

# BIBLIOGRAPHY

## 4th Quarter 2017

### 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. As a result of a fruitful partnership with the University of Toronto, a number of abstracts are now also produced by students involved in the International Human Rights Program (IHRP).

### **Access to document**

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

### **Chronology**

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

### **Contents**

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

### **Sources**

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

### **Disclaimer**

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

## **Subscription and feedback**

Please send your request for subscription or feedback to [library@icrc.org](mailto: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)

### **Abuse of law on the twenty-first-century battlefield : a typology of lawfare**

Janina Dill. - In: *Soft war : the ethics of unarmed conflict*. - Cambridge [etc.] : Cambridge University Press, 2017. - p. 119-133

### **Fighting for self-determination : on equality of peoples and belligerents**

Matthias Vanhullebusch. In: *The Asian yearbook of human rights and humanitarian law*, Vol. 1, 2017, p. 137-165

### **The International Committee of the Red Cross and its mandate to protect and assist : law and practice**

Christy Shucksmith. - Oxford ; Portland : Hart, 2017. - XXVI, 216 p.

### **Media warfare, propaganda, and the law of war**

Laurie R. Blank. - In: *Soft war : the ethics of unarmed conflict*. - Cambridge [etc.] : Cambridge University Press, 2017. - p. 88-103

### **The phoenix of colonial war : race, the laws of war, and the "horror on the Rhine"**

Rotem Giladi. In: *Leiden journal of international law*, Vol. 30, no. 4, December 2017, p. 847-875

<https://doi.org/10.1017/S0922156517000395>

### **The qualified prohibition on third-state assistance to parties in armed conflicts : illuminating the myth, interpreting the reality**

Nele Verlinden and Luca Ferro. - [S.l.] : European Society of International Law, 2017  
<https://ssrn.com/abstract=3045276>

### **Sharp wars are brief**

Jens David Ohlin. - In: *Weighing lives in war*. - Oxford : Oxford University Press, 2017. - p. 58-76

### **Sources of international humanitarian law and international criminal law : specific features**

Raphaël van Steenberghe. - In: *The Oxford handbook on the sources of international law*. - Oxford : Oxford University Press, 2017. - p. 891-911

### **Sources of international humanitarian law and international criminal law : war/crimes and the limits of the doctrine of sources**

Steven R. Ratner. - In: *The Oxford handbook on the sources of international law*. - Oxford : Oxford University Press, 2017. - p. 912-935

### **Taming democracy : codifying the laws of war to restore the European order, 1856-1874**

Eyal Benvenisti and Doreen Lustig. - [S.l.] : University of Cambridge, Faculty of law, June 2017. - 47 p.  
<https://ssrn.com/abstract=2985781>

**To feel or not to feel ? : emotions and international humanitarian law**

Nele Verlinden. - Leuven : Leuven Centre for Global Governance Studies, December 2016. - 16 p.

<https://lirias.kuleuven.be/handle/123456789/561207>

## II. Types of conflicts

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

**Anonymous armies : modern "cyber-combatants" and their prospective rights under international humanitarian law**

Jake B. Sher. In: Pace international law review, Vol. 28, issue 1, Spring 2016, p. 233-275

<http://digitalcommons.pace.edu/pilr/vol28/iss1/6>

**Applying the law of proportionality to cyber conflict : suggestions for practitioners**

Eric Boylan. In: Vanderbilt journal of transnational law, Vol. 50, no. 1, 2017, p. 217-244

<https://www.vanderbilt.edu/jotl/2017/02/applying-the-law-of-proportionality-to-cyber-conflict-suggestions-for-practitioners/>

**Background to the crisis in Syria and perspectives on human rights & humanitarian law violations**

Yana Ballod. - Oisterwijk : Wolf legal publishers, 2015. - 142 p.

**Captive or criminal ? : reappraising the legal status of IRA prisoners at the height of the troubles under international law**

Samantha Anne Caesar. In: Duke journal of comparative and international law, Vol. 27, no. 2, Winter 2017, p. 323-348

<https://scholarship.law.duke.edu/djcil/vol27/iss2/5>

**Cyber weapons : oxymoron or a real world phenomenon to be regulated ?**

Bill Boothby. - In: Conflict in cyber space : theoretical, strategic and legal perspectives. - London ; New York : Routledge, 2016. - p. 165-174

**Defining terrorism : one size fits all ?**

Alan Greene. In: International and comparative law quarterly, Vol. 66, part 2, April 2017, p. 411-440

<https://doi.org/10.1017/S0020589317000070>

**Distinction and proportionality in cyberwar : virtual problems with a real solution**

Peter Pascucci. In: Minnesota journal of international law, Vol. 26, issue 2, 2017, p. 419-460

<http://minnjil.org/archives-2/volume-26-issue-2/>

**From cyber norms to cyber rules : re-engaging states as law-makers**

Kubo Macák. In: Leiden journal of international law, Vol. 30. no. 4, December 2017, p. 877-899

<https://doi.org/10.1017/S0922156517000358>

**Legal implications surrounding operation "inherent resolve" in Iraq and Syria**

by Chris De Cock. In: Israel yearbook on human rights, Vol. 47, 2017, p. 69-138

**(New) cyber exploitation and (old) international humanitarian law**

Marco Longobardo. In: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht = Heidelberg journal of international law, 77. Jg., H. 3/2017, p. 809-834

**Targeted killings : never not an act of international criminal law enforcement**

Barry Kellman. In: Boston college international and comparative law review, Vol. 40, issue 1, 2017, p. 27-62

<http://lawdigitalcommons.bc.edu/iclr/vol40/iss1/3>

**Trying to make sense of the senseless : classifying the Syrian war under the law of armed conflict**

David Wallace, Amy McCarthy, and Shane R. Reeves. In: Michigan State international law review, Vol. 25, no. 3, 2017, p. 555-594

<https://digitalcommons.law.msu.edu/ilr/vol25/iss3/2>

**Yémen ? : vous avez dit crise humanitaire ? : droit international humanitaire et droit international pénal**

Jelena Aparac. In: La revue des droits de l'homme, 2017, 15 p.

<http://journals.openedition.org/revdh/3025>

## **III. Armed forces / Non-state armed groups**

(Combatant status, compliance with IHL, etc.)

**The accountability of armed groups under human rights law**

Katharine Fortin. - Oxford : Oxford University Press, 2017. - XXXII, 430 p.

**Anonymous armies : modern "cyber-combatants" and their prospective rights under international humanitarian law**

Jake B. Sher. In: Pace international law review, Vol. 28, issue 1, Spring 2016, p. 233-275

<http://digitalcommons.pace.edu/pilr/vol28/iss1/6>

**Co-belligerency**

Rebecca Ingber. In: Yale journal of international law, Vol. 42, issue 1, 2017, p. 67-120

<http://www.yjil.yale.edu/volume-42-issue-1/>

**The equality of combatants in asymmetric war**

Claire Finkelstein. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 241-258

**Kidnapping and extortion as tactics of soft war**

Tamar Meisels. - In: Soft war : the ethics of unarmed conflict. - Cambridge [etc.] : Cambridge University Press, 2017. - p. 200-216

**Rewriting the AUMF : bringing guidance to executive decisions on combatancy and returning the US to the path of the war convention**

Jon Todd. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 259-283

**Targeting decisions and consequences for civilians in the Colombian civil strife**

Aaron X. Fellmeth and Douglas J. Sylvester. In: Minnesota journal of international law, Vol. 26, no. 2, 2017, p. 501-560

<http://minnijl.org/archives-2/volume-26-issue-2/>

**Tracing the historical and legal development of the levée en masse in the law of armed conflict**

Emily Crawford. In: Journal of the history of international law, Vol. 19, issue 3, 2017, p. 329-361

<https://library.ext.icrc.org/library/docs/ArticlesPDF/44246.pdf>

## IV. Multinational forces

**Joint and combined targeting : structure and process**

Michael Schmitt... [et al.]. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 298-324

**The privatization of peacekeeping : exploring limits and responsibility under international law**

Lindsey Cameron. - Cambridge [etc.] : Cambridge University Press, 2017. - XVII, 414 p.

**The United Nations as a party to armed conflict : the intervention brigade of MONUSCO in the Democratic Republic of Congo (DRC)**

Damian Lilly. In: Journal of international peacekeeping, Vol. 20, issue 3-4, 2016, p. 313-341

<https://library.ext.icrc.org/library/docs/ArticlesPDF/44245.pdf>

## V. Private entities

**Les entreprises militaires et de sécurité privées appréhendées par le droit**

Thierry Garcia. - Paris : Mare & Martin, 2017. - 184 p.

**The privatization of peacekeeping : exploring limits and responsibility under international law**

Lindsey Cameron. - Cambridge [etc.] : Cambridge University Press, 2017. - XVII, 414 p.

**The role of private military and security companies : corporate dogs of war or civilians operating in hostile environment ?**

Frauke Renz. In: Swiss review of international and european law = Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen, Vol. 27 (2017), no. 3, p. 305-332 : graph

## VI. Protection of persons

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

### **All the news that's worth the risk : improving protection for freelance journalists in war zones**

Lindsay R. Grossman. In: Boston college international and comparative law review, Vol. 40, issue 1, 2017, p. 141-166  
<http://lawdigitalcommons.bc.edu/iclr/vol40/iss1/6>

### **Contre Daech : la protection des populations civiles à l'épreuve des conflits entre le droit musulman et le droit international humanitaire**

Jabeur Fathally. In: La revue des droits de l'homme, 12/2017, 32 p.  
<http://journals.openedition.org/revdh/3230>

### **La criminalisation du recours aux "enfants-soldats" dans les conflits armés**

Mathieu Jacquelin. - In: Justice pénale internationale : les nouveaux enjeux de Nuremberg à La Haye. - Paris : Mare & Martin, 2016. - p. 133-153

### **Designing amends for lawful civilian casualties**

Lesley Wexler and Jennifer K. Robbennolt. In: Yale journal of international law, Vol. 42, issue 1, 2017, p. 121-183  
<http://www.yjil.yale.edu/volume-42-issue-1/>

### **Le droit international humanitaire et la protection des enfants en situation de conflits armés : étude de cas de la République Démocratique du Congo**

Junior Mumbala Abelungu. In: Afrika focus, Vol. 30, no 1, 2017, p. 117-129  
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### **Humanitarian assistance and the Security Council**

Andreas Zimmermann. In: Israel law review, Vol. 50, issue 1, March 2017, p. 3-23  
<https://doi.org/10.1017/S0021223716000315>

### **ISIS and the violations of human rights of sexual minorities : is the international community responding adequately ?**

Silvia Venier and Denise Venturi. In: The Asian yearbook of human rights and humanitarian law, Vol. 1, 2017, p. 109-134

### **Justifying restrictions on reconstructing Gaza : military necessity and humanitarian assistance**

Sari Bashi. In: Israel law review, Vol. 49, issue 2, July 2016, p. 149-168

### **Nuclear weapons targeting : the evolution of law and U.S. policy**

Theodore T. Richard. In: Military law review, Vol. 224, issue 4, 2016, p. 862-978

### **Revitalizing the international legal protection of humanitarian aid workers in armed conflict**

Francesco Seatzu. In: La revue des droits de l'homme, 11/2017, 12 p.  
<http://journals.openedition.org/revdh/2759>

### **Targeting environmental infrastructures, international law, and civilians in the new Middle Eastern wars**

Jeannie L. Sowers, Erika Weinthal, Neda Zawahri. In: Security dialogue, Vol. 48, no. 5, October 2017, p. 410-430 : cartes, graph.

**Territorial control by armed groups and the regulation of access to humanitarian assistance**

Tom Gal. In: Israel law review, Vol. 50, issue 1, March 2017, p. 25-47

**Yémen ? : vous avez dit crise humanitaire ? : droit international humanitaire et droit international pénal**

Jelena Aparac. In: La revue des droits de l'homme, 2017, 15 p.

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**Zealots, victims and captives : maintaining adequate protection of human shields in contemporary international humanitarian law**

by Robin Geiss and James G. Devaney. In: Israel yearbook on human rights, Vol. 47, 2017, p. 11-33

## VII. Protection of objects

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

**Al Mahdi has been convicted of a crime he did not commit**

William Schabas. In: Case Western Reserve journal of international law, Vol. 49, issue 1, 2017, p. 75-102

<https://scholarlycommons.law.case.edu/jil/vol49/iss1/7>

**Beyond symbolism : problems and prospects with prosecuting environmental destruction before the ICC**

Eliana Teresa Cusato. In: Journal of international criminal justice, Vol. 15, no. 3, July 2017, p. 491-507

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**Enforcing conventional humanitarian law for environmental damage during internal armed conflict**

Mete Erdem. In: The Georgetown environmental law review, Vol. 29, issue 3, Spring 2017, p. 435-479

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**The ICC's role in combatting the destruction of cultural heritage**

Mark S. Ellis. In: Case Western Reserve journal of international law, Vol. 49, issue 1, 2017, p. 23-62

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**Individual criminal responsibility for the destruction of religious and historic buildings : the Al Mahdi case**

Milena Sterio. In: Case Western Reserve journal of international law, Vol. 49, issue 1, 2017, p. 63-73

<https://scholarlycommons.law.case.edu/jil/vol49/iss1/6>

**The Janus face of water in Central African Republic (CAR) : towards an instrumentation of natural resources in armed conflicts**

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**Targeting environmental infrastructures, international law, and civilians in the new Middle Eastern wars**

Jeannie L. Sowers, Erika Weinthal, Neda Zawahri. In: Security dialogue, Vol. 48, no. 5, October 2017, p. 410-430 : cartes, graph.

## **VIII. Detention, internment, treatment and judicial guarantees**

**Captive or criminal ? : reappraising the legal status of IRA prisoners at the height of the troubles under international law**

Samantha Anne Caesar. In: Duke journal of comparative and international law, Vol. 27, no. 2, Winter 2017, p. 323-348

<https://scholarship.law.duke.edu/djCIL/vol27/iss2/5>

**ICRC negotiations with North Vietnamese authorities regarding access to American POWs during the Vietnam War, 1965-1970**

Audrey Gros and Cormac Shine. - [S.l.] : [s.n.], [2016]. - 24 p.

<https://library.icrc.org/library/docs/DOC/44263.pdf>

**Kidnapping and extortion as tactics of soft war**

Tamar Meisels. - In: Soft war : the ethics of unarmed conflict. - Cambridge [etc.] : Cambridge University Press, 2017. - p. 200-216

## **IX. Law of occupation**

**An article that changed the course of history ?**

Eyal Benvenisti. In: Israel law review, Vol. 50, no. 3, November 2017, p. 269-298

<https://doi.org/10.1017/S0021223717000140>

**Justifying restrictions on reconstructing Gaza : military necessity and humanitarian assistance**

Sari Bashi. In: Israel law review, Vol. 49, issue 2, July 2016, p. 149-168

**The West Bank and international humanitarian law on the eve of the fiftieth anniversary of the Six-Day War**

by Theodor Meron. In: American journal of international law, Vol. 111, issue 2, April 2017, p. 357-375

<https://doi.org/10.1017/ajil.2017.10>

## X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

### **Animals and the law of armed conflict**

by Marco Roscini. In: Israel yearbook on human rights, Vol. 47, 2017, p. 35-67

<https://ssrn.com/abstract=3037931>

### **Applying the law of proportionality to cyber conflict : suggestions for practitioners**

Eric Boylan. In: Vanderbilt journal of transnational law, Vol. 50, no. 1, 2017, p. 217-244

<https://www.vanderbilt.edu/jotl/2017/02/applying-the-law-of-proportionality-to-cyber-conflict-suggestions-for-practitioners/>

### **Areas of harm : understanding explosive weapons with wide area effects**

Pax, Article 36. - [Utrecht] : Pax ; [S.l.] : Article 36, October 2016. - 43 p.

<http://www.article36.org/explosive-weapons/areas-of-harm-report/>

### **Contre Daech : la protection des populations civiles à l'épreuve des conflits entre le droit musulman et le droit international humanitaire**

Jabeur Fathally. In: La revue des droits de l'homme, 12/2017, 32 p.

<http://journals.openedition.org/revdh/3230>

### **The dispensable lives of soldiers**

Gabriella Blum. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 17-57

### **Distinction and proportionality in cyberwar : virtual problems with a real solution**

Peter Pascucci. In: Minnesota journal of international law, Vol. 26, issue 2, 2017, p. 419-460

<http://minnijl.org/archives-2/volume-26-issue-2/>

### **Errors and misconceptions in the 2015 Department of Defense law of war manual**

Jordan J. Paust. In: Minnesota journal of international law, Vol. 26, issue 2, 2017, p. 303-344

<http://minnijl.org/archives-2/volume-26-issue-2/>

### **Humanity, necessity, and the rights of soldiers**

Larry May. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 77-110

### **Joint and combined targeting : structure and process**

Michael Schmitt... [et al.]. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 298-324

### **Legal implications surrounding operation "inherent resolve" in Iraq and Syria**

by Chris De Cock. In: Israel yearbook on human rights, Vol. 47, 2017, p. 69-138

### **The morality of drone warfare and the politics of regulation**

Marcus Schulzke. - London : Palgrave Macmillan, 2017. - IX, 236 p.

### **Nuclear weapons targeting : the evolution of law and U.S. policy**

Theodore T. Richard. In: Military law review, Vol. 224, issue 4, 2016, p. 862-978

**Proportionality in customary international law : an argument against aspirational laws of war**

James Kilcup. In: Chicago journal of international law, Vol. 17, no. 1, 2016, p. 244-272  
<http://chicagounbound.uchicago.edu/cjil/vol17/iss1/8>

**Proportionality in warfare as a political norm**

Ariel Colonomos. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 217-237

**Proportionate defense**

Jeff McMahan. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 131-154

**Proportionate killing : using traditional jus in bello conditions to model the relationship between liability and lesser-evil justifications for killing in war**

Jovana Davidovic. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 155-172

**Sharp wars are brief**

Jens David Ohlin. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 58-76

**Targeting decisions and consequences for civilians in the Colombian civil strife**

Aaron X. Fellmeth and Douglas J. Sylvester. In: Minnesota journal of international law, Vol. 26, no. 2, 2017, p. 501-560  
<http://minnjil.org/archives-2/volume-26-issue-2/>

**A theory of jus in bello proportionality**

Adil Ahmad Haque. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 188-216

**Under siege : international humanitarian law and Security Council practice concerning urban siege operations**

Sean Watts. - [Cambridge (MA)] : Harvard law school, May 2014. - 22 p.  
<https://ssrn.com/abstract=2479608>

**Weighing lives in war**

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**Yémen ? : vous avez dit crise humanitaire ? : droit international humanitaire et droit international pénal**

Jelena Aparac. In: La revue des droits de l'homme, 2017, 15 p.  
<http://journals.openedition.org/revdh/3025>

**Zealots, victims and captives : maintaining adequate protection of human shields in contemporary international humanitarian law**

by Robin Geiss and James G. Devaney. In: Israel yearbook on human rights, Vol. 47, 2017, p. 11-33

## XI. Weapons

### **Antipersonnel mines, booby traps and improvised explosive devices as war crimes**

Luke Moffett... [et al.]. - Belfast : Queen's University Belfast Human Rights Centre, 2017. - 26 p.

<https://tinyurl.com/44271-Moffett>

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#### **The Janus face of water in Central African Republic (CAR) : towards an instrumentation of natural resources in armed conflicts**

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Jeannie L. Sowers, Erika Weinthal, Neda Zawahri. In: Security dialogue, Vol. 48, no. 5, October 2017, p. 410-430 : cartes, graph.

**MALI****Al Mahdi has been convicted of a crime he did not commit**

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<https://doi.org/10.1017/ajil.2017.10>

## YEMEN

### **Targeting environmental infrastructures, international law, and civilians in the new Middle Eastern wars**

Jeannie L. Sowers, Erika Weinthal, Neda Zawahri. In: Security dialogue, Vol. 48, no. 5, October 2017, p. 410-430 : cartes, graph.

### **Yémen ? : vous avez dit crise humanitaire ? : droit international humanitaire et droit international pénal**

Jelena Aparac. In: La revue des droits de l'homme, 2017, 15 p.  
<http://journals.openedition.org/revdh/3025>

## YUGOSLAVIA

### **War, conflict and human rights : theory and practice**

Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman. - London ; New York : Routledge, 2018. - XX, 277 p.

## All with Abstracts

### **Abuse of law on the twenty-first-century battlefield : a typology of lawfare**

**Janina Dill.** - In: *Soft war : the ethics of unarmed conflict.* - Cambridge [etc.] : Cambridge University Press, 2017. - p. 119-133. - Cote 345.2/1038

If abuse of law robs law of what distinguishes it from a firefight, we may want to reserve the term lawfare as a synonym only for abuse of law. But what distinguishes the use of international law in war from its abuse? Before answering the question by proposing a definition and a typology of lawfare, Janina Dill discusses several closely related ways of delineating the use from the abuse of international humanitarian law, which we encounter in the literature that denounces lawfare as the wrong way to use law. They all ultimately determine whether law is used or abused not based on the merit of the legal argument, but with regard to the perceived merit of the belligerent for or against whom the law is invoked.

### **The accountability of armed groups under human rights law**

**Katharine Fortin.** - Oxford : Oxford University Press, 2017. - XXXII, 430 p. - Cote 345.29/249

Although the practice of holding armed groups to account under human rights law remains controversial and under-theorized as a matter of law, statements from Commissions of Inquiry and United Nations Special Rapporteurs holding armed groups to account under this body of law are relatively commonplace. Motivated by this contradiction, this study aims to clarify when and how armed groups are bound by human rights law. It brings several key issues of clarification to the legal framework. The first part of the book presents a new perspective on the role that human rights law plays in the legal framework that applies to non-international armed conflict. In particular, the study investigates the normative added value that human rights law can bring vis-à-vis international humanitarian law. The second part of the book sheds light on the circumstances in which armed groups acquire obligations under human rights law. Combining historical and comparative research with theoretical analysis on international legal personality, the research demonstrates what the legal frameworks of belligerency, insurgency, and international humanitarian law can tell us about when and how such groups may be bound by human rights law. The third part of the book tests and investigates the four most utilized theories of how armed groups are bound by human rights law, examining (i) treaty law, (ii) control of territory, (iii) international criminal law, and (iv) customary international law. The book's conclusions are drawn together thematically and contain important practical recommendations for practitioners in this field.

### **Al Mahdi has been convicted of a crime he did not commit**

**William Schabas.** In: *Case Western Reserve journal of international law*, Vol. 49, issue 1, 2017, p. 75-102. - Cote 344/709 (Br.)

On September 27, 2016, Ahmad Al Faqi Al Mahdi was convicted by a Trial Chamber of the International Criminal Court for the crime of directing an attack against buildings dedicated to religion and historic monuments which were not military objectives, pursuant to article 8(2)(e)(iv) of the Rome Statute. A closer look at the Rome Statute suggests that Al Mahdi did not commit the crime for which he was convicted.

<https://scholarlycommons.law.case.edu/jil/vol49/iss1/7>

### **All the news that's worth the risk : improving protection for freelance journalists in war zones**

**Lindsay R. Grossman.** In: *Boston college international and comparative law review*, Vol. 40, issue 1, 2017, p. 141-166. - Cote 360/49 (Br.)

Although war journalism has existed for centuries, changes in the nature of armed conflict and its coverage have put the danger for modern journalists at an all time high. The traditional war correspondent has been replaced in recent years by the independent freelance journalist. While the former receives the full protection and financial backing of his respective news organization and the American military, the latter works on his own, often living in dangerous war zones with little or no training, insurance, or equipment. This new mode of journalism has proved especially dangerous in the current conflict in Syria, where terrorist organizations such as the Islamic State intentionally capture journalists for use as propaganda pieces and bargaining chips. The U.S. government and news organizations worldwide have issued policies and entered into agreements aimed at offering better protection to journalists reporting from dangerous conflict zones. Recently, many voices have advocated for legislative amendments to the Geneva Convention that would establish new protections such as a press emblem or a special status. This will not solve the problem, however, as the major players in current conflicts systematically ignore codified law. The most feasible action to mitigate danger

and reduce targeted attacks against journalists is to put an end to the impunity that has allowed the Islamic State and other violent military groups to carry out these acts unprosecuted.

<http://lawdigitalcommons.bc.edu/iclr/vol40/iss1/6>

### **Animals and the law of armed conflict**

by **Marco Roscini**. In: Israel yearbook on human rights, Vol. 47, 2017, p. 35-67

In spite of the wide use of animals for military purposes, the law of armed conflict has almost exclusively focused on the protection of human beings. The present article is the first ever in-depth study of how the law of armed conflict applies to animals and fills a serious gap in the literature. The problem has become of great significance in the light of the public opinion's increasing sensibility towards animal welfare and the emergence of animal rights theories. The main purposes of this article, then, are to assess whether the existing rules of the law of armed conflict provide adequate protection to animals and to highlight the fault lines in the law. The article distinguishes the general provisions of the law of armed conflict, i.e. those that were not adopted with specific regard to animals but the application of which might restrict the killing and injuring of animals, from the provisions that specifically provide protection to animals. The analysis essentially focuses on the killing and injuring of animals in the conduct of hostilities, and only incidentally refers to the exploitation of natural resources, pillage, and seizure of property in occupied territories.

<https://ssrn.com/abstract=3037931>

### **Anonymous armies : modern "cyber-combatants" and their prospective rights under international humanitarian law**

**Jake B. Sher**. In: Pace international law review, Vol. 28, issue 1, Spring 2016, p. 233-275. - Cote 348/135 (Br.)

This article provides a framework for defining "cyber-combatants", reviewing the traditionally accepted definition of "combatants" under the Geneva Conventions and customary international law as restated through the Tallinn Manual on the international law applicable to cyber warfare. The article explores the alleged cyber-operations of sovereign states and introduces the problem posed by cyber-attacks perpetrated by agents of unrecognized states and organized terrorist groups such as Al-Qaeda and ISIS. It concludes by proposing alternative definitions for cyber-attacks, and consequentially, cyber-combatants.

<http://digitalcommons.pace.edu/pilr/vol28/iss1/6>

### **Antipersonnel mines, booby traps and improvised explosive devices as war crimes**

**Luke Moffett... [et al.]**. - Belfast : Queen's University Belfast Human Rights Centre, 2017. - 26 p. - Cote 344/711 (Br.)

In August 2017 Belgium proposed an amendment to the Rome Statute of the International Criminal Court to include inter alia anti-personnel mines as war crimes. This report based on research on international law, state practice and jurisprudence outlines the status and legality of anti-personnel mines and booby-traps on the extent to which they can be considered war crimes. Drawing from this research the report also proposes draft provisions of what such war crimes would look like under the Rome Statute. The report is split into two parts. The first part examines the legality of anti-personnel mines, their position under conventional and customary law, in particular international humanitarian law. The second part explores the legality of booby-traps and other improvised explosive devices. Although Belgium has not proposed an amendment to the Rome Statute to include these types of weaponry, the report includes booby-traps and other improvised explosive devices for consideration as a war crime as some 14,301 civilians in 2016 were killed or seriously injured by such weapons.

<https://tinyurl.com/44271-Moffett>

### **Applying the law of proportionality to cyber conflict : suggestions for practitioners**

**Eric Boylan**. In: Vanderbilt journal of transnational law, Vol. 50, no. 1, 2017, p. 217-244. - Cote 348/136 (Br.)

This note examines the applicability of the law of armed conflict, and particularly the concept of proportionality, to cyber attacks. After exploring deviations in terminology that may lead to confusion in the field, it considers the difficulties associated with applying an area of law first implemented in the post-World War II era to technologies that have only become vitally important in recent years. Delving into some of the facets of cyber technology that make it unique as a potential battleground, this note examines why those

qualities make the law of proportionality particularly difficult to apply. Acknowledging that the law of armed conflict, although perhaps inapt, is nonetheless compulsory, this note ends with several suggestions that may assist military commanders in conducting cyber operations in a way that comports with the law as it exists today.

<https://www.vanderbilt.edu/jotl/2017/02/applying-the-law-of-proportionality-to-cyber-conflict-suggestions-for-practitioners/>

### **Areas of harm : understanding explosive weapons with wide area effects**

**Pax, Article 36.** - [Utrecht] : Pax ; [S.l.] : Article 36, October 2016. - 43 p. - Cote 341.67/832 (Br.)

Against the background of international recognition of the humanitarian problems caused by the use of explosive weapons in populated areas, this report analyses how certain explosive weapons create wide area effects. The report considers the implications of these effects when such weapons are used in cities, towns and villages, finding that in some contexts certain explosive weapons are as likely, if not more likely, to cause harm to the civilian population as to damage a specific military target. The report also looks at how the area effects of certain explosive weapons are already recognised in military policy and practice as having a direct link to the risk presented to civilians. However, this recognition is dispersed across various policy and operational frameworks. In view of this, the report promotes the consolidation of this recognition through an international political declaration containing commitments to reduce harm from the use of explosive weapons.

<http://www.article36.org/explosive-weapons/areas-of-harm-report/>

### **An article that changed the course of history ?**

**Eyal Benvenisti.** In: Israel law review, Vol. 50, no. 3, November 2017, p. 269-298

This contribution is a reflection on the article "The missing reversioner : reflections on the status of Judea and Samaria" by Yehuda Blum, originally published in 1968. Yehuda Blum's article, ostensibly devoted to an examination of the lawfulness of a military order under the law of occupation, actually explored a preliminary question – whether Jordan had valid title to the West Bank (referred to as 'Judea and Samaria'). Concluding that Jordan had no title, Blum concluded that the law of occupation did not apply. This reflection revisits Blum's thesis. It suggests that Blum's argument failed to elucidate the relevant legal questions and therefore his conclusion was hasty. It would be distressing to think that it was Blum's article that convinced Israeli decision-makers to deny the formal applicability of the law of occupation to the West Bank and Gaza.

<https://doi.org/10.1017/S0021223717000140>

### **At the crossroads of control : the intersection of artificial intelligence in autonomous weapon systems with international humanitarian law**

**Alan L. Schuller.** In: Harvard national security journal, Vol. 8, issue 2, 2017, p. 379-425. - Cote 341.67/840 (Br.)

Lawyers and scientists have repeatedly expressed a need for practical, substantive guidance on the development of Autonomous Weapons Systems (AWS) consistent with the principles of international humanitarian law (IHL). Less proximate human control in the context of machine learning poses challenges for IHL compliance, since this technology carries the risk that subjective judgments on lethal decisions could be delegated to artificial intelligence (AI). Lawful employment of such technology depends on whether one can reasonably predict that the AI will comply with IHL in conditions of uncertainty. With this guiding principle, the article proposes clear, objective principles for avoiding unlawful autonomy: the decision to kill may never be functionally delegated to a computer; AWS may be lawfully controlled through programming alone; IHL does not require temporally proximate human interaction with an AWS prior to lethal action; reasonable predictability is only required with respect to IHL compliance; and close attention should be paid to the limitations on both authorities and capabilities of AWS.

<http://harvardnsj.org/volume-8/>

### **Autonomous weapons in armed conflict and the right to a dignified life : an African perspective**

**Christof Heyns.** In: South African journal on human rights, Vol. 33, no. 1, 2017, p. 46-71. - Cote 341.27/838 (Br.)

Autonomous weapons are weapons that, once activated, can without further human intervention select and engage targets. This raises the possibility that computers will determine whether people will live or die. The possible use of autonomous weapons against humans in armed conflict clearly has potential right to life

implications. This contribution argues that the right to dignity angle must also be brought into play. The first concern raised by autonomous weapons is ‘can they do it?’: Can autonomous targeting conform with the requirements of international humanitarian law, in particular the rules of distinction and proportionality? If machines cannot do proper targeting, such use of force will be ‘arbitrary’ and thus violate the right to life. Moreover, the right to life requires accountability, but it is not clear who is to be held responsible when robots get it wrong. Secondly: ‘Should they do it?’ Should robots have the power of life and death over humans? This may violate the rights to life as well as the right to dignity. The question whether there is ‘meaningful human control’ over the release of force is emerging as a helpful tool to distinguish between acceptable and unacceptable autonomous targeting, and the author argues that it also makes sense from a human rights perspective. The question that will haunt the debate in the future is: What if technology develops to the point where it is clear that fully autonomous weapons surpass human targeting, and can potentially save many lives? Would human rights considerations in such a case not militate for the use of autonomous weapons, instead of against it? The author argues that the rights to life and dignity demand that even under such circumstances, full autonomy in force delivery should not be allowed. The article emphasises the importance placed on the concept of a ‘dignified life’ in the African human rights system.

### **Background to the crisis in Syria and perspectives on human rights & humanitarian law violations**

**Yana Ballod.** - Oisterwijk : Wolf legal publishers, 2015. - 142 p. - Cote 345.27/156

Since the beginning of the crisis in Syria, in mid-March 2011, the context in which it is regarded has been constantly changing. Four years later, the escalating violent armed conflict, fired from the “Arab Spring” movement has led to the rise of terrorist groups and a huge wave of refugees fleeing from the country. The present publication addresses the developments before 2011, as well as between mid-March 2011 and July 2015. It provides the factual background to the crisis and its analysis within the scope of humanitarian and human rights law. This volume is useful for understanding the roots of the crisis and its circumstances before summer 2015. A detailed research on what has happened and is happening in Syria brings up numerous unsolved issues within the international community. International law provides several possibilities for conflict resolution and stabilizing crises: timely and effective response of international community represented by United Nations and its agencies, in particular United Nations Security Council; enforcement of the responsibility to protect; imposing sanctions; bringing to international justice and internationally addressing elements of the crisis, e. g. terrorism. However, with the involvement of different international actors, the implementation of international law depends on the particular behaviour of each of them. This way even erga omnes norms become voluntary. In the case of Syria, the application of international law instruments has been accompanied by hesitation. Cross-regional, regional and internal tensions prevented international community from shaping a coherent and decisive response to mass atrocities taking place in Syria. Thus, this research questions the existing system of leverages and sets an ambitious goal of finding out how to change it.

### **Beyond symbolism : problems and prospects with prosecuting environmental destruction before the ICC**

**Eliana Teresa Cusato.** In: *Journal of international criminal justice*, Vol. 15, no. 3, July 2017, p. 491-507

In September 2016, the International Criminal Court (ICC) Prosecutor issued a new policy paper detailing the Office of the Prosecutor’s (OTP) priorities for case selection and prioritization, including giving a ‘particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land’. This new commitment of the OTP in fighting environmental devastation has been received enthusiastically by civil society and alleged victims. Indeed, few would disagree that protecting the environment against harmful conduct and conserving the world’s natural resources are some of the most compelling challenges faced by the international community. Further, the negative impact of environmental destruction on human rights and peace and security is a matter of concern for many international institutions, including the Security Council. This article considers the merits and limits of prosecuting environmental destruction before the ICC. It contends that the significance and practical implications of the OTP’s green shift ought to be appreciated against the constraints posed by existing criminal provisions (which have already received attention in the literature) and, more significantly, factual and structural challenges that have been more peripheral in the academic debate. Accordingly, the article suggests possible ways to overcome some of these obstacles. The article concludes by reflecting on the necessity to strike a balance between the OTP’s commendable policy shift, victims’ and environmental activists’ expectations, and the ICC’s possible contribution to ‘environmental justice’.

<https://doi.org/10.1093/jicj/mqx026>

### **Captive or criminal ? : reappraising the legal status of IRA prisoners at the height of the troubles under international law**

**Samantha Anne Caesar.** In: *Duke journal of comparative and international law*, Vol. 27, no. 2, Winter 2017, p. 323-348. - Cote 400.2/388 (Br.)

The late 1960s through the early 1990s period in Northern Ireland is referred to commonly as “The Troubles,” a time rife with political struggle, violence, and reactionary laws aimed at restricting civil liberties in the name of security. One topic of contention during this era relates to the political status of prisoners convicted of terrorism. These men and women—mostly suspected members of a nationalist paramilitary, the provisional Irish Republican Army—claimed a right to special treatment as prisoners of war. The British rejected the notion that an international war existed in fact, and insisted on treating the prisoners as ordinary criminals under domestic law. The conflict in Northern Ireland is too often and too easily dismissed as a purely internal matter, regarded a domestic civil rights movement. Consequently, any potential consideration of the conflict as an international armed conflict has been disregarded. This paper reexamines the classification of The Troubles in light of current, applicable international law to make two determinations: first, to ascertain whether the armed conflict may be classified as one of an international, rather than a non-international, character. Based on this classification, this paper will then discern whether IRA prisoners should have been entitled to prisoner of war or some other discrete legal status, separate from that of ordinary criminals.

<https://scholarship.law.duke.edu/djcil/vol27/iss2/5>

### **Child soldiers as agents of war and peace : a restorative transitional justice approach to accountability for crimes under international law**

**Leonie Steidl.** - The Hague : Berlin : Asser Press ; Springer, 2017. - XII, 421 p. - Cote 362.7/438

This book deals with child soldiers' involvement in crimes under international law. Child soldiers are often victims of grave human rights abuses, and yet, in some cases, they also participate actively in inflicting violence upon others. Nonetheless, the international discourse on child soldiers often tends to ignore the latter dimension of children's involvement in armed conflict and instead focuses exclusively on their role as victims. While it might seem as though the discourse is therefore beneficial for child soldiers as it protects them from blame and responsibility, it is important to realize that the so-called passive victim narrative entails various adverse consequences, which can hinder the successful reintegration of child soldiers into their families, communities and societies. This book aims to address this dilemma. First, the available options for dealing with child soldiers' participation in crimes under international law, such as transitional justice and criminal justice, and their shortcomings are analyzed in depth. Subsequently a new approach is developed towards achieving accountability in a child-adequate way, which is called restorative transitional justice.

### **Co-belligerency**

**Rebecca Ingber.** In: *Yale journal of international law*, Vol. 42, issue 1, 2017, p. 67-120. - Cote 345.29/260 (Br.)

Executive branch officials rest the United States President's authority in today's war against ISIS, al Qaeda, and other terrorist groups on an expansive interpretation of a 15-year-old statute, the 2001 “Authorization for Use of Military Force” (AUMF), passed in the wake of the 9/11 attacks. They rely on that statute to justify force against groups neither referenced in – nor even in existence at the time of – the 2001 statute, by invoking a creative theory of international law they call “co-belligerency.” Under this theory, the President can read his AUMF authority flexibly, to justify force against not only those groups covered by the statute, but also new groups that “join the fight.” In relying on “co-belligerency,” executive branch officials maintain that the President's authority is bound by a clearly constraining rule with an established legal pedigree, but the co-belligerency theory does not in fact deliver on either. Instead, the Executive's position is fluid, evolving, internally contested, and – contrary to the assurance that it has a firm foundation in international law – rests on shaky doctrinal grounds. In fact, the record suggests that executive branch officials are not even unified themselves on what the concept means or where it comes from. And yet the existence of this contested idea nevertheless acts as some impediment if not a barrier to executive action. It is, in effect, a grey-ish legal space, dangerously close to what David Dyzenhaus has called a “legal grey hole,” a mere “façade” of legal constraint. This article presents a story of a creative idea that became entrenched law, but in the process lost much of its shape. The result has been neither a clear limit on Presidential power, nor an executive branch run completely amok, but rather an amorphously-defined pool of discretionary authority for the President that few if any fully understand.

<http://www.yjil.yale.edu/volume-42-issue-1/>

### **Compensation and proportionality in war**

**Saba Bazargan-Forward.** - In: *Weighing lives in war.* - Oxford : Oxford University Press, 2017. - p. 173-187. - Cote 345.25/361

Virtually all wars inflict massive casualties on innocent civilians. Even if inflicting such casualties is justified all things considered, the victims are owed compensation—or so I argue. In doing so, I address two questions. First, who owes the compensatory duties in cases where the casualties were justifiably inflicted? I argue that those who authorize the justified infringements and who benefit from those harms must compensate the victims if the war's unjust aggressor cannot or will not do so. Second, what happens if it is reasonable to surmise beforehand that we will culpably fail to discharge our compensatory duties post bellum? I argue that satisfying the war's proportionality constraint is virtually impossible under those conditions. A lesson is that failing to take duties of compensation seriously constrains the moral permission to protect ourselves.

### **Complications of a common language : why it is so hard to talk about autonomous weapons**

**Merel A. C. Ekelhof.** In: *Journal of conflict and security law*, Vol. 22, no. 2, Summer 2017, p. 311-331

In the past years, a growing number of voices are calling for urgent discussion on weapon systems with increasing autonomy. The discourse on these emerging technologies takes place at the political level under the auspices of the Convention on Certain Conventional Weapons (CCW) but the issue is also widely reflected upon in academic articles, conference papers, (governmental) reports and other papers. As the issue of autonomous weapons is multifaceted and multidisciplinary, the community involved in the discourse is too. What all of these actors have in common, however, is that they are all part of a discourse within which semantic disputes are prominent. Although different terms are suggested to describe autonomous weapons, a number of terms stand out. Particularly prominent terms are 'autonomy', 'target selection and attack' and 'human intervention'. These terms are the basis of a widely used and broadly accepted definition describing autonomous weapons as weapons that are capable of selecting and attacking targets without human intervention. At first glance, the definition and language seem quite clear; nevertheless, upon further examination this definition reveals a number of complications. The aim of this paper however is not to propose a definition that would solve linguistic disputes (if such a definition would even be viable); rather it takes a more external perspective with the purpose to illustrate how a common vocabulary can complicate the discourse on autonomous weapons when the terms involved are not commonly understood or lack consistent interpretations. Hence, this article functions as a map for understanding the debate on autonomous weapons—imperative for anyone who would decide to participate in it.

<https://doi.org/10.1093/jcsl/krw029>

### **Contre Daech : la protection des populations civiles à l'épreuve des conflits entre le droit musulman et le droit international humanitaire**

**Jabeur Fathally.** In: *La revue des droits de l'homme*, 12/2017, 32 p. - Cote 360/126 (Br.)

Dans cet article l'auteur vise à déconstruire le discours des groupes terroristes en démontrant les ressemblances qui existent entre les règles humanitaires protégeant les civils contre les effets des hostilités telles qu'elles sont développées par la tradition musulmane et par le droit international humanitaire contemporain. L'auteur défend l'idée selon laquelle les règles du droit international humanitaire sont violées en Syrie, en Irak et ailleurs, non pas parce qu'elles sont, aux dires de ces groupes, une création occidentale ou coloniale mais tout simplement parce que ces groupes, ayant perdu tous « les repères sur les limites du licite » ne respectent aucune règle protégeant les civils y compris celles consacrées par la tradition religieuse musulmane.

<http://journals.openedition.org/revdh/3230>

### **Convention on Certain Conventional Weapons (CCW) : Meeting of experts on lethal autonomous weapons systems (LAWS) : 11-15 April 2016, Geneva : views of the International Committee of the Red Cross (ICRC) on autonomous weapon system**

**ICRC.** - [Geneva] : ICRC, 2016. - 6 p. - Cote 341.67/833 (Br.)

Views on autonomous weapon systems, including those of the International Committee of the Red Cross (ICRC), continue to evolve as a better understanding is gained of current and potential technological capabilities, the military purpose of autonomy in weapon systems, and the resulting questions for compliance with international humanitarian law (IHL) and ethical acceptability. Expert discussions of the last three years in the framework of the Convention on Certain Conventional Weapons (CCW) and in meetings convened by the ICRC and other organisations have been crucial to enhancing this understanding. The ICRC held a second expert meeting on 'Autonomous weapon systems: Implications of increasing

autonomy in the critical functions of weapons' from 15-16 March 2016 in Versoix, Switzerland. The ICRC will soon publish a summary report of the meeting. In the meantime, as a contribution to ongoing discussions in the CCW, this paper highlights some of the key issues on autonomous weapon systems from the perspective of the ICRC, and in the light of discussions at its recent expert meeting.

<https://library.icrc.org/library/docs/DOC/44268.pdf>

### **La criminalisation du recours aux "enfants-soldats" dans les conflits armés**

**Mathieu Jacquelin.** - In: *Justice pénale internationale : les nouveaux enjeux de Nuremberg à La Haye.* - Paris : Mare & Martin, 2016. - p. 133-153. - Cote 344/701

Cette contribution examine la jurisprudence de la Cour Pénale Internationale et du Tribunal Spécial pour le Sierra Léone en matière de recours aux "enfants soldats". L'enrôlement et la conscription, tout en étant présentés comme deux crimes distincts, semblent toutefois renvoyer à un phénomène général d'incorporation des mineurs à des groupements armés où se profile toujours un élément de contrainte. Les précisions apportées sur la notion de participation aux hostilités par les juridictions pénales témoignent quant à elle d'une conception large des conduites punissables et conduisent à questionner les frontières de l'infraction envisagée. Enfin, l'établissement de la responsabilité pénale pour ces faits suppose non seulement de déterminer l'âge des personnes assujetties mais également le degré de connaissance de cet âge par les personnes accusées de tels crimes.

### **Cyber weapons : oxymoron or a real world phenomenon to be regulated ?**

**Bill Boothby.** - In: *Conflict in cyber space : theoretical, strategic and legal perspectives.* - London ; New York : Routledge, 2016. - p. 165-174. - Cote 348/130

The first purpose of this chapter is to discuss whether the notion of cyber weapons makes practical and legal sense, and, if so, whether this has implications for the applicability of international law rules. The next section considers what, in summary form, the applicable rules of weapons law consist of, noting how some of them would seem to apply to particular kinds of cyber weapon. The obligations of states legally to review new cyber weapons, means and methods of warfare are then set forth, and the adjustments to normal processes and criteria that the legal review of cyber weapons seems likely to require are discussed. The final section seeks to draw some conclusions, noting in particular why the application of weapons law to these capabilities is important.

### **The deaths of combatants : superfluous injury and unnecessary suffering in contemporary warfare**

**Michael L. Gross.** - In: *Weighing lives in war.* - Oxford : Oxford University Press, 2017. - p. 111-128. - Cote 345.25/361

Although there are few restrictions on killing combatants, the contemporary law of war bans weapons that cause superfluous injury and unnecessary suffering. Because military necessity and humanitarian norms often conflict, no clear regulations have emerged. Instead, states sometimes ban weapons because they cause horrific wounds. But this determination is subjective and has led the Red Cross to seek objective medical guidelines on unnecessary suffering. A close look shows how it is often difficult to apply these guidelines to new non-lethal technologies, which include electromagnetic, pharmacological, and neurological weapons. These weapons do not cause obvious injury and suffering and may even reduce combatant and civilian injuries. Nevertheless, they can cause intense transient pain or impinge upon human dignity when they undermine cognitive capabilities. Weighing the costs of new technologies against their benefits remains an abiding challenge for humanitarian law.

### **Defining terrorism : one size fits all ?**

**Alan Greene.** In: *International and comparative law quarterly*, Vol. 66, part 2, April 2017, p. 411-440

This article challenges the idea, both in domestic and international law, of defining terrorism. Using section 1 of the UK's Terrorism Act 2000 as an illustrative example, this article argues that a single definition of terrorism is invariably broad owing to the need to accommodate the lowest common denominator. This is damaging to the 'principle of legality' as recognized in British public law and the European Convention on Human Rights. Moreover, this problem is further exacerbated by the increasing application of counterterrorism legislation to non-international armed conflicts. This article therefore suggests an alternative solution: multiple definitions of terrorism whose breadth is dependent upon the specific circumstances for which they are designed. Fears that such an approach may amount to an 'expression of inconsistency' will be addressed by arguing that law's capacity to shape and frame public and political debate on the concept of terrorism is over-exaggerated. Legal definitions of terrorism therefore should remain primarily concerned with the legal rather than political function of defining terrorism.

<https://doi.org/10.1017/S0020589317000070>

### **Designing amends for lawful civilian casualties**

**Lesley Wexler and Jennifer K. Robbennolt.** In: *Yale journal of international law*, Vol. 42, issue 1, 2017, p. 121-183. - Cote 345.22/305 (Br.)

Academic scholars, U.S. military commanders, and advocacy groups, and former-President Obama largely agreed that militaries should offer compensation after the lawful killing of civilians. But this understanding is undertheorized and potentially up for debate under President Trump. The authors suggest this compensation should be reconceptualized as a form of amends to better reflect the needs of affected civilians and to provide a mechanism for those engaged in armed conflict to address the harm they do within the limits of the law. This article makes three contributions to the amends literature and the policy debate about compensation for conflict. First, the authors identify a full range of supply-side and demand-side justifications for making amends in the lawful military harm setting. While the existing literature focuses on foreign civilian and domestic military benefits, they also explore reasons why individual military actors might benefit from amends making and the significance of addressing their moral injuries. Second, they mine the psychology literature to identify the possibilities and limitations of current condolence and solatia practices in satisfying both demand and supply-side needs for amends making. In particular, they emphasize the importance of responsibility-taking and efforts at forbearance, elements of amends that need to be strengthened. Third, they situate amends making within the context of international humanitarian law to inform the design of processes for making amends. They contend that existing compensation practices should be restructured as amends, but in a way that respects the inherent balance between the claims of humanity and the lawfulness of engaging in harmdoing inherent in this body of law.

<http://www.yjil.yale.edu/volume-42-issue-1/>

### **The dispensable lives of soldiers**

**Gabriella Blum.** - In: *Weighing lives in war.* - Oxford : Oxford University Press, 2017. - p. 17-57. - Cote 345.25/361

This chapter challenges the status-based distinction of the laws of war, calling instead for revised targeting doctrines that would place further limits on the killing of enemy soldiers. The chapter argues that the changing nature of wars and militaries casts doubts on the necessity of killing all enemy combatants indiscriminately. The chapter proposes two amendments. The first is a reinterpretation of the principle of distinction, suggesting that the status-based classification be complemented by a test of threat. The second is a reinterpretation of the principle of military necessity, introducing a least-harmful-means test, under which, whenever feasible, an alternative of capture or disabling of the enemy would be preferred to killing.

### **Distinction and proportionality in cyberwar : virtual problems with a real solution**

**Peter Pascucci.** In: *Minnesota journal of international law*, Vol. 26, issue 2, 2017, p. 419-460. - Cote 348/137 (Br.)

This article addresses the jus in bello principles of distinction and proportionality, as applied to cyber war, and demonstrates that the present structure of international humanitarian law (IHL) fails to fulfill the spirit of adequately protecting civilians from the harms of war. The article argues that while a new, comprehensive cyberspace treaty is neither necessary nor politically likely, a limited-in-scope additional protocol to the Geneva Conventions that seeks to clarify the definitions and application of key terms with respect to cyberwar is necessary, appropriate and politically feasible. Specifically, Additional Protocol IV should clearly delineate what constitutes a civilian object versus a military objective in cyberspace, including how to calculate damage in cyberwar, and determine the scope and extent to which indirect or knock-on effects must be considered.

<http://minnjil.org/archives-2/volume-26-issue-2/>

### **Does and should international law prohibit the prosecution of children for war crimes ?**

**Noëlle Quénivet.** In: *European journal of international law*, Vol. 28, no. 2, May 2017, p. 433-455

This article investigates whether international law prohibits the prosecution of children for war crimes and, if it does not, whether it should do so. In particular, the interplay between restorative and retributive post-conflict justice mechanisms, on the one hand, and juvenile rehabilitative justice mechanisms, on the other, is discussed in detail. The article suggests that in certain, narrow, circumstances children having committed war crimes should be prosecuted.

<https://doi.org/10.1093/ejil/chx023>

### **Domestic human rights adjudication in the shadow of international law : the status of human rights conventions in Israel**

**Barak Medina.** In: *Israel law review*, Vol. 50, no. 3, November 2017, p. 331-388. - Cote 345.1/666 (Br.)

The quarter-century anniversary of Israel's ratification of the major U.N. human rights treaties is an opportunity to revisit the formal and informal interaction between domestic and international Bills of Rights in Israel. The study reveals that the human rights conventions lack almost entirely a formal domestic legal status. The current study identifies a minor shift in the scope of the Israeli Supreme Court's reference to international law, as the Court now cites international human rights law to justify decisions that a state action is unlawful, and not only to support findings that an action is valid. This shift may be the result of other reasons, for instance, a 'radiation' of the Court's relatively extensive use of international humanitarian law in reviewing state actions taken in the Occupied Territories. However, it may also reflect a perception of enhanced legitimacy of referring to international human rights law as a point of reference in human rights adjudication, following the treaties' ratification. At the same time, the Court continues to avoid acknowledging incompatibility between domestic law and international law. It refers to the latter only as a support to its interpretation of the Israeli constitutional law, as it did before the ratification. The paper critically evaluates this practice. While international human rights law should not be domestically binding, due to its lack of sufficient democratic legitimacy in Israel, it should serve as an essential benchmark. The Court may legitimize a human right infringement that is unjustified according to international law, but such incompatibility requires an explicit justification. The Court, as well as the legislature and the government, are required to critically engage with the non-binding norms set by the ratified U.N. human rights treaties.

<https://doi.org/10.1017/S0021223717000164>

### **Le droit international humanitaire au sein de la jurisprudence de la Cour interaméricaine des droits de l'homme**

**Juana María Ibáñez Rivas.** In: *La revue des droits de l'homme*, 11/2017, 29 p. - Cote 345.1/661 (FRE Br.)

La Cour interaméricaine a commencé à se référer explicitement au DIH à partir de 2000. L'étude de sa jurisprudence permet d'identifier les fondements factuels à partir desquels la Cour a vérifié que les faits des affaires concernées se déroulaient dans un contexte de conflit armé, ainsi que les fondements juridiques qui établissent sa compétence pour se référer à un cadre normatif extérieur au corpus juris interaméricain. La jurisprudence démontre aussi qu'à partir d'interprétations à la lumière du DIH, la Cour a renforcé le contenu et la portée des droits de l'homme et des obligations de l'État ; et qu'en allant au-delà de la simple interprétation, la Cour a déclaré la violation des principes du DIH et a ordonné des mesures de réparation pour garantir la mise en œuvre de ce droit. Ainsi, la Cour interaméricaine est devenue un mécanisme indirect de contrôle du DIH.

<http://journals.openedition.org/revdh/2799>

### **Le droit international humanitaire et la protection des enfants en situation de conflits armés : étude de cas de la République Démocratique du Congo**

**Junior Mumbala Abelungu.** In: *Afrika focus*, Vol. 30, no 1, 2017, p. 117-129. - Cote 362.7/440 (Br.)

Le régime de protection de l'enfant en situation de conflits armés tel qu'institué par le droit international humanitaire complété par le droit international des droits de l'homme, voire le droit international pénal, reste sujet à de nombreux écueils. Ceux-ci sont à situer plus au niveau de la définition des obligations des parties au conflit et des mécanismes devant assurer la mise en œuvre de ces obligations. Ainsi, prenant pour cadre d'investigation la République Démocratique du Congo, pays qui comptait plus de 30.000 enfants soldats (plus ou moins 15% des filles) et dont les enfants demeurent victimes des atrocités indicibles de forces et groupes armés, la présente contribution s'interroge sur le contenu et l'efficacité de la protection spéciale réservée à l'enfant – civil ou soldat – en situation de conflits armés.

<http://dx.doi.org/10.21825/af.v30i1.4983>

### **The duty to disobey illegal nuclear strike orders**

**Anthony J. Colangelo.** - [Dallas] : SMU Dedman school of law, 2017. - Cote 341.67/839 (Br.)

This essay argues there is a legal duty to disobey illegal nuclear strike orders. Failure to carry out this duty may result in criminal and civil liability. Because nuclear weapons are quantitatively and qualitatively different from conventional weapons, typical legal calculations regulating their use under the laws of war or humanitarian law, as well as human rights law, change along with the change in weaponry. The essay's thesis largely boils down to: if conventional weapons can be used to achieve the same or similar military objectives as nuclear weapons in proximity to civilians, and nuclear weapons are ordered to be used instead, that order may be manifestly illegal, leading to war crimes for which actors can be liable if they obey the illegal order. This universal customary international law applies both to state and non-state actors alike.

<https://ssrn.com/abstract=3048979>

### **Enforcing conventional humanitarian law for environmental damage during internal armed conflict**

**Mete Erdem.** In: The Georgetown environmental law review, Vol. 29, issue 3, Spring 2017, p. 435-479. - Cote 358/164 (Br.)

This article aims to explore possibilities of individual criminal responsibility as a means of enforcement of conventional humanitarian law for environmental damage during internal armed conflict. Part I examines the existing treaty regimes for the legal protection of the environment in internal armed conflict with reference to Protocol II of the Geneva Conventions of 1949 and arms control regulations. Part II discusses the viability of the penal repression of violations of international humanitarian law for environmental wrongs as means of enforcement in view of the far-reaching implications of the Tadic decision of the International Criminal Tribunal for the Former Yugoslavia and the Rome Statute of the International Criminal Court. In conclusion, this article argues that, although penal sanctions against the most egregious environmental damages remain the only viable means of enforcement, effectiveness ultimately depends on strengthening the substantive body of law regarding internal armed conflict, complementary to a wider scheme of proposals and strategies to develop and enhance the existing normative legal framework for protection of the environment through the unification of international humanitarian law.

<https://gielr.files.wordpress.com/2017/07/zsk00317000435.pdf>

### **Les entreprises militaires et de sécurité privées appréhendées par le droit**

**Thierry Garcia.** - Paris : Mare & Martin, 2017. - 184 p. - Cote 345.29/253

Les Entreprises militaires et de sécurité privées (EMSP) – définies comme des entités commerciales privées qui fournissent des services militaires et/ou de sécurité - ont fait l'objet de nombreuses études spécifiques par les juristes anglosaxons, depuis une vingtaine d'années. Mais, jusqu'à présent, aucune étude globale ne leur a été consacrée en langue anglaise et surtout en Français. La grande originalité de cet ouvrage réside dans l'étude de manière transversale des EMSP, sous différents angles juridiques incluant toutes ses dimensions : internationale, régionale, nationale et comparée. La conception retenue consiste à se demander de quelle manière les EMSP sont appréhendées par ces différents droits. La dynamique de cette approche comparatiste permet de percevoir les évolutions en ce domaine, ainsi que d'établir les éléments de divergence et de convergence. L'harmonisation et la combinaison entre ces ordres juridiques sont alors prescrites dans cet ouvrage afin de saisir de manière effective et efficace ces entreprises.

### **The equality of combatants in asymmetric war**

**Claire Finkelstein.** - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 241-258. - Cote 345.25/361

This chapter considers the relationship between the principle of distinction and the idea that combatants are "morally equal" on the battlefield. This relationship is of particular interest, as well as complexity, in so-called asymmetric warfare, namely warfare between traditional state actors and non-state actors such as ISIS or al-Qaeda. It argues that an essential concept for understanding the moral equality principle is that of role responsibility. The notion of role responsibility, where it applies, has the effect of isolating the rights and duties that pertain to the actor from other segments of morality and enables morality to be discontinuous across its various domains. The result is that two principles of right may conflict with one another across the various domains to which they apply. This explains how a combatant can be on the wrong side of a conflict and yet have the right to kill an opposing combatant in war. The idea is challenging to extend to asymmetric war.

### **Errors and misconceptions in the 2015 Department of Defense law of war manual**

**Jordan J. Paust.** In: Minnesota journal of international law, Vol. 26, issue 2, 2017, p. 303-344. - Cote 345.22/306 (Br.)

This article focuses primarily on several egregious errors and manifest misconceptions contained in portions of Part I of the 2015 Department of Defense Law of War Manual. These generally relate to the unavoidable duty of all members of the Executive branch, including members of the armed forces, to faithfully execute the law; the relationship between the law of war and other forms of international law applicable during armed conflict; applicability and the reach of human rights law during armed conflict; and the nature, reach, and content of customary international law. This article also addresses certain other errors and concerns with respect to the nature of war crimes, compensation, targetable civilians, military necessity, the test regarding weapons of a nature to cause unnecessary suffering, dum-dum bullets, herbicides, destruction of food and water, justified force in the context of Kosovo, the proper test for legitimate self-defense, and the nature of non-international armed conflicts.

<http://minnijl.org/archives-2/volume-26-issue-2/>

### **The European Convention in conflicted societies : the experience of Northern Ireland and Turkey**

**Onder Bakircioglu and Brice Dickson.** In: *International and comparative law quarterly*, Vol. 66, part 2, April 2017, p. 263-294

Since the entry into force of the European Convention on Human Rights there have been many serious conflicts in Europe. This article examines the role played by the Convention in two of those conflicts: that in Northern Ireland between supporters of the territory remaining part of the United Kingdom and supporters of Northern Ireland becoming part of a reunified Ireland, and that in Turkey between those who advocate for a unified Turkish State and those who want a Turkey which grants greater rights to Kurds and accepts greater autonomy for the Kurdish-dominated southeast region. The principal goal is to compare how the institutions in Strasbourg have responded to applications lodged by victims of human rights abuses allegedly committed during the two conflicts. The comparison seeks to identify to what extent the European Court of Human Rights has adopted principles and practices which can contribute to a reduction in human rights abuses during times of conflict.

<https://doi.org/10.1017/S0020589317000033>

### **Fighting for self-determination : on equality of peoples and belligerents**

**Matthias Vanhullebusch.** In: *The Asian yearbook of human rights and humanitarian law*, Vol. 1, 2017, p. 137-165

Peoples have been fighting for self-determination and equality ever since the time of colonisation. The principles that inform the legitimacy of those struggles from the period of decolonisation until the present day, namely the principle of equality of peoples and of belligerents have variably received legal recognition under international and humanitarian law. Since the wars of national liberation against colonialism, the fights for internal self-determination until more recently the operationalisation of the doctrine on the Responsibility to Protect, both principles have either come closer or moved further apart. Various international legal, political, judicial and humanitarian institutions have shaped the content and interplay of these principles in response to the human suffering on the battlefield. This article will examine how competing sovereignty or community interests within distinctive political contexts have been responsible for such divergent evolution in their relationship.

### **From cyber norms to cyber rules : re-engaging states as law-makers**

**Kubo Macák.** In: *Leiden journal of international law*, Vol. 30. no. 4, December 2017, p. 877-899

Several indicators point to a crisis at the heart of the emerging area of international cyber security law. First, proposals for binding international treaties by leading stakeholders, including China and Russia, have been met with little enthusiasm by other states, and are generally seen as having limited prospects of success. Second, states are extremely reluctant to commit themselves to specific interpretations of controversial legal questions and thus to express their cyber *opinio juris*. Third, instead of interpreting or developing rules, state representatives seek refuge in the more ambiguous term 'norms'. This article argues that the reluctance of states to engage in international law-making has left a power vacuum, lending credence to claims that international law fails in addressing modern challenges posed by rapid technological development. In response, several non-state-driven norm-making initiatives have sought to fill the void, including Microsoft's cyber norms proposals and the Tallinn Manual project. The article then contends that this emerging body of non-binding norms presents states with a critical window of opportunity to reclaim a central law-making position, similar to historical precedents including the development of legal regimes for Antarctica and nuclear safety. Whether the supposed crisis will lead to the demise of inter-state cyberspace governance or a recalibration of legal approaches will thus be decided in the near future. States should assume a central role if they want to ensure that the existing power vacuum is not exploited in a way that would upset their ability to achieve strategic and political goals.

<https://doi.org/10.1017/S0922156517000358>

### **Humanitarian assistance and the Security Council**

**Andreas Zimmermann.** In: *Israel law review*, Vol. 50, issue 1, March 2017, p. 3-23. - Cote 361/689 (Br.)

Humanitarian assistance is essential for the survival of the civilian population and people hors de combat in the theatre of war. Its regulation under the laws of armed conflict tries to achieve a balance between humanitarian goals and state sovereignty. This balance, reflected in the provisions of the 1949 Geneva Conventions and their Additional Protocols, is not as relevant to contemporary armed conflicts, most of which involve non-state armed groups. Even those provisions relating to humanitarian assistance in conflicts involving non-state armed groups fail to address properly the key features of these groups, and especially their territorial aspect. This article proposes a different approach, which takes into consideration and gives weight to the control exercised by non-state armed groups over a given territory. Accordingly, it is suggested that provisions regulating humanitarian relief operations in occupied territories should apply to territories controlled by armed groups. This approach views international humanitarian law first and foremost as an effective, realistic and practical branch of law. Moreover, it has tremendous humanitarian advantages and reflects the aims and purposes of the law, while considering the factual framework of these conflicts.

<https://doi.org/10.1017/S0021223716000315>

### **Humanity, necessity, and the rights of soldiers**

**Larry May.** - In: *Weighing lives in war.* - Oxford : Oxford University Press, 2017. - p. 77-110. - Cote 345.25/361

In both morality and law, it is still common to say that soldiers' lives do not count for very much in assessments of whether or not a particular war or armed conflict is justifiably initiated and conducted. Larry May argues that soldiers should be acknowledged to have the humanitarian right not to be killed unnecessarily. Also, he argues that military necessity is best conceived as a form of practical necessity. He argues for a strengthening of the principle of military necessity, so that a soldier's life can only be taken if it is practically necessary to achieve a needed military objective. He then sets out a new way to understand humanitarian norms that is in keeping with the idea that the humans who are soldiers should be treated with at least minimal dignity. He supports an expanded view of humanitarian rights that takes account of soldiers' unique vulnerabilities.

### **Humanization of arms control : paving the way for a world free of nuclear weapons**

**Daniel Rietiker.** - London ; New York : Routledge, 2018. - XXX, 322 p. - Cote 341.67/826

Despite clear legal rules and political commitments, no significant progress has been made in nuclear disarmament for two decades. Moreover, not even the use of these weapons has been banned to date. New ideas and strategies are therefore necessary. The author explores an alternative approach to arms control focusing on the human dimension rather than on States' security: "humanization" of arms control! The book explores the preparatory work on arms control treaties and in particular the role of civil society. It analyzes the positive experiences of the movements against chemical weapons, anti-personnel mines, and cluster munitions, as well as the recent conclusion of the Arms Trade Treaty. The author examines the question of whether civil society will be able to replicate the success strategies that have been used, in particular, in the field of anti-personnel mines (Ottawa Convention) and cluster munitions (Oslo Convention) in the nuclear weapons field. Is there any reason why the most destructive weapons should not be outlawed by a legally binding instrument? The book also explains the effects of weapons, especially nuclear weapons, on human beings, the environment, and global development, thereby focusing on vulnerable groups, such as indigenous peoples, women, and children. It takes a broad approach to human rights, including economic, social, and cultural rights. The author concludes that the use of nuclear weapons is illegal under international humanitarian and human rights law and, moreover, constitutes international crimes under the Rome Statute of the International Criminal Court.

### **The ICCPR in armed conflict : an appraisal of the human rights committee's engagement with international humanitarian law**

**Vito Todeschini.** In: *Nordic journal of human rights*, Vol. 35, no. 3, 2017, p. 203-219. - Cote 345.1/660 (Br.)

The present article examines the Human Rights Committee's pronouncements on the relationship between the International Covenant on Civil and Political Rights (ICCPR) and international humanitarian law (IHL), taking into account the developments in the jurisprudence of other human rights bodies. The analysis aims to clarify the theoretical underpinnings of the relationship between the ICCPR and IHL, paying special attention to the complementarity perspective and the interpretive principle of systemic integration. The article critically examines the Human Rights Committee's understanding of how the Covenant applies in armed conflict, specifically in relation to the protection of the rights to life and liberty and the regulation of the use of force and security detention; it considers both the shortcomings and the innovative aspects of the Committee's interpretations. The analysis concludes by exploring the normative and practical implications deriving from the concurrent application of IHL and the Covenant, particularly with regard to the Committee's ability to review state action in armed conflict, the duty to investigate violations, and the right to a remedy and reparation for victims.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/44247.pdf>

### **The ICC's role in combatting the destruction of cultural heritage**

**Mark S. Ellis.** In: *Case Western Reserve journal of international law*, Vol. 49, issue 1, 2017, p. 23-62. - Cote 357/193 (Br.)

Ahmad Al Faqi Al Mahdi appeared before the International Criminal Court on September 30, 2015, charged with the war crime of destroying Mali's cultural heritage. Because Al Mahdi admitted guilt, the trial lasted only a few days. A full trial would have had the benefit of focusing attention on the destruction of cultural heritage as a prosecutable crime against humanity. Despite the fact that it was dispensed with so quickly, the case remains important to the goal of deterring such crimes in the future. This article considers the likelihood of that aspiration by looking at the charges brought against Al Mahdi. It also reviews the Al Mahdi case in the context of international law and past practices, with particular emphasis on current treaties and jurisprudence from the International Criminal Tribunal for the former Yugoslavia.

<https://scholarlycommons.law.case.edu/jil/vol49/iss1/5>

### **ICRC negotiations with North Vietnamese authorities regarding access to American POWs during the Vietnam War, 1965-1970**

**Audrey Gros and Cormac Shine.** - [S.l.] : [s.n.], [2016]. - 24 p. - Cote 400.2/381 (Br.)

This paper studies the International Committee of the Red Cross (ICRC)'s persistent efforts at negotiating with North Vietnamese authorities, specifically regarding the treatment of American POWs, during the period from 1965 to 1970. Based on the ICRC archives, it charts the organization's efforts to engage with North Vietnamese authorities on the issue. The centrality of the Geneva Conventions for all actors involved in the conflict is also studied. Finally, the ICRC's attempts to safeguard its principles on a political and reputational level are addressed.

<https://library.icrc.org/library/docs/DOC/44263.pdf>

### **Individual criminal responsibility for the destruction of religious and historic buildings : the Al Mahdi case**

**Milena Sterio.** In: *Case Western Reserve journal of international law*, Vol. 49, issue 1, 2017, p. 63-73. - Cote 344/710 (Br.)

Ahmad Al Faqi Al Mahdi, also known as Abon Tourab, was a member of the radical Islamic group Ansar Eddine, serving as one of four commanders during its brutal occupation of Timbuktu in 2012. The International Criminal Court (ICC) indicted Al Mahdi on several charges of war crimes, for intentional attacks against ten religious and historic buildings and monuments. All the buildings which Al Mahdi was charged with attacking had been under UNESCO protection, and most had been listed as world heritage sites. The case against Al Mahdi at the ICC unfolded relatively quickly and efficiently, from the official Malian referral of the case to the ICC until the end of the trial when the defendant, who had pled guilty, was sentenced. Al Mahdi's initial arrest caught many by surprise. While he was detained in a prison in Niger, ICC authorities issued a sealed warrant for his arrest, sent representatives to meet with Niger government officials, and transferred him to the ICC detention facility at The Hague. In addition, Al Mahdi's arrest and prosecution at the ICC have sparked controversy because of the court's decision to pursue a little-known defendant for a relatively insignificant crime. Others, however, have applauded the ICC's prosecution of Al Mahdi as a victory for the institution and a ground-breaking legal precedent. This article analyzes the Al Mahdi case and argues that his conviction will not only constitute an important precedent for the ICC, but also contribute toward the tribunal's overall legitimacy.

<https://scholarlycommons.law.case.edu/jil/vol49/iss1/6>

## **The International Committee of the Red Cross and its mandate to protect and assist : law and practice**

**Christy Shucksmith.** - Oxford ; Portland : Hart, 2017. - XXVI, 216 p. - Cote 600/100

The purpose of this book is to consider the legality of the changing practice of the International Committee of the Red Cross (ICRC). It provides extensive legal analysis of the ICRC as an organisation, legal person, and humanitarian actor. It draws on the law of organisations, international humanitarian law, international human rights law, and other relevant branches of international law in order to critically assess the mandate and practice of the ICRC on the ground. Ultimately the book concludes that the ICRC is no longer restricted to the provision of humanitarian assistance on the battlefield. It is increasingly drawn into long-term and extremely complicated conflicts, in which, civilians, soldiers and non-State actors intermingle. In order to remain useful for the people on the ground, therefore, the ICRC is progressively developing its mandate. This book questions whether, on occasion, this could threaten its promise to remain neutral, impartial and independent.

## **An international terrorism court in nuce in the age of international adjudication**

**Ignacio de la Rasilla.** In: *The Asian yearbook of human rights and humanitarian law*, Vol. 1, 2017, p. 76-108

After characterizing the different dimensions of an increasing focus on terrorism in international law and the move towards international adjudicative mechanisms as defining features of the international legal zeitgeist in the post-cold war era, the main technical and political difficulties involved in bringing transnational terrorism under the jurisdictional scope of the International Criminal Court are assessed. An overview of the history and the precedential value of the 1937 Conventions on the Punishment and Prevention of Terrorism, and the Creation of an International Criminal Court, is followed by an appraisal of a contemporary blueprint for the establishment of a permanent international terrorism court by a Resolution of the Security Council acting under Chapter VII of the UN Charter. In an age of international adjudication, the present international volatility, fueled by the on-going series of ISIS-inspired suicide terrorist attacks, may well turn out to be what 'historical institutionalism' terms a 'critical juncture' for the creation of new international adjudicative mechanisms for dealing with transnational terrorist offences.

## **ISIS and the violations of human rights of sexual minorities : is the international community responding adequately ?**

**Silvia Venier and Denise Venturi.** In: *The Asian yearbook of human rights and humanitarian law*, Vol. 1, 2017, p. 109-134

As part of the atrocities committed in Syria since the outbreak of the civil war, the attention of the international community has been attracted by the violence targeting a particularly vulnerable group, i.e. individuals pertaining to 'sexual minorities', or Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI). This article aims at providing an overview of the human rights abuses committed against LGBTI individuals in the territories controlled by ISIS in Syria and Iraq, and at discussing the extent to which the international community is aware of the problem and is addressing it adequately. The article then seeks to examine the legal implications triggered by the abuses committed by ISIS militants against LGBTI individuals and to discuss further avenues that might be available at the international level to ensure accountability, focusing on the challenges in applying international humanitarian law, international human rights law and international criminal law provisions to these contexts.

## **The Janus face of water in Central African Republic (CAR) : towards an instrumentation of natural resources in armed conflicts**

**Isidore Collins Ngueuleu Djeuga.** In: *Les Cahiers d'Outre-Mer*, Vol. 68, no 272, octobre-décembre 2015, p. 577-594. - Cote 358/159

In the conflict that is destroying the Central African Republic (CAR) since 2013, belligerents have used water in many ways, including polluting water facilities, destroying water pipes, denying access to water points to civilians and denying humanitarian access. This has raised an important issue of international humanitarian law regarding the position of water in conflict as either a civilian property or a military target. The targeting of water facilities intentionally or not has made it become a victim, target or weapon in the conflict. Gangs, militias and bandits have developed tactics of war that, in controlling territories also control water points, pollute wells, destroy water pipes and humiliate the enemy by raping women at water points. Transitional justice mechanisms and humanitarian aid should include activities that intends to turn water from an instrument of conflict into an instrument of peace.

## **Joint and combined targeting : structure and process**

**Michael Schmitt... [et al.].** - In: *Weighing lives in war.* - Oxford : Oxford University Press, 2017. - p. 298-324 . - Cote 345.25/361

This chapter discusses how the law is implemented by armed forces during “targeting,” the process by which individuals and objects are systematically analyzed and prioritized for potential engagement. Centered on an examination of the United States’ “Joint Targeting Cycle,” a construct broadly shared by many other states and organizations, such as NATO, it explains how international humanitarian law concepts are given practical effect during armed conflict. The analysis then proceeds to explore the nuances of targeting in different operational domains: air, land, sea, and cyber. While achieving broadly the same set of legal functions, practice has developed to reflect the different means and methods of warfare in each particular environment. The chapter concludes by extending the discussion to targeting in a coalition context, in which processes and procedures are required to account for legal differences between partners, while minimizing the detrimental effect on operations in order to achieve “legal interoperability.”

### **Justice pénale internationale : les nouveaux enjeux de Nuremberg à La Haye**

**sous la direction de Philippe Gréciano.** - Paris : Mare & Martin, [2016]. - 218 p. - Cote 344/701

Contient notamment : Juger le crime de génocide : un enjeu historique et juridique / M. Eudes. - Les principes de Nuremberg : des règles du passé aux priorités de demain / B. Borhardt. - La justice pénale internationale à l'épreuve du maintien de la paix / F. Schnell. - Les enjeux diplomatiques de la justice pénale internationale / H.-D. Heumann.

### **Justifying restrictions on reconstructing Gaza : military necessity and humanitarian assistance**

**Sari Bashi.** In: *Israel law review*, Vol. 49, issue 2, July 2016, p. 149-168. - Cote 351/133 (Br.)

This article analyses the relationship between the scope of security needs that are cited as justification for restricting humanitarian assistance in situations of occupation and the scope of the occupant's obligation to facilitate and/or proactively provide humanitarian relief. It argues that, compared with a non-occupant, an occupying power may consider broader security goals as reasons to restrict humanitarian assistance, but that doing so imposes a greater responsibility on the occupying power to provide alternatives to the humanitarian assistance being restricted. In addition, as a normative matter, as increasingly long-term security goals are included in the ‘military necessity’ cited as a reason for restricting humanitarian assistance, the ambit of what is included in humanitarian assistance should be expanded to include the economic development and investment in infrastructure needed to provide for humanitarian needs in the long term. This kind of regime would enhance the self-regulation of warring powers by requiring those with the ability to engage in long-term security planning to use that ability also to provide for the long-term humanitarian needs of the civilian population. The article examines restrictions on humanitarian assistance in Gaza as an example of how this normative arrangement might work in practice.

### **Kidnapping and extortion as tactics of soft war**

**Tamar Meisels.** - In: *Soft war : the ethics of unarmed conflict.* - Cambridge [etc.] : Cambridge University Press, 2017. - p. 200-216. - Cote 345.2/1038

Why are armies permitted to take prisoners during wartime, while guerrillas are condemned as “kidnappers” even when they capture active military servicemen, as when Hamas held Israeli soldier Gilad Shalit? This chapter defends the double standard. The central argument concerns agency, suggesting that most insurgents do not, and should not, achieve the legal status of lawful belligerents which would permit them to kill and capture with impunity. Moreover, by using their captives as bargaining chips in negotiating the release of their incarcerated comrades, insurgents violate international prohibitions on hostage taking, as well as the Kantian interdiction on exploiting human beings as means only.

### **Law in the militarization of cyber space : framing a critical research agenda**

**Kristin Bergtora Sandvik.** - In: *Conflict in cyber space : theoretical, strategic and legal perspectives.* - London ; New York : Routledge, 2016. - p. 175-197. - Cote 348/130

This chapter aims to set out some ideas and pointers for a further development of a research agenda on the role of law in the militarization of cyber space. Critical legal thinking on cyber war remains an underdeveloped and fragmented endeavor: international law scholars usually take the existence of cyber war at face value, both with respect to the possibility that cyber attacks may cross threshold for armed attacks set out in the law of armed conflict and thus be labelled “cyber war” (though not war), and the appropriateness of applying this legal framework to the field of cyber security. The writing on the legal regulation of cyber war continues to focus mostly on US military responses or the interpretation and application of the norms of the laws of war in the USA national security context. Hence, the task for legal scholars is twofold: to

respond critically to the US centric discourse on the role of law in the militarization of cyber space, but also to develop "local" or "regional" scholarly perspectives on the constitutive role of law with respect to cyber security.

### **Legal implications surrounding operation "inherent resolve" in Iraq and Syria**

by **Chris De Cock**. In: *Israel yearbook on human rights*, Vol. 47, 2017, p. 69-138

The aim of this article is to analyze the conflict in Iraq and Syria under both the *jus ad bellum* and the *jus in bello*, primarily through the lens of the United States-led coalition. The author argues that coalition operations against Daesh in Syria are based on the right of self-defence and do not violate the provisions of the UN Charter. He then examines various issues pertaining to the classification of the conflict. He also considers the legality of targeting oil production facilities and enemy banking systems. Regarding the use of explosive weapons in populated areas, he argues that a clear distinction should be made between direct attacks on civilians, indiscriminate attacks and the lawful use of explosive weapons.

### **Media warfare, propaganda, and the law of war**

**Laurie R. Blank**. - In: *Soft war : the ethics of unarmed conflict*. - Cambridge [etc.] : Cambridge University Press, 2017. - p. 88-103. - Cote 345.2/1038

This chapter explores how propaganda and media warfare intersect with the international law framework governing conflict, focusing on how information operations and media coverage link back to legal compliance — specifically claims of law violations or compliance — and legitimacy. In essence, the information battlespace has a significant effect on the application and interpretation of the law of armed conflict, including the very definitions that form the heart of the legal framework. Media coverage is an essential tool for the protection of persons and the enforcement of legal and moral norms. At the same time, in order to preserve the law of armed conflict (LOAC)'s principles and processes, it is helpful to understand how the two interrelate and, in particular, how media coverage's impact on public discourse can have significant and problematic consequences for the interpretation and development of LOAC.

### **The morality of drone warfare and the politics of regulation**

**Marcus Schulzke**. - London : Palgrave Macmillan, 2017. - IX, 236 p. - Cote 341.67/834

This book discusses the moral and legal issues relating to military drones, focusing on how these machines should be judged according to the principles of just war theory. The author analyses existing drones, like the Predator and Reaper, but also evaluates the many types of drones in development. The book presents drones as not only morally justifiable but having the potential to improve compliance with the principles of just war and international law. Realizing this potential would depend on developing a sound regulatory framework, which the book helps to develop by considering what steps governments and military forces should take to promote ethical drone use. It also critically evaluates the arguments against drones to show which should be abandoned and which raise valid concerns that can inform regulations.

### **(New) cyber exploitation and (old) international humanitarian law**

**Marco Longobardo**. In: *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht = Heidelberg journal of international law*, 77. Jg., H. 3/2017, p. 809-834

Cyber exploitation is a new means of intelligence gathering. It refers to unauthorized access to computers, computer systems, or networks, in order to gain information, without affecting the functionality of the accessed system or deleting the data contained or in transit therein. States employ cyber exploitation both in peacetime and in wartime since cyber exploitation often proves relevant both in order to plan and launch an attack and in order to gain information for defensive purposes. Since international humanitarian law is the law that regulates the conduct of the hostilities, it is necessary to test the applicability of its rules to cyber exploitation. Cyber exploitation proves particularly problematic because it is an extremely recent phenomenon, while international humanitarian law rules were mainly codified in 1907, 1949 and 1977, when cyber warfare had not yet been envisaged. This paper first examines the international humanitarian law rules regarding intelligence collection in wartime, with particular regard given to espionage. This paper goes on to verify whether these old rules are applicable and relevant to the case of cyber exploitation. Finally, this paper examines the applicability of the rules regarding direct participation of civilians in hostilities to instances involving cyber exploitation. This paper concludes postulating that international humanitarian law considers cyber exploitation to be a lawful activity since these rules do not prohibit intelligence gathering. However, this paper further demonstrates that specific international humanitarian law rules are not applicable to cyber exploitation, apart from very marginal and unpractical cases.

### **Nuclear weapons targeting : the evolution of law and U.S. policy**

**Theodore T. Richard**. In: *Military law review*, Vol. 224, issue 4, 2016, p. 862-978

This article explores the history of the legal aspects of targeting, specifically addressing the evolution of the law of war related to strategic bombing and belligerent reprisals - both prior to August 1945 and in the seventy years since. The article examines the interaction between the law of war and United States nuclear weapon targeting policy during those periods. While nuclear targeting policy was consistent with law at the close of the Second World War, it subsequently struggled to justify its conformity with international law norms as they continued to evolve. This struggle is evident when assessing Cold War concepts like city targeting, "bonus damage", and retaliation against law-of-war principles such as distinction and proportionality. Since the end of the Cold War, nuclear threats have become more varied and regionalized. In this new international security environment, the U.S. accepted law-of-war limitations on nuclear weapons. Understanding and applying those limitations, however, is challenging to say the least. The unique nature of nuclear weapons, combined with treaty obligations, has created a *lex specialis* of nuclear targeting.

### **On the implications of the use of drones in international law**

**Jaume Saura.** In: *Journal of international law and international relations*, Vol. 12, no. 1, 2016, p. 120-150. - Cote 341.67/837 (Br.)

The purpose of this paper is to contextualize the challenges that drones imply for international law, particularly in the realm of international human rights law. It has been rightly said that drones are simply new weapons that, as any other, must be used in accordance with existing law. In this respect, what the current drone proliferation brings about is the questioning, or a reappraisal, of some very core international law principles and norms; principles and norms that are fully in force and must be respected whether one uses drones or any other armament. In this article, Jaume Saura provides an overview of current drone technology and how it is used; he subsequently presents some of the challenges that these systems bring to international law in three arenas: the means of warfare; the prohibition of the use of force and its exceptions; and international human rights and international humanitarian law (IHL), particularly when drones are used for targeted killing.

<http://www.jilir.org/on-the-implications-of-the-use-of-drones-in-international-law/>

### **On the power of a State to waive reparation claims arising from war crimes and crimes against humanity**

**Alessandro Bufalini.** In: *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht = Heidelberg journal of international law*, 77. Jg., H. 2/2017, p. 447-470

After war it is common practice among States to conclude lump-sum agreements in order to settle the issue of reparations owed by one party to another. In most of these agreements, there are provisions in which a State waives any future reparation claims related to the injuries suffered during the armed conflict. Notwithstanding this practice, it might be of some interest to assess whether the State's power to waive reparations is today subject to some limitation or whether it is a right which each State is freely entitled to exercise. Evolutionary trends in the law of State responsibility, in fact, seem to suggest the existence of some limitation to the State's power to waive reparation claims arising from violations of peremptory norms. Limitations to the State's power to waive reparation claims might also be inferred from the interpretation of a number of provisions of the Geneva Conventions of 1949. To these legal arguments, one could add more general policy reasons based on the importance of collective and non-economic forms of reparation.

### **The phoenix of colonial war : race, the laws of war, and the "horror on the Rhine"**

**Rotem Giladi.** In: *Leiden journal of international law*, Vol. 30, no. 4, December 2017, p. 847-875

The article explores the demise of the 'colonial war' category through the employment of French colonial troops, under the 1918 armistice, to occupy the German Rhineland. It traces the prevalence of – and the anxieties underpinning – antebellum doctrine on using 'Barbarous Forces' in 'European' war. It then records the silence of postbellum scholars on the 'horror on the Rhine' – orchestrated allegations of rape framed in racialized terms of humanity and the requirements of the law of civilized warfare. Among possible explanations for this silence, the article follows recent literature that considers this scandal as the embodiment of crises in masculinity, white domination, and European civilization. These crises, like the scandal itself, expressed antebellum jurisprudential anxieties about the capacity – and implications – of black soldiers being 'drilled white'. They also deprived postbellum lawyers of the vocabulary necessary to address what they signified: breakdown of the laws of war; evident, self-inflicted European barbarity; and the collapse of international law itself, embodied by the Versailles Diktat treating Germany as a colonial 'object', as Schmitt lamented. Last, the article traces the resurgence of 'colonial war'. It reveals how, at the moment of collapse, in the very instrument embodying it, the category found a new life. Article 22(5) of the League of Nations Covenant (the Covenant) reasserted control over the colonial object, furnishing international lawyers with a new vocabulary to address the employment of colonial troops – yet, now, as part of the 'law of peace'. Reclassified, both rule and category re-emerged, were codified, and institutionalized imperial governance.

<https://doi.org/10.1017/S0922156517000395>

### **The privatization of peacekeeping : exploring limits and responsibility under international law**

**Lindsey Cameron.** - Cambridge [etc.] : Cambridge University Press, 2017. - XVII, 414 p. - Cote 345.29/252

Private military and security companies (PMSCs) have been used in every peace operation since 1990, and reliance on them is increasing at a time when peace operations themselves are becoming ever more complex. This book provides an essential foundation for the emerging debate on the use of PMSCs in this context. It clarifies key issues such as whether their use complies with the principles of peacekeeping, outlines the implications of the status of private contractors as non-combatants under international humanitarian law, and identifies potential problems in holding states and international organizations responsible for their unlawful acts. Written as a clarion call for greater transparency, this book aims to inform the discussion to ensure that international lawyers and policy makers ask the right questions and take the necessary steps so that states and international organizations respect the law when endeavouring to keep peace in an increasingly privatized world.

### **Proportionality in customary international law : an argument against aspirational laws of war**

**James Kilcup.** In: Chicago journal of international law, Vol. 17, no. 1, 2016, p. 244-272. - Cote 345.25/363 (Br.)

The principle of proportionality is a central feature of international law regulating modern military engagements. Yet the legal status of proportionality in international law is far from clear. Two major international treaties — the Rome Statute and the 1977 Additional Protocol to the Geneva Convention — address war crimes and provide distinct definitions of the crime of disproportionate use of force. Many of the world's major military powers are not signatories to either treaty. Consequently, the only framework of legal accountability for alleged proportionality violations committed by those nations is customary international law. Furthermore, in non-international conflicts no treaty law respecting proportionality exists, meaning that customary international law again is the only binding law available. Given the importance of the definition of proportionality to policing modern military conflicts, reducing ambiguity regarding the legal elements of proportionality would be a salutary development. This comment, drawing on doctrinal and realist policy analyses, argues that the legal elements of proportionality in customary international law can be clarified through the adoption of the definition of proportionality provided by the Rome Statute as customary international law.

<http://chicagounbound.uchicago.edu/cjil/vol17/iss1/8>

### **Proportionality in warfare as a political norm**

**Ariel Colonomos.** - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 217-237. - Cote 345.25/361

This chapter argues in favor of a political version of the norm of proportionality. Proportionality, as embodied in the "orthodox" narrow proportionality test, is widely used in the legal and ethical debates about the use of force. There are, however, reasons to be dissatisfied with the current norm. This article identifies the reasons for the failure of proportionality—mainly the lack of commensurability between the variables that are aggregated in the calculus of proportionality and the lack of attention paid to the intertemporal dimension of proportionality. Moreover, this chapter challenges the prevailing individualist model we find both in law and ethics. It argues for a reframing of proportionality in political terms which meets the challenges of contemporary warfare. The chapter then establishes five principles that would serve as the groundstone of this new political norm.

### **Proportionate defense**

**Jeff McMahan.** - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 131-154. - Cote 345.25/361

Proportionality in defense is a relation between the good and bad effects of a defensive act. Stated crudely, proportionality requires that the bad effects of such an act not be excessive in relation to the good. If this seems simple, the apparent simplicity is an illusion. This chapter explores some of the hitherto unappreciated complexities in the idea of proportionality. It explains how a requirement of proportionality differs from a requirement of necessity, distinguishes among various types of proportionality, and examines the ways in which proportionality in defense differs from proportionality in punishment. The chapter also suggests that certain good or bad effects may have less weight than others, or even no weight at all, in the

assessment of proportionality. Finally, the chapter argues that proportionality is not just a matter of the consequences of action, but is also sensitive to the ways in which consequences are brought about.

### **Proportionate killing : using traditional jus in bello conditions to model the relationship between liability and lesser-evil justifications for killing in war**

**Jovana Davidovic.** - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 155-172. - Cote 345.25/361

This chapter attempts to explain how liability and lesser-evil justifications can work together, in an individualist account of just war, to answer some difficult questions about fighting in war. It starts with a brief survey of other individualist attempts to make sense of jus in bello in general and proportionality in bello in particular. It argues that the traditional jus in bello conditions and the separation of labor between them can be helpful, as a model, for understanding exactly how liability and lesser-evil justifications are meant to work together to account for some of our intuitions regarding the more difficult cases of collective action and limited or minimal moral responsibility in war. One upshot of this account is that it gives us reasons to reject the view that a complex picture of justification for actions in war needs to commit us to pacifism.

### **Prosecuting collective punishment : Israel's breach of international law in the West Bank**

**Ryan Corbett.** In: Boston university international law journal, Vol. 35, issue 2, Summer 2017, p. 369-396. - Cote 345.22/301 (Br.)

This note examines Israel's use of collective punishment in the West Bank and investigates the best forum for prosecuting these violations. Collective punishment is prohibited under international humanitarian law, and is an act prosecutable as a war crime or against humanity by the International Criminal Court. However, to date, Israel's use of collective punishment has gone unchallenged in international courts. In addition, while domestic Israeli law provides for challenges in court based on customary international law, the High Court of Justice, Israel's Supreme Court, has been reluctant to grapple with these violations of international laws that prohibit Israel's use of collective punishment in the West Bank. This note details the relevant international and domestic laws that prohibit Israel's use of collective punishment in the West Bank. This note then investigates the best forum to challenge these violations of international law, focusing on the International Criminal Court, ad hoc tribunals, and the High Court of Justice in Israel. Finally, this note concludes with benefits and drawbacks of each of these fora and outlines the best forum in which to prosecute these violations.

### **The qualified prohibition on third-state assistance to parties in armed conflicts : illuminating the myth, interpreting the reality**

**Nele Verlinden and Luca Ferro.** - [S.l.] : European Society of International Law, 2017. - Cote 352/40 (Br.)

There are two doctrines in international law that, together, form a legal firewall against third-State intervention in armed conflict: the law of neutrality, which imposes neutrality during international armed conflict and its corollary during non-international armed conflict, the principle of non-intervention. This paper aims at shedding light on how both doctrines operate in practice and how theoretical uncertainties potentially influence their application. In particular, the paper explains that a status of non-belligerency has no foundation in international law, clarifies the relationship between neutrality law and the UN Charter and argues that the principle of non-intervention does not hamper assistance upon request of a government embroiled in a non-interventional armed conflict. After having illuminated the myth, the paper focuses on reality by looking at State practice in respect or in violation of the law of neutrality and the principle of non-intervention, highlighting that even apparent violations do not always mean that the doctrine as such is no longer valid. Finally, the paper compares and contrasts both legal doctrines, arguing that the legal firewall against intervention in armed conflict is still standing.

<https://ssrn.com/abstract=3045276>

### **Les rapports normatifs entre le droit international humanitaire et la Convention européenne des droits de l'homme : le droit international humanitaire, une lex specialis par rapport à la Convention européenne des droits de l'homme ?**

par **Evangelia Vasalou**. In: Revue trimestrielle des droits de l'homme, No 112, octobre 2017, p. 953-987. - Cote 345.1/658 (Br.)

Fondé sur la jurisprudence de la Cour européenne des droits de l'homme, cet article examine la relation entre le droit international humanitaire et la Convention européenne des droits de l'homme. Son objectif est de démontrer que la prise en compte du droit international humanitaire par la Cour européenne des droits de l'homme dans des affaires portant sur les conflits armés repose sur la spécialité des normes de ce droit. Prenant en considération les divergences normatives dont la solution n'est pas réalisable, ainsi que celles dont l'harmonisation dépend d'une limitation des droits de la Convention, l'article procède à l'évaluation de l'apport des normes spéciales du droit international humanitaire à la construction du raisonnement de la Cour européenne des droits de l'homme.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/44233.pdf>

### **Red Cross interventions in weapons control**

**Ritu Mathur**. - London [etc.] : Lexington Books, 2017. - XIII, 171 p. - Cote 341.67/827

This book explores how the International Committee of the Red Cross (ICRC), a leading humanitarian actor, addresses the problem of weapons. A triangulation of strategies such as testimonialization, medicalization and legalization, are investigated, with the help of critical security studies literature, to cultivate an understanding of an effects based approach to weapons. The attempt here is not only to introduce some innovative, conceptual tools but also to provide a coherent and critical narrative of the experiences of the ICRC vis-à-vis states to regulate and prohibit weapons. This experiential account of the ICRC's engagement with the problem of weapons is significant as it produces an empowering, alternative discourse making visible subjugated knowledge in the field of arms control and disarmament.

### **Revitalizing the international legal protection of humanitarian aid workers in armed conflict**

**Francesco Seatzu**. In: La revue des droits de l'homme, 11/2017, 12 p. - Cote 361/684 (Br.)

Contemporary armed conflicts have seen an increase in the number of humanitarian aid workers (HAW) being attacked. This is so notwithstanding these subjects have traditionally received international legal protection under the four Geneva Conventions of 1949 and the related Protocols I and II of 1977, and de facto immunity from attack by warring parties. This article analyses in detail how international humanitarian law (IHL) can be used to protect this category of currently highly vulnerable subjects to mitigate the direct and indirect consequences on them of (international and non-international) armed conflicts and of other public emergencies, together with its limits. With its historical origin and purpose of protecting persons not taking part in hostilities (persons hors de combat), IHL focuses on the protection of civilians suffering from the direct consequences of armed conflicts, such as injuries occurring from ongoing hostilities. In other words, the Geneva Conventions forbid combatants to attack persons hors de combat and require occupying forces to keep general order. However, IHL does not require warring parties to guarantee the safety of humanitarian aid workers (it does not require warring parties to supply security escorts, for instance, when other factions threaten the safety of non-combatants operating in their area) nor guarantee access of humanitarian aid workers to affected areas: governments or occupying forces may, if they wish, ban a relief agency from working in their area. The paper concludes with a proposal for reinforcing and complementing the protection of humanitarian aid workers during armed conflict situations, namely drafting future international agreements between humanitarian NGOs (to which the majority of HAWs belong) and belligerent parties in a way that is similar to the Statute of Forces Agreements (SOFAs), which deal in detail with the status, privilege and duties of the military and civilian employees.

<http://journals.openedition.org/revdh/2759>

### **Rewriting the AUMF : bringing guidance to executive decisions on combatancy and returning the US to the path of the war convention**

**Jon Todd**. - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 259-283. - Cote 345.25/361

The chapter starts with a synopsis of the concept of distinction and explains why it is foundational to any understanding of the concept of combatancy. It then provides an overview of the US approach to the concept of combatancy and surveys the changing position of that concept in international law. The chapter goes on to discuss the concept of combatancy in the courts and in Congress. Because the US executive branch either has not acknowledged or cannot follow this evolving concept of combatancy in the context of modern warfare, Congress must reauthorize and update the AUMF, expanding the concept of combatancy to include the issue of non-state actors, a recognition of partial compliance of combatants, and an incorporation of the ICRC Guidance on Direct Participation in Hostilities.

## **The role of private military and security companies : corporate dogs of war or civilians operating in hostile environment ?**

**Frauke Renz.** In: Swiss review of international and european law = Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen, Vol. 27 (2017), no. 3, p. 305-332 : graph.

Private Military and Security Companies perform a wide range of roles during non-international armed conflicts. While many of those roles have been assessed thoroughly, the roles of contractors involved in combat air patrol missions have remained understudied. Major militaries worldwide are increasingly relying on drone warfare and make use of private contractors throughout the process. It is thus essential to assess the legal status of those contractors under international humanitarian law to determine their rights and how those correspond to their contractual obligations. This article argues that contractors analyzing intelligence are likely to directly participate in hostilities while those piloting and operating the drones potentially perform an inherently governmental function and thus blur the line between the public and the private sector. Their work might even qualify as membership of an armed group with a continuous combat function, thus depriving them of the revolving door benefit.

## **Sharp wars are brief**

**Jens David Ohlin.** - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 58-76. - Cote 345.25/361

This chapter makes three claims. First, Lieber's conception of necessity stems directly from his philosophical claim that sharp wars are brief. Second, the Lieberian conception of necessity is not a relic of the historical past but rather represents the basic structure of today's laws of war. If one wants to know why today's laws of war do so little to value the lives of combatants—while protecting civilians—one need look no further than Lieber's claim that sharp wars are brief. Finally, the chapter evaluates Lieber's argument and asks why the laws of war assign so little value to the lives of combatants. The chapter concludes with a very limited normative defense of this state of affairs, but the existing law will not emerge unscathed; reform is still required.

## **Sources of international humanitarian law and international criminal law : specific features**

**Raphaël van Steenberghe.** - In: The Oxford handbook on the sources of international law. - Oxford : Oxford University Press, 2017. - p. 891-911. - Cote 345/728

This chapter analyses the specific features which characterize the sources of international humanitarian law (IHL) and international criminal law (ICL). It first examines those which are claimed to characterize IHL and ICL sources in relation to the secondary norms regulating the classical sources of international law. The chapter then looks at the specific features of some IHL and ICL sources in relation to the others of the same field. Attention is given particularly to the Rome Statute of the International Criminal Court and the impact of its features on other ICL sources, as well as to the commitments made by armed groups, whose characteristics make them difficult to classify under any of the classical sources of international law. In general, this chapter shows how all those specific features derive from the specific fundamental principles and evolving concerns of these two fields of international law.

## **Sources of international humanitarian law and international criminal law : war/crimes and the limits of the doctrine of sources**

**Steven R. Ratner.** - In: The Oxford handbook on the sources of international law. - Oxford : Oxford University Press, 2017. - p. 912-935. - Cote 345/728

This chapter contends that international humanitarian law (IHL) and criminal law (ICL) cast serious doubt on the traditional doctrine and understanding of sources. Article 38 of the International Court of Justice (ICJ) Statute inadequately describes key modes for prescribing law in these areas. International courts are particularly important for both areas, perhaps because of their unprincipled approach to the indicia of custom. More fundamentally, IHL and ICL suggest that sources scholarship should see itself not as determining necessary and sufficient methods for the making of law, but rather as a search for relevant inputs that become indicators of law. Under this view, certain processes are more authoritative than others, but all deserve scrutiny. Moreover, a theory of sources must take account of the purpose of understanding sources, which is to promote compliance with rules. IHL and ICL also shed light on the importance of morality and ethics to the law-making process.

## **Strengthening compliance with IHL : an Achilles' heel ? : reflections on the 32nd International Conference of the Red Cross and Red Crescent**

**Alessandra La Vaccara.** In: *The Asian yearbook of human rights and humanitarian law* Vol. 1, 2017, p. 300-313

The inability of States to agree upon a proposal for a new International Humanitarian Law (IHL) compliance mechanism at the 32nd International Conference of the Red Cross and Red Crescent proves that ensuring compliance with IHL is both a political and legal challenge. This article intends to develop critical reflections on the IHL compliance system and, in light of the recent breakdown at the 32nd International Conference, to address the question of whether this system can be reformed or revived. A critique of the functioning of existing IHL compliance mechanisms finds that new options should be explored in order to change the current status quo. The impact of external mechanisms on strengthening compliance with IHL is underestimated; yet, there is room for constructive synergies with IHL-based mechanisms.

### **Taming democracy : codifying the laws of war to restore the European order, 1856-1874**

**Eyal Benvenisti and Doreen Lustig.** - [S.l.] : University of Cambridge, Faculty of law, June 2017. - 47 p. - Cote 345.2/1044 (Br.)

In this article, the authors contend that the canonical narrative about civil society's efforts to discipline warfare during the mid-nineteenth century - a narrative of progressive evolution of Enlightenment-inspired international humanitarian law (IHL) - does not withstand scrutiny. On the basis of archival work and close reading of protocols, they argue that European governments codified the laws of war not for the purpose of protecting civilians from combatants' fire, but rather to protect combatants from civilians eager to take up arms to defend their nation - even against their own governments' wishes. They further argue that the concern with placing "a gun on the shoulder of every socialist" extended far beyond the battlefield. Monarchs and emperors turned to international law to put the dreaded nationalist and revolutionary genies back into the bottle. Specifically, they propose that it was the Franco-Prussian War of 1870 - 1871 and the subsequent short-lived, but violent, rise of the Paris Commune that prompted governments (more than any other war during this formative era of international law) to adopt the Brussels Declaration of 1874, the first comprehensive text on the laws of war. The new law not only exposed civilians to the war's harms, but also supported the growing capitalist economy by ensuring that market interests would be protected from the scourge of war and the consequences of defeat. The laws of war, in this formative stage, were more about restoring the political and economic order of Europe than about wartime.

<https://ssrn.com/abstract=2985781>

### **Targeted killings : never not an act of international criminal law enforcement**

**Barry Kellman.** In: *Boston college international and comparative law review*, Vol. 40, issue 1, 2017, p. 27-62. - Cote 345.2/943 (Br.)

Defenders of targeted killings proffer a straightforward elaboration of military necessity in the context of modern technological capabilities and conclude that killing members of terrorist organizations is legal under international law. In this essay, Barry Kellman asserts that targeted killings to combat terrorist threats should not be governed predominantly by the law of war but should be synthesized with widely recognized principles of international criminal justice. Targeted killings are now the only aspect of counter-terrorism policy that operates outside constraints of criminal justice and beyond judicial review. That many people are being killed without anything like due process of law undermines the pursuit of strategies to strengthen law enforcement's role in global counter-terrorism. A targeted killing is never not an act of criminal law enforcement and therefore must be governed by a foundational commitment to the primacy of criminal justice in defeating threats of terrorism.

<http://lawdigitalcommons.bc.edu/iclr/vol40/iss1/3>

### **Targeting decisions and consequences for civilians in the Colombian civil strife**

**Aaron X. Fellmeth and Douglas J. Sylvester.** In: *Minnesota journal of international law*, Vol. 26, no. 2, 2017, p. 501-560. - Cote 345.25/364 (Br.)

The trend in armed conflicts since 1945 has moved away from traditional international wars and toward non-international conflicts between the state and organized rebellions, criminal organizations, or terrorist cells. The difficulty of coping with an enemy that hides among civilians without causing avoidable civilian deaths and damage to civilian property has often been observed and, in practice, the number of civilian deaths in such conflicts frequently overshadows combatant deaths by a significant margin. Yet, it is a homily among international lawyers that the principle of proportionality applies in non-international as well as international conflicts under customary international law. In order to better understand the apparent contradiction of this claim with the quotidian fact of disproportionate civilian casualties, the authors studied the practice of Colombia in its decades-long civil strife against the organized armed groups Revolutionary

Armed Forces of Colombia, or FARC, and the National Liberation Army, or ELN. This study summarizes Colombian practice in training and regulating its armed forces with respect to the specific principle of proportionality; examines several incidents of allegedly disproportionate attacks; and analyzes the Colombian government's response to determine whether it considers itself bound to comply with the proportionality principle in its internal conflict and, if so, how the state interprets its compliance obligations with that principle.

<http://minnijl.org/archives-2/volume-26-issue-2/>

### **Targeting environmental infrastructures, international law, and civilians in the new Middle Eastern wars**

**Jeannie L. Sowers, Erika Weinthal, Neda Zawahri.** In: Security dialogue, Vol. 48, no. 5, October 2017, p. 410-430 : cartes, graph.

Research in conflict studies and environmental security has largely focused on the mechanisms through which the environment and natural resources foster conflict or contribute to peacebuilding. An understudied area of research, however, concerns the ways in which warfare has targeted civilian infrastructure with long-term effects on human welfare and ecosystems. This article seeks to fill this gap. We focus on better understanding the conflict destruction of water, sanitation, waste, and energy infrastructures, which we term environmental infrastructures, by drawing on an author-compiled database of the post-2011 wars in the Middle East and North Africa (MENA). While research across the social sciences has examined the targeting of civilians and environmental destruction during wars, including the issue of uricide, we expand the study of targeting environmental infrastructure to (1) examine the role of different types of actors (international vs. subnational), (2) document the type of infrastructure targeted, form of attack, and impacts, and (3) situate increased targeting of environmental infrastructure in the changing context of war-making in the MENA. Comparatively analyzing the conflict zones of Libya, Syria, and Yemen, we show that targeting environmental infrastructure is an increasingly prevalent form of war-making in the MENA, with long-term implications for rebuilding states, sustaining livelihoods, and resolving conflicts.

### **Territorial control by armed groups and the regulation of access to humanitarian assistance**

**Tom Gal.** In: Israel law review, Vol. 50, issue 1, March 2017, p. 25-47. - Cote 361/688 (Br.)

Humanitarian assistance is essential for the survival of the civilian population and people hors de combat in the theatre of war. Its regulation under the laws of armed conflict tries to achieve a balance between humanitarian goals and state sovereignty. This balance, reflected in the provisions of the 1949 Geneva Conventions and their Additional Protocols, is not as relevant to contemporary armed conflicts, most of which involve non-state armed groups. Even those provisions relating to humanitarian assistance in conflicts involving non-state armed groups fail to address properly the key features of these groups, and especially their territorial aspect. This article proposes a different approach, which takes into consideration and gives weight to the control exercised by non-state armed groups over a given territory. Accordingly, it is suggested that provisions regulating humanitarian relief operations in occupied territories should apply to territories controlled by armed groups. This approach views international humanitarian law first and foremost as an effective, realistic and practical branch of law. Moreover, it has tremendous humanitarian advantages and reflects the aims and purposes of the law, while considering the factual framework of these conflicts.

### **A theory of jus in bello proportionality**

**Adil Ahmad Haque.** - In: Weighing lives in war. - Oxford : Oxford University Press, 2017. - p. 188-216. - Cote 345.25/361

The chapter argues that an attack that inflicts harm on civilians is proportionate only if it prevents the opposing party from inflicting substantially greater harm on the attacking force or civilians in current or future military operations. This account does not compare incommensurable values, only immediate losses to civilians and future losses to civilians and to attacking forces. In addition, it applies symmetrically to all parties to an armed conflict, independently of the jus ad bellum morality and legality of their use of military force. Attacks that are disproportionate under this account are morally impermissible when carried out by just combatants, and disproportionate attacks carried out by unjust combatants are morally worse than proportionate attacks carried out by unjust combatants. Finally, the chapter explores a number of decision procedures and rules of engagement that officers may use to make the best possible decision given the limited information available to them.

### **To feel or not to feel ? : emotions and international humanitarian law**

**Nele Verlinden.** - Leuven : Leuven Centre for Global Governance Studies, December 2016. - 16 p. - Cote 345.2/1043 (Br.)

This paper addresses the relationship between emotions and IHL, investigating whether emotions should play a more important role in the regulation of warfare. In order to answer this question, the paper discusses three main points of contact between IHL and emotions, more specifically from the perspective of the lawmakers, the fighting parties, and the victims of armed conflict. The paper concludes that an affective turn in IHL is necessary at some levels, but not desirable at others.

<https://lirias.kuleuven.be/handle/123456789/561207>

### **Tracing the historical and legal development of the levée en masse in the law of armed conflict**

**Emily Crawford.** In: Journal of the history of international law, Vol. 19, issue 3, 2017, p. 329-361. - Cote 345.29/257 (Br.)

Levée en masse – the spontaneous uprising of the civilian population against an invading force – has long been a part of the modern law of armed conflict with regards to determining who may legitimately participate in armed conflict. The concept originated during the revolutionary wars in America and France, and was incorporated into the first codified rules of armed conflict. However, despite the prevalence of the category of levée en masse in the modern laws of armed conflict, there have been few, if any, instances of levée en masse taking place in modern armed conflicts. This article examines how and why the category of levée en masse developed. In doing so, this article situates the concept and evolution of levée en masse within the history of international humanitarian law more generally.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/44246.pdf>

### **Trying to make sense of the senseless : classifying the Syrian war under the law of armed conflict**

**David Wallace, Amy McCarthy, and Shane R. Reeves.** In: Michigan State international law review, Vol. 25, no. 3, 2017, p. 555-594. - Cote 345.2/990 (Br.)

This article examines the issue of the classification of the conflict taking place in Syria. The article begins with a brief historical background section. Sections on the various state and non-state actors battling within Syria as well as a general overview of how conflicts are classified under international law follow. The article concludes with a classification determination for the Syrian hostilities and a reminder that all parties to the conflict are obligated to comply with the law of armed conflict.

<https://digitalcommons.law.msu.edu/ilr/vol25/iss3/2>

### **Under siege : international humanitarian law and Security Council practice concerning urban siege operations**

**Sean Watts.** - [Cambridge (MA)] : Harvard law school, May 2014. - 22 p. - Cote 345.25/362 (Br.)

This paper demonstrates that while siege operations, as traditionally practiced, are not technically prohibited, they are now significantly limited by international humanitarian law in both international armed conflict and non-international armed conflict, and that international political opinion seems to have increasingly little patience, at least in connection to some contexts, for the human suffering and deprivation involved in urban sieges.

<https://ssrn.com/abstract=2479608>

### **The United Nations as a party to armed conflict : the intervention brigade of MONUSCO in the Democratic Republic of Congo (DRC)**

**Damian Lilly.** In: Journal of international peacekeeping, Vol. 20, issue 3-4, 2016, p. 313-341. - Cote 345.29/258 (Br.)

As the role of United Nations peacekeeping operations has evolved in recent decades so too has the legal interpretation of the way in which international humanitarian law (IHL) is viewed as applying to its peacekeepers. While it has been understood that the UN could become a party to armed conflict, the organization has never publicly acknowledged this until the establishment of the Intervention Brigade of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) pursuant to Security Council resolution 2098 of March 2013. This article addresses the legal consequences

of the Intervention Brigade as a party to armed conflict and the insights it provides into the legal status of UN peacekeeper under IHL. In particular, it will argue that the established legal framework for UN peacekeeping operations as having the protected status of civilians under IHL has proved ill-suited for the Intervention Brigade and its experience has highlighted the inconsistencies and gaps in the rules that have been developed.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/44245.pdf>

### **War, conflict and human rights : theory and practice**

**Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman.** - London ; New York : Routledge, 2018. - XX, 277 p. - Cote 345.1/561 (2018)

War, conflict and human rights is an innovative inter-disciplinary textbook, combining aspects of law, politics and conflict analysis to examine the relationship between human rights and armed conflict. This third edition has been fully revised and updated, and contains a completely new chapter on business, conflict and human rights.

### **Weighing lives in war**

**ed. by Jens David Ohlin, Larry May and Claire Finkelstein.** - Oxford : Oxford University Press, 2017. - VI, 327 p. - Cote 345.25/361

This volume combines philosophical analysis with normative legal theory. Although both disciplines have spent the past fifty years investigating the nature of the principles of necessity and proportionality, these discussions were all too often walled off from each other. However, the boundaries of these disciplinary conversations have recently broken down, and this volume continues the cross-disciplinary effort by bringing together philosophers concerned with the real-world military implications of their theories and legal scholars who frequently build doctrinal arguments from first principles, many of which herald from the historical just war tradition or from the contemporary just war literature. What unites the chapters into a singular conversation is their common skepticism regarding whether the traditional doctrines, in both law and philosophy, have correctly valued the lives of civilians and combatants at war. The arguments outlined in this volume reveal a set of principles, including necessity and proportionality, whose core essence remains essentially contested. What does military necessity mean and are soldiers always subject to lethal force? What is proportionality and how should military commanders attach a value to a military target and weigh it against collateral damage? Do these valuations remain the same for both sides of the conflict? From the secure viewpoint of the purely descriptive, lawyers might confidently describe some of these questions as settled. But many others, even from the vantage point of descriptive theory, remain under-analyzed and radically lacking in clarity and certainty.

### **The West Bank and international humanitarian law on the eve of the fiftieth anniversary of the Six-Day War**

**by Theodor Meron.** In: American journal of international law, Vol. 111, issue 2, April 2017, p. 357-375

The West Bank and the Settlements, again? Readers may have had enough of this subject. But these are exceptional times. The adoption by the Security Council of Resolution 2334 on December 23, 2016, the unprecedented speech by Secretary Kerry delivered shortly thereafter, and the immediate rejection of both by Prime Minister Netanyahu, combined with the approach of the fiftieth anniversary of the Six-Day War in June 2017 and the continued march toward an inexorable demographic change in the West Bank, not to mention the nomination as U.S. Ambassador to Israel of a person reportedly supporting an active settlement policy and annexation: the confluence of these events demands our renewed attention. And while these developments undoubtedly have powerful political dimensions, they also call upon those of us who care about international law to speak up in support of its requirements and application.

<https://doi.org/10.1017/ajil.2017.10>

### **Yémen ? : vous avez dit crise humanitaire ? : droit international humanitaire et droit international pénal**

**Jelena Aparac.** In: La revue des droits de l'homme, 2017, 15 p. - Cote 345.26/259 (Br.)

Le conflit armé au Yémen a été déclenché en mars 2015 par une intervention militaire de la Coalition de plusieurs pays du Golf et de la Ligue Arabe à la demande du président Hadi en exil à Riyad. La Coalition, qui agit sur commandement militaire de l'Arabie Saoudite, combat le groupe armé Houthis qui contrôle militairement et administrativement une partie du territoire ensemble avec sa branche politique Ansar Allah. Les Houthis sont soutenus par l'ancien président Saleh. Le conflit soulève des questions juridiques importantes telles que la qualification du conflit armé au Yémen ainsi que son éventuelle internationalisation

et le droit applicable. En outre, le conflit s'inscrit dans un contexte économique et politique désastreux et aggrave la situation humanitaire du pays. En effet, sur 26 millions d'habitants, 18 sont en grande situation de besoin humanitaire et parmi ceux-ci, 10.3 million sont dans un besoin urgent d'aide humanitaire, sans laquelle ils risquent leurs vies. Ce drame interroge aussi sur l'absence de couverture médiatique alors que les personnes et des biens civils sont les premiers à être touchés par des attaques militaires ciblées, en violation du droit international humanitaire. Malgré cela, il n'y aura aucune enquête internationale indépendante et impartiale pour documenter les violences. Le Yémen est en train de devenir un « failed state ».

<http://journals.openedition.org/revdh/3025>

**Zealots, victims and captives : maintaining adequate protection of human shields in contemporary international humanitarian law**

by Robin Geiss and James G. Devaney. In: Israel yearbook on human rights, Vol. 47, 2017, p. 11-33

This article seeks to present an analysis of the modern-day phenomenon of human shielding. Part 1 focuses on the key defining elements of human shielding and explores the under-researched question of how human shielding, a practice which is strictly prohibited by international humanitarian law, can be distinguished from collocation, which in times of war is often unavoidable and in certain forms not prohibited. Part 2 then considers the legal consequences that arise from human shielding. Particular attention is paid to the effect that the use of human shields has on the obligations of the attacked party, i.e., the party illegally using human shields, and the legal protections applicable to the civilian population affected by this practice. The issue of direct participation in hostilities of human shields is now often viewed through the lens of the conventional distinction between voluntary and involuntary participation in hostilities. However, the authors argue that this is inadequately nuanced to be a satisfactory prism through which to assess this issue. Consequently, it is crucially important to establish a more satisfactory means of ensuring that involuntary human shields are not deprived of the protection that the law affords them.



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