opposition personnel as civilians taking a direct part in hostilities—even when applying the CCF concept—provides these operatives with an unjustifiable windfall and conflates law and rules of engagement. The Article concludes with a proposal of how to reconcile the DPH Study with status based targeting presumptions : maintain the distinction integrity.

UNDERSTANDING WHEN AND HOW DOMESTIC COURTS APPLY IHL

Laurie R. Blank. In: Case western reserve journal of international law Vol. 44, 2011, 20 p.

This essay will analyze what factors courts to choose to apply—or not apply—International Humanitarian Law (IHL) and how much of it they will apply. Knowing how the law actually applies to the facts at hand is, of course, critical to the preparation of any case, military operation, advocacy campaign, or other action. A

strategic analytical approach to the way that courts approach IHL is also useful for the overall development of IHL. When courts simply refuse to apply IHL or apply it in a limited manner in conjunction with other legal regimes, the failure to tackle new challenges can stunt the development of the law. IHL's development and effectiveness will be richest when courts of all kinds, whether national, regional or international, address current complexities and controversies head-on and grapple with how to maintain IHL's central goals of civilian protection and lawful conduct of hostilities even in the face of new challenges. In the broadest sense, therefore, understanding how and why courts do or do not apply IHL, and to what extent, in particular situations can help trigger deeper understandings of how the law is likely to develop and what its impact will be in the future.

UNIVERSAL JURISDICTION : A MEANS TO END IMPUNITY OR A THREAT TO FRIENDLY INTERNATIONAL RELATIONS ?

Karinne Coombes. In: George Washington international law review Vol. 43, no. 3, 2011, p. 419-466

Ending impunity for perpetrators of serious international crimes such as genocide, crimes against humanity, and war crimes is considered important because convictions may achieve justice and deter future acts. A controversial tool for ending impunity is the exercise of universal jurisdiction by states. The recent resistance of the African Union to attempted prosecutions of nationals of A.U. member states on the basis of universal jurisdiction highlights the controversy surrounding the exercise of universal juisdiction. Through an analysis of the African Union reaction, this Article examines and assesses the arguments in favor and against universal jurisdiction, and proposes how a proper balance may be struck between enforcement of international criminal law on the basis of universal jurisdiction and respect for state sovereignty. This Article argues that, under international law, states have the right to exercise universal jurisdiction over certain international crimes. Rather than disregarding international justice, such prosecutions may achieve justice by imposing individual responsibility for serious international crimes. It is undeniable, however, that difficulties may accompany the exercise of universal jurisdiction. Although there may be few legal restrictions on its use, states should adopt a balanced approach that makes universal jurisdiction a useful tool for ending impunity while minimizing the risks associated with its exercise. Ultimately, an international agreement may be required to resolve the outstanding disagreement among states surrounding the doctrine; until then, states should implement universal jurisdiction legislation and exercise it with care.

UNLAWFUL PRESENCE OF PROTECTED PERSONS IN OCCUPIED TERRITORY ? : AN ANALYSIS OF ISRAEL'S PERMIT REGIME AND EXPULSIONS FROM THE WEST BANK UNDER THE LAW OF OCCUPATION

Alon Margalit and Sarah Hibbin. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 245-282

The new Israeli military legislation formalized the policy of expulsion of Palestinians from the West Bank to Gaza that Israel had carried out sporadically since 2003. The reason given for these expulsions has not been that the individual deportee poses a specific security risk, but rather is based on his or her outdated Gazan registered address and arguendo unlawful presence in the West Bank. The requirement to hold a stay permit, and the risk of expulsion in its absence, applies also to individuals who moved to the West Bank before 2007, when these permits were first introduced. Despite years of living in the West Bank, their registered address remains as the Gaza Strip, mostly due to the Israeli refusal to register the change, and in some cases, even children subsequently born in the West Bank have been registered with the same address as their parents. It is estimated that the recent Military Order exposes tens of thousands of Palestinians to expulsions from the West Bank to the Gaza Strip. This paper examines the legality of this practice, as illustrated in the Azzam case and formalized in the recent military legislation, from the perspective of International Humanitarian Law. Clearly, the Israeli Policy also has important implications for the human rights of the affected Palestinians and it is necessary to examine its lawfulness under International Human Rights Law as well.

UNMANNED COMBAT AIRCRAFT SYSTEMS AND INTERNATIONAL HUMANITARIAN LAW : SIMPLIFYING THE OFT BENIGHTED DEBATE

Michael N. Schmitt. In: Boston university international law journal Vol. 30, no. 2, Summer 2012, p. 595-619

There are very few legal issues unique to unmanned combat aircraft systems (UCAS). For instance there is disagreement among legal experts as to whether counter-terrorist operations mounted outside the context of an ongoing armed conflict should be considered international armed conflict, non-international armed conflict or armed conflict at all. The question is significant, for its answer will determine which body of law to apply to UCAS cross-border operations. However, the fact that UCAS is the means of attack has no bearing on the determination. Furthermore, controversial issues raised by targeted killing operations, such as the legal status of the target or the individual conducting the strike, have little to do with the fact taht a UCAS was employed instead of other means, such as cyber attacks or car bombs. This article attempts to identify, explain and demystify the key international humanitarian legal (IHL) issues that should be considered by those charged with rendering ex ante advice or making ex post facto assessments about UCAS operations. The article does not discuss the jus ad bellum.

UNREGULATED ARMED CONFLICT : NON-STATE ARMED GROUPS, INTERNATIONAL HUMANITARIAN LAW, AND VIOLENCE IN WESTERN SAHARA

Orla Marie Buckley. In: North Carolina journal of international law and commercial regulation Vol. 37, Spring 2012, p. 793-845

The majority of armed conflict today occurs within states and involves one or more non-state armed groups (NSAGs). Despite the increasing role of NSAGs in armed conflict, international humanitarian law remains state-centric and provides limited opportunities for armed groups to comply with its provisions or engage in its development. This comment argues that the legal framework regulating internal armed conflict and NSAGs is inadequate and much weaker than the rules that govern states involved in international armed conflict. Part II examines the definition and development of NSAGs and discusses the advantages and disadvantages of accommodating NSAGs under IHL. Part III outlines the current legal framework of IHL to determine the level of regulation of NSAGs during an internal armed conflict. Part IV looks specifically at the application of IHL to one NSAG, the Polisario Front. Part V offers recommendations, focusing on measures to hold NSAGs more accountable and to better incorporate NSAGs into the IHL legal framework.

UNTANGLING BELLIGERENCY FROM NEUTRALITY IN THE CONFLICT WITH AL-QAEDA

Rebecca Ingber. In: Texas international law journal Vol. 47, no. 1, Fall 2011, p. 75-114

This Article provides a survey of the legal architecture currently governing the conflict with al-Qaeda and the Taliban, and — considering that operating framework —presents a defense of critical law of war constraints on state action. It responds to Karl Chang's Article, "Enemy Status and Military Detention in the War Against Al-Qaeda," which proposes a broad legal theory of detention based on the law of neutrality and divorced from core protective law of war constraints. In responding to this and other calls for broad authority, this Article supports the complex though crucial practice of applying jus in bello principles, such as the principle of distinction between belligerents and civilians, to modern armed conflicts such as that with al-Qaeda and the Taliban. To the extent the U.S. government and other states rely on an armed conflict paradigm to support broad authorities, they must likewise constrain themselves in accordance with the international legal regimes governing such conflicts.

THE US DEPARTMENT OF DEFENSE LAW OF WAR MANUAL : AN UPDATE

Stephanie Carvin. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 353-363

One of the major legal instruments the US Department of Defense (DoD) will be relying on in terms of planning and carrying out its activities in the near future is a new law of war military manual which is expected to be published sometime in 2011. While on the surface such a document may not seem of critical interest to those interested in security/strategic studies or to humanitarian activists seeking to ban rather than regulate violence, there are important reasons to place a certain amount of emphasis on this DoD product and to expect that it will have a significant impact, especially on issues that are presently widely debated within the humanitarian legal community. This article aims briefly to introduce the background of the US military Manual, and illustrate the path taken to bring it to fruition over nearly three decades. It will conclude with a brief description of what the manual will look like when it is eventually published.

THE USE OF COMBAT DRONES IN CURRENT CONFLICTS : A LEGAL ISSUE OR A POLITICAL PROBLEM ?

Sebastian Wuschka. In: Goettingen Journal of International Law Vol. 3, no. 3, 2011, p. 891-905

The regulation of the employment of combat drones in current conflicts is a central issue of recent discussions in international law. Contrary to misinterpretations in the media, this article claims that the legal framework regarding today's drone systems is settled. The author first provides an assessment of unmanned combat drones as a new technology from the perspective of international humanitarian law. He then proceeds to the vital point of the legality of targeted killings with remotely operated drones. Further, he discusses the preconditions for applicability of humanitarian law and human rights law to such operations. In conclusion, the author holds the view that the legal evaluation of drone killings depends on the execution of each specific strike. Assuming that targeted killings with drones will generally only be legal under the law of armed conflict, States might be further tempted to label their struggle against terrorism as 'war'.

THE USE OF DEPLETED URANIUM AMMUNITION UNDER PUBLIC INTERNATIONAL LAW

Lars Schönwald. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 3/2012, p. 148-155

Several armies worldwide use depleted uranium in ammunition. DU is quite cheap, available in large quantities and its high density allows the use in armor-penetrating or bunker busting weapons. Despite these advantages, the use of DU is prohibited by international humanitarian law as is shown in this article.

In the first part, it will be examined by presenting recent medical research that DU might cause superfluous injuries to combatants - a clear violation of international humanitarian law. Moreover, it will be elaborated in the second part that in certain cases the use of DU has effects which cannot be limited to combatants, but which also affect non-combatants - which constitutes another violation of international humanitarian law. Furthermore, DU has an impact on the environment, although this impact does not meet the high threshold needed to assert another violation of international humanitarian law - at least according to up to date research.

THE USE OF FORCE TO PROTECT CIVILIANS AND HUMANITARIAN ACTION : THE CASE OF LIBYA AND BEYOND

Bruno Pommier. In: International review of the Red Cross Vol. 93, no. 884, December 2011, p. 1063-1083

The Libyan crisis of 2011 has again raised the crucial problem of the choice of means in protecting civilians. Authorized by the international community as part of military operations in Libya, the use of force in protecting civilians has revived the concept of "humanitarian war" and has raised a number of issues for humanitarian organizations, in particular concerning the notion of neutral, impartial, and independent humanitarian action. The article focuses on these humanitarian issues and, inter alia, on the possible impact on humanitarian action of the concept of the Responsibility to Protect (R2P), which was at the basis of the intervention in Libya.

THE USE OF UNMANNED AERIAL VEHICLES IN CONTEMPORARY CONFLICT : A LEGAL AND ETHICAL ANALYSIS

Sarah Kreps, John Kaag. In: Polity advance online publication 13 February 2012, 26 p.

The increased use of unmanned aerial vehicles (UAVs) in contemporary conflict has stirred debate among politicians, government officials, and scholars. Spokespeople for the U.S. government often highlight the precision of UAVs and argue that this quality enables military action to comply with the international humanitarian law principles of distinction and proportionality. This article criticizes the technologically advanced weapons on the same ground on which the U.S. government has defended them : meeting international standards of distinction and proportionality. The article opens with a discussion of the legal implications of Just War theory. It then offers a critique of the politico-military discourse surrounding UAVs and presents a philosophical framework that might lessen the confusion surrounding the ethics of modern warfare. The article closes with a discussion of the various ways that defenders of the UAVs overstate the ability of technology to answer difficult legal and political questions that the principles of distinction and proportionality pose.

USING HUMANITARIAN AID TO "WIN HEARTS AND MINDS" : A COSTLY FAILURE ?

Jamie A. Williamson. In: International review of the Red Cross Vol. 93, no. 884, December 2011, p. 1035-1061

This article contends that the integration of humanitarian assistance in efforts to "win hearts and minds" in counter-insurgencies has not been successful, and that the costs, both operational and legal, clearly outweigh any benefits. It demonstrates how such manipulation of humanitarian assistance runs counter to fundamental principles of international humanitarian law. In addition, a growing body of research suggests that the use of short-term aid and relief programmes as part of counter-insurgency has been ineffectual, and that, in places such as Afghanistan, it may even have undermined the overall military goal of defeating insurgents. With the United States and NATO military operations winding down in Afghanistan, it is time for the military and policy-makers reviewing ‘winning hearts and minds’ as a counter-insurgency strategy to draw the lessons and recognize the importance of a neutral and independent space for humanitarian aid.

VICTIMS AND PERPETRATORS OF INTERNATIONAL CRIMES : THE PROBLEM OF THE "LEGAL PERSON"

Kirsten Campbell. In: Journal of international humanitarian legal studies Vol. 2, issue 2, 2011, p. 325-351

Protecting victims and punishing perpetrators are now seen as integral elements of the implementation and enforcement of humanitarian norms. However, how international law constructs the victims and perpetrators of international crimes as entities with rights and duties remains insufficiently examined. This paper explores the different models of victims and perpetrators as legal persons in international criminal law. It argues that the legal person takes two forms: the victim of human rights and the perpetrator of criminal responsibility. While the legal regime presents these as autonomous and singular individuals, it also constitutes them as members of groups that criminal norms seek to protect or punish. Contemporary international criminal law resolves this tension between individual and collective rights and responsibilities by reconstituting legal subjectivity through an intersubjective conception of the universal community of humans. Ultimately, this `legal person' relies on the idea of `humanity', the collectivity of all humans, to hide this problematic conceptual basis of the rights and duties of victims and perpetrators in ICL.

THE VIETNAMIZATION OF THE LONG WAR ON TERROR : AN ONGOING LESSON IN INTERNATIONAL HUMANITARIAN LAW NON-COMPLIANCE

Lesley Wexler. In: Boston university international law journal Vol. 30, no. 2, Summer 2012, p. 575-593

This essay rejects the conventional wisdom that post Vietnam military reforms adequately addressed the problem of U.S. noncompliance with international humanitarian law. Just as My Lai and Son Thang defines the nadir of America's counterinsurgency in Vietnam, and the trio of Haditha, Abu Ghraib, and Operation Iron Triangle evoke our worst behavior in Iraq, the recent events of the 5th Stryker "kill team" brigade may come to symbolize our greatest failings in Afghanistan. The premeditated and deliberate killing of Afghani civilians reveals an indifference to human life that is utterly inconsistent with the premises of International Humanitarian Law and the deeply held values of the American military. This short piece examines the Stryker kill team's behavior to help build the knowledge and insight necessary to develop further reforms for military practices during the long war on terror. The essay situates the 5th Stryker brigade's troubling behavior within the military's recent shift to counterinsurgency and highlights the suboptimal compliance conditions likely to bedevil the U.S. military during the long war on terror. Though the U.S. military successfully restructured its goals and reformed its behavior after Vietnam, at least three notable similarities remain. In particular, the military still: (a) abandons effective sorting strategies to exclude high risk soldiers when the demand for troops rises; (b) lacks adequate safeguards against leadership failures that allow a culture of disrespect for human life to fester; and lastly (c) faces only weak checks on its behavior as the result of domestic pressure. In identifying these factors, this essay seeks to help the military and other actors better target efforts to improve international humanitarian law compliance.

LE VIOL ET LES AUTRES CRIMES DE VIOLENCES SEXUELLES À L'ENCONTRE DES FEMMES DANS LES CONFLITS ARMÉS

par Mélanie Dubuy. - In: Le droit international humanitaire face aux défis du XXIe si[è]cle. - Bruxelles : Bruylant, 2012. - p. 181-217

La première partie de chapitre procède à l'analyse des conventions internationales organisant la protection des victimes, des femmes particulièrement, durant les conflits, et montre de grandes lacunes, la batterie de textes ne suffisant pas à condamner avec véhémence le viol et les violences sexuelles. La deuxième partie s'attache aux travaux des tribunaux pénaux internationaux et à la jurisprudence internationale qui étoffe le droit international humanitaire, contribuant largement à combler les lacunes normatives.

LES VIOLATIONS DU DROIT HUMANITAIRE AU PROCHE-ORIENT : LE CAS DE L'OPÉRATION "PLOMB DURCI" À LA LUMIÈRE DU RAPPORT GOLDSTONE

par Abdelwahab Biad. - In: Proche-Orient et sécurité internationale. - [Bruxelles] : Bruylant, [2011]. - p. 93-106

La mission d'établissement des faits, dont le Rapport Goldstone est issu, avait pour mandat d'enquêter sur toutes les violations des droits de l'homme et du droit international humanitaire qui auraient pu être commises dans le contexte des opérations militaires a Gaza en décembre 2008 et janvier 2009, que ce soit avant, pendant ou après. Il ressort des conclusions que les violations constatées du DIH ne relèvent pas de faits commis par des officiers ou des soldats isoles, mais de la politique adoptée par les autorités militaires pour engager une action. Les violations répertoriées concernent principalement le non respect de deux principes fondamentaux du DIH, les principes de "distinction" et de "proportionnalité" dans l'attaque. Ce chapitre revient sur les violations constatées par le Rapport chez les deux parties au conflit.

VIRTUAL BATTLEGROUNDS : DIRECT PARTICIPATION IN CYBER WARFARE

Emily Crawford. - [S.l.] : The University of Sydney Law School, 2012. - [20] p.

This paper looks at the question of direct participation in cyber hostilities under the international law of armed conflict, or international humanitarian law (IHL) as it is also known. The paper examines the history and development of the concept of direct participation in hostilities by civilians, which serves as an exception to the principle of civilian or non-combatant immunity. In charting the development of the concept, this paper looks at landmark attempts to legally define the concept of direct participation, including the Israeli Targeted Killings Case, and the International Committee of the Red Cross (ICRC) study into direct participation. Using this legal background, this paper then analogises direct participation in the context of cyber hostilities, and critically examines the ways in which civilians may be deemed to be direct participating in cyber hostilities. The paper also posits some solutions to potentially problematic situations raised by civilian participation in cyber warfare.

WAGING WATERFARE : ISRAEL, PALESTINIANS, AND THE NEED FOR A NEW HYDRO-LOGIC TO GOVERN WATER RIGHTS UNDER OCCUPATION

Jeffrey D. Stein. In: New York Journal of International Law and Politics Vol. 44, No. 1, Fall 2011, p. 165-217

As water becomes scarcer, its role as both a tool and target of international politics becomes more pronounced. The power dynamics of military occupation further complicate transnational water management. As evidenced by Israel's administration of Palestinian water resources, states occupying neighboring riparians maintain a selfish interest in shared watercourses and may use administration of those resources to advance their own hydrological and political priorities. This self-interested administration of occupied populations' water resources is termed "waterfare." The author argues that a more particularized rule, as opposed to the currently existing guiding principles, is not only appropriate, but critical to promote efficient and equitable governance of water resources under coriparian occupation. First, he sketches the hydrological dimension of Israel's occupation of the West Bank and Gaza in order to demonstrate the reality and gravity of waterfare and to justify the rule proposed. The author next outlines and overlays International Humanitarian Law and Transboundary Resource Law to expose the doctrinal gaps necessitating each component of the proposed rule, which he then formulates and defends. By reducing doctrinal ambiguity that obfuscates occupants' obligations, the rule proposed would belie many of the issues arising out of occupants' control of coriparian communities' water resources in general, and with regard to Israel's occupation of the Palestinian territories in particular.

THE WAR (?) AGAINST AL-QAEDA

Noam Lubell. - In: International law and the classification of conflicts. - Oxford : Oxford University Press, 2012. - p. 421-454

This chapter examines the legal ambiguities surrounding a war that might not be a war, against an elusive ennemy whose existence as an organized entity is sometimes cast in doubt. Military operations are carried out under the mantle of this war and casualties and destruction have followed, rendering the analysis and classification a crucial matter. Although this conflict encompasses numerous —if not endless— challenges in the area of international law, the focus in this chapter is on those issues that have direct bearing upon the classification of the conflict.

WAR AND THE VANISHING BATTLEFIELD

Frédéric Mégret. In: Loyola University Chicago international law review Vol. 9, no. 1, Fall/Winter 2011, p. 131-155

These days, the battlefield hardly seems to be a term of art in international humanitarian law discourse. The laws of war are about conflicts, international or non-international, and hostilities or zones of combat. It is customary to contrast the conventional war of yesterday that occurred in relatively neatly delineated spaces with today's complex, asymmetrical, or even post-modern wars that do not depend on the classical battlefield. Certainly, the idea of disciplined armies meeting in a rural setting at dawn to fight each other off belongs to distant memories. This article will suggest that the application of the laws of war nonetheless remains more haunted by the idea of the battlefield than is commonly acknowledged, and that the concept provides a crucial variable to understand the law's evolution. Indeed, it will contend that the "battlefield" continues to serve a strong role in assessing why, when and how international humanitarian law applies (or does not). In turn, the destructuring of the concept of the battlefield has had a strong impact on the very possibility of the laws of war, and of war itself. These issues have not escaped the attention of some international lawyers but they have tended to be seen mostly through the prism of the most recent developments, notably the "War on Terror." This article will suggest that the definition of the battlefield has always been central to the genesis and evolution of the laws of war, and that the idea of the battlefield captures more of what constitutes war as an activity than many other indicators.

WAR CRIMES AND INTERNATIONAL CRIMINAL LAW

Willem-Jan van der Wolf [ed.]. - The Hague : International courts association, 2011. - 641 p.

The International Criminal Law Series published by the International Courts Association (ICA) aims at the providing of summarised and practical guides on all aspects of International Criminal Law. This volume contains: History. - Definition of war crimes. - Jurisdiction. - Prosecution of war crimes. - War crimes in international armed conflict. - War crimes in non-international armed conflict. - War crimes jurisprudence of the International Tribunal for the Former Yugoslavia. - War crimes jurisprudence of the International Criminal Tribunal for Rwanda.

THE WAR CRIMES TRIAL THAT NEVER WAS : AN INQUIRY INTO THE WAR ON TERRORISM, THE LAWS OF WAR, AND PRESIDENTIAL ACCOUNTABILITY

Stuart Streichler. In: University of San Francisco law review Vol. 45, no. 4, Spring 2011, p. 959-1004

While President George W. Bush was in office, a cottage industry developed calling for his impeachment. Some even made a case for prosecuting him in a court of law. Many of the criminal offenses the President allegedly committed involved his conduct in the war on terrorism. Actions taken in the war on terrorism during President Bush's years in office have raised a number of disturbing questions. One of the most significant is whether members of the U.S. armed forces, Central Intelligence Agency ("CIA") agents, security contractors, and others working for the United States committed war crimes. If so, was this attributable to a "few bad apples, or does culpability extend to the highest officials in the Bush Administration, including the President? Although no trial is forthcoming, it is still possible to explore the issue of presidential accountability and assess the President's actions under the laws of war. Part I of this Article examines what constitutes a war crime under U.S. law by comparing the legal definition with the popular understanding of that term. Part II explains how, in a political system structured to curb the abuse of power, it could have been possible for the executive to violate the laws of war. Part III then analyzes the case against the President as if it were going to trial. It does not address every technical legal issue that could arise. Instead, the aim is to show generally how a war crimes trial could clarify what happened and resolve outstanding questions of criminal liability. To that end, this last section suggests lines of questioning for the cross-examination of President Bush.

"WAR" IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Laurence Burgorgue-Larsen and Amaya Úbeda de Torres. In: Human rights quarterly : a comparative and international journal of the social sciences, humanities, and law Vol. 33, no. 1, February 2011, p. 148-174

How have Inter-American Human Rights bodies dealt with the notion of “war”, which has been transformed over time into the notion of internal and international “armed conflicts”? This question provides the analytical foundation of the first part of this study, which sets out the various types of conflicts that have occurred in the American continent. These situations (armed conflicts, internal strife, State terrorism) have produced a wide range of legal categorizations, utilized by both the Commission and Inter-American Court of Human Rights in their case-law. This conceptual delimitation carried out by these two bodies is all the more important as it affects the law that applies to armed conflicts. Indeed, by analysing this question, the never-ending debate on the relationship between International Human Rights Law and International Humanitarian Law reappears. The second part of this study therefore focuses on the issue of discovering whether and in which way jus in bello has found its place into the Inter-American Human Rights bodies’ case-law. As the active political life of Latin American societies has shown, the study of the different applicable legal regimes also requires looking into “state of emergency” Law, an issue which has been shaped by the Inter-American Court and Commission’s work.

WHAT AMERICANS THINK OF INTERNATIONAL HUMANITARIAN LAW

Brad A. Gutierrez, Sarah DeCristofaro and Michael Woods. In: International review of the Red Cross Vol. 93, no. 884, December 2011, p. 1009-1034

The United States’ foreign policy in the first decade of the twenty-first century and its involvement in armed conflicts in Iraq and Afghanistan have given rise to a reinvigorated interest in international humanitarian law (IHL), commonly referred to in the United States as the law of armed conflict. Conversations about whether to classify detainees as prisoners of war, debates about what constitutes torture, and numerous surveys attempting to measure the public’s knowledge about and views on the rules of war are offering an opportunity to examine Americans’ views on IHL.This article will reflect on those views, providing numerous examples to illustrate the complexities encountered when near universally accepted legal standards of conduct are layered upon the fluid and unpredictable realities of modern warfare. The article will also highlight the impact that battlefield activities can have on domestic debates over policy choices and national conscience.

WHAT'S NEW IN LAW AND CASE LAW ACROSS THE WORLD : BIANNUAL UPDATE ON NATIONAL LEGISLATION AND CASE LAW : JANUARY-JUNE 2011

[ICRC]. In: International review of the Red Cross Vol. 93, no. 883, September 2011, p. 853-872

The biannual report on national legislation and case law is an important tool in promoting the exchange of information on national measures for implementation of international humanitarian law (IHL). The ICRC was asked to undertake this task of information exchange through a resolution adopted at the 26th International Conference of the Red Cross and Red Crescent in 1996.

WHITE PHOSPHOROUS MUNITIONS : INTERNATIONAL CONTROVERSY IN MODERN MILITARY CONFLICT

Philip Hashey. In: New England Journal of International and Comparative Law Vol. 17, 2011, p. 291-315

This article examines the current state of international law governing the use of white phosphorus munitions and argues that the ambiguous legal status of white phosphorus has become untenable given recent controversies in Fallujah and Gaza. This article further argues that the deployment of white phosphorus munitions may already be illegal in many circumstances under either the Chemical Weapons Convention or the Convention on Certain Conventional Weapons or both. However, changes may be necessary to one or both treaty regimes to explicitly ban the use of white phosphorus munitions in some situations, particularly when used in urban areas. A more definitive consensus on the legality of white phosphorus use will reduce the current state of confusion, which is obscuring the debate in the public, the media, the military, and even among legal scholars and commentators.

WHO IS PROTECTED UNDER INTERNATIONAL HUMANITARIAN LAW ? : FINDING A DEFINITION FOR "DIRECT PARTICIPATION IN HOSTILITIES"

Helen Durham and Eve Massingham. - In: Protecting civilians during violent conflict : theoretical and practical issues for the 21st century. - Farnham ; Burlington : Ashgate, 2012. - p. 103-117

Helen Durham and Eve Massingham, of the Australian Red Cross, explain that the current complex global conflict waged against those engaged in acts of terrorism has led certain commentators to question the relevance and use of some of the principles found in international humanitarian law (IHL). But they argue that a deeper examination of the issues in both the practical and the academic discourse indicates that problems do not lie with the actual principles themselves - such as distinction and proportionnality - but rather in the capacity to implement these requirements on a battlefield that is no longer neatly divided between civilian and combatant. The ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities is an attempt to stimulate debates on the practical application of the requirement of distinction in situations where fighters do not adequately differentiate themselves from the civilian population and where civilians directly engage in fighting. Durham and Massingham outline the guidelines and reflect on the major criticisms of them. They go on to examine other useful principles found within IHL, such as the requirement of precautions in attack, which might enhance attempts to protect civilians during times of armed conflict.

WHO MAY BE KILLED ? : ANWAR AL-AWLAKI AS A CASE STUDY IN THE INTERNATIONAL LEGAL REGULATION OF LETHAL FORCE

Robert Chesney. In: Yearbook of international humanitarian law Vol. 13, 2010, p. 3-60

Anwar al-Awlaki is a dual Yemeni-American citizen who has emerged in recent years as a leading English-language proponent of violent jihad, including explicit calls for the indiscriminate murder of Americans. According to the US government, moreover, he also has taken on an operational leadership role with the organization al Qaeda in the Arabian Peninsula (AQAP), recruiting and directing individuals to participate in specific acts of violence. Does international law permit the US government to kill al-Awlaki in these circumstances? The use of lethal force in response to terrorism—especially the use of such force by the United States and Israel—has been the subject of extensive scholarship, advocacy, and litigation over the past decade. Yet we remain far from consensus. The al-Awlaki scenario accordingly provides an occasion for fresh analysis. Part 1.2 opens with a discussion of what we know, based on the public record as reflected in media reports and court documents, about AQAP, about al-Awlaki himself, and about the US government's purported decision to place him on a list of individuals who may be targeted with lethal force in certain circumstances. Part 1.3 explores objections founded in the UN Charter's restraints on the use of force in international affairs, emphasizing Yemen's potential objections under Article 2 of the Charter. Part 1.4 considers whether an attack on al-Awlaki would best be understood as governed by International Humanitarian Law (IHL) or International Human Rights Law (IHRL), and whether and when either body of law would actually permit the use of lethal force.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

ICRC

4147/002 04.2013 250