BIBLIOGRAPHY
2nd Trimester 2013

International Humanitarian Law

New acquisitions on international humanitarian law , classified by subjects, at the International Committee of the Red Cross Library

ICRC

ICRC

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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 with abstract for readers who need it all

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.

Access to document

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

Chronology

This bibliography is based on the acquisitions made by the ICRC Library 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.

I. General issues

(General catch-all category, Customary Law)

Le droit humanitaire rattrapé par les droits de l'homme ?

par Giorgio Malinverni. - Paris : Dalloz, 2011. - p. 401-419. - In: La conscience des droits : mélanges en l'honneur de Jean-Paul Costa. - Cote 345.2/927 (Br.)

Far be it from thee to slay the righteous with the wicked : an historical and historiographical sketch of the bellicose debate concerning the distinction between jus ad bellum and jus in bello

JHH Weiler and Abby Deshman. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 25-61

only from ICRC headquarters: http://ejil.oxfordjournals.org/content/24/1/25.full.pdf

The fog of victory

Gabriella Blum. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 391-421

only from ICRC headquarters: http://ejil.oxfordjournals.org/content/24/1/391.full.pdf

"IHL" as "islamic humanitarian law" : a comparative analysis of international humanitarian law and islamic military jurisprudence amidst changing historical contexts

Omar Yousaf. In: Florida journal of international law Vol. 24, no. 2, August 2012, p. 439-468. - Cote 345.2/912 (Br.)

only from ICRC headquarters:
http://heinonline.org/HOL/Page?handle=hein.journals/fjil24&id=455&collection=journals&index=journals/fjil

International humanitarian law bibliography 2012 : new acquisitions [...], classified by theme, at the International Committee of the Red Cross library

ICRC. - Geneva : ICRC, April 2013. - 192 p. - Cote 345.2/922

Islamic law on protection and assistance of civilians affected by armed conflicts and natural disasters, methods and means of warfare, and treatment of prisoners of war

Mohd Hisham Mohd Kamal. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 245-261

Ius in bello under islamic international law

Mohamed Elewa Badar. In: International criminal law review Vol. 13, issue 3, 2013, p. 593-625

The limits of economic sanctions under international humanitarian law : the case of the Congo

Mallory Owen. In: Texas international law journal Vol. 48, issue 1, 2012, p. 103-123. - Cote 345.2/923 (Br.)

http://www.tilj.org/content/journal/48/num1/Owen103.pdf

The relationship between international humanitarian law and international human rights law in situations of armed conflict

Daniel Bethlehem. In: Cambridge journal of international and comparative law Vol. 2, no. 2, 2013, p. 180-195. - Cote 345.2/925 (Br.)

http://www.cjicl.org.uk/journal/article/100

Research handbook on human rights and humanitarian law

ed. by Robert Kolb, Gloria Gaggioli. - Cheltenham ; Northampton : E. Elgar, 2013. - 684 p. - Cote 345.2/913

Towards a synthesis between islamic and Western jus in bello

Jacob Turner. In: Journal of transnational law and policy Vol. 21, no. 1, 2011-2012, p. 165-206. - Cote 345.2/917 (Br.)

only from ICRC headquarters:

http://heinonline.org/HOL/Page?handle=hein.journals/jtrnlwp21&id=171&collection=journals&index=journals/jtrnlwp

The U.S. v. the Red Cross : customary international humanitarian law and universal jurisdiction

Noura Erakat. In: Denver journal of international law and policy Vol. 41, no. 2, Winter 2013, p. 225-272. - Cote 345.2/928 (Br.)

The use of force under islamic law

Niaz A. Shah. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 343-365

only from ICRC headquarters: http://ejil.oxfordjournals.org/content/24/1/343.full.pdf

War crimes in the American revolution : examining the conduct of Lt. Col. Banastre Tarleton and the British Legion during the southern campaigns of 1780-1781

John Loran Kiel. In: Military law review Vol. 213, Fall 2012, p. 29-64

II. Types of conflicts

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

Appréciation de l'application de certaines règles du droit international humanitaire dans les rapports portant sur l'interception de la flottille naviguant vers Gaza

par Vaios Koutroulis. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht Vol. 45, 2012-1, p. 90-122

La conduite des hostilités dans les conflits armés asymétriques : un défi au droit humanitaire

Lorenzo Redalié. - Genève [etc.] : Schulthess : Faculté de droit de l'Université de Genève ; Paris : L.G.D.J., 2013. - 378 p. - Cote 345.25/270

The counterinsurgent's constitution : law in the age of small wars

Ganesh Sitaraman. - Oxford [etc.] : Oxford University Press, 2013. - 328 p. - Cote 345.25/266

Ensuring compliance of non-state actors with rules of international humanitarian law on the use of weapons in NIAC : a way to follow ?

Rustam B. Atadjanov. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 140-182

Expanding the R2P tool-kit : new political possibilities and attendant legal uncertainties

John Cerone. In: ILSA journal of international and comparative law Vol. 18, issue 1, 2011-2012, p. 531-563. - Cote 345.26/228 (Br.)

only from ICRC headquarters:

http://heinonline.org/HOL/Page?handle=hein.journals/ilsaic18&collection=journals&index=journals/ilsaic&id=578

How cyber changes the laws of war

Jack Goldsmith. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 129-138

only from ICRC headquarters: http://ejil.oxfordjournals.org/content/24/1/129.full.pdf+html

The illegality of military support to rebels in the Libyan war : aspects of jus contra bellum and jus in bello

Olivier Corten and Vaios Koutroulis. In: Journal of conflict and security law Vol. 18, no. 1, Spring 2013, p. 59-93

only from ICRC headquarters: http://jcsl.oxfordjournals.org/content/18/1/59.full.pdf

Interception on the high seas in the context of peace and security : the right of visit in cases of armed conflict and Security Council's action

Efthymios Papastavridis. - Oxford ; Portland : Hart, 2013. - p. 83-112. - In: The interception of vessels on the high seas : contemporary challenges to the legal order of the oceans. - Cote 347.799/142

International law and civil wars : intervention and consent

Eliav Lieblich. - London ; New York : Routledge, 2013. - 286 p. - Cote 345.27/125

Mexico's drug war : is it really a war ?

Callin Kerr. In: South Texas law review Vol. 54, Fall 2012, p. 193-224. - Cote 345.26/230 (Br.)

only from ICRC headquarters:

http://heinonline.org/HOL/Page?handle=hein.journals/stexlr54&collection=journals&index=journals/stexlr&id=205

Politically inconvenient, legally correct : a non-international armed conflict in southern Thailand

Benjamin Zawacki. In: Journal of conflict and security law Vol. 18, no. 1, Spring 2013, p. 151-179

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Road to nowhere ? : the future for a declaration on fundamental standards of humanity

Emily Crawford. In: Journal of international humanitarian legal studies Vol. 3, no. 1, 2012, p. 43-72

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Le statut de combattant dans les conflits armés non internationaux : étude critique de droit international humanitaire

Gérard Aivo ; préf. de Stéphane Doumbé-Billé et de Robert Kolb. - Bruxelles : Bruylant, 2013. - 512 p. - Cote 345.29/185

Tallinn manual on the international law applicable to cyber warfare : prepared by the International Group of Experts at the invitation of the NATO cooperative cyber defense centre of excellence

general ed. Michael N. Schmitt. - Cambridge [etc.] : Cambridge University Press, 2013. - 282 p. - Cote 345.26/227

http://issuu.com/nato_ccd_coe/docs/tallinnmanual

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

L'applicabilité du droit international humanitaire aux groupes armés organisés

Jann K. Kleffner. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 141-161

http://www.cid.icrc.org/library/docs/DOC/irrc-882-kleffner-fre.pdf

Une collection de codes de conduite établis par des groupes armés

compilée par Olivier Bangerter ; constituée et présentée par Nelleke van Amstel. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 185-205

http://www.cid.icrc.org/library/docs/DOC/irrc-882-codes-conduct-fre.pdf

Le contrôle du respect des normes humanitaires par les acteurs armés non étatiques : un aperçu des mécanismes internationaux et l'Acte d'engagement de l'Appel de Genève

Pascal Bongard et Jonathan Somer. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 257-296

http://www.cid.icrc.org/library/docs/DOC/irrc-883-bongard-somer-fre.pdf

Les engagements pris par les groupes armés et les enseignements à en tirer pour le droit des conflits armés : définition des cibles légitimes et prisonniers de guerre

Sandesh Sivakumaran. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 163-184

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Justice through armed groups' governance : an oxymoron ?

Jan Willms. - Berlin : DFG Collaborative Research Center (SFB) 700, October 2012. - 30 p. - Cote 345.22/215 (Br.)

http://www.sfb-governance.de/publikationen/sfbgov_wp/wp40_en/WP40.pdf?1350914047

Killing in the fog of war

Adil Ahmad Haque. In: Southern California law review Vol. 86, no. 1, November 2012, p. 63-116. - Cote 345.29/187 (Br.)

only from ICRC headquarters:

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Mesures anti-piraterie en Somalie entre les droits de l'homme et les garanties du droit humanitaire : la contribution de la jurisprudence et de la pratique des mécanismes de contrôle non juridictionnel

Maria Chiara Noto. - The Hague : T.M.C Asser Press, 2013. - p. 497-512. - In: International courts and the development of international law : essays in honour of Tullio Treves. - Cote 345.29/186 (Br.)

Les obligations découlant du droit international humanitaire devraient-elles être vraiment égales pour les États et les groupes armés ?

Marco Sassòli et Yuval Shany. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 119-133

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Les raisons pour les groupes armés de choisir de respecter le droit international humanitaire, ou pas

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Le statut de combattant dans les conflits armés non internationaux : étude critique de droit international humanitaire

Gérard Aivo ; préf. de Stéphane Doumbé-Billé et de Robert Kolb. - Bruxelles : Bruylant, 2013. - 512 p. - Cote 345.29/185

Vers une égalité concrète en droit international humanitaire : réponse aux arguments de Marco Sassòli et Yuval Shany

René Provost. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 134-139

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IV. Multinational forces

Les missions autorisées par le Conseil de sécurité à l'heure de la R2P : vers une application différenciée du jus in bello ?

Frédéric Mégret. - [S.l.] : [s.n.], 2012. - [22] p. - Cote 345.26/229 (Br.)

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2195710

Protection of civilians in international humanitarian law and by the use of force under chapter VII of the Charter of the United Nations

Keiichiro Okimoto. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 1-102

Le recours à la force dans les opérations de maintien de la paix contemporaines

Ophélie Thielen ; préf. de Hervé Ascensio. - Paris : Librairie Générale de Droit et de Jurisprudence : Lextenso, 2013. - 437 p. - Cote 345/625

V. Private entities

A U.N. convention to regulate PMSCs ?

José L. Gómez del Prado. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 262-286. - Cote 345.29/188

Accountability for private military and security contractors in the international legal regime

Kristine A. Huskey. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 193-212. - Cote 345.29/188

Due diligence obligations of conduct : developing a responsibility regime for PMSCs

Nigel D. White. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 233-261. - Cote 345.29/188

Mind the gap : lacunae in the international legal framework governing private military and security companies

Benjamin Perrin. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 213-232. - Cote 345.29/188

Private military and security companies (PMSCs) and the quest for accountability

Guest ed. : George Andreopoulos and John Kleinig. In: Criminal justice ethics Vol. 31, no. 3, December 2012, 318 p. - Cote 345.29/188

The privatization of war : from privateers and mercenaries to private military and security companies

Amanda Foong. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 210-244

Unaccountable : the current state of private military and security companies

Marcus Hedahl. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 175-192. - Cote 345.29/188

VI. Protection of persons

The extraterritorial obligation to prevent the use of child soldiers

Tracey B. C. Begley. In: The American University international law review Vol. 27, no.3, 2012, p. 613-641. - Cote 362.7/123 (Br.)

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http://heinonline.org/HOL/Page?handle=hein.journals/amuilr27&collection=journals&index=journals/amuilr&id=647

Islamic law on protection and assistance of civilians affected by armed conflicts and natural disasters, methods and means of warfare, and treatment of prisoners of war

Mohd Hisham Mohd Kamal. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 245-261

Looting and rape in wartime : law and change in international relations

Tuba Inal. - Philadelphia : University of Pennsylvania Press, 2013. - 269 p. - Cote 362.8/190

On locating the rights to lost

Ricardo A. Sunga III. In: The John Marshall law review Vol. 45, no. 4, Summer 2012, p. 1051-1119. - Cote 332/14 (Br.)

only from ICRC headquarters:

http://heinonline.org/HOL/Page?handle=hein.journals/jmlr45&collection=journals&index=journals/jmlr&id=1149

The prosecution of child soldiers : balancing accountability with justice

Erin Lafayette. In: Syracuse law review Vol. 63, no. 2, 2013, p. 297-325. - Cote 362.7/122 (Br.)

Protecting the right to life of journalists : the need for a higher level of engagement

Christof Heyns, Sharath Srinivasan. In: Human rights quarterly : a comparative and international journal of the social sciences, humanities, and law Vol. 35, no. 2, May 2013, p. 304-332

http://muse.jhu.edu/journals/human_rights_quarterly/v035/35.2.heyns.pdf

La protection internationale des femmes pour des raisons liées au genre en droit international : interprétations récentes des instruments de droit international soutenant des formes de protection subsidiaire

par Sílvia Morgades-Gil. In: Revue générale de droit international public Tome 17, no 1, 2013, p. 37-73

Sheltering the displaced : the protected status of internally displaced persons (IDPs) under international humanitarian law

Louise Sarsfield Collins. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 183-209

UN Security Council resolutions concerning children affected by armed conflict : in whose "best interest" ?

Sarah M. Field. In: The international journal of children's rights Vol. 21, no. 1, 2013, p.127-161

VII. Protection of objects

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

Looting and rape in wartime : law and change in international relations

Tuba Inal. - Philadelphia : University of Pennsylvania Press, 2013. - 269 p. - Cote 362.8/190

Protection of the environment during armed conflict

Susan Breau. - London ; New York : Routledge, 2013. - p. 617-632. - In: Routledge handbook of international environmental law. - Cote 363.7/145 (Br.)

Sustainable development and the protection of the environment during times of armed conflict

Onita Das. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 120-182. - In: Environmental protection, security and armed conflict : a sustainable development perspective. - Cote 363.7/141

Towards an international law of brigandage : interpretative engineering for the regulation of natural resources exploitation

Jean d'Aspremont. In: Asian journal of international law Vol. 3, no. 1, 2013, p. 1-24. - Cote 363.7/144 (Br.)

When bonobos meet guerillas : preserving biodiversity on the battlefield

Brendan Kearns. In: Georgetown international environmental law review Vol. 24, issue 2, Winter 2012. - Cote 363.7/142 (Br.)

VIII. Detention, internment, treatment and judicial guarantees

L'arrêt Al-Jedda de la Cour européenne des droits de l'homme et le droit international humanitaire

Jelena Pejic. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 365-381

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La détention par les groupes armés : surmonter les obstacles à l'action humanitaire

David Tuck. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 337-363

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Military captivity in two world wars : legal frameworks and camp regimes

Iris Rachamimov. - Cambridge [etc.] : Cambridge University Press, 2012. - p. 214-235 - In: War and the modern world. - Cote 355/983

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http://heinonline.org/HOL/Page?handle=hein.journals/jmlr45&collection=journals&index=journals/jmlr&id=1149

The power to detain : detention of terrorism suspects after 9/11

Oona Hathaway... [et al.]. In: Yale journal of international law Vol. 38, no. 1, 2013, p. 124-177. - Cote 400.2/132 (Br.)

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IX. Law of occupation

Appréciation de l'application de certaines règles du droit international humanitaire dans les rapports portant sur l'interception de la flottille naviguant vers Gaza

par Vaios Koutroulis. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht Vol. 45, 2012-1, p. 90-122

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http://www.unisa.ac.za/contents/faculties/law/docs/10chinkin.pdf

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David Mennie. In: Transnational law and contemporary problems Vol. 21, issue 2, Summer 2012, p. 511. - Cote 345.28/102 (Br.)

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The treatment of occupation legislation by courts in liberated territories

Eyal Benvenisti and Michal Saliternik. - Cambridge [etc.] : Intersentia, 2012. - p. 269-289. - In: International law in domestic courts : rule of law reform in post-conflict states. - Cote 344/592

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X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

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

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XV. Contemporary challenges

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

Autonomous weapon systems and international humanitarian law : a reply to the critics

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XVI. Countries/Regions

Afghanistan

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Appréciation de l'application de certaines règles du droit international humanitaire dans les rapports portant sur l'interception de la flottille naviguant vers Gaza

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Porter le flambeau de l'humanité jusqu'au coeur des conflits, une tradition suisse à relayer

par Didier Burkhalter. In: Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen = Rivista svizzera di diritto internazionale e europeo = Swiss review of international and european law 23e année, 1/2013, p. 9-17

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Iain Bonomy. - Oslo : Torkel Opsahl Academic EPublisher, 2013. - 53 p. - Cote 344/122 (Br.)
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A U.N. convention to regulate PMSCs ?

José L. Gómez del Prado. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 262-286. - Cote 345.29/188

In the last 20 years the ruthless competition for natural resources, political instability, armed conflicts, and the terrorist attacks of 9/11 have paved the way for private military and security companies (PMSCs) to operate in areas which were until recently the preserve of the state. PMSCs, less regulated than the toy industry, commit grave human rights violations with impunity. The United Nations has elaborated an international binding instrument to regulate their activities but the opposition of the U.S., U.K., and other Western governments—and from PMSCs, which prefer self-regulation—have prevented any advancement.

Accountability for private military and security contractors in the international legal regime

Kristine A. Huskey. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 193-212. - Cote 345.29/188

The rapidly growing presence of private military and security contractors (PMSCs) in armed conflict and post-conflict situations in the last decade brought corresponding incidents of serious misconduct by PMSC personnel. The two most infamous events—one involving the firm formerly known as Blackwater and the other involving Titan and CACI—engendered scrutiny of available mechanisms for criminal and civil accountability of the individuals whose misconduct caused the harm. Along a parallel track, scholars and policymakers began examining the responsibility of states and international organizations for the harm that occurred. Both approaches have primarily focused on post-conduct accountability—of the individuals who caused the harm, of the state in which the harm occurred, or of the state or organization that hired the PMSC whose personnel caused the harm. Less attention, however, has been paid to the idea of pre-conduct accountability for PMSCs and their personnel. A broad understanding of "accountability for" PMSCs and their personnel encompasses not only responsibility for harm caused by conduct, but responsibility for hiring, hosting, and monitoring these entities, as well as responsibility to the victims of the harm. This article provides a comprehensive approach for analyzing the existing international legal regime, and whether and to what extent the legal regime provides "accountability for" PMSCs and their personnel. It does so by proposing a practical construct of three phases based on PMSC operations—contracting, in-the-field, and post-conduct—with which to assess the various bodies of international law.

L'applicabilité du droit international humanitaire aux groupes armés organisés

Jann K. Kleffner. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 141-161

S'il est généralement admis aujourd'hui que le droit international humanitaire (DIH) s'applique aux groupes armés organisés, il n'est pas aisé de dire pour quelles raisons il en va ainsi, ni sur quelles bases s'appuyer pour expliquer en quoi le DIH a force obligatoire pour ces groupes. Différentes thèses ont été avancées et le présent article propose une analyse critique de cinq d'entre elles, à savoir que les groupes armés organisés sont liés par les obligations incombant à l'État sur le territoire duquel ils opèrent, qu'ils sont liés par le DIH dès lors que leurs membres le sont individuellement, que les normes du DIH ont un caractère contraignant pour les groupes armés organisés du fait qu'ils exercent de facto des fonctions gouvernementales, que le DIH coutumier s'applique aux groupes armés organisés en vertu de leur personnalité juridique internationale (limitée) et que les groupes armés organisés sont liés par le DIH dès lors qu'ils y ont consenti.

http://www.cid.icrc.org/library/docs/DOC/irrc-882-kleffner-fre.pdf

Appréciation de l'application de certaines règles du droit international humanitaire dans les rapports portant sur l'interception de la flottille naviguant vers Gaza

par Vaios Koutroulis. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht Vol. 45, 2012-1, p. 90-122

Le présent article analyse les rapports issus du Conseil des droits de l'homme, des commissions établies par les gouvernements turc et israélien ainsi que du panel d'inspection mis en place par le Secrétaire général des Nations Unies portant sur l'interception de la flottille naviguant vers Gaza, afin d'examiner

comment ils interprètent certaines règles du droit international humanitaire relatives à la licéité du blocus israélien. En premier lieu, nous nous attardons sur le droit applicable au blocus. Sur ce point, les rapports confirment le caractère coutumier des règles énoncées dans le manuel de San Remo et précisent les relations de ces règles avec le droit de la mer ainsi qu'avec les autres règles générales du droit international humanitaire (DIH). En deuxième lieu, on analyse de plus près comment les rapports interprètent certaines règles du DIH, à savoir l'interdiction d'affamer la population civile, le principe de proportionnalité et l'interdiction d'infliger des peines collectives à la population civile. L'analyse identifie tant les interprétations qui sont conformes aux règles appliquées que celles qui s'écartent de ces règles.

L'arrêt Al-Jedda de la Cour européenne des droits de l'homme et le droit international humanitaire

Jelena Pejic. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 365-381

L'arrêt rendu par la Cour européenne des droits de l'homme dans l'affaire Al-Jedda portait sur la licéité des pratiques de détention du Royaume-Uni en Irak au regard de la Convention européenne des droits de l'homme. On peut cependant considérer que cette décision de la Cour risque d'avoir des incidences plus larges sur la capacité des États parties à la Convention de mener des opérations de détention en situation de conflit armé. Cet article analyse ce que la Cour a dit, et aussi ce qu'elle n'a pas dit, au sujet de l'application du droit international humanitaire.

http://www.cid.icrc.org/library/docs/DOC/irrc-883-pejic-fre.pdf

Articulating international human rights and international humanitarian law : conciliatory interpretation under the guise of conflict of norms-resolution

Jean d'Aspremont. - In: The interpretation and application of the European Convention of Human Rights : legal and practical implications. - Leiden ; Boston : M. Nijhoff, 2013. - p. 3-31. - Cote 345.2/918 (Br.)

This chapter seeks to challenge the principle "Lex specialis derogat generali" elevated to the cornerstone of articulation of international humanitarian law (IHL) and human rights law (HRL) by both case-law and legal scholarship. It is argued that judges and legal experts do no actually articulate HRL and IHL along the lines of that principle but rather engage in a systemic integration of these two sets of rules. More specifically, it is submitted here that most judges and experts apply a principle of interpretation of international that is the principle of systemic integration of international law. The ambition of this chapter is accordingly to shed some light on the actual manner in which HRL and IHL have been articulated and dispel the impressions that are conveyed by the professed use of conflict-resolution mechanisms. This chapter will start by recalling the elementary features of the principle of systemic integration of international law (1) and those of the principle of Lex specialis derogat generali (2) with a view to showing that each of them constitute a very specific mechanism that does not serve the same purpose as the other. The chapter will then demonstrate how, in the context of the simultaneous application of IHL and HRL, these two mechanisms have been conflated, the systemic integration principle being applied under the guise of the Lex specialis derogat generali (3). Eventually, this chapter will try to unearth some of the reasons underlying the trompe l'oeil created by the use of the Lex specialis derogat generali to carry out a systemic integration of IHL and HRL (4).

Autonomous weapon systems and international humanitarian law : a reply to the critics

Michael N. Schmitt. In: Harvard national security journal, Features, online February 5, 2013, 37 p. - Cote 341.67/728 (Br.)

This article is designed to infuse granularity and precision into the legal debates surrounding such weapon systems and their use in the future "battlespace." It suggests that whereas some conceivable autonomous weapon systems might be prohibited as a matter of law, the use of others will be unlawful only when employed in a manner that runs contrary to international humanitarian law's prescriptive norms. This article concludes that Human Rights Watch report "Losing Humanity"'s recommendation to ban the systems is insupportable as a matter of law, policy, and operational good sense. Human Rights Watch's analysis sells international humanitarian law short by failing to appreciate how the law tackles the very issues about which the organization expresses concern. Perhaps the most glaring weakness in the recommendation is the extent to which it is premature. No such weapons have even left the drawing board. To ban autonomous weapon systems altogether based on speculation as to their future form is to forfeit any potential uses of them that might minimize harm to civilians and civilian objects when compared to other systems in military arsenals.

http://harvardnsj.org/2013/02/autonomous-weapon-systems-and-international-humanitarian-law-a-reply-to-the-critics/

Avoiding strict liability in mixed conflicts : a subjectivist approach to the contextual element of war crimes

Henri Decoeur. In: International criminal law review Vol. 13, no. 2, 2013, p. 473-492

As long as distinct legal regimes apply to international and non-international armed conflicts, the determination of the nature of the conflict by a court of law directly impacts on the criminal responsibility of the accused for war crimes. As this article shows, the approach traditionally used in international criminal law to characterise mixed conflicts is not sufficiently reliable for the addressees of penal norms. Low-ranking perpetrators have generally little chance of being aware of the international character of the conflict. This article argues that the principle of individual guilt requires establishing the mens rea regarding the nature of the conflict. Accordingly, a mistake of fact, or alternatively, a mistake of legal element should be admissible defences. Furthermore, it is submitted that both the method of conflict characterisation and the definition of the corresponding mental element are not compatible with the requirements of the principle of legality.

Bombs ahoy ! : targeting of "pirate equipment" in Somalia : between law enforcement and hostilities

Eliav Lieblich. - [S.l.] : [s.n.], 2012. - 32 p. - Cote 347.799/143 (Br.)

On 15 May 2012, EU forces (EU NAVFOR) conducted, for the first time, an aerial attack against 'pirate equipment' located in Somali coastal territory. The operation, which did not target persons, was underplayed by EU NAVFOR as a 'mere extension' of 'disruption actions' regularly taken against pirates at sea. However, attacks of this type – labeled in this article as 'forcible disruption operations' (FDOs) – raise a plethora of legal questions, the importance of which stretches well beyond the case of Somalia, to the core of the law enforcement/hostilities dichotomy so prevalent in contemporary international-legal discourse. First, the question arises whether such actions are law enforcement operations, or rather are hostile acts. Positing that FDOs are closer to the latter, we ask whether they can be justifiable under international humanitarian or human rights law (IHL and IHRL). We further discuss whether relevant UN Security Council resolutions, as well as the consent of Somali authorities, affect this analysis. Rather surprisingly, the article concludes that while FDOs may be problematic under IHL, IHRL – due to its system of derogations – might indeed allow such actions. However, these must conform to several Rule of Law conditions, that safeguard the right to life and the adherence to due process obligations.

The challenge of autonomous lethal robotics to international humanitarian law

Chantal Grut. In: Journal of conflict and security law Vol. 18, no. 1, Spring 2013, p. 5-23

The concept of a truly autonomous weapons system—a system which is capable of operating itself, independently from human oversight—sounds more like science fiction than science fact. However, the reality is that weapons development is increasingly moving in this direction. Despite reassurances that humans will always be 'in the loop', significant amounts of autonomy have been given to certain weapons systems already. Such weapons present unique regulatory problems, arising not so much from their nature as weapons, but from their replacement of the human role in war and killing. This article considers the implications of increasing weapon autonomy for the humanitarian law principles of distinction and proportionality, and the concept of accountability for breaches of international humanitarian law.

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Changing the paradigm of international criminal law : considering the work of the United Nations War Crimes Commission of 1943-1948

Dan Plesch and Shanti Sattler. In: International community law review Vol. 15, no. 2, 2013, p. 203-223

More than 2,000 international criminal trials were conducted at the end of World War II in addition to those held by the International Military Tribunals (IMTs) at Nuremburg and Tokyo. Fifteen national tribunals conducted these trials in conjunction with an international war crimes commission established by these same states in October 1943 under the name, The United Nations Commission (UNWCC). The extensive work of the UNWCC and these tribunals serves as a source of customary international criminal law that relates directly to the current work of the International Criminal Court and the ad hoc tribunals in operation since the 1990s.

Chinese humanitarian law and international humanitarian law

Liu Daqun. - In: The diversification and fragmentation of international criminal law. - Leiden : M. Nijhoff, 2012. - p. 349-359. - Cote 345.22/214 (Br.)

The development of international humanitarian law is traditionally associated with the awakening of a humanitarian consciousness in Europe and North America. The Lieber Code of 1863, the St. Petersburg Declaration of 1868 and the Hague Conferences of 1899 are commonly credited as the sources of interna tional humanitarian law. By the same token, the philosophical basis of international humanitarian law is typically attributed to the writings of Aristotle, Plato, Cicero and Grotius. However, the genesis of international humanitarian law is not unique to Western civilization. The history of armed conflict is replete with examples of states and sovereigns developing rules to regulate the use of force, the protection of civilians and the behaviour of belligerents in their conduct of war. With its long history of over 5,000 years, splendid cultural heritage and many philosophers, jurists and thinkers, China has made a great contribution, not only to civilization, but also to the development of international humanitarian law.

A chink in the armor : how a uniform approach to proportionality analysis can end the use of human shields

Margaret T. Artz. In: Vanderbilt journal of transnational law Vol. 45, no. 5, November 2012, p. 1447-1487. - Cote 345.25/128 (Br.)

The appropriate response to human shields is a recurring issue in modern warfare. Technological asymmetry, disparate obligations, and doctrinal divergence between state and nonstate adversaries combine to make civilians account for 84 percent of combat deaths. Just as a slot machine entices a gambler though he rarely wins, the international community's inconsistent response to human shields has placed shield users on an intermittent reinforcement schedule, thereby ensuring that this tactic remains part of insurgent strategy. Long-term protection of civilians requires eliminating this tactic. Principles of behavior science indicate that an effective way to do so is to uniformly remove its desired consequence— combatants must never allow the presence of shields to impede access to the shielded military objective. And given the options (deterrence in the presence of human shields or pursuit of the military objective 100 percent of the time), the latter is the only option that disables human shield use as a functional behavior and effective strategy. Therefore, this Note suggests that the international community should adopt a broad understanding of proportionality analysis that allows attacking forces to achieve their military objective despite the presence of human shields. If this approach is pursued uniformly, it will extinguish the use of shields as an effective tactic, thereby increasing compliance with international humanitarian law principles and reaffirming the overarching premise of international humanitarian law to protect the right to life. This approach is supported by a broader, more forward-thinking conception of the principle of proportionality as reflected in current treaty and customary international law.

http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Artz-FINAL.pdf

Une collection de codes de conduite établis par des groupes armés

compilée par Olivier Bangerter ; constituée et présentée par Nelleke van Amstel. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 185-205

Ce numéro de la Revue internationale de la Croix-Rouge traite de l'importance qu'il y a de comprendre les groupes armés et les normes qui les lient. L'examen des règles et des décisions qu'ils choisissent d'adopter permet d'appréhender ces groupes et de travailler avec eux à l'amélioration du respect de la loi.

http://www.cid.icrc.org/library/docs/DOC/irrc-882-codes-conduct-fre.pdf

Combating impunity : legal nuances of the Philippine IHL act and the Philippine ratification of the Rome Statute of the International Criminal Court

H. Harry L. Roque. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 262-281

When the Philippines ratified the Geneva Conventions, it entered into the obligation to enact domestic laws punishing violations thereof. After almost sixty years, the Philippines finally discharged this burden with the passage of the IHL Act on December 11, 2009. Subsequently thereafter, on August 22, 2011, after eleven long years of continuous lobby, the Philippine Senate gave its concurrence to the Rome Statute of the International Criminal Court ("Rome Statute"), paving the way for the deposit of the instrument of ratification with the UN Secretary-General. With this deposit, the Philippines became the 117th State party to the Rome Statute. Certainly, both developments are an important indication of the country's commitment to combat impunity in respect of grave breaches and serious violations of International Humanitarian Law. This paper seeks to analyze the legal nuances of both developments and the

challenges that come with the entry into force of the IHL Act and the Rome Statute within Philippine jurisdiction.

Le Comité international de la Croix-Rouge et le règlement des différends internationaux

Aurélie Farah. - [S.l.] : [s.n.], 2012. - 155 p. - Cote 345.22/213

Depuis sa création en 1863, le Comité international de la Croix-Rouge porte assistance aux victimes des conflits armés internationaux et non internationaux. Il demeure ainsi l'acteur principal dans le développement de l'aide humanitaire afin de renforcer la protection juridique des victimes. Dans le cadre de ses interventions humanitaires dans un conflit entre plusieurs Etats ou entités, le CICR peut également être amené à contribuer directement ou indirectement à son règlement et aux différends survenant lors de ce conflit. Ceci-dit, lui-même peut être partie à un différend lorsqu'il est victime d'attaques pendant son intervention humanitaire. En outre, avec l'apparition progressive depuis 1945 des juridictions pénales internationales permettant une transition entre l'état de guerre et l'état de paix, les criminels de guerre présumés sont traduits en justice. Très souvent présent sur le terrain où ces criminels ont opéré, le CICR pourrait jouer un rôle dans l'obtention et l'administration des preuves nécessaires. Il apparait ainsi utile d'analyser la conciliation des activités du CICR en tant qu'organisme humanitaire avec ses éventuelles interventions dans le règlement des différends internationaux durant un conflit armé ainsi que dans la phase post-conflit armé. Il importe de présenter la spécificité du rôle du CICR au sein de son propre Mouvement mais également au sein de la Communauté internationale qui lui permet de contribuer au règlement d'un différend d'une part avant de clarifier dans quel type de différends et de modes de règlement de différend le CICR peut intervenir d'autre part.

Comments on illegal war and illegal conduct : are the two related ?

by Charles Garraway. In: Netherlands international law review Vol. 59, issue 3, 2012, page 473-492. - Cote 345.25/160 (Br.)

This article examines whether there is a link between the legality or otherwise of an armed conflict under jus ad bellum and the subsequent conduct of the campaign under jus in bello. This is done by comparing two conflicts where the legality was not in serious dispute, The Falklands/Malvinas conflict and the Iraq War 1990-1991, and three where the legality has been questioned, Kosovo 1999, the 'global war on terror' and the Iraq War 2003. In looking for a common link, the author is drawn away from concerns over the jus ad bellum to doubts over the content of the relevant law governing the conduct of hostilities. Uncertainties in the law have occurred both from the extension to non-international armed conflict of 'Hague law', traditionally applicable only in international armed conflicts, and the overlap between human rights law and the law of armed conflict. The author concludes that there is a danger that the balance between military necessity and humanity may be disturbed so that the law will become impracticable in the cauldron of conflict to the detriment of all, soldier and civilian alike.

La conduite des hostilités dans les conflits armés asymétriques : un défi au droit humanitaire

Lorenzo Redalié. - Genève [etc.] : Schulthess : Faculté de droit de l'Université de Genève ; Paris : L.G.D.J., 2013. - 378 p. - Cote 345.25/270

Le droit international humanitaire (DIH) aurait-il perdu sa pertinence face aux réalités des conflits armés asymétriques contemporains ? Pour répondre à cette question, l'auteur confronte les principales règles de conduite des hostilités aux particularités propres aux guerres asymétriques qui opposent des forces irrégulières à des forces régulières largement supérieures en termes de capacités militaires et technologiques. Identifier la nature et prendre la mesure des défis posés aux principes de "distinction", "proportionnalité" et "précaution", ainsi qu'à l'"interdiction de la perfidie" et au "principe de réciprocité", répond avant tout à l'exigence de vérifier la capacité même des parties au conflit asymétrique de respecter le DIH.

The contribution of the Special Court for Sierra Leone to the development of international humanitarian law

by Ousman Njikam. - Berlin : Duncker and Humblot, 2013. - 332 p. - Cote 344/595

The objective of this thesis is to provide a comprehensive analysis of the contribution of the Special Court to the development of international humanitarian law. Similar to its predecessors (ad hoc Tribunals), the Special Court consolidated the principle under international law of individual criminal responsibility. The author evaluates the Special Court's mandate to "prosecute those who 'bear the greatest responsibility' " as being in itself a contribution to the development of international humanitarian law since the ICTY and ICTR at the time of their inception did not have this limitation rationae personae / prosecutorial discretion. The author assesses some of the interesting and challenging issues dealt with such as the

recruitment of child soldiers, amnesty for international crimes, head of state immunity and the crime of forced marriage. He concludes that the Special Court contributed albeit to a limited extent to the development of international humanitarian law.

Le contrôle du respect des normes humanitaires par les acteurs armés non étatiques : un aperçu des mécanismes internationaux et l'Acte d'engagement de l'Appel de Genève

Pascal Bongard et Jonathan Somer. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 257-296

Alors que la plupart des confits armés d'aujourd'hui impliquent des acteurs armés non étatiques, le droit international comprend peu de mécanismes permettant de garantir que ces acteurs respectent les normes humanitaires qui leur sont applicables. Rares, en particulier, sont les traités multilatéraux qui contiennent des mécanismes de contrôle et de vérification du comportement des acteurs armés non étatiques. Lorsque tel est le cas, ces mécanismes sont faibles et ne sont pas appliqués dans la pratique. Au cours des années récentes, un certain nombre de mécanismes parallèles ont été mis au point pour mieux contrôler le respect des normes humanitaires dans les conflits armés internes et vérifier les allégations de violations. Le présent article examine la valeur de ces divers mécanismes, pour se concentrer ensuite sur l'Acte d'engagement, un instrument novateur conçu par l'Appel de Genève, organisation non gouvernementale sise en Suisse, afin d'amener les acteurs armés non étatiques à répondre de leurs actes. L'expérience acquise dans le cadre de l'Acte d'engagement en matière d'interdiction des mines antipersonnel montre que ces mécanismes alternatifs peuvent être efficaces pour assurer un meilleur respect du droit international humanitaire, tout au moins certaines de ses normes.

http://www.cid.icrc.org/library/docs/DOC/irrc-883-bongard-somer-fre.pdf

The counterinsurgent's constitution : law in the age of small wars

Ganesh Sitaraman. - Oxford [etc.] : Oxford University Press, 2013. - 328 p. - Cote 345.25/266

Since the "surge" in Iraq in 2006, counterinsurgency effectively became America's dominant approach for fighting wars. Yet many of the major controversies and debates surrounding counterinsurgency have turned not on military questions but on legal ones. The Counterinsurgent's Constitution tackles this wide range of legal issues from the vantage point of counterinsurgency strategy. Ganesh Sitaraman explains why law matters in counterinsurgency: how it operates on the ground and how law and counterinsurgency strategy can be better integrated. Counterinsurgency, Sitaraman notes, focuses on winning over the population, providing essential services, building political and legal institutions, and fostering economic development. So, unlike in conventional war, where law places humanitarian restraints on combat, law and counterinsurgency are well aligned and reinforce one another. Indeed, following the law and building the rule of law is not just the right thing to do, it is strategically beneficial. Moreover, reconciliation with enemies can both help to end the conflict and preserve the possibility of justice for war crimes. Following the rule of law is an important element of success.

La détention par les groupes armés : surmonter les obstacles à l'action humanitaire

David Tuck. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 337-363

Le conflit armé et la privation de liberté sont inextricablement liés. La privation de liberté par des groupes armés non étatiques est une conséquence de la prédominance des conflits non internationaux dans le monde actuel. Quelle que soit la nature de l'autorité détentrice ou la légalité théorique de ses opérations de détention, la privation de liberté peut avoir de graves conséquences pour les personnes détenues en termes humanitaires. Pour nécessaire qu'elle soit, l'action humanitaire se heurte à divers obstacles, comme le risque ressenti de légitimation du groupe armé. Le Comité international de la Croix-Rouge (CICR) a toujours cherché à surmonter ces écueils, depuis l'action fondatrice de son créateur Henry Dunant. Il tire parti à cette fin de son expérience de l'action humanitaire en matière de détention par les États, en l'adaptant aux exigences des groupes armés et aux particularités de leur pratique de la détention. Malgré des revers occasionnels, le CICR conserve un rôle sans égal dans ce domaine et ne ménage pas ses efforts pour améliorer le traitement et les conditions de détention des personnes privées de liberté par des groupes armés.

http://www.cid.icrc.org/library/docs/DOC/irrc-883-tuck-fre.pdf

Dialogue humanitaire et lutte contre le terrorisme : antagonisme des normes et émergence d'un nouveau paysage politique

Naz K. Modirzadeh, Dustin A. Lewis et Claude Bruderlein. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 225-255

Le présent article met en évidence deux ensembles de normes antagonistes. Le premier corpus, qui vise à protéger la population, encourage l'établissement d'un dialogue entre humanitaires et groupes armés non étatiques (GANE) en période de conflit armé. Le second, qui vise à protéger la sécurité nationale et/ou internationale, interdit un tel dialogue avec des groupes listés en tant que « terroristes ». Les auteurs examinent en quoi cet antagonisme juridique pourrait affecter la capacité des organisations humanitaires à procurer une aide vitale aux populations dans les zones contrôlées par un de ces groupes. Ancré dans le droit international humanitaire (DIH), le premier ensemble de règles constitue la base sur laquelle un dialogue humanitaire peut être engagé en période de conflit armé interne, dans le double but de porter assistance aux populations vivant sous le contrôle de groupes armés non étatiques et d'encourager ces derniers à respecter les règles du DIH. Le second ensemble vise à empêcher l'apport d'un soutien financier ou matériel (formation technique et coordination comprises) à des entités listées en tant que « terroristes », dont certaines peuvent être considérées comme des groupes armés non étatiques au sens du DIH. L'article met l'accent sur les réglementations antiterroristes élaborées par les États-Unis et par le Conseil de sécurité des Nations Unies, bien que d'autres États et organes multilatéraux se soient dotés de dispositifs similaires. Pour conclure, les auteurs décrivent brièvement diverses réponses possibles des organisations humanitaires aux difficultés évoquées.

http://www.cid.icrc.org/library/docs/DOC/irrc-883-modirzeh-lewis-bruderlein-fre.pdf

Disruption of satellite transmissions ad bellum and in bello : launching a new paradigm of convergence

Deborah Housen-Couriel. In: Israel law review Vol. 45, no. 3, 2012, p. 431-458. - Cote 345.2/921 (Br.)

The dramatic increase over the past decade in the quantity and sophistication of communications satellites in the earth's orbit raises new legal questions regarding the hostile disruption of satellite transmissions. As dependence on satellite communications in the military, governmental, economic and civilian spheres escalates globally, both states and non-state entities have become increasingly vulnerable to the consequences of disrupted transmissions, whether accidental or intentional. The implications of this new phenomenon for international humanitarian law (IHL) are better understood in the context of a preliminary analysis of the principles and norms underlying three regimes which now converge around satellite activities ad bellum. These are the substantive law regarding freedom of transborder communication, including relevant jus cogens prohibitions; international telecommunications regulation; and space law. The present analysis focuses on (a) the development of a taxonomy of the types of hostile disruption of satellite transmissions, (b) an examination of the three present normative regimes which govern international satellite transmissions in peacetime, and (c) the relevance of these three regimes for the development of applicable IHL. Overall, the article addresses the legal and policy aspects of an improved international response to the growing phenomenon of transmission disruption on the part of state and non-state entities both in peacetime and during war. Greater clarity regarding the applicable legal norms will enable both state and non-state actors to utilise satellite systems with increased certainty, reliability and effectiveness.

Doctrines of equivalence ? A critical comparison of the instrumentalization of international humanitarian law and the islamic jus in bello for the purposes of targeting

Matthew Hoisington. In: The Fletcher Forum of world affairs Vol. 37:2, Summer 2013, p. 153-170

As the battle between the United States and al-Qaeda and its associated forces continues, in a large number of geographic locations and seemingly without end, the targeting decisions undertaken by both sides and the way in which they have been justified to their respective constituencies deserve careful scrutiny. Matthew Hoisington addresses a subset of the decision-making process, namely, the instrumentalization of international humanitarian law (IHL) and the Islamic jus in bello for the purposes of targeting. The article begins with an examination of the radical innovations in the Islamic jus in bello that resulted in its instrumentalization by al-Qaeda and other Islamic armed groups in the name of jihad. It then addresses the key legal arguments of the U.S.-led response, particularly post-September 11. Finally, it offers a critical appraisal of the use of targeting rules to justify killing by both sides.

Le droit humanitaire rattrapé par les droits de l'homme ?

par Giorgio Malinverni. - In: La conscience des droits : mélanges en l'honneur de Jean-Paul Costa. - Paris : Dalloz, 2011. - p. 401-419. - Cote 345.2/927 (Br.)

Après un rapide aperçu des signes de rapprochements qui se sont opérés entre le droit international humanitaire et le droit international des droits de l'homme, tant sur le plan doctrinal que dans la jurisprudence des juridictions internationales, l'auteur se demande si ce rapprochement n'est pas remplacé par un autre phénomène: celui de l'empiétement progressif des droits de l'homme dans le domaine traditionnel et réservé du droit international humanitaire, comme il le montre à la lecture de certaines décisions récentes prises par les organes internationaux chargés d'assurer le respect des droits de l'homme. Au regard du cercle des personnes protégées, des obligations procédurales qui sont inhérentes à une protection effective des droits de l'homme, et de la nature des organes de de contrôle du respect de ces deux branches du droit international, il est peut-être permis de penser que les droits de l'homme offrent une meilleure protection que le droit international humanitaire.

Due diligence obligations of conduct : developing a responsibility regime for PMSCs

Nigel D. White. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 233-261. - Cote 345.29/188

As non-state actors, PMSCs are not embraced by traditional state-dominated doctrines of international law. However, international law has itself failed to keep pace with the evolution of states and state-based actors, to which strong Westphalian notions of sovereignty are no longer applicable. It is argued that these structural inadequacies stand in the way of international regulation of PMSCs, rather than defects in international human rights and humanitarian law per se. By analyzing understandings of legal responsibility, where such structural issues come to the fore, it is argued that, rather than attempting to resolve the essentially ideological dispute about the inherent functions of a state, regulatory regimes should focus on the positive obligations of states and PMSCs, and the interactions between them. Applying the results of this analysis, current and proposed regulatory regimes are evaluated and their shortcomings revealed.

Elements of accessorial modes of liability : article 25(3)(b) and (c) of the Rome statute of the International criminal court

by Sarah Finnin. - Leiden ; Boston : M. Nijhoff, 2012. - 234 p. - Cote 344/597

This volume continues the work of the preparatory commission of the international criminal court by developing "elements" for ordering , instigating and aiding and abetting the commission of international crimes under article 25(3)(b) and (c) of the Rome statute. The development of proposed elements for these accessorial modes of liability is necessary because while detailed elements for the substantive crimes within the jurisdiction of the court were identified in the "elements of crimes", no such elements were elaborated for the modes of liability for those crimes. The proposed elements in this volume break new ground and are designed to assist the ICC in applying the provisions of the Rome statute to the cases before it for trial with consistency and accuracy.

Les engagements pris par les groupes armés et les enseignements à en tirer pour le droit des conflits armés : définition des cibles légitimes et prisonniers de guerre

Sandesh Sivakumaran. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 163-184

Il est fréquent que les groupes armés prennent des engagements ad hoc qui comportent un élément de droit des conflits armés. Ces engagements visent à exposer de façon détaillée les obligations de ces groupes quant au respect du droit international humanitaire, des Conventions de Genève ou de règles particulières qui y sont énoncées. Par ces textes, le groupe peut s'engager à respecter les normes internationales – en dépassant même parfois leurs exigences – ou, à certains égards, violer ces mêmes normes. Bien qu'ils passent souvent inaperçus, ces engagements offrent certains enseignements pour le droit des conflits armés. Le présent article a pour objet d'étudier les engagements des groupes armés par rapport à deux domaines spécifiques du droit dont l'interprétation est contestée ou qui semblent inapplicables aux conflits armés non internationaux, à savoir la définition des cibles légitimes et le régime des prisonniers de guerre.

http://www.cid.icrc.org/library/docs/DOC/irrc-882-sivakumaran-fre.pdf

Ensuring compliance of non-state actors with rules of international humanitarian law on the use of weapons in NIAC : a way to follow ?

Rustam B. Atadjanov. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 140-182

This article provides a brief account of existing definitions, legal rules, gaps and problems related to the compliance of NSAs with the international humanitarian law (IHL) applicable to a NIAC, then goes on to less explored issues such as the used of specific weapons by non-State armed groups, examples of this and threats posed by such use, and, finally, delineates the ways suggested to ensure the NSAs' proper compliance in this regard. The principal argument that the article proposes is this: despite the absence of a "solid" treaty-based grounding as it is traditionally understood in international law, as well as the existing problematic legal and political questions over armed groups' compliance with relevant IHL norms — and because of the very necessity of taking into proper account the reality of armed conflicts today —the question of non-State actors' compliance with IHL rules on the use of weapons should be given more consideration, and different ways aimed at ensuring such compliance should be sought.

Expanding the R2P tool-kit : new political possibilities and attendant legal uncertainties

John Cerone. In: ILSA journal of international and comparative law Vol. 18, issue 1, 2011-2012, p. 531-563. - Cote 345.26/228 (Br.)

In mid-February 2011, in the wake of popular uprisings in Tunisia and Egypt, members of the Libyan public began protesting against the decades-old regime of Libyan leader Muammar Gaddafi. The situation rapidly escalated as the government sought to forcibly suppress the demonstrations. By early March the situation had deteriorated into an armed conflict. A number of international organizations responded to the crisis in Libya as it evolved. They utilized a variety of different tools, ranging from official statements and press communiques to the adoption of sanctions and other legal measures. On March 19, 2011, a coalition of states initiated a bombing campaign in Libya. The United Nations (U.N.) Security Council authorized this enforcement action in response to reports of serious violations of international human rights law and the international law of armed conflict committed in Libya by persons acting on behalf of the Gaddafi regime. This article provides an overview of applicable rules of international law through different phases of the situation in Libya and sketches out various modes of enforcement action employed by international organizations to respond to the crisis, analyzing several of the controversial legal issues that arise in that context. The article concludes with an analysis of the unresolved legal issues implicated by the evolving situation in Libya and by the international community's responses to it.

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The extraterritorial obligation to prevent the use of child soldiers

Tracey B. C. Begley. In: The American University international law review Vol. 27, no.3, 2012, p. 613-641. - Cote 362.7/123 (Br.)

Regardless of how children end up in armies and rebel groups, whether through forced recruitment or "voluntary" enlistment, the international community recognizes that children should not be fighting wars. There are a variety of international and national instruments that prohibit warring factions from conscripting children. First, this paper discusses the global use of child soldiers, the legal framework regarding child soldiers, and state obligations to protect the rights of children. Next, this paper argues that international and national instruments create extraterritorial obligations for states to prevent the use of child soldiers beyond their own borders. Lastly, this paper examines U.S. extraterritorial obligations regarding child soldiers and the country's ability to uphold its obligations.

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Far be it from thee to slay the righteous with the wicked : an historical and historiographical sketch of the bellicose debate concerning the distinction between jus ad bellum and jus in bello

JHH Weiler and Abby Deshman. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 25-61

The question whether jus in bello and jus ad bellum should interact, or remain in hermetically sealed spheres, has generated a voluminous and vociferous body of contemporary literature. The goal of this article is to take a step back from the particulars of the arguments and examine the shape and direction of

the debate itself. The authors trace how the debate has evolved in response to political culture and sensibilities, focusing in on paradigmatic points throughout the 20th century. In each era the discussion on how these two areas of law should, or should not, intersect arises. And contrary to what might be implied by the recent debate where both sides often rely on 'fundamental principles', the dialogue regarding the relationship between jus in bello and jus ad bellum is not a static argument. The discourse is dynamic and politically contextualized – impacted by, and impacting upon, the external controversies of the day. Certain consistent threads have guided the debate – first order political interests, institutional considerations, and consequences, and a legal and sociological conservativism run throughout. Distinct visions and assessments of the morality of war and who is to blame for its evils and how best to work towards peace also push and pull the flow of debate. Frequently, the positions on jus in bello and jus ad bellum serve as proxies for deeper or shallower courses of discussion. And although the contemporary discourse is more fractured, these same influences are discernable today.

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Finding war crimes : the criminalization of international humanitarian law

Thomas Liefländer. - In: Droit international pénal : précis. - Bâle : Helbing Lichtenhahn, 2012. - p. 319-346. - Cote 344/499 (2012)

The chapter starts by considering the legal structure of war crimes law. It addresses its fundamental elements : the existence of primary rules binding individuals in times of armed conflict and the existence of a secondary rule imposing individual criminal liability (rule of criminalization). The second section deals more precisely with the content of the secondary rule that imposes criminal liability. It demonstrates that various approaches have been employed in the jurisprudence of international criminal tribunals and that complete coherence has so far not been achieved. The third section briefly considers whether special rules apply where a rule applicable to international armed conflicts is extended to cover non-international armed conflicts as well. It is argued that the need for criminalization of individual rules is in part dependent on whether the rules of international armed conflicts and those of non-international armed conflicts are perceived as forming two separate, if related systems, or whether they are part of the same body of rules, merely having different scopes of application. Finally, the author briefly explores the means by which the existence of a secondary rule criminalizing certain conduct in international law can be discerned.

The fog of victory

Gabriella Blum. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 391-421

What does victory mean today? How do we know who 'won' the war and what does the winner win by winning? This article uses the prism of victory to view the transformation of the goals, means, and targets of war, and assesses the applicability of the conventional Just War doctrine (through the traditional laws of war) to the modern battlefield. Specifically, the article claims that the military and civilian components of war have grown so intertwined in both the conduct and ending of hostilities that the laws of war, with their emphasis on combat, are hard-pressed to offer a normative yardstick for a just modern war.

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The functional beginning of belligerent occupation

written by Michael Siegrist. - [S.l.] : [s.n.], 2010. - 81 p. - Cote 345.28/101

The ICRC commentary on the fourth Geneva Convention advocates the so-called functional beginning of belligerent occupation. Accrodingly, the rules on occupied territories of the Fourth Geneva Convention apply as soon as a "protected person" falls into the hands of a party to the conflict present in enemy territory. It is argued in this paper that the application of the functional beginning of occupation is the preferred solution. This would fill probable gaps of protection during the invasion phase and would be in line with the object and purpose of the Geneva Conventions. Moreover, an analysis of the rules relating to belligerent occupation suggests that invading troops would not be disproportionally burdened with additional and impractical obligations. Quite the contrary, the wording of most articles leaves enough leeway to adapt and take into account the difficult circumstances prevailing during an invasion. Furthermore, the functional beginning of belligerent occupation would also bestow certain rights upon the invading power, like a legal basis for security measures and internment.

http://www.geneva-academy.ch/the-academy/awards/prix-henri-dunant/655-prix-henry-dunant-2010-michael-siegrist

Les groupes armés dans un système de droit international centré sur l'État

Zakaria Daboné. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 85-118

Comment situer les groupes armés non étatiques au sein du droit international public, un système conçu pour et par les États ? Cet article analyse cette question en examinant la place des groupes armés principalement dans le jus ad bellum et le jus in bello. Il démontre que le groupe armé est essentiellement un élément déclencheur du jus ad bellum, mais qu'il n'est pas lui-même titulaire d'un droit à la paix. Le jus in bello confère des droits et des obligations au groupe armé mais dans le cadre d'un rapport inégal avec l'État. Le régime de la détention par les groupes armés dans les conflits non-internationaux illustre en particulier cette inégalité devant le droit. Malgré leur importance dans les conflits actuels, les groupes armés représentent une « anomalie » d'un système juridique qui demeure état-centrique.

http://www.cid.icrc.org/library/docs/DOC/irrc-882-dabone-fre.pdf

How cyber changes the laws of war

Jack Goldsmith. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 129-138

Michael Walzer's Just and Unjust Wars anticipated many problems and developments in the laws of war, but it understandably did not anticipate how the Internet and associated computer and telecommunications revolutions would change war or the laws that govern it. This article seeks to assess, in general terms, the ways that the rise of cyber exploitation and cyber attacks challenge prevailing conceptions of the laws of war.

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Human rights obligations in military occupation

Noam Lubell. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 317-337

This article examines the applicability of international human rights law in situations of military occupation. Proceeding from the position that human rights obligations can exist in these circumstances, the article provides an analysis of the precise modalities of application. It examines the tests for the determination of human rights applicability, and how these are linked to the concept of occupation. Finally, it recognizes the practical and legal challenges to the implementation of human rights obligations, and argues for a contextual approach that provides for human rights protection while recognizing the realities of military occupation.

http://www.cid.icrc.org/library/docs/DOC/irrc-885-lubell.pdf

The humanitarian problem with drones

Frédéric Mégret. - [S.l.] : [s.n.], [2013]. - [30] p. - Cote 341.67/258 (Br.)

This article outlines a series of ways in which drones have been seen as problematic which it is argued are either not specifically humanitarian, or really interested in something else such as what the legal framework applicable to the "war on terror" should be. Separating these very important debates from the humanitarian questions that ought to be asked about drones as such is crucial if one is to make conceptual headway. The author examines the issue of whether there is anything that is specific and/or inherent to drones, and address the question of whether it is that drones cause unwarranted harm to civilians. He seeks to explain how, regardless of the answer to that complicated question, drones are much more likely to be perceived as inflicting excessive damage due to their highly discriminatory potential but also, crucially, the way in which they maximize the safety of the drone operator. If anything, it is this aspect that is most specific and novel about drones. He argues that this absolute safety of the operator not only maximizes states' ability to minimize collateral harm, as has already been observed elsewhere, but also has the potential to fundamentally alter the laws of war's tolerance for collateral harm, which was always based on the assumption of a tradeoff between harm to the attacker and to "enemy civilians." It is this tradeoff that is increasingly at risk of being rendered moot. The author finishes with an attempt to contextualize the drone problem within a larger history of exogenous technological shock to international humanitarian law and how it has addressed them. Overall, the article is interested not just in determining whether drone use may or may not be "legal" but also more broadly how it impacts some of the moral underpinnings of the laws of war.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2228659&download=yes

"IHL" as "islamic humanitarian law" : a comparative analysis of international humanitarian law and islamic military jurisprudence amidst changing historical contexts

Omar Yousaf. In: Florida journal of international law Vol. 24, no. 2, August 2012, p. 439-468. - Cote 345.2/912 (Br.)

This analysis illustrates the similarities between Islamic military jurisprudence and international humanitarian law (IHL), while demonstrating that most of the inconsistencies between the two are due to the social contexts in which they were formulated, not an innate incompatibility. As such, an underlying theme of this Note is that relevant principles of armed conflict must be looked at through the prism in which they were formulated because that will help establish their continued relevance today. After an introduction to the relevant sources of law in each respective tradition so as to illustrate their legitimacy and their influence on the regulation of armed conflict, this Note discusses the importance of jus ad bellum, and how the socio-historical contexts that underlie the justifications of going to war have shaped the laws that regulate the conduct of war. Next, it turns to a comparative analysis of particular principles related to the regulation of armed conflict, including civilian immunity and the principle of distinction (including the distinction between civilian and military objectives), the combatant's privilege, and prisoners of war (POWs). It concludes by demonstrating that Islam can stay true to its own traditions, while working within, and contributing to, the broader international framework.

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The illegality of military support to rebels in the Libyan war : aspects of jus contra bellum and jus in bello

Olivier Corten and Vaios Koutroulis. In: Journal of conflict and security law Vol. 18, no. 1, Spring 2013, p. 59-93

One of the most prominent aspects of the 2011 conflict in Libya was the overt support, both military and non-military, offered to the Libyan anti-Gaddafi rebels by the States that intervened in the conflict. The present article evaluates the conformity of this support with the rules of jus contra bellum and jus in bello. From a jus contra bellum perspective, support of the Libyan rebels exceeds the 'necessary measures' that the intervening States were allowed to take in order to protect the civilian population in the Libyan conflict according to Security Council resolution 1973 (2011). From a jus in bello perspective, instead of identifying possible violations of international humanitarian law during military operations on a case-by-case basis, the article takes a step back and analyses the legality of the support of the rebels as such. In view of the violations of humanitarian rules reportedly committed by the rebels, the continuous support of the rebels constitutes, on behalf of the supporting States, a violation of the customary obligation to ensure respect for international humanitarian law.

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In search of legal grounds to detain for armed groups

Nelleke Van Amstel. In: Journal of international humanitarian legal studies Vol. 3, issue 1, 2012, p. 160-191

Arbitrary deprivation of liberty is prohibited by international law; hence even during armed conflict internment of adversaries must have a legal basis in international humanitarian law or national law. The law of non-international armed conflict contains an inherent power to intern. Nevertheless, a further legal source is needed to ensure detention is not arbitrary, outlining grounds and procedure of detention. Such legal grounds do not exist for internment by organised armed groups. This article will outline the possible consequences for members of armed groups when interning without a further legal basis, thus in violation of the prohibition of arbitrary detention, and will subsequently suggest solutions to overcome the imbalance between obligations imposed upon and instruments granted to these actors.

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L'interaction normative entre droit international humanitaire et droit international des droits de l'homme : de la fragmentation à la complémentarité

Jean Baptiste Harelimana. In: Anuário brasileiro de direito internacional Vol. 2, no. 13, julho de 2012, p. 11-62. - Cote 345.2/919 (Br.)

L'article invite à une odyssée prospective du débat consacré à la relation entre le droit des conflits armés et le droit international des droits de l'homme. L'auteur y aborde la problématique de leur interaction, signifiant dynamique et non statique, à partir du débat large portant sur le caractère fragmentaire du

droit international. L'examen des différentes manières dont ces corpus s'articulent permet de comprendre que leur complémentarité s'est construite sous l'influence mutuelle de la doctrine, du juge et du législateur, tous trois surdéterminés par la nécessité de relever les défis des conflits armés asymétriques et identitaires pour mieux protéger l'universel humain.

Interception on the high seas in the context of peace and security : the right of visit in cases of armed conflict and Security Council's action

Efthymios Papastavridis. - In: The interception of vessels on the high seas : contemporary challenges to the legal order of the oceans. - Oxford ; Portland : Hart, 2013. - p. 83-112. - Cote 347.799/142

This chapter discusses a series of recent cases where either the belligerent right of visit was applied or the interdiction operations were mandated by the UN Security Council. The author argues that it is legally more justifiable to classify such interdiction operations under the rubric of the law of naval warfare, rather than under the jus ad bellum and the right of self-defence, this being more congruent with the basic tenet of "la juridicité" of the high seas, as well as with the fundamental principle of legal certainty under general international law.

International humanitarian law bibliography 2012 : new acquisitions [...], classified by theme, at the International Committee of the Red Cross library

ICRC. - Geneva : ICRC, April 2013. - 192 p. - Cote 345.2/922

A compilation of the four electronic quarterly International Humanitarian Law bibliography issued by the ICRC Library during the year 2012. Based on the library's regular and extended acquisitions on IHL, this bibliography is aimed at helping students, professors and legal professionals be up-to-date and have overview on issues being dealt with by academic authors in specific subjects of IHL. It contains articles, chapters, books, reports and working papers in English and French. Subject headings include general issues, types of conflict, armed forces and non-state actors, multinational forces, detention and treatment of persons, private actors, protection of persons, protection of objects, conduct of hostilities, weapons, law of occupation, international criminal law, human rights, implementation, contemporary challenges and countries. Easy to use, the bibliography also offers abstracts.

International law and civil wars : intervention and consent

Eliav Lieblich. - London ; New York : Routledge, 2013. - 286 p. - Cote 345.27/125

This book examines the international law of forcible intervention in civil wars, in particular the role of party-consent in affecting the legality of such intervention. In modern international law, it is a near consensus that no state can use force against another - the main exceptions being self-defense and actions mandated by a UN Security Council resolution. However, one more potential exception exists : forcible intervention undertaken upon the invitation or consent of a government, seeking assistance in confronting armed opposition groups within its territory. Although the latter exception is of increasing importance, the numerous questions it raises have received scant attention in the current body of literature. This volume fills this gap by analyzing the consent-exception in a wide context, and attempting to delineate its limits, including cases in which government consent power is not only negated, but might be transferred to opposition groups. The book also discusses the concept of consensual intervention in contemporary international law, in juxtaposition to traditional legal doctrines. It traces the development of law in this context by drawing from historical examples such as the Spanish civil war, as well as recent cases such as those of the Democratic Republic of the Congo, Somalia, Libya and Syria. This book will be of much interest to students of international law, civil wars, the responsibility to protect, war and conflict studies and IR in general.

Irregular naval warfare and blockade

by James Kraska and Raul Pedrozo. - In: International maritime security law. - Leiden ; Boston : M. Nijhoff, 2013. - p. 859-901. - Cote 347.799/144

The law of naval warfare is a subset of the law of armed conflict, and it consists mostly of jus in bello, or the conduct of hostilities during a state of war. The law of naval warfare still reflects a great dose of customary international law, although much of it has been codified in treaty. The contemporary law of naval warfare was developed largely through customary international law from the time of the age of sail through the end of World War I, and it was largely codified by the Hague Conventions of 1907. The 1995 San Remo manual on international law applicable to armed conflicts at sea, which was developed in the aftermath of the Iran-Iraq "tanker war" of the 1980s, contains a restatement of current practice in the law of naval warfare.

Islamic law on protection and assistance of civilians affected by armed conflicts and natural disasters, methods and means of warfare, and treatment of prisoners of war

Mohd Hisham Mohd Kamal. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 245-261

Islamic law has several branches, and the one relevant in times of wars and armed conflicts is al-siyar, which is the Islamic conception of international relations that generally prescribe the behavior of Muslim States in dealing with non-Muslim States. Human life is one of the five human interests; its protection is one of the objectives of Islamic law. The other four are faith of Muslims, dignity, intellect, and property. Al-siyar contains, among other things, the law of war, the law of peace, and neutrality. The concept of jihad is the main issue in al-siyar. With regard to the humanitarian aspect, al-siyar enumerates the permissible and the forbidden conducts in the State of war, including conducts of belligerence towards civilians and prisoners of war. Civilians are people who do not take part in hostilities, while prisoners of war are captured combatants. This article focuses on three aspects. The first aspect provides protection and assistance to civilians who are affected by armed conflicts and natural disasters. It is to be noted that the conduct of Muslim States in response to natural disaster is not covered by al-siyar. The second aspect deals with the methods and means of warfare, while the third concerns the treatment of prisoners of war.

Ius in bello under islamic international law

Mohamed Elewa Badar. In: International criminal law review Vol. 13, issue 3, 2013, p. 593-625

In 1966, Judge Jessup of the International Court of Justice pointed out that the appearance of an English translation of the teaching on the 'Islamic law of nations' of an eighth-century Islamic jurist (Shaybani) is particularly timely and of so much interest because of the debate over the question whether the international law, of which Hugo Grotius is often called the father, is so completely Western-European in inspiration and outlook as to make it unsuitable for universal application in the context of a much wider and more varied international community of States. However, there has been little analysis of the role of Islam in shaping the modern European law of war and its progeny, international humanitarian law. This article argues that there is a room for the contribution of the Islamic civilisation within international humanitarian law and a conversation between different civilisations is needed in developing and applying international humanitarian law norms.

Justice through armed groups' governance : an oxymoron ?

Jan Willms. - Berlin : DFG Collaborative Research Center (SFB) 700, October 2012. - 30 p. - Cote 345.22/215 (Br.)

In this paper, the author addresses the question of whether armed groups' courts are suitable to enforce international humanitarian law. The ensuing question of whether the existence of these courts conforms to international law is answered in the affirmative: international humanitarian law and human rights law do not in principle prohibit the operation of such courts. Adjudication by armed groups has a relatively high potential to deter the groups' fighters from committing violations of international humanitarian law. This is to a large extent because convictions by armed groups' courts gain more attention among fighters than convictions by national or international criminal courts. However, the empirical record of armed groups' courts is mixed. The African armed groups examined in this paper violated international humanitarian law, including due process guarantees. Yet, they showed more respect for civilians than many armed groups without their own jurisdiction.

http://www.sfb-governance.de/publikationen/sfbgov_wp/wp40_en/WP40.pdf?1350914047

Killing in the fog of war

Adil Ahmad Haque. In: Southern California law review Vol. 86, no. 1, November 2012, p. 63-116. - Cote 345.29/187 (Br.)

This Article answers two of the most urgent and important questions facing the contemporary law of armed conflict. First, how certain must a soldier be that a given individual is a combatant and not a civilian before attacking that individual? Second, what risks must soldiers accept to themselves and to their mission in order to reduce the risk of mistakenly killing civilians?

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Knock, knock; who's there ? : announcing targeted killing procedures and the law of armed conflict

John C. Harwood. In: Syracuse journal of international law and commerce Vol. 40, no. 1, Fall 2012, p. 1-27. - Cote 345.25/132 (Br.)

Acting as a Special Rapporteur on extrajudicial, summary, or arbitrary executions for the Human Rights Council of the United Nations, in 2010 Professor Alston published a report addressing the targeted killing programs of the U.S., Israel, and Russia. The report focused on issues such as national sovereignty, the right to self-defense, who may be targeted (and its corollary, what constitutes a "direct participation in hostilities"), the use of Remotely Piloted Aircrafts (RPA) in targeted killings, and "[t]he requirements of transparency and accountability." This article focuses on Alston's specific assertion that LOAC and IHRL require transparency and accountability for targeted killing programs. This article summarizes the current use of RPAs by the U.S. in Afghanistan and Pakistan, analyzes the argument put forward for transparency in the targeting procedures, and counters the assertion that states should be obligated to disclose the criteria and procedures of their targeted killing programs. Specifically, this article argues that because the conflict between U.S. forces and al Qaeda and the Taliban is properly characterized as "armed conflict," with the application of LOAC as the lex specialis, there is no requirement to publicize or disclose the criteria and procedures of the U.S. targeted killing program.

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The last round ? : a post-Gotovina reassessment of the legality of using artillery against built-up areas

Darren Vallentgoed. In: Journal of conflict and security law Vol. 18, no. 1, Spring 2013, p. 25-57

Artillery has been a staple of siege warfare for centuries as a cheap and effective weapon against area and point targets; however, its legality under the rules of International Humanitarian Law may be changing. The recent Ante Gotovina case at the International Criminal Tribunal for the Former Yugoslavia (ICTY) reflects an evolving line of jurisprudence that could result in a global reassessment of the legal norms for using artillery against targets located in urban areas. Thus far, commentators have criticized the Gotovina trial judgement on the basis that the law should conform to the technical limitations of artillery, but this article proposes that if basic artillery cannot conform to the standards of accuracy required under IHL, then it should not be paired to targets in urban areas. At a minimum, if after a calculation of probable errors of the fall of shot, the margin of error lies outside of that accepted by international tribunals, then a decision to nonetheless engage the urban target may rise to the standard of recklessness and result in possible criminal liability for the commander. In a 3-2 majority decision, the ICTY Appeals Chamber overturned the Trial Chamber decision in Gotovina, but did not articulate what legal standard it applied in doing so. The result muddies the legal waters as it pertains to artillery and exposes a deep divide in the application of the law by international criminal tribunals.

only from ICRC headquarters: http://jcsl.oxfordjournals.org/content/18/1/25.full.pdf

Laws of occupation

Christine Chinkin. - In: Multilateralism and international law with Western Sahara as a case study. - [Pretoria] : VerLoren van Themaat Centre, University of South Africa, 2010. - p. 196-221. - Cote 345.28/99 (Br.)

This presentation looks at the legal definitions of belligerent occupation and its consequences. What might be termed ‘occupation law’ is both complex and lacking in clarity. These difficulties derive from both legal and factual considerations. Factually, the state of occupation covers a range of political and ideological scenarios. Legally, occupation law is found across a range of treaties, soft law instruments, customary international law, and, in the case of Iraq, modified by Security Council (SC) resolution. This last has led to a spate of litigation and academic writing which poses the question whether occupation law has undergone significant transformation, or whether the situation in Iraq is exceptional and of little precedential value. The very multiplicity of legal regimes creates inconsistencies and gaps in the law. Despite the inconsistencies and uncertainties in occupation law, one aspect is uncontroversial: occupation is the flip side of the coin to self-determination.. This presentation focuses on the situation of Western Sahara and Morocco.

http://www.unisa.ac.za/contents/faculties/law/docs/10chinkin.pdf

The limits of economic sanctions under international humanitarian law : the case of the Congo

Mallory Owen. In: Texas international law journal Vol. 48, issue 1, 2012, p. 103-123. - Cote 345.2/923 (Br.)

Today, economic sanctions are frequently used as a “unilateral technique in international politics, though not necessarily explicitly.” The most recent example of this technique is Section 1502 of the Dodd-Frank Wall Street Reform Act (“Section 1502”). Section 1502 was created to address the humanitarian crisis in the Democratic Republic of the Congo (“DR Congo”). It requires public companies to disclose whether certain minerals in their supply chain originate from the DR Congo or its neighboring countries. Section 1502 has been widely criticized for failing to address the root causes of conflict in the DR Congo and, instead, creating a de facto embargo on a minerals trade that hundreds of thousands of civilians rely on for their livelihoods. In light of these unintended consequences, this Note poses the question: How should we think about influence strategies like economic sanctions that are likely to directly or indirectly produce significant collateral damage? This Note provides a general discussion of international humanitarian law (“IHL”) and how it can and should be applied to economic sanctions specifically. It that because economic instruments like Section 1502 are coercive in nature, they should be assessed under an IHL framework. Left unregulated, sanctions programs will continue to map new patterns of inequality and violence in target countries.

http://www.tilj.org/content/journal/48/num1/Owen103.pdf

Looting and rape in wartime : law and change in international relations

Tuba Inal. - Philadelphia : University of Pennsylvania Press, 2013. - 269 p. - Cote 362.8/190

Women were historically treated in wartime as property. Yet in the Hague Conventions of 1899 and 1907, prohibitions against pillaging property did not extend to the female body. There is a gap of nearly a hundred years between those early prohibitions of pillage and the prohibition of rape finally enacted in the Rome Statute of 1998. "Looting and Rape in Wartime" addresses the development of these two separate "prohibition regimes," exploring why states make and agree to laws that determine the way war is conducted, and what role gender plays in this process. In examining the historical and ideological context of how these two regimes evolved, Looting and Rape in Wartime provides vital perspective on the forces that block or bring about change in international relations.

Mesures anti-piraterie en Somalie entre les droits de l'homme et les garanties du droit humanitaire : la contribution de la jurisprudence et de la pratique des mécanismes de contrôle non juridictionnel

Maria Chiara Noto. - In: International courts and the development of international law : essays in honour of Tullio Treves. - The Hague : T.M.C Asser Press, 2013. - p. 497-512. - Cote 345.29/186 (Br.)

La présente étude vise à analyser les questions qui sous-tendent l'application contextuelle du droit international humanitaire et des droits de l'homme dans les opérations anti-piraterie. Premièrement, [l'auteur] cherchera à identifier le statut juridique des pirates qui n'est pas simple à déterminer, sauf dans les cas de flagrant délit. Deuxièmement, [elle] analysera le fondement juridique qui justifie l'application contextuelle du droit international humanitaire et des droits de l'homme dans les opérations anti-piraterie. Enfin, sur la base de la jurisprudence de la Cour internationale de justice (CIJ) et la pratique des mécanismes de contrôle non juridictionnel pertinents, [l'auteur] se penchera sur la relation entre le système du droit international humanitaire et celui des droits de l'homme, afin de déterminer le niveau de protection qui s'appliquera, par l'interaction des deux systèmes, aux pirates et aux otages éventuellement capturés.

Mexico's drug war : is it really a war ?

Callin Kerr. In: South Texas law review Vol. 54, Fall 2012, p. 193-224. - Cote 345.26/230 (Br.)

What force may Mexico use against the drug cartels? This Comment addresses whether the "drug war" is in fact a war within the legal definition of war. Part II analyzes the history of the drug violence in Mexico, the evolution of the laws of war, and what laws may apply to the Mexican drug war. Part III applies factors developed by the International Committee of the Red Cross and international tribunals to interpret the type of conflict. Part IV explains what force may be used against the cartels and the legal implications of using such force.

Part V addresses the customary international law and humanitarian perspective on non-international armed conflict. Finally, Part VI discusses the various, and not so intuitive, repercussions of invoking the laws of war in the Mexican drug war.

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Military captivity in two world wars : legal frameworks and camp regimes

Iris Rachamimov. - In: War and the modern world. - Cambridge [etc.] : Cambridge University Press, 2012. - p. 214-235 - Cote 355/983

The evolving legal codification of POW treatment in the period 1899-1949 affected not only the treatment of military captives, but also the framing of captivity itself. The aim of this chapter is to examine the development of this legal framework and to analyse its complex historical interaction with regimes of treatment during both world wars. The chapter argues that although the story of captivity offers some of the most harrowing and murderous episodes in modern warfare, an internationally recognized standard of treatment had evolved by the middle of the twentieth century. This established standard became a binding reference point, which exerted moral and political pressure even on belligerent countries that objected to its "western" provenance or the liberal values that were encoded in it.

Mind the gap : lacunae in the international legal framework governing private military and security companies

Benjamin Perrin. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 213-232. - Cote 345.29/188

This article examines the common claim that there are gaps in international law that undermine accountability of private military and security companies. A multi-actor analysis examines this question in relation to the commission of international crimes, violations of fundamental human rights, and ordinary crimes. Without this critical first step of identifying specific deficiencies in international law, the debate about how to enhance accountability within this sector is likely to be misguided at best.

Missing the target : where the Geneva Conventions fall short in the context of targeted killing

Michelle Mallette-Piasecki. In: Albany Law Review Vol. 76, issue 1, p. 263-297. - Cote 345.25/127 (Br.)

Even though Additional Protocols I and II were implemented in 1977 specifically to deal with the changing nature of armed conflict and advances in weapons technology, their adoption was a retroactive response to the increase in internal State conflicts, civil wars, and national liberation movements rather than a prospective means of encompassing any future advances in warfare. Over the last decade, the International Committee of the Red Cross (ICRC) has issued several reports to rectify areas of ambiguity in the Conventions and other areas of customary international law in general, but gaps still remain. This note explores those gaps by focusing on the issue of targeted killing and the current problems the international legal community faces in upholding International Humanitarian Law (IHL). Part II examines the emergence of targeted killing as part of the United States and Israeli policies to combat terrorism. Part III discusses the law of armed conflict as it is codified in the Conventions and how classification of an armed conflict affects the legality of targeted killing. Part IV contrasts the United States' position justifying targeted killing as preemptive self-defense with the international legal community's position of strict adherence to Article 51 of the U.N. Charter. Part V explores the recent targeted killings of Osama bin Laden and Anwar Al-Aulaqi, and the disparate treatment afforded to each under international law. The note concludes with a discussion on how the Geneva Conventions can be reformed to eliminate gaps in the future.

http://www.albanylawreview.org/articles/263%20Mallette-Piasecki.pdf

Les missions autorisées par le Conseil de sécurité à l'heure de la R2P : vers une application différenciée du jus in bello ?

Frédéric Mégret. - [S.l.] : [s.n.], 2012. - [22] p. - Cote 345.26/229 (Br.)

Dans l'ensemble le droit international positif pose une séparation complète entre jus ad bellum et jus in bello. En d'autres termes, un organe international qui intervient pour protéger des civils ou empêcher des crimes de droit international n'aurait ni plus ni moins d'obligations humanitaires qu'un autre acteur intervenant pour une cause illicite ou moins légitime. Cette position de principe, très rigide dans la doctrine, se comprend bien traditionnellement s'agissant d'un Etat qui souhaiterait échapper à ses obligations humanitaires en invoquant la légitimité de sa cause. Sans doute le fait de réclamer un moins disant en matière d'obligations humanitaires est-il inquiétant (en lui même car il prive la mise en oeuvre

du DIH d'une partie, et en termes communicatifs, par rapport à d'autres parties qui se sentiront éventuellement d'autant moins liées), et c'est bien ce danger qui a obnubilé la doctrine depuis des décennies. L'idée d'une application différenciée imposant des obligations supérieures à certaines parties, en revanche, est loin de faire courir les mêmes dangers. Cette perspective pourrait au contraire contribuer à substantiellement renouveler les termes d'un débat plus subtil qu'il n'y paraît. C'est avec ces considérations à l'esprit que l'on se propose d'envisager en quoi la logique humanitaire d'une part et le rôle spécifique du Conseil de sécurité d'autre part posent un défi à l'idée d'une séparation rigide entre jus in bello et ad bellum (I), avant d'envisager certaines des implications concrètes qui pourraient résulter pour le droit de la guerre d'une plus fine prise en compte de la spécificité d'opérations pro humanitas multilatérales (II).

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2195710

National prosecution of international crimes and universal jurisdiction

Philip Grant. - In: Droit international pénal : précis. - Bâle : Helbing Lichtenhahn, 2012. - p. 579-604. - Cote 344/499 (2012)

The present article [...] will firstly limit itself to briefly expounding the meaning of "jurisdiction" over international crimes. It will then review the conditions set out in international law concerning the establishment and the exercise of criminal jurisdiction over international crimes, both with respect to the so-called "traditional" titles of jurisdiction and with respect to the principle of universal jurisdiction.

Les obligations découlant du droit international humanitaire devraient-elles être vraiment égales pour les États et les groupes armés ?

Marco Sassòli et Yuval Shany. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 119-133

Pour ce premier débat, la Revue a demandé à deux membres de son Comité de rédaction, les professeurs Marco Sassòli et Yuval Shany, de débattre sur le thème de l'égalité des États et des groupes armés en droit international humanitaire. Les commentaires du professeur René Provost apportent un troisième éclairage à ces échanges. La question cruciale est de savoir s'il est réaliste d'appliquer aux groupes armés non étatiques le régime juridique en vigueur. Comment les groupes armés, qui ont des moyens parfois très limités et une organisation rudimentaire, pourraient-ils s'acquitter des mêmes obligations que les États ? Qu'est-ce qui inciterait les groupes armés à respecter les règles établies par leurs adversaires ? Pourquoi devraient-ils respecter des règles quand le fait même de prendre les armes contre l'État fait déjà d'eux des 'hors-la-loi' ? Les participants à cette discussion aspirent tous à assurer une meilleure protection juridique à toutes les personnes touchées par les conflits armés non internationaux. Les professeurs Sassòli et Shany ont convenu de présenter deux positions 'radicalement' opposées, le professeur Sassòli soulignant la nécessité de reconsidérer l'égalité et de la remplacer par une gradation des obligations, et le professeur Shany réfutant ce point de vue. Le professeur Provost propose ensuite une réflexion sur les positions exposées par les deux intervenants et nous invite à revisiter la notion même d'égalité des belligérants. Par souci de clarté et de concision, les débatteurs ont simplifié la complexité de leur raisonnement juridique. Les lecteurs de la Revue garderont à l'esprit que les positions des intervenants sur ce point de droit sont en réalité plus nuancées que ne le laisse apparaître ce débat.

http://www.cid.icrc.org/library/docs/DOC/irrc-882-sassoli-shany-provost-fre.pdf

On locating the rights to lost

Ricardo A. Sunga III. In: The John Marshall law review Vol. 45, no. 4, Summer 2012, p. 1051-1119. - Cote 332/14 (Br.)

This Article investigates the status and scope of the right to know the truth. It asks the question: What is the nature of the violation that the denial of the truth about disappeared and missing persons constitutes, and how has international law responded to this nature? In the process, the Article explores the need for complete recognition in international human rights law of a distinct right to know the truth and, in this context, critically examines the express guarantee of this right embodied in Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance. The Article analyzes the specific dimensions of the violation that a denial of the truth about the disappeared and missing constitutes and examines the extent to which international law and jurisprudence adequately reflect its full nature.

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Politically inconvenient, legally correct : a non-international armed conflict in southern Thailand

Benjamin Zawacki. In: Journal of conflict and security law Vol. 18, no. 1, Spring 2013, p. 151-179

This article argues that the insurgency in southern Thailand, currently into its ninth consecutive year, is a non-international armed conflict (NIAC). The title implies the contentiousness of the argument, which is responsive to the government of Thailand's express claim that the situation in the South is rather one of banditry, organized crime, and/or ill-defined insurgency. The article begins with brief sections on the nature and applicability of international humanitarian law (IHL) and the factual background of Thailand's conflict. The conflict began in January 2004 and has pitted variously armed and organized ethnic Malays—nearly all Muslims—against the predominantly Buddhist Thai state and its security forces. Over 5000 people have been killed and thousands more injured. Reference is made to a recent report by Amnesty International (for which the author works), which characterized insurgency attacks as war crimes under IHL. The article then applies the relevant IHL to these facts by addressing, through their various constituency sub-elements, the two main legal elements of Common Article 3 NIACs, organization and intensity. Each sub-element is at least partially satisfied, such that the requisite 'minimum levels' of both organization and intensity are plainly established, and the situation's character as a NIAC becomes clear. The article draws upon both primary and secondary source material, and for the first time marshals the facts in southern Thailand relevant to Common Article 3 NIACs in a coherent and purposeful manner. Finally, the article dispenses with the specific claim that Thailand's southern violence is primarily of a non-ideological, criminal nature and that such militates against its constituting a NIAC.

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Porter le flambeau de l'humanité jusqu'au coeur des conflits, une tradition suisse à relayer

par Didier Burkhalter. In: Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen = Rivista svizzera di diritto internazionale e europeo = Swiss review of international and european law 23e année, 1/2013, p. 9-17

Discours prononcé à l'occasion de la journée du droit international public à Berne, le 19 octobre 2012.

Potential pitfalls of "strategic litigation" : how the Al-Aulaqi lawsuit threatened to undermine international humanitarian law

Michael W. Lewis. In: Loyola university Chicago international law review Vol. 9, issue 1, 2011, p. 177-186. - Cote 345.26/231 (Br.)

In 2010 the American Civil Liberties Union (ACLU) filed a lawsuit that attempted to enjoin the Obama Administration from continuing to target Anwar al-Aulaqi. An integral part of the legal basis for that lawsuit was the claim that the targeting of al-Aulaqi as a member of Al-Qaeda in the Arabian Peninsula (AQAP) in Yemen was occurring "outside of armed conflict." Although the lawsuit was dismissed on procedural grounds, this short essay examines the ACLU's central legal argument that strikes in Yemen were occurring outside of armed conflict and therefore beyond the scope of IHL (International Humanitarian Law). If this proposed limitation on the scope of IHL were accepted it would effectively turn IHL on its head. Such a limitation would fundamentally undermine IHL by offering sanctuaries to groups like al Qaeda and AQAP that until now were disfavored because their conduct (targeting civilians and blending in with the civilian population) was antithetical to IHL's core purposes of protecting the civilian population from harm.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2120215

The power to detain : detention of terrorism suspects after 9/11

Oona Hathaway... [et al.]. In: Yale journal of international law Vol. 38, no. 1, 2013, p. 124-177. - Cote 400.2/132 (Br.)

The sources of the U.S. government's authority to detain suspected terrorists, and the limitations on that authority, remain ill-defined. This article aims to fill this gap by clarifying the reach and limits of existing sources of U.S. government authority to detain suspected terrorists in the ongoing conflict with al-Qaeda and associated forces. While prior scholarship has examined pieces of the detention picture, this article seeks to offer a more comprehensive view—examining both statutory and constitutional authority for law-of-war detention, and comparing it to detention and prosecution of terrorism suspects under domestic criminal law. In the process, the article shows that law-of-war detention has weaknesses not often recognized by those who champion its use for terrorism suspects. In many cases, criminal law detention

and prosecution of terrorism suspects is not only more consistent with U.S. legal principles and commitments, but is also likely to be more effective in battling terrorism.

http://www.yjil.org/docs/pub/38-1-hathaway-the-power-to-detain.pdf

Practices of legalization in arms control and disarmament : the ICRC, CCW and landmines

Ritu Mathur. In: Contemporary security policy Vol. 33, no. 3, December 2012, p. 413-436. - Cote 341.67/411 (Br.)

It has long been assumed that progress toward arms control and disarmament is possible only after constituting legal frameworks from which such an action could be initiated. Although the legal framework regarding a particular weapon might be questioned for its effectiveness, the related practices of legalization themselves are rarely interrogated. This article problematizes practices of legalization in the field of arms control and disarmament. It builds upon innovations by critical security studies scholars to scrutinize the ICRC's engagement with the problem of conventional weapons, especially landmines. Study of practices of legalization demonstrate the embeddedness of legal discourses in the regulation and prohibition of weapons. It compels state and non-state actors to represent their interests in legal terms and represents their efforts as attempts towards developing existing legal frameworks. This article acknowledges the experiences with practices of legalization in the preceding halfcentury of arms control and disarmament negotiations. A reflection on these experiences exposes the limitations and possibilities of practices of legalization and encourages alternative approaches to regulating and prohibiting weapons.

http://www.contemporarysecuritypolicy.org/assets/CSP-33-3%20Mathur.pdf

Principles of distinction and protection at the ICTY

Iain Bonomy. - Oslo : Torkel Opsahl Academic EPublisher, 2013. - 53 p. - Cote 344/122 (Br.)

The assessment of military conduct during armed hostilities as either lawful or criminal involves striking a balance between the requirements of humanity and those of military necessity. Throughout its existence, the International Criminal Tribunal for the former Yugoslavia (ICTY) has tackled this balancing exercise in the context of individual criminal responsibility by reference to the laws of war. Indeed, the Appeals Chamber of the ICTY in the Kunarac case noted that "the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of acts committed in its midst". Accordingly, for many years, the Trial and Appeals Chambers of the ICTY have been guided by the wellknown principles of distinction and protection, which, according to one of the Trial Chambers, form "the foundation of international humanitarian law". In applying these guiding principles the Chambers have also had regard to and analysed the prohibition against indiscriminate and disproportionate attacks. This has all been done in the context of the Statute establishing the ICTY. The relevant provisions in the Statute are Article 2 (grave breaches of the Geneva Conventions), Article 3 (violations of law or customs of war other than those covered by Articles 2, 4, and 5), and Article 5 (crimes against humanity). This paper considers pertinent ICTY's jurisprudence and provides an overview of the application of these principles in the various cases. In doing so, it focuses on those most relevant to the issue of what qualifi es as lawful conduct in armed hostilities.

http://www.fichl.org/fileadmin/fichl/documents/FICHL_OPS/FICHL_OPS_3_Bonomy.pdf

Private military and security companies (PMSCs) and the quest for accountability

Guest ed. : George Andreopoulos and John Kleinig. In: Criminal justice ethics Vol. 31, no. 3, December 2012, 318 p. - Cote 345.29/188

Special issue devoted to ethical issues arising from the activities, roles, and status of private military and security companies. In recent years these issues have grown in prominence globally. Matters of law, ethics, the scope of stale power, the powers of corporate entities, and the complex intersection of law, authority, accountability, and the scope of discretion are all involved. The articles in this issue are revised and elaborated versions of papers originally presented at a conference on that topic at John Jay College Criminal Justice in October 2011.

The privatization of war : from privateers and mercenaries to private military and security companies

Amanda Foong. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 210-244

The recent cascade of academic literature on where private military and security companies (PMSCs) sit in the international legal framework has been sparked by contemporary controversies such as the killing of seventeen civilians by PMSC employees in Nisoor Square, Baghdad. Commentators in the field have generally focused on States' obligations under international humanitarian law (IHL) and the need for industry regulation, epitomized in the Montreux Document of 2008. This essay seeks to examine the privatization of war from a theoretical and historical perspective, by looking at the moral and ethical concerns often voiced in the debate over PMSCs, and the extent to which these have been taken into account by the Monfreux regulatory framework. The legal framework envisaged by the Montreux Document with regards to PMSC involvement in situations of war is primarily based on IHL, given that IHL is lex specialis in the context of international and internal armed conflicts. This is potentially problematic as IHL is arguably an amoral regime that legitimizes violence. However, when faced with a new dilemma such as that of PMSCs, one should ask not only how to adapt the current legal regime to accommodate these changes, but also what the underlying goals and purposes of the law should be. Thus, traditional hard law obligations, such as those under IHL, may not provide satisfactory solutions to the issue of PMSCs.

Proportionality in armed conflicts : a principle in need of clarification ?

Ben Clarke. In: Journal of international humanitarian legal studies Vol. 3, no. 1, 2012, p. 73-123

In their quest to find ways to reduce civilian casualties during armed conflict, States often emphasise the importance of compliance with fundamental rules of international humanitarian law that apply during the conduct of hostilities. Chief among them are the rule of distinction, proportionality and precaution. This contribution focuses on the proportionality principle. It examines whether there is a need for clarification or development of this rule. After highlighting reasons why clarification of the law on proportionality is necessary, the author proposes a guidance document on proportionality decision-making in armed conflict. To lay the foundation for such a document, the author identifies a range of issues that could be addressed in the document.

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http://booksandjournals.brillonline.com/content/10.1163/18781527-00301003

The prosecution of child soldiers : balancing accountability with justice

Erin Lafayette. In: Syracuse law review Vol. 63, no. 2, 2013, p. 297-325. - Cote 362.7/122 (Br.)

There are currently over 300,000 children under the age of eighteen participating in armed conflicts across the world. They are responsible for countless deaths, rapes, mutilations, and other atrocities. However, the international community has failed to reach a consensus regarding the age at which a child can be held legally responsible for their crimes. Consequently, despite the perpetration of international horrors, children unanimously escape criminal liability in international tribunals. Victims are left with little or no recourse to justice for the pain they have experienced. While some domestic courts have prosecuted individuals under eighteen-years-old for crimes committed during an armed conflict, but not war crimes, this provides little relief within a global perspective due to the wide range of minimum ages of criminal responsibility and consequent inequitable results. This Note explores the need for both international and domestic reform with regards to crimes committed by children during armed conflicts. International tribunals must begin to expressly state within their statutes the age at which they can claim jurisdiction over individuals. Domestic courts, such as those within the United States, can help this process by clarifying their own rules and thereby attempt to set precedent. Ultimately, instead of using eighteen as an arbitrary age of delineation for criminal responsibility, courts must have discretion to prosecute children for international atrocities by looking at the individual's physical, mental, and moral development as well as their cultural norms. Part I of this Note introduces the basic concepts of international law, including international criminal law and the legal protections that have been established for individuals under eighteen-years-old. Part II examines the difficulties that arise when determining the roles of children in armed conflict and the extent to which they can be held responsible for their actions. Additionally, it suggests several possible defenses that should be made available to juveniles if they are prosecuted in an international tribunal. The third section of the Note provides a case study of the only person under eighteen-years-old who has been prosecuted for a war crime since World War II and further evaluates the United States' role in this trial and their general perspective towards the treatment of minors in combat. Finally, Part IV emphasizes the need for an international consensus

regarding the minimum age of criminal responsibility in international courts and suggests this reform must begin at the domestic level.

Prosecution of war crimes in Bosnian cantonal and district courts : the role of the rule of law

Sanja Popovic. - In: International law in domestic courts : rule of law reform in post-conflict states. - Cambridge [etc.] : Intersentia, 2012. - p. 221-240. - Cote 344/592

In this chapter on the prosecution of war crimes in Bosnian cantonal and district courts, the author explores the judicial inadequacies that have become apparent through case law and proposes potential ways for rectification. With the establishment of the ICTY, an international body was set up specifically designed to bring to justice those who committed serious violations of international humanitarian law during the conflict in the former Yugoslavia since 1991. Concurrently, Bosnian local courts were empowered to try those cases that concerned "less serious" war crimes. The role of the local courts will, however, considerably increase once the ICTY's mandate expires. By taking into account the tangibility of an assessment of local courts' modi operandi and the impossibility of an operation of the rule of law without the desire to be bound by the respective laws, the contribution examines some of the decision taken by Bosnian cantonal and district courts. Particular attention is paid to the preservation of international criminal law norms and standardsm and its impact on the receptiveness of the judicial branch. In some instances the practice of Bosnian courts displays their failure to follow international precedents, and at times it has been proven to be irreconcilable with basic principles of war crimes prosecution.

Protecting the right to life of journalists : the need for a higher level of engagement

Christof Heyns, Sharath Srinivasan. In: Human rights quarterly : a comparative and international journal of the social sciences, humanities, and law Vol. 35, no. 2, May 2013, p. 304-332

Journalists play a central role in fostering a society based on the open discussion of facts and the pursuit of the truth, as opposed to one based on rumor, prejudice, and the naked exercise of power. As a result, journalists are often literally in the line of fire and deserve special protection. This article considers the characteristics of deadly attacks on journalists over the last two decades and examines how the applicable legal and policy frameworks can be used better or improved to provide a higher level of protection. Impunity, often a by-product of the politicized nature of journalistic activities, is seen as the major cause of continuous attacks on journalists. The conclusion is drawn that one of the key elements of a strategy to better protect journalists is to "elevate" the issue on a number of fronts: to move prevention and accountability from the local to the central level within domestic jurisdictions, while simultaneously heightening the level of international engagement with this issue.

http://muse.jhu.edu/journals/human_rights_quarterly/v035/35.2.heyns.pdf

La protection internationale des femmes pour des raisons liées au genre en droit international : interprétations récentes des instruments de droit international soutenant des formes de protection subsidiaire

par Sílvia Morgades-Gil. In: Revue générale de droit international public Tome 17, no 1, 2013, p. 37-73

La reconnaissance progressive des droits des femmes pendant la deuxième moitié du XXème siècle dans divers domaines du droit international, notamment en droit international humanitaire et en droit international des droits de l'homme, a contribué au fait que les persécutions subies par des femmes en raison de leur genre ou de leur identité sexuelle soient de plus en plus prises en compte dans les régimes de protection du droit des réfugiés et de l'asile. Dans l'article, nous analysons l'interprétation que quelques instances nationales ont fait de la notion de réfugié pour y inclure des formes de persécution ou d'absence de protection de la part de l'Etat d'origine pour des raisons liées au genre ou à l'identité sexuelle des femmes. Nous nous penchons également sur l'interprétation sensible au genre que des organes décisoires internationaux ont fait récemment des principaux instruments de droit international qui soutiennent l'établissement de formes de protection subsidiaire. Dans l'article, nous appuyons le fait que la protection des femmes qui ont subi des formes spécifiques de persécution ou de mauvais traitements en raison de leur genre ou de leur identité sexuelle est favorisée par des formes d'interprétation de type non comparatif des instruments internationaux.

Protection of civilians in international humanitarian law and by the use of force under chapter VII of the Charter of the United Nations

Keiichiro Okimoto. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 1-102

in recent years, the United Nations (UN) Security Council of the has become increasingly involved in the protection of civilians during armed conflict, including through the use of force as authorized under Chapter VII of the UN Charter. Such trend revives the question of whether UN forces can be bound by JHL, and at the same time raises the question of whether they can be actors enforcing II-IL and whether such actions can have positive and negative consequences. This article begins with the theoretical framework, namely the relationship between jus ad bellum and jus in bello, and the applicability of the latter to UN forces as an actor bound by, and enforcing, IHL. The article then discusses the distinction between the protection of civilians in IHL and the protective regime of the use of force under Chapter VII. The relationship between the two types of protection for civilians and the potentially positive and negative aspects of civilian protection by the use of force under Chapter VII is discussed at the end of the paper.

Protection of the environment during armed conflict

Susan Breau. - In: Routledge handbook of international environmental law. - London ; New York : Routledge, 2013. - p. 617-632. - Cote 363.7/145 (Br.)

One of the concerns of international humanitarian law is lack of enforcement of customary and treaty rules on protection of the environment during armed conflict. Environmental degradation may be a priority issue for the international community but the same cannot be said for addressing environmental damage during wars. This chapter assesses the effectiveness of treaty and customary international law rules with respect to the environment and armed conflict. It argues that investigation of the conflict in Kosovo illustrates the weakness of the treaty regime. This chapter argues that it is customary humanitarian law which offers hope for environmental protection in armed conflict.

Puzzling over amnesties : defragmenting the debate for international criminal tribunals

Dov Jacobs. - In: The diversification and fragmentation of international criminal law. - Leiden : Martinus Nijhoff, 2012. - p. 305-345. - Cote 344/596 (Br.)

This chapter first examins the human rights law and international humanitarian law approach to the question of amnesties; and more particularly a duty to prosecute human rights violations and grave breaches of humanitarian law or how duties to prosecute have developed in relation to other crimes of international law. It then examins how fragmentation within international criminal law (substantial, procedural and institutional) applies to the debate on amnesties. The study concludes that international criminal tribunals are under a statutory obligation to prosecute the crimes within their jurisdiction and amnesties will not be recognized in the absence of an express provision to the contrary in their Statute.

Les raisons pour les groupes armés de choisir de respecter le droit international humanitaire, ou pas

Olivier Bangerter. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 51-84

Le choix de respecter le droit – ou pas - est loin d'être automatique pour un groupe armé ou un État. Le respect du droit des conflits armés ne peut être encouragé – et donc amélioré - que si les ressorts du respect et des violations sont compris et si l'argumentation en faveur du respect les prend en compte. Parmi les raisons de respecter le droit, deux domaines ont un poids particulier pour les groupes armés : l'image de soi et l'avantage militaire. Parmi les raisons de ne pas respecter le droit, trois dominent : le but du groupe, l'avantage militaire et ce que le DIH représente pour le groupe.

http://www.cid.icrc.org/library/docs/DOC/irrc-882-bangerter-fre.pdf

Reckless endangerment warfare : civilian casualties and the collateral damage exception in international humanitarian law

Bruce Cronin. In: Journal of Peace Research Vol. 50, no. 2, March 2013, p. 175-187. - Cote 345.25/129 (Br.)

This article examines how military organizations that are generally committed to following the laws and customs of war exploit what the author terms 'the collateral damage exemption', by employing legally-sanctioned war-fighting strategies that result in significant numbers of civilian casualties. This exemption

shields combatants from legal liability for 'incidental' or 'inadvertent' civilian losses and the destruction of civilian objects that may occur during lawful actions. The author argues that military strategies which promote the use of overwhelming force under conditions that are likely to adversely affect the civilian population on a significant scale push the boundaries of legal behavior. Under these conditions, collateral damage is not inadvertent, but the calculated results of policy decisions. Most academics, journalists, and political leaders focus on blatant violations of International Humanitarian Law (IHL), for example, deliberate attacks on civilian populations. However, these actions are in many ways the least interesting from both a policy and scholarly perspective. This is because such violations are usually unambiguous, easily detected, and difficult to defend. More insidious are practices that deliberately straddle the line between legitimate action and violation by exploiting the collateral damage exception to IHL. This article demonstrates that high rates of civilian casualties that occur under the shroud of legality threaten the integrity of the laws and customs of armed conflict.

Le recours à la force dans les opérations de maintien de la paix contemporaines

Ophélie Thielen ; préf. de Hervé Ascensio. - Paris : Librairie Générale de Droit et de Jurisprudence : Lextenso, 2013. - 437 p. - Cote 345/625

De la pratique contemporaine des Nations Unies est né un genre nouveau d'opérations de maintien de la paix, caractérisé par une autorisation, au niveau tactique, d'user de la force et de la contrainte armées pour l'exécution du mandat, la protection des populations ou la lutte contre les groupes armés irréguliers. Cette évolution empirique fait l'objet d'une réflexion au sein des instances onusiennes, visant à conceptualiser, en partenariat avec les Etats décideurs et contributeurs, ce qu'implique l'autorisation d'user de la force, en termes d'interprétation et de mise en oeuvre des mandats et des règles d'engagement, de planification des opérations et d'entraînement et d'équipement des contingents. Cette réflexion semble pour autant rester axée sur les questions de faisabilité politique et opérationnelle, sans que soient analysés les aspects juridiques de l'autorisation de l'usage de la force par les Casques bleus. Cette pratique soulève ainsi de multiples questions - s'agissant du statut des forces de maintien de la paix au regard du droit international humanitaire, des règles encadrant la conduite des opérations militaires, de la non-indemnisation par les Nations Unies des dommages résultant des opérations de combat ou encore des particularités du statut pénal des membres des forces de maintien de la paix - questions renouvelées dans leur contenu et, pourtant, encore largement occultées, que cette étude se propose de contribuer à clarifier, à défaut de prétendre résoudre.

The relationship between international humanitarian law and international human rights law in situations of armed conflict

Daniel Bethlehem. In: Cambridge journal of international and comparative law Vol. 2, no. 2, 2013, p. 180-195. - Cote 345.2/925 (Br.)

Following some framing remarks to place in wider context the discussion that follows on the relationship between international humanitarian law (IHL) and international human rights law (HRL), and the application of the latter in armed conflict, this paper addresses the following : (a) the systemic relationship between IHL and HRL ; (b) whether key HRL provisions are amenable to reasonable application in armed conflict, and, if so, whether there are policy considerations that suggest their application as a matter of discretion, even if they are not applicable de jure ; (c) assuming that HRL provisions apply in armed conflict de jure, or ought to be applied as a matter of discretion, the relationship between relevant IHL and HRL provisions. The paper does not address issues concerning the de jure application of HRL in armed conflict.

http://www.cjicl.org.uk/journal/article/100

Research handbook on human rights and humanitarian law

ed. by Robert Kolb, Gloria Gaggioli. - Cheltenham ; Northampton : E. Elgar, 2013. - 684 p. - Cote 345.2/913

This fascinating handbook explores the interplay between international human rights law and international humanitarian law, offering expert analysis on the increasingly complex issues surrounding their application in armed conflicts across the world. Contributors to this volume provide a comprehensive treatment of the ongoing relationship between human rights law and humanitarian law, from the historical background and origins of the two bodies of law to their various applications today. Divided into four parts – Historical Background, Common Issues, The Need for a Combined Approach, and Monitoring Mechanisms – the Handbook presents a rich and varied spectrum of original research and thought from some of the brightest minds in the field.

Road to nowhere ? : the future for a declaration on fundamental standards of humanity

Emily Crawford. In: Journal of international humanitarian legal studies Vol. 3, no. 1, 2012, p. 43-72

In the years following the adoption of the Additional Protocols to the Geneva Conventions in 1977, debate emerged regarding the extant lacunae in the international rules relating to armed conflict. It was argued that there were gaps in international humanitarian law (IHL) and international human rights law with regards to so-called 'grey-zone conflicts' – armed conflicts that did not reach the minimum threshold of either Protocol II or Common Article 3. Therefore, it was proposed that a declaration outlining the minimum humanitarian standards applicable in all situations of violence and conflict be adopted. By 1990, this debate had crystallised around the Turku Declaration on Minimum Humanitarian Standards. However, progress on the declaration quickly stalled once discussion was moved to the United Nations. Since 1995, there have been nine reports by the Secretary-General on the question of fundamental standards of humanity to use the current terminology. Over the years, the scope and content the fundamental standards of humanity has become clearer, yet the adoption of a document on these fundamental standards is no more imminent than when the issue first moved to the United Nations. This article will therefore examine why and how this apparently vital piece of international policy has stalled.

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The role of the International Covenant on Civil and Political Rights in the Israeli-Palestinian conflict : should Israel's obligations under the Covenant extend to Gaza and the other occupied Palestinian territories ?

David Mennie. In: Transnational law and contemporary problems Vol. 21, issue 2, Summer 2012, p. 511. - Cote 345.28/102 (Br.)

This Note addresses whether and to what degree the International Covenant on Civil and Political Rights (ICCPR) creates obligations for Israel with respect to the individuals residing in Gaza as well as the other Occupied Palestinian Territories ("OPTs"). It shows that, according to the norms of customary international law, the ICCPR does not create obligations for Israel with respect to those individuals residing in either Gaza or the OPTs. However, the Israeli Supreme Court has created some binding obligations for the Israeli government under the ICCPR with regard to individuals in the OPTs and, perhaps, in Gaza as well. It will conclude that these obligations have negatively impacted the individuals residing in Gaza and the other OPTs.

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Sheltering the displaced : the protected status of internally displaced persons (IDPs) under international humanitarian law

Louise Sarsfield Collins. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 183-209

With cognizance of the definition contained in the United Nations Guiding Principles on Internal Displacement (herein Guiding Principles), this paper aims to focus on displacement in situations of armed conflict. It also seeks to examine the legal framework on the protection of civilians, looking not only at the prohibition of forced displacement but also at the scope of protection for IDPs at the end of an armed conflict regardless of the lawfulness of their displacement. Several bodies of law are of some relevance, namely international human rights law, international refugee law, and ius in bello. However, as this paper will concentrate on IDPs caught up in situations of armed conflict where many human rights laws may be derogated from and refugee law is not applicable, the primary focus will be on the protection afforded by IHL. It concludes that there is somewhat a lacuna regarding the right of return to their place of habitual residence for those IDPs who are victims of unlawful displacement.

Le statut de combattant dans les conflits armés non internationaux : étude critique de droit international humanitaire

Gérard Aivo ; préf. de Stéphane Doumbé-Billé et de Robert Kolb. - Bruxelles : Bruylant, 2013. - 512 p. - Cote 345.29/185

Avant les Conventions de Genève de 1949, seuls les conflits armés internationaux étaient réglementés par le droit de la guerre. Ce dernier ne pouvait s'appliquer dans les guerres civiles qu'après la reconnaissance des forces rebelles comme partie belligérante. Or, depuis la Seconde guerre mondiale, on a assisté à une multiplication des conflits armés non internationaux. Mais les Conventions de Genève de 1949 leur ont

consacré seulement l'article 3 commun ; puis le protocole II additionnel de 1977 est venu le compléter. Ces deux textes comportent de nombreuses lacunes, notamment l'absence de définition des "combattants" et des "civils", rendant ainsi difficile le respect du principe de distinction pourtant essentiel à la protection des populations civiles. Ces dispositions ne réglementent pas non plus les moyens et méthodes de guerre. Outre les lacunes normatives, il y a des problèmes matériels qui compliquent la mise en oeuvre efficace des règles pertinentes. Il s'agit notamment de la participation des populations civiles aux hostilités, y compris les enfants-soldats et les mercenaires. L'absence du statut de combattant dans les conflits armés non internationaux apparaît comme le problème principal compromettant l'efficacité du droit international humanitaire. Celle-ci ne contribue-t-elle pas au non respect de ce droit par les groupes armés ? Faudrait-il conférer ce statut à ces derniers en vue de les amener à appliquer le droit international humanitaire ou envisager d'autres moyens ? Toutes ces questions sont traitées.

Study group on the conduct of hostilities under international humanitarian law in the 21st century : working session, 30 August 2012

Patricia Conlan... [et al.]. In: Report of the [...] Conference [International law association] 75, 2012, p. 1037-1045

Report of the working session of 30 August 2012 fo the International Law Association study group on the conduct of hostilities under IHL in the 21st Century. Although the law of armed conflict has arguably already adapted in a certain way by providing special rules for non-international armed conflicts, one needs to keep in mind that especially the Hague Law dealing with the means and methods of warfare was mainly designed to deal with interstate wars. Even though some of these rules are nowadays held to be equally applicable to non-international armed conflicts, they were originally not drafted to cover the situation of these kinds of conflicts, and thus the fit is not always appropriate. What is more, in modern asymmetric conflict constellations the conduct of hostilities increasingly seems to intersect/coincide with law enforcement operations. Thus, the International Law Association study group was set up to examine whether the IHL rules governing the conduct of hostilities are still adequate to deal with current conflicts, or whether it needs revision or amendment.

Sustainable development and the protection of the environment during times of armed conflict

Onita Das. - In: Environmental protection, security and armed conflict : a sustainable development perspective. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 120-182. - Cote 363.7/141

This chapter [...] begins by presenting in Section 2, the laws of armed conflict applicable to the protection of the environment during armed conflict (particularly those pertinent to the case-studies); Section 3 explores the First Gulf War ; Section 4 reviews the Kosovo conflict ; and Section 5 briefly considers recommendations for reform. The relevant IHL rules and principles in relations to their scope in protecting the environment during armed conflict are considered form a sustainable development perspective.

Tallinn manual on the international law applicable to cyber warfare : prepared by the International Group of Experts at the invitation of the NATO cooperative cyber defense centre of excellence

general ed. Michael N. Schmitt. - Cambridge [etc.] : Cambridge University Press, 2013. - 282 p. - Cote 345.26/227

The product of a three-year project by twenty renowned international law scholars and practitioners, the Tallinn manual identifies the international law applicable to cyber warfare and sets out ninety-five black-letter rules governing such conflicts. It addresses topics including sovereignty, State responsibility, the jus ad bellum, international humanitarian law, and the law of neutrality. An extensive commentary accompanies each rule, which sets forth each rule's basis in treaty and customary law, explains how the Group of Experts interpreted applicable norms in the cyber context, and outlines any disagreements within the group as to each rule's application.

http://issuu.com/nato_ccd_coe/docs/tallinnmanual

Towards a synthesis between islamic and Western jus in bello

Jacob Turner. In: Journal of transnational law and policy Vol. 21, no. 1, 2011-2012, p. 165-206. - Cote 345.2/917 (Br.)

International Humanitarian Law (IHL) has lagged behind modern warfare. This article deals with the difficulties in distinguishing civilians from combatants in an age where most conflicts are fought between

irregular combatants and full-time armies. The recent killing of Osama Bin Laden, as well as the increasing use of armed aerial 'drones' has provided publicity to these debates. It has also become apparent that many Islamist participants in warfare do not consider themselves primarily bound by traditional Western IHL sources, such as the Geneva Conventions, instead preferring religious sources. It is imperative that new provisions of IHL be developed to accommodate the dynamics of modern warfare. In order that these provisions attain the requisite level of moral force to bind both state and non-state actors, a new element of legitimacy must also be secured. This article takes the novel approach of suggesting that Islamic as well as Western sources of law should be taken into account in re-designing the law. The article concludes by demonstrating how such a synthesis may be achieved in practice, particularly in relation to the distinction between civilians and combatants.

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http://heinonline.org/HOL/Page?handle=hein.journals/jtrnlwp21&id=171&collection=journals&index=journals/jtrnlwp

Towards an international law of brigandage : interpretative engineering for the regulation of natural resources exploitation

Jean d'Aspremont. In: Asian journal of international law Vol. 3, no. 1, 2013, p. 1-24. - Cote 363.7/144 (Br.)

The exploitation of natural resources in times of conflict has been the object of a prolific literature due to the extremely laconic character of the standards of conduct prescribed by the Hague and Geneva Conventions. Such laconicism has led scholars to be creative in ensuring that this central aspect of modern conflicts falls within the scope of existing legal instruments. This article starts by depicting the rich argumentative creativity developed by scholars and experts to ensure a more comprehensive regulation of what has often been perceived as a form of international brigandage. Subsequently it reflects on the biases of the professional community that has dedicated its efforts to the elaboration of a fairer framework of natural resources exploitation in times of conflict. In particular, it formulates some critical remark on the “just world business” that has dictated the methodology behind most of the interpretative engineering to be found.

Transformative occupation and the unilateralist impulse

Gregory H. Fox. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 237-266

The 2003 occupation of Iraq ignited an important debate among scholars over the merits of transformative occupation. An occupier has traditionally been precluded from making substantial changes in the legal or political infrastructure of the state it controls. But the Iraq experience led some to claim that this ‘conservationist principle’ had been largely ignored in practice. Moreover, transformation was said to accord with a variety of important trends in contemporary international law, including the rebuilding of post-conflict states along liberal democratic lines, the extra-territorial application of human rights treaty obligations, and the decline of abstract conceptions of territorial sovereignty. This article argues that these claims are substantially overstated. The practice of Occupying Powers does not support the view that liberal democratic transformations are widespread. Human rights treaties have never been held to require states parties to legislate in the territories of other states. More importantly, the conservationist principle serves the critical function of limiting occupiers’ unilateral appropriation of the subordinate state’s legislative powers. Postconflict transformation has indeed been a common feature of post-Cold War legal order, but it has been accomplished collectively, most often via Chapter VII of the UN Charter. To grant occupiers authority to reverse this trend by disclaiming any need for collective approval of ‘reforms’ in occupied states would be to validate an anachronistic unilateralism. It would run contrary to the multilateralization of all aspects of armed conflict, evident in areas well beyond post-conflict reconstruction.

http://www.cid.icrc.org/library/docs/DOC/irrc-885-fox.pdf

The treatment of occupation legislation by courts in liberated territories

Eyal Benvenisti and Michal Saliternik. - In: International law in domestic courts : rule of law reform in post-conflict states. - Cambridge [etc.] : Intersentia, 2012. - p. 269-289. - Cote 344/592

This chapter focuses on the jurisprudence of courts in liberated territories concerning the laws and administrative acts that were promulgated and applied by the occupying power. An analysis of a varied range of case law shows that, by tendency, national courts in the aftermath of an occupation prioritize the transitional needs of their societies - at least, in cases of conflict - over addressing questions of international legality. The "transitional bias" produced by post-occupation courts is examined by reference to case studies originating from several jurisdictions, under occupation during World War I, the Namibian Supreme Court's ruling in the Cultura 2000 case, the imposition of capital punishment on

Saddam Hussein by the Iraqi High Criminal Tribunal, and cases from East Timor and Kosovo in which prescriptive measures of UN territorial administrations were scrutinized by national courts. Inferring from the case studies, the chapter offers insight into the various froms of "transitional bias", ranging from post-occupation justice and struggle for reputation to the institutional aspects of post-conflict situations. The chapter concludes by suggesting that, given the countervailing concerns, it would be preferable to distinguish between ex ante and ex post consideration, and it criticizes the courts for invoking the laws of occupation as the basis for their ex post findings, thereby contributing to distorting this law.

The U.S. v. the Red Cross : customary international humanitarian law and universal jurisdiction

Noura Erakat. In: Denver journal of international law and policy Vol. 41, no. 2, Winter 2013, p. 225-272. - Cote 345.2/928 (Br.)

This article seeks to assess the accuracy of the US's critique of the ICRC's approach to establishing customary law. In doing so, it both develops an argument about the appropriate methodology for establishing customary law as well as examines one case study, on universal jurisdiction, in close detail. Narrowly, the question it seeks to answer is whether, and to what extent, the US Government's response to the ICRC's study is valid in light of proper approaches to the formation of customary international law? The modern approach to custom is more appropriate as concerns human rights and humanitarian law because of the unreliability of operational state practice, as well as the fact that the community of nations is not an aggregate of its many parts but rather a collective whole. However, this does not discount the tangible and heavy-handed impact of the behavior of powerful states upon the formation of custom. The article concludes that whereas the International Court of Justice in the North Sea found that custom cannot be established in the face of protest by a specially affected state in regard to a specific right, it is argued that global superpower, by virtue of its status, is always specially affected by a supranational law.

UN Security Council resolutions concerning children affected by armed conflict : in whose "best interest" ?

Sarah M. Field. In: The international journal of children's rights Vol. 21, no. 1, 2013, p.127-161

The agreement by the Security Council to adopt thematic resolutions on children is a powerful expression of our collective commitment to children and their rights: specifically to ensuring children's right to protection from serious violations of international law. Still history is replete with examples of protectionism by powerful decision-makers; not all follow a rights-based approach as entrenched within international human rights law. The objective of this paper is to investigate the decision-making processes and related outcomes of the Security Council from the perspective of international law. At the core of this investigation is an analysis of two interconnected dynamics: first the extent to which the Council is bound – under the Charter of the United Nations – by the Convention on the Rights of the Child (CRC); and second the extent to which the Council is in compliance with these obligations. This includes de-constructing the resolutions from the perspective of the procedural right of the best interests of the child and also assessing the outcomes with reference to the Council's primary responsibility – the maintenance of peace and security. Attentive to the normative power of the Security Council's decisions and recommendations, the paper cuts deeper to investigate: (i) the legal effects of the resolutions for the development international law relating to children and (ii) the consequences for children's right to protection from serious violations of international law – present and future.

Unaccountable : the current state of private military and security companies

Marcus Hedahl. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 175-192 : tabl.. - Cote 345.29/188

The current accountability system for private military and security contractors (PMSCs) is woefully inadequate, and mere enhancements in oversight cannot hope to remedy that failing. I contend that once we recognize the kind of accountability required of PMSCs, we will realize that radical changes in the foundational relationship between PMSCs and the state are required. More specifically, in order to be appropriately accountable, members of PMSCs must become a part of or, at the very least, directly responsible to the legitimate authoritative military or police structures, and there must be a clear and precise delineation of responsibility among public officials for holding individual members of PMSCs criminally liable.

Use of force during occupation : law enforcement and conduct of hostilities

Kenneth Watkin. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 267-315

This article explores the law governing the maintenance of public order and safety during belligerent occupation. Given the potential for widespread violence associated with international armed conflict, such as occurred in 2003–2004 in Iraq, it is inevitable that military and police forces will be engaged in activities that interface and overlap. Human-rights-based norms governing law enforcement, such as the right to life, are found in humanitarian law, permitting an application of both law enforcement and conduct of hostilities norms under that body of law. This results in the simultaneous application of these norms through both humanitarian and human rights law, which ultimately enhances the protection of inhabitants of the occupied territory.

http://www.cid.icrc.org/library/docs/DOC/irrc-885-watkin.pdf

The use of force under islamic law

Niaz A. Shah. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 343-365

This article focuses on the use of force under Islamic law, i.e., jus ad bellum. Islamic law allows the use of force in self-defence and in defence of those who are oppressed and unable to defend themselves. In contrast, the offensive theory of jihad is untenable. Muslim states follow the defensive theory of jihad. Islamic law also allows, under certain conditions, anticipatory self-defence. Only the head of a Muslim state (a ruler or caliph) is allowed to declare jihad. Most of the current so-called declarations of jihad have been issued by non-state actors, e.g. Al-Qaeda, who have no authority to declare jihad. These declarations thus have no validity under Islamic law and, indeed, Muslim states are fighting these armed groups. Islamic law imposes certain restrictions on the use of force in self-defence, i.e., military necessity, distinction, and proportionality. Accepting an offer of peace and humanity are also relevant conditions.

only from ICRC headquarters: http://ejil.oxfordjournals.org/content/24/1/343.full.pdf

Using the army to police organized crime in Mexico : what is its impact ?

Marcos Pablo Moloeznik. - In: Policing global movement : tourism, migration, human trafficking, and terrorism. - Boca Raton [etc.] : CRC Press, 2012. - p. 57-74 - Cote 355/993 (Br.)

The first section describes the differences between the military and the law enforcement agencies on fundamental matters like mandate, training, and capacity, indicating the kind of problems that must be solved for both agencies to work effectively in fighting organized crime. The second section describes the structural problems of using the armed forces in activities outside their jurisdiction and for which they are not prepared ; it also provides examples of practical issues, such as the use of checkpoints, military operations in civilian areas, and human rights violations generated by the incursion of the armed forces in activities concerning public security. Finally, the chapter concludes that the state needs to rethink its current strategy in the fight against organized crime.

Vers une égalité concrète en droit international humanitaire : réponse aux arguments de Marco Sassòli et Yuval Shany

René Provost. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 134-139

Pour ce premier débat, la Revue a demandé à deux membres de son Comité de rédaction, les professeurs Marco Sassòli et Yuval Shany, de débattre sur le thème de l'égalité des États et des groupes armés en droit international humanitaire. Les commentaires du professeur René Provost apportent un troisième éclairage à ces échanges. La question cruciale est de savoir s'il est réaliste d'appliquer aux groupes armés non étatiques le régime juridique en vigueur. Comment les groupes armés, qui ont des moyens parfois très limités et une organisation rudimentaire, pourraient-ils s'acquitter des mêmes obligations que les États ? Qu'est-ce qui inciterait les groupes armés à respecter les règles établies par leurs adversaires ? Pourquoi devraient-ils respecter des règles quand le fait même de prendre les armes contre l'État fait déjà d'eux des 'hors-la-loi' ? Les participants à cette discussion aspirent tous à assurer une meilleure protection juridique à toutes les personnes touchées par les conflits armés non internationaux. Les professeurs Sassòli et Shany ont convenu de présenter deux positions 'radicalement' opposées, le professeur Sassòli soulignant la nécessité de reconsidérer l'égalité et de la remplacer par une gradation des obligations, et le professeur Shany réfutant ce point de vue. Le professeur Provost propose ensuite une réflexion sur les positions exposées par les deux intervenants et nous invite à revisiter la notion même d'égalité des belligérants. Par souci de clarté et de concision, les débatteurs ont simplifié la

complexité de leur raisonnement juridique. Les lecteurs de la Revue garderont à l'esprit que les positions des intervenants sur ce point de droit sont en réalité plus nuancées que ne le laisse apparaître ce débat.

http://www.cid.icrc.org/library/docs/DOC/irrc-882-sassoli-shany-provost-fre.pdf

War crimes and genocide in international law

Hoxha Rinor, Shveika Kateryna, Koldzo Nizama. - [S.l.] : [s.n.], [2012]. - 37 p. - Cote 344/128 (Br.)

The concept of war crimes and genocide, historical aspects, the definitions, written sources and institutions are analyzed in this working paper. Apart from this analysis, brief presentation and comparisons of historical events of bloody conflicts that happened in Rwanda 1994 and Yugoslavia during the nineties are made. Furthermore, the establishment, role, composition, etc of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) are presented.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2230813

War crimes before the Norwegian Supreme Court : the obligation to prosecute and the principle of legality : an incumbrance or opportunity ?

Simon O'Connor. - Oxford : Oxford Institute for Ethics, Law and Armed Conflict, February 2013. - 36 p. - Cote 344/119 (Br.)

In proceedings in 2010 and 2011 the Norwegian Supreme Court dismissed a war crimes conviction under the relatively recently passed international crimes provisions of the Norwegian Penal Code. The Court held that the conviction was unconstitutional as it applied those provisions retroactively. This essay challenges that conclusion. The argument that this paper presents is that the Supreme Court's decision is arguably untenable, inconsistent with the acknowledged obligations the state of Norway has long recognized it had (and are recognized under international law) to prosecute such acts as the international crimes they are and that in fact to do so is consistent rather than in contradiction any other than an absolutist originalist reading of the Norwegian Constitution. The precedential consequences of their decision are already being felt. On the 14 February 2013 a trial court convicted an accused for complicity in the Rwandan genocide. His conviction and the indictment were on the charge of murder, not genocide. Whilst there are different arguments with respect to other international crimes than those constituting grave breaches of the Geneva Conventions this paper argues that the rationale and conclusions reached by the Norwegian Supreme Court need to be revisited.

http://www.elac.ox.ac.uk/policy/

War crimes chamber of the court of Bosnia and Herzegovina : seeding "international standards of justice" ?

Katerina Uhlírová. - In: International law in domestic courts : rule of law reform in post-conflict states. - Cambridge [etc.] : Intersentia, 2012. - p. 195-220. - Cote 344/592

In this chapter the author examines the process of rebuilding the rule of law in Bosnia and Herzegovina. Building on the efforts of the international community and its major role during the process of reconstruction, the contribution concentrates on the question whether such rule of law efforts were and could have been successful, springing not from local linkage but rather from an external imposition. The chapter especially examines two aspects or goals of the rule of law: providing efficient and impartial justice, and upholding human rights. As international law plays a major role in that regard, both the process of empowering domestic institutions to apply international law as well as the actual application of international law are analyzed.

War crimes in the American revolution : examining the conduct of Lt. Col. Banastre Tarleton and the British Legion during the southern campaigns of 1780-1781

John Loran Kiel. In: Military law review Vol. 213, Fall 2012, p. 29-64

The genesis for this article comes from a blog in which a historian recently wrote of Banastre Tarleton: "Although a skilled cavalryman, he occasionally acted in a manner unbecoming an officer. In other words, he butchered soldiers and treated civilians cruelly. In another century, Bansatre Tarleton would have been a war criminal." The purpose of this article is to examine whether this supposition is true in light of the British and American Articles of War in effect at the time of the Revolutionary War and customary law that had developed prior to the late 18th Century. The article concludes that under both the British and American Articles of War and under customary "Law of Nations," Banastre Tarleton personally

committed war crimes and was culpable under the principle of command responsibility for some of the war crimes his dragoons committed while serving under his command.

War crimes prosecution in a post-conflict era and a pluralism of jurisdictions : the experience of the Belgrade war crimes chamber

Sharon Weill and Ivan Jovanovic. - In: International law in domestic courts : rule of law reform in post-conflict states. - Cambridge [etc.] : Intersentia, 2012. - p. 241-268. - Cote 344/592

This chapter on war crimes prosecution in the former Yugoslavia examines the function of the Serbian War Crimes Chamber (WCC) in Serbia. Remarkably, the Chamber - being established within the District Court of Belgrade - constitutes one of the very few courts in the world that, shortly after the ending of a conflict, is prosecuting its own nationals on a systematic scale. The first part of the contribution examines the background of the WCC as another establishment constituting an alternative to the ICTY. The second part provides a critical analysis of the first decisions issued by the Chamber during its first six years of operation, evaluating the WCC's approach to applying international law in practice and its importance as an international player in the wider context of the international rule of law. As the latter is dependent on the Chamber's objectice ability to apply international law - which, in practice, seems especially parochial as to the application of international humanitarian law - and its subjective political willingness to do so, the former represents one of its essential elements.

When bonobos meet guerillas : preserving biodiversity on the battlefield

Brendan Kearns. In: Georgetown international environmental law review Vol. 24, issue 2, Winter 2012. - Cote 363.7/142 (Br.)

This article analyzes the present capacity of international humanitarian law to address the threats to biodiversity emanating from armed conflict and proposes ways to enhance the protections of endangered species such as the bonobo. Section II describes the current plight of Pan paniscus, an ape whose population has been decimated by armed hostilities. Section III discusses the existing international framework in the laws of war protecting the natural environment through an analysis of Additional Protocol I to the Geneva Conventions and the Rome Statute, and argues that international humanitarian law presently includes provisions prohibiting any military conduct that gravely threatens the surrounding biodiversity. Section IV examines several theories of compliance with international commitments. While offering distinct explanations for state compliance, these disparate models converge in important and illuminating ways that highlight fundamental shortcomings in the present legal regime addressing wartime threats to the natural environment. The international community must enhance the existing protections of the natural environment through an additional protocol to the Geneva Conventions establishing an organization that facilitates state compliance with the prohibition of military conduct that threatens "widespread, long-term and severe damage to the natural environment." Section V discusses the design and operation of this proposed organization, particularly the establishment of mechanisms that provide technical and scientific expertise, facilitate financial transfers from donors to recipient nations, and monitor and publicize compliance with the existing norms.

Which law governs during armed conflict ? : the relationship between international humanitarian law and a human rights law

Oona A. Hathaway... [et al.]. In: Minnesota law review Vol. 96, no. 6, June 2012, p. 1883-1943. - Cote 345.1/40 (Br.)

This Article draws on jurisprudence, state practice, and recent scholarship to describe three possible approaches to applying human rights or humanitarian law to armed conflict: The Displacement Model, the Complementarity Model, and the Conflict Resolution Model. Of the three, the Conflict Resolution Model offers the best approach. Under that Model, human rights law and humanitarian law are both applied together when possible. If the two bodies of law are in direct conflict, however, the Model offers three possible decision rules for resolving that conflict. Of these three, the Article endorses the specificity decision rule, under which the law more specific to the operation, situation, or encounter governs. This approach recognizes that both bodies of law can productively inform each other when they do not squarely conflict, yet it allows for highly nuanced determinations as to when conduct is governed best by each body of law when conflict between the two is irreconcilable. To illuminate the stakes of the debate, the Article examines situations of armed conflict in which human rights law comes into direct conflict with humanitarian law—including those that raise issues of the right to life; detention and the right to trial; women's rights; and the rights to freedom of expression, association, and movement—and shows how the specificity variation of the Conflict Resolution Model effectively resolves the conflict. This approach to deciding which law governs during armed conflict accomplishes the fundamental goal common to both human rights law and humanitarian law: to effectively protect human dignity.

http://www.minnesotalawreview.org/issue/96-6/

The XM25 individual airburst weapon system : a "game changer" for the (law on the) battlefield ? : revisiting the legality of explosive projectiles under the law of armed conflict

Tom Ruys. In: Israel law review Vol. 45, no. 3, 2012, p. 401-429. - Cote 341.67/232 (Br.)

In the summer of 2010, the US Army began the field-testing of a new weapon, the XM25 'Individual Semi-Automatic Airburst System', which fires 'airburst' anti-personnel rounds that can be programmed to detonate at a certain distance. While the XM25 has been heralded as a 'game changer' for modern warfare, the question nonetheless remains to what extent it is compatible with the law of armed conflict (LOAC). Against this background, this article aims to examine the legality of the XM25, in particular having regard to the customary prohibition on certain explosive projectiles and the general prohibition on causing superfluous injury and unnecessary suffering.

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