BIBLIOGRAPHY
2nd Issue 2022

International Humanitarian Law

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

ICRC

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Introduction

The International Committee of the Red Cross Library

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

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

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

The Library is open to the public from Monday to Friday (9 am to 1 pm).

Origin and purpose of the IHL bibliography

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

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

It quickly emerged that the bibliography was also helpful to other researchers, students and legal professionals working in the field of IHL. The Library therefore decided to make the bibliography accessible to the general public.

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

How to use the IHL Bibliography

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

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

Part II: All entries with abstract for readers who need it all

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

Access to document

Whenever an article is electronically available in full text, a link allows you to access the document directly. Links followed by a * are restricted to subscribers or otherwise limited to ICRC staff. All documents are available for loan at the ICRC Library. In case your local library cannot provide you with some of the documents, requests for copies or scans (in a reasonable amount) can be sent to library@icrc.org

Chronology

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

Contents

The bibliography lists writings on IHL subjects (e.g. articles, monographs, chapters, reports and working papers) in English and French, with the addition of writings in German and Spanish since 2022.

Sources

The ICRC Library monitors a wide range of sources, including all 80 journals to which the Library subscribes, bibliographical databases, legal databases, legal publishers' catalogues, legal research centres and non-governmental organizations. It also receives suggestions from the ICRC legal advisers.

Disclaimer

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

Subscription and feedback

Please send your request for subscription or feedback to library@icrc.org with the subject heading "IHL bibliography subscription/feedback".

I. General issues

(General catch-all category, Customary Law, Religion, Development of law, Scope, Multiple subjects monographies)

Civilization as humanity : the 'men of 1873', John Westlake and the Grotius Society

Cornelia Navari. - In: The international society tradition : from Hugo Grotius to Hedley Bull. - Basingstoke ; New York : Palgrave Macmillan. - p. 93-104
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Compatibility between modern international humanitarian law and principles of islamic law of conduct of war : a comparative analysis

Humna Sohail. In: Islamabad law review, vol. 5, no. 1 & 2, Spring/Summer 2021, p. 83-114
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Developing and clarifying international humanitarian law : the role and legacy of the ICRC

Knut Dörmann and Andrea Raab. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 240-264
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Encouragement of learning through war video games as an intelligible textbook on international humanitarian law

Keisuke Minai. In: Cornell international law journal, vol. 52, issue 4, Winter 2020, p. 643-673
https://heinonline.org/HOL/P?h=hein.journals/cintl52&i=679 *

Equality and non-discrimination in armed conflict

George Dvaladze. - [S.I.] : [s.n.], 2021. - 346 p.
https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57023.pdf *

Gendering the Geneva Conventions

Boyd van Dijk. In: Human rights quarterly : a comparative and international journal of the social sciences, humanities, and law, vol. 44, No. 2, May 2022, p. 286-312
https://doi.org/10.1353/hrq.2022.0021 *

Humanitarian restraints in early modern warfare : law of armed conflict from antiquity to the Great War

Gregory P. Noone, Derek D. Mills, and Philip E. Angeli. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 61-80

International law in revolutionary upheavals : on the tension between international investment law and international humanitarian law

Tillmann Rudolf Braun. - In: Investment in conflict zones : the role of international investment law in armed conflicts, disputed territories, and 'frozen' conflicts. - Leiden : Brill Nijhoff, 2021. - p. 19-53

The interrelationship between counter-terrorism frameworks and international humanitarian law

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Yoram Dinstein. In: Yearbook of international humanitarian law, vol. 23, 2020, p. 3-19

Laws of political violence

Damien Rogers. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 165-196

The Macquarie laws of war corpus : design, construction and use

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Non-participation in armed conflict : continuity and modern challenges to the law of neutrality

Constantine Antonopoulos. - Cambridge : Cambridge University Press, 2022. - XXX, 263 p.

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The principles of military necessity and humanity in light of international human rights law

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Ka Lok Yip. - Oxford [etc.] : Oxford University Press, 2022. - XXX, 296 p.

II. Types of conflicts

(Qualification of conflict, international and non-international armed conflict, asymmetric, cyber, urban, naval and aerial warfare...)

Active resistance by merchant vessel crews during international armed conflict is not "direct participation in hostilities"

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Pia Hüsch and Henning Lahmann. - Geneva : The Geneva Academy of International Humanitarian Law and Human Rights, 2022. - 33 p.

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https://doi.org/10.4337/9781789900972.00028 *

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

The applicability of international humanitarian law to acts of violence perpetrated by unidentified armed individuals in the Sahel : the case of Burkina Faso

Sanwé Médard Kienou. In: International review of the Red Cross, vol. 103, no. 918, 2021, p. 901-921
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El derecho internacional humanitario y su significado para las operaciones militares presentes y futuras

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From words to deeds : a research study of armed non-state actors' practice and interpretation of international humanitarian and human rights norms : the Taliban-Afghanistan

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Jurisdiction and combatant's privilege in the MH17 Trial : treading the line between domestic and international criminal justice

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https://library.icrc.org/library/docs/DOC/irrc-919-fellmeth.pdf

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Amanda Alexander. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 239-256

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Claire Finkelstein. In: Vanderbilt journal of transnational law, vol. 54, no. 5, 2021, p. 1163-1202
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Tethering the law of armed conflict to operational practice : "organized armed group" membership in the age of ISIS

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IV. Multinational forces

Cyber peacekeeping operations and the regulation of the use of lethal force

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Eugenio Carli. In: Ordine internazionale e diritti umani, no. 3/2021, 15 July 2021, p. 716-730
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Alfons Vanheusden. In: Yearbook of international humanitarian law, vol. 23, 2020, p. 35-59

NATO, self-defence and its interplay with international humanitarian law and human rights law

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Partnering in detention and detainee transfer operations

Tilman Rodenhäuser. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 387-410
https://doi.org/10.4337/9781789900972.00032 *

UN peace operations, international humanitarian law and international human rights law

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V. Private actors

The application of investment treaties in occupied or annexed territories and 'frozen' conflicts : tabula rasa or occupata?

Kit De Vriese. - In: Investments in conflict zones : the role of international investment law in armed conflicts, disputed territories, and 'frozen' conflicts. - Leiden : Brill Nijhoff, 2021. - p. 319-358

Arms exports to conflict zones and the two hats of arms companies

Hiruni Alwishewa. In: Transnational legal theory, vol. 12, issue 4, 2021, p. 527-549
https://doi.org/10.1080/20414005.2022.2028472

Entertainment and the laws of war : the role of States in their interactions with the entertainment industry in order to ensure respect for international humanitarian law

Eve Massingham. In: Media and arts law review, vol. 24, 2021, p. 130-147
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The genealogy of extended war clauses : requisition and destruction of property in armed conflicts

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International law in revolutionary upheavals : on the tension between international investment law and international humanitarian law

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Los mercenarios como mecanismo de elusión de la responsibilidad internacional

Rafael Sánchez de Nogués Gil. In: Revista española de derecho militar, Núm.116, julio-diciembre 2021, p. 111-167

Normative transformation and the war on terrorism : the evolution of targeted killing, torture, and private military contracting

Simon Frankel Pratt. - Cambridge : Cambridge University Press, 2022. - XI, 215 p.
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The price of settlement : World War II reparations in China, Japan, and Korea

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VI. Protection of persons

(Women, children, journalists, medical personnel, humanitarian assistance, responsibility to protect, displaced persons, humanitarian workers, ...)

Active resistance by merchant vessel crews during international armed conflict is not "direct participation in hostilities"

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

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VIII. Detention, internment, treatment and judicial guarantees

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The right to a fair trial during armed conflict

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Robbie Sabel. - Cambridge [etc.] : Cambridge University Press, 2022. - XVII, 446 p.
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X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

Active resistance by merchant vessel crews during international armed conflict is not "direct participation in hostilities"

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Human rights violations in Yemen and the prospects for justice

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Juridification of warfare and limits of accountability : an ethnomethodological investigation into the production and assessment of legal targeting

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Nobody is born a legitimate target : a four-step test to the targeting of individuals and groups in armed conflict

Birgit Haslinger. - Vienna : Facultas , 2019. - 486 p.

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Rights and duties of civilians in armed conflict

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The status of state and nonstate actors in postwar hostilities : restoring the rule of law to US targeted killing operations

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XIII. International human rights law

(Relationship with IHL, application in situations of armed conflict and other situations of violence, extraterritoriality, human rights bodies,...)

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Justice ivoirienne et répression des crimes graves du droit international humanitaire : entre avancées et incertitudes

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EUROPEAN UNION

Arms exports to conflict zones and the two hats of arms companies

Hiruni Alwishewa. In: Transnational legal theory, vol. 12, issue 4, 2021, p. 527-549
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FALKLAND ISLANDS (MALVINAS)

La guerra de Malvinas a la luz del derecho internacional humanitario

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GERMANY

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Reparation for victims of serious violations of international humanitarian law : new developments

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ISIS's sexual slavery of Yazidi women and girls : an underwhelming response to an overwhelming international crime

Samar El-Masri. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 347-365

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'Bury me not, I pray thee, in Egypt : but I will lie with my fathers' : the right of soldiers to be buried in their homeland

Hilly Moodrick-Even Khen. In: Journal of international humanitarian legal studies, vol. 13, no. 1, 2022, p. 49-77

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Human rights law and counter terrorism strategies : dead, detained or stateless

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International law and the Arab-Israeli conflict

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State immunity and victims' rights to access to court, reparation and the truth

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Jurisdiction and combatant's privilege in the MH17 Trial : treading the line between domestic and international criminal justice

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POLAND

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RUSSIAN FEDERATION

The application of investment treaties in occupied or annexed territories and 'frozen' conflicts : tabula rasa or occupata?

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Confronting human rights violations in Ukraine : some legal and practical challenges

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Does international law permit the provision of humanitarian assistance without host State consent ? : territorial integrity, necessity and the determinative function of the General Assembly

Rebecca J. Barber. In: Yearbook of international humanitarian law, vol. 23, 2020, p. 85-121

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Human rights law and counter terrorism strategies : dead, detained or stateless

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Normative transformation and the war on terrorism : the evolution of targeted killing, torture, and private military contracting

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The status of state and nonstate actors in postwar hostilities : restoring the rule of law to US targeted killing operations

Claire Finkelstein. In: Vanderbilt journal of transnational law, vol. 54, no. 5, 2021, p. 1163-1202
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Withdrawal from Afghanistan marks Guantánamo's endpoint

David Glazier. In: Harvard national security journal, vol. 13, issue 2, 2022, p. 285-368
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VIETNAM

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YEMEN

Deutsche Außen- und Verteidigungspolitik vor dem BVerwG : Extraterritoriale grundrechtliche Schutzpflichten bei US-amerikanischen Drohneneinsätzen

Thilo Marauhn, Daniel Mengeler, Vera Strobel. In: Archiv des Völkerrechts, Bd. 59, H. 3, 2021, S. 328-351

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Human rights violations in Yemen and the prospects for justice

Louisa Ashley. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 383-405

All with Abstracts

The accountability of software developers for war crimes involving autonomous weapons : the role of the joint criminal enterprise doctrine

Elliot Winter. In: University of Pittsburgh law review, vol. 83, no. 1, 2021, p. 51-86

This article considers the extent to which the joint criminal enterprise doctrine could be invoked to hold software developers criminally accountable for violations of international humanitarian law involving autonomous weapons. More specifically, it considers whether the third part of the concept—which concerns common criminal purposes—might be brought to bear to achieve this end. The doctrine is deconstructed into five components, and each component is analyzed both in abstract and in terms of practical application. The article establishes that, in certain contexts, software developers can and should be held accountable through this mechanism. Thus, it demonstrates that it is possible to avoid the emergence of a "responsibility gap" if, or more likely when, autonomous weapons with offensive capabilities are finally deployed on the battlefield.

https://doi.org/10.5195/lawreview.2021.822

Active resistance by merchant vessel crews during international armed conflict is not "direct participation in hostilities"

Robert McLaughlin. In: International law studies, vol. 99, 2022, p. 284-318

Within the land, air, and cyber conflict contexts, the concept of "civilian direct participation in hostilities" has been subject to intense scrutiny, interpretive endeavor, and operational application over the last several decades. There is a risk, however, that interpretations and applications based on this experience may inappropriately permeate the law of naval warfare, where the scope of application of this concept is considerably narrower. This is because a key difference between allocating law of armed conflict status ashore and at sea is that the law of armed conflict status of people at sea tends to follow the status of their vessel. Consequently, the status of a merchant vessel crew is generally a direct reflection of the status and conduct of their vessel. This article therefore seeks to assess the scope for application of direct participation in hostilities within the law of naval warfare context by analyzing what this body of law directs in terms of the conduct of the most likely groups of civilians to be encountered at sea – merchant mariners and, to a lesser extent, passengers. The analysis suggests that under the law of naval warfare, direct participation in hostilities at sea is relatively restricted to active resistance or hostilities perpetrated by passengers, whereas actively resisting or even hostile neutral and enemy merchant vessel crews should at most be made prisoners of war, and should not be treated as civilians directly participating in hostilities.

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The 'allegiance' test : judicial legislation and interpretation of GCIV

Manuel Galvis Martínez. In: Journal of conflict and security law, vol. 27, no. 1, Spring 2022, p. 21-51

The article critically addresses the 'allegiance' test developed by International Criminal Jurisdictions for the determination of protected personal status under the Fourth Geneva Convention. Through a deconstruction of its elements and the methodology employed in its creation, the author shows substantial and methodological flaws that showcase the test as highly questionable example of judicial legislation. The article concludes that, although the test is likely to go into substantial desuetude, its existence as an interpretative tool will persist and thus its flaws and potential dangers must be assessed critically to prevent unrestricted and unfounded judicial legislation. In particular, the article exposes the lack of relation between the concept of allegiance and the so-called 'allegiance' test.

https://doi.org/10.1093/jcsl/krab019 *

Animals in war : at the vanishing point of international humanitarian law

Anne Peters and Jérôme de Hemptinne. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1285-1314

> Animals are the unknown victims of armed conflict. They are regularly looted, slaughtered, bombed or starved on a massive scale during such hostilities. Their preservation should become a matter of great concern. However, international humanitarian law (IHL) largely ignores this issue. It only indirectly, and often ambiguously, provides animals with the minimum protection afforded to civilian objects, the environment, and specially protected objects such as medical equipment, objects indispensable for the survival of civilian population or cultural property. This regime neither captures the essence of animals as sentient beings experiencing pain, suffering and distress, nor takes into account their particular needs during wartime. To address these challenges, two strategies are possible: the first strategy would be to apply existing IHL more effectively to animals, if necessary by creative interpretation in line with the animals' needs. This strategy comprises two options: animals could be included into the categories of combatant/prisoners of war or of civilians. Animals would thus benefit from many guarantees given to human beings in armed conflict. Alternatively, and perhaps more realistically, animals could be equated with "objects" under IHL, while the relevant rules would be reinterpreted to cater for the fact that animals are living beings, experiencing pain, suffering and distress. The second strategy, which could be envisaged as a long-term objective, would be to adopt a new international instrument specifically aimed at granting rights to animals, notably in relation to prohibiting the use of animals as weapons of war.
>
> https://library.icrc.org/library/docs/DOC/irrc-919-peters.pdf

La aplicación extraterritorial del derecho internacional de los derechos humanos en casos de ocupación beligerante

Víctor Luis Gutiérrez Castillo. In: Revista electrónica de estudios internacionales, no. 36, 2018, p. 1-31

> Una de las cuestiones más controvertidas en la última década en materia de protección internacional de derechos humanos es su aplicación extraterritorial en situaciones en las que un Estado ocupa el territorio de otro Estado por razones beligerantes. La práctica y jurisprudencia internacional -en ámbito de la Organización de las Naciones Unidas y del Consejo de Europa- han reconocido la aplicabilidad extraterritorial de los instrumentos internacionales de protección de derechos humanos en estos casos, aunque con matices. Especial atención se presta en este artículo a la evolución de la jurisprudencia del Tribunal Europeo de Derechos Humanos (TEDH). Para este último, cuando un Estado ejerce un control efectivo sobre un territorio extranjero, su responsabilidad queda comprometida por los actos cometidos por sus fuerzas armadas, así como por las autoridades locales apoyadas por el mismo.
>
> http://dx.doi.org/10.17103/reei.36.04

The applicability of international humanitarian law to acts of violence perpetrated by unidentified armed individuals in the Sahel : the case of Burkina Faso

Sanwé Médard Kienou. In: International review of the Red Cross, vol. 103, no. 918, 2021, p. 901-921

> Burkina Faso has suffered attacks most often attributed to unidentified armed individuals. These attacks occur in an area which is under the influence of terrorist groups as well as criminal groups. Instability does not stem from a prior armed conflict, but from a continuous deterioration resulting from unclaimed attacks. The challenge then is to know whether international humanitarian law (IHL) can apply in a context where the perpetrators of violence are not identified. This requires visiting the conditions of applicability of IHL in non-international armed conflict to assess their relevance in a context of production of violence without identification of the perpetrators.
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> https://library.icrc.org/library/docs/DOC/irrc-918-kienou.pdf
>
> *En français:* https://library.icrc.org/library/docs/DOC/irrc-918-kienou-fre.pdf

The application of investment treaties in occupied or annexed territories and 'frozen' conflicts : tabula rasa or occupata?

Kit De Vriese. - In: Investments in conflict zones : the role of international investment law in armed conflicts, disputed territories, and 'frozen' conflicts. - Leiden : Brill Nijhoff, 2021. - p. 319-358

This chapter addresses the question whether and how an occupying or annexing state can be held accountable for its acts and omissions regarding investments and property in claimed territory. While article 43 Hague Regulations argues in favour of continuity of the occupied state's law for occupation, its relevance for investment law is limited. This chapter sets out two principles, which are each other's antipode. Inter-state violations, the object and purpose of the treaty, acquired rights and the need to avoid a (quasi-) legal vacuum argue for the extraterritorial application of the occupant's treaties. Exceptions can be found in temporary occupations (including territorial administration), and when occupied states are willing to guarantee investment protection. For annexation, this extraterritoriality principle is reversed due to the problems created by the jus cogens prohibition of aggression. Yet, if its wording permits it, an effective interpretation of the annexing-annexed state IIA parallel to the one in the ICJ's Namibia Advisory Opinion could also lead to protection in favour of investors. The Crimea tribunals and subsequently the Swiss Federal Tribunal have reached this conclusion, although on a slightly different basis than what will be set out in this chapter. Its normative framework could then be used as a guide for arbitrators dealing with current and future situations of occupation and annexation.

Are IHL and HRL still two distinct branches of public international law ?

Vaios Koutroulis. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 29-56

Whether international humanitarian law and human rights law remain two distinct branches of international law or not has been the subject of much discussion. Instead of revisiting this debate, this chapter addresses the following question: why does it matter whether IHL and HRL are still two distinct branches of public international law or not? The chapter first looks at this question from a theoretical perspective, establishing that the relevant debate is rather academic. In absence of a concrete added value at a theoretical level, the chapter then examines the practice of States, more specifically, the argumentation they invoke. Based on the observations sent by several States to the Human Rights Committee during the elaboration of the general comments on articles 6 and 9 of the ICCPR, we identify the extent to which States refer to the distinction between IHL and HRL and the legal consequences they attach to it

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Armed drones and the law of armed conflict

Nathalie Weizmann. - In: Drones and other unmanned weapons systems under international law. - Leiden ; Boston : Brill Nijhoff, 2018. - p. 89-122

Developments in weapon technology have long been enhancing targeting precision and accuracy, while in parallel significantly diminishing the role of humans on the battlefield and "depersonalizing" armed conflict. While the first uses of an armed unmanned aerial vehicle during armed conflict appears to date back to the mid-1800s when hot-air balloons were mounted with bombs, as described in the introduction to this book the first direct attack by aerial drone took place in 2001. Unmanned aircraft are held to entail lower acquisition and maintenance costs to have greater endurance and persistence; and to initiate force faster after target identification than their manned equivalents, all at significant distances from, and vastly reduced risk to, the operator. Despite these perceived advantages, there has also been concern about the compliance of armed drones with international law, including under the law of armed conflict (LOAC). This chapter explains when an armed conflict exists, describes the fundamental LOAC rules governing the conduct of hostilities in an armed conflict, and assesses the ability of armed drones to comply with those rules.

https://doi.org/10.1163/9789004363267_006 *

Arms exports to conflict zones and the two hats of arms companies

Hiruni Alwishewa. In: Transnational legal theory, vol. 12, issue 4, 2021, p. 527-549

Arms companies wear two hats: they act as businesses and are also expected to behave as socially responsible actors. These hats are not of equal size; the former is often much larger and conceals the latter. But a lack of visibility does not mean the existence of the smaller hat can be easily ignored. In this paper, the responsibilities of arms companies for the export of arms to conflict zones are examined. It is argued that the two hats that arms companies wear necessitates a reassessment of their responsibilities. It is suggested that due diligence obligations should be harnessed to enhance the discrete responsibilities of arm companies, thereby recalibrating how responsibilities should apply to actors intimately linked with the state apparatus, and minimising the potential for the business interests to subvert the role of arms companies as socially responsible actors.

https://doi.org/10.1080/20414005.2022.2028472

Autonomous weapons systems and international criminal law

Stuart Casey-Maslen. - In: Drones and other unmanned weapons systems under international law. - Leiden ; Boston : Brill Nijhoff, 2018. - p. 217-249

This chapter discusses the extent to which use of armed drones and fully autonomous weapons systems may amount to an international crime, particularly a war crime or the crime of aggression. A war crime is a serious violation of the law of armed conflict that attracts individual criminal responsibility. An act of aggression is defined in the 1998 Rome Statute of the International Criminal Court as the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations. Depending on the alleged crime, international criminal law either authorises states, or imposes on them an obligation, to prosecute alleged international criminals and to punish the convicted.

https://doi.org/10.1163/9789004363267_010 *

Autonomous weapons systems and the protection of the human person : an international law analysis

Diego Mauri. - Cheltenham ; Northampton : E. Elgar, 2022. - XI, 290 p.

Providing a much-needed study of the weapons paradox in the case of autonomous weapons, this book is a detailed and comprehensive account of the current debate over the use of autonomous weapons - should some form of regulation be applied or a total ban be enforced? How can compliance with existing rules be ensured? Can responsibility be properly allocated? To what extent do concepts such as 'human dignity' and 'humanity' provide legal guidance in coping with technology? This book tackles these momentous challenges and strives to provide sound answers by elaborating on international law and proposing normative solutions for current and future human-machine interactions in this critical field. Diego Mauri expertly explains the complex new technological research involved in autonomous weaponry, with particular focus on technological developments that have elicited intense debates among diplomats, military experts, scientists, philosophers, and international lawyers. Providing innovative and original discussion of the effective protection of the human person in international law, this book will be welcomed by legal scholars, human rights lawyers, and researchers concerned with the relationship between international law and technology.

https://doi.org/10.4337/9781802207675 *

Balancing precautions in attacks versus precautions against the effect of attacks in urban armed conflict

Andrew Navarro. In: Brigham Young University law review, vol. 47, no. 3, Spring 2022, p. 1037-1098

In 2019, in its quadrennial report on international humanitarian law (IHL), the International Committee of the Red Cross (ICRC) presented its conclusions on the conduct of hostilities during urban warfare, and notably on the use of explosive weapons with a wide-impact area. This article argues that the ICRC's interpretation of IHL neglects military necessity and customary

international law. It responds to the above-mentioned report in three parts. Part I discusses the legal principles of proportionality and distinction of urban international armed conflicts through application of AP I article 57. Part II considers how defending States should have a larger role in protecting civilians during an urban armed conflict under a firmer reading of AP I article 58. In Part III, the author identifies potential future problems of armed conflict in urban areas.

https://digitalcommons.law.byu.edu/lawreview/vol47/iss3/10/

Between rights, sovereignty and cooperation : responding to victims of armed conflict

Emily Camins. In: Journal of international humanitarian legal studies, vol. 13, no. 1, 2022, p. 7-24

Although the humanitarian effects of armed conflict are vast and transcend national boundaries, international law does not yet provide an adequate or comprehensive response to the suffering of victims of war. This article argues considerations of State sovereignty have shaped the development of international law on post-war redress, hindering the emergence of individual rights to reparations under international humanitarian law. Meanwhile, alternative models such as victim assistance, which largely preserve sovereignty, are emerging in pockets of international humanitarian law, such as weapons treaties. This article suggests that victim assistance offers a potential model for addressing the harm to victims of armed conflict more broadly.

https://doi.org/10.1163/18781527-bja10044 *

Bringing IHL home through domestic law and policy : fifth universal meeting of national committees and similar entities on international humanitarian law : 29 November - 2 December 2021

ICRC. - Geneva : ICRC, May 2022. - 57 p.

In this fifth edition of the Universal Meeting of National Committees and Similar Entities on IHL, the ICRC gives the floor to States and other actors, including Red Cross and Red Crescent National Societies and international or regional organization, to describes the measures taken to strengthen or support the domestic implementation of IHL. This report features the contributions from many national IHL committees and similar entities across the globe on concrete outcomes that they have achieved in this respect. Among other things, these contributions address the role played by national IHL committees in encouraging and securing the ratification of or accession to IHL-related treaties by states, the drafting and adoption of national laws and policies compliant with IHL obligations, the establishment of detailed plans of action to enhance the training of domestic actors in charge of applying and interpreting the law, and the drafting of voluntary reports out-lining the progress of IHL implementation at the domestic level and identifying areas requiring further work.

https://library.icrc.org/library/docs/DOC/icrc-4609-002.pdf

'Bury me not, I pray thee, in Egypt : but I will lie with my fathers' : the right of soldiers to be buried in their homeland

Hilly Moodrick-Even Khen. In: Journal of international humanitarian legal studies, vol. 13, no. 1, 2022, p. 49-77

This article argues that certain legal duties of states involved in armed conflicts confer legal and moral rights on both the combatants and their families. The combatant is entitled to the right to be identified and buried, and the families are entitled, not only to receive information about the treatment of their dead relatives, but also to make decisions in this regard. These decisions relate to the rituals of burial and cremation and even the place of burial, which in some cases implies a right to demand repatriation of remains. The arguments are based on both ethical and legal grounds. Yet, apart from the right to be buried in a dignified way, rights regarding the nature and place of burial are not absolute. They can be limited according to a variety of considerations, including State policies and interests. The article also refers to the special case of dead combatants' remains held by non-state actors that do not respect international law prescriptions regarding the dead. Under these circumstances, families have a stronger case to demand repatriation of remains as this would be the only way to secure the core right of the combatant to be respectfully buried.

https://doi.org/10.1163/18781527-bja10041

Can armed non-state actors exercise jurisdiction and thus become human rights duty-bearers ?

Amrei Müller. In: Human rights law review, vol. 20, Issue 2, June 2020, p. 269–305

Recent literature and United Nations documents advocate that most armed non-state actors (ANSAs) should be bound by human rights law. This article takes a more critical stance on this issue. It argues that only a limited number of ANSAs should potentially become human rights duty-bearers: those that exercise de facto (human rights) jurisdiction and thus have considerable institutional and military capacities, as well as particular normative characteristics. It specifies these capacities and characteristics with an analysis of ANSAs' practice that tentatively indicates that some of these entities may indeed exercise de facto jurisdiction. The argument is justified by highlighting the broader consequences that recognising ANSAs as human rights duty-bearers will entail. It will also endow them with privileges that will legitimise their authority over time. This is grounded in the normative logic of human rights law that emphasises the interrelationship between human rights, equality and democracy that also permeates the notion of jurisdiction and is further supported by a political understanding of the right to self-determination. The article closes with a brief sketch of two complementary ways to develop international law binding ANSAs to be further explored in future research: the so-called 'responsibilities for human rights' and an adapted law of occupation.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57273.pdf *

The case of M/S Józef Conrad and law of air warfare during the Vietnam war

Mateusz Piątkowski. In: Journal of international humanitarian legal studies, vol. 13, no. 1, 2022, p. 110-151

On the 20th of December 1972, the Polish-flagged merchant vessel M/S Józef Conrad, anchored in the North Vietnam port of Haiphong, was hit by an air-delivered projectile in the Linebacker II air campaign, also referred to as the 'Christmas bombing'. The attack caused both loss of life and health among Polish sailors, and destroyed the ship itself. In 2020, the Polish Commissioner for Human Rights submitted a formal petition to the executive branch of the Polish government, highlighting that despite the fact that the act was a violation of the ICCPR and UDHR, neither legal actions nor diplomatic efforts were later undertaken on behalf of the victims. The statement of the High Commisioner did not examine the bombardment from the perspective of the law of air warfare, which is a pivotal precondition to determine the wrongfulness of the act in the light of international law.

https://doi.org/10.1163/18781527-bja10048 *

CBRN weapons and the protection of the environment during armed conflicts

Stefano Saluzzo. - In: International law and chemical, biological, radio-nuclear (CBRN) events. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 380-395

Throughout history, environmental damage has been an inherent element of any armed conflict, not necessarily linked to the use of specific weapons. The present chapter will deal exclusively with environmental damage arising out of the use of CBRN weapons and it does not aim at addressing all the problems related to environmental protection in armed conflicts. The aim of the present chapter is to understand the extent to which the rules on environmental protection in armed conflicts could provide a further layer of restrictions on the use of CBRN weapons. Moreover, the chapter addresses the relevance of international environmental law (IEL) principles that could provide a more detailed regulation of the different phases of a CBRN event occuring during an armed conflict.

https://doi.org/10.1163/9789004507999_023

Certain factors influencing compliance with international humanitarian law

Réka Varga. In: Hungarian yearbook of international law and European law, vol. 7, 2019, p. 187-202

There are various mechanisms within and outside the sphere of international humanitarian law (IHL) which contribute to a better application, respect and enforcement of its rules. The present study takes stock of specific factors or mechanisms that may have an effect on better respect. This

analysis attempts to demonstrate that even though states could not agree on the setting up of a permanent mechanism to meet regularly and discuss IHL related issues (the so-called Compliance process), there are certain instruments which could lead to similar result. The UN's role with respect to IHL is examined. The International Criminal Court (ICC) is also briefly analyzed from this perspective, bearing in mind the international politics within which it has to function. The International Humanitarian Fact-Finding Commission (IHFFC) that has successfully completed its first mandate is a string of hope if more frequently used. Soft law documents are filling a void caused by the fatigue of states in adopting new rules, at the same time they start to have a similarly binding effect as legally binding obligations. All these factors become especially interesting if we understand that most conflicts today are fought with the involvement of non-state armed groups who are not involved in law-making. This reality gives training, both within state and non-state armed forces a special significance. States should also make efforts to undertake enquiries in cases of serious violations of IHL, as well as through exercising jurisdiction to repress violations, be they their own nationals or not.

https://heinonline.org/HOL/P?h=hein.journals/huyiel2019&i=201 *

Challenges to implementation of humanitarian access norms in the Sahel

Romaric Ferraro. In: International review of the Red Cross, vol. 103, no. 918, 2021, p. 859-882

While the rules of international humanitarian law (IHL) on humanitarian access are clear, implementing them at the national level can become challenging. To ensure full respect for those rules, States must strike a balance between preserving the security of the civilian population and humanitarian organizations and ensuring that people have access to goods and services that enable the full enjoyment of their rights. This article seeks to show how the IHL rules governing humanitarian access apply in the context of the Sahel region of Africa. First, it describes the multiplicity of armed actors that are present in the Sahel and the humanitarian situation in this region. Next, it addresses the legal framework applicable to humanitarian access under IHL applicable in non-international armed conflicts. The article then examines the measures that have been taken by the States of the Sahel to protect the civilian population and humanitarian organizations, such as the resort to declaration of states of emergency and to armed escorts. It is shown that these measures can hinder the delivery of impartial humanitarian assistance. Finally, the article describes some creative solutions that have been put forward by Sahelian States to facilitate humanitarian access. Examples of these include the creation of coordination mechanisms to foster dialogue on humanitarian access where all concerned actors are invited to participate; the adoption of domestic legal frameworks related to humanitarian access through which this access is proclaimed and its violation sanctioned; and the recognition of humanitarian exemptions in counterterrorism laws.

https://library.icrc.org/library/docs/DOC/irrc-918-ferraro.pdf

En français: https://library.icrc.org/library/docs/DOC/irrc-918-ferraro-fre.pdf

Challenging some baseline assumptions about the evolution of international commissions of inquiry

Michael A. Becker. In: Vanderbilt journal of transnational law, vol. 55, no. 3, 2022, p. 559-628

Conventional accounts of the historical development of international commissions of inquiry reflect a progress narrative consisting of three propositions: (1) that recourse to inquiry bodies has increased dramatically in the post–Cold War era, (2) that inquiry bodies have evolved from mechanisms for "pure" fact- finding into quasi-judicial bodies that engage with international law, and (3) that the function of inquiry bodies has shifted from diplomatic dispute settlement to norm enforcement and accountability. Part I explains how this narrative simplifies and distorts the rich history of inquiry bodies in international affairs. Part II shows how the idea of a post–Cold War "turn to inquiry" downplays the extent and scope of earlier practice. Part III examines how inquiry bodies have long engaged with questions of international law, even if the form of that engagement has varied. Part IV then considers historical inquiry bodies that, like their modern-day counterparts, engaged in norm enforcement, pursued accountability, and addressed human rights violations and atrocity crimes. Ultimately, a more nuanced understanding of past practice

has value for ongoing debates about the usefulness of inquiry bodies and the extent to which their contemporary role reflects a measure of progress.

https://www.transnat.org/post/challenging-some-baseline-assumptions-about-the-evolution-of-international-commissions-of-inquiry

Civil society coalitions and the humanitarian campaigns to ban landmines and cluster munitions

Stephanie Koorey and Loren Persi Vicentic. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 273-290

The ending of the Cold War ushered in an era of conventional arms control measures that were previously stymied by great power competition. Further, by the end of the 1990s, a civil society coalition working with middle power states had changed the way international law was made, and had achieved an outright ban not only on a conventional weapon but a weapon in popular use by ground forces and stockpiled by most countries in the world – the antipersonnel landmine. A decade later, a similar ban on cluster munitions was achieved by a related coalition. The popularity of these bans, for ostensibly humanitarian reasons, and in what came to be termed "humanitarian arms control" led to normative changes in State behavior, and changes to customary international law. Additionally, civil society groups found ways to bring other users of these weapons, armed non-state actors, to be accountable under international law. That challenged the long-held notions not only that the State holds the monopoly on the threat or use of force but also who or what can be held accountable to international norms and laws. Further, human rights, particularly the rights of survivors of landmine and cluster munition explosions, became central to the provisions in these treaties.

Civilization as humanity : the 'men of 1873', John Westlake and the Grotius Society

Cornelia Navari. - In: The international society tradition : from Hugo Grotius to Hedley Bull. - Basingstoke ; New York : Palgrave Macmillan. - p. 93-104

This chapter treats the humanizing of the society of states through humanizing the laws of war. It considers the role of non-governmental agents in humanizing war and the role of lawyers as adjuncts of the state in carrying out that role. It points to the role of 'clubs' of lawyers in both promoting humanization and drafting its articles. It points to the extension of the idea of human rights in war to the idea of human rights as underpinning international relations in general.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/56543.pdf *

Co-application and harmonization of IHL and IHRL : are rumours about the death of lex specialis premature ?

Yuval Shany. - In: Research handbook on human rights and humanitarian law : further reflections and perpectives. - Cheltenham : E. Elgar, 2022. - p. 9-28

The chapter presents some of the reasons for the emergence of the law of co-application of IHL and IHRL and discusses the principal difficulties encountered in their harmonization. Beyond questions relating to the method of applying the lex specialis rule, and the propensity of IHL bodies to resort to IHL and IHRL bodies to IHRL, each branch of law also carries with it certain ethoi, normative assumptions and institutional considerations. As a result, harmonization requires engagement with difficult, yet imperceptible value choices. Part Two reviews the road to the introduction of the lex specialis rule by the ICJ. Part Three discusses the significance of the Nuclear Weapons opinion and Part Four describes the slide from lex specialis to cumulative application of IHL and IHRL. Parts Five discusses recent trends in co-application and harmonization, including a cautious return to the lex specialis rule and developing hybrid norms. Part Six concludes.

https://doi.org/10.4337/9781789900972.00009 *

Collective engagement and selective endorsement : India's ambivalent attitude towards laws of armed conflict

Srinivas Burra. - In: Locating India in the contemporary international legal order. - New Delhi : Springer, 2018. - p. 51-65

It is argued that ancient Indian warfare had certain practices which were of significance to the conduct of hostilities in terms of their humanitarian values. India also had the instances of individuals taking humanitarian lead in providing relief in situations of armed conflict. An example of this being Bhai Kanhaiya who can be considered as an Indian counterpart to Henry Dunant. India had taken part in the drafting of the four Geneva Conventions of 1949. It is a party to the four Geneva Conventions and also brought in the implementing legislation to give effect to them. India actively participated along with many other newly independent States in the negotiations of the two Additional Protocols which were adopted in 1977 to strengthen the protection mechanism provided in the four Geneva Conventions of 1949. During the negotiations, India, along with other post-colonial States, supported the expansion of the definition of international armed conflicts to include national liberation movements. This was a clear reflection of the experience of many newly independent States who were under the yoke of colonialism till then. However, it expressed its reluctance to accept the category of non-international armed conflicts. It has not yet become a party to the two Additional Protocols. However, India participates in several other treaties which are of relevance to the situations of non-international armed conflicts. India's ambiguous position in respect of non-international armed conflicts seems to reflect its non-ratification of some of the treaties. Though it cannot be considered as a consistent position as there are also some examples to the contrary. This chapter would evaluate India's engagement with the laws of armed conflict and its ambivalent attitude towards some of the issues like the non-international armed conflict. It also would attempt to evaluate India's engagement with humanitarian organizations like the International Committee of the Red Cross.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57276.pdf *

Command responsibility, Australian war crimes in Afghanistan, and the Brereton report

Douglas Guilfoyle, Joanna Kyriakakis, and Melanie O'Brien. In: International law studies, vol. 99, 2022, p. 220-283

This article examines the question of command responsibility for war crimes under international and Australian law, and how far such responsibility extends. It uses the results of the Brereton Report, an Australian investigation into alleged crimes committed by its special forces in Afghanistan, as its starting point. While this is very much an Australian case study, the concerns it raises should be of interest to all professional militaries. The article also provides an important case study of the implications when national legal standards adopted for war crimes prosecutions differ from the provisions of international law.

https://digital-commons.usnwc.edu/ils/vol99/iss1/8/

Compatibility between modern international humanitarian law and principles of islamic law of conduct of war : a comparative analysis

Humna Sohail. In: Islamabad law review, vol. 5, no. 1 & 2, Spring/Summer 2021, p. 83-114

The present study undertakes the comparative analysis of the general principles regulating the behavior of combatants in international humanitarian law and Islamic law. The article explores the fact that the regulation of the behavior of combatants during an armed conflict has a very old Islamic history as compared to the modern-day IHL practices. Its acknowledgment of the notion of military necessity is emphatically conjoined with the observance of elementary considerations of humanity that are the sine qua non for mitigating the unnecessary harm to combatants on one hand and any harm at all to civilians on the other. This balancing effort between the military necessity and humanity finds basis in the objectives of Shari˙ah as well. Thus, the wholeness of Islamic law best serves as a model for refining and complementing the modern-day humanitarian regime. Conflicts are indispensable yet they must be conducted humanely. Thus, the present study concludes with the recommendations whereby both the humanitarian regimes can simultaneously be employed and reinforced for maximising the protection they offer.

https://ssrn.com/abstract=3926545

The compatibility of autonomous weapons with the principles of international humanitarian law

Elliot Winter. In: Journal of conflict and security law, vol. 27, no. 1, 2022, p. 1-20

The emergence of autonomous weapons remains a hot topic in international humanitarian law. Much has been said by States, international organisations, non-governmental organisations and academics on the matter in recent years. However, no agreement has been reached on how best to regulate this nascent technology. In the absence of any such agreement, the best approach is to analyse autonomous weapons through the lens of the principles of international humanitarian law. After humanity and military necessity are debunked as false principles, this article tests the compatibility of autonomous weapons with distinction, proportionality and precaution. It argues that autonomous weapons are not currently able to comply with these principles, owing primarily to a lack of sufficiently advanced artificial intelligence and contextual awareness. However, it also argues that the path to international humanitarian law-compliant autonomous weapons is shorter, and more clearly defined, than many realise. Indeed, the article highlights various ways in which future technological advances could enable autonomous weapons to comply with the principles of international humanitarian law more rigorously than human beings. The article does not seek to address the compatibility of autonomous weapons with other aspects of international law or the morality of such weapons.

https://doi.org/10.1093/jcsl/krac001

Comprehensive prohibition of torture : challenges and loosening of a taboo

Bahzad Joarder. - In: Human rights and international criminal law. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 164-192

Torture and Cruel, Inhuman or Degrading Treatment (CIDT) are a type of reprehensible crimes that attract universal condemnation. States parties to various international instruments are obligated to ensure a complete prohibition of the practices. States confronted with competing objectives often attempt to absolve actores that resort to such practices. This chapter begins with a brief discussion of the international instruments designed to prohibit torture and CIDT. Then it details some state practices with a principal focus on the USA because of its attempt to re-define torture and CIDT restrictively. Such practices have grave consequences in loosening the prohibitive rules against torture and CIDT. Finally, the chapter examines the legitimate use of structural restraints available in international law which allows 'watering down' of state obligations under various international instruments.

Confronting human rights violations in Ukraine : some legal and practical challenges

Conall Mallory. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 367-382

From the annexation of territory to the use of volunteer battalions and from large-scale detentions to the deployment of hybrid warfare methods, the Ukrainian conflict is a melting pot of contemporary issues relating to modern war. Along with being representative of a multifaceted conflict, these dynamics make the fulfillment of human rights obligations inherently more challenging. This chapter considers a series of the most pressing legal and practical difficulties to emerge from the crisis in this respect. For legal challenges, it analyzes the obstacles in identifying where human rights obligations apply, to whom and what their content may be. In respect of practical challenges, it highlights difficulties in monitoring human rights violations during the course of ongoing hostilities in contested territories. It concludes with a reflection on how the legacy of the conflict is likely to be shaped by the responses international bodies provide to these challenges.

The context and prospects of regulating drones in conflict

Michael P. Kreuzer. - In: Drones and global order : implications of remote warfare for international society. - Abingdon : Routledge, 2022. - p. 209-226

Focusing primarily on the narrative of "regulate the drones" as we so often hear from non-governmental organizations will likely result in failure given the interests of the great powers to capitalize on the promised dividends of advanced military technologies. This approach, however

successful it may have been in the past to regulate biological and chemical weapons, as well as anti-personnel land mines, may very well undermine otherwise valuable regulatory regimes that serve to limit the spread of troubling military capabilities. This chapter develops this argument by first outlining existing multilateral regimes and legal frameworks that international society has retrofitted to regulate air warfare and drones. Next, it addresses the challenges associated with attempting to integrate drones into existing regulatory frameworks that were not designed to manage the proliferation of unmanned systems in the first place. It concludes by proposing a potentially more effective approach: member states of international society should form an entirely new regulatory regime, as opposed to modifying existing governance structures, as well as strengthen international laws and the norms of air warfare itself, to better regulate states' adoption of drone warfare.

Cooperating through the General Assembly to end serious breaches of peremptory norms

Rebecca J. Barber. In: International and comparative law quarterly, vol. 71, no. 1, January 2022, p. 1-35

The International Law Commission's 2019 Draft Conclusions on Peremptory Norms of International Law assert that States have an obligation to cooperate to end serious breaches of peremptory norms. International law provides scarce guidance, however, regarding how States are expected to fulfil that obligation. This article seeks to elaborate: first, whether the prohibition of crimes against humanity and the 'basic rules' of international humanitarian law are peremptory norms; second, what States are required to do to fulfil their obligation to cooperate; and third, how States might utilise the General Assembly as a forum through which to fulfil that obligation.

https://doi.org/10.1017/S002058932100049X

Creating legal frameworks to afford human accountability for AI decisions in war

Natalie J E Nunn. - In: Futures of international criminal justice. - Abingdon : Routledge, 2022. - p. 198-218

Human control over weapons is being phased out. In its place, we are seeing the development of artificial intelligence (AI), which will take over many of a weapon's functions. Seek, engage, and destroy functions are being programmed into lethal fully autonomous weapon systems (LAWS) to remove the human from the arena of armed conflict. AI allowing superior detection, faster analysis and response times, and lack of physically limiting factors such as exhaustion, hunger, and stress makes LAWS a desirable option for military operations, despite raising ethical concerns. These developments create several legal issues, with the most pressing being how to assign accountability. This chapter will focus on the issue of human accountability under international criminal law (ICL) for breaches of law enacted by LAWS. It will look at how existing frameworks are not sufficient to regulate accountability for their use and will suggest a new framework for responsibility that extends existing law to safely regulate AI in battle.

The crime of child recruitment and State responsibility : towards the integral protection of the child

Silvina Sánchez Mera. - In: Human rights and international criminal law. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 140-163

The inclusion of the crime of child recruitment as a war crime has been praised and recognised as a 'fundamental element of the protection of children', Nevertheless, prosecuting the crime of child recruitment, while a great and welcome step, does not cover the full array of what children go through, nor does it cover all children. In fact, it creates a protection gap. This chapter approaches the topic of child soldiers differently; not from the individual perpetrator's responsibility, but from the perspective of children's rights. This then puts the focus on the State and its consequent responsibility to ensure such rights. The chapter argues that the crime of child recruitment as defined in the Rome Statute of the International Criminal Court falls short in ensuring child soldier's rights. Furthermore, the sole prosecution of the crime of child recruitment hinders the integral protection of children and triggers the State's responsibility under international human rights law. It will be concluded that, to provide for an integral protection of child soldier's rights the exercise of domestic jurisdiction to prosecute international crimes tend to be more favourable

to the protection of children, while at the same time safeguarding the State's responsibility for breaches of Human Rights norms.

Crimes against humanity and transitional justice in Ethiopia (1935-2020)

Thijs B. Bouwknegt and Tadesse Simie, Metekia. - In: The Oxford handbook on atrocity crimes. - Oxford [etc.] : Oxford University Press, 2022. - p. 853-875

Ethiopia has experienced a gamut of mass atrocity violence over the last century. Colonial, political, and ethnic violence have been cyclical phenomena and have often escalated into mass atrocity crimes against civilians. By exhibiting a historical synopsis of mass atrocity violence in Ethiopia since 1935, this chapter demonstrates how the expression crimes against humanity can be operationalized to perceive, understand, and explain mass atrocity violence in diverse temporal, political, and socioeconomic contexts. Additionally, the chapter narrates an Ethiopian genealogy of transitional justice. The chapter concludes that crimes against humanity—as a judicial, scholarly, and historical framework—captures best the dynamics and nature of mass atrocity violence in Ethiopia. Simultaneously, we observe that Ethiopia has been spearheading trends in international law and transitional justice, but has done so on its own terms.

Crimes against women in armed conflicts : judicial activism and feminist legal interpretation as key factors in the reconstruction of concepts of international humanitarian law

Karolina Ristova-Aasterud. - In: Language and legal interpretation in international law. - Oxford [etc.] : Oxford University Press, 2022. - p. 315-346

This chapter examines the novelties in international humanitarian law of the 1990s regarding crimes against women in armed conflicts and argues that they can be explained by two key factors. The first factor is the judicial activism of the ad hoc criminal tribunals for the former Yugoslavia and Rwanda, rather uncommon for the criminal law area. The second factor is the very organized background work of the feminist ‘interpretative community’ against the gender bias in international law. The main conclusion is that although some challenges remain to be addressed, feminist legal discourse has finally started to win the semantic and conceptual ‘war’ against the most serious wording and ontological gaps in international humanitarian law that have existed since the aftermath of World War II, with the creation of the Nuremberg and Tokyo tribunals, and the subsequent Geneva Regime of 1949.

The criminalization of cyber-operations under the Rome Statute

Jennifer Trahan. In: Journal of international criminal justice, vol. 19, no. 5, November 2021, p. 1133-1164

This article examines how a cyber-operation that has consequences similar to a kinetic or physical attack — causing serious loss of life or physical damage — could be encompassed within the crimes prosecuted before the International Criminal Court (ICC). It explains when and how such a cyber-operation could fall within the ambit of the ICC’s crimes — genocide, crimes against humanity, war crimes, and the crime of aggression. The article additionally acknowledges some limitations as to which cyber-operations would be encompassed, given the ICC’s gravity threshold as well as the potential difficulty of attributing conduct to a particular suspect through admissible evidence that could meet the requirement of proof beyond a reasonable doubt. Notwithstanding such limitations, increased awareness of the previously largely overlooked potential of the Rome Statute to cover certain cyber-operations could potentially contribute to deterring such crimes.

https://doi.org/10.1093/jicj/mqab066

Criminalizing starvation in an age of mass deprivation in war : intent, method, form, and consequence

Tom Dannenbaum. In: Vanderbilt journal of transnational law, vol. 55, no. 3, 2022, p. 681-755

Mass starvation in war is resurgent. Across a range of conflicts, belligerents have attacked farmers and humanitarian workers; destroyed, looted, or rendered unusable food and food sources; and cut off besieged populations from the external supply of essential goods. Millions have been left in famine or on the brink thereof. Increasingly, this has elicited calls for accountability. However,

traditional criminal categories are not promising in this respect. The situation and nature of objects indispensable to survival is such that they typically provide sustenance to both civilians and combatants; the conduct that deprives people of those objects often involves acting on the objects, rather than acting directly on the affected persons; and the causal chain from deprivation to civilian suffering is long and complex. Appropriately, then, attention has turned instead towards the recently codified and largely untested war crime of starvation of civilians as a method of warfare. Whether and how this framework can underpin a legal response to mass deprivation hinges on how key debates as to the crime's meaning are resolved. Entering those debates, this article debunks the common view that the starvation crime attaches only to conduct that seeks to weaponize civilian suffering. Instead, it presents an alternative theory according to which the crime should be understood transitively as focused primarily on the act of deprivation, rather than the outcome it produces. This approach would reshape how to think about the crime, with particularly acute implications for the regulation of sieges and blockades.

https://www.transnat.org/post/criminalizing-starvation-in-an-age-of-mass-deprivation-in-war-intent-method-form-and-consequence

Cultural evolution : protecting "digital cultural property" in armed conflict

Ronald Alcala. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1083-1119

As an emerging and largely unfamiliar form of cultural heritage, digital cultural property remains something of an enigma. Under the law of armed conflict, States are bound to protect cultural property from harm, yet the rules applicable to traditional cultural property do not transfer neatly to digital works. It is unclear, for example, how the twin obligations to safeguard and respect cultural property, as outlined in the 1954 Hague Cultural Property Convention, should apply to digital creations – or even what digital material appropriately qualifies as cultural property. Can only new digital creations, otherwise known as "born-digital" material, be cultural property? What about high-quality copies of existing works, such as an extremely high-resolution image of the Mona Lisa? Does it matter whether a digital work has been reproduced in large quantities? Given the ubiquity of digital media and the growing popularity of digital art and other works, protecting digital cultural property in the event of armed conflict will require States to consider and resolve as-yet undecided questions concerning the nature of digital creations and the reasons why certain works should be preserved.

https://library.icrc.org/library/docs/DOC/irrc-919-alcala.pdf

Cyber operations against civilian data : revisiting war crimes against protected objects and property in the Rome Statute

Simon McKenzie. In: Journal of international criminal justice, vol. 19, no. 5, November 2021, p. 1165-1192

Cyber operations are becoming an increasing part of armed conflict. This article assesses whether cyber operations against data during an armed conflict could amount to a war crime in the Statute of the International Criminal Court. It unpacks the plausibility of computer data being included in the categories of 'object' and 'property' in the Statute, showing there is no doctrinal and jurisprudential unanimity in either case. However, the Court can and should take a wide view of when tangible objects are affected in a legally relevant way by attacks on or through data. Considering this question forces us to reflect about the proper interpretation of the Statute in light of the principle of legality, and about whether and how the Statute will be able to 'keep up' with new forms of warfare.

https://doi.org/10.1093/jicj/mqab067

Cyber peacekeeping operations and the regulation of the use of lethal force

Nicholas Tsagourias and Giacomo Biggio. In: International law studies, vol. 99, 2022, p. 37-71

Peacekeeping is an essential tool at the disposal of the United Nations for the maintenance of international peace and security. The growing relevance of cyber technologies presents itself as an opportunity to adapt peacekeeping to the challenges of a rapidly evolving security landscape. This article introduces the notion of "cyber-peacekeeping," defined as the incorporation and use of cyber capabilities by peacekeepers. It discusses the legal basis for cyber-peacekeeping and the

foundational principles of consent, impartiality, and use of defensive force. The article examines the use of lethal force by cyber-peacekeepers under the law of armed conflict paradigm. It considers the circumstances under which cyber peacekeepers become a party to an international or non-international armed conflict, whether they become combatants, and under what circumstances cyber peacekeepers can commit direct participation in hostilities. The article also considers the use of lethal force under the law enforcement paradigm. In this respect, it discusses the applicability of International Human Rights Law to cyber-peacekeeping as well as its extraterritorial application by focusing on the right to life. It then goes on to examine the application of the requirements of necessity, proportionality, and precautions to the use of lethal force by cyber peacekeepers. The article is one of the first systematic expositions of how international law regulates the use of lethal force in the course of cyber-peacekeeping but its findings can also apply to traditional peacekeeping.

https://digital-commons.usnwc.edu/ils/vol99/iss1/3/

Decoding China's perspectives on cyber warfare

Chaoyi Jiang. In: Chinese journal of international law, vol. 20, issue 2, June 2021, p. 257-312. - XVII, 358 p.

This article examines China's concerns over the adequacy of existing jus ad bellum and jus in bello to address cyber warfare, particularly the rules on cyberattacks governed by the jus in bello, dual-use infrastructure and war-sustaining facilities, the proportionality of cyberattacks against key infrastructures and the targetability of certain categories of civilians. This article argues that China's resistance to applying some rules of the jus in bello to cyberspace is in line with the "wait and see" approach of most States. But there are two distinctive objectives behind this generalized stance: one is to protect its domestic regulatory power over cyberspace from being bound by disfavoured emerging and existing law, and the other is to build up consensus for a treaty regulating uses of cyber force under the United Nations framework.

https://doi.org/10.1093/chinesejil/jmab022 *

Defining weapon systems with autonomy : the critical functions in theory and practice

Nurbanu Hayir. In: Groningen journal of international law, vol. 9, no. 2, 2022, p. 239-265

The rise of the use of Autonomous Weapon Systems (AWS) in the battlefield has engendered numerous ongoing legal debates, including that on their legal definition. There have been various approaches with respect to defining them in relation to their interaction with humans, the complexity of the technology behind them, and the features of their functions. The latter has been particularly endorsed by the International Committee of the Red Cross (ICRC), which defines AWS as weapon systems with autonomy in their critical functions of target selection and attack. None of these approaches received unanimous approval by States. Though scholars have addressed the advantages and the disadvantages of the first two approaches, not many amendments have been introduced on the functional approach of the ICRC. The wording of the ICRC definition is vague and requires a framework on what should be defined as critical as well as on the functions of weapon systems. The critical nature of the function must be determined in relation to its relevance in terms of international humanitarian law (IHL) regulating AWS, which is the most important element in their definition. This analysis will benefit to resolve the impasse in the debate on the legal definition of AWS and further the efforts to regulate them.

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El derecho internacional humanitario y su significado para las operaciones militares presentes y futuras

Carlos Alberto Ardila Castro, Erika Remírez Benítez y Jaime Cubides-Cárdenas. In: Revista científica general José María Córdova, vol. 18, no. 32, 2020, p. 857-882

Este artículo investiga la relación del derecho internacional humanitario con el desarrollo de operaciones militares, para analizar cuál es el estado actual de esa relación como también proyectar los escenarios futuros en los que esas operaciones se desarrollarán y sus nuevos retos. Para ello, el artículo asume una metodología cualitativa y se desarrolla en tres secciones: 1) se define qué es una operación militar; 2) se define el derecho internacional humanitario y su

función en el marco de las operaciones militares, y 3) finalmente, en prospectiva, se plantean futuros escenarios de las operaciones militares y la relación de estos con el derecho internacional humanitario en cuatro dimensiones: terrestre, marítima, aérea y cibernética. Esta prospectiva se enfoca en el caso colombiano, con énfasis en el estudio del Ejército Nacional.

https://doi.org/10.21830/19006586.697

Los derechos de las mujeres víctimas del conflicto armado colombiano

Miriam Sofía Atencio Gómez. In: Revista científica general José María Córdova, vol. 18, no. 30, 2020, p. 401-415

Este artículo tiene como objetivo, mediante una metodología descriptiva y cualitativa, identificar los derechos que tienen las mujeres víctimas de graves violaciones a los derechos humanos e infracciones al DIH perpetrados por actores armados irregulares con ocasión del conflicto armado interno colombiano. En tal sentido, se identifican en primer lugar los instrumentos internacionales y regionales que amparan a las mujeres; luego se consideran las normas nacionales de protección y garantía con respecto a los derechos. Posteriormente se analiza la situación de las mujeres colombianas víctimas, para luego describir los derechos de las víctimas, especialmente el derecho a la verdad, el derecho a la justicia y el derecho a la reparación, frente a los cuales el Estado colombiano aún tiene el deber de avanzar.

https://doi.org/10.21830/19006586.584

Deutsche Außen- und Verteidigungspolitik vor dem BVerwG : Extraterritoriale grundrechtliche Schutzpflichten bei US-amerikanischen Drohneneinsätzen

Thilo Marauhn, Daniel Mengeler, Vera Strobel. In: Archiv des Völkerrechts, Bd. 59, H. 3, 2021, S. 328-351

[Article in German] On 25 November 2020, the German Federal Administrative Court ruled on an individual claim for protection against US drone strikes in Yemen, submitted by three Yemeni citizens against the Federal Republic of Germany. In its ruling, the Court accepts that, in principle, there may be an extraterritorial constitutional duty of protection imposed upon the Federal Republic of Germany arising from the right to life. According to the Court, such a duty may arise for the benefit of foreign citizens living abroad and in the case of violations of fundamental rights by foreign states. The Court develops several criteria for such a duty of protection to exist. However, it rejects a violation of such obligation in the case at hand. Thus, in contrast to a preceding lower instance court ruling, the claimants cannot demand any further measures to be taken by the Federal Government to ensure that Ramstein Air Base is used in accordance with public international law, in particular international humanitarian law. This contribution analyses the Court’s reasoning and questions the requirements set out by the Court concerning an extraterritorial constitutional duty to protect the right to life. The focus is on constitutional law and public international law issues, including international humanitarian law. It is argued that the Court marginalizes the interface between fundamental rights and public international law rather than effectuating this interconnection.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57270.pdf *

Developing and clarifying international humanitarian law : the role and legacy of the ICRC

Knut Dörmann and Andrea Raab. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 240-264

The international community has vested the ICRC with the mandate to work for the faithful application and promotion of IHL, and to prepare its development. This chapter explores the diverse ways in which the ICRC has carried out this role, and contributed to the development and clarification IHL. By dissecting its historical involvement and modern-day advocacy, it examines the organisation's approach toward advocating for the strengthening, clarification and effectiveness of the law, and elucidates the manifold IHL and related instruments that bear the ICRC's imprint. In discussing the manner in which the ICRC has navigated the obstacles it has been facing in carrying out its IHL mandate, the chapter further illustrates the organisation's unwavering determination to enhance the protection for persons affected by armed conflict. On

this basis, the chapter sheds light on the ICRC's vast legacy in shaping the contemporary IHL landscape - which it continues to build today.

https://doi.org/10.4337/9781789900972.00023 *

The diminishing status of international law in the decisions of the Israeli Supreme Court concerning the Occupied Territories

Tamar Hostovsky Brandes. In: International journal of constitutional law, vol. 18, issue 3, October 2020, p. 767-787

This article examines the attitude of the Supreme Court of Israel towards international law in the past decade, focusing on cases concerning the Occupied Territories. It compares the decisions of the past decade to those of the preceding decade, which were characterized as developing a "jurisprudence inspired by international law." The article argues that the status of international law in decisions that regard the Occupied Territories has, overall, declined. While the international law of occupation still operates, officially, as the governing law in the Occupied Territories, the emphasis on compliance with the norms of international law in the Court's decisions has decreased. Instead of relying on international law, the Court has increased its reliance on Israeli administrative law, and, in recent years, on Israeli constitutional law. As a result, the distinction between the Occupied Territories and Israel is blurred. The article argues that this shift is consistent with a deliberate eradication of the distinction between Israel and the Occupied Territories by the legislator and the government. While the article does not argue that the Court intentionally supports this eradication, it does argue that it facilitates it

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57253.pdf *

Direct participation in hostilities in the age of cyber : exploring the fault lines

David Wallace, Shane Reeves, and Trent Powell. In: Harvard national security journal, vol. 11, issue 1, 2021, p. 164-197

Throughout history, civilians have contributed to nearly every armed conflict in a variety of roles that confer different protection under international law. They have supplied logistic, economic, administrative, and political support to belligerent parties. When such civilian contributions are indirect and away from battlefields, there is rarely much concern about those participating civilians jeopardizing their protected status under the Law of Armed Conflict (LOAC), which is one of the LOAC's central aims. The civilian population and individual civilians enjoy general protections against dangers arising from military operations. Civilians are protected unless and for such a time as they take a direct part in hostilities. An act of direct participation in hostilities by civilians renders them liable to be attacked, and it subjects the participating civilians to prosecution and punishment to the extent that their activity, their membership, or the harm they caused is criminal under domestic law. The notion of "taking a direct part in hostilities" is one of the most fundamental yet vexing concepts under the LOAC. Its application raises many challenging issues. For example, who precisely is considered a civilian under the LOAC? What conduct amounts to taking a direct part in hostilities? And, at what point does taking a direct part in hostilities begin and end? Understanding and applying the concept of direct participation in hostilities can be challenging. Belligerents increasingly use civilians in capacities that involve greater or more direct participation in hostilities. As complicated as these and related questions may seem, the concept of taking a direct part in hostilities presents even greater difficulties when applied in the context of cyber operations. This article provides a background and context on the dangerous trend towards increased civilian participation on modern battlefields and an overview of the legal concept direct participation in hostilities. It next considers Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations (Tallinn Manual 2.0) rules and commentary as this resource pointedly addresses the notion of taking a direct part in hostilities in cyber operations. Finally, the article concludes by outlining several important fault lines highlighted by the group of experts behind Tallinn Manual 2.0 in hopes of strengthening "the implementation of the principle of distinction" and, consequently, ensuring greater accountability in warfare.

https://harvardnsj.org/wp-content/uploads/2021/02/HNSJ-Vol-12-Wallace-Reeves-and-Powell-Direct-Participation-in-Hostilities-in-the-Age-of-Cyber.pdf

Disability, human rights violations, and crimes against humanity

by William I. Pons, Janet E. Lord, and Michael Ashley Stein. In: American journal of international law, vol. 116, issue 1, January 2022, p. 58-95

Persons with disabilities have historically been subjected to egregious human rights violations. Yet despite well-documented and widespread harms, one billion persons with disabilities remain largely neglected by the international laws, legal processes, and institutions that seek to redress those violations, including crimes against humanity (CAH). This Article argues for the propriety of prosecuting egregious and systemic human rights violations against persons with disabilities as a CAH, and, in addition, asserts the necessity of ensuring the accessibility of international criminal processes to those individuals. The UN Security Council's recent acknowledgement of the enhanced risk that persons with disabilities experience during armed conflict, the growing evidence of widespread human rights violations against them, and an ongoing effort to forge a UN convention on the prevention and punishment of CAH make these arguments especially timely.

https://doi.org/10.1017/ajil.2021.41 *

Disruptive technology and the law of naval warfare

James Kraska and Raul Pedrozo. - Oxford [etc.] : Oxford University Press, 2022. - X, 314 p.

Disruptive technologies have transformed conflict at sea, creating a dynamic and distributed operational environment that extends from the oceans to encompass warfare on land, in the air, outer space, and cyberspace. Navel warfare throughout this integrated multi-domain, networked seascape raises a choice of law decisions that include the law of naval warfare and the law of armed conflict, neutrality law, and the peacetime regimes that apply to the oceans, airspace, outer space, and cyberspace. The international law in networked naval warfare must contend with autonomous vessels and aircraft, artificial intelligence, and long-range precision strike missiles that can close the "kill chain" at sea and beyond. The asymmetric use of merchant ships and blockchain shipping in naval operations, opening the seabed as a new dimension of undersea warfare, and sophisticated attacks against submarine cables and space satellites pose new operational and legal dilemmas. Navigating this broader conception of the international law of naval warfare requires an understanding of emerging operational capabilities and concepts throughout the spectrum of conflict and the selection and integration of distinct legal regimes.

https://doi.org/10.1093/oso/9780197630181.001.0001 *

Dissemination of international humanitarian law in Greece : a maritime perspective

Alba Grembi. In: Journal of international humanitarian legal studies, vol. 13, no. 1, 2022, p. 25-48

This article analyses specific provisions within the Greek legal order that guide the naval commander’s conduct during an armed conflict at sea. It demonstrates that these provisions do not adequately satisfy the requirement to ensure respect for the law of naval warfare and to contribute to the discontinuance, during such times, of the violations of international rules on the assistance of persons in distress at sea by State organs. In this manner, it points to the necessity of an extensive discussion among legal scholars about the dissemination of international humanitarian law in Greece. This process could lead to the establishment of a comprehensive national military manual that would demonstrate the spirit of abidance to the obligation to respect and ensure respect for the rules of this law in Greece’s maritime realm during peace and warfare, and play an instrumental role in the enhancement of safety for persons and objects at sea during naval conflict.

https://doi.org/10.1163/18781527-bja10042 *

Does international law permit the provision of humanitarian assistance without host State consent ? : territorial integrity, necessity and the determinative function of the General Assembly

Rebecca J. Barber. In: Yearbook of international humanitarian law, vol. 23, 2020, p. 85-121

This chapter considers whether, in cases where there is overwhelming humanitarian need and the host State will not consent to humanitarian assistance, there is any legal alternative to exclusive

reliance on the Security Council. It first interrogates the view that humanitarian assistance provided without consent violates territorial integrity, and then considers whether non-consensual humanitarian assistance may be justified by circumstances of necessity. It then considers whether the UN General Assembly could play a role by making a legal determination regarding a state of necessity, which would have the effect of precluding the wrongfulness of an internationally wrongful act.

Double classification of non-consensual state interventions : magic protection or Pandora's box

Pauline Lesaffre. In: International law studies, vol. 99, 2022, p. 408-452

The classification under international humanitarian law of certain cross-border armed conflicts against an organized armed group remains controversial. More specifically, cross-border armed conflicts resulting from a non-consensual State intervention, such as the United States' intervention in Syria (without Syrian consent) against the Islamic State, still divide legal scholarship regarding their appropriate classification. One theory argues for a single classification of non-international armed conflict between the intervening State and the organized armed group; another theory relies on a double classification of non-consensual State interventions, adding to the non-international armed conflict an international armed conflict between the intervening State and the territorial State. This article demonstrates that this second theory, the double classification theory, is not desirable. First, it creates several problems concerning the traditional understanding of international armed conflict. Second, it causes significant problems with the determination of the applicable law to the intervening State's armed forces. By underlining these problems with the double classification theory, this article favors a single non-international armed conflict classification between the intervening State and the organized armed group.

https://digital-commons.usnwc.edu/ils/vol99/iss1/15/

Drawing the cyber baseline : the applicability of existing international law to the governance of information and communication technologies

Dapo Akande, Antonio Coco and Talita de Souza Dias. In: International law studies, vol. 99, 2022, p. 4-36

"Cyberspace" is often treated as a new domain of State activity in international legal discourse. This has led to the assumption that for international law to apply to cyber operations carried out by States or non-State actors, "cyber-specific" State practice and opinio juris must be demonstrated. This article challenges that assumption on five different bases. First, it argues that rules of general international law are generally applicable to all domains, areas, or types of State activity. In their interpretation and application to purported new domains, limitations to their scope of application cannot be presumed. Second, this article demonstrates that the concept of "domain" is not aimed at excluding certain domains from international law's scope of application. Third, in any event, cyberspace is not a domain or a space, in the way that land, air, sea, or outer space are. Rather, it is a combination of multilayered information and communications technologies operating across different domains. Fourth, and relatedly, international law is technology-neutral, in that it applies to all technology unless stated otherwise. Fifth, the framing of certain international legal rules as policy recommendations cannot displace existing international law. On those bases, we conclude that existing international law applies as a whole and by default to States' use of information and communications technologies.

https://digital-commons.usnwc.edu/ils/vol99/iss1/2/

Drone warfare and international humanitarian law : the US, the ICRC, and the contest over the global legal order

Arturo Jimenez-Bacardi. - In: Drones and global order : implications of remote warfare for international society. - Abingdon : Routledge, 2022. - p. 156-172

This chapter analyzes the competing legal interpretations over targeted killing provided by the International Committee of the Red Cross and the United States. Both approximate the ontology of world and international society that, in broad terms, emphasize transnational advocacy networks and states as the principal agents of global affairs. Both present countervailing visions of what the global legal order is and how drone warfare ought to be governed. America's use of

drone warfare is not merely about exercising military power. Rather, drone warfare is integral to a broader shaping of global order that preserves maximum strategic flexibility for powerful states, but especially the US. The ICRC contends that drone warfare subjects the global legal order, already fraught with troubling inconsistencies, to further humanitarian stress that threatens global order generally. First, this chapters explains what the stakes are in the debates over drone warfare: the very meaning of IHL itself. Second, it adopts a textual analysis method to compare and contrast the competing visions of the ICRC and US on each fundamental principle of IHL, including distinction, military necessity, proportionality and humanity.

Drones at war : the military use of unmanned aerial vehicles and international law

Claudia Candelmo. - In: Use and misuse of new technologies : contemporary challenges in international and European law. - Cham : Springer, 2019. - p. 93-112

The use of Unmanned Aerial Vehicles (UAVs) in the military field has become an issue of increasing concern in the international community. As practice grows (notably, due to the frequent use of such equipment in various countries, either involved or not in armed conflicts), so does case law on its contentious aspects. In this respect, the concept of "border" is of paramount importance, both in its physical meaning (territorial border of the State) and in its legal sense (delimitation of the area where sovereignty is exercised and other States' intrusion is prevented). Against this background, the Chapter examines the responsibility of the State for cross-border activities, in connection with the use of remotely piloted drones in light of three bodies of international law: the law governing the use of force, in relation to the concept of territorial borders and sovereignty of States; international human rights law, as regards the extraterritorial application of human rights treaties; and international humanitarian law, with particular reference to the law of neutrality and the evolving concept of "battlefield" during an armed conflict.

The duties of occupying powers in relation to the prevention and control of contagious diseases through the interplay between international humanitarian law and the right to health

Marco Longobardo. In: Vanderbilt journal of transnational law, vol. 55, no. 3, 2022, p. 757-804

This article explores the rules governing the prevention and control of contagious diseases in occupied territory under international law. Although the Article refers to the ongoing COVID-19 pandemic, its scope is broader and encompasses instances of state practice that have occurred over the last two centuries. After a careful analysis of the relevant treaties and episodes of state practice, the article concludes that occupying powers have duties under international humanitarian law and international human rights law to prevent and control contagious diseases, through cooperating with the local authorities and bringing the necessary medical supplies in the occupied territory. The article stresses that taking these measures, including facilitating the supply of vaccines, is a duty under international law rather than an arbitrary act of international solidarity.

https://www.transnat.org/post/the-duties-of-occupying-powers-in-relation-to-the-prevention-and-control-of-contagious-diseases

Encouragement of learning through war video games as an intelligible textbook on international humanitarian law

Keisuke Minai. In: Cornell international law journal, vol. 52, issue 4, Winter 2020, p. 643-673

This study analyzes the manner in which undergraduate students learn International Humanitarian Law ("IHL") through the war video game Arma 3 by means of the grounded theory approach and considers the effect of learning IHL through video games. As a result of data analysis, "identifying the targets of attacks" emerges as a core concept on the phenomenon of learning IHL through video games in addition to eight sub-concepts encircling this core concept. Sorting out the relevance among these concepts, the present study discovers six patterns to explicate the phenomenon, which are as follows: (A) smooth IHL learning with the use of knowledge already acquired; (B) committing illegal acts as virtual reality; (C) disregarding the instructors' lectures and committing illegal acts; (D) learning IHL norms on the basis of lectures

by the instructors; (E) discovery of IHL norms during gameplay; and (F) trajectory modification from illegal acts. By intercomparing these six patterns, the author isolated four distinct operations that are central to IHL application learning through war games, which include 1) paying attention to lectures by the instructors; 2) working on elements for identifying the targets of attacks; 3) imagining real fighting conditions and feeling empathy for real combatants; and 4) paying attention to admonitions after illegal acts. Accordingly, so as to achieve further improvement of the effect of IHL learning through war video games, it can be contended that adopting contrivances that enable players to pass through these four operations is extremely important.

https://heinonline.org/HOL/P?h=hein.journals/cintl52&i=679 *

Enhancing environmental protection in relation to armed conflict : an assessment of the ILC draft principles

Daniëlla Dam-de Jong, Britta Sjöstedt. In: Loyola of Los Angeles international and comparative law review, vol. 44, no. 2, 2021, p. 129-156

This article examines the outcome of the International Law Commission's (ILC) Study on the Protection of the Environment in relation to Armed Conflict as adopted on first reading. The twenty-eight draft principles, adopted by the ILC in July 2019, aim to enhance environmental protection before, during, and after armed conflict. This article evaluates the strengths and weaknesses of the draft principles and highlights principal innovations of the draft principles. Then this article concludes that the ILC study makes important substantive contributions to enhancing environmental protection, but it also misses opportunities to advance the law in this field. The principal strength of the study is that it brings in many different aspects relating to the environment and armed conflicts under one framework, including legal questions that were hitherto neglected. Its weaknesses relate most notably to the protection of the environment during armed conflict. This article argues that, even though there was limited space for the ILC to develop the applicable law in this field, it nevertheless could have been more ambitious.

https://digitalcommons.lmu.edu/ilr/vol44/iss2/1

Ensuring fully autonomous weapons systems comply with the rule of distinction in attack

Maziar Homayounnejad. - In: Drones and other unmanned weapons systems under international law. - Leiden ; Boston : Brill Nijhoff, 2018. - p. 123-157

A fully autonomous weapons system is essentially one that, "once activated, can select and engage targets without further intervention by a human operator". Such systems are in early stage development in more than 40 states and may well be fielded within the coming decade. Fully autonomous weapons systems are distinct from more traditional means of warfare in that the human operator is kept "out of the loop" in the critical functions of the weapon system, leaving sensory equipment and software algorithms to determine if, when, and to what extent force should be applied against specific targets. This raises questions on the capacity of such systems to comply with the law of armed conflict ; specifically, though not exclusively, with the rules governing the conduct of hostilities. The key rules, discussed in the previous chapter, are of distinction and proportionality in attack. This chapter focuses on the most fundamental of these rules: distinction in attack. It examines the extent to which autonomous weapons can be deployed and used in a way that distinguishes lawful from unlawful targets and enables the weapon system to engage only the former. The main analysis is in three parts. First, I seek to define fully autonomous weapons systems and clarify their main features. The second section reviews the content of the rule of distinction in attack and how it might be applied to autonomous weapons deployments. Finally, the chapter considers some potential "legal transplants" that could inform a treaty or LOAC manual regulating fully autonomous weapons systems.

https://doi.org/10.1163/9789004363267_007 *

Entertainment and the laws of war : the role of States in their interactions with the entertainment industry in order to ensure respect for international humanitarian law

Eve Massingham. In: Media and arts law review, vol. 24, 2021, p. 130-147

When the entertainment industry does not call out violations of the law for what they are, they undermine the project of international law which seeks to ensure accountability for such conduct. That the entertainment industry has an enormous influence on all facets of our lives has long been recognised by militaries. Indeed, militaries around the world have very deliberate engagement strategies with the entertainment industry in order to capitalize on this. This article argues that more can be done through engagement with the entertainment industry to improve respect for international humanitarian law. There is no specific legal obligation on the industry itself, but there is a legal obligation on States to ensure that private actors are respecting and ensuring respect for international humanitarian law. This legal obligation is found in Common article 1 of the Geneva Conventions of August 1949 and their Additional Protocols I and III. This article argues that the very close relationship between the State and the entertainment industry – when it comes to military themes and stories – places an obligation on States to ensure that their support of this industry is not in violation of their legal obligations under Common article I. This article suggests some of the ways in which governments, and the industry, can ensure better respect for the laws of war.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57188.pdf *

Equality and non-discrimination in armed conflict

George Dvaladze. - [S.I.] : [s.n.], 2021. - 346 p.

Discrimination is among the most pressing humanitarian issues that arise in all types of armed conflicts and in different spheres of warfare – be it in the treatment of persons in the power of a Party to an armed conflict or in the conduct of hostilities. International law applicable to such situations, in particular international humanitarian law (IHL) and international human rights law, include important safeguards against such practices. The PhD thesis examines the legal framework to clarify the applicability and scope of relevant rules, as well as their interplay in armed conflict. It also looks at the notions of discrimination, adverse distinction and equality, and their constitutive elements as shaped out by the State practice, jurisprudence of international courts and tribunals and legal scholarship, in order to provide clear legal parameters to draw the line between prohibited discrimination and other differentiations that may be lawful or even required by international law.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57023.pdf *

Failed notions and lost opportunities : revisiting India's standpoint on the International Criminal Court

Sanoj Rajan. - In: Human rights and international criminal law. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 253-280

This chapter focuses on the general premise that since 'India has efficient law enforcement mechanisms and an active judiciary, its actions need not and should not be open to scrutiny by an international institution,' and contributes to the existing scholarship on the importance of India joining the ICC. The chapter approaches the topic in three parts. The first part delivers an analysis of various mass crimes committed in India since independence and assesses how the Indian legal system has handled them. The second part examines the ability of India's present legal framework to deal with mass crimes under the Rome Statute; this includes exploring the judgments of various Indian Courts. The third concluding part advocates the need for a strong legal mechanism in India for prosecuting crimes included in the Rome Statute and highlights the merits of acceding to the ICC.

From words to deeds : a research study of armed non-state actors' practice and interpretation of international humanitarian and human rights norms : the Taliban-Afghanistan

Ashley Jackson and Rahmatullah Amiri. - [Geneva] : [Geneva Academy of International Humanitarian Law and Human Rights], June 2022. - 56 p.

This case study explores the Afghan Taliban's attitudes toward human rights and IHL norms. It only looks at the Taliban's views as an insurgency, stopping prior to their full takeover of Afghanistan in August 2021. It concentrates on the period from roughly 2014 onwards, when the Taliban progressively began to exert influence in more of the country and were ultimately the de facto governing authority in a small number of districts before their full takeover. Compiling and analysing the Taliban's views enables an understanding of how they perceived international law, the norms that enjoyed greater acceptance and those that were disputed. This case study responds to several inquiries, notably how Taliban internal dynamics and policies evolved and what factors might explain the gap between internal policies and public statements on the one hand, and practice on the ground on the other. This research was conducted as part of the research project 'From Words to Deeds: Providing Tools for an Effective Engagement of Armed Non-State Actors to Improve Humanitarian Protection'.

https://words2deeds.org/wp-content/uploads/2022/09/Taliban_Case-Study.pdf

Future-proofing international criminal law : complexity theory perspectives on collective entity accountability

Anna Marie Brennan. - In: Futures of international criminal justice. - Abingdon : Routledge, 2022. - p. 219-238

International crimes are typically perpetrated by collective entities – organisations such as non-state armed groups, which are independent and distinct from their members – but current international law can only prosecute individuals. Due to the complex structure of some non-state armed groups, it can be challenging to pinpoint which individual members perpetrated the crime. Hence, discord persists between international criminal law's objective of prosecuting those most responsible for crimes and its failure to address collective entities. This chapter will use complexity theory to explore the argument that an accountability model for non-state armed groups needs to be developed under international criminal law. It will further investigate why the moral and legal inquiry on international criminal law has been dominated by approaches that emphasise the criminal responsibility of natural persons, not collective entities, taking into consideration what benefits, if any, would be derived from extending international criminal law to non-state armed groups. In doing so, this chapter will potentially provide the platform for a future examination of how investigations and prosecutions of non-state armed groups for international crimes could proceed if international criminal law were extended to collective entities.

Gendered impacts of armed conflict and implications for the application of international humanitarian law

drafted by Vanessa Murphy, legal adviser, ICRC, with significant contributions from Lindsey Cameron, ICRC. - Geneva : ICRC, June 2022. - 42 p.

Gender affects and shapes individual experiences of armed conflict in complex ways. A gender perspective is a relevant tool for practitioners seeking to understand and reduce civilian harm in armed conflict. This landmark report focuses on gendered impacts of the conduct of hostilities and of situations of occupation and explores their implications for related IHL rules. It also tackles challenging questions regarding the role of IHL in addressing gendered harm in armed conflict, identifying opportunities and limitations. This report aims to contribute to the legal discourse on gender and IHL from an ICRC perspective, informed by an expert workshop.

https://library.icrc.org/library/docs/DOC/icrc-4634-002.pdf

Gendering the Geneva Conventions

Boyd van Dijk. In: Human rights quarterly : a comparative and international journal of the social sciences, humanities, and law, vol. 44, No. 2, May 2022, p. 286-312

What role did gender and sexuality play in the making of the 1949 Geneva Conventions? And how did the drafters of the most important document ever formulated for armed conflict envision men and women's rights in wartime? Until now, most scholars have treated these questions only marginally. Drawing on multi-archival materials and critical and feminist approaches to international law, this article demonstrates how the Conventions' drafters tried to recover prewar sex differences as part of a much larger sexual restoration after 1945. Instrumentalizing the sexes proved integral to humanitarian law's construction in the fragile geopolitical landscape of the early Cold War and decolonization. Gendering the Geneva Conventions has a special significance for practitioners and scholars tracing the origins of international law. It exposes how gender has shaped the very nature of international law in wartime and offers new perspectives on questions relating to international law, global legal politics, and sexual violence.

https://doi.org/10.1353/hrq.2022.0021 *

The genealogy of extended war clauses : requisition and destruction of property in armed conflicts

Ira Ryk-Lakhman. - In: Investments in conflict zones : the role of international investment law in armed conflicts, disputed territories, and 'frozen' conflicts. - Leiden : Brill Nijhoff, 2021. - p. 54-83

Many investment instruments, including those of conflict-ridden states, contain explicit stipulations that prescribe a right to compensation under circumstances of 'war' and 'armed conflict'. These provisions are known as 'war clauses'. One type of these 'war clauses' merely requires non-discrimination in the treatment of losses incurred as a result of the armed conflict and similar situations. The other type of provisions goes further and mandates the payment of compensation to investors for losses resulting from hostilities provided that certain conditions are met (the extended war clause). This chapter focuses on the latter type and looks into the treaty obligation to compensate investors for the requisition or destruction of their property during hostilities. The chapter traces the origins and meaning of the extended war clause to customary war law. It is suggested that the treaty language 'requisition by the armed forces' and 'destruction not required by the necessity of war' (and like formulations) are terms of art with a recognized meaning under international law. Thus, under the rules of the Vienna Convention on the Law of Treaties, the meaning of the provision is ascertained by way of examining the content of the customary rules on the treatment of alien property. As for the customary rules on the treatment of alien property, it is argued that these were shaped by, and molded after, customary war law norms as codified in the instruments of the Hague Law of 1907. In turn, the chapter shows that the rules of the Hague Law infiltrated the law on state responsibility for losses to alien property in the framework of claims for injuries to, or wrongful seizures of, private foreign property by revolutionists during civil unrest and by armed forces during the World Wars. This progressive development resulted in the emergence of a set of specific customary rules on state responsibility for damage to private foreign property in war. Today, these rules are reflected in the language of the extended war clause. Overall, it is suggested that tracing the origins of the war clause to customary war law brings further clarity to practical, contested aspects of the provision, namely its scope, burden of proof and threshold of its invocation, and interaction with treaty provisions on expropriation.

Governing conflicts between international humanitarian law and international criminal law : the crime of starvation in non-international armed conflicts

Matthias Vanhullebusch. - In: Human rights and international criminal law. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 233-249

Starvation of the civilian population and wilful impediment of humanitarian relief committed in the course of a non-international armed conflict was criminalised with the amendment to the war crimes provision under the Rome Statute in December 2019. The crime of starvation complements the fighting parties' existing positive and negative obligations under indernational humanitarian law (IHL) vis-à-vis the civilian population under their control, namely, respectively

the obligation to provide in the means necessary to their survival (i.e. the prescriptive norms) and the prohibition to the use of starvation against them as a method of warfare, and arguably a prohibition of arbitrary denial (i.e. the prohibitive norms). The first section of this chapter identifies the normative conflict between the crime of starvation under international criminal law and the right to strategic consent under IHL from the perspective of the primary rules. The second section addresses the impossibility to overcome this conflit in favour of the application of the crime of starvation that could trump the exception to the principle of equality of the fighting parties under Article 18(2) of Additionnal Protocol II with reference to the secondary rules governning the conflict of norms under international law. The third section seeks to offer alternative avenues to pursue a criminal justice agenda that could render that law of international humanitarian relief more effective in the long-run.

La guerra contra el narcotráfico en Mexico : ¿ un conflicto armado no internacional no reconocido ?

Ana Gabriela Rojo Fierro. In: Foro internacional, vol. 60, no 4, 2020, p. 1415-1462

Este trabajo es una reflexión en torno a la clasificación jurídica de la llamada "guerra contra el narcotráfico" en México a la luz del derecho internacional humanitario, que regula la conducción de los conflictos armados, tanto internacionales como no internacionales. Después de un recuento de las particularidades de este conflicto, se argumenta la pertinencia jurídica de reconocer la situación mexicana como un ·conflicto armado no internacional· y exigir la consecuente aplicación del DIH.

https://doi.org/10.24201/fi.v60i4.2628

La guerra de Malvinas a la luz del derecho internacional humanitario

Matteo Fornari. - In: A 40 años de la guerra de Malvinas : una mirada diferente. - Buenos Aires : Escuela Nacional de Inteligencia. Agencia Federal de Inteligencia, 2022. - p. 535-566

El conflicto armado del Atlántico Sur fue breve pero intenso: vio enfrentados a unos quince mil combatientes argentinos y a unos veinte mil quinientos británicos. Se trató de un conflicto armado típicamente de carácter internacional (CAI en la nomenclatura del Derecho Internacional Humanitario), que afectó a múltiples ámbitos del Derecho Internacional y, en particular, del Derecho Internacional Humanitario (DIH) o Derecho Internacional de los Conflictos Armados(DICA). La conducción de hostilidades puso de manifiesto el recurso a medidas bélicas como las zonas de exclusión marítimas que, por una parte, tuvieron el mérito de localizar y limitar geográficamente la zona de conflicto, pero por otra, interfirieron con la libertad de navegación de terceros países. Otras cuestiones particularmente interesantes del conflicto armado de las Malvinas fueron las relativas al tratamiento de los prisioneros de guerra y el papel fundamental desempeñado por los buques hospitales para la asistencia prestada a los soldados heridos y a los náufragos.

https://www.argentina.gob.ar/sites/default/files/2022/04/malvinas_40a_final_digital.pdf

"Guerre" contre le terrorisme et droit international humanitaire

Julia Grignon. In: Annuaire français de droit international, vol. 22, 2021, p. 101-114

Si la « guerre » contre le terrorisme ne renvoie pas à une notion relevant du droit international humanitaire, elle a cependant produit un certain nombre de conséquences sur la compréhension de certaines de ses dispositions. Revenant sur quelques controverses emblématiques de l'articulation entre droit des conflits armés et lutte contre le terrorisme, cette contribution met en évidence la capacité renouvelée du droit international humanitaire à appréhender toute nouvelle forme de conflictualité. De l'étape essentielle de la qualification de toute situation de violence aux questionnements liés à la délivrance de l'aide humanitaire et aux « combattants étrangers », le droit international humanitaire a su apporter des réponses réalistes aux singularités nées des conflits qu'ont générés vingt ans de « guerre » contre le terrorisme.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57235.pdf *

How international law learned to love the bomb : civilians and the regulation of aerial warfare in the 1920s

Christiane Wilke. In: Australian feminist law journal, vol. 44, no. 1, 2018, p. 29-47

The 1923 Draft Rules on Aerial Warfare proposed regulations on aerial bombing. These Rules were also the first text intended to become an international treaty that mentioned civilians as a specific category of non-combatants. The civilian emerges in international law at the precise moment when they are about to be bombed. The article analyses the relationship between technologies, legal techniques, and the racialised and gendered articulation of the civilian status in the 1920s. It shows that civilian status was racially and spatially circumscribed and that civilians were conscripted into aiding the targeting process by making themselves 'sufficiently visible' to the eyes in the sky.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57275.pdf *

How torture and national security have corrupted the right to a fair trial in the 9/11 Military Commissions

Kasey McCall-Smith. In: Journal of conflict and security law, vol. 27, no. 1, Spring 2022, p. 83-116

Now passing its tenth year of pre-trial, the 9/11 military commission involves five men on trial for war crimes and terrorism in relation to the attacks against the USA on 11 September 2001. This article examines specific issues regarding the relationship between the prohibition against torture, national security and the right to fair trial that have arisen in the pre-trial phase of the case. The most obvious connection between the prohibition against torture and the right to fair trial has traditionally played out in the context of the exclusion of evidence obtained through torture. However, the frenetic nature of engagement between the defense and the prosecution in the courtroom reinforces that the US government's efforts to hide the torture of the defendant victims diminishes the further range of protections that make up the right to fair trial, in particular this article examines various components of the right to an effective defense. In analysing these issues, the article contributes to the legal literature and understanding about the interrelated nature of torture and fair trial in the Guantánamo military commissions by demonstrating how efforts to conceal torture using the guise of national security prevents the defendants from fully engaging their rights to a fair trial in the 9/11 military commission.

https://doi.org/10.1093/jcsl/krac002

Human and non-human targets in armed conflicts

Patrycja Grzebyk. - Cambridge [etc.] : Cambridge University Press, 2022. - XIII, 280 p.

What norms apply to the determination of lawful targets? What persons and objects may be lawfully targeted in armed conflict? What are the reasons, both legal and extra-legal, of civilian losses? What principles must be observed when attacking military objectives? How can the protection of persons who are not participating in hostilities be strengthened? Is it possible to develop a consistent approach to targeting in armed conflict regardless of the legal qualification of the armed conflict? This monograph answers these questions and many more. Taking into account both military objectives and civilian objects, it considers the extent of their protection in a range of contexts, providing an essential source of reference for scholars dealing with issues across international humanitarian law and armed conflict.

https://doi.org/10.1017/9781108980272 *

Human rights and counterterrorism : the American "global war on terror"

Rebecca Sanders. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 425-443

After the September 11, 2001 terrorist attacks on New York and Washington D.C., the United States launched the "global war on terror," a transnational military campaign against Al Qaeda and associated forces. In pursuit of its adversaries, the Bush administration, and to varying degrees, the subsequent Obama and Trump administrations, authorized numerous abusive practices including torture and cruel, inhuman, and degrading treatment of detainees, secret and indefinite detention without fair trial, extrajudicial killing that strains the standards set forth by

the law of armed conflict, and mass surveillance without a warrant. While human rights violations are ubiquitous in irregular armed conflicts, the last two decades of US counterterrorism are notable for the extent to which American authorities have sought to legally justify their actions. Rather than overtly violate domestic and international legal norms, or rely solely on secrecy to evade detection of illegal programs, US policymakers have deployed lawyers to construct the plausible legality of "enhanced interrogation techniques," targeted killing, and other controversial practices. This has successfully immunized perpetrators from prosecution while hollowing out legal rules, reducing the capacity of human rights law to constrain state violence.

Human rights and international criminal law

edited by Borhan Uddin Khan and Md Jahid Hossain Bhuiyan. - Leiden ; Boston : Brill Nijhoff, 2022. - XXXIV, 432 p.

This book examines the importance of international criminal law in promoting and defending human rights as well as its relationship with law and international politics. It highlights criminal cases at the International Criminal Tribunals for the former Yugoslavia and the International Criminal Tribunals for Rwanda, the International Criminal Court, and the International Crimes Tribunal of Bangladesh. The book considers human rights approaches to crimes from a theoretical and practical perspective, analyses various crimes under international law, and examines the application, implementation and enforcement of international criminal law.

Human rights and international humanitarian law : challenges ahead

Edited by Norman Weiß and Andreas Zimmermann. - Cheltenham ; Northampton : Edward Elgar, 2022. - IX, 255 p.

Where contemporary developments have significantly altered the implementation methods of, and relationship between, human rights law and international humanitarian law, this timely book looks at the future challenges of protecting human rights during and after armed conflicts. Leading scholars use critical case studies to shed light on new approaches used by international courts and experts to balance these two bodies of law. Divided into four thematic parts, chapters explore the protection of specific groups and actors during conflicts, including organised armed groups, armed non-state actors, and refugees, as well as using divergent methodological approaches to analyse the extra-territorial application of human rights treaties. Shifting to post-conflict, the book further examines the tools and practices involved in building lasting peace and sustainable post-conflict order while avoiding future resurrection of armed conflict. It concludes by considering whether the traditional interpretation of international law is still apt for the twenty-first century. Underlining the necessity of a more coherent application of international humanitarian law and human rights law, this incisive book will be invaluable to students and scholars from the two areas of law. Global in scope, it will also prove useful for humanitarian workers, and practitioners and policy makers involved in human rights.

https://doi.org/10.4337/9781839108273 *

Human rights bodies : a comparative approach

Walter Kälin and Jörg Künzli. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 188-208

UN treaty bodies and regional human rights courts and commissions are regularly confronted with the relationship between international human rights and humanitarian law whenever they are asked to decide cases of human rights violations during armed conflict. This chapter analyses the reasoning of human rights bodies underlying their conclusions that except in cases of derogations of human rights guarantees also apply in times of armed conflict, including where a State conducts military operations abroad. It then examines how human rights bodies assess the relationship between the two branches of law; whether and how they take IHL into account when interpreting and applying IHRL; and, how they proceed in cases of conflict between human rights law and jus in bello guarantees. The chapter concludes that to a large extent the jurisprudence of human rights bodies is coherent and respectful of the specificities of IHL.

https://doi.org/10.4337/9781789900972.00020 *

Human rights in war

Damien Rogers ed.. - Singapore : Springer Nature Singapore, 2022. - XVII, 489 p.

This volume is the most comprehensive and up-to-date compilation of in-depth analyses on human rights violations committed in war. It offers myriad perspectives on the content and application of legal protections offered to civilians, including women, children and the elderly, and to others who are 'no longer active in the fight.' A series of carefully researched case studies illustrates the extent to which human rights violations occur in recent and current armed conflict, and signals the ways in which these violations are dealt with. Each of the contributing authors has been selected on the basis of their international academic reputation and/or professional standing within the human rights field. Given the alarming numbers of people harmed in recent and current armed conflict, this book will be of great interest to researchers, policymakers and opinion-shapers alike.

Human rights law and counter terrorism strategies : dead, detained or stateless

Diane Webber. - Abingdon : Routledge, 2022. - XXXI, 257 p.

In 2006, the United Nations urged Member States to ensure that counter terrorism policies guaranteed respect for human rights and the rule of law. This book demonstrates that, in many cases, counter terrorism policies relating to preventive detention, targeted killing and measures relating to returning foreign terrorist fighters have failed to respect human rights, and this encourages vulnerable people to be drawn towards supporting or committing actes of terrorism. Furthermore, in recent years, jurisprudence and public opinion in some countries have shifted from being at one stage more protective of human rights, to an acquiescence that some particularly draconian counter terrorism methods are necessary and acceptable. This book analyzes why this has happened, with a focus on the United States, United Kingdom, and Israel, and offers suggestions to address this issue. The work will be essential reading for students, academics and policy-makers working in the areas of human rights, humanitarian law, and counter terrorism.

Human rights violations in Yemen and the prospects for justice

Louisa Ashley. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 383-405

This chapter explores some of the more egregious international human rights and international humanitarian law violations alleged to have been committed by all parties to the current war in Yemen. The particular focus here is on gross breaches of the principles of distinction, proportionality and precaution, the recruitment of children to armed forces, arbitrary detention, and enforced disappearance committed by all sides to this conflict. The recent responses by domestic, international, and civil society actors are addressed through the lens of the global governance of international human rights and international humanitarian law. This contribution closes by giving thought to how gross violations might be accounted for in the context of postconflict transitional justice, finding an ad hoc tribunal to be the most appropriate, albeit imperfect, vehicle.

Humanitarian restraints in early modern warfare : law of armed conflict from antiquity to the Great War

Gregory P. Noone, Derek D. Mills, and Philip E. Angeli. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 61-80

The Law of Armed Conflict (LOAC) can be traced back to ancient times. The Sumerians, Hammurabi – King of Babylon, Cyrus I – King of the Persians, and the Hittites all formulated rules or codes that were designed to regulate and provide structure to armed conflict. The idea that war should adhere to rules evolved throughout subsequent centuries and was espoused by the likes of Saint Augustine, Saint Thomas Aquinas, Hugo Grotius, and Jean Jacques Rousseau. Like most branches of international law, LOAC has grown organically across cultures, religions, peoples, and continents. In an effort to add more humanity to the violence and destruction of war, LOAC's purpose, at a minimum, is to protect those that cannot protect themselves. Unfortunately, there is a long history of brutality inflicted upon those unlucky enough to find themselves in or around armed conflict even though, over time, LOAC has become more detailed and specific and

for the most part universally adhered to. Despite the likely occurrence of major violations of LOAC in every conflict, states have either instructed their armies to follow LOAC or, in some cases, to cover-up, hide, and deny any violations that took place in order to at least appear to be following the rule of law. As a result, LOAC affects the way many states fight wars. This chapter will examine the development of the Jus in Bello legal theory, or the laws regulating wartime conduct. It aims to advance our understanding of the history and evolution of this law on land warfare prior to the Great War.

The ICRC's legal and policy position on nuclear weapons

In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1477-1499

The ICRC's legal and policy position on nuclear weapons has evolved over the years in step with international developments in policy, medicine, science and law. Its most recent views, expressed in this paper, are based on new evidence and data on the humanitarian impact of nuclear weapons on human health and on the environment. They further reflect the ICRC's legal analysis, as well as the key findings of the International Court of Justice's 1996 advisory opinion on the legality of the threat or use of nuclear weapons. These views are framed by the Movement's policy on nuclear weapons. The ICRC's position is structured around six main points: non-use, prohibition and elimination of nuclear weapons, in view of their catastrophic humanitarian consequences; prevention of use through risk reduction and non-proliferation; adherence to and faithful implementation of the Treaty on the Prohibition of Nuclear Weapons (TPNW); adherence to and faithful implementation of other international agreements and pursuit of negotiations for the elimination of nuclear weapons and incompatibility of nuclear weapons with the principles and rules of international humanitarian law (IHL).

https://library.icrc.org/library/docs/DOC/irrc-919-icrc.pdf

The impacts of human rights law on the regulation of armed conflict : a coherency-based approach to dealing with both the "interpretation" and "application" processes

Raphaël van Steenberghe. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1345-1396

Nowadays, human rights law significantly impacts the regulation of armed conflict through two main processes: the “interpretation process”, whereby international humanitarian law is interpreted in light of human rights law's norms or concepts, and the “application process”, whereby human rights law applies in armed conflict alongside international humanitarian law. These processes raise complex problems with respect to the interplay between the two branches of international law. The aim of this paper is to propose an elaborated theoretical framework, based on legal theories of normative coherence, in order to address that interplay and to overcome the shortcomings of the formal mechanisms usually referred to in practice and legal scholarship. It is demonstrated that such a coherency-based approach recommends adapting the outcomes of the interpretation and application processes, either by modulating or displacing the inappropriate norm or regime, in light of substantial considerations.

https://library.icrc.org/library/docs/DOC/irrc-919-vansteenberghe.pdf

The International Court of Justice, international humanitarian law and human rights law

Pavle Kilibarda and Robert Kolb. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 168-187

The ICJ is usually perceived as the world's preeminent authority in matters of international law. As such, its judgments and advisory opinions have a crucial role towards identifying the content of the law. Over the years, the Court has had a number of opportunities to make statements on humanitarian law, human rights or both. This chapter identifies and analyses two relevant strains in the Court's jurisprudence on these questions: first, its case-law on the 'elementary considerations of humanity', binding norms whose provenance the ICJ never clearly establishes; and second, its deliberations on the interplay between IHL and HRL in situations of armed conflict, where the Court employs an unusual understanding of lex specialis to describe the relationship between the two bodies of law. In spite of the Court's often ambiguous approach,

there exists sufficient clarity in its dicta to draw straightforward conclusions regarding issues of practical relevance.

https://doi.org/10.4337/9781789900972.00019 *

International criminal courts and tribunals

Yasmin Naqvi. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 209-238

This chapter reviews international judicial perspectives of the international criminal courts and tribunals on the inter-relation between IHL and IHRL. The case law examined demonstrates that courts have often applied a systemic integration approach to interpretation, where both IHL and IHRL are interpreted taking into account both bodies of law. This approach can, at its best, lead to a rigorous examination of relevant norms deriving from both regimes, which can help to articulate the specific contours of rules, provide contextual understanding behind the perpetuation of mass atrocities in armed conflict, and delimit liability in an appropriate way that respects the principle of legality. However, this review also shows that an uncritical convergence approach, or conversely, treating IHL and IHLR as wholly independent regimes, may lead to results that impose unrealistic expectations upon combatants during active conflict.

https://doi.org/10.4337/9781789900972.00021 *

International human rights law and non-state armed groups : the (de)construction of an international legal discourse

Ezequiel Heffes. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 265-287

This chapter explores the way in which the discourse related to the application of international human rights law (IHRL) to non-State armed groups (NSAGs) is being constructed by numerous scholars and institutions. Although it is undisputed that NSAGs have an impact on the civilian population in the various conflict settings to which they are party, the actual reasons why this discourse is being articulated and who is undertaking this task remain insufficiently explored. As international law does not exist in an intellectual vacuum, an examination of these issues may serve to better comprehend the purpose and goals of IHRL in armed conflict as understood by scholars and institutions, together with certain legal interactions that often remain unseen.

https://doi.org/10.4337/9781789900972.00024 *

International law and chemical, biological, radio-nuclear (CBRN) events : towards and all-hazards approach

edited by Andrea de Guttry, Federico Casolari, Micaela Frulli and Ludovica Poli. - Leiden ; Boston : Brill Nijhoff, 2022. - XXIII, 665 p.

This volume investigates to what extent the international and European Union legal framework applicable to Chemical, Biological and Radio-Nuclear (CBRN) events are adequate to face current challenges. It is innovative in many aspects: it adopts an all-hazard approach to CBRN risks, focusing on events of intentional, accidental and natural origin; it explores international obligations according to the four phases of the emergency cycle, including prevention, preparedness, response and recovery; and it covers horizontal issues such as protection of human right, international environmental law, new technologies, the role of private actors, as well as enforcement mechanisms and remedies available to victims. The book thus offers a new way of looking at the applicable rules of international law in this field.

http://doi.org/10.1163/9789004507999

International law and the Arab-Israeli conflict

Robbie Sabel. - Cambridge [etc.] : Cambridge University Press, 2022. - XVII, 446 p.

Drawing upon Robbie Sabel's first-hand involvement with many legal negotiations in the Arab-Israeli conflict, International law and the Arab-Israeli conflict examines international law in relation to the conflict by analysing its major events and agreements, both historical and contemporary. Outlining the role of international law from the collapse of the Ottoman Empire until the present day, it considers the legal elements of relevant documents and the various peace

treaties that Israel has signed with its neighbouring Arab States. Using his expertise as a professor, practitionner and ambassador, Sabel endeavours to represent both sides of the conflict, offering a wealth of counter-arguments and adding his own legal interpretations. With this valuable resource, students and researchers working within a range of disciplines can fully appreciate the role of international law in the Arab-Israeli conflict.

https://doi.org/10.1017/9781108762670 *

International law in revolutionary upheavals : on the tension between international investment law and international humanitarian law

Tillmann Rudolf Braun. - In: Investment in conflict zones : the role of international investment law in armed conflicts, disputed territories, and 'frozen' conflicts. - Leiden : Brill Nijhoff, 2021. - p. 19-53

In a decentralised system such as public international law with its many specialised subfields, the question of how to conceptualize the relationship and interplay of its distinct subfields becomes especially salient. Moreover, this question becomes even more acute when these subfields simultaneously claim authority and possibly arrive at quite different, if not conflicting, results. In the case of civil war, a foreign investor's production site may be destroyed. This may lead to a breach of a bilateral investment treaty if government forces are deemed sufficiently responsible for such a destruction. However, in remarkable contrast to this, under international humanitarian law of non-international armed conflicts, if the destruction was justified under the principle of 'military necessity', then this state action could be considered lawful. If a conflict between the norms of both regimes arises here at all, should it be resolved by the principle of lex specialis? Or should rather a more informative approach be taken? Shall therefore the extended war clause contained in bilateral investment treaties—which offers compensation for investments demonstrably destroyed in cases in which the destruction was not required by the 'necessity of the situation'—be interpreted in the light of humanitarian law's principle of military necessity? Or, are there compelling arguments for an autonomous treaty interpretation on its own terms? Finally, the question is raised whether the burden of proof remaining on the plaintiff investor in these specific constellations is compatible with the principle of procedural equality.

International military operations, duty to conduct effective investigations and extraterritorial application of the ECHR : has the court gone too far in "Hanan v. Germany"?

Eugenio Carli. In: Ordine internazionale e diritti umani, no. 3/2021, 15 July 2021, p. 716-730

The Hanan v. Germany case regards the alleged violation by Germany of the procedural limb of Article 2 (right to life) of the European Convention of Human Rights (ECHR), consequent to an airstrike killing about fifty persons in the course of a NATO-led international military mission in Afghanistan conducted under a mandate given by the United Nations Security Council. The question of admissibility is particularly interesting as the extraterritorial application of the Convention is maintained based exclusively on the existence of three "special features", creating a jurisdictional link for the purposes of Article 1 ECHR. The judgment raises questions as to the content of the (not particularly) special features identified by the Court and the missed reference to the question of attribution of conduct and its relevance in the admissibility discourse. However, the decision appears legally sound if one considers inter alia the nature of the contested obligation and the particular circumstances of the case and it should be warmly received to the extent that it potentially extends the ECHR's scope and related accountability guarantees in complex scenarios.

https://www.rivistaoidu.net/wp-content/uploads/2021/12/9_Carli.pdf

The interrelationship between counter-terrorism frameworks and international humanitarian law

United Nations Security Council, Counter-Terrorism Committee Executive Directorate (CTED). - [S.I.] : [s.n.], January 2022. - 44 p.

This study, prepared in accordance with Security Council resolution 2617 (2021), builds on CTED's engagement with Member States and other relevant stakeholders, including in the context of the country assessment visits conducted on behalf of the Counter-Terrorism Committee. It also benefits from a contribution by the Office for the Coordination of Humanitarian Affairs (OCHA), which provided an anonymized analysis and synthesis of information collected from the

humanitarian community on the impact of counter-terrorism measures on humanitarian operations conducted in situations of armed conflict where terrorist groups are active. The study maps the references to international humanitarian law contained in Council resolutions addressing threats to international peace and security caused by terrorist acts. Based on that mapping, the study explores (without seeking to provide an exhaustive analysis) two pertinent issues repeatedly addressed in the relevant resolutions: (i) the impact of counter-terrorism measures on humanitarian action carried out in armed conflict contexts in a manner consistent with international law; and (ii) the linkages between terrorism and serious violations of international humanitarian law, with a view to promoting comprehensive accountability for terrorist conduct. The study is intended to serve as a basis for the discussion of issues relating to the intersection between counter-terrorism frameworks and international humanitarian law and ways to support Member States in their efforts to implement Security Council resolutions on counter-terrorism in compliance with international humanitarian law.

https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2022/Jan/cted_ihl_ct_jan_2022.pdf

Investigations in armed conflict

Claire Simmons. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 340-361

Investigations into alleged violations of international humanitarian law and international human rights law in armed conflict are crucial to the implementation of these bodies of law. There are however numerous legal and practical challenges which arise when considering a State's obligations under international law with regards to such investigations. These include establishing the bases and scope of the duty to investigate under both bodies of law, and determining the way in which these investigations must be carried out. Furthermore, addressing the framework for investigations in armed conflict necessarily requires examination of the interplay of IHL and IHRL. Focusing on the concept of effectiveness of investigations under international law, this chapter addresses the legal and practical challenges surrounding the conduct of investigations in armed conflict, taking into account the complementary way in which both bodies of law interact.

https://doi.org/10.4337/9781789900972.00029 *

Investment law and the conflict in the Donbas region : legal challenges in a special case

Stefan Lorenzmeier and Maryna Reznichuk. - In: Investments in conflict zones : the role of international investment law in armed conflicts, disputed territories, and 'frozen' conflicts. - Leiden : Brill Nijhoff, 2021. - p. 431-457

The contribution assesses the international and national legal challenges for investment law in the occupied territories of the Donbas. Investment protection in this area encounters difficulties on several levels. First, the two established de facto entities claiming to govern the territory – the Peoples' Republics of Donetsk (DNR) and Luhansk (LNR) –are neither internationally recognized states nor do they fulfil the requirements of de facto regimes. Second, Russia denies any involvement although it pulls the strings and has to be regarded as the de facto occupant. Third, Ukraine is unable to exercise control over the occupied territories. After looking into the international law of occupation and attribution, the Ukrainian national laws of investment protection in the Donbas and rules of bilateral investment treaties, this chapter analyses international humanitarian law and the European Convention on Human Rights as possible avenues for investment protection.

Investments in conflict zones : the role of international investment law in armed conflicts, disputed territories, and 'frozen' conflicts

Edited by Tobias Ackermann, Sebastian Wuschka. - Leiden : Brill Nijhoff, 2021. - XLVI, 491 p.

Investments in Conflict Zones addresses the topical and underexplored role of international investment law in armed conflicts, disputed territories, and 'frozen' conflicts. The edited collection explores how these different conflict situations impact the application and intervention of international investment law and how the protection of investors can be reconciled with the

politically charged circumstances and state interests involved. Written by a selected group of experts from different fields of international law, the volume moves beyond the confines of investment law, offering novel insights into its intersection with the law of armed conflicts, human rights law, the law of the sea, general international law, and national laws, including those adopted by de facto regimes which lack recognition as states.

ISIS's sexual slavery of Yazidi women and girls : an underwhelming response to an overwhelming international crime

Samar El-Masri. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 347-365

The sexual slavery against Yazidi women and girls was organized, codified, institutionalized, legitimized, and proudly and explicitly justified by the Islamic State in Iraq and Syria (ISIS). It is an overwhelming grave violation of human rights that requires a proportional response to punish the perpetrators and provide some sort of justice to the victims. Yet, despite the extent and the brutality of the crime, and the considerable activism by advocacy groups and nongovernmental organizations, the response so far has been underwhelming. This chapter argues that this is the case not because of shortcomings in the international legal regime, but because of the limited response to prosecute, and the various challenges and restraints encountered by prosecutors within national courts, at the ICC, and in courts of third states.

Islamist terrorism and the classical Islamic law of war

Joseph Hoelz. In: International law studies, vol. 97, 2021, p. 1633-1658

Islamist terrorists have had a large influence on U.S. foreign and domestic policy for more than twenty years, and yet policy makers, legal practitioners, and the public know very little about what motivates these violent extremist organizations. A primary unifying principle among the various Islamist terrorist groups is their desire to return to a religiously ordered State, justified and based upon their interpretation of the Shari'a, or Islamic law. This article explores the Islamist terrorist interpretation of Shari'a law and how it generally contradicts that of mainstream Islamic scholars. The article begins with a review of the primary and secondary sources of Islamic law and the attendant controversies. It then defines jihad, explores the Islamic law on authorizing a just war, and highlights how terrorist groups selectively interpret the primary sources to justify their ideology. Next, it explains the divergent views on the law concerning treatment of noncombatants, suicide attacks, treatment of prisoners, and cessation of hostilities. The final section further defines the background, principles, and goals of Islamist terrorist organizations, using al-Qaeda and associated Islamist terrorist groups as an example. It concludes by summarizing the divergent interpretations of Shari'a, and makes modest suggestions on steps that can be taken to alleviate the influence of these terrorist groups.

https://digital-commons.usnwc.edu/ils/vol97/iss1/54/

Juridification of warfare and limits of accountability : an ethnomethodological investigation into the production and assessment of legal targeting

by Martina Kolanoski. - Leiden ; Boston : Brill Nijhoff, 2022. - XIII, 196 p.

The book provides an empirical account of the laws that regulate today's scenes of armed conflict by looking into the details of one particular military incident and its ex-post legal accounting. Empirically, the book focuses on a highly controversial airstrike in Afghanistan (2009), in which large numbers of civilians were identified as combatants and killed as such. The incident lends itself to reflect upon the relation between the violation of the procedural rules and the violation of the international laws of armed conflict. The ethnomethodological Law-in-Action research investigates the practical details of legal accountability and explores how the event shaped and specified the legally required protection of civilians in armed conflict. Exploring the collaborative and systematic work that goes into the "application of law" at the military and the judiciary site, the study develops an empirical respecification of the concept of "juridification of warfare".

Jurisdiction and combatant's privilege in the MH17 Trial : treading the line between domestic and international criminal justice

Lachezar Yanev. In: Netherlands international law review, vol. 68, 2021, p. 163-188

This article focuses on the MH17 Trial that is currently underway in the Netherlands, dealing with the shooting down of a civilian aircraft over Eastern Ukraine and the resulting deaths of all 298 persons on board. Two legal questions arising from the prosecutorial strategy to charge the four accused with 'ordinary' crimes under the Dutch Criminal Code—instead of with war crimes—are studied here. First, the jurisdictional basis on which the District Court of The Hague is trying MH17, and its effect on the applicable laws, is examined. It is argued that, contrary to what the Prosecution has submitted, jurisdiction over the killing of the 93 non-Dutch nationals on board of flight MH17 can only be established on the basis of the less known title of delegated (representative) jurisdiction: a conclusion that also brings certain legal requirements. Second, this paper analyzes the way the MH17 Prosecutor defined the notion of 'combatant's privilege' under international humanitarian law and his arguments for rejecting a combatant status for the separatist armed forces that shot down flight MH17 over Eastern Ukraine. All this analysis is then used to explain why it was indeed more sensible for the Prosecution to charge the four accused with murder and intentionally causing an aircraft to crash under Dutch criminal law, than with war crimes under international law.

https://doi.org/10.1007/s40802-021-00193-8

Justice ivoirienne et répression des crimes graves du droit international humanitaire : entre avancées et incertitudes

Fidèle Goulyzia. In: Ordine internazionale e diritti umani no. 2/2022, 15 May 2022, p. 425-446

L'organisation nationale de la répression des crimes graves du droit international humanitaire (DIH) dans le contexte post-conflictuel ivoirien a-t-elle été à la hauteur des engagements conventionnels de l'Etat de Côte d'Ivoire ? De cette question se dégagent des préoccupations sous-jacentes : existe-t-il un cadre juridique interne propice à une répression optimale des crimes graves du DIH ? La réponse judiciaire ivoirienne s'aligne-t-elle sur les exigences du DIH ? Cet article s'articule autour du postulat suivant : en dépit de l'aménagement de son arsenal pénal interne, la justice ivoirienne manque d'apporter une réponse satisfaisante à l'obligation de répression des crimes graves identifiés lors des séquences de belligérance de la décennie de crise militaropolitique. La première partie de l'article analyse la mise en conformité de l'arsenal pénal ivoirien avec les exigences de répression des crimes graves du DIH. La seconde partie de l'article tend à montrer que la justice ivoirienne s'est illustrée par une démarche parcellaire qui n'a pas permis d'établir une chaîne de commandement claire dans la commission des crimes puis d'en dégager les responsabilités pénales individuelles y afférentes.

https://www.rivistaoidu.net/wp-content/uploads/2022/05/7_Gouliza.pdf

Kriegsverbrechen gegen Eigentum : Ihre Verankerung im Statut des Internationalen Strafgerichtshofes und die Umsetzung in das deutsche Völkerstrafgesetzbuch

Yvonne Mitri-Plingen. - Baden-Baden : Nomos, 2020. - 337 p.

Die Kriegsverbrechen gegen Eigentum stehen im Schatten der unmittelbar gegen Menschen begangenen Verbrechen. Dabei sind sie von nicht zu vernachlässigender praktischer Relevanz. Denn die Zerstörung und Aneignung von Eigentum hat gravierende Auswirkungen auf die betroffenen Menschen, die lebenswichtiges Hab und Gut verlieren. Zudem werden Zerstörungen von Eigentum oftmals als Mittel der Vertreibung eingesetzt. Die Verfasserin stellt die Entwicklung der Kriegsverbrechen gegen Eigentum im Recht der bewaffneten Konflikte dar. Dabei bietet sie einen Überblick über die Nachkriegsrechtsprechung, die Rechtsprechung des Jugoslawienstrafgerichtshofes sowie des Internationalen Strafgerichtshofes. Die den Kriegsverbrechen gegen Eigentum zugrundeliegenden kriegsrechtlichen Regelungen werden im systematischen Zusammenhang der Tatbestandsmerkmale eingehend erläutert. Zudem würdigt die Verfasserin die Umsetzung der Kriegsverbrechen gegen Eigentum im Völkerstrafgesetzbuch.

Law of armed conflict manuals

Yoram Dinstein. In: Yearbook of international humanitarian law, vol. 23, 2020, p. 3-19

This is an analytical study of several LOAC manuals in which the author was personally associated in the past quarter of a century. These manuals consist of informal non-binding codifications of the lex lata regulating the conduct of hostilities in chosen fields such as sea or air warfare. Their rationale is guiding both practitioners and legal advisers in areas where the law is not self-evident. The principal purpose is to articulate existing customary international law, but obviously treaty law has to be woven in and assessed as either innovative (hence binding only on Contracting Parties) or declaratory of general custom. Drafting is done by international groups of experts in their private capacity, convened by international institutes or prodded by Governments. Either way, the texts produced must be framed in close consultation with Governments (the ultimate end-users). The manuals have demonstrated their fundamental value in the practice of States, being constantly cited in official publications and actually steering military training. Yet, since the lex lata does not remain frozen in time, manuals must be updated after lapse of time. As far as format is concerned, LOAC manuals are commonly comprised of black-letter rules (adopted by consensus) accompanied by explanatory commentaries (framed by smaller drafting committees).

Laws of political violence

Damien Rogers. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 165-196

The rule of law features prominently in state-based responses to an array of contemporary security problems, especially those involving acts of political violence. Laws are used not only to prohibit and, in some cases, criminalize certain acts relating to such violence, but also to authorize and then place limits on the use of force by states and state agents. While these laws are often treated as separate systems or branches of public international law by legal scholars and practitioners, they are, perhaps from a politico-analytical perspective, better understood as artifacts produced by relatively distinct, but at times interconnecting, social fields in the Bourdieusian sense. These fields tend to emerge and evolve through a transversal dynamic that occurs between horizontal interstate conduct and vertical state reach, a dynamic spurred on through the drafting and negotiation of certain instruments of international law, the implementation and administration of those instruments by state parties, and the monitoring and enforcement of state compliance relating to any duties and responsibilities flowing from those instruments. This chapter describes certain types of political violence before offering a brief overview of four fields of law that regulate that violence: namely, (1) the general prohibition on the use of armed force in international affairs; (2) international humanitarian law; (3) international criminal law; and (4) transnational criminal law. Signaling key struggles occurring within these fields, this chapter warns of the wide scope for the misuse of various instruments of international law. The chapter finds that these fields of law, which frame the possibilities for, and the limitations of, regulating various types of political violence, can contribute in important, but always limited, ways to the protection and advancement of internationally-recognized human rights in times of war, broadly understood.

The legal legacy of the Special Court for Sierra Leone

Charles C. Jalloh. - Cambridge : Cambridge University Press, 2020. - XXII, 389 p.

This book examines whether the Special Court for Sierra Leone (SCSL), which was established jointly through an unprecedented bilateral treaty between the United Nations (UN) and Sierra Leone in 2002, has made jurisprudential contributions to the development of the nascent and still unsettled field of international criminal law. The work, which focuses on the main legal legacy of the SCSL, opens with an examination of the historical and political circumstances which led to the outbreak of a notoriously brutal civil war in Sierra Leone which lasted between March 1991 and January 2002 and led to the deaths of approximately 75,000 people. Following a discussion of the creation, jurisdiction, and the trials conducted by the SCSL, the author examines the SCSL's unique personal jurisdiction over persons bearing "greatest responsibility" for the serious crimes committed in Sierra Leone and the implications of its use in future ad hoc international tribunals; the prosecution of the novel crime of "forced marriage" as other inhumane acts of crimes against humanity; the prosecution of the war crime of recruitment and use of children under the age of fifteen for the purpose of using them to participate in hostilities; as well as issues of immunity for the serving head of state of Liberia, which President Charles Taylor sought to invoke to block his

own trial for international crimes before the SCSL. The book then discusses the status of blanket amnesties under international law, and critically evaluates the SCSL's ruling that such a domestic measure could not block prosecution of universally condemned crimes before an independent international tribunal. Lastly, the book evaluates the tenuous interaction between truth commissions and special courts given both their simultaneous operation in Sierra Leone and distinctive mandates aimed at reconciliation and punishment. The author demonstrates that the SCSL, as the third modern international criminal tribunal supported by the UN, made some useful jurisprudential additions on many of these topics, and in some cases broke new ground, and that these represent a valuable legal and judicial contribution to the development of the nascent field of international criminal law.

https://doi.org/10.1017/9781316823491 *

The legality and accountability of autonomous weapon systems : a humanitarian law perspective

Afonso Seixas-Nunes. - Cambridge : Cambridge University Press, 2022. - XII, 274 p.

By adopting a multi-disciplinary approach, this book provides a comprehensive analysis of the legality of the use of autonomous weapons systems under international law. It examines different arguments presented by States, roboticists and scholars to demonstrate the challenges such systems will create for the laws of war. This study examines how technology of warfare seeks to increase the dissociation of risk and communication between weapons and their human operators. Furthermore, it explains how algorithms might give rise to 'errors' on the battlefield that cannot be directly attributed to human operators. Against this backdrop, Dr Seixas-Nunes examines three distinct legal frameworks: the distinction between the legality of weapons and the laws of targeting; different mechanisms of individual accountability and the importance of recovering the category of 'dolus eventualis' for programmers and technicians and, finally, State responsibility for violations of the laws of war caused by weapons' software errors.

https://doi.org/10.1017/9781009090001 *

The Leuven manual on the international law applicable to peace operations : an ambitious sui generis expert panel manual with time on its side?

Alfons Vanheusden. In: Yearbook of international humanitarian law, vol. 23, 2020, p. 35-59

This chapter discusses the Leuven Manual project in light of the questions raised by the proliferation of expert panel manuals. After a brief introduction, it details the project's methodology. The decision of the Boards of the International Society for Military Law and the Law of War to initiate and support this project required several initial main efforts, ranging from the composition of a Project Management Team and finding appropriate experts willing to take part in the project, over drafting a project plan, to generating international support for the project and approaching relevant stakeholders. The section on methodology continues by describing the approach to research and drafting. Subsequently, it outlines the Leuven Manual's format, its dissemination and its status as a living reference document. The following section identifies various main factors that influence the degree of authority of the Leuven Manual. The adoption of both black letter rules and commentary by consensus and the attention paid to geographical representation are the first two factors mentioned. The way the Leuven Manual was published, welcomed and reviewed, is considered as a third factor. Obviously, the expertise of the members of the Group of Experts and the quality of their research form a fourth factor; and the degree to which the Leuven Manual is and will be used as a reference work is a fifth factor. The chapter concludes that the Leuven Manual offers itself to the peacekeeping and academic communities as a sui generis expert panel manual.

The Macquarie laws of war corpus : design, construction and use

Annabelle Lukin, Rodrigo Araujo e Castro. In: International journal for the semiotics of law, vol. 35, 2022, p. 2167-2186

This paper discusses the creation and use of the new Macquarie Laws of War Corpus (MQLWC). The corpus consists of the 110 documents of international war law stored in the International Committee of the Red Cross treaties database, starting with the 1856 Declaration Respecting Maritime Law (Paris Declaration) and ending with the most recent amendment to the Rome Statute (2019). The new MQLWC is hosted at the Sydney Corpus Lab (sydneycorpuslab.com), via

its CQWeb interface, which allows for searching of frequencies, concordance lines, and collocations. The corpus can also be downloaded for offline processing in other popular concordance programs, such as #Lancsbox and AntConc. This paper introduces the corpus, describes the process of assembling the data, and explains its limitations. The paper then demonstrates some of the ways the data can be explored using the concept of 'military necessity'. The MQLWC contributes to the growing use of corpus linguistics in legal studies, and will be of particular relevance to scholars in the field of international war law.

https://doi.org/10.1007/s11196-022-09889-3

The Martens Clause, global pandemics, and the law of armed conflict

Patrick Leisure. In: Harvard international law journal, vol. 62, no. 2, Summer 2021, p. 469-524

In the aftermath of the UN Secretary General's call for a global ceasefire following the outbreak of COVID-19, a discussion emerged regarding how international humanitarian law applies during a global pandemic. This Article contributes to that discussion through the lens of two distinct strands of thought on the Martens Clause. The first considers the Martens Clause as capable of affecting understandings of how the existing law of armed conflict applies to the conduct of hostilities during a global pandemic. Applying various scholarly and judicial interpretations of the Martens Clause's contemporary legal import, the Article argues that the humanitarian law principles of proportionality, distinction, and military necessity have significant legal bearing on the conduct of hostilities concurrent to a global pandemic. During a global pandemic, the principle of proportionality ought to insist that military commanders include foreseeable incidental harm to civilians resulting from an attack's expected impact on disease transmission in their incidental harm calculus. The principle of distinction should mandate that the effects of chosen means and methods of combat—including on disease transmission—be limited to military objectives. And the principle of military necessity obliges respect for its delicate balance with humanity, allowing only that which is necessary to achieve legitimate objectives—including taking seriously the duty to take tailored precautions before attacks amidst a global pandemic. These principles, particularly in light of the Martens Clause's principles of humanity and the dictates of the public conscience, have important legal sway over the conduct of hostilities during pandemics. The second strand of thought on the Martens Clause relates to its ability in certain limited and defined situations to affect the formation process of new customary rules of humanitarian law. This Article argues that armed conflict during a global pandemic falls into this narrow category and that, as a result, the Martens Clause might influence the formation of an emerging custom regulating armed conflict during a global pandemic. In light of significant international support for the call for a global ceasefire in response to the outbreak of COVID-19, the Article assesses whether a new rule of humanitarian law mandating a ceasefire amidst the outbreak of future global pandemics is forming. Analyzing the current stage of this lex ferenda, the Article illustrates the elements lacking in the formation process. Nonetheless, such a rule solidifying into new customary law in the aftermath of the COVID-19 pandemic would be a normatively positive evolution in light of the threat posed by future pandemics.

https://harvardilj.org/wp-content/uploads/sites/15/HLI204_crop-2.pdf

Los mercenarios como mecanismo de elusión de la responsibilidad internacional

Rafael Sánchez de Nogués Gil. In: Revista española de derecho militar, Núm.116, julio-diciembre 2021, p. 111-167

Los mercenarios constituyen un fenómeno tan antiguo como el de la propia guerra. Sin embargo, actualmente presentan una difusión y una expansión inauditas en la historia, especialmente en la forma de grandes empresas internacionales, dando lugar a una "mercantilización" de los conflictos bélicos. Este auge persiste a pesar de diversos intentos a nivel internacional de regular o, incluso, prohibir su utilización. No obstante, todas estas iniciativas han fracasado de forma irremediable, dada la utilidad de los servicios que prestan a Estados y otros entes, que los emplean de forma sistemática para burlar su posible responsabilidad ante los actos ilícitos que estos cometen.

Military necessity in international cultural heritage law

by Berenika Drazewska. - Leiden ; Boston : Brill Nijhoff, 2022. - XXVI, 365 p.

This book offers the first comprehensive scholarly analysis of the current meaning and scope of military necessity – a key concept in the international legal framework for the protection of cultural heritage during armed conflicts since the adoption of the 1954 Hague Convention. Academic discussions commonly view military necessity uniquely through the lens of international humanitarian or international criminal law. In her book, Berenika Drazewska presents a more comprehensive perspective, examining developments across various strands of international law arisen since 1954. This novel approach demonstrates how international cultural heritage law affords a particularly strict meaning to military necessity. As a result, the relative waiver will only be available to belligerents very rarely, in truly extraordinary circumstances.

NATO, self-defence and its interplay with international humanitarian law and human rights law

Camilla Guldahl Cooper. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 144-166

When may NATO forces rely on self-defence during armed conflict? Although the question is simple, the answer is complex, and requires an examination of both IHL, IHRL, and the criminal law concept of self-defence. Will these apply at the same time, and if so, how? This chapter explains that the historic concept of personal self-defence, now reflected in the human right to life and prohibition on arbitrary deprivation of life, applies to all and at all times, including military personnel involved in armed conflict. However, during armed conflict, the primary legal regime is IHL, leaving limited scope of application for self-defence. Additionally, the self-defence criteria make it an unsuitable legal basis for warfighting. The tendency that all defensive force in military operations is referred to as self-defence and hence applied without ROE, amongst others due to restrictive NATO ROE, is therefore both legally and operationally problematic.

https://doi.org/10.4337/9781789900972.00017 *

Naval warfare : a role for international human rights law ?

Wolff Heintschel von Heinegg. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 131-143

Naval warfare is primarily concerned with platforms rather than individuals. The law of naval warfare deals with individuals only insofar as they qualify as protected persons under the Second and Third Geneva Conventions of 1949. The crews and masters of neutral merchant vessels do not belong to any of the categories of protected persons, although such vessels may qualify as lawful targets. Neither do individuals in distress at sea qualify as protected persons if the situation of distress is unrelated to the hostilities at sea. Moreover, the law of naval warfare does not provide any standards for detentions onboard warships irrespective of whether the respective individuals qualify as prisoners of war or whether they are detained under prize law. Accordingly, there are considerable gaps in the law of naval warfare on the treatment and protection of individuals that can be filled by reference to international human rights law.

https://doi.org/10.4337/9781789900972.00016 *

A new understanding of disability in international humanitarian law : reinterpretation of article 30 of Geneva Convention III

Priscilla Denisse Coria Palomino. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1429-1454

This paper examines whether the interpretation of Article 30 of Geneva Convention III that allows the use of solitary confinement for prisoners of war with psychosocial disabilities is still valid in light of the new standards of the Convention on the Rights of Persons with Disabilities. It proposes two alternative interpretations of Article 30 to demonstrate why isolation based on disability is unlawful and concludes that the use of solitary confinement on prisoners of war with psychosocial disabilities should be prohibited.

https://library.icrc.org/library/docs/DOC/irrc-919-palomino.pdf

No functional immunity for crimes under international law before foreign domestic courts : an unequivocal message from the German Federal Court of Justice

Aziz Epik. In: Journal of international criminal justice, vol. 19, no. 5, November 2021, p. 1263-1281

For some time now, there seemed to be consensus that functional immunity does not protect (former) state officials from criminal prosecution by foreign domestic courts in cases where they are suspected of having committed or participated in crimes under international law. Recently, however, this has been called into question not only by scholars but also by members of the International Law Commission as well as a considerable number of state representatives. It is against this backdrop that the German Federal Court of Justice has issued a landmark judgment confirming the exclusion of functional immunity in cases of crimes under international law. This article provides a summary as well as a legal analysis of the Court's main arguments. It focuses on the main question of immunity while also touching upon the Court's application of the substantive law concerning war crimes under the German Code of Crimes Against International Law.

https://doi.org/10.1093/jicj/mqab071

Nobody is born a legitimate target : a four-step test to the targeting of individuals and groups in armed conflict

Birgit Haslinger. - Vienna : Facultas , 2019. - 486 p.

This book is based on the idea that targeting decisions demand a four-step test, which can simply be described as follows: Know the framework. Know yourself. Know your opponent. Know the circumstances. This test is depicted by a decision-making funnel which begins with a relatively large number of questions requiring a considerable amount of time to answer, the number of questions and time needed to answer them tapers away as the process proceeds. Whereas the first two steps ("Know the framework" and "Know yourself") may be determined prior to actual involvement in an armed conflict and therefore without major time restraints, the last two steps ("Know the opponent" and "Know the circumstances") require fast assessment. This funnel is similarly depicted by the number of questions raised in connection to the four steps and also in relation to the page count of the respective chapters dealing with different steps. This book does not attempt to add new views or more detailed assessments, rather it seeks to find a way to apply existent laws and their interpretations in a coherent way to fit into the four-step established by the author.

Non-discrimination under international humanitarian and human rights law

George Dvaladze. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 411-434

This chapter provides an overview of guarantees of equality and non-discrimination under international law applicable in time of armed conflict. First it analyses the nature and scope of the rules of international humanitarian law (IHL) and international humanitarian law (IHRL) on the prohibition of discrimination and on the equality of treatment. In doing so, it explores how discrimination is construed under both regimes and how to distinguish it from differentiations that are justified or even required by law. After analysing the legal parameters of non-discrimination rules under IHL and IHRL, the chapter turns to discussing the interplay of the two regimes.

https://doi.org/10.4337/9781789900972.00033 *

Non-participation in armed conflict : continuity and modern challenges to the law of neutrality

Constantine Antonopoulos. - Cambridge : Cambridge University Press, 2022. - XXX, 263 p.

Non participation in armed conflict gives rise to the relevance, role and content of the law of neutrality in contemporary international law. Despite scholarly opinion to the contrary the challenges posed by collective security and the prohibition of the use of force have not made neutrality obsolete. The validity of the law of neutrality is reaffirmed in State practice, mainly in the form of national military manuals, and the case-law of international tribunals. The legal

framework of neutrality remains unchanged with respect to most rules. At the same time, it has been adapted to the evolution of the law of the sea as a result of the 1982 UN Law of the Sea Convention, the globalization of trade and the use of cyberspace in armed conflict. This has been achieved mainly through soft law documents and national military manuals. Neutrality, however, remains inapplicable in non-international armed conflict.

https://doi.org/10.1017/9781009085700 *

Normative transformation and the war on terrorism : the evolution of targeted killing, torture, and private military contracting

Simon Frankel Pratt. - Cambridge : Cambridge University Press, 2022. - XI, 215 p.

Pratt investigates the potential erosion of prohibiting assassination, torture, and mercenarism during the US's War on Terrorism. In examining the emergence and history of the US's targeted killing programme, detention and interrogation programme, and employment of armed contractors in warzones, he proposes that a 'normative transformation' has occurred, which has changed the meaning and content of these prohibitions, even though they still exist. Drawing on pragmatist philosophy, practice theory, and relational sociology, this book develops a new theory of normativity and institutional change, and offers new data about the decisions and activities of security practitioners. It is both a critical and constructive addition to the current literature on norm change, and addresses enduring debates about the role of culture and ethical judgement in the use of force. It will appeal to students and scholars of foreign and defence policy, international relations theory, international security, social theory, and American politics.

https://doi.org/10.1017/9781009092326 *

Nuclear weapons law : where are we now ?

William H. Boothby and Wolff Heintschel von Heinegg. - Cambridge : Cambridge University Press, 2022. - V, 238 p.

This book examines the law relating to the possession, threat or use of nuclear weapons. By addressing in logical sequence the law regarding sovereignty, the threat or use of force, the conduct of nuclear hostilities, neutrality, weapons law and war crimes, the book illustrates the topics that an effective national command, control and communications system for nuclear weapons must address. Guidance is given on intractable issues, such as the responsibilities of remote submarine commanders. The continuing relevance of the ICJ's Nuclear Advisory Opinion is assessed, and the prospects for the Treaty on the Prohibition of Nuclear Weapons are discussed. The book has been written in an accessible style so that it will be equally useful to lawyers and practitioners, including relevant commanders, politicians, policy staffs and academics. The objective is to state the law accurately and to explain its implications and provide practical guidance in this most sensitive area.

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The obligation to exercise "leniency" in penal and disciplinary measures against prisoners of war in light of the ICRC updated Commentary on the Third Geneva Convention

Katayoun Hosseinnejad and Pouria Askary. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1121-1147

This paper explores how the general obligation of the Detaining Power to exercise the greatest leniency towards prisoners of war may be used in interpreting the provisions of the Third Geneva Convention of 1949 (GC III) related to the sanction regime to fulfil the obligation of humane treatment and to preserve the persons and honour of prisoners of war. The International Committee of the Red Cross updated Commentary on GC III is placed at the core of the arguments of this research.

https://library.icrc.org/library/docs/DOC/irrc-919-hosseinnejad.pdf

Obligation to prosecute CBRN-related international crimes

Luisa Vierucci. - In: International law and chemical, biological, radio-nuclear (CBRN) events : towards an all-hazards approach. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 579-598

Some CBRN-related offences may amount to acts of genocide, crimes against humanity or war crimes. After having identified the elements of the CBRN-related international crimes, the obligations incumbent upon States with respect to the prosecution of these crimes will be analysed by distinguishing the various stages of the criminal proceedings to which they are connected. The umbrella obligation to prosecute requires, in the first place, that the elements of the crime and the appropriate penalties be established in the national legal order; secondly, the submission of the case to the relevant authorities for the purposes of the investigation and, as the case may be, prosecution or extradition; thirdly, the cooperation and assistance with other States or the ICC.

https://doi.org/10.1163/9789004507999_033

Obligation to provide access to adequate remedies to victims of CBRN events under IHL and IHRL

Francesca Capone. - In: International law and chemical, biological, radio-nuclear (CBRN) events : towards an all-hazards approach. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 619-642

The present contribution aims at mapping and analysing the procedural and substantive aspects related to the international remedies that can be claimed directly by individuals or groups of victims of CBRN-related violations as committed by States, private actors (eg terrorist organisations), business enterprises or individual perpetrators, in the various phases of a CBRN event. In relation to those responsible for violations that directly cause (or contribute to) a CBRN event, it is worth underscoring that all the actors mentionned above bear an obligation to provide reparations, as spelled out by different sources of international law, eg the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). Ultimately, the present chapter will address the following key issues: an overview of victims' rights (or lack thereof) as enshrined in the current international and regional legal regimes applicable specifically to CBRN events; the role of international human rights law (IHRL) and international humanitarian law (IHL); and the potential contribution of international criminal law (ICL).

https://doi.org/10.1163/9789004507999_035

The obligation to provide reparations by armed groups : a norm under customary international law?

Laura Iñigo Alvarez. In: Netherlands international law review, vol. 67, no. 3, 2020, p. 427-452

Reparations represent a key element to redress the suffering caused to victims of armed conflict. Taking into account the predominantly non-international nature of contemporary armed conflicts and the fact that armed groups represent half of the participants, it seems legitimate to question whether reparations should also be provided by armed groups. From the victims' perspective, the suffering caused to them remains the same irrespective of whether the perpetrator is a state or a non-state actor. In this context, there appears to be an emerging practice supporting the obligation of armed groups to provide reparation, as acknowledged in some UN reports. In addition, there have been examples of armed groups committing to provide some forms of reparation to victims through peace agreements, unilateral declarations and codes of conduct. This article analyses the recent international practice and examines any potential duty by non-state armed groups that could have been recognised in the provision of reparations. More precisely, the article evaluates whether the developments in the practice of armed groups could be considered as contributing to customary international law and suggests how this practice could be weighted together with the practice of states. It also identifies challenges and limiting factors in the provision of reparations by armed groups.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57267.pdf *

One step forward, two steps back? : "Georgia V Russia (II)", European Court of Human Rights, Appl no 38263/08

Floris Tan and Marten Zwanenburg. In: Melbourne journal of international law, vol. 22, no. 1, 2021, 20 p.

The European Court of Human Rights' ('Court') Grand Chamber judgment in the interstate case Georgia v Russia (II) was keenly awaited by many. Against the background of the brief armed conflict between Georgia and Russia in 2008, it was expected that the Court would provide clarity with respect to a number of highly contested issues in legal practice and scholarship. Such issues pertain to the applicability of human rights — the European Convention on Human Rights ('ECHR') in particular, during international armed conflict ('IAC') — the extraterritorial application of the Convention during such conflicts and how the right to life must be interpreted in the context of the conduct of hostilities and in relation to international humanitarian law ('IHL'). The judgment indeed presents a new landmark in the Court's case law with respect to the extraterritorial applicability of the Convention and with respect to the interplay of the Convention with IHL. It is of further importance to states' procedural obligation to investigate violations of the Convention, which, as is explored below, takes on a particularly prominent role. Yet, the judgment is controversial in many respects, and whether it succeeds in bringing clarity, and whether it does so in a convincing manner, remains to be seen. Below, the judgment is explored, starting with a summary of the factual and legal findings of the Court (Part II). This contribution then analyses and contextualises the judgment in respect of the issue of jurisdiction (Part III), the interplay between the ECHR and IHL (Part IV) and the procedural duty to investigate (Part V). The contribution concludes with a number of final remarks.

https://law.unimelb.edu.au/__data/assets/pdf_file/0004/3900622/Tan-unpaginated.pdf

Overflying justiciability? Drones and avoidance doctrines before national courts

Luca Gervasoni. - In: Use and misuse of new technologies : contemporary challenges in international and European law. - Cham : Springer, 2019. - p. 327-351

The great majority of domestic suits related to targeted killing have been dismissed on procedural grounds before ever reaching an adjudication on their merits, mainly as a result of domestic courts' reliance on non-justiciability theories (or avoidance doctrines). The article will thus unveil that, due to the particular nature and features of drone strikes, the application of avoidance doctrines to cases ensuing from unlawful killing by unmanned aerial vehicles has the effect of leaving victims' demands for justice absolutely frustrated, thus effectively placing them outside the protection of the law. So that application of traditional theories on justiciability to new lethal practices ensuing from previously unforseeable technical evolutions makes it possible for States to "kill in large numbers and to the sound of trumpets", while segregating victims to "die in the silence of courts". Being this the case, the article will look into the specificity of drone strikes from an opposite angle, trying to turn the peculiarities of this weapon platform into a chance to pursue accountability and reparation throughout multiple proceedings in alternative jurisdictions.

Partnering in detention and detainee transfer operations

Tilman Rodenhäuser. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 387-410

Today, hardly any armed force fights alone. At least for the past two decades, major conflicts - such as the ones in Afghanistan, Iraq, the Sahel region, Syria or Yemen have involved coalitions of States or of States and non-State parties to armed conflicts. Detention is often a particularly challenging issue in partnered operations. For operational, legal or political reasons, certain coalition partners will not have an interest in taking or keeping detainees. Yet, taking detainees - at least when boots are on the ground - is often difficult to avoid. In light of this reality, a practice has emerged in which some States ask partners to detain in joint operations; or, if they do take detainees themselves, they aim to transfer them to partners. This chapter analyses first which force is legally responsible for detainees in partnered operations; second, it recalls non-refoulement obligations of detaining forces that wish to transfer a detainee; and third, examines under what conditions a State may be legally responsible for internationally wrongful acts against detainees committed by partner forces.

https://doi.org/10.4337/9781789900972.00032 *

Paving the way for mind-reading : reinterpreting "coercion" in article 17 of the Third Geneva Convention

John Zarrilli. In: Duke journal of constitutional law and public policy sidebar, vol. 17, 2021, 30 p.

Mind-reading is no longer a concept confined to the world of science-fiction: "Brain reading technologies are rapidly being developed in a number of neuroscience fields." One obvious application is to the field of criminal justice: Mind-reading technology can potentially aid investigators in assessing critical legal questions such as guilt, legal insanity, and the risk of recidivism. Two current techniques have received the most scholarly attention for their potential in aiding interrogators in determining guilt: brain-based lie detection and brain-based memory detection. The growing ability to peer inside someone's mind raises significant legal issues. A number of American scholars, especially in the past fifteen years, have debated the constitutionality of forensically employing mind-reading technologies on United States citizens. Almost no scholarly attention, however, has focused on the legality of mind-reading technologies under international humanitarian law. This Note seeks to fill this gap in the literature and explores whether the administration of mind-reading technologies on a prisoner of war ("POW") in an armed conflict violates international humanitarian law—arguing that an interpretation of coercion more faithful to the text and purpose of Article III would likely permit the application of mind-reading technology during interrogations. Part I briefly lays out the two prevailing interpretations of coercion, noting their implications for the legality of mind-reading technologies, and this Note's interpretation of coercion, which markedly differs from the prevailing interpretations. Part II briefly expands upon the technology discussed in Part I—noting the potential for more accurate mind-reading technology in the future and the applicability of this technology to interrogations. Part III examines current interpretations of the term coercion, formulates a new definition by looking at the text and drafting history of Article 17, and contends that the coercion ban is meant to protect POWs from physical and mental suffering. Part IV then applies this new definition of coercion to various mind-reading technologies, concluding that the painless use of mind-reading technology does not violate Article 17 of Geneva III.

https://scholarship.law.duke.edu/djclpp_sidebar/204

People with disabilities in armed conflict

Magdalena Kun-Buczko. In: Eastern European journal of transnational relations, vol. 3, no. 2, 2019, p. 43-55

During armed conflict, people with disabilities are victims of a vicious cycle of violence, social polarization, deteriorating services and deepening poverty. They are among the most marginalized and excluded part of the population affected by the armed conflict. They are at greater risk in situations of conflict, most likely to be left behind when populations flee and also at greater risk of violence and discrimination. The international normative framework related to people with disabilities in armed conflicts is mainly based on human rights law and international humanitarian law. The Convention on the Rights of Persons with Disabilities moves the meaning of disability from regarding persons with disabilities as objects of medical care and charity to recognizing them as subjects with rights. There is still a long way to go in effectively protecting disabled people during armed conflicts. It seems that legal norms in this respect are sufficiently precise. But as often happens, the executive fails. The international community has a highly developed sense of solidarity and empathy for those in need. However, we are constantly observing many imperfections and shortcomings in the procedures and mechanisms of humanitarian aid operations.

https://doi.org/10.15290/eejtr.2019.03.02.03

The persecution of stones : war crimes, law's autonomy and the co-optation of cultural heritage

Timothy William Waters. In: Chicago journal of international law, vol. 20, no 1, 2019, p. 62-97

In 1567, a bridge was built over a river in Bosnia—a bridge widely seen as a work of great beauty. In 1993, it was destroyed in a war. What did its destruction mean? Was it a crime—and which one? An assault on culture—and whose? Between 2004 and 2017, a trial held in The Hague sought

to answer these questions. The way it did—the assumptions and categories the prosecutors and judges deployed, the choices they made—tells us something important about how law operates and how it appropriates other bodies of knowledge, whether in a now-obscure Balkan conflict or on the battlefields today's courts confront. Our inquiry begins with an interesting puzzle: why didn't the prosecution of the Yugoslav war crimes tribunal charge the most obvious crime—destruction of an historical monument? The answer turns out to be obvious too, but the path by which that obvious answer was reached— and what happened after—was complicated in ways that tell us something even more interesting about what law does to the events and values it is supposed to serve. It also tells us something about what law can and cannot do in responding to the horrors and complexities of war. In answering questions about a cultural monument's destruction, a war crimes tribunal, in its own, autonomous way, turned a beautiful bridge into something very different.

https://chicagounbound.uchicago.edu/cjil/vol20/iss1/2/

The price of settlement : World War II reparations in China, Japan, and Korea

Timothy Webster. In: New York University journal of international law and politics, vol. 51, no. 2, 2019, p. 301-384

World War II litigation has roiled East Asia for the past quarter century. Asian victims of Japanese military aggression — from Taiwanese comfort women to Korean forced laborers to Chinese subjects of medical experimentation — filed more than one hundred lawsuits against the government of Japan, and dozens of large Japanese corporations. The Japanese judiciary has, pursuant to various affirmative defenses, insulated both government and corporate defendants. However, in a handful of cases, Japanese corporations settled, in spite of guaranteed judicial victory. To answer the question of why corporations settled, this Article provides the first comprehensive treatment of six settlement agreements signed by Japanese corporations and forced laborers from China and South Korea. It argues that the process and terms of settlement, upon fulfilling certain criteria, make a discrete contribution to the project of war reconciliation. After providing historical context, the Article articulates a framework to evaluate the settlement agreements, based on apology, admission of liability, public memory, and monetary compensation. It then examines the extent to which each agreement attained these remedies. The case studies show the value of openness in settlement and suggest a role in private settlement for advancing social concerns.

https://nyujilp.org/wp-content/uploads/2019/04/NYI201.pdf

The principles of military necessity and humanity in light of international human rights law

Marco Pedrazzi. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 76-89

Military necessity and humanity are two fundamental principles of IHL; humanity is even more important in HRL, which also knows necessity, but with different meaning, scope and effects. HRL has had an influence in shaping the principle of humanity in IHL, and especially in altering the balance between military necessity and humanity. Military necessity per se has not been influenced by HRL, however human rights concerns may have had an impact on the recent elements of practice and doctrinal positions reflecting a restrictive reading of military necessity. HRL shall not defer to military necessity in the name of lex specialis outside of clear and incontestable conduct of hostilities situations, in cases amenable to be dealt with under a law enforcement paradigm.

https://doi.org/10.4337/9781789900972.00012 *

Private military and security companies under international humanitarian law and human rights law

Marie-Louise Tougas. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 111-130

Private military and security companies provide various services in armed conflict situations, but also in other contexts such as maritime insecurity and detention centres. After years of debates and doubts surrounding the application of IHL and HRL to activities of PMSCs, there is nowadays

a consensus to the effect that rules of international law do apply to them. Despite several developments aiming at ensuring a better regulation of the industry, concerns about their potential involvements in violations of IHL and IHRL continue to be raised. This chapter proposes to draw a portrait of the main relevant rules of international law applicable to PMSCs and their personnel. It will first explore the application of IHL and IHRL to PMSCs and their activities, before turning to the rules of State responsibility and criminal responsibility. National legislation allowing civil liability for international crimes will also be highlighted. Finally, the main relevant soft law instruments will be addressed as well as the use of PMSCs by international organizations.

https://doi.org/10.4337/9781789900972.00015 *

Prosecuting foreign fighters in Germany : the interaction of counter-terrorism law and international humanitarian law

Katharina Parameswaran-Seiffert. In: Archiv des Völkerrechts, vol. 58, issue 2, 2020, p. 190-215

The collapse of the Islamic State (IS) Caliphate, the ongoing conflict in Syria and the release of hundreds of IS fighters following the fighting between Turkish and Kurdish forces in late 2019 have once more intensified the debate on what to do with so-called foreign fighters or foreign terrorist fighters. Many counter-terrorism experts and international lawyers have reasoned that these fighters should be brought home and brought to justice before national courts, for moral, legal and long-term security reasons. In light of the difficulties in gathering evidence in war-torn countries like Syria and Iraq, prosecutors have – until recently – focused on the use of counter-terrorism legislation, such as criminal charges for membership in terrorist organizations, rather than war crimes. That is understandable – from a practical point of view – as the evidentiary threshold is much lower here. Therefore, prosecutors do not need to prove actual war crimes but 'merely' that these individuals joined and were part of a terrorist organization. There are, however, some cases in which returning foreign fighters were actually convicted (also) for war crimes. While this development is to be welcomed in principle, it is crucial to know how the distinct fields of counter-terrorism law and international humanitarian law (IHL) correlate. Especially since there have also been cases in which returned foreign fighters have been prosecuted and convicted of crimes such as murder of opposing armed forces that would have been lawful if they were committed by regular armed forces. This comment will try to delineate the legal issues arising of the dual nature of foreign fighters as legal entities under international humanitarian law on the one side and under counter-terrorism law on the other.

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Proteccion penal de la mujer contra la violencia sexual en el Estatuto de Roma y prohibición de la analogía in malam parte : a propósito de la condena del ex niño soldado Dominic Ongwen por la Corte Penal Internacional

José Luis Rodríguez-Villasante y Prieto. In: Revista española de derecho militar, Núm. 116, julio-diciembre 2021, p. 57-109

Este estudio presenta el marco legal aplicable a la violencia sexual contra mujeres y niñas, de conformidad con el Estatuto de Roma de la Corte Penal Internacional. El artículo examina le definición de término "género", crímenes de lesa humanidad, crímenes de guerra (delitos: violación, esclavitud sexual, prostitución forzada, embarazo forzado, esterilización forzada o cualquier otra forma de violencia sexual de gravedad comparable) y crimen de matrimonio forzado come acto inhumano de carácter similar (crimen de lesa humanidad conforme al artículo 7 (1) K del Estatuto de Roma). Además, muestra los problemas específicos de la protección penal de las mujeres, incluida la posición relativa al artículo 22.2 del Estatuto (la definición de crimen será interpretada estrictamente y no se haraá extensiva por analogía). El estudio también examina el veredicto de la Sala de Primera Instancia IX de la Corte Penal Internacional de fecha 4 de febrero de 2021 (sentencia pronunciada sobre Dominic Ongwen por crímenes de los que fue considerado culpable). El artículo analiza los límites del ámbito de la eximente de órdenes superiores, por la presunción de que la ilicitud de la orden es manifiesta, cuando los crímenes de genocidio y crímenes de lesa humanidad son cometidos en su complimiento. Finalmente, se presentan las conclusiones.

Protection of cultural property under international humanitarian law : emerging trends

Niteesh Kumar Upadhyay, Mahak Rathee. In: Revista de direito internacional, vol. 17, no. 3, 2020, p. 390-409

The legal system related to protection of cultural property is mostly a soft law mechanism in which the implementation body and implementation system is missing and there are many laws which show the importance of cultural property during peacetime and also during war. This paper will discuss in detail about the significance of cultural property, long term effect of destroying of cultural property, Iconoclasm, laws regulating the protection of cultural property during war and peacetime, international criminalization of wrongs against cultural property and suggestions of the authors for protection of cultural property.

https://www.publicacoesacademicas.uniceub.br/rdi/article/view/7076/pdf

Protection of individuals "hors de combat" : convergence of international humanitarian law and international human rights law

Silvia Borelli and Helin Laufer. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 309-343

The principle that persons who are not, or are no longer, taking part in hostilities cannot be attacked or harmed represents one of the cornerstones of international humanitarian law. This principle is embodied by the protections afforded under international humanitarian law to individuals who are hors de combat, which apply in both international and non-international armed conflicts. Alongside the extensive protections envisaged by international humanitarian law, individuals who have fallen into enemy hands during an armed conflict also enjoy a range of substantive and procedural protections under international human rights law. The present chapter provides an overview of the relevant protections under the two systems, highlighting similarities and differences between the protections applicable under both systems, and their interaction. In doing so, it provides a critical assessment of the extent to which the protections arising under international human rights law apply to combatants who are in the power of the adverse party, and the extent to which they extend beyond those afforded under international humanitarian law.

Punishment and pardon : the use of international humanitarian law by the Special Jurisdiction for Peace in Colombia

María Camila Correa Flórez, Andrés Felipe Martín Parada and Juan Francisco Soto Hoyos. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1199-1221

Transitional justice systems generally aim to achieve two goals. One is to bring the perpetrators of past atrocities to justice to ensure that they do not go unpunished, which involves the State fulfilling its duty to investigate, prosecute and punish serious human rights violations and breaches of international humanitarian law (IHL). The other is to bring about reconciliation to heal a divided society and achieve peace and stability. This normally requires the adoption of measures of clemency, such as granting amnesty, so that those who took part in the country's violent past can return to civilian life. The use of IHL is relevant in attaining both these goals because its complex nature means that it provides the legal basis for their implementation. However, this very complexity can mean that there are contradictions or complementarities between its characteristics. This article looks at the case of the Special Jurisdiction for Peace (JEP) in Colombia, showing how this transitional jurisdiction has used IHL as a legal basis both for investigating, prosecuting and punishing serious violations committed during the Colombian armed conflict and for granting amnesty to those who took part in the hostilities. These different uses by the JEP demonstrate that IHL is a flexible tool that can facilitate the process of delivering both justice and peace after a conflict has ended.

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Rapport volontaire sur la mise en œuvre du droit international humanitaire au niveau national 2021/2022

Croix-Rouge française. - Paris : Croix-Rouge française, juin 2022. - 75 p.

La publication volontaire de ce rapport relève d'une initiative de la Croix-Rouge française à travers son engagement avec l'État français, à la dernière Conférence Internationale de la Croix-Rouge et du Croissant-Rouge. Ce premier "Rapport volontaire sur la mise en œuvre du Droit International Humanitaire au niveau national 2021/2022" a été rédigé en collaboration avec différents partenaires tels que le ministère des Armées, le Tribunal de grande instance de Paris, la Commission Nationale Consultative des Droits de l'Homme, le Bouclier Bleu France ainsi que des experts du monde académique. Le rapport volontaire fournit un aperçu global de la mise en œuvre du droit international humanitaire (DIH) en France. Il analyse les principaux exemples de bonnes pratiques et enjeux en la matière. Les principaux sujets abordés sont les suivants : protection spécifique, réglementation des moyens et méthodes de guerre, répression pénale des violations graves du DIH, diffusion et formation en DIH, soutien à la mise en œuvre du DIH, autres mesures pour assurer le respect du DIH.

https://www.croix-rouge.fr/content/download/1745651/21871379/version/1/file/CR-rapport2022_web.pdf

"Reason to know" in the international law of command responsibility

Aaron Fellmeth and Emily Crawford. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1223-1266

A recent report by the Australian Defence Force arrived at a conclusion that further investigation was not warranted of commanders regarding their responsibility for failing to investigate suspicious behaviour of subordinates in Afghanistan, who were accused of violations of international humanitarian law. This troubling conclusion calls for a better analysis and understanding of command responsibility in international law and gaps in the law of command responsibility. This article identifies the conflicting precedents and scholarship regarding the law of command responsibility, which create uncertainty, and proposes a clarification of that law, with a special focus on the "reason to know" standard that triggers responsibility for failing to prevent or punish war crimes. It refutes the popular claim that commanders must act wilfully, and it rejects the common dichotomy between a commander who orders or otherwise directly participates in the war crimes of subordinates and one who unwittingly fails to prevent or punish such crimes. Using the empirical psychological literature, the article further explains how commanders can insidiously signal toleration of war crimes without giving direct orders. Finally, the article argues that international law, by absolving commanders who fail to properly train their subordinates to respect the law of armed conflict, misses a rare opportunity to deter war crimes, and offers some suggestions to fill this gap in the law.

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The reasonable intelligence agency

Asaf Lubin. In: The Yale journal of international law, vol. 47, no. 1, Winter 2022, p. 119-164

Article 57(2) of the First Additional Protocol to the Geneva Conventions requires parties to an armed conflict to "do everything feasible to verify" their objects of attack and take "all precautions" to minimize civilian casualties and unintentional damage to civilian property. This obligation has been interpreted in international law to require state parties to set up an "effective intelligence gathering system" that would properly identify targets using all technical means at the disposal of the combating forces. But existing law has failed to define what "effective intelligence" looks like. Quite the opposite. Modern history is filled with examples of intelligence errors that resulted in calamitous civilian casualties. In this paper, I look at five such case studies, spanning various historical periods, geographical zones, and belligerent parties. Examining these cases, this Article makes the claim that faults in wartime intelligence production are not inevitable as is often presumed and that it is for a lack of specific regulation within the treatises of international humanitarian law (IHL) that they occur at the rate that they do. Tribunals and military manuals guide us to rely on the "reasonable commander" test in determining the lawfulness of a particular strike. Yet, in the process we overlook the fact that any reasonable commander will turn to her "reasonable intelligence agency"—the contours of this standard are conspicuously under- defined. This paper takes a first step at proposing such a standard, a new duty of care, based on both

historical analysis and emerging best practices. In so doing the paper proposes a path forward for addressing the accountability gap that permeates contemporary IHL as it relates to state responsibility for wartime errors and mistakes.

http://hdl.handle.net/20.500.13051/18065

Reducing suffering during conflict : the interface between Buddhism and international humanitarian law

Andrew Bartles-Smith, Kate Crosby, Peter Harvey, P. D. Premasiri, Asanga Tilakaratne, Daniel Ratheiser, Mahinda Deegalle, Noel Maurer Trew, Stefania Travagnin [and] Elizabeth Harris. In: Contemporary Buddhism, vol. 21, no. 1-2, 2020, p. 369-435

This article stems from a project launched by the International Committee of the Red Cross (ICRC) in 2017 to examine the degree to which Buddhism might complement or enhance international humanitarian law (IHL), also known as 'the law of war' or 'the law of armed conflict'. Given that Buddhist teachings discourage violence, scholarship has critiqued Buddhists' involvement in armed conflict rather than considered how Buddhism might contribute to regulating the conduct of hostilities once war has broken out. Yet the Buddhist aim to reduce suffering is particularly relevant during armed conflict, and the empirical realism of early Buddhist texts shows that early Buddhist communities were very much aware of its grim reality. The article investigates the evidence for this empirical realism before exploring a range of concepts, doctrines and practices from within Buddhism that are pertinent to the recognition and implementation of IHL principles and the conduct of war. While IHL lays down explicit rules to follow during war, Buddhism emphasises broader ethical principles to be applied, so as not to dilute its ideal of non-violence. At a deeper level, it addresses the intention or motivation of parties to armed conflict, and possesses psychological insights and resources to help change their behaviour.

https://doi.org/10.1080/14639947.2021.1976016

Regional consultation of Latin American states : 9-10 November 2021 : international humanitarian law and cyber operations during armed conflicts

report prepared by Kubo Macák, legal adviser, ICRC. - Geneva : ICRC, June 2022. - 30 p.

The government of Mexico and the International Committee of the Red Cross jointly organized – on 9 and 10 November 2021 – a regional consultation of Latin American states on international humanitarian law (IHL) and cyber operations during armed conflicts. The aim of the event was to facilitate dialogue among states in the region, with a view to developing common understandings on how international law applies to the use of information and communication technologies during armed conflicts. This report provides an account of the exchanges among experts that took place during the consultation. In particular, participating states agreed that IHL lays down limits for cyber operations during armed conflicts and should be interpreted in light of the evolving technologies of warfare. They also considered that certain key IHL notions needed to be clarified in the cyber context, and highlighted suggestions for the way forward, including through developing national positions on international law in cyberspace and through taking active part in the relevant multilateral processes.

https://library.icrc.org/library/docs/DOC/icrc-4635-002.pdf

Reparation for victims of serious violations of international humanitarian law : new developments

Elizabeth Salmón and Juan Pablo Pérez-León-Acevedo. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1315-1343

This article aims to determine what important new developments have emerged in reparation for victims of serious violations of international humanitarian law (IHL). Our hypothesis is that there have been significant new developments in this area of particular relevance to IHL and that reparation for victims of serious violations of IHL is increasingly being incorporated into this body of law as one of its key components. It is submitted that the following developments are evidence of this gradual transformation of IHL: (i) broad recognition of the right of victims of serious violations of IHL to reparation; (ii) extension of the scope of the obligation to provide reparation under IHL to include non-State armed groups and individuals as well as States; (iii) the existence

of innovative domestic reparation mechanisms complemented or supervised by regional courts, as evidenced by experiences in Latin America; and (iv) the reparation system of the International Criminal Court as a global mechanism.

https://library.icrc.org/library/docs/DOC/irrc-919-salmon.pdf

Reparations for victims of terrorist acts in Sahel conflicts : the case of Niger

Maman Aminou A. Koundy. In: International review of the Red Cross, vol. 103, no. 918, 2021, p. 883-900

After the crisis in Mali erupted in 2012, numerous conflicts have broken out in countries of the Sahel and resulted in many violations of international human rights law and international humanitarian law. While these bodies of law were designed primarily to protect individuals or categories of individuals, they also require that reparations be made for harm suffered by the victims of such violations. Despite the ever-growing number of victims in conflicts in the Sahel in general and in Niger in particular, it is evident that States of the Sahel have not made a priority of meeting the reparation obligation, which falls mainly on them. However, the specific nature of the harm suffered (as a result, in part, of civilians being targeted) in terrorist-related conflicts calls for a prompt reaction by States, as they are the true targets of acts perpetrated by terrorist-designated non-State armed groups, while individuals and communities are only proxy victims. A legal, institutional and operational framework for victim reparations needs to be set up by the States, but that has yet to happen, even though it is one of the conditions of durable conflict resolution. The scattered initiatives that have been launched in Niger would gain from being brought together under a holistic framework with a global strategic vision.

https://library.icrc.org/library/docs/DOC/irrc-918-koundy.pdf

En français: https://library.icrc.org/library/docs/DOC/irrc-918-koundy-fre.pdf

Research handbook on human rights and humanitarian law : further reflections and perspectives

Edited by Robert Kolb, Gloria Gaggioli and Pavle Kilibarda. - Cheltenham ; Northampton : E. Elgar, 2022. - XVI, 530 p.

Providing up-to-date discussions of both evolving and novel debates in human rights law and humanitarian law, this timely new edition of the Research Handbook on Human Rights and Humanitarian Law complements, rather than replaces, its predecessor with fresh perspectives from leading scholars on the controversial and crucial topics within these fields. Examining the application of international law to armed conflict situations, contributors present contemporary reflections on a variety of issues that have evolved and emerged in recent years. Chapters integrate a multitude of converging and diverging perspectives on international law in armed conflict, giving voice to stakeholders from academic, humanitarian, judicial, and military backgrounds. Grounded in the results from extensive cutting-edge research on various topics pertaining to the interplay between human rights law and humanitarian law, this Research Handbook illuminates the role of international law in topics such as counterterrorism, tribunals, detention and detainee transfer, sexual and gender-based violence and torture. Breaking down major and recent international and domestic jurisprudence in an accessible format, this Research Handbook will prove invaluable to students and scholars of human rights and international humanitarian law. With practical examples, it will also act as a useful reference guide to practitioners and humanitarian workers in the field.

https://doi.org/10.4337/9781789900972 *

Reverse distinction : a US violation of the law of armed conflict in space

David A. Koplow. In: Harvard national security journal, vol. 13, issue 1, 2022, p. 25-120

The “democratization of space”—referring to the vastly increased private sector engagement in satellite functions—has been one of the most conspicuous and successful recent developments in the field, exploiting the dramatically reduced costs of developing, launching, and operating spacecraft for applications such as reconnaissance and telecommunications. The U.S. government has vigorously endorsed this opportunity and is determined to rely upon commercial sources to provide essential support even for crucial national security space operations. Sequential declarations of official governmental space policy—adopted through Republican and Democratic

administrations—have embraced this "outsourcing," intertwining military and intelligence community programs and functions into private sector and third state spacecraft. This integration of governmental and commercial space assets promises significant cost savings as well as offering more rapid uptake of new space technologies. However, this intermingling runs afoul of one of the most central requirements of the traditional law of armed conflict: the principle of distinction (or discrimination), which mandates that in combat, states may lawfully direct their attacks only against military objectives, not against civilians or their property. An important corollary of this principle—referred to in this article as "reverse distinction"—requires a state to separate its military assets from civilian objects. This precaution is necessary in order to spare civilians and their property from the worst ravages of warfare and also to enable the adversary to carry out its primary obligations under the distinction principle: to aim its attacks only against military targets. This article examines the growing, persistent U.S. violation of the principle of reverse distinction. As the U.S. national security space assets and functions become increasingly insinuated into private commercial and neutral spacecraft, the separation required by the law of armed conflict is ignored. This U.S. practice is both illegal and unwise, as it threatens to make future conflict in space even wider and more devastating than it would inherently have to be.

https://harvardnsj.org/wp-content/uploads/2022/01/HNSJ-Vol-13-Koplow-ReverseDistinction.pdf

The right to a fair trial during armed conflict

Davit Javakhishvili. In: Levan Alexidze journal of international law, vol. 1, no. 1, 2020, p. 68-77

The right to a fair trial is the bedrock of the other fundamental human rights. The scope of this right changes in the time and space, however, the essence remains the same: to protect the individual from the violation of her/his rights and allow to prove her/his truth. Within the scope of international law, enforcement of the right to a fair trial faces the most severe challenges during the operation of the International Humani#arian Law (IHL). Taking into consideration the reality of contemporary Georgia, namely armed conflict hotspots in the country, occupation and pending investigation of the International Criminal Court (ICC) in the situation of Georgia (concerning the alleged international crimes committed in the context of an international armed conflict), the right to a fair trial in that regard has a specific relevance. Aim of the present paper is to introduce readers to the efficiency of the right to a fair trial during armed conflicts; to analyze what is the national/international legal framework for the functioning of the military court and assess whether the aforementioned court can satisfy international standards to guarantee the right to a fair trial. Present paper reviews practice of the European Court of Human Rights (ECtHR), Constitutional Court of Georgia, and International Military Tribunals.

http://laf.ge/journals/index.php/test/article/view/4/7

The right to water for internally displaced persons in the Sahel region

Sâ Benjamin Traoré and Tiérowé Germain Dabiré. In: International review of the Red Cross, vol. 103, no. 918, 2021, p. 959-980

The number of internally displaced persons (IDPs) has drastically increased over the last five years in the countries of the Sahel region. This situation is linked to the rise of countless armed groups, especially in Mali, Niger and Burkina Faso. The present paper aims to assess the existence and contours of a right to water for IDPs in the Sahel region. In doing so, it examines international humanitarian law and other international law regimes to determine the legal foundations that protect and guarantee IDPs' right to water. The contribution provides the contextual background of armed conflict-induced displacement in the Sahel region, and demonstrates the existence of a right to water for IDPs in the Sahel countries. This right derives not only from international humanitarian law but also from other complementary international rules applicable even in conflict situations. The paper finally discusses and recommends legal and practical ways in which IDPs' right to water can be better realized in the current context of the Sahel region.

https://library.icrc.org/library/docs/DOC/irrc-918-traore.pdf

En français: https://library.icrc.org/library/docs/DOC/irrc-918-traore-fre.pdf

Rights and duties of civilians in armed conflict

Amanda Alexander. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 239-256

This chapter examines the rights and duties of civilians in armed conflict. It argues that international law has long considered that the primary duty of civilians in international humanitarian law is to refrain from taking part in hostilities. If civilians remain inactive and passive in conflict situations, then defending, occupying, or attacking parties will be able to uphold civilians' right to immunity, and their protection through the principles of distinction and proportionality. The realities of conflict, however, and the recognition in the 1977 Geneva Protocol I of irregular belligerents mean that this clear separation of passive civilians and a zone of conflict are unlikely in practice. Therefore, although it is agreed that, even in the complexity of modern warfare, civilians still have rights to protection under the principles of distinction and proportionality, the application of these principles in warfare is highly contested.

The rights of the families of missing persons : going beyond international humanitarian law

Grazyna Baranowska. In: Israel law review : a journal of human rights, public and international law, vol. 55, no. 1, 2022, p. 25-49

The main aim of the article is to test how states implement international humanitarian law (IHL) with regard to the families of missing persons. The article shows relevant IHL shortcomings and compares them with rules applicable in cases of enforced disappearance. The national legislation collected in the section titled 'The Missing and Their Families' of the National Implementation Database of the International Committee of the Red Cross is then examined. The analysis addresses three core questions that are particularly relevant for families of missing persons: (1) Who is considered a missing person under each law? Approaching this question allows the testing of whether states follow the understanding of 'missing persons' under IHL treaty law. The second and third questions address two issues that are crucial for families of missing persons that are not addressed in IHL: (2) How is the legal status of the missing person regulated? (3) Are family members provided with measures of reparation and/or assistance? This approach reveals that states rarely apply the IHL understanding of 'missing persons' and predominantly exceed IHL by addressing some of the identified shortcomings. It further shows that states provide families of missing persons either with reparation measures – in cases of human rights violations – or, less often, with measures of assistance in post-conflict situations.

https://doi.org/10.1017/S0021223721000182

The rights to privacy and data protection under international humanitarian law and human rights law

Asaf Lubin. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 462-491

A review of the roles that the rights to privacy and data protection play in regulating wartime military operations is long overdue. Literature exploring the use of digital technologies during armed conflict has centered mostly on either the development of lethal autonomous weapon systems or on various techniques in cyber and information warfare. Far more limited attention has been given to other more mundane technologies which wartime deployment could have significant privacy and data protection infringing effects. This Chapter explores three such case studies: the data protection obligations of a belligerent occupier, the privacy limitations on mass surveillance collection for targeting in armed conflict, and the obligations of jus post bellum international courts and fact-finders in collecting digital evidence for criminal investigations. In reviewing these case studies, the Chapter explores the normative foundation and scope of application of the rights to privacy and data protection in IHL.

https://doi.org/10.4337/9781789900972.00035 *

A room full of experts : expert manuals and their influence on the development of international law

Heather A. Harrison Dinniss. In: Yearbook of international humanitarian law, vol. 23, 2020, p. 21-34

Expert manuals play an increasingly important role on the development of international law into new areas and environments. While not formally a source of law themselves, their influence on those involved in the development and construction of more formal sources of law takes place on multiple levels and in a variety of ways. This contribution explores some of the different elements that effect the influence these manuals wield. The selection of experts, their qualifications, diversity and ability to adapt to new environments and technological domains are core components of this influence. Likewise the methodology used by the manual, the attempt to separate lex lata from lex ferenda and the method of representing differing views within the group will all have an impact on its subsequent influence. Manuals will continue to play a valuable role in the development of international law, by influencing the decisions of policy makers, treaty negotiators and others, particularly in an era characterised by lack of agreement between states and stagnation of formal law making processes in emerging domains.

"Safe zones" : a protective alternative to flight or a tool of refugee containment ? : Clarifying the international legal framework governing access to refugee protection against the backdrop of "safe zones" in conflict-affected contexts

Harriet Macey. In: International review of the Red Cross, vol. 104, no. 919, 2022, p. 1455-1475

So-called "safe zones" pose an increasingly pressing threat to genuine and robust international legal protection for persons fleeing conflict. This paper aims to address the key challenges and risks of safe zones under international law and to provide some clarifications on the legal framework which must be respected by refugee-receiving States. Through assessing the intentions of preventing migration flows which underlie their creation, this paper will demonstrate that the existence of safe zones cannot be used to circumvent the obligations of refugee-receiving States under international law, specifically the right to leave and seek asylum and the prohibition of non-refoulement. This paper concludes that safe zones should only be created as an urgent response to humanitarian crises in order to ensure the immediate safety of civilians in conflict zones, and only under very strict conditions. In this respect, this paper will demonstrate that even if safe zones comply with certain minimum protective standards, because of the volatility and complexities of the conflict environment they should not and cannot act as a substitute for genuine refugee protection under international law.

https://library.icrc.org/library/docs/DOC/irrc-919-macey.pdf

Sexual violence as a practice of war : implications for the investigation and prosecution of atrocity crimes

Kim Thuy Seelinger and Elisabeth Jean Wood. - In: The Oxford handbook on atrocity crimes. - Oxford [etc.] : Oxford University Press, 2022. - p. 649-673

This chapter analyzes the implications of recent social science on sexual violence by armed actors for the investigation and prosecution of atrocity crimes. It focuses on a fundamental challenge to both: rape and other forms of sexual violence may be committed frequently by members of an armed organization without being ordered or authorized as policy. This, we term a practice. When frequent, it is driven by the gender norms held by combatants and those held by commanders. Attention to these social dynamics enhances prosecutors' gender analysis and investigation of an armed conflict, illuminating the relationships between different acts of violence. Charging sexual violence that occurs as a practice calls for specific characterizations of the offense and type of responsibility. Because it features complicity, tolerance, and foreseeability, modes of liability such as aiding and abetting, command/superior responsibility, and joint criminal enterprise are most relevant.

Sexualised crimes, armed conflict and the law : the International Criminal Court and the definitions of rape and forced marriage

Hannah Baumeister. - Abingdon : Routledge, 2018. - XXIII, 251 p.

This book explores how the ICC definitions of rape and forced marriage came about, and addresses the ongoing challenge of how to define war rape and forced marriage in times of armed conflict in a way that adequately reflects women's experiences, as well as the nature of the crimes. In addition to deepening the understanding of the ICC negotiations of war rape and forced marriage, and of the crimes themselves, this volume highlights relevant factors that need to be considered when criminalising acts of sexualised war violence under international law.

Los sistemas de armas autónomas en la convención sobre ciertas armas convencionales : sombras legales y éticas de una autonomía ¿bajo el control humano?

Reyes Jiménez-Segovia. In: Revista electrónica de estudios internacionales, no. 37, 2019, p. 1-33

Los sistemas de armas autónomos, también conocidos como Killer Robots, han llegado a los conflictos armados para quedarse. Desde 2014, los Estados Partes en la Convención sobre Ciertas Armas Convencionales debaten cómo dar salida a un medio de combate cuyo uso plantea serios retos legales e importantes dilemas éticos. La imposibilidad de formular una definición común de esta clase de armas ha atrapado a los Estados en un circuito cerrado y repetitivo, impidiéndoles abordar las cuestiones jurídicas y éticas de mayor calado humanitario. El presente estudio expone las claves técnicas de las armas autónomas que dan lugar al actual bloqueo, profundizando en sus consecuencias sobre las cuestiones legales y éticas y propone un conjunto de actuaciones integrales y transparentes, que aseguren su uso conforme al derecho internacional humanitario y sometido a un constante y significativo control del ser humano.

http://dx.doi.org/10.17103/reei.37.07

La situación de la violencia relacionada con las drogas en México del 2006 al 2017 : ¿ es un conflicto armado no internacional ? = The situation of drug-related violence in Mexico from 2006-2017 : a non-international armed conflict ?

Universiteit Leiden, Grotius Centre for International Legal Studies. - México : Comisión mexicana de defensa y promoción de los derechos humanos, 2019Guadalajara, México : Instituto Tecnológico y de Estudios Superiores de Occidente. - 267 p.

En este informe se analiza detalladamente la situación de la violencia relacionada con las drogas en México entre diciembre de 2006 y diciembre de 2017. Examinamos la participación de las más poderosas organizaciones de tráfico de drogas (OTD) y sus enfrentamientos armados con las fuerzas armadas mexicanas. Se concluye que esta situación de violencia ha resultado en un conflicto armado de carácter no internacional (CANI) desde 2007, lo que se traduce en un aumento alarmante del número de víctimas civiles. Para determinar si la situación en México puede ser considerada como equivalente a un CANI deben cumplirse los dos criterios de organización e intensidad, como lo confirman las resoluciones de los tribunales internacionales. En esencia, las partes en esa situación deben estar suficientemente organizadas y la situación de violencia debe alcanzar un umbral de intensidad suficiente. Este informe evaluó el grado de organización de los actores no estatales pertinentes, se concluyó que siete de los nueve OTD analizados cumplían el requisito de nivel de organización: el Cártel de Juárez, el Cártel de Sinaloa, el Cártel Jalisco Nueva Generación, La Familia michoacana, Los Caballeros Templarios, Los Zetas y la Organización Beltrán Leyva. Los dos OTD restantes, el Cártel del Golfo y el Cártel de los Arellano Félix/Tijuana, no se consideraron lo suficientemente organizados para calificar como un grupo armado organizado. La situación de violencia que involucra a estas OTD más organizadas y a las fuerzas armadas mexicanas fue estudiada a profundidad adicionalmente, con el fin de establecer si también se cumplía el umbral de intensidad.

https://www.cmdpdh.org/publicaciones-pdf/cmdpdh-la-situacion-de-la-violencia-con-las-drogas-2006-a-2017.pdf

Small arms and light weapons : the humanitarian challenge

Roderic Alley. - In: Human rights in war. - Singapore : Springer Nature Singapore, 2022. - p. 291-308

The continued proliferation of small arms and light weapons (SALW) has gained added salience as a human security concern. This has followed mounting concern over the tolls exacted by this weaponry in long-running conflicts, as well as domestic firearms outrages annually claiming millions of lives. This chapter addresses the scale and impacts of SALW transfers; existing restraints over this activity but deficient controls over ammunition, and spread of this weaponry to armed non-state actors; and transfer impacts upon internal conflicts, firearms abuse, and conditions of persisting insecurity. The extent to which existing international humanitarian, human rights, and criminal law restricts SALW transfers is examined, including scope for their enhanced compliance and implementation. Barriers to such strengthening are deemed substantial but not insurmountable. Finally, the chapter locates the SALW transfer question within widening debate over state responsibilities for right to life and imperatives of human security.

Societal risks and potential humanitarian impact of cyber operations

Pia Hüsch and Henning Lahmann. - Geneva : The Geneva Academy of International Humanitarian Law and Human Rights, 2022. - 33 p.

Our new Working Paper Societal Risks and Potential Humanitarian Impact of Cyber Operations provides an up-to-date assessment of existing risks and protection needs in light of contemporary and future military cyber capabilities. Based on two expert workshops and four other consultations with individual experts – held between February and May 2021 – it addresses the following three overarching questions: What risks, potential humanitarian consequences, and protection needs for conflict-affected populations arise on the digital battlefield? Does international law, in particular international humanitarian law (IHL), adequately address these risks and protection needs? If not, what recommendations could be developed in terms of law and policy beyond the existing IHL framework to mitigate these risks and address these protection needs? The report details in five distinct parts the actors involved in adversarial cyber operations, the methods they use, their objectives, on what the vulnerabilities of the targets depends, and what can be done to strengthen these targets' resilience against cyber harm. A sixth concluding part briefly touches upon some of the legal issues raised during the workshops and consultations that merit more in-depth consideration.

https://www.geneva-academy.ch/joomlatools-files/docman-files/working-papers/Societal%20Risks%20and%20Potential.pdf

State immunity and victims' rights to access to court, reparation and the truth

Vessela Terzieva. In: International criminal law review vol. 22, issue 4, 2022, p. 780-804

Recently municipal courts have found that foreign states do not enjoy jurisdictional immunity with respect to civil claims involving serious violations of international law within the forum state's territory during armed conflict. This article assesses the recent judgments' potential impact, taking into account previous court practice and international human rights jurisprudence. It concludes that an exception to immunity in the above circumstances where no alternative judicial remedies exist for the victims has a basis in previous practice and may be required to give effect to international human rights obligations. A recognition by the foreign state of an individual victims' right to bring a claim before that state's courts could provide the victims with reparation in the form of satisfaction. Where no such possibility exists, a limited exception to the rule of state immunity would ensure the victims' right to access to court and to the truth.

https://doi.org/10.1163/15718123-bja10139

The status of state and nonstate actors in postwar hostilities : restoring the rule of law to US targeted killing operations

Claire Finkelstein. In: Vanderbilt journal of transnational law, vol. 54, no. 5, 2021, p. 1163-1202

With the killing of Iranian general Qassim Soleimani, the United States crossed a new frontier in the use of extrajudicial lethal operations outside of armed conflict. As a state actor, Soleimani

once would have been entirely off-limits as a target outside the context of a formal armed conflict between the United States and Iran. The Trump administration's choice to conduct a one-off strike on a state military leader indicates that conflicts among state adversaries are increasingly fought using the hybridized tools of the war on terror. This article will argue that the increasing use of such techniques and the perceived relaxation of the constraints of international law in conflicts among states is a regrettable, but foreseeable, result of a certain conception of violent nonstate actors that immediately followed the 9/11 attacks. Greater clarity about the legal boundaries governing the use of Bush-era interrogation methods and President Obama's dramatic increase in the use of extrajudicial killing against nonstate actors might have forestalled this development. This article focuses on the decision to treat violent nonstate actors in the war on terror as "unlawful combatants,"—a framework that deprives them of the traditional protections of both the Law of Armed Conflict (LOAC) and the constitutional guarantees ordinarily extended to criminal defendants. This ambiguity provided legal impunity for abuse, the impossibility of achieving convictions at trial for those detained, and an uncertain legal basis for those who are targeted rather than captured. The question of status now arises with urgency for violent state actors like Qassim Soleimani, who was killed by a US drone strike in January of 2020. This article will argue that violent nonstate actors are more properly thought of as civilians than combatants but that this approach should not be permitted to affect the treatment of state actors like Soleimani, whose status as a state actor implies that he can only be targeted as a state combatant and then only if in the context of armed conflict.

https://www.transnat.org/post/restoring-the-rule-of-law-to-us-targeted-killing-operations

A study of child rights in armed conflicts under the international legislative framework

Dolly Biswas. In: Indian journal of law and justice, vol. 12, no. 2, 2021, p. 253-268

Protecting children in conflict is a key concern for international children's legislation and its implementation today, with over 250 million children living in conditions of armed conflict. The international legal measures that safeguard children during armed conflict are examined in this article. It examines the general legal rights afforded to children during times of conflict, particularly their access to critical resources for their physical and mental well-being and to developmental activities, including education. It also looks at how international law prevents children from becoming involved in armed conflicts, including the restriction on their recruitment and use in hostilities, as well as how children who are captured or detained should be treated. The article concludes with a brief description of how, over the last few decades, the protection of children in armed conflict has grown to be a major worldwide problem, particularly within the UN system.

https://ir.nbu.ac.in/handle/123456789/4214

The subject-matter jurisdiction and interpretative competence of the African Court on human and people's rights in relation to international humanitarian law

Gus Waschefort. In: African human rights law journal. vol. 20, no. 1, 2020, p. 41-77

The African Court on Human and Peoples' Rights has a uniquely broad subject-matter jurisdiction that includes any 'relevant human rights instrument ratified by the states concerned' (article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights). This article considers the extent to which the Court's subject-matter jurisdiction includes international humanitarian law, and the related issue of the Court's interpretive competence. It is argued that the Court indeed is competent to directly apply norms of international humanitarian law. However, the circumstances under which it can do so are limited to two instances, namely, (i) where international humanitarian law norms are incorporated by reference into applicable human rights treaties; and (ii) in the likely scenario that the Court regards some international humanitarian law conventions as having a human rights character, the primary rules of the applicable international humanitarian law obligations must entail an individual right. Whether a given international humanitarian law obligation entails an individual right is to be determined on a case-by-case basis and, in any event, such instances will be rare. As a consequence of the limited circumstances under which the Court can directly apply international humanitarian law, determining the extent to which the Court can rely on the interpretation of international humanitarian law in applying human rights norms remains pertinent. In this regard it is argued that the Court can rely on international humanitarian law in

the application of human rights norms on two bases. First, considering the complementary relationship the Court has with the African Commission, the Court can rely on the African Charter's interpretation clause (articles 60 and 61). Second, the Court has an implied power to interpret international humanitarian law in applying human rights treaties, as this power is necessary for the Court to discharge its mandate.

http://dx.doi.org/10.17159/1996-2096/2020/v20n1a2

Tactical nuclear weapons cannot comply with the law of armed conflict

Evan Richardson. In: Fordham international law journal, vol. 45, no. 2, 2021, p. 429-472

The Nuclear Weapons Advisory Opinion is one of the most important pieces of the International Court of Justice's jurisprudence. Delivered in 1996, only a few years after the end of the Cold War, the world watched as the Court proclaimed that no body of international law explicitly bans the use of nuclear weapons in every scenario. This note analyzes that ruling and its subsequent interpretations and argues that it is short sighted. The Court believed that use of all nuclear weapons may be illegal, but that the Court lacked sufficient facts to determine whether that was true in every scenario. The exemplary issue showcasing legality was self-defense. This note argues that the Court should have distinguished tactical from strategic nuclear weapons and should have prohibited any use of tactical nuclear weapons. As will be discussed, tactical nuclear weapons are incapable of providing self-defense when the very survival of the state is at risk, provide no greater military advantage than conventional weapons, and cause indiscriminate effects in the form of the uncontrollable spread of radiation. This note, like the Court in its opinion, does not comment on or argue about deterrence as a matter of policy. Nor does this note comment on the legality of use of strategic nuclear weapons in self-defense. The scope of this note is limited to arguing that the Court should have held that tactical nuclear weapons are different than strategic nuclear weapons, and should have held that the use of tactical nuclear weapons is, or would be, per se illegal.

https://ir.lawnet.fordham.edu/ilj/vol45/iss2/4

Taking the next steps on sexual and gender-based violence in international humanitarian law : embracing complementarity and mainstreaming gender

Helen Durham and Vanessa Murphy. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 362-385

This chapter's primary purpose is to make links. In its first half, it sets out how different provisions of international humanitarian law (IHL) govern the prevention of and response to sexual violence in armed conflict, and how these rules of IHL are complemented by other international legal frameworks including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Security Council's women, peace and security agenda. In its second half, the article then addresses how analyses of sexual violence must form a part but not the whole of gender-related interpretations of IHL. It does this by identifying broader types of gender-based violence in IHL, as well as gendered impacts of armed conflict and corresponding implications for the application of certain IHL obligations.

https://doi.org/10.4337/9781789900972.00030 *

Targeting a satellite : contrasting considerations between the jus ad bellum and the jus in bello

Hitoshi Nasu. In: International law studies, vol. 99, 2022, p. 142-179

With the development and greater availability of counter-space capabilities, satellites are becoming a prime target of military threats. However, the legal assessment for the targeting of a satellite requires careful analysis because of its impacts on terrestrial activities and the potential to affect the rights and interests of third parties when their payloads are carried by the targeted satellite. With these two unique characteristics in mind, this article unravels the complexity of international legal regimes applicable to military operations conducted against a satellite by contrasting threshold legal considerations necessary for the identification and application of relevant legal requirements under the law governing the use of force (jus ad bellum) and those under the law governing the conduct of hostilities in situations of armed conflict (jus in bello). It

finds that while its terrestrial impact is arguably relevant under the jus ad bellum and more so under the jus in bello to the legal characterization of satellite targeting and the identification of an injured or belligerent State, there is no need to afford special protection to the rights and interests of a third State that may be affected as a result of the operation.

https://digital-commons.usnwc.edu/ils/vol99/iss1/6/

Targeting in outer space : an exploration of regime interactions in the final frontier

Caitlyn Georgeson, Matthew Stubbs. In: Journal of air law and commerce, vol. 85, no. 4, 2020, p. 609-668

Space infrastructure is now integral to both civilian life and warfare. Belligerents may find great military advantage in destroying a satellite in orbit, but this could have grave consequences for civilians on earth and create long-lasting space debris. This article identifies the applicable law by harmonizing international humanitarian law, human rights law, and international space law. The authors conclude that targeting a satellite in armed conflict will be permissible only as a measure of last resort, not of first response.

https://scholar.smu.edu/jalc/vol85/iss4/3/

Testing knowledge : weapons reviews of autonomous weapons systems and the international criminal trial

Eve Massingham and Simon McKenzie. - In: Futures of international criminal justice. - Abingdon : Routledge, 2022. - p. 177-197

A recurring theme of the debate about the development and use of autonomous weapon systems (AWS) into the future is how to ensure accountability for their use. There is a fear that in the future an AWS might be involved in a serious violation of international law but that no one could be held responsible for that violation. This has led many scholars to propose ways to bridge the perceived gap between the decisions of the operator of the system and targets selected by the device. The chapter contributes to this debate by considering how the legal obligation of states to carry out a weapons review links with the high threshold that has been set for individual criminal responsibility for crimes triable before the International Criminal Court (ICC). It shows the importance of testing in the development and acquisition of AWS and how testing and its documentation through legal review are important ways of promoting accountability for the use of AWS.

Tethering the law of armed conflict to operational practice : "organized armed group" membership in the age of ISIS

E. Corrie Westbrook Mack, Shane R. Reeves. In: Berkeley journal of international law, vol. 36, issue 3, 2018, p. 334-361

The article begins with a background section discussing organized armed groups (OAGs), such as ISIS, and the consequences of membership in such a group. A survey of the various methods of determining OAG membership, and the practical applicability of each approach to ISIS, follows. Based upon this comparison, the article concludes that more restrictive membership criteria create an unworkable paradigm that does not match the realities of the modern battlefield. Instead, an expansive understanding of who qualifies as a member of an OAG is not only practical, but necessary for providing underlying support for the principle of distinction in non-international armed conflicts.

https://doi.org/10.15779/Z381R6N13R

Torture and other cruel, inhuman or degrading treatment or punishment in international law : towards a generic definition?

Pavle Kilibarda. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 435-461

International law prohibits torture and other forms of ill-treatment with uncommon resoluteness: their prohibition is absolute. Nevertheless, considerable controversies persist regarding the concepts involved, the situations covered and the very legal strength of the prohibition, which has

not gone unchallenged. Developments in legal practice highlight the challenges of applying provisions devised decades earlier in ways that had not earlier been fully explored, for example regarding the extra-custodial use of force. The present chapter therefore seeks to weigh out the different elements of torture and ill-treatment in customary international law and elucidate the common elements present across the spectrum of jurisprudence.

https://doi.org/10.4337/9781789900972.00034 *

Training and education of armed forces in the age of high-tech hostilities

Marco Longobardo. - In: Use and misuse of new technologies : contemporary challenges in international and European law. - Cham : Springer, 2019. - p. 73-91

In recent decades, new technologies have so radically changed current warfare that, as a consequence, the very law of armed conflict had to be applied to new means and methods of warfare, such as unmanned aerial vehicles and cyber attacks, as well as autonomous weapon systems. This chapter explores the impact of this high-tech trend on the education and training of the personnel of armed forces from two different perspectives. First, it explores what military training duties States have with respect to high-tech means and methods of warfare and, in particular, whether the law of armed conflict requires that States employing them provide specific military training to their armed forces. It is argued that States may be held responsible for the inadequate training of their soldiers in situations where this results in a violation of the principle of precaution. Second, the analysis aims at establishing whether a duty to provide international humanitarian law education and training exists with specific regard to high-tech means and methods of warfare, in light of State practice regarding the dissemination of international humanitarian law. Arguably, although a significant trend regarding the supply of specific instructions and education pertaining to high-tech means and methods of warfare does exist, the lack of a specific international humanitarian law education and training focusing on high-tech means and methods of warfare may not be considered a violation of international humanitarian law in every case.

Treaty interpretation : international humanitarian law and international human rights law

Eirik Bjorge. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 57-75

The provisions of the Geneva Conventions of 1949 and international human rights conventions are drafted at different levels of generality. The Geneva Conventions contain detailed and practical provisions: international human rights conventions are drafted at a very high level of generality. This means that they are, to some degree, necessarily to be interpreted differently. The two treaty regimes nevertheless form part of the same one world and their differences should not lead us to disregard the appropriate connections between them.

https://doi.org/10.4337/9781789900972.00011 *

UN peace operations, international humanitarian law and international human rights law

Marten Zwanenburg. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 91-110

This chapter examines the relationship between UN peace operations, IHL and IHRL. It notes that it is generally accepted that the UN is bound by human rights, although there is no consensus on the legal rationale underpinning this conclusion. The same is true for the application of IHL to peace operations. The chapter discusses when IHL becomes applicable to a UN peace operation, and the status of members of an operation when that happens. It then analyses the situation in which both IHL and IHRL apply to a peace operation. It argues that if a norm of IHL and IHRL both apply and cannot be applied in a complementary manner, the principle of lex specialis may help resolve the norm conflict. The chapter continues by discussing certain aspects of the interplay between IHL and IHRL that are specific to peace operations. It concludes that the interplay continues to raise many questions. For this reason, it is important for the UN to make clear its institutional position on this issue.

https://doi.org/10.4337/9781789900972.00014 *

Unmanned weapons systems and the right to life

Stuart Casey-Maslen. - In: Drones and other unmanned weapons systems under international law. - Leiden ; Boston : Brill Nijhoff, 2018. - p. 158-194

Going beyond consideration of the law of law enforcement rules applicable to the use of drones and other unmanned weapons systems, this chapter addresses their regulation under international human rights law. In so doing, there are potential jurisdictional obstacles to the application of the law that must first be considered. The chapter then considers the use of autonomous weapons systems during armed conflict, discussing the inter-relationship of human rights law with the law of armed conflict (LOAC) during the conduct of hostilities. The chapter also summarises key cases at domestic level that draw on international human rights law and LOAC. Finally, it looks at whether human rights law regulates the transfer of autonomous weapons systems.

https://doi.org/10.1163/9789004363267_008 *

Unspeakable suffering : the humanitarian impact of nuclear weapons

Editor : Beatrice Fihn ; Magnus Lovold (et al.). - Geneva ; New York : Reaching Critical Will of the Women's International League for Peace and Freedom, February 2021. - 136 p.

This publication examines the humanitarian impact of nuclear weapons and is aimed for civil society actors, academics, and governments that are interested in approaching weapons negotiations with a humanitarian lens. We hope it will be useful for the upcoming period that hopefully will be shaped by a reframing of the nuclear debate, and for challenging the rhetoric of the nuclear weapon possessors. By highlighting the reality of these weapons and what they would cause if used, this publication demonstrates that a stronger and more concrete commitment to ban and eliminate nuclear weapons must be made now.

https://www.reachingcriticalwill.org/images/documents/Publications/humanitarian-impact-nuclear-weapons-2nd-edition.pdf

"Urban killing fields" : international humanitarian law, gang violence, and armed conflict on the streets of El Salvador

Kirsten Ortega Ryan. In: International and comparative law review, vol. 20, no. 1, 2020, p. 97-126

El Salvador is currently one of the most violent countries in the world with rates of violent death second only to Syria. With gangs running rampant and state security forces unchecked, the streets have become “urban killing fields” while the rest of the world has turned a blind eye to the atrocities. It is time for the international community to refocus on El Salvador and work towards a solution to this dire humanitarian crisis. To that end, it is imperative that the gang violence in El Salvador should be understood by the global community as an internal “armed conflict” under international humanitarian law. By recognizing the violence in El Salvador as an “armed conflict,” international attention to resolving this human rights tragedy will increase, and Salvadoran gang leaders and government forces can be prosecuted internationally for war crimes and crimes against humanity.

https://doi.org/10.2478/iclr-2020-0005

US recognition of a commander's duty to punish war crimes

Brian Finucane. In: International law studies, vol. 97, 2021, p. 995-1018

This article explores the United States' recognition of the doctrine of command responsibility. The doctrine has been invoked by those alleging that President Trump’s pardons of U.S. personnel convicted or accused of war crimes could amount to war crimes themselves. The article focuses on a commander’s duty to punish war crimes by his subordinates. It examines the United States’ past recognition of the duty to punish as an element of command responsibility under the law of war. The principle that a commander has an obligation to punish war crimes by his subordinates is not a progressive development of the law promoted by the advocacy community. Instead, the duty to punish stands out as an ancient legal norm interwoven into the domestic law of the United States and which the United States has incorporated into international legal instruments. The

lesson from this history is clear, if not always appreciated: commanders who fail to punish their subordinates for war crimes may themselves be war criminals.

https://digital-commons.usnwc.edu/ils/vol97/iss1/41/

The use of CBRN weapons in armed conflict

Diego Mauri. - In: International law and chemical, biological, radio-nuclear (CBRN) events : towards and all-hazards approach. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 358-379

The purpose of the present chapter is to provide a fresh appraisal of how Chemical, Biological, Radiological and Nuclear (CBRN) weapons are regulated by existing international humanitarian law (IHL). The chapter begins by tackling the extent to which CBRN 'agents' can be considered as 'weapons' or 'means of warfare' pursuant to IHL. The analysis then turns to IHL rules and principles of IHL dealing with specific weapons and prohibiting (or retraining) specific means of warfare, without losing sight of general rules and core principles. Finally, the chapter deals with current challenges posed by new technologies in the specific field of CBRN weapons, including considerations of up and coming advancements in military applications of CBRN agents, and identifies and discusses a normative tool for addressing them, before turning to conclusions.

https://doi.org/10.1163/9789004507999_022

The use of force against individuals in war under international law : a social ontological approach

Ka Lok Yip. - Oxford [etc.] : Oxford University Press, 2022. - XXX, 296 p.

Is it legal to kill, or capture and confine, someone in war? Is this relevant or wise to ask in the reality of war? What does 'legal' actually mean in the labyrinth of overlapping international laws? This volume explores the meaning, relevance, and wisdom of questioning the 'legality' of the use of force against individuals in war by reconnecting legal thought with the social world. Weaving together law, social theories, and actual practices, the book presents and interdisciplinary study of the laws regulating warfare. The Use of Force against Individuals in War under International Law uncovers different conceptions of 'legality' that generate tensions among different international laws regulating warfare and highlights the limits of legal techniques in addressing these tensions. Accepting these tensions serves not to denigrate the law itself but to invite a deeper level of engagement with it through the lens of social theories. Drawing on the insight that every social action results from an interaction between human agency and social structures, this volume argues that in regulating warfare, one distinct body of international law, the law of armed conflicts, accommodates the diminished agency of human beings operating in highly structured conditions while other bodies of international law harbour the potential to transform these very structured conditions. Thus, assimilating these laws, whether in court or in real-world practices, fundamentally conflates their underlying social ontologies.

The use of less-lethal weapons for law enforcement during armed conflict

Stuart Casey-Maslen, Christof Heyns and Thomas Probert. - In: Research handbook on human rights and humanitarian law : further reflections and pespectives. - Cheltenham : E. Elgar, 2022. - p. 290-308

The use of force in law enforcement during armed conflict remains constrained by general law enforcement principles, in particular necessity and proportionality, as complemented by the human rights principles of legality, precaution, and accountability. In 2020, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published detailed guidance on the design, procurement, transfer, and use of all less-lethal weapons that reflects international norms and standards. Specific guidance is provided with respect to certain less-lethal weapons, including chemical irritants, conducted energy weapons, police batons, and kinetic impact projectiles. This chapter summarises the key elements of the OHCHR guidance.

https://doi.org/10.4337/9781789900972.00027 *

Violences sexuelles et droit des conflits armés : une approche féministe

Marine Wéry. In: Revue interdisciplinaire d'études juridiques, vol. 86, no. 1, 2021, p. 63-90

Depuis plusieurs décennies, de nombreuses théories féministes du droit international ont vu le jour dans la littérature anglo-saxonne, en particulier à propos de la question des violences sexuelles commises en situation de conflit armé. Ces analyses résonnent cependant encore assez peu dans le monde académique francophone. Cette contribution propose donc de présenter une série de réflexions féministes particulièrement pertinentes mais encore rarement mobilisées lorsque la problématique des violences sexuelles perpétrées en temps de guerre est abordée d'un point de vue juridique. Dans un premier temps, ce texte examine sous l'angle du féminisme critique les instruments conventionnels internationaux ayant vocation à régir la thématique spécifique des violences sexuelles commises durant les conflits armés, à savoir le droit international humanitaire et le droit international pénal. Dans un second temps, cette perspective d'analyse est étendue au droit international humanitaire dans son ensemble, questionnant aussi bien la place que l'absence de place que cette branche du droit accorde aux femmes.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/56162.pdf

What role for IHL and HRL in the fight against terrorist networks?

Gloria Gaggioli and Ilya Sobol. - In: Research handbook on human rights and humanitarian law : further reflections and perspectives. - Cheltenham : E. Elgar, 2022. - p. 309-339

Contemporary counterterrorism practices continue to pose challenges to legal regimes forced to accommodate the continuously expanding demands of national security. This chapter discusses a number of such developments pertaining to the efforts to "accommodate" the law of armed conflict to the interests of counterterrorism, pushing the legal boundaries of what constitutes an armed conflict, how long it lasts, as well as who is to be targeted. The second part of the chapter focuses on the recent challenges posed by counterterrorism practices outside of armed conflict and discusses the impact on human rights (law) of the measures adopted to address the risks, however real, posed by fighters returning from conflict zones. It also addresses issues relating to the securitization of citizenship, the problematization of 'violent extremism' and solutions to it, as well as the continuing challenges to the principle of non-refoulement posed by counter-terrorism practices.

https://doi.org/10.4337/9781789900972.00028 *

When Geneva meets Rome in Nuremberg

Olivier de Frouville. In: Ordine internazionale e diritti umani, no. 5/2021, 15 December 2021, p. 1238-1245

Two persons meet in Nuremberg, not far from the Palace of Justice. One is E.D. Geneva, the head of the World Organisation of Oppressive States (WOOS). The other is E.D. Rome, chief of Criminals Organized Global Union (COGUN). The two are are to discuss the evolution of international law on enforced disappearances. E.D. Rome is anxious about the inclusion of non-state actors as potential perpetrators of enforced disappearance as a crime against humanity in article 7, paragraph 2-i of the Statute of the International Criminal Court. E.D. Geneva, on his part, is worried that states are being pushed to ratify the International Convention for the Protection of All Persons Against Enforced Disappearances. They both argue about a number of interpretative issues : is the state-agency element a part of the definition of enforced disappearances ? What does "placement of the person outside the protection of the law" really mean? And is it true that the person must be removed from the protection of the law "for a prolonged period of time"? Is there an efficient way for perpetrators to escape prosecutions at the domestic level? Is it true that one can commit enforced disappearance in connection with an armed conflict and enjoy impunity?

https://www.rivistaoidu.net/wp-content/uploads/2021/12/7_De-Frouville.pdf

Who are protected by the fundamental guarantees under international humanitarian law ? : part 1 : breaking with the status requirement in light of the ICC case law

Raphaël van Steenberghe. In: International criminal law review, vol. 22, no. 3, 2022, p. 347-400

International humanitarian law provides for fundamental guarantees, the content of which is similar irrespective of the nature of the armed conflict and which apply to individuals even if they do not fall into the categories of specifically protected persons under the Geneva Conventions. Those guarantees, all of which derive from the general requirement of human treatment, include prohibitions of specific conduct against persons, such as murder, cruel treatment, torture, sexual violence, or against property, such as pillaging. However, it is traditionally held that the entitlement to those guarantees depends upon two requirements: the 'status requirement', which basically means that the concerned persons must not or no longer take a direct part in hostilities, and the 'control requirement', which basically means that the concerned persons or properties must be under the control of a party to the armed conflict. This paper, to be followed by a second paper in the next issue of the same journal, deals with the status requirement. It especially delves into the ICC decisions in the Ntaganda case with respect to the issue of protection against intra-party violence. It advocates for the applicability of the fundamental guarantees in such a context by rejecting the requirement of a legal status, on the basis of several arguments. Those arguments rely on IHL provisions protecting specific persons, on the potential for humanizing IHL on the matter and on the approach making the status requirement relevant only when the fundamental guarantees apply in the conduct of hostilities.

https://doi.org/10.1163/15718123-bja10111

Who are protected by the fundamental guarantees under international humanitarian law ? : part 2 : breaking with the control requirement in light of the ICC case law

Raphaël van Steenberghe. In: International criminal law review, vol. 22, no. 4, 2022, p. 583-640

International humanitarian law provides for fundamental guarantees, the content of which is similar irrespective of the nature of the armed conflict and which apply to individuals even if they do not fall into the categories of specifically protected persons under the Geneva Conventions. Those guarantees, all of which derive from the general requirement of human treatment, include prohibitions of specific conduct against persons, such as murder, cruel treatment, torture, sexual violence, or against property, such as pillaging. However, it is traditionally held that the entitlement to those guarantees depends upon two requirements: the 'status requirement', which basically means that the concerned persons must not or no longer take a direct part in hostilities, and the 'control requirement', which basically means that the concerned persons or properties must be under the control of a party to the armed conflict. This study argues in favour of breaking with these two requirements in light of the existing ICC case law. This second paper, following a first paper published in the previous issue of the same journal, deals with the control requirement. It examines several ICC cases in detail, including the Katanga and Ntaganda cases, in relation to the issue of the applicability of the fundamental guarantees in the conduct of hostilities. It is argued that the entitlement to those guarantees is not dependent upon any general control requirement, and that, as a result, some of these guarantees may apply in the conduct of hostilities. This concerns mainly those guarantees whose application or constitutive elements do not imply any physical control over the concerned persons or properties.

https://doi.org/10.1163/15718123-bja10112

Who is to blame for autonomous weapons systems' misdoings?

Daniele Amoroso and Benedetta Giordano. - In: Use and misuse of new technologies : contemporary challenges in international and European law. - Cham : Springer, 2019. - p. 211-232

This Chapter analyses who (or what legal entity) should be held responsible for behaviours by Autonomous Weapons Systems (AWS) that, were they enacted by a human agent, would qualify as internationally wrongful acts. After illustrating the structural problems which make ascription

of responsibility for AWS' activities particularly difficult, when not impossible, the alternative routes proposed to solve the ensuing responsibility gaps will be assessed. The analysis will focus, in the first place, on the international criminal responsibility of the individuals who, in one way or another, are involved in the process of production, deployment and activation of the AWS. The possibility to hold the deploying State accountable for AWS' wrongdoings will then be gauged. Subsequently, attention will be paid to the responsibility of the corporations manufacturing and/or programming the AWS. It will be observed that these options may solve some responsibility problems more effectively than critics of AWS are ready to admit. At the same time, it will be shown that, unless a no-fault liability regime is adopted, autonomy in weapons systems is bound to magnify the risk that no one may be held to answer for acts which are objectively in contrast with international legal prescriptions. Also, it will be argued that, given the complementary relationship among the various forms of responsibility under international law, proposals aimed at focusing solely on one of these at the expense of others are incapable of leading to satisfying results.

Why communities hosting internally displaced persons in the Sahel need stronger and more effective legal protection

Steve Tiwa Fomekong. In: International review of the Red Cross, vol. 103, no. 918, 2021, p. 923-957

In the Sahel, host communities are among those most affected by recurrent internal displacement, but they are often ignored in responses to displacement. Furthermore, their situation has attracted little attention from researchers or other observers. The present article will argue that it is essential to provide these communities with adequate protection, especially as they play a leading role in providing humanitarian protection and assistance to internally displaced persons (IDPs). The article begins by examining the legal instruments that protect populations affected by forced displacement, in order to identify and present the legal protection they offer to IDP host communities. The article will then analyze and highlight the advantages of fully applying this protection. It will show that the recurrent violence and breaches of the law that these communities suffer are impeding the full realization of those advantages. Finally, the article shall propose solutions that would overcome the deficiencies noted and hence ensure enhanced protection for IDP host communities in Burkina Faso, Mali and Niger.

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En français: https://library.icrc.org/library/docs/DOC/irrc-918-fomekong-fre.pdf

Why were there no war crimes trials for the Korean War ?

Sandra Wilson. In: Journal of global history, vol. 16, no. 2, 2021, p. 185-206

In the Korean War of 1950-53, U.S. authorities were determined to pursue atrocities perpetrated by North Korean and Communist Chinese forces through legal channels, in keeping with the standards they believed they had set after the Second World War. Yet, their plans foundered in Korea, despite extensive groundwork for prosecutions. Four factors were responsible. First, it was difficult to find reliable evidence and to identify and apprehend suspects. Second, U.S. officials rapidly lost confidence in the idea of prosecuting national leaders. Third, the lack of clear-cut victory in the conflict necessitated a diplomatic solution, which was incompatible with war crimes trials. Fourth, the moral standing of the West, and hence its authority to run trials, was undermined by the large number of atrocities committed by the United Nations side. Thus, the U.S. plan for war crimes trials was dropped without fanfare, to be replaced by an anti-Communist propaganda campaign.

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Withdrawal from Afghanistan marks Guantánamo's endpoint

David Glazier. In: Harvard national security journal, vol. 13, issue 2, 2022, p. 285-368

The United States has held 779 men and boys in Guantánamo during the two decades since the 9/11 attacks, justified by loose reliance on international law rules addressing prisoners of war; thirty-seven remained as of May 2022. The Supreme Court upheld the practice in its 2004 Hamdi v. Rumsfeld decision, holding that the congressional Authorization for the Use of Military Force against al-Qaeda and the Taliban included implied authorization of the “fundamental incidents”

of war, including preventive detention and military trials. But it also explicitly noted that this authority ends at the close of "active hostilities." The war ended in August, 2021, yet detention continues to this day. Post-conflict use of military commission trials falling short of international and U.S. constitutional criminal procedure standards is also highly problematic. The Court's 2006 Hamdan v. Rumsfeld decision recognized that military commissions depend on federal war powers for their existence. So these trials, too, cannot legitimately continue post-conflict. While the Biden administration continues to pursue winding down Guantánamo via detainee transfers with "security assurances," the law of war mandates prompt post-hostilities repatriation. There is no "bad dude" exception based on general threat perceptions—only an actual criminal sentence or pending charges can justify delay. The detainees must now be charged in federal courts, extradited to another country for prosecution, or promptly repatriated. After demonstrating why the legal authority for Guantánamo detention and military commissions has expired, this article provides recommended dispositions for each of the detainees remaining at Guantánamo consistent with residual law of war mandates. It concludes by arguing that this outcome actually serves larger overall U.S. national interests; Guantánamo's fiscal, legal, moral, and political costs have long outweighed its benefits.

https://harvardnsj.org/wp-content/uploads/2022/06/Vol13Iss2_Glazier_WithdrawalFromAfghanistan.pdf

Die zeitliche Dimension des Besatzungsvölkerrechts

Christian Schaller. In: Archiv des Völkerrechts, Bd. 57, H. 1, 2019, S. 83-114

[Article in German] The rights and obligations of states in occupied territory are subject to the international law of occupation. Pursuant to Article 43 of the 1907 Hague Regulations the occupying power shall take all the measures in its power to restore and ensure, as far as possible, public order and public life, while respecting, unless absolutely prevented, the laws in force in the country. States that have gained control over foreign territory during a military intervention often try to evade this responsibility by denying the applicability of the laws of occupation in the case at hand. As a consequence, persons living in that territory are deprived of fundamental rights. It is therefore necessary to define the scope of application of the international law of occupation as precisely as possible. This article addresses the temporal dimension of occupation. In particular, it will be examined under which conditions an occupation begins and how it may end. Basically, an occupation occurs when a conflict party effectively controls foreign territory without the consent of the local government. Effective control in this sense presupposes that the occupying power has a sufficient number of armed forces present in the territory and is in a position to exercise authority over the territory instead of the local government. An occupation terminates when the occupying power relinquishes or loses effective control of the territory or when the local government validly consents to the presence of the occupying forces. This conceptual understanding of occupation, which is based on the criterion of effective territorial control, goes back to the Hague Regulations and has crystallized over decades in customary international humanitarian law. It will be argued, however, that a functional approach to occupation may, in certain circumstances, lead to a more appropriate distribution of responsibility among the conflict parties. According to such functional approach, the international law of occupation should be applied even if an occupying power does not exercise effective territorial control in the conventional sense but nevertheless projects its authority onto the population and exercises certain functions of an occupying power in the territory. Some provisions dealing with occupation contained in the Fourth Geneva Convention, for instance, may already apply during the invasion phase to the extent that protected persons fall into the hands of the invading troops. Moreover, a functional approach is appropriate where the occupying power, after having withdrawn its armed forces from the occupied territory, retains effective control of that territory by employing advanced military and surveillance technology. In such case, occupation law should be applied to determine the rights and obligations of the controlling state. Apart from these special constellations, three other aspects are addressed in this article: the UN Security Council's role in defining the temporal parameters of an occupation regime, the applicability of the laws of occupation to cases of prolonged occupation, and some legal challenges concerning the post-occupation phase.

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Zur Dogmatik des Verhältnismäßigkeitsgrundsatzes im Völkerrecht der bewaffneten Konflikte und im Völkerstrafrecht

Michael Agi. - Baden-Baden : Nomos, 2021. - 322 p.

Art. 8 II b) iv) IStGH-Statut sanktioniert den, der einen offensichtlich unverhältnismäßigen Angriff durchführt. Aber was ist, wenn nicht-erforderliche Angriffsmittel eingesetzt werden, obwohl militärischer Vorteil und Kollateralschaden in einem angemessenen Verhältnis zu einander zu stehen scheinen? Dieser Frage geht das Werk auf den Grund. Dabei wird zunächst die Prinzipientheorie auf das Konfliktsvölkerrecht angewandt und sodann die Entstehungsgeschichte des ZP I im Hinblick auf den Zusammenhang von Erforderlichkeit und Verhältnismäßigkeit im engeren Sinne analysiert. Die Ergebnisse beider Ansätze münden im Entwurf eines „targeting cycle“, aus dem sich ergibt, dass auch derjenige, der nicht-erforderliche Waffen einsetzt, ein Kriegsverbrechen begeht.

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