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AIR WARFARE


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


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

Drones and the boundaries of the battlefield / Michael W. Lewis. - In: Texas international law journal, Vol. 47, no. 2, Spring 2012, p. 293-314. - Photocopies

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

The law of operational targeting : viewing the LOAC through an operational lens / Geoffrey S. Corn and Gary P. Corn. - In: Texas international law journal, Vol. 47, no. 2, Spring 2012, p. 337-380. - Photocopies
Understanding how air and missile warfare is planned, executed, and regulated requires more than just an understanding of relevant LOAC provisions. In U.S. practice (and that of many other countries), air and missile warfare is one piece of a broader operational mosaic of law and military doctrine related to the joint targeting process. How operational commanders select, attack, and assess potential targets and how the LOAC reflects the logic of military doctrine related to this process is therefore the objective of this Article. To achieve this objective, the authors focus on a recent decision by the International Criminal Tribunal for the Former Yugoslavia (ICTY), Prosecutor v. Gotovina. Although the military operation at the center of this case involved only limited use of air and missile warfare, the ICTY’s extensive focus on the use of artillery and rocket attacks provides a useful and highly relevant illustration of why understanding the interrelationship between law and military doctrine is essential for the logical and credible development of the law. The authors therefore seek to “exploit” this case as an opportunity to expose the reader to this interrelationship, an interrelationship equally essential to the effective evolution of the law of air and missile warfare.

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

This issue of the Texas International Law Journal focuses on the Manual on International Law Applicable to Air and Missile Warfare (AMW Manual) produced by the Program on Humanitarian Policy and Conflict Research at Harvard University (HPCR). The 2011 Symposium organized in Austin by the editorial team of the Texas International Law Journal represents a first opportunity to reflect on the nature and goals of the AMW Manual and to formulate a critical appraisal of its content.

**ARMS**


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


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

**Targeting: precision and the production of ethics / Maja Zehfuss**. In: European journal of international relations, Vol. 17, no. 3, September 2011, p. 543-566. - Photocopies

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**BIOGRAPHY**


**Louis Appia (1818-98) : military surgeon and member of the International Committee of the Red Cross / R. Ottaviani... [et al.]**. In: Journal of medical biography, Vol. 19, no. 3, August 2011, p. 117-124 : ill. - Photocopies
CHILDREN

362.7/359

This policy and practice note describes the methodology of the non-governmental organization (NGO) Geneva Call to engage armed non-state actors (ANSAs) in protecting children from the effects of armed conflict. ANSAs cannot take part in the development of, or become party to, international treaties, so Geneva Call has developed an innovative mechanism, the ‘Deed of Commitment’, by which ANSAs subscribe to specific norms. Efforts to engage ANSAs on protection of children built on Geneva Call's earlier experience and the trust built up with ANSAs in developing and implementing a Deed of Commitment banning the use of anti-personnel (AP) mines. The Deed of Commitment on children and armed conflict, however, is more complex, having to take account of the agency of children, a more convoluted legal framework, and the existing United Nations (UN) Monitoring and Reporting Mechanism on children and armed conflict (MRM). The Deed of Commitment on children and armed conflict – similar to its predecessor banning AP mines – includes provisions on implementation and verification by both external monitoring and self-monitoring. Challenges to monitoring and verification include those posed by states which deny or obstruct access to ANSAs or territories where they operate. Complex problems such as protecting children from the effects of armed conflict require a range of responses. While the MRM – a political and process-driven mechanism based on an essentially punitive approach – will continue to be a key mechanism, it is important to have complementary approaches to engage ANSAs in committing to and complying with norms for child protection in armed conflict. The text of the Deed of Commitment is included as an appendix. 345.22/200 (Br.)

CIVILIANS

355/947

Content notamment : The politics of civilian identity / D. Rothbart. - Israeli soldiers’ perceptions of Palestinian civilians during the 2009 Gaza war / N. Oren. - Civilians under the law: inequality, universalisms, and intersectionality as intervention / S. F. Hirsch 355/947

In this chapter the author explores the role of international law in protecting some civilians and failing to protect others. In so doing she addresses a central question taken up in the volume as a whole: how and why do international institutions contribute to lethal and non-lethal civilian devastation? Although it has not always been applied uniformly, IHL guides the protection of civilians through a body of customary law, treaties such as the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949, and the related Additional Protocols of 1977, which include the Principle of Distinction. More recently, developments in International Criminal Law (ICL) have also shaped the treatment of civilians through treaties, statutes, and case decisions. Most notable are those related to the ad hoc criminal tribunals following mass violence, specifically the International Criminal Tribunal for the former Yugoslavia (ICTY) and the
International Criminal Tribunal for Rwanda (ICTR), as well as the International Criminal Court (ICC) established in 1998.
355/947

**Israeli soldiers' perceptions of Palestinian civilians during the 2009 Gaza war / Neta Oren.**
355/947

The politics of civilian identity / Daniel Rothbart

In the arena of IHL civilian noncombatants are treated as war's innocents, and thus situated outside of the realm of military objectives. Yet, the principle of proportionality is so shallow in meaning that it fosters a dizzying array of incompatible interpretations and applications by field commanders. Because of its lack of clarity, excessive vagueness, and conceptual impoverishment regarding the meaning of proportionate killing, the principle allows for highly arbitrary judgments by military leaders, many of which prioritize the military mission, strategy, and tactics at the expense of humanitarian protections of civilians. Commanders often "fill in" the principle's content with their own, possibly idiosyncratic, understanding of proportionality that is linked to their sense of balance of competing moral commitments.
355/947

Protecting civilians during violent conflict : theoretical and practical issues for the 21st century / ed. by David W. Lovell, Igor Primoratz

There is almost unanimous agreement that civilians should be protected from the direct effects of violent conflict, and that the distinction between combatant and non-combatant should be respected. But what are the fundamental ethical questions about civilian immunity? Are new styles of conflict making this distinction redundant? Eloquently combining theory and practice, leading scholars from the fields of political science, law and philosophy have been brought together to provide an essential overview of some of the major ethical, legal and political issues with regard to protecting civilians caught up in modern inter- and intra-state conflicts. In doing so, they examine what is being done, and what can be done, to make soldiers more aware of their responsibilities in this area under international law and the ethics of war, and more able to respond appropriately to the challenges that will confront them in the field. 'Protecting Civilians During Violent Conflict' presents a clear-eyed look at the dilemmas facing regular combatants as they confront enemies in the modern battlespace, and especially the complications arising from the new styles of conflict where enemy and civilian populations merge.
345.2/886

**CONFLICT-VIOLENCE AND SECURITY**

**Armed groups and intra-state conflicts : the dawn of a new era ? / Arnaud Blin.**
- In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 287-310

Have the various profound changes that have affected the world, and particularly its geostrategic dimensions, since the end of the ColdWar radically altered the nature of conflicts? Twenty years after the collapse of the Soviet Union and ten years after the destruction of the twin towers in New York, there is an apparent degree of continuity in the resilience of former centres of unresolved conflicts and of armed groups involved in them. Nonetheless, whereas most armed conflicts can today be classified as 'intraestate', the general context has changed to the extent that reference is now made to the phenomenon of 'new wars'. Increasingly unacceptable economic and political imbalances along with globalization, environmental damage and its consequences or the emergence of large-scale conflicts triggered by organized crime are some of the perils already affecting the nature of today's conflicts or potentially defining those of the future. As the period dominated by jihadist groups with a universalist vocation possibly draws to an end, the current trend seems to be towards a new generation of guerrilla fighters who stand to benefit, in particular, from the erosion of the nation-state and from geopolitical convulsions arising from the post-colonial legacy as the starting point for intensely zealous and violent long-term ventures. The impact of globalization could cause a flare-up of
some existing conflicts that are currently limited in scope while the international community struggles to redefine other rules and to adapt them to the new dialectic of war and peace.

**Armed groups' organizational structure and their strategic options / Abdulkader H. Sinno.** - In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 311-332

The organizational structures of armed groups, whether they develop by accident or by design, affect their strategic choices during the conflict and their ability to enter peace agreements. This article explains how frequently encountered structures such as centralized, decentralized, networked, and patronage-based ones affect strategic choices for the organization and its opponents. Only centralized organizations can make use of sophisticated strategies such as ‘divide and conquer’, ‘co-option’, and ‘hearts and minds’, and can engage in successful peace agreements. Centralized armed organizations that do not have a safe haven within the contested territory tend to be very vulnerable, however, which makes peace less attractive to their opponents and explains in part why long-lasting peace agreements between such groups and their opponents are rare.


**Economic dimensions of armed groups : profiling the financing, costs, and agendas and their implications for mediated engagements / Achim Wennmann.** - In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 333-352

This article introduces the various economic dimensions of armed groups and explores the implications of their engagement through mediation and dialogue. It looks specifically at the financing, operational costs, and economic agendas of armed groups and brings together examples from Angola, Kosovo, Sudan, Colombia, and other places. It emphasizes that information about available financing and operational costs is critical for assessing the financial and operational strength of an armed group. It also highlights the need to understand armed groups in the broader context of their evolution and the changes that organizational and territorial expansions require with regards to financing strategies. Overall, the economic dimensions of armed groups should be approached with an open mind so that issues such as financing, costs, and economic agendas can be perceived as opportunities, and not necessarily as a problem for peace.


For this issue on understanding armed groups, the Review considered it important to invite someone who could give the inside perspective of an armed group. Minister Ali Ahmad Jalali, currently Distinguished Professor at the National Defense University in Washington, DC, is uniquely placed to do so in the context of Afghanistan: he has at once the experience of a
former member of the Mujahideen during the war against the Soviet Union, a former Colonel in the Afghan National Army, and a former Minister of the Interior for Afghanistan from 2003 to 2005. Minister Jalali has published extensively on political, military, and security issues in Afghanistan, Iran, and Central Asia.


**Des pirates à l'abordage de la mondialisation... / par Karsten von Hoesslin... [et al.].** - In: Diplomatie : affaires stratégiques et relations internationales, No 56, mai-juin 2012, p. 40-65 : photogr., graph., cartes


**Prisoners of war and civilian internees of the Japanese in British Asia : the similarities and contrasts of experience / Felicia Yap.** - In: Journal of contemporary history, Vol. 47, no. 2, April 2012, p. 317-346


323.14/AZE 8

323.13/PAK 13

323.15/IRQ 28

323.11/33


**HEALTH-MEDICINE**

Protection of military medical personnel in armed conflicts / Peter de Waard and John Tarrant. - In: University of Western Australia law review, Vol. 35, no. 1, September 2010, p. 157-183. - Photocopies

Medical personnel are entitled to protection in armed conflicts under international law. However, that protection will be lost unless such personnel strictly comply with the requirements set out in the relevant conventions. The authors examine the protection regime available to medical personnel including the regime applicable to hospital ships and medical aircraft. The authors argue that any permanent military medical personnel who engage in hostile acts without being correctly re-assigned permanently from their medical role could be liable for their conduct under the criminal law because they do not possess combatant immunity. The difficulty in re-assigning personnel from medical to non-medical roles and vice versa is examined against the background of the concept of civilians directly participating in hostilities. The authors examine the interpretive guidance issued by the International Committee of the Red Cross and the significant criticism of that guidance.

356/128 (Br.)

**HUMAN RIGHTS**


345.1/597


The article discusses the efficacy of the remedies offered to successful applicants by the European Court of Human Rights in the cases coming from the armed conflict in the Chechen Republic of the Russian Federation. It submits, firstly, that proper establishment of facts constitutes a remedy in itself for victims of human rights violations in an armed conflict. It then analyses the establishment of facts by the Court in the Chechen cases and argues that the assessment of evidence under the Court's burden of proof "beyond reasonable doubt" was applied unevenly in different cases. The paper suggests that the Court obtains evidence proprio motu, which it has never done in the Chechen cases. Secondly, this paper evaluates the
European Court's practice to limit the just satisfaction by monetary awards and to consistently deny the applicants' requests for non-monetary awards. It then discusses the developments in the international law on reparations for human rights violations under the ECHR and in the Inter-American and UN systems, and argues for a need to enhance the European Court's awards of just satisfaction. Finally, the paper assesses the supervision of the execution of judgments in the Chechen cases, finds it ineffective, and suggests that more actions are required from the Court in order to deal effectively with alleged human rights violations arising from armed conflicts.

345.1/595

345.1/596

HUMANITARIAN AID


361/461 (2012)

361/574

ICRC-INTERNATIONAL MOVEMENT OF THE RED CROSS AND RED CRESCENT

This report is primarily an account of the ICRC's work in the field and its activities to promote international humanitarian law. Mention is made of some of the negotiations entered into with a view to bringing protection and assistance to the victims of international and non-international armed conflicts and other situations of violence. Other negotiations are not mentioned, since the ICRC feels that any publicity would not be in the interests of the victims. Thus, this report cannot be regarded as covering all the institution's efforts worldwide to come to the aid of the victims of conflict. Moreover, the length of the text devoted to a given country of situation is not necessarily proportional to the magnitude of the problems observed and tackled by the institution. Indeed, there are cases which are a source of grave humanitarian concern but on which the ICRC is not in a position to report because it has been denied permission to take action. By the same token, the description of operations in which the ICRC has great freedom of action takes up considerable space, regardless of the scale of the problems involved.
362.191/563 (2011)
Réf. MOU 1 (2011)

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(XXV, 717 p.); 21 x 28 cm + 1 CD-ROM. - (Quaderni "Henry Dunant"; no 6). - Fac-similés des manuscrits. - Bibliographie : p. XV
362.191/1449 (IV part. 1)
362.191/1449 (IV part. 2)

Have you ever thought of working in the humanitarian field? Do you have "soft" skills and professional experience? If so, the ICRC may be the place for you! This brochure explains some of the jobs you could be doing with the ICRC. It includes useful links to the ICRC on Facebook, YouTube and other sites. And a chapter is devoted to the benefits the ICRC offers its employees.
362.191/1307 (Br.)

INTERNATIONAL CRIMINAL LAW

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

Formulating a new atrocity speech offense : incitement to commit war crimes / Gregory S. Gordon. - In: Loyola University Chicago law journal, Vol. 43, no. 2, Winter 2012, p. 281-316. - Photocopies
Since the time of the Pharaohs, certain military commanders have sought to demonize the enemy in speeches given to troops before sending them into battle. Depending on the words used by the commanding officer in these situations, such speech would not necessarily amount to "orders" given to the troops. In a genocidal context, the officer's words alone might be actionable as "incitement to genocide." But curiously, under the current state of international humanitarian law, the speech itself would not permit an incitement prosecution of the commander. This Article proposes filling the speech gap in international humanitarian law by creating a new inchoate offense—direct incitement to commit war crimes. The Article proceeds in five parts. Part II chronicles instances where both military commanders and prominent civilians have exhorted soldiers and militia to commit atrocities but the civilians' use of such facilitating language was not punished as a violation of the law of war. Part III examines the existing law related to speech crimes in the mass atrocity context and its extremely limited scope in the current laws and customs of war and applicable treaties, including the Geneva and Hague Conventions. Part IV suggests ways in which incitement could be incorporated into the existing framework of both international humanitarian law and international criminal law. Finally, Part V will demonstrate that while the new offense may raise free-expression and operational concerns, it will not run afoul of military individual liberty norms or institutional prerogatives.
344/260 (Br.)

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

La "gravité" dans la jurisprudence de la cour pénale internationale à propos des crimes de guerre / Rosmerlin Estupiñan Silva. - In: Revue internationale de droit pénal = Revista internacional de derecho penal, 82e année, 3/4 trim., 2011, p. 541-558

Universal jurisdiction : a means to end impunity or a threat to friendly international relations ? / Karinne Coombes. - In: George Washington international law review, Vol. 43, no. 3, 2011, p. 419-466. - Photocopies

Ending impunity for perpetrators of serious international crimes such as genocide, crimes against humanity, and war crimes is considered important because convictions may achieve justice and deter future acts. A controversial tool for ending impunity is the exercise of universal jurisdiction by states. The recent resistance of the African Union to attempted prosecutions of nationals of A.U. member states on the basis of universal jurisdiction highlights the controversy surrounding the exercise of universal jurisdiction. Through an analysis of the African Union reaction, this Article examines and assesses the arguments in favor and against universal jurisdiction, and proposes how a proper balance may be struck between enforcement of international criminal law on the basis of universal jurisdiction and respect for state sovereignty. This Article argues that, under international law, states have the right to exercise universal jurisdiction over certain international crimes. Rather than disregarding international justice, such prosecutions may achieve justice by imposing individual responsibility for serious international crimes. It is undeniable, however, that difficulties may accompany the exercise of universal jurisdiction. Although there may be few legal restrictions on its use, states should adopt a balanced approach that makes universal jurisdiction a useful tool for ending impunity while minimizing the risks associated with its exercise. Ultimately, an international agreement may be required to resolve the outstanding disagreement among states surrounding the doctrine; until then, states should implement universal jurisdiction legislation and exercise it with care.


INTERNATIONAL HUMANITARIAN LAW-GENERALITIES


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


Réf. DIH 8 (I à III 2012 FRE) (excluded from loan)
INTERNATIONAL HUMANITARIAN LAW-CONDUCT OF HOSTILITIES

Regulating the irregular: international humanitarian law and the question of civilian participation in armed conflicts / Emily Crawford. - In: University of California Davis journal of international law and policy, Vol. 18, no. 1, 2011, p. 163-190. - Photocopies
This paper will review the history of international humanitarian law and regulation of irregular participation in armed conflict as a case study to demonstrate the increasingly difficult task of achieving international consensus on the rule of law during armed conflict. From the first provisions in the Hague Regulations regarding levée en masse, to the Geneva Conventions and the Additional Protocols, this paper will look at how nonconventional combatancy has been regulated, and examine the debates surrounding the expansion of the legal category of “combatant.” This paper will culminate in an analysis of the International Committee of the Red Cross (ICRC) Expert Process on Direct Participation in Hostilities, finding both the final Interpretive Guidance, and the controversy leading up to and surrounding its publication, are demonstrative of the obvious stumbling blocks facing any new treaties regarding participation in armed conflict.
345.25/257 (Br.)


INTERNATIONAL HUMANITARIAN LAW-IMPLEMENTATION

All necessary means to protect civilians: what the intervention in Libya says about the relationship between the jus in bello and the jus ad bellum / Julian M. Lehmann. - In: Journal of conflict and security law, Vol. 17, no. 1, Spring 2012, p. 117-146
This article scrutinizes the phrase 'all necessary means to protect civilians under threat of attack', contained in the United Nations (UN) Security Council Resolution 1973 (2011) authorizing military force in the Libyan Arab Jamahiriya (Libya). It assesses both the meaning of this phrase and the legal regime pursuant to the resolution. That regime challenges the teleological separation but concurrent application of the law on the use of force (the jus ad bellum), and the law applicable in international and non-international armed conflict [the jus in bello or international humanitarian law (IHL)]. Security Council Resolution 1973, and its understanding of the term 'civilian', should be read in accordance with other international law norms; prima facie conflict of the resolution with IHL on the issue of targeting can be resolved. The resolution was however ambiguous on when force can be used. It is suggested that Resolution 1973 required a demonstrable risk of indiscriminate attack to civilians, per se necessity and jus ad bellum proportionality, the latter exceeding IHL's concept of proportionality because of the specificity of the resolution's aim. In examining the concurrent application of the jus ad bellum and the jus in bello in the context of specific interventions in Libya, the criticism that some states contributing coalition forces overstretched their mandate is corroborated. A combination of the resolution's ambiguity and political considerations lie at the heart of that overstretch. In developing international law for analogous situations, the intervention is likely to exacerbate existing quarrels over future council action to protect civilians.

Did LOAC take the lead?: reassessing Israel's targeted killing of Salah Shehadeh and the subsequent calls for criminal accountability / Alon Margalit. - In: Journal of conflict and security law, Vol. 17, no. 1, Spring 2012, p. 147-173
The recent report of an Israeli Inquiry Committee that examined the 2002 targeted killing of Salah Shehadeh, the commander of Palestinian armed group Hamas, provides a valuable opportunity to reassess the legality of this highly controversial incident. The attack on Shehadeh by Israeli forces caused the death of 13 innocent civilians and the injury of dozens of others. While Israel refused to open a criminal investigation following the attack, several attempts in Israel and elsewhere were made in order to initiate criminal proceedings and to hold those involved accountable. It seems however that the allegations of 'an Israeli war crime' neglected the normative framework which governs the incident. This article analyses the lawfulness of the Israeli operation under the law of armed conflict (LOAC) by discussing the legitimacy of the selected target and the issues of proportionality and precautions in attack. It also considers the
relationship between LOAC and human rights law. As the calls for criminal measures may be resumed in light of the Inquiry Committee’s findings, the article recalls the supremacy of LOAC when assessing behaviour in the context of high-intensity hostilities. In the absence of a LOAC violation which triggers individual criminal responsibility, human rights law may play a role in relation to a post-incident remedy, namely, a review of the attack and, in some cases, compensation for victims. Yet, allegations of war crimes cannot be based on human rights law when there is no case to answer under LOAC.

Reasons why armed groups choose to respect international humanitarian law or not / Olivier Bangerter. - In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 353-384
The decision to respect the law – or not – is far from automatic, regardless of whether it is taken by an armed group or a state. Respect for international humanitarian law (IHL) can only be encouraged, and hence improved, if the reasons used by armed groups to justify respect or lack of it are understood and if the arguments in favour of respect take those reasons into account. Among the reasons for respecting the law, two considerations weigh particularly heavily for armed groups: their self-image and the military advantage. Among the reasons for non-respect, three are uppermost: the group’s objective, the military advantage, and what IHL represents according to the group.

INTERNATIONAL HUMANITARIAN LAW-LAW OF OCCUPATION

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

INTERNATIONAL HUMANITARIAN LAW-TYPE OF ACTORS

The applicability of international humanitarian law to organized armed groups / Jann K. Kleffner. - In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 443-461
While it is generally accepted today that international humanitarian law (IHL) is binding on organized armed groups, it is less clear why that is so and how the binding force of IHL on organized armed groups is to be construed. A number of explanations for that binding force have been offered. The present contribution critically examines five such explanations, namely that organized armed groups are bound via the state on whose territory they operate; that organized armed groups are bound because their members are bound by IHL as individuals; that norms of IHL are binding on organized armed groups by virtue of the fact that they exercise de facto governmental functions; that customary IHL is applicable to organized armed groups because of the (limited) international legal personality that they possess; and that organized armed groups are bound by IHL because they have consented thereto.

In virtually all contemporary armed conflicts a staggering 90 per cent of all victims are civilians. A comprehensive and constructive clarification of international law relating to the protection of civilians in armed conflict requires that both academics and practitioners take a step back from an overly technical, political or positivist analysis of the law and look as the questions presenting themselves through the prism of general, well-established principles of law, most notably the principles of: (i) necessity; (ii) proportionality; (iii) precaution; and (iv) humanity, which underlie the entire normative framework governing the use of force. A major problem arises with regard to the lack of any incentive for rebels to comply with international humanitarian law. A viable alternative to the introduction of a full combatant privilege for non-state belligerents would require a two-pronged approach. In accordance with the respective logic of the jus in bello and the jus ad bellum, the conduct of hostilities and the exercise of power and authority over persons in compliance with international humanitarian law should be encouraged and legitimized (first objective), whereas the initiation of, or participation in, an armed conflict in contravention of domestic law should be discouraged (second objective).

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

A collection of codes of conduct issued by armed groups / compiled by Olivier Bangerter ; assembled and introduced by Nelleke van Amstel. - In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 483-501
Several authors in this edition of the Review discuss the importance of codes of conducts for understanding and engaging with armed groups. The Review has thus decided to include a collection of codes of conduct, or relevant extracts thereof. All materials in this collection are publicly available. They originate from various geographic areas and time periods – from China in 1947 to Libya in 2011 – and provide an insight into different armed groups’ views of and appreciation of humanitarian norms.

In “Enemy Status and Military Detention in the War Against Al-Qaeda,” the author proposed that the concept of “enemy” and the standards for construing “enemy” that have been developed in the law of neutrality provide the appropriate legal framework for construing the limits of detention authority in U.S. military operations against al-Qaeda. The author proposed the concept of “enemy” as a legal theory that would bridge domestic and international law. This theory could provide principles to address the hard cases and define the edges of the authority that the U.S. government may exercise to prosecute its war against al-Qaeda. And, unlike attempts to craft law anew, this theory draws from the rich principles and practice that states have developed in the law of neutrality. In this vein, Rebecca Ingber and Kevin Jon Heller have written responses to “Enemy Status and Military Detention,” which accompanied it in the first issue of the forty-seventh volume of the Texas International Law Journal. Ingber and Heller have raised some important issues to which the author would like to reply. Below, he discusses...
Lessons for the law of armed conflict from commitments of armed groups: identification of legitimate targets and prisoners of war / Sandesh Sivakumaran. - In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 463-482

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


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


Over the past few years privatized military firms (PMFs) have allegedly committed all kind of war crimes, including torture. Prisoners' abuses at Abu Ghraib or indiscriminate firing against civilian vehicles to the rhythm of Elvis Presley's "Runaway Train" are but a couple of examples of the excesses revealed by the public media. Nonetheless, members of PMFs have hardly been held accountable. "Lawlessness" and "weak laws" have been blamed for these striking cases of impunity. Emphasizing the crime of torture, this article explores the legal framework applicable to PMFs, both from a domestic and an international perspective, and sheds light on ways in which these alleged crimes could be investigated, prosecuted, and tried. The Article concludes by questioning the reasons behind the impunity of members of a PMF, even in cases in which their military counterparts were tried and condemned.


Governments against whom rebels fight regard them as persons engaging in seditious action hence as criminals deserving to be punished. As a result rebels, knowing that in any case upon capture they will be punished not only for any war crime they may have committed but also for the simple fact of taking up arms against the government, have no incentive to comply with humanitarian law rules, in spite of recent trends to the contrary and the imperative stemmings for the whole body of international humanitarian law (IHL). No international customary rule exists suppressing or curtailing the freedom of every state to treat as it pleases its own nationals and other individuals participating in a civil strife. However, a customary rule is gradually crystallizing. Two conditions should be met for rebels to acquire a special status under customary IHL: (i) such status should only be granted when the insurgent group is (a)
organized; (b) shows some degree of stability; (c) conducts sustained and concerted military operations; with the consequence that (d) the hostilities are not sporadic or short-lived. It is also necessary (ii) for the rebels to distinguish themselves from the civilian population when engaging in an attack or in a military operation reparatory of an attack. In addition, rebels as a group must comply with the rules of IHL.

345/606

Should the obligations of states and armed groups under international humanitarian law really be equal? / Marco Sassòli and Yuval Shany. - In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 425-436

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

INTERNATIONAL HUMANITARIAN LAW-TYPE OF CONFLICT

Les cyber-opérations et le jus in bello = Cyber operations and jus in bello / Nils Melzer. - In: Forum du désarmement = Disarmament forum, 4, 2011, p. 3-18, 3-17


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

345.25/262 (Br.)


There is a growing view that human rights law offers greater protection to the individual and should therefore replace international humanitarian law (IHL) in the regulation of internal armed conflict, at least when the violence is below the threshold of Protocol II. However, the consequences of a shift from regulation through IHL to regulation through human rights law have not been fully explored. For example, one would need to turn attention to wether, and in what circumstances, armed groups have human rights obligations. There would also need to be a forum before which these obligations could be enforced. Another problem is the methodological approach by which the international law of internal armed conflict has developed. The development has taken place primarily by analogy to the law of international armed conflict. Yet there are important differences between internal armed conflicts and their international counterparts, principal among which are the actors that take part in each of them. A study needs to be undertaken to determine wether all rules now applicable in internal armed conflicts are within the capacity of armed groups. To improve upon the current condition greater
This Note addresses an emerging form of cyberspace operations, and adapts existing threshold approaches to this new type of warfare first executed during the Russian-Georgian War of 2008: the use of non-kinetic cyberattacks to facilitate kinetic effects and the use of non-kinetic effects as a substitute for conventional operations. This Note is divided into four parts. The first part provides a basic introduction to the terminology used in this note and a brief discussion of the legal paradigms that may apply to cyberspace operations. Part II continues with a proposal to consider cyberspace operations as an armed attack when non-kinetic cyberattacks are used in connection with other conventional weapons to achieve kinetic effects or to supplant the need for kinetic effects. This proposal is significant because it will impact the legal response a state can take in an armed conflict. Part II also introduces two case studies in which cyberspace operations were used in connection with conventional military attacks. The first is the 2007 Israeli raid on the suspected Syrian nuclear reactor; the second is the Russian-Georgian War of 2008. Part III discusses the different tests that have been proposed to determine when a cyberspace operation meets the threshold to be declared an armed attack. After reviewing existing literature, a proposal is made to adopt a modified effects-based approach to better address the unique nature of cyberattacks and their interaction with conventional arms to achieve kinetic outcomes. Part IV provides concluding thoughts and discusses what future steps should be taken with regards to developing a legal framework that is better-suited to the distinct challenges of cyberattacks.

The qualification of a conflict as international or non-international is of key importance in determining the legal regime to be applied under the law of armed conflict. Despite recent developments suggesting an increasing convergence of the law applied in international armed conflicts and non-international armed conflicts, there remain a number of significant differences between the minimum protections of Common Article 3 and the comprehensive regulation of the Common Article 2 regime. The fact pattern of the 2011 civil war in Libya is complex, and there have been allegations of breaches of international humanitarian law by all parties. This article will track the transformations of conflict status in Libya, arguing that the initial internal uprising rose to the level of a non-international armed conflict, triggering the application of Common Article 3, and was then transformed by foreign intervention into an international armed conflict, governed by the stricter standards of Common Article 2. This international conflict was then ‘re-internalized’ by international recognition of the National Transitional Council as the legitimate government of Libya in mid-July. It is hoped that, by clarifying the legal regimes applicable to actors over the course of the conflict, this article will help make it possible to reach sound judgments as to the legality of the actions of those taking part in hostilities. These transformations also expose a certain arbitrariness in the Geneva system, as conflict status shifts in response to political events, rather than humanitarian concerns.
Library's new acquisitions: May to mid-June 2012

**PEACE**

172.4/247

172.4/183

**PROTECTION OF CULTURAL PROPERTY**


The role of the Swiss armed forces in the protection of cultural property / Stephan Zellmeyer. - Woodbridge (Royaume-Uni): Rochester (Etats-Unis): Boydell, 2010. - 159-166. - In: Archeology, cultural property and the military

**PUBLIC INTERNATIONAL LAW**


REFUGEES-DISPLACED PERSONS


The technology issue / T Alexander Aleinikoff... [et al.]. - In: Forced migration review, Issue 38, October 2011, p. 4-42: photogr.


TERRORISM


In Holder v. Humanitarian Law Project, decided in 2010, the Supreme Court addressed the constitutionality of punisbing speech and association on the ground that they might further violence. The particular speech in question in Humanitarian Law Project (HLP) advocated only nonviolent, lawful ends; the plaintiffs principally sought to advocate for human rights and peace to and with the Kurdistan Workers’ Party, a Kurdish organization in Turkey that the Secretary of State had designated as a “foreign terrorist organization.” They did not intend to further the organization’s illegal ends; indeed, they sought to dissuade it from violence, and to urge it to pursue lawful ends through peaceful means. Yet the Court held, by a vote of 6-3, that the First Amendment permitted criminal prosecution of such speech. The HLP decision has potentially grave repercussions. Most immediately, nongovernmental organizations working to resolve conflict or to provide humanitarian assistance may well be unable to operate where designated “terrorist organizations” are involved, because any advice or assistance they provide could be criminally prohibited. Still more troubling, however, are the decision’s potential consequences for First Amendment doctrine more generally. Part I summarizes the case and its treatment by the Supreme Court. Part II details the grave consequences for First Amendment doctrine that the Court’s analysis portends if it applies generally. Part III asks whether HLP can be limited in ways that would preserve First Amendment protection for other speech and association disputes involving national security in the future.

303.6/204 (Br.)

TORTURE


International Committee of the Red Cross (ICRC) policy on torture and cruel, inhuman or degrading treatment inflicted on persons deprived of their liberty: policy adopted by the Assembly Council of the ICRC on 9 June 2011 / [ICRC]. - In: International review of the Red Cross, Vol. 93, no. 882, June 2011, p. 547-562

Action against torture and cruel, inhuman or degrading treatment is a key focus in the ICRC's work on behalf of persons deprived of their liberty. On the basis of its profound conviction that such practices are absolutely unacceptable, the ICRC implements a global response the
primary objective of which is to ensure protection and assistance for victims and contribute to their rehabilitation, and help to establish and/or strengthen a normative, institutional and ethical environment conducive to the prevention of this phenomenon. Accordingly, the ICRC relies on its own experience, on its in-depth knowledge of this practice, on its privileged access to victims and on its confidential bilateral dialogue with the authorities and other actors. It also knows that it can rely on the normative, institutional and ethical developments that have taken place in recent years with regard to these issues. Aware of the immense challenge that action against torture and cruel, inhuman or degrading treatment represents and of its importance for present and future victims and for their families, communities and societies, the ICRC seeks to reaffirm clearly and publicly the scope and depth of its commitment to its work in this sphere.

WOMEN-GENDER

**The tools to combat the war on women's bodies: rape and sexual violence against women in armed conflict / Kas Wachala.** - In: The international journal of human rights, Vol. 16, no. 3, March 2012, p. 533-553. - Photocopies 362.8/172 (Br.)


**La violence sexuelle dans le conflit armé colombien : de la dénonciation au recours à la justice / Carolina Vergel Tovar.** - In: Problèmes d'Amérique latine, No 84, printemps 2012, p. 41-59

VARIA

