International Humanitarian Law
International Committee of the Red Cross Library’s classified acquisitions on international humanitarian law
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Introduction

The ICRC Library

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

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

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

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

Origin and purpose of the IHL bibliography

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

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

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

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

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

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

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

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

Contents
The bibliography contains English and French writings related to IHL subjects: articles, monographs, chapters and reports or working papers.

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

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

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

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

(General catch-all category, Customary Law)

Do we need new regulations in international humanitarian law? : one American’s perspective

Droit humanitaire

Droit international humanitaire : thèmes choisis

International humanitarian law a decade after September 11 : developments and perspectives
Full text : only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660845&fulltextType=RA&fileId=S1389135912000116

The legal framework of humanitarian access in armed conflict

Modern warfare : armed groups, private militaries, humanitarian organizations, and the law

Perspective and the importance of history
Full text : only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660847&fulltextType=RA&fileId=S1389135912000128

Sixtieth anniversary of the Geneva Conventions : lessons from the past

Splendid isolation : international humanitarian law, legal theory and the international legal order
Full text : only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660831&fulltextType=RA&fileId=S1389135912000049

Théories et réalités du droit international humanitaire : contribution à l’étude du droit des conflits armés en Afrique noire contemporaine
II. Types of conflicts

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

The 26/11 terrorist attacks and the application of the laws of armed conflict
Rishi Gulati. In: ISIL yearbook of international humanitarian and refugee law Vol. 10, 2010, p. 91-113

Afghanistan 2001-2010

The applicability of international humanitarian law to the conflict in Libya
Full text: only from ICRC headquarters
http://www.ingentaconnect.com/content/mnp/iclr/2012/00000014/00000004/art00006

Classification in future conflicts

Classification of armed conflicts: relevant legal concepts

Colombia

Conflict classification and the law applicable to detention and the use of force

Controlling the use of force in cyber space: the application of the law of armed conflict during a time of fundamental change in the nature of warfare

Cyber attacks and the laws of war
Cyber warfare and the laws of war

Cyber warfare as armed conflict
Noam Lubell. In: Collegium No. 41, Automne 2011, p. 41-46. - Cote 345.25/175

Cyber warfare : challenges for the applicability of the traditional laws of war regime

Cyberthreats and international law

The Democratic Republic of the Congo 1993-2010

Evaluating the use of force during the Arab Spring
Full text : only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660825&fulltextType=RA&fileId=S1389135912000013

Gaza

International law and the classification of conflicts
ed. by Elizabeth Wilmshurst ; Steven Haines... [et al.]. - Oxford : Oxford University Press, 2012. - 531 p. - Cote 345.26/223

Iraq (2003 onwards)

The law of non-international armed conflict

Lebanon 2006

Legal-policy considerations and conflict characterisation at the threshold between law enforcement and non-international armed conflict

The legal regulation of cyber attacks in times of armed conflict
Robin Geiss. In: Collegium No. 41, Automne 2011, p. 47-53. - Cote 345.25/175
Non-international armed conflict in the twenty-first century
http://www.usnwc.edu/getattachment/21b3c656-4160-4090-af57-42fed7f8c6ae/88.aspx

Northern Ireland 1968-1998

A qualified defense of American drone attacks in northwest Pakistan under international humanitarian law
http://tinyurl.com/ac9uwz

"Small wars" : the legal challenges
http://www.usnwc.edu/getattachment/71a10b51-3bc3-4f28-a61c-ddc70677fa4f/Small-Wars--The-Legal-Challenges.aspx

South Ossetia (2008)

Stuxnet as cyberwarfare : applying the law of war to the virtual battlefield

Stuxnet : legal considerations

"Terrorism" as a central theme in the evolution of maritime operations law since 11 September 2011
Full text : only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660851&fulltextType=RA&fileId=S1389135012000141

The war (?) against Al-Qaeda

III. Armed forces / Non-state armed groups
(Combatant status, compliance with IHL, etc.)

Le droit international public relatif aux groupes armés non étatiques

A functional approach to targeting and detention
Monica Hakimi. In: Michigan law review Vol. 110, no. 8, 2012, p. 1365-1420. - Cote 345.26/224 (Br.)
Hobbes face à Kant : la justice militaire américaine et la doctrine de la responsabilité du supérieur hiérarchique suite à Abu Ghraib

Modern warfare : armed groups, private militaries, humanitarian organizations, and the law

The role and responsibilities of legal advisors in the armed forces : evolution and present trends (celebration of the military law and the law of war review's 50th anniversary)
Thomas E. Randall... [et al.]. In: Revue de droit militaire et de droit de la guerre 50, 1-2, 2011, p. 17-126
Full text : only from ICRC headquarters : http://tinyurl.com/a3zdq5w

Role of international humanitarian institutions in ensuring that "armed non state actors" augment the fundamental notions of international humanitarian law ! : a critique !

Superior responsibility and the principle of legality at the ECCC

Taking distinction to the next level : accountability for fighters's failure to distinguish themselves from civilians
Laurie R. Blank. In: Valparaiso University law review Vol. 46, no. 3, spring 2012, p. 765-802. - Cote 345.29/174 (Br.)
http://scholar.valpo.edu/cgi/viewcontent.cgi?article=2242&context=vulr

IV. Multinational forces

The Copenhagen process on the handling of detainees in international military operations : the Copenhagen process : principles and guidelines.
- [S.l.] : [s.n.], 2012. - 25 p. - Cote 400.1/27 (Br.)

V. Private actors

Droit international, sociétés militaires privées et conflit armé : entre incertitudes et responsabilités

Modern warfare : armed groups, private militaries, humanitarian organizations, and the law
VI. Protection of persons

**Armed conflict and displacement: the protection of refugees and displaced persons under international humanitarian law**


**Criminalizing the victim: why the legal community must fight to ensure that child soldier victims are not prosecuted as war criminals**


Full text: only from ICRC headquarters: [http://tinyurl.com/abmx3ej](http://tinyurl.com/abmx3ej)

**Curbing the menace of child soldiers: an unsolved riddle of international humanitarian law**


**The International Criminal Court and child soldiers: an appraisal of the Lubanga judgement**


Full text: only from ICRC headquarters: [http://jicj.oxfordjournals.org/content/10/4/945.full.pdf+html](http://jicj.oxfordjournals.org/content/10/4/945.full.pdf+html)

**International law and sexual violence in armed conflicts**


**Louder than words: an agenda for action to end state use of child soldiers: report published to mark the tenth anniversary year of entry into force of the Optional Protocol on the involvement of children in armed conflict**


**Prohibition on the use of child soldiers: how real?**

Ranjana Ferrao. In: ISIL yearbook of international humanitarian and refugee law Vol. 9, 2009, p. 279-299
The right of child victims of armed conflict to reintegration and recovery

http://www.saflii.org/za/journals/PER/2012/3.pdf

The right to reparation in international law for victims of armed conflict


Schoolchildren as propaganda tools in the war on terror: violating the rights of Afghani children under international law


The use of force to protect civilians and humanitarian action: the case of Libya and beyond


VII. Protection of objects

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

Le droit international, les conflits armés et les catastrophes écologiques


Energy as a human right in armed conflict: a question of universal need, survival, and human dignity

http://www.brooklaw.edu/~media/PDF/LawJournals/BJI_PDF/bji_vol37ii.ashx

An old debate revisited: applicability of environmental treaties in times of international armed conflict pursuant to the international law commission's "draft articles on the effects of armed conflict on treaties"


VIII. Detention, internment, treatment and judicial guarantees

The Al-Jedda and Al-Skeini cases before the European Court of Human Rights

F. Naert... [et al.]. In: Revue de droit militaire et de droit de la guerre 50, 3-4, 2011, p. 315-446

Conflict classification and the law applicable to detention and the use of force


The Copenhagen process on the handling of detainees in international military operations: the Copenhagen process: principles and guidelines.

- [S.l.]: [s.n.], 2012. - 25 p. - Cote 400.1/27 (Br.)
Droit international et prisonniers de guerre occidentaux lors de la Grande Guerre

A functional approach to targeting and detention
Monica Hakimi. In: Michigan law review Vol. 110, no. 8, 2012, p. 1365-1420. - Cote 345.26/224 (Br.)

Preventive detention in the law of armed conflict : throwing away the key ?
Diane Webber. In: Journal of national security law and policy Vol. 6, no. 1, 2012, p. 167-205. - Cote 400.1/28 (Br.)

Prisoners of the international community : the legal position of persons detained at international criminal tribunals

Some holds barred : extending executive detention habeas law beyond Guantanamo bay
Ashley E. Siegel. In: Boston university law review Vol. 92, no. 4, July 2012, p. 1405-1430. - Cote 345.2/292 (Br.)

"Tout est possible à celui qui croit" ? (Marc, 9:23) : la réglementation de la vie religieuse dans les camps de prisonniers de guerre de la Seconde guerre mondiale

IX. Law of occupation

The Al-Jedda and Al-Skeini cases before the European Court of Human Rights
F. Naert... [et al.]. In: Revue de droit militaire et de droit de la guerre 50, 3-4, 2011, p. 315-446

Droit de l'occupation et reconstruction de l'Etat irakien : le droit de l'occupation militaire à l'épreuve de la reconstruction de l'Etat par les puissances occupantes en Irak
Laura Barjot. - Saarbrücken : Éditions universitaires européennes, 2012. - 149 p. - Cote 345.28/92

The Israeli military commander's powers under the law of occupation in relation to quarrying activity in area C
http://tinyurl.com/aql729x

It's not wrong, it's illegal : situating the Gaza blockade between international law and the UN response
Limits of the rights of expropriation (requisition) and of movement restrictions in occupied territory: expert opinion

submitted by Michael Bothe. - Frankfurt/Main : [s.n.], 2012. - 8 p. - Cote 345.28/95 (Br.)

X. Conduct of hostilities

( Distinction, proportionality, precautions, prohibited methods )

Autonomous weapons systems and the application of IHL
Daniel Reisner. In: Collegium No. 41, Automne 2011, p. 71-77. - Cote 345.25/175

Current challenges in the legal regulation of the methods of warfare
Théo Boutruche. In: Collegium No. 41, Automne 2011, p. 31-40. - Cote 345.25/175

Current challenges to the legal regulation means of warfare

Cyber warfare and the laws of war

Cyber warfare as armed conflict
Noam Lubell. In: Collegium No. 41, Automne 2011, p. 41-46. - Cote 345.25/175

The Gaza mission: implications for international humanitarian law and UN fact-finding

ICRC's interpretive guidance on the notion of direct participation in hostilities under international humanitarian law: an overview

The interpretive guidance on the notion of direct participation in hostilities: a critical analysis

Into the caves of steel: precaution, cognition and robotic weapon systems under the international law of armed conflict
http://www.amsterdamlawforum.org/
The killing of Osama Bin Laden and Anwar Al-Aulaqi: uncharted legal territory
Full text: only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660841&fulltextType=RA&fileId=S1389151012000098

The law of cyber-attack
Oona A. Hathaway... [et al.]. In: California law review Vol. 100, no. 4, 2012, p. 817-885. - Cote 345.25/174 (Br.)

The law of non-international armed conflict

The law of targeting

Law on the battlefield

Lawful murder: unnecessary killing in the law of war
Full text: only from ICRC headquarters:
http://heinonline.org/HOL/Page?handle=hein.journals/caljp25&collection=journals&index=journals/caljp&id=419

Legal, political and ethical dimensions of drone warfare under international law: a preliminary survey
Full text: only from ICRC headquarters:
http://www.ingentaconnect.com/content/mnp/icla/2012/00000012/00000004/art00004

The legal regulation of cyber attacks in times of armed conflict
Robin Geiss. In: Collegium No. 41, Automne 2011, p. 47-53. - Cote 345.25/175

Legal regulation of the military use of outer space: what role for international humanitarian law?
Steven Freeland. In: Collegium No. 41, Automne 2011, p. 87-97. - Cote 345.25/175

Margin of error: potential pitfalls of the ruling in The Prosecutor v. Ante Gotovina

Not all civilians are created equal: the principle of distinction, the question of direct participation in hostilities and evolving restraints on the use of force in warfare
Operation Unified Protector and the protection of civilians in Libya
Full text: only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660837&fulltextType=RA&fileId=S1389135912000073

Principle of proportionality: the criticized compromising formula of international humanitarian law

Propriety of self-defense targetings of members of Al Qaeda and applicable principles of distinction and proportionality

A qualified defense of American drone attacks in northwest Pakistan under international humanitarian law
http://tinyurl.com/ac9uwsz

Remote-controlled weapons systems and the application of IHL
Jack Beard. In: Collegium No. 41, Automne 2011, p. 57-61. - Cote 345.25/175

Robots in the battlefield: armed autonomous systems and ethical behaviour
Ronald Arkin. In: Collegium No. 41, Automne 2011, p. 62-70. - Cote 345.25/175

The rules governing the conduct of hostilities in Additional Protocol I to the Geneva Conventions of 1949: a review of relevant United States references
Full text: only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660833&fulltextType=RA&fileId=S1389135912000050

Taking distinction to the next level: accountability for fighters' failure to distinguish themselves from civilians
Laurie R. Blank. In: Valparaiso University law review Vol. 46, no. 3, spring 2012, p. 765-802. - Cote 345.29/174 (Br.)
http://scholar.valpo.edu/cgi/viewcontent.cgi?article=2242&context=vulr

Targeted strikes: the consequences of blurring the armed conflict and self-defense justifications
http://www.wmitchell.edu/lawreview/Volume38/documents/11_BlankFINAL.pdf
Technological challenges for the humanitarian legal framework: proceedings of the 11th Bruges Colloquium, 21-22 October 2010 = Les défis technologiques posés au cadre juridique humanitaire: actes du 11ème colloque de Bruges, 21-22 octobre 2010
CICR, Collège d’Europe. In: Collegium No. 41, Automne 2011, 130 p. - Cote 345.25/175

The technology of offensive cyber operations
Herbert Lin. In: Collegium No. 41, Automne 2011, p. 33-40. - Cote 345.25/175

Unmanned combat aircraft systems and international humanitarian law: simplifying the oft benighted debate
http://tinyurl.com/bydmzzo

XI. Weapons

Current challenges to the legal regulation means of warfare

The use of depleted uranium ammunition under public international law

XII. Implementation

Beyond the grave breaches regime: the duty to investigate alleged violations of international law governing armed conflicts
Full text: only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660827&fulltextType=RA&fileId=S1389135012000025

Domestic investigation of suspected law of armed conflict violations: United States procedures, policies and practices
Full text: only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660829&fulltextType=RA&fileId=S1389135012000037

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

The Gaza mission: implications for international humanitarian law and UN fact-finding
Implementation of international humanitarian law in the South Asian countries


International civil tribunals and armed conflict


International humanitarian and human rights law in Russian courts

Full text : only from ICRC headquarters: http://www.ingentaconnect.com/content/mnp/jhls/2012/00000002/00000002/art00003

Investigating violations of international law in armed conflict

Michael N. Schmitt. In: Harvard national security journal Vol. 2, no. 1, 2011, p. 31-84. - Cote 345.22/204 (Br.)

The law of non-international armed conflict


Mini exploring humanitarian law : the essence of humanitarian law


Mini explorons le droit humanitaire : l'essentiel du droit humanitaire

CICR. - Genève : CICR, juin 2012. - 42 p. - Cote 345.2/900 (FRE)

Modern warfare : armed groups, private militaries, humanitarian organizations, and the law


Operation Unified Protector and the protection of civilians in Libya

Full text : only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660837&fulltextType=RA&fileId=S1389135912000974

Les organes de contrôle du droit international des droits de l'homme et le droit international humanitaire

par Sébastien Marmin. In: Revue trimestrielle des droits de l'homme Vol. 23, no 92, octobre 2012, p. 815-836. - Cote 345.22/208 (Br.)

The right to reparation in international law for victims of armed conflict


Role of international humanitarian institutions in ensuring that "armed non state actors" augment the fundamental notions of international humanitarian law ! : a critique !

The rules governing the conduct of hostilities in Additional Protocol I to the Geneva Conventions of 1949: a review of relevant United States references


Full text: only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&amp;aid=8660833&amp;fulltextType=RA&amp;fileId=S1389135912000050

Taking distinction to the next level: accountability for fighters’s failure to distinguish themselves from civilians

Laurie R. Blank. In: Valparaiso University law review Vol. 46, no. 3, spring 2012, p. 765-802. - Cote 345.29/174 (Br.)
http://scholar.valpo.edu/cgi/viewcontent.cgi?article=2242&amp;context=vulr

Théories et réalités du droit international humanitaire: contribution à l’étude du droit des conflits armés en Afrique noire contemporaine


The vietnamization of the long war on terror: an ongoing lesson in international humanitarian law non-compliance

Lesley Wexler. In: Boston university international law journal Vol. 30, no. 2, Summer 2012, p. 575-593. - Cote 345.22/206 (Br.)
http://tinyurl.com/awdzj78

XIII. International Human Rights Law
(Focus on situations of armed conflict and other situations of violence)

The Al-Jedda and Al-Skeini cases before the European Court of Human Rights

F. Naert... [et al.]. In: Revue de droit militaire et de droit de la guerre 50, 3-4, 2011, p. 315-446

Conflict classification and the law applicable to detention and the use of force


Energy as a human right in armed conflict: a question of universal need, survival, and human dignity

http://www.brooklaw.edu/~media/PDF/LawJournals/BJI_PDF/bji_vol37ii.ashx

International humanitarian and human rights law in Russian courts

Full text: only from ICRC headquarters:
http://www.ingentaconnect.com/content/mnp/jhls/2012/00000002/00000002/art00003

Investigating violations of international law in armed conflict

Michael N. Schmitt. In: Harvard national security journal Vol. 2, no. 1, 2011, p. 31-84. - Cote 345.22/204 (Br.)
Legacy of 9/11: continuing the humanization of humanitarian law
Full text: only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660855&fulltextType=RA&fileId=S1389135912000065

Lex lacunae: the merging laws of war and human rights in counterinsurgency
Iain D. Pedden. In: Valparaiso University law review Vol. 46, no. 3, spring 2012, p. 803-842. - Cote 345.1/336 (Br.)
http://scholar.valpo.edu/cgi/viewcontent.cgi?article=2243&context=vulr

Not all civilians are created equal: the principle of distinction, the question of direct participation in hostilities and evolving restraints on the use of force in warfare

Les organes de contrôle du droit international des droits de l'homme et le droit international humanitaire
par Sébastien Marmin. In: Revue trimestrielle des droits de l'homme Vol. 23, no 92, octobre 2012, p. 815-836. - Cote 345.22/208 (Br.)

The right to reparation in international law for victims of armed conflict

XIV. International Criminal Law

Beyond the grave breaches regime: the duty to investigate alleged violations of international law governing armed conflicts
Full text: only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660827&fulltextType=RA&fileId=S1389135912000025

Criminalizing the victim: why the legal community must fight to ensure that child soldier victims are not prosecuted as war criminals
Full text: only from ICRC headquarters: http://tinyurl.com/abms3ej

The day after: prosecuting international crimes committed in Libya

Droit international pénal

Forgiven and forgotten: the Republic of China in the United Nations War Crimes Commission
Full text: only from ICRC headquarters: http://tinyurl.com/aflk9am
A handbook on assisting international criminal investigations

Hobbes face à Kant : la justice militaire américaine et la doctrine de la responsabilité du supérieur hiérarchique suite à Abu Ghraib

The International Criminal Court and child soldiers : an appraisal of the Lubanga judgement
Full text : only from ICRC headquarters: http://jicj.oxfordjournals.org/content/10/4/945.full.pdf+html

International law and sexual violence in armed conflicts

Margin of error : potential pitfalls of the ruling in The Prosecutor v. Ante Gotovina

Post-war developments of the Martens clause : the codification of "crimes against humanity" applicable to acts of genocide
Full text : only from ICRC headquarters:
http://www.ingentaconnect.com/content/mnp/jhls/2012/00000002/00000002/art00004

Prisoners of the international community : the legal position of persons detained at international criminal tribunals

The right to reparation in international law for victims of armed conflict

Still searching for solution : from protection of individual human rights to individual criminal responsibility for serious violations of humanitarian law

Superior responsibility and the principle of legality at the ECCC

Taking armed conflict out of the classroom : international and domestic legal protections for students when combatants use schools
Full text : only from ICRC headquarters:
http://www.ingentaconnect.com/content/mnp/jhls/2012/00000002/00000002/art00005
Victims and perpetrators of international crimes: the problem of the "legal person"

Full text: only from ICRC headquarters: http://www.ingentaconnect.com/content/mnp/jhls/2012/00000002/00000002/art00006

XV. Contemporary challenges
(Terrorism, DPH, cyber warfare, asymmetric war, etc.)

Autonomous weapons systems and the application of IHL
Daniel Reisner. In: Collegium No. 41, Autumnne 2011, p. 71-77. - Cote 345.25/175

Can the law of armed conflict survive 9/11?
Full text: only from ICRC headquarters:
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660849&fulltextType=RA&fileId=S138913591200013X

Classification in future conflicts

Controlling the use of force in cyber space: the application of the law of armed conflict during a time of fundamental change in the nature of warfare

Current challenges in the legal regulation of the methods of warfare
Théo Boutruche. In: Collegium No. 41, Autumnne 2011, p. 21-31. - Cote 345.25/175

Current challenges to the legal regulation means of warfare

Cyber attacks and the laws of war

Cyber warfare and the laws of war

Cyber warfare as armed conflict
Noam Lubell. In: Collegium No. 41, Autumnne 2011, p. 41-46. - Cote 345.25/175

Cyber warfare: challenges for the applicability of the traditional laws of war regime
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Preventive detention in the law of armed conflict: throwing away the key?
Diane Webber. In: Journal of national security law and policy Vol. 6, no. 1, 2012, p. 167-205. - Cote 400.1/28 (Br.)

Propriety of self-defense targetings of members of Al Qaeda and applicable principles of distinction and proportionality

A qualified defense of American drone attacks in northwest Pakistan under international humanitarian law
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Some holds barred: extending executive detention habeas law beyond Guantanamo bay
Ashley E. Siegel. In: Boston university law review Vol. 92, no. 4, July 2012, p. 1405-1430. - Cote 345.2/292 (Br.)
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The 26/11 terrorist attacks and the application of the laws of armed conflict
Rishi Gulati. In: ISIL yearbook of international humanitarian and refugee law Vol. 10, 2010, p. 91-113

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

Afghanistan 2001-2010

This chapter critically examines the classification of the conflict in Afghanistan, subdividing the 2001-2010 period in two: from October 2001 to the installation of Hamid Karzai and from then to the present. The author reaches the conclusion that the legal problems encountered in the course of the hostilities against and within Afghanistan did not result from difficulties in classifying the conflicts but that the phase of non-international armed conflict does, however, exemplify a situation where formal classification does not always help with the problems on the ground, particularly in relation to operations the conduct of which varies not according to the legal classification of the conflict, but according to the nature of the task and the constraints of policy. It was the gap in international humanitarian law relating to non-international armed conflict, controversies with regard to the scope of applicability of international human rights law, and multiple participants with different views of the law and policy which caused most of the problems in practice.

The Al-Jedda and Al-Skeini cases before the European Court of Human Rights
F. Naert... [et al.]. In: Revue de droit militaire et de droit de la guerre 50, 3-4, 2011, p. 315-446

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

The applicability of international humanitarian law to the conflict in Libya

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


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

Autonomous weapons systems and the application of IHL

Daniel Reisner. In: Collegium No. 41, Automne 2011, p. 71-77. - Cote 345.25/175

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

Beyond the grave breaches regime: the duty to investigate alleged violations of international law governing armed conflicts


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

Can the law of armed conflict survive 9/11?


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

Full text: only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660849&fulltextType=RA&fileId=S138913501200013X

Classification in future conflicts

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

Classification of armed conflicts: relevant legal concepts

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

Colombia

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

Conflict classification and the law applicable to detention and the use of force

This chapter examines two of the main ‘baskets’ of rules making up international humanitarian law: the norms governing the deprivation of liberty of persons and those regulating the use of force, with a view to identifying—in summary form—what the existing law is and where it may be lacking in the face of ‘new’ conflict classifications. In each section of this chapter, the interplay between international humanitarian law and human rights law is also discussed. Part 2 provides an overview of the principal sources of law applicable to armed conflict and to other situations of violence that do not meet that threshold. Part 3 focuses on the rules governing detention in armed conflict, with a particular emphasis on procedural safeguards in internment, as well as the legal and practical issues related to the transfer of detainees. Part 4 outlines the rules governing the use of force in armed conflict and outside of it, highlighting especially the issue of the interface between international humanitarian law and human rights law. Part 5 offers some concluding remarks.
Controlling the use of force in cyber space: the application of the law of armed conflict during a time of fundamental change in the nature of warfare


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


The Copenhagen process on the handling of detainees in international military operations: the Copenhagen process: principles and guidelines.

- [S.l.]: [s.n.], 2012. - 25 p. - Cote 400.1/27 (Br.)

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

Criminalizing the victim: why the legal community must fight to ensure that child soldier victims are not prosecuted as war criminals


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

Full text: only from ICRC headquarters: http://tinyurl.com/abms3ej

Curbing the menace of child soldiers: an unsolved riddle of international humanitarian law


The issues before international humanitarian law regarding children involved in armed conflict are the core of this paper. The attempt has been made to know the reasons of participation by children as a combatant and how to oprenvent the same, the position of international humanitarian law with respect to child as combatant and to study certain unsolved problems of international humanitarian law regarding child soldiers.
Current challenges in the legal regulation of the methods of warfare
Théo Boutruche. In: Collegium No. 41, Automne 2011, p. 21-31. - Cote 345.25/175
This presentation focuses on technological developments that raise challenges to IHL. Challenges also relate to whether technology is not creating greater obligations for parties to a conflict which have advanced technology in their arsenal. The increasing resort to Unmanned Combat Aerial Vehicles raise serious issues such as the question of assigning responsibility in case of violations because of pilot’s absence from the cockpit, or the ability of human operators to base the identification of targets on information and intelligence gathered though UCAV’s systems, miles away from the field of operations, and consequently to assess IHL legal parameters based on this information. Deriving from the principle of precaution, there is also a debate on whether States have an obligation to either acquire precision-guided munitions or to use such weapons when they possess them in their arsenal. The increasing resort to non-lethal technology has potential implication on the notion of "hors de combat" as some non-lethal weapons are designed to temporary incapacitate or immobilize.


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


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


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

Cyber warfare as armed conflict
Noam Lubell. In: Collegium No. 41, Automne 2011, p. 41-46. - Cote 345.25/175
In the context of international law, one of the pressing questions is whether cyber warfare fulfils the definition of armed conflict. Unquestionably, there need to be parties to the conflict. But if we have no knowledge of the source of a cyber attack, then we may be obstructed from determining the conflict, from applying the rules, and most importantly, from having any form of accountability. We then still need to identify the existence of force between States, which is usually understood to mean armed force. Under ius ad bellum and depending on their precise nature and consequences, cyber attacks may be a violation
of the prohibition on use of force or of non-intervention, but this may be too low a threshold to necessarily determine existence of armed conflict. Under ius in bello, the law makes reference to ‘hostilities’ and to ‘attacks’. Hostilities can encompass more than single acts of violence, but the latter are usually expected to be part of the situation. As for ‘attacks’, these are traditionally understood to include an element of armed violence. However, it seems fair to assume that the primary focus was on the fact that the attacks were acts designed to cause physical harm, whether human casualties or physical damage and destruction. As such, it could be argued that cyber warfare which has these same effects, could be considered as equivalent to the type of violence envisaged to exist under the ius in bello.


Cyber warfare: challenges for the applicability of the traditional laws of war regime

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

Cyberthreats and international law

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

The day after: prosecuting international crimes committed in Libya

In 2011, Libya was a theatre of atrocious crimes. Ensuring that those involved do not go unpunished is now a major challenge to the new Libyan Government and the international community. The first part of this article surveys the crimes against humanity and war crimes that were reportedly committed by both the Gaddafi forces and the insurgents. It also considers the NATO air strikes which resulted in civilian casualties or damage to civilian objects and might amount to war crimes. The second part of the article discusses the available mechanisms for prosecuting the aforementioned crimes. Firstly, the Security Council referral of the Libyan situation to the International Criminal Court and its limitations are examined, and subsequent developments are explored, including the warrants against Muammar Gaddafi, his son Saif Al-Islam and Al-Senussi, their capture and Libya’s admissibility challenge of 1 May 2012. Secondly, the article considers the prospects for national proceedings against the alleged criminals. The author argues that proceedings before Libyan courts are the only practically available option to ensure the punishment of the bulk of perpetrators. She also emphasizes the importance of investigations and prosecutions being given equal weighting, whether they are of Gaddafi loyalists or revolutionaries.
The Democratic Republic of the Congo 1993-2010

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

Do we need new regulations in international humanitarian law? : one American's perspective

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

Domestic investigation of suspected law of armed conflict violations : United States procedures, policies and practices

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

Droit de l'occupation et reconstruction de l'Etat irakien : le droit de l'occupation militaire à l'épreuve de la reconstruction de l'Etat par les puissances occupantes en Irak
Laura Barjot. - Saarbrücken : Éditions universitaires européennes, 2012. - 149 p. - Cote 345.28/92

Droit humanitaire

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

Droit international et prisonniers de guerre occidentaux lors de la Grande Guerre

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

Droit international humanitaire : thèmes choisis

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

Le droit international, les conflits armés et les catastrophes écologiques

Un conflit armé a ainsi toujours un impact sur l’environnement, impact plus ou moins important et plus ou moins délibéré, mais toujours réel, même s’il semble parfois difficilement quantifiable. Si le phénomène a toujours coexisted avec les conflits eux-mêmes, il s’est avéré pour l’opinion publique depuis la guerre du Viet Nam, où le milieu a été alors érigé en arme de guerre (7ème partie). L’interdiction de cette pratique n’a pas réussi à régler le problème de l’évaluation des impacts des conflits et de la prévention des catastrophes (2ème partie), potentiellement porteuses de nouveaux conflits.

Droit international pénal

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

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

Droit international, sociétés militaires privées et conflit armé : entre incertitudes et responsabilités

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

Energy as a human right in armed conflict : a question of universal need, survival, and human dignity

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

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

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

Evaluating the use of force during the Arab Spring

The legal questions raised by the Arab Spring are almost as numerous and as complex as the scenarios that occurred. In Libya, for instance, the late Colonel Qaddafi, in response to civil protests in the east of
the country, launched armed attacks against protesters, and then later plunged the country into an armed conflict of a non-international character with groups that became organised and armed, thereby triggering the application of international humanitarian law (IHL). This had the paradoxical consequence under IHL of allowing the Libyan government to use force against persons participating directly in hostilities, who could also be tried for having taken up arms against the regime. The evaluation of the use of force in such contexts needs to start with an analysis of the right to protest under international law and to its regulation. May a government use force to limit or control mass protest, and if so, what is its scope? In particular, what does public international law have to say, if anything, about armed civil resistance against oppressive political regimes? Can a State commit the equivalent of aggression against its own people and, were this the case, is there a collective right to self-defence for a population in danger? Would this change the applicable law?

Forgiven and forgotten: the Republic of China in the United Nations War Crimes Commission


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

Functional approach to targeting and detention

Monica Hakimi. In: Michigan law review Vol. 110, no. 8, 2012, p. 1365-1420. - Cote 345.26/224 (Br.)

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

Gaza


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

**The Gaza mission: implications for international humanitarian law and UN fact-finding**


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

**A handbook on assisting international criminal investigations**


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


**Hobbes face à Kant: la justice militaire américaine et la doctrine de la responsabilité du supérieur hiérarchique suite à Abu Ghraib**


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


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

Implementation of international humanitarian law in the South Asian countries


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

International civil tribunals and armed conflict


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

The International Criminal Court and child soldiers: an appraisal of the Lubanga judgement


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

Full text: only from ICRC headquarters: http://jicj.oxfordjournals.org/content/10/4/945.full.pdf+html
International humanitarian and human rights law in Russian courts

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

Full text: only from ICRC headquarters
http://www.ingentaconnect.com/content/mnp/jhls/2012/00000002/00000002/art00003

International humanitarian law a decade after September 11: developments and perspectives

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

Full text: only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660845&fulltextType=RA&fileId=S1389130112000116

International law and sexual violence in armed conflicts

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

International law and the classification of conflicts
ed. by Elizabeth Wilmshurst ; Steven Haines... [et al.]. - Oxford : Oxford University Press, 2012. - 531 p. - Cote 345.26/223

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

The interpretive guidance on the notion of direct participation in hostilities: a critical analysis

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


Into the caves of steel: precaution, cognition and robotic weapon systems under the international law of armed conflict

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

http://www.amsterdamlawforum.org/

Investigating violations of international law in armed conflict
Michael N. Schmitt. In: Harvard national security journal Vol. 2, no. 1, 2011, p. 31-84. - Cote 345.22/204 (Br.)

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

Iraq (2003 onwards)


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

The Israeli military commander's powers under the law of occupation in relation to quarrying activity in area C

by Iain Scobbie and Alon Margalit. [London]: SOAS University of London, July 2012. 11 p. Cote 345.28/94 (Br.)

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

http://tinyurl.com/aql729x

It's not wrong, it's illegal: situating the Gaza blockade between international law and the UN response


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

The killing of Osama Bin Laden and Anwar Al-Aulaqi: uncharted legal territory


The killing of Osama bin Laden in Pakistan in May 2011 and Anwar al-Aulaqi in Yemen in September 2011 both raise the question of when the killing of an identified individual posing a threat to a nation-state is lawful. Although it has not yet been forced to publicly defend either killing in any great detail, the
Obama Administration has insisted on the legality of both operations by deploying an amalgam of legal and rhetorical arguments that explicitly or implicitly invoke multiple bodies of law. As an administration spokesperson stated in connection with the Bin Laden operation.

The law of cyber-attack

Oona A. Hathaway... [et al.]. In: California law review Vol. 100, no. 4, 2012, p. 817-885. - Cote 345.25/174 (Br.)

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

The law of non-international armed conflict


This book brings together and critically analyzes the disparate conventional, customary, and soft law relating to non-international armed conflict. All the relevant bodies of international law are considered, including international humanitarian law, international criminal law, and international human rights law. The book traces the changes to the legal framework applicable to non-international armed conflict from ad hoc regulation in the nineteenth and early twentieth century, to systematic regulation through the 1949 Geneva Conventions and 1977 Additional Protocols, to the transformation of the law in the mid-1990s. Armed conflicts ranging from the US civil war, the Algerian War of Independence, and the attempted secession of Biafra, through to the current conflicts in the Colombia, Philippines, and Sudan are all considered. The identification and analysis of the law is complemented by a consideration of the practice, allowing both violations of, and respect for, the law, to be ascertained. Given that non-international armed conflicts are fought between states and non-state armed groups, or between armed groups, particular attention is paid to the oft-neglected views of armed groups. This is done through an analysis of hundreds of statements, unilateral declarations, internal regulations, and bilateral agreements issued by armed groups. Equivalent material emanating from states parties to conflicts is also considered. The book is thus an essential reference point for the law and practice of non-international armed conflicts.

The law of targeting


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

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

Lawful murder : unnecessary killing in the law of war
Samuel G. Walker. - Canadian journal of law and jurisprudence Vol. 25, no. 2, 2012, p. 417-446. - Cote 345.25/163 (Br.)

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

Full text: only from ICRC headquarters
http://heinonline.org/HOL/Page?handle=hein.journals/caljp25&collection=journals&index=journals/caljp&id=419

Lebanon 2006

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

Legacy of 9/11 : continuing the humanization of humanitarian law

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

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

Legal-policy considerations and conflict characterisation at the threshold between law enforcement and non-international armed conflict

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

Legal, political and ethical dimensions of drone warfare under international law: a preliminary survey

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

The legal regulation of cyber attacks in times of armed conflict
Robin Geiss. In: Collegium No. 41, Automne 2011, p. 47-53. - Cote 345.25/175

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


Legal regulation of the military use of outer space : what role for international humanitarian law?
Steven Freeland. In: Collegium No. 41, Automne 2011, p. 87-97. - Cote 345.25/175

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


Lex lacunae : the merging laws of war and human rights in counterinsurgency
Iain D. Pedden. In: Valparaiso University law review Vol. 46, no. 3, spring 2012, p. 803-842. - Cote 345.1/336 (Br.)

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

http://scholar.valpo.edu/cgi/viewcontent.cgi?article=2243&context=vulr

Limits of the rights of expropriation (requisition) and of movement restrictions in occupied territory : expert opinion
submitted by Michael Bothe. - Frankfurt/Main : [s.n.], 2012. - 8 p. - Cote 345.28/95 (Br.)

Can the expropriation and/or movement restrictions relating to an area of land in occupied territory for the purpose of operating a military training zone be justified under international law? Does the protection provided by the rules referred to in the first question depend on the persons affected being permanent residents in the area, in particular in cases of forcible evictions or destruction of their property located in the area? In order to give an answer to these questions, a short overview of the rights and duties of an occupying power will first be given. These rules will then be applied to the situation of the Fire Zone 918, particularly in the light of the State’s reply dated 19 July 2012 to petitions submitted to the Israeli Supreme Court in IHCJ 517/00 and IHCJ 1199/00.1


Louder than words : an agenda for action to end state use of child soldiers : report published to mark the tenth anniversary year of entry into force of the Optional Protocol on the involvement of children in armed conflict

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


**Margin of error : potential pitfalls of the ruling in The Prosecutor v. Ante Gotovina**


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

**Mini exploring humanitarian law : the essence of humanitarian law**


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


**Mini explorons le droit humanitaire : l'essentiel du droit humanitaire**

CICR. - Genève : CICR, juin 2012. - 42 p. - Cote 345.2/900 (FRE)

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


**Modern warfare : armed groups, private militaries, humanitarian organizations, and the law**


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

The Montreux document on private military and security companies: proceedings of the regional workshop for Latin America: Santiago, Chile, 12-13 May 2011 = El documento de Montreux sobre las empresas militares y de seguridad privadas: actas del seminario regional para América Latina: Santiago, Chile, 12 y 13 de Mayo de 2011

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

The Montreux document on private military and security companies: proceedings of the regional workshop for North East and Central Asia: Ulaanbaatar, Mongolia, 12-13 October, 2011

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

The mottled legacy of 9/11: a few reflections on the evolution of the international law of armed conflict

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

Full text: only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660857&fulltextType=RA&fileId=S1389135912000177

Northern Ireland 1968-1998

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


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

An old debate revisited: applicability of environmental treaties in times of international armed conflict pursuant to the international law commission's "draft articles on the effects of armed conflict on treaties"


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

Operation Unified Protector and the protection of civilians in Libya


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

Full text: only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660837&fulltextType=RA&fileId=S1389135912000974
Les organes de contrôle du droit international des droits de l'homme et le droit international humanitaire

par Sébastien Marmin. In: Revue trimestrielle des droits de l'homme Vol. 23, no 92, octobre 2012, p. 815-836. - Cote 345.22/208 (Br.)

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

Perspective and the importance of history


In the wake of the al Qaeda 9/11 attacks and ensuing Coalition military operations in Afghanistan, Iraq, and Yemen, government officials, military members, academicians, and international lawyers referred to the "changing character of war" while characterizing the conflicts as "asymmetric" warfare, as if this was the first time in which opposing armed forces with dissimilar capabilities, strategic goals, and tactical choices faced one another: that is, 9/11 was the first time the international community faced asymmetric threats of global acts of terror by armed non-State actors. History suggests otherwise as shown in this contribution. Ignorance of history leads to the argument that there has been a change in the character of war and may tempt military and civilian leaders to argue that the law of war does not apply, or cannot be applied. This was seen in Bush Administration reactions to the 11 September 2001 al Qaeda attacks on New York and Washington. Its mistakes were numerous. International lawyers, and others, owe it to their belief in the rule of law to study and understand history in understanding the law and its application over the past decade.

Full text : only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660847&fulltextType=RA&fileId=S1389150120000128

Post-war developments of the Martens clause : the codification of "crimes against humanity" applicable to acts of genocide


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

Full text : only from ICRC headquarters:
http://www.ingentaconnect.com/content/mnp/jhls/2012/00000002/00000002/art00004

Preventive detention in the law of armed conflict : throwing away the key?

Diane Webber. In: Journal of national security law and policy Vol. 6, no. 1, 2012, p. 167-205. - Cote 400.1/28 (Br.)

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


The principle of proportionality looms very large in the law of armed conflict as it works as the compromising formula which balances the two competing interests; namely, humanity and military necessity. This has become a conventional rule after the Geneva Conventions, while it has also been identified as a customary international law principles for years. Though the principle plays a vital role in IHL in reducing the calamities of warfare, there is another side to the same issue because that has been vividly criticized. In this context, the objective of this article is to identify the conceptual and conventional foundation of the principle of proportionality and its practical application, specially relating to the means and methods of warfare, terrorism and the protection of environment in times of warfare. It will also address the contemporary challenges and existing gaps and conclude with possible suggestions.

**Prisoners of the international community: the legal position of persons detained at international criminal tribunals**


This book addresses a specific aspect of international criminal law. It describes the legal position and conditions of persons detained under the jurisdiction of international criminal tribunals, particularly as regards their internal legal position, their rights and duties inside the remand facility. Central to the book is the understanding that the circumstances surrounding these persons' detention are different from a domestic context.

**Prohibition on the use of child soldiers: how real?**

Ranjana Ferrao. In: ISIL yearbook of international humanitarian and refugee law Vol. 9, 2009, p. 279-299

"Armed conflict" is an umbrella term for a variety of scenarios in which children can be directly or indirectly harmed. Children have played a variety of combat-related roles throughout history. The denial of humanitarian access to children in conflict areas is often a great concern. Children, both girls and boys, even under the age of 15 are cynically included and used as cheap and expendable tools of war, and too many are also exposed to sexual abuse and exploitation in the context of armed groups. This paper briefly introduces the practice of using children as soldiers and the phenomenon of displacement within the context of human security. In then explores some of the links between child soldiering and displacement. International law and standards for protecting children in these situations is described, and hoped to be followed.

**Propriety of self-defense targetings of members of Al Qaeda and applicable principles of distinction and proportionality**


This short article provides detailed disclosure why the United States cannot be at war with al Qaeda under international law. It also recognizes that, nonetheless, targetings of members of al Qaeda in the theatre of a real war with the Taliban is lawful and that such targetings are also lawful under the law of self-defense if members of al Qaeda are directly participating in ongoing attacks on the United States, its military, and/or other U.S. nationals. In particular, permissibility of the targeting of Anwar al-Alwaki in Yemen as a direct participant in armed attacks (DPAA) is addressed.

**A qualified defense of American drone attacks in northwest Pakistan under international humanitarian law**


Since the terrorist attacks of September 11, 2001, international law has had to grapple with the fundamental challenges that large-scale violence carried out by non-State actors poses to the traditional inter-State orientation of international law. Questions related to the "adequacy" and "effectiveness" of international humanitarian law, international human rights law and the law related to the use of force have been particularly pronounced. This paper focuses on the international humanitarian law implications of American drone attacks in northwest Pakistan. A highly-advanced modality of modern warfare, armed drones highlight the possibilities, problems, prospects and pitfalls of high-tech warfare. How is the battlefield to be defined and delineated geographically and temporally? Who can be targeted,
and by whom? Ultimately, this paper concludes that American drone attacks in northwest Pakistan are not unlawful as such under international humanitarian law, though, like any tactical decision in the context of asymmetric warfare, they should be continuously and closely monitored according to the dictates of law with sensitivity to facts on the ground.

Remote-controlled weapons systems and the application of IHL
Jack Beard. In: Collegium No. 41, Automne 2011, p. 57-61. - Cote 345.25/175

As they continue to evolve and variants multiply, unmanned systems are allowing military forces to project power on an unprecedented scale and have introduced a new era of remote-controlled killing. In so doing, they are raising profound questions for international humanitarian law. However, these technologies may also be unexpectedly and somewhat ironically giving unprecedented traction, transparency and relevance to jus in bello principles protecting civilians from the effects of hostilities – and may ultimately force States and individuals to confront revitalised and new duties to avoid causing harm to civilian populations. In addition to the transparency that comes with the persistent surveillance provided by unmanned systems, many of the factors that have been cited as excuses or justifications for incidental civilian casualties in the past are profoundly affected or even eliminated by these systems.

The right of child victims of armed conflict to reintegration and recovery

Article 39 of the Convention on the Rights of the Child provides for the right to recovery and reintegration of child victims of armed conflict. In this publication an explanation is tendered of when children are considered to be victims of armed conflict. Specific reference is made to the question of whether or not a former child soldier may be viewed as such a child victim. In addition the question is addressed of how a monist or dualist approach in terms of which treaty law is incorporated into municipal law influences the rights of child victims in terms of article 39 of the Convention of the Rights of the Child. Thirdly, article 39 is discussed against the background of the international human rights instrument, the Convention on the Rights of the Child.

The right to reparation in international law for victims of armed conflict

In this evaluation of the international legal standing of the right to reparation and its practical implementation at the national level, Christine Evans outlines state responsibility and examines the jurisprudence of the International Court of Justice, the Articles on State Responsibility of the International Law Commission and the convergence of norms of different branches of international law, notably human rights law, humanitarian law and international criminal law. Case studies of countries in which the United Nations has played a significant role in peace negotiations and post-conflict processes allow her to analyse to what extent transnational justice measures have promoted state responsibility for reparations, interacted with human rights mechanisms and prompted subsequent elaboration of domestic legislation and reparations policies. In conclusion, she argues for an emerging customary right for individuals to receive reparations for serious violations of human rights and a corresponding responsibility of states.

Robots in the battlefield: armed autonomous systems and ethical behaviour
Ronald Arkin. In: Collegium No. 41, Automne 2011, p. 62-70. - Cote 345.25/175

The contributor reports on the result of a three year program granted by the Departement of Defence to study the application of ethics in these autonomous systems. The premise of the research was to explore whether robots could outperform soldiers with respect to collateral damage. Could they be ultimately more human than humans? Robots are already stronger, faster and smarter than us in many cases. Therefore, it is a relatively low bar to create autonomous systems that can perform more ethically in the battlefield. Part of this research program was to program a robot for the right of refusal of an order. It can also provide on-the-ground reporting on the ethical behaviour of soldiers which may have the ability to cause human soldiers to behave better. What was tried in the prototype software was to incorporate international humanitarian law and rules of engagement which are required to be consistent with that.

The role and responsibilities of legal advisors in the armed forces: evolution and present trends (celebration of the military law and the law of war review's 50th anniversary)

Thomas E. Randall... [et al.]. In: Revue de droit militaire et de droit de la guerre 50, 1-2, 2011, p. 17-126

Contents: The evolving role of the legal advisor in support of military operations / T. E. Randall. - Legal officers in the Australian defence force: functions by rank and competency level, along with a case-study on operations / I. Henderson. - Legal advice in the conduct of operations in the Israeli defense forces / L. A. Libman. - "Giving" operational legal advice: context and method / R. Mc Laughlin

Full text: only from ICRC headquarters: http://tinyurl.com/azdq5w

Role of international humanitarian institutions in ensuring that "armed non state actors" augment the fundamental notions of international humanitarian law! : a critique!


Implementation of international humanitarian law continues to centre round the interests of civilians. "Armed rebel groups", as they continue to be labeled despite their concern and struggle for the welfare of group of people to whom they are committed to, find little role in the implementation of international humanitarian law. The present article examines at length the requirements as often spoken in terms of their identity but most importantly, analyzes the indispensable role of the armed non state actors in the humanitarian law and calls for a greater role of international humanitarian organizations in relooking at the role of the least recognized groups in the implementation of IHL.

The rules governing the conduct of hostilities in Additional Protocol I to the Geneva Conventions of 1949: a review of relevant United States references


There is no single authoritative reference detailing those provisions of AP I the US accepts as an accurate restatement of customary international law or other legal obligations, or that it follows as a matter of policy during armed conflict. This paper seeks to partially address that lacuna through a systematic review of official US policies, directives, publications, treaty obligations, laws, and proclamations pertinent to those provisions of AP I governing the conduct of hostilities. This paper will not opine whether any of these official materials are conclusive proof that the US accepts any specific provision of AP I as customary international law. Nor will it evaluate the merits of the US position with regard to the instrument. Rather, it will furnish a consolidated resource for the researcher who contemplates these questions. More practically, it will provide military operational law practitioners with US references that embrace, modify, or contradict provisions of AP I as they pertain to the conduct of hostilities.

Full text: only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660833&fulltextType=RA&fileId=S1389135912000050

Schoolchildren as propaganda tools in the war on terror: violating the rights of Afghani children under international law


This book explores in what ways both sides involved in the so-called war on terror are using schoolchildren as propaganda tools while putting the children's security at grave risk. The book explores how terrorists use attacks on education to attempt to destabilize the government while the government and the international aid community use increases in school attendance as an ostensible index of largely illusory progress in the overall security situation and in development. The book challenges the notion that unoccupied civilian schools are not entitled under the law of armed conflict to a high standard of protection which prohibits their use for military purposes. Also examined are the potential violations of international law that can occur when government and education aid workers encourage and facilitate school attendance, as they do, in areas within conflict affected states such as Afghanistan where security for education is inadequate and the risk of terror attacks on education high.
Sixtieth anniversary of the Geneva Conventions: lessons from the past

This article reflects on the strengths and weaknesses of International Humanitarian Law in the light of developments in this branch of public international law since the adoption of the Geneva Conventions in 1949. It dwells particularly on the codification and progressive development of IHL applicable in non-international armed conflicts, the relationship of IHL and international human rights law, the State responsibility for violations of international humanitarian law, IHL and international criminal justice, the interface between customary and conventional IHL and implementation and enforcement of IHL. It then examines whether and to what extent IHL is capable of addressing and overcoming new challenges and risks that lie ahead.

Some holds barred: extending executive detention habeas law beyond Guantanamo bay
Ashley E. Siegel. In: Boston university law review Vol. 92, no. 4, July 2012, p. 1405-1430. - Cote 345.2/292 (Br.)

Part I reviews habeas law from its historical roots to its modern application in executive detention cases brought about by the United States detention of aliens at Guantanamo Bay. Part II examines alien detention abroad apart from the habeas context. Part III explores the likelihood and appropriateness of extending the Boumediene line of cases to scenarios of alien detainees held abroad by foreign governments at the behest of the United States. The Supreme Court has recently demonstrated a greater willingness to exert its power in the national security realm, no longer giving broad deference to the Executive’s wartime powers. The Supreme Court in this realm appears to take a functionalist, case-by-case approach that leaves open the possibility that the Court will exert itself in different executive detention contexts. Given the vital, fundamental individual rights implicated by executive detention, the Supreme Court should continue to actively review the actions of the legislative and executive branches. Further, based on the reasoning supporting its past precedents, the Court should extend jurisdiction to detainees held by foreign nations at the behest of the U.S. government.

South Ossetia (2008)

This chapter analyses the 2008 South Ossetian armed conflict, involving the States of Georgia and Russia, and the armed forces of the de facto authorities of South Ossetia. Classifying the conflict is not unproblematic. Was it an international armed conflict or a non-international armed conflict? Accordingly, as regards the law of armed conflict, this chapter raises wider questions about the relationship between conflicts. This chapter also discusses the increasingly complex relationship between Hague law, Geneva law and human rights law, and the growing tensions between these various systems of law.

Splendid isolation: international humanitarian law, legal theory and the international legal order

To consider the role played by IHL in contemporary legal debate, this paper will first give a brief account of how this body of law interacts with other aspects of international law. As with other specialist fields, IHL is not absolutely settled; nevertheless, it is possible to broadly outline its place within the international legal order. This article aims to set a firm basis for considering what current discussions on the future of public international law can tell us about IHL and vice versa. Following an examination of the interplay between IHL and international law, this piece will turn to two thematic approaches that dominate current international legal discourse, namely, fragmentation and constitutionalisation. A brief outline of the parameters of both approaches is followed by an assessment of how each has engaged with IHL. The article concludes with some thoughts on how IHL could make a contribution to these debates. Ultimately, this article will discuss and propose how engagement from both ends of the spectrum would benefit international law and suggest why such connections should be encouraged.

Full text: only from ICRC headquarters
http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8660831&fulltextType=RA&fileId=S138945920000049
Still searching for solution: from protection of individual human rights to individual criminal responsibility for serious violations of humanitarian law


In order "to reaffirm faith in fundamental human rights, in dignity and worth of the human person, in the equal rights of men and women", the United Nations has embarked on criminalization of acts constituting massive violations of human rights and humanitarian law. Today, in evaluating UN efforts in the protection and promotion of human rights, both its activities in the fields of international human rights and international criminal law need be considered pari passu. The crux of this paper is to consider and make a comparative analysis of the Nuremberg Charter, Statutes of the International Criminal Tribunal for the former Yugoslavia and for Rwanda.

Stuxnet as cyberwarfare: applying the law of war to the virtual battlefield


This paper focuses on a recent event known as Stuxnet, a computer virus that infected and damaged a nuclear research facility in Natanz, Iran. Reflecting on this particular cyber attack, did it rise to the level of an armed attack within the meaning of IHL? If so, did it adhere to the two core principles of IHL, namely distinction and proportionality? From this analysis, it is hoped that a better understanding of what is a cyber war will emerge.

Stuxnet: legal considerations


The worm Stuxnet was programmed to affect computer systems of five nuclear facilities located in Iran. The media reported the worm as being the first "cyber-weapon" used and were speculating that certain States might have been the creators of the malware - suspecting in particular the involvement of USA and Israel within a long-term operation code-named "Olympic Games". The discovery of Stuxnet showed the possibility of malicious infections of computer systems of a State's critical infrastructure, even if disconnected from the Internet, and changed the perception of danger in the context of national security considerations. Legally assessing the implications of the creation, installation and control of Stuxnet is especially challenging because of the lack of detailed and reliable information relating to its origin and the physical effects it (indirectly) caused outside the targeted computer systems. Based on the assumption that one or more States created, installed and controlled the worm, the present public international law analysis shows that Stuxnet can be considered a "legal masterpiece".

Summary of the Geneva Conventions of 12 August 1949 and their additional protocols


This is not an abridged commentary on the Conventions and their Additional Protocols, but a summary of their main provisions, with references to the relevant articles. For all categories of readers.


Superior responsibility and the principle of legality at the ECCC


This article examines two recent decisions of the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in the broader context of whether it is fair to impose criminal liability on Khmer Rouge leaders for acts committed between 1975 and 1979. Since international criminal law was not as fully developed in the 1970s, some of the accused Khmer Rouge leaders argue that the principle of legality ("nullem crimen sine lege") bars many of the charges brought against them. In particular, they have argued that superior responsibility—a mode of liability that holds superiors responsible for the criminal acts of their subordinates—had not crystallized into a norm of customary international law by the 1970s. The Pre-Trial Chamber in two rulings in early 2011 dismissed the defendants' arguments and held that from 1975 to 1979 international law had recognized superior responsibility as a mode of criminal liability in a form sufficiently developed and accessible to the accused so as to satisfy the principle of legality. These decisions, though correctly decided, are based on a flimsy legal foundation. The Pre-Trial Chamber relied on the jurisprudence of post-World War II tribunals, which are notorious for their lack of clarity. These tribunals have also been plagued with allegations of "victor's justice," for
finding German and Japanese commanders guilty of capacious, poorly-defined crimes that were arguably only recognized as crimes after the end of the war. For these reasons, this article argues that the ECCC should have based its decisions on Additional Protocol I to the Geneva Conventions of 1949 (1977), which more clearly defines superior responsibility and reflects broad consensus on the state of international law in the 1970s. Moreover, Additional Protocol I commenced an evolution in the law of superior responsibility— that has continued through the United Nations ad hoc tribunals and the International Criminal Court toward greater protection of defendants from the sort of arbitrary justice imposed in the post-WWII cases. Counter-intuitively, relying on more recent statements of the law of superior responsibility would not only comply with the principle of legality, but would benefit the accused. Going forward, this approach would bolster the ECCC's legal stature and reputation for reasoned, impartial decision-making in light of persistent allegations of bias and corruption.

Taking armed conflict out of the classroom: international and domestic legal protections for students when combatants use schools


Schools around the world are being used for military purposes by State security forces and non-state armed groups. A review of conflicts in 23 countries since 2006 reveals that military use of schools often disrupts, or altogether halts, children's education and places students and schools at increased risk of abuse and attack. While international humanitarian law does not prohibit the military use of schools, failing to evacuate students from partially occupied schools, which have become military objectives subject to attack, may violate humanitarian law. Moreover, where military use impedes education, States may also violate international human rights obligations to ensure the right to education. Despite these negative consequences and the international legal framework restricting this practice, few States have enacted national prohibitions or restrictions to regulate the military use of schools explicitly. However, the experiences of countries heavily affected by conflict - Colombia, India, and the Philippines - indicate that States can counter opposition armed groups while completely prohibiting the military use of schools. This article argues that States should adopt and implement national legislation and military laws that restrict the military use of schools to better comply with their existing international obligations to protect schoolchildren and ensure the right to education.

Taking distinction to the next level: accountability for fighters' failure to distinguish themselves from civilians

Laurie R. Blank. In: Valparaiso University law review Vol. 46, no. 3, spring 2012, p. 765-802. - Cote 345.29/174 (Br.)

This article explores how the failure to hold persons accountable for perfidy and other violations of the obligation to distinguish between combatants and civilians will continue to undermine the ability of the law to provide maximum protection to innocent civilians during armed conflict. The first section of this article sets forth the parameters of the principle of distinction and how the law of armed conflict (LOAC) implements this fundamental principle. In addition, the first section explores the challenges and complexities of contemporary warfare, specifically with relation to the obligations of distinction. The second section addresses current trends and efforts in the implementation and enforcement of the principle of distinction. Finally, this article highlights LOAC's untapped potential, a gap resulting from the failure to enforce distinction on both sides of the coin.

Targeted strikes: the consequences of blurring the armed conflict and self-defense justifications


Targeted strikes – predominantly using drones – have become the operational counterterrorism tool of choice for the United States. For the past several years, the United States has relied on both armed conflict and self-defense as legal justifications for targeted strikes outside of the zone of active combat in Afghanistan. Challenging questions arise from the use of both justifications at the same time, without careful distinction delimiting the boundaries between when one applies and when the other applies. This article will focus on the consequences of the United States consistently blurring the lines between the armed conflict paradigm and the self-defense paradigm as justifications for the use of force against designated individuals. In particular, there are four primary categories in which the use of both paradigms without differentiation blurs critical legal rules and principles: geographical issues
surrounding the use of force; the obligation to capture rather than kill; proportionality; and the identification of individual targets, namely the conflation of direct participation in hostilities and imminence. On a broader level, there are three areas in which this blurring of legal justifications and paradigms has significant contemporary and future consequences for the application of international law in situations involving the use of force. In particular, this blurring undermines efforts to fulfill the core purposes of the law, whether the law of armed conflict or the law governing the resort to force, hinders the development and implementation of the law going forward, and risks complicating or even weakening enforcement of the law.

Technological challenges for the humanitarian legal framework: proceedings of the 11th Bruges Colloquium, 21-22 October 2010 = Les défis technologiques posés au cadre juridique humanitaire: actes du 11ème colloque de Bruges, 21-22 octobre 2010
CICR, Collège d'Europe. In: Collegium No. 41, Automne 2011, 130 p.. - Cote 345.25/175

Ce colloque permet d’examiner les nouvelles technologies présentes sur le champ de bataille et les défis qu’elles posent quant à la réglementation des méthodes et moyens de combats. Il aborde ensuite le très vaste et difficile domaine de la guerre cybernétique. L’utilisation de l’espace cybernétique à des fins hostiles offre en effet un immense potentiel de nuisance dont il est difficile d’imaginer, aujourd’hui, tous les contours. Les armes télécommandées et automatiques sont ensuite abordées avant d’explorer dans quelle mesure l’espace extra-atmosphérique pourrait devenir un théâtre de conflit armé. Enfin ce colloque se termine par une table ronde dont le but est de discuter de la manière dont ces nouvelles technologies vont défier le DIH dans les décennies à venir.

The technology of offensive cyber operations
Herbert Lin. In: Collegium No. 41, Automne 2011, p. 33-40. - Cote 345.25/175

This piece introduces the technology and effectors of an offensive attack: access, vulnerability and payload. It then describes the two types of offensive cyber operation: cyber attack and cyber exploitation. Cyber attacks are destructive in nature and cause adversary computer systems and networks to become unavailable or untrustworthy and therefore less useful to the adversary. Cyber exploitations are non-destructive, as they seek to obtain information resident on or transiting through an adversary’s computer systems or networks, information that would otherwise be kept confidential. After going through the key characteristics, operational considerations and possible goals for an offensive cyber operations, the contributor raises some IHL ambiguities and fundamental questions posed by these operations.

Temporality and terrorism in international humanitarian law

Most of the discussion on the United States’ armed conflict against al Qaida and its allies—if it is legally an armed conflict at all—focuses on the nature of the actors, actions, and geography of this conflict—who, how, and where issues—because modern jus ad bellum and jus in bello regimes grew out of a long history of states or locally-confined armed groups waging violence in particular ways. In addition to resulting perplexities involving who, how, and where this conflict is waged, there are highly unusual temporal features of this conflict—and, therefore, when issues—that characterize it. It is difficult to discern when this conflict began (recognizing that it began at least as far back as the 9/11 attacks, though perhaps earlier than that), and even more difficult to assess even hypothetically its endpoint. The temporal aspects of the conflict have strained application of IHL, some would argue to the breaking point and others would argue necessitating legal or policy adaptation to meet the demands of 21st century warfare.

"Terrorism" as a central theme in the evolution of maritime operations law since 11 September 2011

The aim of the author is to briefly examine the ways in which he believes the focus upon terrorism has influenced, or is beginning to influence, the development of maritime operations law. To do this, he
focuses upon four sub-themes within the overall terrorism chapeau: terrorism from the sea; terrorism at sea; terrorism supported from the sea; and terrorist groups as subjects within the law of naval warfare. The first three sections briefly outline some examples of the types of threats emanating from this particular manifestation of terrorism, and then offer a short account of some (but by no means all) of the legal responses prompted by these threats. The fourth section offers general comments on an emerging debate.

Théories et réalités du droit international humanitaire : contribution à l’étude du droit des conflits armés en Afrique noire contemporaine

Le droit international humanitaire repose sur le sentiment d’humanité et la protection de la personne humaine en période de conflit armé. Ses fondements éthiques et moraux sont aujourd’hui solidifiés par une normativité de moins en moins contestée. Toutefois, si les États africains ont majoritairement adhéré au DIH, il n’en demeure pas moins que certaines spécificités africaines en rendent sa réception difficile et sa mise en œuvre malaisée. Traumatisée par la traite négrière et la colonisation, l’Afrique noire est en proie à de nombreux conflits armés aux multiples causes mais aux conséquences toujours dramatiques : régression économique, flux de réfugiés et de déplacés internes, mercenariat, participation d’enfants-soldats, génocide, etc. Il en découle un décalage entre la théorie du DIH et les réalités africaines. De nombreux obstacles liés à un usage du DIH en fonction d’intérêts statiques et à un usage immédiat du principe de souveraineté grèvent fortement la mise en œuvre du DIH. A cela, s’ajoutent l’insuffisance d’information de la population civile et l’ignorance du DIH par ses principaux destinataires.

"Tout est possible à celui qui croit" ? (Marc, 9:23) : la réglementation de la vie religieuse dans les camps de prisonniers de guerre de la Seconde guerre mondiale

Si la peur des représailles et le principe de réciprocité de traitement sont généralement évoqués pour expliquer le respect - ou le non-respect - des Conventions de Genève, ce seul raisonnement paraît simpliste. Il est intéressant de resserrer le point de vue historique sur une captivité donnée ou un point particulier des Conventions. Ce chapitre pose un premier jalon dans ce sens en se concentrant sur les logiques qui président aux réglementations du droit à la pratique religieuse parmi les prisonniers de guerre français et britanniques détenus par le IIIème Reich et les captivités des militaires allemands en mains françaises et britanniques. Il s’attache à préciser les motifs qui déterminent le degré d’application des traités internationaux par les belligérants, sans établir toutefois une hiérarchisation claire.

Unmanned combat aircraft systems and international humanitarian law : simplifying the oft benighted debate

There are very few legal issues unique to unmanned combat aircraft systems (UCAS). For instance there is disagreement among legal experts as to whether counter-terrorist operations mounted outside the context of an ongoing armed conflict should be considered international armed conflict, non-international armed conflict or armed conflict at all. The question is significant, for its answer will determine which body of law to apply to UCAS cross-border operations. However, the fact that UCAS is the means of attack has no bearing on the determination. Furthermore, controversial issues raised by targeted killing operations, such as the legal status of the target or the individual conducting the strike, have little to do with the fact that UCAS was employed instead of other means, such as cyber attacks or car bombs. This article attempts to identify, explain and demystify the key international humanitarian legal (IHL) issues that should be considered by those charged with rendering ex ante advice or making ex post facto assessments about UCAS operations. The article does not discuss the jus ad bellum.
The use of depleted uranium ammunition under public international law

Several armies worldwide use depleted uranium in ammunition. DU is quite cheap, available in large quantities and its high density allows the use in armor-penetrating or bunker busting weapons. Despite these advantages, the use of DU is prohibited by international humanitarian law as is shown in this article. In the first part, it will be examined by presenting recent medical research that DU might cause superfluous injuries to combatants - a clear violation of international humanitarian law. Moreover, it will be elaborated in the second part that in certain cases the use of DU has effects which cannot be limited to combatants, but which also affect non-combatants - which constitutes another violation of international humanitarian law. Furthermore, DU has an impact on the environment, although this impact does not meet the high threshold needed to assert another violation of international humanitarian law - at least according to up to date research.

The use of force to protect civilians and humanitarian action : the case of Libya and beyond

The Libyan crisis of 2011 has again raised the crucial problem of the choice of means in protecting civilians. Authorized by the international community as part of military operations in Libya, the use of force in protecting civilians has revived the concept of "humanitarian war" and has raised a number of issues for humanitarian organizations, in particular concerning the notion of neutral, impartial, and independent humanitarian action. The article focuses on these humanitarian issues and, inter alia, on the possible impact on humanitarian action of the concept of the Responsibility to Protect (R2P), which was at the basis of the intervention in Libya.


Using humanitarian aid to "win hearts and minds" : a costly failure ?

This article contends that the integration of humanitarian assistance in efforts to "win hearts and minds" in counter-insurgencies has not been successful, and that the costs, both operational and legal, clearly outweigh any benefits. It demonstrates how such manipulation of humanitarian assistance runs counter to fundamental principles of international humanitarian law. In addition, a growing body of research suggests that the use of short-term aid and relief programmes as part of counter-insurgency has been ineffectual, and that, in places such as Afghanistan, it may even have undermined the overall military goal of defeating insurgents. With the United States and NATO military operations winding down in Afghanistan, it is time for the military and policy-makers reviewing 'winning hearts and minds' as a counter-insurgency strategy to draw the lessons and recognize the importance of a neutral and independent space for humanitarian aid.


Victims and perpetrators of international crimes : the problem of the "legal person"

Protecting victims and punishing perpetrators are now seen as integral elements of the implementation and enforcement of humanitarian norms. However, how international law constructs the victims and perpetrators of international crimes as entities with rights and duties remains insufficiently examined. This paper explores the different models of victims and perpetrators as legal persons in international criminal law. It argues that the legal person takes two forms: the victim of human rights and the perpetrator of criminal responsibility. While the legal regime presents these as autonomous and singular individuals, it also constitutes them as members of groups that criminal norms seek to protect or punish. Contemporary international criminal law resolves this tension between individual and collective rights and responsibilities by reconstituting legal subjectivity through an intersubjective conception of the universal community of humans. Ultimately, this ‘legal person’ relies on the idea of ‘humanity’, the collectivity of all humans, to hide this problematic conceptual basis of the rights and duties of victims and perpetrators in ICL.
The vietnamization of the long war on terror: an ongoing lesson in international humanitarian law non-compliance
Lesley Wexler. In: Boston university international law journal Vol. 30, no. 2, Summer 2012, p. 575-593. - Cote 345.22/206 (Br.)

This essay rejects the conventional wisdom that post Vietnam military reforms adequately addressed the problem of U.S. noncompliance with international humanitarian law. Just as My Lai and Son Thang defines the nadir of America’s counterinsurgency in Vietnam, and the trio of Haditha, Abu Ghraib, and Operation Iron Triangle evoke our worst behavior in Iraq, the recent events of the 5th Stryker “kill team” brigade may come to symbolize our greatest failings in Afghanistan. The premeditated and deliberate killing of Afghani civilians reveals an indifference to human life that is utterly inconsistent with the premises of International Humanitarian Law and the deeply held values of the American military. This short piece examines the Stryker kill team’s behavior to help build the knowledge and insight necessary to develop further reforms for military practices during the long war on terror. The essay situates the 5th Stryker brigade’s troubling behavior within the military’s recent shift to counterinsurgency and highlights the suboptimal compliance conditions likely to bedevil the U.S. military during the long war on terror. Though the U.S. military successfully restructured its goals and reformed its behavior after Vietnam, at least three notable similarities remain. In particular, the military still: (a) abandons effective sorting strategies to exclude high risk soldiers when the demand for troops rises; (b) lacks adequate safeguards against leadership failures that allow a culture of disrespect for human life to fester; and lastly (c) faces only weak checks on its behavior as the result of domestic pressure. In identifying these factors, this essay seeks to help the military and other actors better target efforts to improve international humanitarian law compliance.

The war (?) against Al-Qaeda

This chapter examines the legal ambiguities surrounding a war that might not be a war, against an elusive enemmy whose existence as an organized entity is sometimes cast in doubt. Military operations are carried out under the mantle of this war and casualties and destruction have followed, rendering the analysis and classification a crucial matter. Although this conflict encompasses numerous —if not endless— challenges in the area of international law, the focus in this chapter is on those issues that have direct bearing upon the classification of the conflict.

What Americans think of international humanitarian law

The United States’ foreign policy in the first decade of the twenty-first century and its involvement in armed conflicts in Iraq and Afghanistan have given rise to a reinvigorated interest in international humanitarian law (IHL), commonly referred to in the United States as the law of armed conflict. Conversations about whether to classify detainees as prisoners of war, debates about what constitutes torture, and numerous surveys attempting to measure the public’s knowledge about and views on the rules of war are offering an opportunity to examine Americans’ views on IHL. This article will reflect on those views, providing numerous examples to illustrate the complexities encountered when near universally accepted legal standards of conduct are layered upon the fluid and unpredictable realities of modern warfare. The article will also highlight the impact that battlefield activities can have on domestic debates over policy choices and national conscience.