BIBLIOGRAPHY
3rd Quarter 2014

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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October 2014

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Introduction

The International Committee of the Red Cross Library

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

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

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

The Library is open to the public from Monday to Thursday (9 a.m. to 5 p.m. non-stop) and on Friday (9 a.m. to 1 p.m.).

Origin and purpose of the IHL bibliography

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

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

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

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 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)

The concept of armed conflict in international humanitarian law

by Krisztina Huszti Orban. - [S.l.] : [s.n.], 2014. - 385 p.

Current issues of international humanitarian law : Belgrade National Assembly of the Republic of Serbia, 16 December 2010 : international seminar

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The Eritrea-Ethiopia Claims Commission and customary international humanitarian law

Agnieszka Szpak. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 296-314
http://booksandjournals.brillonline.com/content/journals/10.1163/18781527-00402004

Healthcare on the battlefield : in search of a legal and ethical framework

Brigit Toebes. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 197-219
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Legal asymmetries in asymmetric war

Ryder Mackeown. In: Review of international studies 2014, p. 1-22
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New frontiers in the laws of war : international humanitarian law transparency

Lesley Wexler. In: Journal of transnational law and policy Vol. 23, 2013-2014, p. 93-117

New frontiers in the laws of war : the UN Charter, human rights law, and contingent pacifism

Larry May. In: Journal of transnational law and policy Vol. 23, 2013-2014, p. 37-67

Regulating war in the shadow of law : toward a re-articulation of ROE

Kristin Bergtora Sandvik. In: Journal of military ethics Vol. 13, no. 2, July 2014, p. 118-136
http://www.tandfonline.com/doi/pdf/10.1080/15027570.2014.949476

The resonance of christian political conceptions within international humanitarian law

D. Brian Dennison. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 157-172
http://ihlcentreug.org/download/ihl-paper-series/ICRC%20UGANDA%20PAPER%20SERIES.pdf

The United States and international humanitarian law : building it up, then tearing it down

Morris Davis. In: North Carolina journal of international law and commercial regulation Vol. 39, issue 4, summer 2014, p. 983-1028
http://tinyurl.com/38903-Davis

II. Types of conflicts

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

Belligerency recognition : past, present and future

Konstantinos Mastorodimos. In: Connecticut journal of international law Vol. 29, spring 2014, p. 301-326
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2441341

The civilian cyber battlefield : non-state cyber operators' status under the law of armed conflict

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http://tinyurl.com/38902-Liles

The concept of armed conflict in international humanitarian law

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Counter-piracy operations and the limits of international humanitarian law

Thilo Marauhn. - In: The law and practice of piracy at sea : european and international perspectives. - Oxford ; Portland : Hart, 2014. - p. 67-77

Cyber attacks : proportionality and precautions in attack

Eric Talbot Jensen. In: International law studies Vol. 89, 2013, p. 198-217
http://tinyurl.com/38855-Jensen

The cyber road ahead : merging lanes and legal challenges

Kenneth Watkin. In: International law studies Vol. 89, 2013, p. 472-511
http://tinyurl.com/38865-Watkin

Cyber warfare : military cross-border computer network operations under international law

Johann-Christoph Woltag. - Cambridge [etc.] : Intersentia, 2014. - 313 p.

Cyber warriors and the jus in bello

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par Raphaël Van Steenberghe. In: Revue générale de droit international public Tome 118, no 2, 2014, p. 273-302

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Jann K. Kleffner and Heather A. Harrison Dinniss. In: International law studies Vol. 89, 2013, p. 512-535
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The law of armed conflict's "wicked" problem : levée en masse in cyber warfare

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III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Controlling the use of power in the shadows : challenges in the application of jus in bello to clandestine and unconventional warfare activities

Todd C. Huntley and Andrew D. Levitz. In: Harvard national security journal Vol. 5, issue 2, 2014, p. 461-512
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Non-state armed groups and technology : the humanitarian tragedy at our doorstep ?

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IV. Multinational forces

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Human rights violations by peacekeeping forces in Somalia

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V. Private entities

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Determining the status of private military companies under international law : a quest to solve accountability issues in armed conflicts

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Ending impunity : bringing superiors of private military and security company personnel to justice

Kate Neilson. In: New Zealand yearbook of international law Vol. 9, 2011, p. 121-159
http://tinyurl.com/38905-Neilson

L'externalisation des activités militaires et sécuritaires : à la recherche d'une règlementation juridique appropriée

Babou Cisse. - [S.l.] : [s.n.], février 2014. - 508 p.
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Private security contractors and neutral relief workers : an unlikely marriage ?

Shannon Bosch. In: African yearbook on international humanitarian law 2013, p. 163-195

Silent partners : private forces, mercenaries, and international humanitarian law in the 21st century

Steven R. Kochheiser. In: The University of Miami national security and armed conflict law review Vol. 2, summer 2012, p. 86-109
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Women and private military and security companies : one more piece for the puzzle

Catarina Prata. - In: Gender violence in armed conflicts. - Lisboa : Instituto da Defesa Nacional, 2013. - p.43-60
http://www.ces.uc.pt/myces/UserFiles/livros/1097_idncaderno_11.pdf#page=44

VI. Protection of persons

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

The abuse of ambiguity : the uncertain status of Omar Khadr under international law

Ryan Liss. In: Canadian yearbook of international law = Annuaire canadien de droit international Vol. 50, 2012, p. 95-161
https://ext.icrc.org/library/docs/ArticlesPDF/38881.pdf

Challenges to humanitarian action in contemporary conflicts : Israel, the Middle East and beyond

Peter Maurer. In: Israel law review Vol. 47, issue 2, July 2014, p. 175-180
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Children and armed conflict

Trevor Buck. - In: International child law. - New York : Routledge, 2014. - p. 384-424
https://ext.icrc.org/library/docs/ArticlesPDF/39075.pdf

Current issues of international humanitarian law : Belgrade National Assembly of the Republic of Serbia, 16 December 2010 : international seminar

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"Death flies down" : the bombing of civilians and the paradox of international law

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Ethical and legal perspectives on cross-border humanitarian operations

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Gender based crimes as "tools of war" in armed conflicts

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http://www.ces.uc.pt/myces/UserFiles/livros/1097_idncaderno_11.pdf#page=149

Gender based violence and international humanitarian law : steps to improve the protection of women in war

Michel Veuthey. - In: Gender violence in armed conflicts. - Lisboa : Instituto da Defesa Nacional, 2013. - p. 91-126
http://www.ces.uc.pt/myces/UserFiles/livros/1097_idncaderno_11.pdf#page=92

Humanitarian action, development and terrorism

Andrej Zwitter. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 315-332

The immunity of civilians : a moral and legal study of attacks on the civilian population

Eva Küblbeck. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 262-295
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International humanitarian law and raison d'état : the balance sheet of Kazakhstan's ratification of the Geneva Convention on refugees

Alex Danilovich, Sabina Insebayeva. In: International journal of refugee law Vol. 26, issue 1, March 2014, p. 112-129

Is formalism a friend or foe ? : saving the principle of distinction by applying function over form

Martijn Jurgen Keeman. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 354-389
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Law as shield, law as sword : the ICC's Lubanga decision, child soldiers and the perverse mutualism of participation in hostilities

Chris Jenks. In: The University of Miami national security and armed conflict law review Vol. 3, summer 2013, p. 106-124
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Private security contractors and neutral relief workers : an unlikely marriage ?

Shannon Bosch. In: African yearbook on international humanitarian law 2013, p. 163-195

Protection of civilians during armed conflict in islamic law

Walusimbi Abdul Hafiz. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 135-156
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Mike Sanderson. In: International law studies Vol. 89, 2013, p. 776-801
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Training children for armed conflict : where does the law stand ?

Elijah Oluwatoyin Okebukola. In: International criminal law review Vol. 14, issue 3, 2014, p. 588-618
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Women and private military and security companies : one more piece for the puzzle

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http://www.ces.uc.pt/myces/UserFiles/livros/1097_idncaderno_11.pdf#page=44

VII. Protection of objects

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

N/A

VIII. Detention, internment, treatment and judicial guarantees

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

Bruce 'Ossie' Oswald, Thomas Winkler. In: Nordic journal of international law Vol. 83, issue 2, 2014, p. 128-167
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IX. Law of occupation

Terrorism and the international law of occupation

David Kretzmer. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 232-249. - In: Research handbook on international law and terrorism

X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

A battle over elasticity : interpreting the concept of "concrete and direct military advantage anticipated" under international humanitarian law

Yutaka Arai-Takahashi. - In: The realisation of human rights : when theory meets practice : studies in honour of Leo Zwaak. - Cambridge [etc.] : Intersentia, March 2014. - p. 351-367
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Reconstructing the civilian/combatant divide : a fresh look at targeting in non-international armed conflict

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Technological asymmetry and the law of armed conflict : the intersection of law and politics in the creation of differentiated state obligations

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"Thou shall not kill" : the use of lethal force in non-international armed conflicts

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XI. Weapons

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XII. Implementation

(ICRC, protecting powers, fact finding commission, other means of preventing violations and controlling respect for IHL, state responsibility)

Challenges of domestic prosecution of war crimes with special attention to criminal justice guarantees

Réka Varga. - Budapest : Pázmány press, 2014. - 284 p.

Les commissions vérité et les violations des droits de l'homme et du droit international humanitaire

Emmanuel Guematcha ; avant-propos Christian Tomuschat ; préf. Sandra Szurek. - Paris : Pedone, 2014. - 628 p.

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XIII. International human rights law

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

The application of international human rights law in non-international armed conflicts

Jean-Marie Kamatali. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 220-261
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An evaluation of the U.S. policy of "targeted killing" under international law : the case of Anwar Al-Aulaqi (part II)

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Challenges to humanitarian action in contemporary conflicts : Israel, the Middle East and beyond

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Terrorism and targeted killings under international law

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XVI. Countries/Regions

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Terrorism and military trials

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Africa

International humanitarian law (IHL) and the use of unmanned aerial vehicles (UAV's) (drones) as a means of warfare against armed groups in Africa

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Les interventions française et africaine au Mali au nom de la lutte armée contre le terrorisme

par Raphaël Van Steenberghe. In: Revue générale de droit international public Tome 118, no 2, 2014, p. 273-302

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Burundi

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Democratic Republic of the Congo

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France

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Libya

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Middle East

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Russian Federation

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Rwanda

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Somalia

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Uganda

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United Kingdom

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United States

The abuse of ambiguity : the uncertain status of Omar Khadr under international law

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An evaluation of the U.S. policy of "targeted killing" under international law : the case of Anwar Al-Aulaqi (part II)

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Yugoslavia

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All with Abstracts

The abuse of ambiguity : the uncertain status of Omar Khadr under international law

Ryan Liss. In: Canadian yearbook of international law = Annuaire canadien de droit international Vol. 50, 2012, p. 95-161. - Cote 362.7/11 (Br.)

There has been a great deal of contemporary scholarly debate, in the abstract, surrounding many of the issues related to Khadr's case, such as the status of "unlawful combatants" and child soldiers. This article endeavours to clarify Khadr's status under international law. First, it analyzes Khadr's status under international humanitarian law,(IHL). In doing so, it considers the character of the conflict in which Khadr was captured, the concept of combatancy, the assertion that Khadr was an "unlawful combatant," and the rights guaranteed to Khadr under IHL as a result of his status. Second, the article assesses Khadr's potential protections as a child soldier by surveying the debate concerning the definition of child soldiers, the obligations of states detaining child soldiers, and the principles governing the treatment of minors involved in penal processes generally. This article focuses on the international legal status and protections Khadr should have been granted, rather than the question of whether any specific breaches of his rights in fact occurred. Nevertheless, even without a thorough review of the state conduct at issue, it is evident that the United States (and arguably Canada) breached some of the basic guarantees that should have been afforded to Khadr. While the law surrounding each aspect of his status is not clear, it seems the United States and Canada have exploited this very ambiguity to justify their disregard for Khadr's rights. The article concludes by observing that this approach to legal ambiguity is, itself, contrary to the foundational principles of IHL.

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The application of international human rights law in non-international armed conflicts

Jean-Marie Kamatali. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 220-261

Since the end of the Cold War, the world has experienced a decrease in international conflict and a significant increase in non-international armed conflict (niac). Despite this change, however, international law has been very slow in adapting its laws that initially were crafted with international armed conflict in mind to the new niac environment. There is a growing recognition that international humanitarian law (ihl) is not well equipped to deal with issues of human rights violations committed during niac. New efforts to make international human rights law (ihrl) applicable in such conflicts have, however, raised more questions than answers. There is still no consensus on whether international human rights law applies to niac. Furthermore, the question on whether non-international armed groups are bound by international human rights obligations remains controversial. This article tries to analyze where international law stands now of these questions. It proposes steps international law could follow to move from its current rhetoric to a more practical solution on these questions. The three solutions proposed are: individual agreements to respect human rights during armed conflict, the possibility of an icj advisory opinion and the option of a protocol additional to international human rights treaties relating to their application in niac.

http://booksandjournals.brillonline.com/content/journals/10.1163/18781527-00402002

Automated warfare

George R. Lucas. In: Stanford Law & policy review Vol. 25, issue 2, June 2014, p. 317-339. - Cote 344/634 (Br.)

In this Article, I review the military and security uses of robotics and "un-manned" or "uninhabited" (and sometimes "remotely piloted") vehicles in a number of relevant conflict environments that, in turn, raise issues of law and ethics that bear significantly on both foreign and domestic policy initatives. My treatment applies to the use of autonomous unmanned platforms in combat and low-intensity international conflict, but also offers guidance for the increased domestic uses of both remotely controlled and fully autonomous unmanned aerial, maritime, and ground systems for immigration control, border surveillance, drug

interdiction, and domestic law enforcement. I outline the emerging debate concerning "robot morality" and computational models of moral cognition and examine the implications of this debate for the future reliability, safety, and effectiveness of autonomous systems that might come to be deployed in both domestic and international conflict situations. I summarize the lessons learned and the areas of provisional consensus reached thus far in this debate in the form of "soft-law" precepts that reflect emergent norms and a growing international consensus regarding the proper use and governance of such weapons.

A battle over elasticity : interpreting the concept of "concrete and direct military advantage anticipated" under international humanitarian law

Yutaka Arai-Takahashi. - In: The realisation of human rights : when theory meets practice : studies in honour of Leo Zwaak. - Cambridge [etc.] : Intersentia, March 2014. - p. 351-367. - Cote 345.25/305 (Br.)

This essay focuses on the key notion 'concrete and direct military advantage' under Articles 51(5)(b) and 57 AP I. It dissects the elements of this notion for the purpose of demonstrating the extent to which this consolidated notion has spawned several additional broader interpretations. This analysis is purported to examine why there is much of elasticity in construing this notion, as compared to the relatively curt treatment given to the countervailing interest of minimising collateral civilian casualties. The investigations will shed light on how the parameters of the notion 'concrete and direct military advantage' may be considered (over-)stretched. To gain closer insight into divergent understandings of components of the expression 'concrete and direct military advantage', analyses will turn to the material element of Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court (ICC Statute), which contains the corresponding war crime of disproportionate collateral casualties, and to the ICC's Elements of Crimes, which provides elaborate commentaries on the normative ingredients of this war crime.

https://ext.icrc.org/library/docs/ArticlesPDF/38879.pdf

Belligerency recognition : past, present and future

Konstantinos Mastorodimos. In: Connecticut journal of international law Vol. 29, spring 2014, p. 301-326. - Cote 345.27/137 (Br.)

In traditional international law, the realities of internal violence have been described in different terms, depending on the level of violence, the success of the armed non-state actor (ANSA) and the interests of the parent or other states. A rebellion was a first level in which violence was relatively low, the ANSA created a little nuisance to the enemy state and there were minimal, if any, repercussions outside of the state where violence was taking place. Insurgency designated a relatively successful ANSA, possibly with some control over territory, whose actions had some consequences in the outside world. Belligerency implied a further increased level of violence and success for the ANSA and created the need for a more comprehensive corpus of legal rules to regulate the situation. This last situation is the focus of this article. The purpose of this article is to expose the past of belligerency, examine its present, explain its retreat, and reflect on whether it deserves any future or adds value to the current state of international law. It is argued that, despite its gradual demise, belligerency recognition is still in existence and that it could be resurrected in appropriate cases.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2441341

Bibliography 2013 : international humanitarian law : based on the ICRC Library classified acquisitions

ICRC ; compil. by Michèle Hou. - Geneva : ICRC, May 2014. - 167 p. - Cote 345.2/922 (2013)

A compilation of the four electronic quarterly International Humanitarian Law bibliography issued by the ICRC Library during the year 2013. Based on the library's regular and extended acquisitions on IHL, this bibliography is aimed at helping students, professors and legal professionals be up-to-date and have overview on issues being dealt with by academic authors in specific subjects of IHL. It contains articles, chapters, books, reports and working papers in English and French. Subject headings include general issues, types of conflict, armed forces and non-state actors, multinational forces, detention and treatment of persons, private actors, protection of persons, protection of objects, conduct of hostilities, weapons, law of occupation, international criminal law, human rights, implementation, contemporary challenges and countries. Easy to use, the bibliography also offers abstracts.

http://www.icrc.org/eng/resources/documents/publication/p4198.htm

Challenges of domestic prosecution of war crimes with special attention to criminal justice guarantees

Réka Varga. - Budapest : Pázmány press, 2014. - 284 p. - Cote 344/624

The present book discusses the different questions arising in the framework of the domestic repression of war crimes, both during the implementation phase as well as its application : the war crimes procedures. Besides discussing legal questions, primarily from the perspective of criminal justice guarantees and their possible conflict with the repression of war crimes, the book also deals with practical questions that may emerge as obstacles during domestic war crime trials.

Challenges to humanitarian action in contemporary conflicts : Israel, the Middle East and beyond

Peter Maurer. In: Israel law review Vol. 47, issue 2, July 2014, p. 175-180. - Cote 361/106 (Br.)

While international law has established clear legal obligations for the parties to armed conflict, the reality is that humanitarian organisations such as the ICRC are facing growing dilemmas in working towards the implementation of those rules and in deciding how best to orientate their work in connection with conflict, whether in Israel and the occupied territories, the broader Middle East or anywhere else in the world. The dilemmas to which this piece alludes, may be summarised as follows: how to determine a practical and acceptable balance between the legitimate security requirements of the parties to a conflict while effectively protecting the civilian population; how to remain committed to confidential dialogue on humanitarian concerns with the parties to a conflict while at the same time meeting the growing requirement for greater public engagement and transparency; whether to focus on the short-term humanitarian needs of populations affected by protracted conflicts or to invest in the resilience and self-sufficiency of these communities.

https://ext.icrc.org/library/docs/ArticlesPDF/38827.pdf

Children and armed conflict

Trevor Buck. - In: International child law. - New York : Routledge, 2014. - p. 384-424. - Cote 362.7/398 (Br.)

This chapter discusses the international framework relating to children's involvement and association with armed conflict. This takes a number of forms: the treatment of child civilians in armed conflicts; the damaging impact of armed conflicts on children; the recruitment and use of children by state and non-state armed forces; the reintegration of child soldiers into society; and the international criminal justice available for those (including child soldiers themselves) who may have committed 'crimes against humanity' and 'war crimes'. This involves a consideration of both 'international humanitarian law' and 'international human rights law'. This section examines the influences of international humanitarian law, principally the Geneva Conventions of 1949 along with the Additional Protocols of 1977, followed by consideration of the main international human rights instruments relevant to this area, that is, the UN Convention on the Rights of the Child along with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (OPAC), the African Charter on the Rights and Welfare of the Child and the Worst Forms of Child Labour Convention.

https://ext.icrc.org/library/docs/ArticlesPDF/39075.pdf

The civilian cyber battlefield : non-state cyber operators' status under the law of armed conflict

Logan Liles. In: North Carolina journal of international law and commercial regulation Vol. 39, issue 4, summer 2014, p. 1091-1121. - Cote 345.29/214 (Br.)

Using two scenarios, one involving a hacker, the other a contractor, the article analyzes the status of both in an article 2 interstate conflict. Part II examines the current structure the LOAC employs to determine an individual's status and the preferences expressed by the law. Part III explores cyber warfare's physical and systematic nature. Part IV applies the framework of the LOAC to the two scenarios and identifies problems with such an application. Part V proposes a shift in interpretation of the LOAC in instances of cyber operations by non-State affiliated individuals to guarantee that non-State cyber operators do not exploit the gray area of unlawful combatancy. This Article concludes that States should either incorporate non-State cyber operators into their armed forces, or States should interpret "direct participation in hostilities" broadly enough to subject non-State cyber operators to the costs of taking up electronic arms.

http://tinyurl.com/38902-Liles

Les commissions vérité et les violations des droits de l'homme et du droit international humanitaire

Emmanuel Guematcha ; avant-propos Christian Tomuschat ; préf. Sandra Szurek. - Paris : Pedone, 2014. - 628 p. - Cote 345.1/620

Généralement créées dans le cadre d'une transition ou après un conflit armé, les Commissions vérité posent la question de la place accordée au droit international, eu égard aux violations des droits de l'homme et du droit international humanitaire sur lesquelles elles enquêtent, eu égard aux obligations internationales des Etats sur le territoire desquels les violations ont été commises. Mises en place au sein de nombreux Etats, notamment à El Salvador, au Guatemala, en Sierra Leone et au Liberia à la suite des conflits armés particulièrement violents, ces institutions, par leurs traits caractéristiques, sont tout à la fois porteuses d'originalités et d'interrogations quant aux évolutions du droit international.

The concept of armed conflict in international humanitarian law

by Krisztina Huszti Orban. - [S.l.] : [s.n.], 2014. - 385 p. - Cote 345.2/964

This study embarks on a search for a (more or less) common understanding of the concept of armed conflict in the context of the international / non-international dichotomy, as provided for by the Geneva Conventions and their Additional Protocols. In this sense it examines the constitutive elements of armed conflict attempting to answer the question: what distinguishes peacetime from armed conflict ? Understanding the concept of armed conflict first of all necessitates an inquiry into the traditional bifurcation of conflict into those of international and non-international character, as set up under the regime of the Geneva Conventions. In this regard, this research investigates the fundamental facets which separate the two main categories of armed conflict. Moreover, subtypes of each category will be given due attention, with the relevance of such a differentiation also being addressed. For this reason, Part I explores the notion of international armed conflict in the sense of Common Article 2 of the Geneva Conventions, as well as Article 1 (4) of Additional Protocol I. Part II will venture into examining the anatomy of non-international armed conflicts, both under Common Article 3 and Additional Protocol II. Part III aims at tackling some of the challenging aspects of conflict classification, where the presence of international elements may influence or complicate the legal classification. Moreover, the analysis will consider, whenever relevant, the adequacy of the concept of armed conflict as interpreted today (whether international or non-international) to suitably ensure protection in situations where the application of international humanitarian law is demanded.

Controlling the use of power in the shadows : challenges in the application of jus in bello to clandestine and unconventional warfare activities

Todd C. Huntley and Andrew D. Levitz. In: Harvard national security journal Vol. 5, issue 2, 2014, p. 461-512. - Cote 345.29/215 (Br.)

This Article sheds some light on only a small fraction of the use of power in the shadows, that being the application of jus in bello to a state's use of surrogates to conduct clandestine and unconventional warcraft activities. It examines the status of surrogates under the law of armed conflict, including an analysis of whether surrogates are combatants entitled to the combatant's privilege or if, and under what circumstances, they lose that protection. This Article also examines when surrogates who are members of an organized armed group could be targeted with armed force. Lastly, the Article looks at the jus in bello principle that presents the greatest challenges of application to clandestine and UW activities: distinction.

http://tinyurl.com/38912-Huntley-Levitz

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

Bruce 'Ossie' Oswald, Thomas Winkler. In: Nordic journal of international law Vol. 83, issue 2, 2014, p. 128-167. - Cote 400/148 (Br.)

The Copenhagen Process Principles and Guidelines on the Handling of Detainees in International Military Operations are intended to contribute both to the humane treatment of detainees and the effectiveness of military operations. This article seeks to stimulate discussion concerning the Principles and Guidelines. It also provides the international community with a better understanding of a very successful process for developing normative standards or soft law. Finally, it explains some of the main issues dealt with during the Process, and some of the key aspects of the provisions contained in the Principles and Guidelines.

https://ext.icrc.org/library/docs/ArticlesPDF/38910.pdf

Counter-piracy operations and the limits of international humanitarian law

Thilo Marauhn. - In: The law and practice of piracy at sea : european and international perspectives. - Oxford ; Portland : Hart, 2014. - p. 67-77. - Cote 347.799/152

The use of military force in the context of counter-piracy operations has given rise to the question whether the laws of war, and in particular international humanitarian law, have any role to play in these operations. In providing a simple answer to this question, this chapter can simply state : no - there is, as a matter of principle, no role to play for the laws of war in counter-piracy operations. Instead, counter-piracy operations are to be understood as law enforcement activities, to the exercise of which a different set of rules applies. The chapter, however, elaborate on the applicability of international humanitarian law, on the distinction between armed conflict and law enforcement operations, on the effects of applying either body of law to counter-piracy operations and on some conclusions from the perspective of maintaining international peace and security on the on hand and global order on the other.

Current issues of international humanitarian law : Belgrade National Assembly of the Republic of Serbia, 16 December 2010 : international seminar

organized by the International Institut of Humanitarian Law ; [ed. by Stefania Baldini]. - San Remo : International Institute of Humanitarian Law, [2011]. - 135 p. - Cote 345.2/958

The volume, reproducing the proceedings of the international Seminar on current issues of international humanitarian law, which took place in Belgrade on 16th December 2010, offers an overview of the more recent evolution of a legal framework confronted with a number of new challenges arising from the transformation of the very nature of armed conflict and the growing complexity of the international security environment.

Cyber attacks : proportionality and precautions in attack

Eric Talbot Jensen. In: International law studies Vol. 89, 2013, p. 198-217

Malicious cyber activities are becoming more and more commonplace, including between nations. This has caused great speculation as to the rules that govern military cyber operations, particularly during armed conflict. The Tallinn Manual on the International Law Applicable to Cyber Warfare is indicative of the importance of this discussion. This article analyzes the application of the law of armed conflict principles of proportionality and precautions to cyber operations, including reference to the Tallinn Manual. In most cases, the existing law provides a clear paradigm to govern cyber activities. However, this article identifies several areas where governments and military operators might question how to apply these principles to a specific cyber operation. In these areas, greater precision is needed to provide clear guidance to those who plan, order, and conduct cyber operations. Part II of the article focuss on the constant-care standard and how it applies to all cyber operations. Part III looks at the principle of proportionality with specific focus on the idea of indirect effects. Part IV analyzes the issue of feasibility with the precautionary standards. Part V analyzes State responsibilities under the obligation to take precautions against the effects of attacks.

http://tinyurl.com/38855-Jensen

The cyber road ahead : merging lanes and legal challenges

Kenneth Watkin. In: International law studies Vol. 89, 2013, p. 472-511

This article first gives an outline of a unique aspect of the cyber domain in the context of its status as a new global commons and its prevalence within modern society. As a result there will be many stakeholders who have views that will impact on the regulation of cyber activity. Second, the analysis turns to specific legal challenges. This part looks at civilian participation in cyber conflict, consider the theoretical approaches applied when assessing cyber operations as a use of force, look at the use of the cyber domain for counter-measures short of war and address the significant potential for confusion at a foundational level regarding the use of the term "attack." Finally, the potential for successfully integrating cyber operations into a legal framework is considered by reference to efforts during the twenty-first century to regulate technologically advanced aerial warfare. Ultimately the road ahead is identified as a challenging one, but with an attainable goal that will require flexibility in applying traditional legal principles to the cyber do-main.

http://tinyurl.com/38865-Watkin

Cyber warfare : military cross-border computer network operations under international law

Johann-Christoph Woltag. - Cambridge [etc.] : Intersentia, 2014, 313 p. - Cote 345.26/256

In the last five years the topic of cyber warfare has received much attention due to several so-called “cyber incidents” which have been qualified by many as State-sponsored cyber attacks. This book identifies rules

and limits of cross-border computer network operations for which States bear the international responsibility during both peace and war. It consequently addresses questions on jus ad bellum and jus in bello in addition to State responsibility. By reference to treaty and customary international law, actual case studies (Estonia, Georgia, Stuxnet) and the Tallinn Manual, the author illustrates the applicability of current international law and argues for an obligation on the State to prevent malicious operations emanating from networks within their jurisdiction.

Cyber warriors and the jus in bello

Vijay M. Padmanabhan. In: International law studies Vol. 89, 2013, p. 288-308

This article analyzes the difficult legal questions raised by application of the jus in bello categories to cyber warriors. The traditional category approach to targeting and detention works best when participation is limited to traditional combatants and it is possible to distinguish on the battlefield between combatants and civilians. Both assumptions are challenged in cyber operations.

http://tinyurl.com/38857-Padmanabhan

"Death flies down" : the bombing of civilians and the paradox of international law

Ronald C. Kramer and Amanda Marie Smith. - In: Towards a victimology of state war. - London ; New York : Routledge, 2014. - p. 110-130. - Cote 344/636 (Br.)

It is intemational law that defines and helps us to "see" civilians who are bombed from the air as "victims," individuals who have experienced a "blameworthy harm". The paradox, however, is that while these laws provide substantive concepts and categories for possible legal definition and action (not to mention an epistemological framework for criminological analysis), they ultimately fail to provide protection and legal recourse for those who are victimized by the state crime of bombing civilians. This chapter examines this paradox, particularly with regard to bombing campaigns carried out by the United States of America.

https://ext.icrc.org/library/docs/ArticlesPDF/39095.pdf

Determining the status of private military companies under international law : a quest to solve accountability issues in armed conflicts

P. R. Kalidhass. In: Amsterdam law forum Vol. 6, no. 2, 2014, p. 4-19. - Cote 345.29/210 (Br.)

Private Military Companies are one of the newest non-state actors in the international scene operating around the globe in different situations as private entities carrying out public works. But their role and responsibility is unknown in international law. To hold them accountable for any violation of legal rules during armed conflicts it is essential to determine their legal status under international law. In the absence of their recognition as a distinctive category of persons under international humanitarian law, inferences could be drawn by reference to other defined categories of persons, namely, combatants, mercenaries and civilians. Based on such inferences the present article examines accountability related issues for any contravention, by civilian-contractors, during armed conflicts.

http://amsterdamlawforum.org/article/view/337

Ending impunity : bringing superiors of private military and security company personnel to justice

Kate Neilson. In: New Zealand yearbook of international law Vol. 9, 2011, p. 121-159. - Cote 344/109 (Br.)

This article argues that the doctrine of command responsibility, as set out in art. 28 of the Rome Statute, should be used to combat the current impunity of private military and security companies (PMSCs). The origins, form, rationales and development of the doctrine are discussed before art. 28 is explored in detail. The relationship between PMSCs and command responsibility is then examined with a focus on how art. 28 can be applied to the superiors of PMSC personnel from the contracting state or from within the PMSC itself.

http://tinyurl.com/38905-Neilson

The Eritrea-Ethiopia Claims Commission and customary international humanitarian law

Agnieszka Szpak. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 296-314

The aim of the article is to highlight several issues concerning the customary international law status of a number of international humanitarian law (IHL) treaty provisions that arose during the proceedings of the Eritrea-Ethiopia Claims Commission. Specifically, two key issues will be analyzed, namely the Commission's findings that the Geneva Conventions and some provisions of Additional Protocol I reflected customary international law and that international landmine conventions create only treaty obligations and do not yet reflect customary international law. Also, some more detailed conclusions relating to particular problems, such as the issue of the customary nature of the ICRC's right to visit prisoners of war and its binding character for non-parties to the Geneva Conventions, will be discussed. The 2005 ICRC Study on Customary International Humanitarian Law and the International Criminal Tribunal for the former Yugoslavia's jurisprudence will also be included as a point of reference to identify the customary character of certain provisions. The main conclusion is that the Commission has significantly contributed to the emerging consensus regarding the status of certain norms of international humanitarian law as customary norms. Furthermore, it has identified lacunae in the existing standards of humanitarian law and suggested the development of new norms to fill those gaps.

http://booksandjournals.brillonline.com/content/journals/10.1163/18781527-00402004

Ethical and legal perspectives on cross-border humanitarian operations

Hugo Slim and Emanuela-Chiara Gillard. In: Humanitarian exchange : the magazine of the Humanitarian Practice Network No. 59, November 2013, p. 6-9

This article looks briefly at three main types of cross-border operations in humanitarian history, and then addresses two main questions: can cross-border operations be pursued legally?; and what constitutes ethical crossborder operations? The legality of cross-border humanitarian operations turns mainly on the two issues of the consent of the affected state and the exclusively humanitarian character of any crossborder aid. Under international humanitarian law (IHL), the consent of the state in whose territory operations are to be implemented is required. So too is the consent of the neighbouring state from which any cross-border operation is to be mounted. In practice, consent is also required from any non-state armed actor in effective control of territory through which the relief goods must transit or for whose civilians they are intended. If the law allows cross-border humanitarian operations in certain situations, what are the main ethical considerations in the decision to pursue such operations? Like most humanitarian decision-making, these turn on issues of need, context and capability, and issues of principle around impartiality, neutrality and independence.

http://tinyurl.com/38733-Slim-Gillard

An evaluation of the U.S. policy of "targeted killing" under international law : the case of Anwar Al-Aulaqi (part II)

Jake William Rylatt. In: California western international law journal vol. 44, spring 2014, p. 115-147. - Cote 345/660 (Br.)

The analysis in Part II this two-part article develops the overall thesis proposed by this author, namely that the targeted killing of Anwar Al-Aulaqi must be evaluated under both jus ad bellum and the "law enforcement" paradigm of International Human Rights Law (IHRL). In doing so, this article analyzes the United States' invocation of a non-international armed conflict (NIAC) to encompass the Al-Aulaqi strike, consequently triggering the more permissive rules of International Humanitarian Law (IHL). After concluding that the strike may not be justified as falling within the scope of any armed conflict in which the United States was engaged at that time, this Article continues to consider whether the strike is justifiable under the true applicable law, IHRL. In doing so, a final conclusion as to the legality of the Al-Aulaqi strike will be reached; a conclusion that may have far-reaching implications for the legality of the U.S. policy of conducting "Targeted Killings" within States such as Yemen, Pakistan, and Somalia.

The evolving status of conflict-related rape and other acts of sexual violence as crimes under international law

Jean de Dieu Sikulibo. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 27, 2/2014, p. 83-92

This article seeks to analyse whether wartime rape and other forms of sexual violence have gained recognition and firmly established as international crimes. Considering whether these crimes have been

recently defined in international criminal law, the paper begins by underlining how this endemic conduct in war has been for too long ignored or sometimes given cursory treatment despite being inflicted for centuries as an integral aspect of warfare. This article offers a critical assessment of the contribution of international criminal tribunals and courts in the prosecution of rape and other forms of sexual violence as international crimes. The author argues that the effective prosecution of these crimes is still hindered by various challenges, despite increasing legal tools in this regard.

L'externalisation des activités militaires et sécuritaires : à la recherche d'une règlementation juridique appropriée

Babou Cisse. - [S.l.] : [s.n.], février 2014. - 508 p. - Cote 345.29/211

Les sociétés militaires et de sécurité privées sont des personnes morales de droit privé employant des salariés pour exécuter les missions de sécurité et de défense que peuvent leur confier des Etats, des organisations internationales ou des entités non étatiques. Cette forme particulière de production de la sécurité n'est pas entièrement appréhendée par les conventions internationales et les législations internes des Etats. De cela résulte une absence de statut juridique international de ces acteurs qui sont de plus en plus présents dans la gestion des conflits armés et dans les opérations de maintien de l'ordre. Les obligations particulières de leurs clients ne sont pas non plus déterminées. Ce défaut d'encadrement spécifique avéré ne signifie pas qu'il y ait un vide juridique dans ce secteur d'activité. Certaines règles internationales et les droits nationaux peuvent effectivement s'appliquer aux activités des SMSP et aux contractants de ces dernières. Seulement, l'efficacité que devaient avoir de telles normes face à des situations qui n'ont pas été prises en compte lors de leurs adoptions, ne saurait être acquise. D'où un processus de régulation internationale et de règlementation nationale initié depuis quelques années par les Etats mais aussi par les organisations internationales. Les sociétés elles mêmes se sont senties concernées par la production de règles encadrant leurs activités et se sont lancées dans la mise en place de code conduite. L'imperfection guette toutes ces nouvelles règles spécifiques destinées à corriger les lacunes des conventions internationales et des lois internes. Ce qui nécessite la proposition de solutions envisageables dans le but de mieux prendre en compte les intérêts des SMSP et la protection de ceux qui s'exposent aux risques que procurent les prestations privées de sécurité militaire.

https://ext.icrc.org/library/docs/ArticlesPDF/38848.pdf

Gender based crimes as "tools of war" in armed conflicts

Francisco José Leandro. - In: Gender violence in armed conflicts. - Lisboa : Instituto da Defesa Nacional, 2013. - p.148-182. - Cote 362.8/208

For many generations of combatants, acts of sexual violence in armed conflicts were largely ignored, tolerated, blanketed, consider as a symbolic side effect, a mark of victory, and sometimes even taken as a "bonus or a compensation" for regular soldiers and mercenaries. For many years it has been perceived as essential to preserving the troops' morale. Sometimes, it was perceived as "part of the game". In fact, only in 1945 rape was recognized as an international crime, despite of the fact that the crime elements remained indeterminate until 1998. In this context women were considered property of unrestricted access. Likewise, for many generations, the international criminal law turned a blind eye to the accountability of perpetrators of sexual crimes in armed conflicts. Consequently, the purpose of this essay is to study how the International Humanitarian Law (IHL), the Law of Armed Conflicts (LOAC) and the International Criminal Law (ICL) are equipped to fight against impunity of gender-based crimes in armed conflicts each time they are perpetrated as a tool of war, while gender-based violence has recently emerged as a salient topic in the human security dimension. Recognizing that gender-based crimes in armed conflicts are neither a legal concept, nor a largely accepted and consensual designation, this study attempts to discover whether, currently, International Humanitarian Law and International Criminal Law incorporate the notion of gender-based violence as a tool of war, as a legal stand included into a larger concept of war crimes, as a constitutive act with respect to genocide and as a crime against humanity.

http://www.ces.uc.pt/myces/UserFiles/livros/1097_idncaderno_11.pdf#page=149

Gender based violence and international humanitarian law : steps to improve the protection of women in war

Michel Veuthey. - In: Gender violence in armed conflicts. - Lisboa : Instituto da Defesa Nacional, 2013. - p. 91-126. - Cote 362.8/208

This chapter first describes how women in war are protected by international humanitarian law: first by the general protection for all war victims, women and men, provided by the 1949 Geneva Conventions and by both 1977 Additional Protocols, and second, by some 40 provisions of these treaties that are specific protections for women. I then turns to three proposals for a better protection of women in time of armed conflict: 1) reinforce existing mechanisms of international humanitarian law (the State parties obligation to respect and ensure respect, Protecting Power, ICRC, the UN and the International Fact-Finding

Commission) ; 2) make a better use of mechanisms of other legal systems (Human rights, environemental law, international criminal law, disarmament, labor law, civil liability,...) ; 3) use remedies more creatively (civil liability claims, traditional customary mechanisms, restaurative justice).

http://www.ces.uc.pt/myces/UserFiles/livros/1097_idncaderno_11.pdf#page=92

Geography of armed conflict : why it is a mistake to fish for the red herring

Geoffrey S. Corn. In: International law studies Vol. 89, 2013, p. 77-107

The author argues that the two traditional categories of International and Non-International Armed Conflict are under-inclusive, particularly in light of the emergence of international terrorism as a national security threat. Transnational Armed Conflict (TAC) has gained traction as a potential new category of armed conflict but has also generated concerns over its apparent legitimization of military operations with unlimited geographic scope. In response to this concern, some have proposed limiting TACs to defined “hot zones” of conflict. However, the author argues that it is the nature of the threat that determines a state’s military scope of operations. In particular, the idea of limiting operations against international terrorism to defined locales, betrays a critical aspect of the TAC typology – bringing the fight to the enemy. Further, history has shown that conflict geography is also affected by a complex interplay among concepts of jus ad bellum, jus in bello, and neutrality, rather than contained by pre-defined geographic limits. The author argues that the geographic constraints of armed conflict as determined by law are perhaps better achieved through political choices. Instead, focusing efforts on the TAC-related issues of targeting belligerents and limiting preventative detention during long-term conflicts will provide a better balance between national security realities and the individuals affected armed conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/38352-Corn

The geography of cyber conflict : through a glass darkly

Ashley S. Deeks. In: International law studies Vol. 89, 2013, p. 1-20

The author discusses the Unwilling and Unable test and its continued relevance for states responding to cyber, as opposed to conventional, attacks being launched from within non-hostile, third party states. Originally justified by the United States in response to non-state actors like Al-Qaeda in the wake of 9/11, the Unwilling and Unable test outlined the factors to consider when deciding whether or not to respond with force to attacks launched through third-party states deemed to be unwilling and unable to respond. Ashley Deeks argues that the Unwilling and Unable test can be used to justify responsive action to cyber armed attacks launched by non-state actors through the networks of non-hostile and third-party states. The test has five factors that victim states should use when assessing whether a third-party state has met the test of being unwilling and unable to respond to an attack launched from their servers. Deeks further argues that, despite the legal and technological uncertainty of cyber warfare, America has been working towards advancing the cyber law and applying it. She offers five reasons for why the US might be pursuing this course, which reflects an awareness of the controversy of its geographic approach to the Al Qaeda conflict, as well as a trend towards legalism. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/38349-Deeks

Global armed conflict ? : the threshold of extraterritorial non-international armed conflicts

Sasha Radin. In: International law studies Vol. 89, 2013, p. 696-743

This article discusses the application of the laws of war to ‘extraterritorial non-international armed conflicts’ (ENIACs): conflicts that cross international borders but which are not fought between sovereign states. Examples include the Israel-Hezbollah conflict, drone strikes, and attacks by Al Qaeda in the Arabian Peninsula. The difficulty applying the laws of war to ENIACs is that the Geneva Conventions cover only international wars and civil wars, while ENIACs occupy a distinct middle ground. The author discusses four common approaches to applying the laws of war to ENIACs: applying laws of international conflict, applying laws of civil (non-international) conflict, creating a third category of conflict, or not submitting ENIACs to any laws of war. The author uses the customary law established around the Geneva Conventions, especially Common Article 3 on non-international conflicts, to advocate applying the laws of non-international conflicts to ENIACs. The author then focuses on the significant work that would be required to adapt Common Article 3 to extraterritorial conflict. Two major concerns are applying the ICC’s Tadic test for defining armed conflicts to situations involving loosely-structured paramilitary groups; and determining the geographic application of the chosen laws of war to conflicts spilling across territorial boundaries. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/38353-Radin

The global fight against terrorism and the application of international humanitarian law

Godard Busingye. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 123-134. - Cote 345.2/662 (Br.)

The article attempts a conceptual analysis of acts of terrorism and then progressively analyses how terrorism has been handled over time and lastly ventures into the most interesting part of the discussion: the global fight against terrorism and whether or not International Humanitarian Law (IHL) applies to this 'war'. The article concludes that overall, terrorism as a concept is a function of global politics, which prevail in a given political environment within States at any given point in time.1 Global fight against terrorism, therefore, may be handled according to the prevailing political environment in a State—that determines whether or not those labeled terrorist will be handled as common criminals or fighters that fall under the ambit of IHL.

http://ihlcentreug.org/download/ihl-paper-series/ICRC%20UGANDA%20PAPER%20SERIES.pdf

Healthcare on the battlefield : in search of a legal and ethical framework

Brigit Toebes. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 197-219

During armed conflicts healthcare workers or medical personnel often work under extremely difficult and dangerous circumstances. In such situations doctors and nurses, hospitals and medical units are at a serious risk of being attacked. Medical personnel also face complex ethical dilemmas when it comes to the treatment of patients from all sides of a conflict. This concerns military medical personnel in particular: as members of the armed forces, they face dilemmas of 'dual loyalty' where they may have to choose between the interests of their employer (the military) and the interests of their patients. This contribution looks at these issues from the perspectives of medical ethics, international humanitarian law (ihl), and human rights law (hrl). The article argues that the standards of medical ethics continue to apply during armed conflicts, and that during such situations medical ethics, ihl and hrl are mutually reinforcing. The principle of 'medical neutrality' and the human 'right to health' are positioned as key norms in this field. The article presents a normative framework for the delivery of health care on the battlefield in the form of a set of commitments for actors involved in the conflict, including the belligerent parties and (military) medical personnel.

http://dx.doi.org/10.1163/18781527-00402001

Human rights bodies and international humanitarian law : common but differentiated approaches

Larissa van den Herik and Helen Duffy. - [Leiden] : Grotius Centre for International Legal Studies : Universiteit Leiden, 2014. - 27 p. - Cote 345.1/96 (Br.)

Human rights courts and bodies are increasingly called upon to look outwards, beyond the immediate contours of their constituent instruments and beyond their own jurisprudence. There is a growing call for such bodies to have regard to, interpret and in some cases 'apply' a range of other norms of international law beyond international human rights law (IHRL). UN imposed sanctions, the assertion of immunities of the state and state officials and issues of state responsibility are among the contexts in which human rights courts have recently had to grapple with generic international law concepts or rules from areas of law other than IHRL, often with controversial results. This chapter considers the approach of human rights courts and bodies to one such issue of interplay that arises with increasing frequency, namely the application of international humanitarian law (IHL) alongside IHRL in situations of armed conflict.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2448146

Human rights violations by peacekeeping forces in Somalia

by Richard J. Wilson and Emily Singer Hurvitz. In: Human rights brief Vol. 21, issue 2, spring 2014, p. 2-8

Widespread sexual violence is occurring throughout South-Central Somalia, and the perpetrators of this violence are often alleged to be government security forces and military personnel from the African Union Mission for Somalia (AMISOM). Within Somalia, there is little recourse for victims of sexual violence, and human rights practitioners are looking to international options as alternative venues for seeking justice. This article uses the case of peacekeeping troops in Somalia perpetrating human rights violations to explore the liability of peacekeepers and their home states in these situations. It assumes, for purposes of analysis here, that due to their traditional immunities, the international organizations involved in

providing the peacekeeping forces are not themselves accountable for human rights violations or criminal misconduct, but that issue is not explored comprehensively in this article.

www.wcl.american.edu/hrbrief/21/2wilson.pdf

Humanitarian action, development and terrorism

Andrej Zwitter. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 315-332 . - Cote 303.6/228

Terrorism thrives on the suffering of people. Underdevelopment, unemployment, poor governance, and absence of the rule of law in combination with grievances are among the factors that facilitate the radicalization of people and the recruitment of new members to terrorist organizations. These conditions are being addressed by humanitarian action and development aid through the delivery of food, shelter, education, good governance training and other elements of a sustainable livelihood that people are entitled to under international human rights standards. The current aid regime, however, is in a classic Catch-22 when it comes to long-term terrorism prevention: international obligations require the delivery of humanitarian aid to anyone in need without prejudice to political affiliation, religion, or parties of a conflict. However, counterterrorism norms prohibit, under threat of prosecution, the giving of any support to terrorist groups, whether it is through material or logistical support or expert advice.

The immunity of civilians : a moral and legal study of attacks on the civilian population

Eva Küblbeck. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 262-295

The paper purports to consider the question of whether it is conceivable that a people, who have been occupied and whose rights have been severely violated for several decades, may legitimately target civilians as a last resort. Looking at terrorist attacks, inter alia suicide attacks, in the Palestinian- Israeli conflict, this paper scrutinizes philosophical and legal attempts to justify the deliberate killing of civilians in order to compel the opponent into changing his politics. The paper draws a simplified picture of the historical developments in the region and does not provide an exhausting analysis of the situation but rather highlights single events in order to examine the legal framework against the background of the conflict. It intends to raise rather than answer questions and aims at making a contribution to this complex discussion. Looking at several philosophical justifications of terrorism, the paper then turns to the issues of self-determination, necessity and self-defence. As expected, the discussion reinforces the prohibition to target civilians as one of the fundamental principles of humanitarian law. However, very interesting aspects come into view when investigating the limits of philosophical theories and legal standards regarding the question of last resort.

http://booksandjournals.brillonline.com/content/journals/10.1163/18781527-00402003

The international conference on the Great Lakes Region (ICGLR) and the implementation of international humanitarian law (IHL) in the Great Lakes Region

Kasaija Phillip Apuuli. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 49-70. - Cote 345.2/962 (Br.)

In recognition of the dire conflict situation in the GLR, the United Nations (UN), during the second half of the 1990s proposed the establishment of the International Conference on the GLR (ICGLR) in order to “develop a regional approach to conflict resolution.” This paper, using the examples of Eastern DRC and Darfur Sudan, discusses the efforts of the ICGLR to implement International Humanitarian Law (IHL) in the Great Lakes Region. The region is awash with individuals, national armies and non-state armed groups (NSAGs) who continue to pose a threat to the security of the region including violating the most basic principles of IHL. Generally, the paper concludes by noting that whilst the ICGLR has developed mechanisms on paper which try to promote IHL, nevertheless, practically the organisation has made small strides in the implementation of IHL. Some member states of the ICGLR have developed measures especially in the area of illegal exploitation of natural resources that aim at regulating the extraction and export of some minerals in the region. Suffice it to note that, the extraction has been characterised by horrendous IHL infractions. The paper sequentially first presents a short history of the ICGLR. The next section describes the Pact on Security Stability and Development in the GLR and the mechanism of its implementation. The next section analyses the implementation of IHL by the ICGLR by looking at its work since it was established in 2006. Specifically, the paper draws on the examples of the continued IHL violations in Eastern DRC and Darfur Sudan. The paper ends with a conclusion.

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The International Crimes Division of Uganda and reparations for victims of sexual violence in Norther Uganda

Veronica Nakijoba. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 31-48. - Cote 345.2/962 (Br.)

This article is an attempt to explore whether the establishment of the International Crimes Division (ICD) in the High Court of Uganda will lead to any meaningful reparations packages for victims of sexual crimes Committed during armed conflict (hereafter referred to as war sexual crimes) between the Ugandan Government and the Lord's Resistance Army (LRA) in Northern Uganda. The paper examines the different challenges at various levels that is to say: societal level factors , gaps in the domestic justice system and structural gaps in international criminal law and the ICC which may impact on the operations of the ICD in the prosecution of war sexual crimes. The main policy argument arising from the discussion in this paper is that it is imperative that the Government of Uganda invests more resources in the Justice, Law and Order Sector (JLOS) to facilitate the ICD expedite justice to the survivors of war sexual crimes since the operations of the ICD are highly influenced by the level of effectiveness of the services offered by other key JLOS institutions.

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International humanitarian law and raison d'état : the balance sheet of Kazakhstan's ratification of the Geneva Convention on refugees

Alex Danilovich, Sabina Insebayeva. In: International journal of refugee law Vol. 26, issue 1, March 2014, p. 112-129. - Cote 325.3/106 (Br.)

Post-soviet countries have been eager to accede to international humanitarian law while quite reluctant to honour the resulting obligations. The home to thousands of asylum seekers from neighbouring countries, Kazakhstan ratified the Geneva Convention on refugees in 1998. However, the Kazakhstani government regularly flouts its important provisions by denying bone fide asylum seekers refugee status and by sending applicants back to countries where they may face imprisonment, torture, and execution. This article is an attempt to explain why Kazakhstan does not always honour its obligations under international humanitarian law. It argues that maintaining good relations with influential neighbours from where refugees originate takes precedence over Kazakhstan's obligations under the Geneva Convention. Various empirical data are used to test this assumption, such as statistics on numbers of applicants extradited from Kazakhstan compiled by Amnesty International and Human Rights Watch, and qualitative data generated through in-depth interviews with UNHCR protection officers posted in the country. The time frame examined is the period between 1999, the year Kazakhstan ratified the Geneva Convention relating the Status of Refugees, and 2012. The analysis seems to uphold the assumption that Kazakhstan's raison d'état and resulting foreign policy priorities undermine its obligations under international humanitarian law.

International humanitarian law and the challenge of combatant status

Jonathan Crowe. In: International law annual Vol. 2, 2014, p. 17-22. - Cote 345.29/209 (Br.)

International humanitarian law faces a range of ongoing challenges. These include the challenges posed by new and emerging types of weapons, the changing face of armed conflict and the political dynamics of the international community. This article focuses on the challenges these kinds of issues can pose for one of the most fundamental principles of international humanitarian law: namely, the principle of distinction. International humanitarian law encourages a clear and reliable division between combatants and non-combatants. The principle of distinction requires combatants to distinguish at all times between military targets and civilian objects and stipulates that only military targets may be the object of attack. This is arguably the most important principle of the whole law of armed conflict. The principle is undermined if attacking forces cannot readily distinguish combatants from other parties.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2461547

International humanitarian law and the Israeli Supreme Court

Aharon Barak. In: Israel law review Vol. 47, issue 2, July 2014, p. 181-189. - Cote 345.22/244 (Br.)

In contrast with most other municipal courts in the world, the Israeli Supreme Court routinely decides cases based on international humanitarian law (IHL). Since the Six Day War in 1967, both the state and the Supreme Court have agreed that the Court has jurisdiction to decide humanitarian issues that come before it from territory held under belligerent occupation. The Court has indeed done so in issues ranging from land seizures to targeted killings, ruling on the basis of the relevant IHL. The Court has been criticised for its judgments, both from the right wing of the political spectrum, who see it as interfering with military matters, and from the left, who see it as granting legitimacy to occupation. In this article, I briefly describe

the development, both historical and legal, of IHL in the Israeli Supreme Court, the criticism of the way the law is applied by the Court, and finally the importance of the fundamental concepts of human dignity and proportionality to IHL decisions.

https://ext.icrc.org/library/docs/ArticlesPDF/38828.pdf

International humanitarian law (IHL) and the use of unmanned aerial vehicles (UAV's) (drones) as a means of warfare against armed groups in Africa

Kasaija Phillip Apuuli. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 109-122. - Cote 345.2/962 (Br.)

The current move to deploy the UAVs in eastern Democratic Republic of Congo (DRC) has been occasioned by the raise of the M23 rebels, who beginning in April 2012, began taking large swathes of territory in the area. Rwanda and Uganda have been accused of helping the rebels logistically and politically. Thus the UAVs are supposed to monitor the common borders between eastern DRC, Rwanda and Uganda. When used in situations of armed conflict (whether international or noninternational), UAVs raise serious issues in IHL. This paper discusses the implications of the use of UAVs against non-state armed groups (NSAGs) in Africa, especially the implications on the IHL principles of distinction, proportionality and prohibitions of perfidy among others. The use of UAVs against NSAGs presupposes that there is an armed conflict between the groups and those deploying the UAVs. But the question is: Does an armed conflict, triggering the application of jus in bello requirements exist between the NSAGs and the states deploying the UAVs? It is only if this question is answered in the affirmative that the use of armed UAVs raises IHL issues.

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Les interventions française et africaine au Mali au nom de la lutte armée contre le terrorisme

par Raphaël Van Steenberghe. In: Revue générale de droit international public Tome 118, no 2, 2014, p. 273-302

La France et certains Etats africains sont intervenus au Mali en janvier 2013 afin d'aider le gouvernement de transition malien à repousser les groupes terroristes contrôlant la partie nord de son territoire, alors que le Mali était en proie à une guerre civile et que le Conseil de sécurité des Nations Unies avait déjà adopté plusieurs résolutions au sujet de la situation malienne. Les interventions française et africaine, consenties par les autorités maliennes, n'ont fait l'objet d'aucune contestation de la part des autres Etats quant à leur légalité et ont été expressément approuvées par la plupart d'entre eux. Cet article s'interroge sur l'enseignement susceptible d'être tiré d'une telle apporbation au sujet des règles tant du jus ad/contra bellum que du jus in bello. Il constate que, si le consentement des autorités maliennes constitute un fondement juridique permettant de justifier valablement chacune des interventions étrangères au regard du jus ad/contra bellum, l'objectif de lutte contre le terrorisme a joué un rôle particulièrement important dans l'approbation de ces interventions. Ce constat semble confirmer que, lorsqu'un Etat est dans une situation de conflit armé interne, l'intervention sollicitée par le gouvernement de cet Etat n'est permise que si elle vise un objectif autre que d'appuyer une partie à ce conflit au détriment du droit des peuples à disposer d'eux-mêmes. Il peut néanmoins également, voire uniquement, révéler que, dans le cas particulier où une intervention s'inscrit dans une situation ayant déjà conduit à l'adoption de résolutions par le Conseil de sécurité des Nations Unies, cette intervention, même valablement consentie, ne peut poursuivre un objectif incompatible avec les résolutions pertinentes du Conseil. Bien que déterminant dans la justification des interventions française et africaine, l'objectif de lutte contre le terrorisme n'a pas influencé l'application du jus in bello aux opérations entreprises dans le cadre de ces interventions. La lutte menée par les forces étrangères contre les groupes terroristes constituait manifestement un conflit armé au sens du droit international conformément au Protocole additionnel II aux quatre Conventions de Genève de 1949, quand bien même certaines puissances étrangères y étaient parties. Cette qualification a été expressément retenue par la France et le Mali dans leur accord relatif au statut des troupes françaises déployées en territoire malien, et au terme duquel ont également été accordées des garanties spécifiques supplémentaires à celles prévues par le Protocole, inspirées du droit des conflits armés internationaux et des droits de l'homme.

Is formalism a friend or foe ? : saving the principle of distinction by applying function over form

Martijn Jurgen Keeman. In: Journal of international humanitarian legal studies Vol. 4, issue 2, 2013, p. 354-389

Contemporary armed conflicts are known to blur the categories of civilians and combatants, leading to problems with the principle of distinction. These categories are the result of an essentially formalised IHL, and have become less accurate by being over- or under-inclusive. Although formalism is vital to IHL's

functioning, maintaining it in its present excessive strength perpetuates distinction problems. In numerous cases a functional inroad based on actual conduct has been introduced, for instance with the concept of direct participation in hostilities. This solution should be implemented across a wider spectrum. Where the two categories are difficult to tell apart, a functional approach for one category benefits the other. This article shows how this can be attained by using existing rules and principles of IHL, such as the concept of military objectives and the prohibition on terrorism, or newer rules.

http://booksandjournals.brillonline.com/content/journals/10.1163/18781527-00402006

Judges, law and war : the judicial development of international law

Shane Darcy. - Cambridge : Cambridge University Press, 2014. - 362 p. - Cote 344/633

International courts and judicial bodies play a formative role in the development of international humanitarian law. Judges, Law and War examines how judicial bodies have influenced the substantive rules and principles of the law of armed conflict, and studies the creation, application and enforcement of this corpus of laws. Specifically, it considers how international courts have authoritatively addressed the meaning and scope of particular rules, the application of humanitarian law treaties and the customary status of specific norms. Key concepts include armed conflicts and protected persons, guiding principles, fundamental guarantees, means and methods of warfare, enforcement and war crimes. Consideration is also given to the contemporary place of judicial bodies in the international law-making process, the challenges presented by judicial creativity and the role of customary international law in the development of humanitarian law.

Jurisdictional immunities of the State for serious violations of international human rights law or the law of armed conflict

Paul David Mora. In: Canadian yearbook of international law = Annuaire canadien de droit international Vol. 50, 2012, p. 243-287. - Cote 345.22/246 (Br.)

In its recent decision in Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening), the International Court of Justice (ICJ) held that Italy had failed to respect immunities enjoyed by Germany under international law when the Italian courts allowed civil actions to be brought against Germany for alleged violations of international human rights law (IHRL) and the law of armed conflict (LOAC) committed during the Second World War. This article evaluates the three arguments raised by Italy to justify its denial of immunity: first, that peremptory norms of international law prevail over international rules on jurisdictional immunities; second, that customary international law recognizes an exception to immunity for serious violations of IHRL or the LOAC; and third, that customary international law recognizes an exception to immunity for torts committed by foreign armed forces on the territory of the forum state in the course of an armed conflict. The author concludes that the ICJ was correct to find that none of these arguments deprived Germany of its right under international law to immunity from the civil jurisdiction of the Italian courts.

https://ext.icrc.org/library/docs/ArticlesPDF/38883.pdf

Keeping the cyber peace : international legal aspects of cyber activities in peace operations

Jann K. Kleffner and Heather A. Harrison Dinniss. In: International law studies Vol. 89, 2013, p. 512-535

What are the legal parameters governing peace operations with regard to ongoing cyber threats? Do peacekeepers' responsibilities extend to monitoring cyber threats? When may a peace operation be mandated to conduct cyber operations? How may peacekeepers respond to a cyber at-tack against them? Are there any legal constraints on a troop-contributing State conducting cyber operations outside the mission area? These are some of the pertinent questions that arise. Answering them from an international law perspective will very much depend on the specifics of the cyber threat, the precise mandate of the peace operation and the operational cyber capabilities of troop-contributing States, among other considerations. This article approaches the issue in the following manner. First, it briefly sets the general context by defining and describing contemporary peace operations. It then addresses the general law applicable to peace operations. Finally, it discusses the potential types of cyber operations and the legal challenges they pose in more detail.

http://tinyurl.com/38866-Kleffner-Dinniss

Law as shield, law as sword : the ICC's Lubanga decision, child soldiers and the perverse mutualism of participation in hostilities

Chris Jenks. In: The University of Miami national security and armed conflict law review Vol. 3, summer 2013, p. 106-124. - Cote 362.7/21 (Br.)

The International Criminal Court's Lubanga decision has been hailed as a landmark ruling heralding an end to impunity for those who recruit and employ children in armed conflict and a pivotal victory for the protection of children. Overlooked amidst this self-congratulation is that the ICC incorrectly applied the law governing civilian participation in hostilities which perversely places child soldiers at greater risk of being attacked. The Court created a false distinction between active and direct participation in hostilities. Expanding the kinds and types of behaviors that constitute children actively participating in hostilities expanded Lubanga's liability. But under the law of armed conflict active and direct refer to the same quantum of participation. And when a civilian, including a child soldier, directly participates in hostilities, they lose a pivotal protection - the protection from being made the lawful object of attack. The ICC's first verdict confuses an already opaque area of the law. Worse, the ICC now provides the international legal imprimatur for the permissible targeting of child soldiers under a wider range of circumstances than previously recognized.

http://tinyurl.com/38890-Jenks

The law of armed conflict's "wicked" problem : levée en masse in cyber warfare

David Wallace, Shane R. Reeves. In: International law studies Vol. 89, 2013, p. 646-668

The Law of Armed Conflict is often ill-suited for application in the cyber context. One particular example — trying to reconcile the concept of levée en masse with the "cyber conflicts between nations and ad hoc assemblages" — starkly illustrates this truth. To support this proposition this article begins with a brief discussion on the history of a levée en masse. An explanation of how the law of armed conflict defines and characterizes the individual battlefield status associated with levée en masse follows. The article then explores the unique aspects of hostilities in cyberspace and delves into the impracticality of applying the concept of levée en masse in the context of cyber warfare. It concludes with specific recommendations in terms of the reconceptualising of a levée en masse in cyber warfare and a hope that, by focusing on this nuanced provision of the law of armed conflict, a broader discussion will ensue.

http://tinyurl.com/38868-Wallace-Reeves

The law of cyber warfare : quo vadis ?

Michael N. Schmitt. In: Stanford law and policy review Vol. 25, issue 2, 2014, p. 269-299. - Cote 345.26/257 (Br.)

Where is the law of cyberware going? This article offers thoughts on the process of normative evolution and identifies certain aspects of the law of sovereignty, the jus ad bellum, and the jus in bello which will have to acclimate to the growing threat cyberterrorists, cyberspies, cyberthieves, cyberwarriors, cyber hacktivists, and malicious hackers pose. For each, the article describes current law and indicates the probable vector of any change. Knowing where such fault lines lie should prove useful as states craft national cyberspace policies and issue rules of engagement, international organizations launch projects designed to achieve normative compatability in cyberspace, and scholars explore the theoretical foundation for the future law of cyber warfare.

http://tinyurl.com/38892-Schmitt

Law-of-war perfidy

Sean Watts. In: Military law review Vol. 219, Spring 2014, p. 106-175

More than a prohibition of underhanded or dishonorable conduct, the prohibition of perfidy is an essential buttress to the law of war as a medium of exchange between combatants – a guarantee of minimum respect and trust between belligerents even in the turmoil of war. Indeed, it may be difficult to conceive of an operative or effective war convention at all without guarantees against and protections from perfidy. Yet most existing conceptions of perfidy, whether drawn from treaty, military legal doctrine, or legal scholarship, merely restate imprecise codifications or offer little more than a vague sensibility. Amid seismic shifts in the conduct, scale, participants, and means of warfare, States have codified progressively narrower conceptions of perfidy, ultimately incorporating discrete legal elements into the offense. This article argues that a principled conception of perfidy that protects minimal concerns of humanity and preserves the law of war as a scheme of minimum good faith between adversaries is at once highly elusive but critical to the future of regulated violence.

http://tinyurl.com/38925-Watts

The laws of war and public opinion : an experimental study

Adam S. Chilton. - [Chicago] : The University of Chicago, May 2014. - 20 p. - Cote 345.22/247 (Br.)

Research examining whether the laws of war change state behavior has produced conflicting results, and limitations of observational studies have stalled progress on the topic. I have conducted a survey experiment to bring new evidence to the debate. I directly test whether a mechanism hypothesized to drive compliance with international law — public opinion — creates pressure to comply with the laws of war. The results provide qualified support to research suggesting that democracies may comply with the laws of war when there is the expectation of reciprocity, and demonstrate the potential of using experimental methods to study the laws of war.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2439428

The legal aspects of military ground robots

by Ronan Doaré. - In: Robots on the battlefield : contemporary issues and implications for the future. - [Fort Leavenworth] : Combat Studies Institute Press, 2014. - p. 73-88. - Cote 355/1039

Should new legal models be sought, such as liability for loss or harm caused by objects in one's care (fait des choses), properly suited to encompassing the specific missions and risks inherent to the deployment of robots? Or, conversely, should we content ourselves with applying existing legal provisions by taking the view that the use of robots does not alter the question of the division of liability in relation to the use of force and does not call for any major changes to the fundamentals of the various parties' liabilities if robots are deemed to be equipment? For now, it must be admitted that "unlike air forces which are equipped with attack drones, ground forces remain reluctant to deploy robots with attack capabilities. Control over fire on the ground remains the sole preserve of humans with no technological interface." However, developments are expected which might radically alter the application of certain provisions, and the provisions of international humanitarian law (IHL) in particular. Taking an interest in the legal aspects to military robotics makes it possible to both understand the legal framework of robot deployment and anticipate potential developments.

http://usacac.army.mil/CAC2/cgsc/carl/download/csipubs/FrenchRobots.pdf#page=110

Legal asymmetries in asymmetric war

Ryder Mackeown. In: Review of international studies 2014, p. 1-22. - Cote 345.2/961 (Br.)

Standard conceptions of the relationship between international law and war in International Relations (IR) mostly oscillate between the sceptical view that law is mostly irrelevant in times of conflict, and the optimistic view that law is a meaningful moral standard that effectively constrains violence. Modern asymmetric conflicts between liberal democratic states and non-state actors such as the Taliban, al-Qaeda, or Hamas challenge these conceptions, however, as they are at once increasingly legal and extremely violent. Drawing inspiration from IR and International Law (IL) scholarship from multiple theoretical paradigms, this article examines the legal asymmetries before, during, and after asymmetric conflict. Noting that law is at once a useful tool and a strong normative force, it argues that a good understanding of legal asymmetries can supplement existing theories of asymmetric war, continue the dissolution of false dichotomies and open up interesting avenues of research in IR, and help both scholars and policymakers understand how international law influences modern asymmetric conflict against non-state actors.

https://ext.icrc.org/library/docs/ArticlesPDF/39079.pdf

Methods and means of cyber warfare

William H. Boothby. In: International law studies Vol. 89, 2013, p. 387-405

Central to the conduct of hostilities in an armed conflict are the tools and techniques with which the fight is undertaken. In non-cyber warfare, the tools, that is, the missiles, bombs, rifles, bayonets, mines, bullets and other weapons and associated equipment, are employed in ways that differ according to the military purpose that it is being sought after. These twin ideas of “military tools” and of the ways in which they are employed can be applied equally to cyber warfare. It follows that we should consider how the law that regulates, respectively, the tools or means of warfare and the ways or methods whereby those tools are used should properly be applied in the cyber context.

http://tinyurl.com/38863-Boothby

Narrowing the international law divide : the drone debate matures

Michael N. Schmitt. In: The Yale journal of international law online Vol. 39, Spring 2014, p. 1-14. - Cote 344/635 (Br.)

This article examines four reports on drone operations released in October 2013: 1) The Heyns UN Special Rapporteur report; 2) the Emmerson UN Special Rapporteur report; 3) the Human Rights Watch report; and 4) the Amnesty International report. It concludes that although the author does not necessarily agree with all conclusions reached in the four reports, they nevertheless represent a sea change in the nature of reports and commentary on drone operations. In particular, the four reports adopt the traditional approach to analyzing attacks under international law, including international humanitarian law and human rights law.

http://tinyurl.com/39078-Schmitt

Networks in non-international armed conflicts : crossing borders and defining "organized armed group"

Peter Margulies. In: International law studies Vol. 89, 2013, p. 54-76

The author examines the definition of organized armed groups (OAGs) under the law of armed conflict and examines how that definition relates to Al Qaeda and the ability for States to use force against them. Additional Protocol II to the Geneva Convention defines OAGs narrowly to include groups that control part of a State's territory. The author argues for a broader interpretation of OAGs and as an example points to case law from the International Criminal Tribunal for the former Yugoslavia and the Inter-American Commission on Human Rights. A broader definition would allow States to target individuals performing a continuous combat function, as opposed to IHLR's narrower, concrete imminent threat to the life of an individual requirement. A broader definition would also allow OAG members to be prosecuted by international tribunals rather than under municipal law. The author argues that Al Qaeda has sufficient organizational structure to be considered an OAG due to: the existence of bureaucracy, discipline mechanisms, monitoring and documentation, and the ability to assess performance. Furthermore, Al Qaeda has synergistic relationships with, and strategic influence over, other regional groups, including al Shabab and Al Qaeda in the Arabian Peninsula. Al Qaeda's OAG status is sufficient to justify the targeting of these affiliate groups. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/38351-Margulies

A new dawn in the nuclear weapons debate : a role for Africa ?

Sarah Swart. In: African yearbook on international humanitarian law 2013, p. 196-218

The question this article attempts to answer is what role the African continent should and could play in the call for an international treaty banning nuclear weapons, and how interested Africa really is in playing such a role. The continent has been described as surprisingly disinterested when it comes to the issue, and this article aims to assess both the implications and likelihood of Africa's future involvement.

New frontiers in the laws of war : international humanitarian law transparency

Lesley Wexler. In: Journal of transnational law and policy Vol. 23, 2013-2014, p. 93-117. - Cote 345.2/960 (Br.)

This article identifies the demand for public transparency as a new frontier in international humanitarian law (IHL). When new conflicts occur, they expose the limitations of the IHL regime and often spur major reform efforts. It suggests that the growing movement for greater public access to information is just as significant as proposals for substantive IHL changes, calls for enhanced accountability, and suggestions for better training. Its advocates contend that information is a necessary precondition to intelligent public debate over IHL reform and assessments of IHL compliance. Demands for enhanced public transparency span the range of IHL activities: the classification of conflicts, the sorting of combatants and civilians, the numbers of civilian casualties, the deployment of unlawful weapons, the conditions of detention, the use of coercive interrogation, its facilitation via extraordinary rendition, and the punishment for unlawful activities.

New frontiers in the laws of war : proportionate defense

Jeff McMahan. In: Journal of transnational law and policy Vol. 23, 2013-2014, p. 1-36. - Cote 345.25/307 (Br.)

The purpose of this essay is to explore some of the hitherto unappreciated complexities in the idea of proportionality. It explains how a requirement of proportionality differs from a requirement of necessity, distinguish among various types of proportionality, and examine the ways in which proportionality in

defense differs from proportionality in punishment. It 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, it 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.

New frontiers in the laws of war : some other mens'rea ? : the nature of command responsibility in the Rome statue

Joshua L. Root. In: Journal of transnational law and policy Vol. 23, 2013-2014, p. 119-156. - Cote 344/627 (Br.)

The Rome Statute of the International Criminal Court provides for Command Responsibility. The provision addressing this is ambiguous and raises a number of interpretive issues. Command responsibility can either be understood as a mode of liability--a way of holding commanders vicariously responsible for the acts of their subordinates, or it can be understood as a separate, distinct crime based on the commander's dereliction of his supervisory duties. The Rome Statute is not clear on the matter and points in both directions. In recent years, the mode of liability approach has come under increasing scrutiny by academics and by judges, particularly at the ICTY. This is rightly so, because the mode of liability approach offends basic notions of justice and accountability for personal responsibility. The separate crime theory conversely, serves to punish commanders for their omissions and comports with modern notions of due process and fundamental fairness. A mode of liability approach is particularly problematic in the context of specific intent crimes, like genocide, because the Rome Statute only requires that a military superior be negligent to be punishable under command responsibility. If command responsibility is a distinct crime, there is no conflict here; however, if command responsibility is a mode of liability, it effectively nullifies the element of genocidal intent, the hallmark of the "crime of crimes." This dissertation explores some of the interpretive issues the Court must address in order to construe command responsibility in the Rome Statute as a distinct crime. The conclusion here is that there is sufficient foundation in the Rome Statute to construe command responsibility as a separate, distinct crime, and still maintain the Court's jurisdiction over that crime.

New frontiers in the laws of war : the UN Charter, human rights law, and contingent pacifism

Larry May. In: Journal of transnational law and policy Vol. 23, 2013-2014, p. 37-67. - Cote 345/661 (Br.)

This paper argues that new developments in both the jus ad bellum law of the use of force, and the jus in bello law of armed conflict, have moved international law quite close to the position of contingent pacifism. The UN Charter was meant to eliminate recourse of war as we had known it. And this continues to be the way the Charter is viewed today as a source of jus ad bellum law. In addition, there is a movement that sees that war cannot be conducted jus in bello, as we have, and still have respect for human rights. International humanitarian law has in the past largely followed the Just War tradition in regarding some wars as just even though war involves the intentional killing of humans. But that is changing with the human rights revolution that is sweeping across international law.

Non-state actors and law of armed conflict revisited : enforcing international law through domestic engagement

Anton O. Petrov. In: Journal of conflict and security law Vol. 19, no. 2, Summer 2014, p. 279-316

Compliance of non-State actors (NSA) constitutes a major problem of the law of armed conflict (LOAC). The reasons lie in the very structure of the law applying in non-international armed conflicts (NIAC). NSA feel disadvantaged and often do not recognize these State-made rules. A promising step is to engage NSA in some form of norm-setting. This can address the deficits of the current law of NIAC by creating a sense of ownership among NSA, and leading to a better-suited legal regime. It has been suggested to conduct this on an international level, and to grant NSA international law-making powers. This article points to significant potential downsides of such an approach. Instead, it argues, the same—or even better—results can be achieved by keeping the engagement on the domestic level and focusing on ad hoc regulation. From the outset, international law-making powers of NSA face major doctrinal difficulties. But also for practical reasons, ad hoc instruments are better suited to ensure a sense of ownership among NSA and to achieve tailored results for the specific conflict. Such domestic processes are also more sensitive to State concerns and interests making their participation more likely which, in turn, increases chances of successful implementation of an effective legal regime. Domestic and international approaches should not be seen as opposing, as they can often complement one another. This article seeks to contribute to the on-going discourse by highlighting some currently neglected aspects.

http://jcsl.oxfordjournals.org/content/19/2/279.full.pdf

Non-state armed groups and technology : the humanitarian tragedy at our doorstep ?

Dave Wallace and Shane Reeves. In: The University of Miami national security and armed conflict law review Vol. 3, 2013, p. 26-45. - Cote 345.29/213 (Br.)

Technological advances are altering the contemporary asymmetric conflicts between non-state armed groups and state actors. This article discusses the humanitarian consequences of these changing conflicts by first illustrating the dangers posed by non-state armed groups gaining access to advanced technologies. A subsequent examination of the increasing ability of non-state armed groups to use new technologies, such as cyber operations, to mitigate state actor advantages and the resultant risks to civilian populations follows. The article concludes that the humanitarian challenges presented by this growing intimacy between non-state armed groups and technology, whether through a potentially devastating attack or by the dramatic erosion to the principle of distinction, are immense and cannot be ignored.

http://tinyurl.com/38888-Wallace-Reeves

Organizing for cyberspace operations : selected issues

Paul Walker. In: International law studies Vol. 89, 2013, p. 341-361

As more and more states create cyber operations units, it is appropriate to examine the international law implications for how cyber operations units should be organized to conduct operations, given the unique nature of cyberspace as an operating domain. This article examines, through the prism of U.S. Department of Defense practices, three areas of the law of armed conflict with implications for the organization and execution of cyberspace operations. First, the issue of reviewing cyberspace weapons for compliance with the laws of armed conflict is examined by comparing and contrasting the practices of the services that comprise the United States armed forces. Second, the article addresses issues raised by the requirement to take precautions against the effects of attacks, specifically, the feasibility of clearly separating military objects and objectives from civilian objects in cyberspace. Finally, the article extends the discussion of precautions against the effect of cyber attacks to a State's conduct of its own cyber attacks, examining principles implicit in the interaction between a number of customary rules within the laws of armed conflict to arrive at conclusions as to how States should organize and prepare for conducting cyber attacks.

http://tinyurl.com/38860-Walker

Private security contractors and neutral relief workers : an unlikely marriage ?

Shannon Bosch. In: African yearbook on international humanitarian law 2013, p. 163-195

This article seeks to ascertain whether the use of private security companies (PSC) - who in recent armed conflicts have been hired by relief workers - automatically undermines the neutrality of a relief worker's actions and results in the revocation of their IHL mandate to provide humanitarian aid. I then asks what legal limitations are placed upon the activities of PSCs who are hired by relief workers, so that they do not through their direct participation in hostilities make themselves legitimate military targets, and by extension expose the relief workers to the risk of being injured as collateral damage. At the heart of the issue is the need to assess to what extent the neutral status of relief workers is or may be compromised by the presence of PSCs. In other words, might a legitimate relief worker's actions amount to direct participation in hostilities in circumstances where his or her organisation has engaged the services of a PSC ?

Proportionality in international law

Michael Newton, Larry May. - Oxford [etc.] : Oxford University Press, 2014. - 339 p. - Cote 345.25/303

Proportionality in International Law critically assesses the law of proportionality in normative terms combining abstract philosophical and legal analysis with highly emotive contemporary combat cases. The principle of proportionality permits actions that are logically linked to the intended goal, and thus defines the permissible boundaries for the initiation and conduct of modern wars. The case studies discussed in this book are predominantly from the perspective of those who make decisions in the midst of armed conflict, bringing analytic rigor to the debates as well as sensitivity to facts on the ground. The authors analyze modern usages of proportionality across a wide range of contexts enabling a more complete comprehension of the values that it preserves. This book contrasts the applications of proportionality in both jus ad bellum (the law and morality of resort to force) and within jus in bello (the doctrines applicable for using force in the midst of conflicts). Proportionality in International Law provides the reader with a unique interdisciplinary approach, offering practitioners and policymakers alike greater clarity over how proportionality should be understood in theory and in practice.

Prosecution of rape as a war crime

written by Vivienne O'Connor. - [S.l.] : INPROL, July 2012. - 13 p. - Cote 344/98 (Br.)

This research memo outlines some options to address the issue of rape committed during armed conflict. The strategies outlined are diverse and range from implementing new legislation to criminalize rape as a war crime, to others which seek to ensure prosecution under the guise of another crime or ground of criminal liability.

http://www.inprol.org/publications/prosecution-of-rape-as-a-war-crime

Protection of civilians during armed conflict in islamic law

Walusimbi Abdul Hafiz. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 135-156. - Cote 345.2/962 (Br.)

As nations strive to ensure precautionary measures against terrorist activities, some Muslim clerics have come out to defend indiscriminate attacks as a legitimate means against forces that are at war with Muslim states. This has led to a misconception of the Islamic standpoint on protection of civilians during an armed conflict. Peaceful co-existence is the ideal situation under Islamic domestic and international relations. War in Islam is described as a burden whose legality is only as a last resort undertaken as a necessity, and whose pursuance must incorporate mandatory measures, before, during and after armed conflict to protect non-combatants from the ruins of war. This article presents the concept of Islamic humanitarian rules with their related provisions of the International Humanitarian Law. It explains the protection of civilians under Islamic law, and refutes the justifications for indiscriminate attack by suicide attacks. It finally ends with recommendations towards a more practical than theoretical emphasis on protection of civilians during armed conflict as understood under Islam.

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Reconstructing the civilian/combatant divide : a fresh look at targeting in non-international armed conflict

Monika Hlavkova. In: Journal of conflict and security law Vol. 19, no. 2, Summer 2014, p. 251-278

The central role now assumed by non-state actors presents new challenges and modifies the classical state-centred wartime environment. 'The new conflicts are driven across state borders and represent a true challenge in terms of regulating the behaviours of both transnational non-state armed groups and the corresponding territorial and extraterritorial response of states.' Transnational armed conflicts can extend beyond time and space and clear-cut delineations are absent. The article begins by setting out the definition of non-international armed conflict. It then looks at how we can make sense of the targeting rules on such complex battlefields and discuss the personal and geographical scope of the rules and attempt to give answers to some outstanding questions. In particular, whether there are any geographical limitations (express or implied) to the rules on targeting or whether combatant status follows the individual anywhere beyond the conflict zone. It is one of the most controversial debates in the legal community at the moment, although often addressed only superficially as part of other ‘big topics’ such as direct participation in hostilities or targeted killings.

http://jcsl.oxfordjournals.org/content/19/2/251.full.pdf

Regulating war in the shadow of law : toward a re-articulation of ROE

Kristin Bergtora Sandvik. In: Journal of military ethics Vol. 13, no. 2, July 2014, p. 118-136

The experiences of multinational engagements in Kosovo in the late 1990s, and then more recently Afghanistan from 2001 and Iraq from 2003, have led to a political debate about the linkage between legality and legitimacy. At the heart of contemporary political and academic discourses about war are questions about the scope and content of the law of armed conflict. Considerably less attention has been given to another mode of regulating warfare, namely Rules of Engagement (ROE), despite their operational significance. This article seeks to begin to bridge this knowledge gap by examining ROE as a means to achieving greater legal accountability for the use of force against civilians. To that end, the article aims to do two things: first, to use examples from the US and the multinational context to develop a typology of the various issues that might affect ROE adversely in a legal accountability perspective, either as a background context or through the deployment and use of ROE itself; and second, to look at ways of rearticulating ROE, setting them on a path toward a more standardized and judicialized form of accountability.

http://www.tandfonline.com/doi/pdf/10.1080/15027570.2014.949476

Report of the ICRC expert meeting on "Autonomous weapon systems : technical, military, legal and humanitarian aspects", 26-28 March 2014, Geneva

ICRC. - [Geneva] : ICRC, May 2014. - 16 p. - Cote 341.67/39 (Br.)

The aim of the meeting was to better understand the issues raised by autonomous weapon systems and to share perspectives among government representatives, independent experts and the ICRC. It brought together 21 States and 13 independent experts, including roboticists, jurists, ethicists, and representatives from the United Nations and non-governmental organisations. Some of the key points made by speakers and participants at the meeting are provided by this report although they do not necessarily reflect a convergence of views.

http://tinyurl.com/38841-ICRC

The resonance of christian political conceptions within international humanitarian law

D. Brian Dennison. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 157-172. - Cote 345.2/962 (Br.)

This paper presents conceptions from the Christian tradition that have special resonance modern International Humanitarian Law. The object of this paper supplies a lens that enables readers to detect the formative influence of unique Christian concepts. The conceptions from the Christian tradition presented include the Augustinian perspective on mortal and eternal life, the conception of a fallen world contrasted with a utopian vision, love as a motivation for peace, an expansive view of human community, the concept of role appropriate morality and the significance of outward signs and symbolism in the context of armed conflict.

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The responsibility to protect and common article 1 of the 1949 Geneva Conventions and obligations of third states

Hanna Brollowski. - In: Responsibility to protect : from principle to practice. - Amsterdam : Amsterdam University Press, 2012. - p. 93-110. - Cote 345.22/248 (Br.)

Much of the existing opposition to Responsibility to Protect (RtoP), seems to be based on the strand of thought that sovereignty signifies the unimpaired capacity to make authoritative decisions with regard to the population and territory of the State. These States have protested against a right for third States to interfere within their sovereign matters. This chapter proposes that even if one were to subscribe to such notion of sovereignty, it is clear that States have voluntarily surrendered parts their otherwise unlimited power by signing certain treaties, thereby agreeing to be bound by their specific provisions and international law in general. It is crucial to focus on this aspect to counteract non-constructive, politically or morally motivated trends to the likes of RtoP, which potentially undermine existing legal tools. This becomes even more crucial in the fight against gross human rights violations such as those covered by the very concept, namely crimes against humanity, war crimes, genocide and ethnic cleansing. When contemplating the available legal tools covering these crimes, the four 1949 Geneva Conventions (GCI-IV) stand out. They are considered the cornerstones of international humanitarian law (IHL) and codify the most important rules applicable during international and national armed conflicts. In particular their common Article I offers some interesting prospects for a system of internationally shared responsibility to address third State violations of GCI-IV, including scenarios covered by the 'RtoP' concept.

A return to coercion : international law and new weapon technologies

Jeremy Rabkin, John Yoo. In: Hofstra law review Vol. 42, issue 4, Summer 2014, p. 1187-1226. - Cote 345.25/308 (Br.)

In recent years, the U.S. has threatened air strikes against Syria and insisted on the possibility of air strikes against Iran, in both cases to deter development of weapons of mass destruction. Such threats represent a return to the idea that international law allows states to impose punitive measures by force. Most academic specialists claim that the UN Charter only authorizes force in immediate self-defense. Many commentators embrace the related doctrine that lawful force can only be exercised against the opposing military force. But there remains more logic in the older view, that international law authorizes force for a wider variety of challenges and against a wider range of legitimate targets. Since there is no global protective service, nations must use force more broadly in self-defense and greater powers must sometimes use force to resist the spread of weapons of mass destruction, to disrupt terror networks, to stop aggressive designs before they provoke all out war. There are good reasons to insist on restraints that limit loss of life among civilians, but civilian property does not have the same claims. But with today's technologies, cyber attacks

or drone strikes can focus on carefully chosen civilian targets. That approach can help resolve disputes between nations with less overall destruction -- the ultimate purpose of the laws of war.

https://ext.icrc.org/library/docs/ArticlesPDF/39097.pdf

The right to life in light of the integration between the norms of international humanitarian law and human rights law

Vera Rusinova. - [Moscow] : National Research University Higher School of Economics, 2014. - 19 p. - Cote 345.1/108 (Br.)

This paper casts doubts on the existence of a contradiction between the norms of international humanitarian law and international human rights law in the sphere of the protection of the right to life and concludes that the wording and systematic interpretation of international treaties, and the subsequent application allowing the inference of an integrated approach to the determination of the negative and positive obligations of states in respect of the right to life.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2435833

The road ahead : gaps, leaks and drips

Michael J. Glennon. In: International law studies Vol. 89, 2013, p. 362-386

Neither international law generally nor the law of armed conflict in particular is complete. Each contains apparent gaps, which are filled by the “freedom principle” (which permits states to act absent an established prohibition). Whether a specific gaps exists must be determined case-by-case. It is unlikely that, if gaps do exist in the rules governing cyber-conflict, those gaps will soon be filled; the conditions necessary for the creation of effective international rules regulating cyber-conflict do not currently obtain. Among the most important of those conditions is attributability, which makes possible the threat of retaliation and deterrence. While the “attribution problem” remains a serious impediment to the formulation of effective international cyber-conflict rules, this barrier is mitigated by the possibility of leaks of the sort that occurred with respect to Stuxnet. The most likely future scenario is still, however, the continuation of “drip-drip” cyber-attacks that cause considerable damage.

http://tinyurl.com/38862-Glennon

The role of national courts in applying international humanitarian law

Sharon Weill. - Oxford : Oxford University Press, 2014. - p. 221. - Cote 345.22/243

Evaluates how domestic courts have interpreted and applied international humanitarian law, and shows how their interpretations can differ. Establishes a methodology to critically assess the actions of domestic courts on a scale from acting as apologists for the use of force to actively promoting and enhancing international humanitarian law. Provides a detailed analysis of several key jurisdictions as case studies: the UK, US, Canada, Italy, Israel, and Serbia, and investigates how their rulings demonstrate the approach taken by each court

The role of necessity in international humanitarian and human rights law

Lawrence Hill-Cawthorne. In: Israel law review Vol. 47, issue 2, July 2014, p. 225-251. - Cote 345.25/304 (Br.)

The nature of armed conflict has changed dramatically in recent decades. In particular, it is increasingly the case that hostilities now occur alongside ‘everyday’ situations. This has led to a pressing need to determine when a ‘conduct of hostilities’ model (governed by international humanitarian law – IHL) applies and when a ‘law enforcement’ model (governed by international human rights law – IHRL) applies. This, in turn, raises the question of whether these two legal regimes are incompatible or whether they might be applied in parallel. It is on this question that the current article focuses, examining it at the level of principle. Whilst most accounts of the principles underlying these two areas of law focus on humanitarian considerations, few have compared the role played by necessity in each. This article seeks to address this omission. It demonstrates that considerations of necessity play a prominent role in both IHL and IHRL, albeit with differing consequences. It then applies this necessity-based analysis to suggest a principled basis for rationalising the relationship between IHL and IHRL, demonstrating how this approach would operate in practice. It is shown that, by emphasising the role of necessity in IHL and IHRL, an approach can be adopted that reconciles the two in a manner that is sympathetic to their object and purpose.

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The role of the international conference of the Great Lakes Region (ICGLR) in the implementation of international humanitarian law (IHL) : a case of Uganda

Nakitto Saidat. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 71-100. - Cote 345.2/962 (Br.)

This paper analyses selected Protocols and Programmes of Actions that relate to the implementation of IHL in the Great Lakes Region and Uganda is selected as a case study for analyzing the extent to which its government has implemented IHL under the international conference of the Great Lakes Region (ICGLR) framework. This is largely because Uganda is the pacesetter for other member states of the GLR having projected itself as taking a progressive stance in the implementation of IHL as discussed in this paper. The paper is composed of three parts: Part I gives an overview of the armed conflicts in the GLR showing their recurrent nature and resultant violations of IHL. Part II briefly discusses the establishment and operation of the ICGLR together with its legal framework relating to the implementation of IHL. Other regional instruments executed before establishing ICGLR are also discussed. Part III analyses the measures undertaken by Uganda in the implementation of IHL under this regional framework.

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The role of the International Court of Justice in the enforcement of the obligation of States to Investigate and prosecute serious crimes at the national Level

Thordis Ingadottir. In: Israel law review Vol. 47, issue 2, July 2014, p. 285-302. - Cote 345.22/245 (Br.)

States have undertaken an international obligation to investigate and prosecute individuals for serious human rights violations and grave breaches of international humanitarian law. However, compliance with that obligation is poor and prosecutions at the national level remain few. The mechanism for enforcement of that obligation is also limited. This article explores the way in which the International Court of Justice (ICJ) can play, and has played, a role in this respect. The jurisprudence of the Court is analysed with regard to three matters: (i) the obligation of states to investigate and prosecute serious crimes at the national level; (ii) national criminal jurisdiction with regard to prosecution of serious crimes, as well as immunities from that jurisdiction; and (iii) the obligation of states to cooperate in criminal matters with other jurisdictions. The Court has adjudicated on some key issues relating to national prosecutions. Some of its findings have, without doubt, enhanced the enforcement of prosecution at the national level, while others have undermined it. Recent cases before the ICJ show an increased willingness by states to use the Court as an avenue for enforcement and, at the same time, the Court has proved more willing to utilise its powers.

https://ext.icrc.org/library/docs/ArticlesPDF/38829.pdf

Seeking international criminal justice in Syria

Annika Jones. In: International law studies Vol. 89, 2013, p. 802-816

In light of the many and serious offences that have taken place during recent hostilities in Syria, the author concludes that prosecuting war crimes and crimes against humanity will require the use of both domestic and international courts. She contends that Syria's domestic courts have potential for greater impact within the Syrian population but could suffer from a lack of capacity and allegations of bias. The International Criminal Court (ICC) is suited for prosecuting high-profile perpetrators who may be more politically charged. However, since Syria is not a party to the Rome Statute there would be difficulties in bringing a Syrian case to the ICC. A UN Security Council referral is one solution, but some permanent members have expressed a lack of support for such a referral. An ad hoc international criminal justice tribunal, like that established for Yugoslavia or Rwanda, is a less attractive option than using the ICC, since it would still require a UN Security Council agreement, and would be less economically efficient. Finally, since war crimes and crimes against humanity are subject to universal jurisdiction, third-party State courts, could act, but they would likely encounter evidentiary difficulties. The author concludes that not only do both international and domestic courts seem necessary to ensure justice, but an involvement of international courts would also likely benefit Syria's domestic courts through the exchange of experience. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/38356-Jones

The seizure of Abu Anas Al-Libi : an international law assessment

Gordon Modarai... [et al.]. In: International law studies Vol. 89, 2013, p. 817-838

The author analyzes the extraterritorial capture of Abu Anas Al-Libi by U.S. forces in Libya, in order to determine the international law issues that arise in such circumstances. The author first addresses the issue of border crossing and establishes that international law requires the consent of the territorial State, or absent that, a self-defence claim on the part of the actor State. In Al-Libi's case, the conflicting statements of U.S. and Libyan governments make it impossible to determine whether the U.S. had Libyan consent to carry out its operation. The author then explains that international law requires the actor State to have grounds in law for the physical capture of its target. A capture may be justified by the laws of armed conflict applicable in a non-international armed conflict (NIAC), which the U.S. claimed this was. Alternatively, if there is no NIAC ground, general international laws regulating enforcement of a State's domestic criminal jurisdiction must be the standard of evaluation. Finally, the author analyzes the factors that make a detention lawful both under the laws of armed conflict and human rights law, concluding that Al-Libi's detention in a warship was permissible since neither body of law expressly prohibited detention at sea. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/38357-Modarai

Sexual violence in the course of armed conflict : thinking beyond gender

Mahesh Menon. In: AALCO journal of international law Vol. 2, Issue 2, p. 189-201. - Cote 362.8/215 (Br.)

It is only in the recent years that prosecution and punishment of sexual violence occurring in the course of armed conflicts has received the attention of the international community. While most of this limited attention that was gathered was spent only on violence perpetrated against women, in its later years of evolution, it was acknowledged that the victims of sexual violence are not limited to any particular gender. In the background of the increasing number of reports that indicate the proliferation of sexual violence against men, this article examines the extent to which the current international legal order that penalise sexual violence perpetrated in the course of armed conflicts is neutral as to the gender of the victim. Subsumed in this analysis are the case of men and also those categories of persons who do not wish to identify themselves as belonging to either of the genders.

https://ext.icrc.org/library/docs/ArticlesPDF/38885.pdf

A short historiography of the unmanned aerial vehicle (UAV)

Adebayo Olowo-Ake. In: Uganda's paper series on international humanitarian law Vol. 1, No. 1, August 2013, p. 101-108. - Cote 345.2/962 (Br.)

Today, many states are not just desirous of developing the capacity of their military forces to fight two or more major wars simultaneously, but are also consciously developing platforms, equipment and devices that will limit, if not completely eliminate fatalities among their military personnel. In pursuit of this ambition, they have been committed to developing pilotless aircraft, such as the unmanned aerial vehicle (UAV), otherwise known as the 'drone.' Drone technology has evolved over the years into the armed, pilotless aircraft of today,which is becoming a vital component of the combat theatre and eliminates risk to the life of a human pilot. To obtain a useful understanding of the evolution of drone technology, it is pertinent to examine the philosophy behind the system, the merits and demerits of its use and the implication of its deployment for International Humanitarian Law (IHL).

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Silent partners : private forces, mercenaries, and international humanitarian law in the 21st century

Steven R. Kochheiser. In: The University of Miami national security and armed conflict law review Vol. 2, summer 2012, p. 86-109. - Cote 345.29/212 (Br.)

In response to gritty accounts of firefights involving private forces like Blackwater in Iraq and Afghanistan, many legal scholars have addressed the rising use of private forces - or mercenaries - in the 21st century under international law. Remarkably, only a few have attempted to understand why these forces are so objectionable. This is not a new problem. Historically, attempts to control private forces by bringing them under international law have been utterly ineffective, such as Article 47 of Additional Protocol II to the Geneva Conventions. In Silent Partners, the author proposes utilizing the norm against mercenary use as a theoretical framework to understand at what point private forces become objectionable and then draft a provision of international humanitarian law to effectively control their use. Such a provision will encourage

greater compliance with international law by these forces and reduce their negative externalities by ensuring legitimate control and attachment to a legitimate cause.

http://tinyurl.com/38886-Kochheiser

Some thoughts on the relationship between international humanitarian law and international human rights law : a plea for mutual respect and a common sense approach

Terry D. Gill. - In: The realisation of human rights : when theory meets practice : studies in honour of Leo Zwaak. - Cambridge [etc.] : Intersentia, March 2014. - p. 335-350. - Cote 345.1/102 (Br.)

The basic purpose of this chapter is to set out a number of observations and criteria which could assist in determining how international humanitarian law (IHL) and international human rights law (IHRL) interact, and how they could be applied in practice with a view to promoting a fruitful interaction between IHL and IHRL, promoting protection of victims and vulnerable groups in armed conflict and in other military operations outside a situation of armed conflict, while at the same time taking account of the realities of armed conflict and of military considerations. The essay first sets out the basic object and purpose of both sub-disciplines and provides some observations concerning the basic terms of their applicability. It then briefly discusses the main approaches to determining their mutual relationship and interaction, including, in particular, the role of the principle of lex specialis derogat legi generali (the lex specialis principle), both as a means of interpretation and as an instrument for resolving conflicts between legal rules and regimes when they occur. It then applies the above to two situations and normative paradigms: the conduct of hostilities, and the maintenance of public order and law enforcement.

Special operations forces and responsibility for surrogates' war crimes

Gregory Raymond Bart. In: Harvard national security journal Vol. 5, issue 2, 2014, p. 513-535. - Cote 345.29/216 (Br.)

This Article considers this specific issue: whether special operations forces (SOF) teams have duties under the law of war—as interpreted by war crimes jurisprudence—to investigate and to attempt to prevent war crimes by surrogate forces. It does not address duties imposed by domestic statutes or regulations. Also, given the breadth of this topic, the Article focuses on the duties of SOF teams in the field—their tactical actions—and not those of higher, strategic, or policy-level decisionmakers. For example, consider the following scenario that might arise during an unconventional warfare mission. A SOF team deploys into a foreign country in either a permissive or non-permissive environment with the mission to accomplish U.S. military objectives through, with, or by surrogates—to train, equip, advise and assist, and even lead, in varying degrees, surrogate forces in combat. Before deploying, the team knows of general rumors that some of the surrogate groups may have committed acts that would constitute serious violations of the law of war. While deployed and providing military assistance, the team hears specific rumors that the surrogates with whom they are working might be committing war crimes. No SOF members directly participate in any war crimes. Within the context of law of war jurisprudence, what are SOF's responsibilities with respect to suspected or confirmed war crimes being committed by surrogate forces?

http://tinyurl.com/38913-Bart

The Syrian civil war and the Achilles' heel of the law of non-international armed conflict

Tom Ruys. In: Stanford journal of international law Vol. 50, issue 2, Summer 2014, p. 247-280. - Cote 345.27/139 (Br.)

The insistence of the Assad regime on treating members of non-state armed groups as terrorists that may receive grave sentences, and even the death penalty, upon capture may go some way in explaining the endemic disregard for the laws of war by all parties in the Syrian civil war. It is broadly recognized that the threat of the death penalty for mere participation in hostilities greatly reduces the incentives for rebel groups to comply with the law of armed conflict. The central thesis of the present contribution is that, under certain conditions, non-state armed groups must be granted combatant-like status without this being conditioned on the ad hoc consent of the de jure government. Clearly this position raises a host of questions, several of which were also raised during the 1949 Geneva Conference. If they were ultimately left unanswered at that time, the excesses of recent conflicts, such as that of Syria, stand as proof that the time is ripe to review.

The Syrian crisis and the principle of non-refoulement

Mike Sanderson. In: International law studies Vol. 89, 2013, p. 776-801

The author advocates for a comprehensive right of non-refoulement for Syrians escaping from a violent civil war to surrounding states. Non-refoulement is the right not to be forcibly returned to a territory where one's freedom is threatened. This right is endorsed by the 1951 Refugee Convention and the 1967 Protocol to the Convention, which are the two basic legal instruments for the protection of refugees. Unfortunately, only two of the five States currently receiving Syrian refugees are parties to these instruments and neither has implemented them comprehensively. However, the author explains that the available protection regime can be enhanced by virtue of the fact that non-refoulement is guaranteed by the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT). All five receiving States are parties to both conventions. The author also argues that the right of non-refoulement has attained the status of preemptory public international law and is a supervening international norm that must be adhered to by all receiving States as well as any others choosing to involve themselves in the Syrian conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/38355-Sanderson

Technological asymmetry and the law of armed conflict : the intersection of law and politics in the creation of differentiated state obligations

Michele Krech. - [S.l.] : [s.n.], [2014]. - 11 p. - Cote 345.25/306 (Br.)

This paper asserts that the law of armed conflict (LOAC), despite its theoretical equal application, actually holds technologically superior militaries (TSMs) to higher standards, and that such differentiated and capacity-based obligations are further buttressed by the politics of war. The law serves as a baseline by which states' actions are publicly scrutinized, resulting in improved humanitarian protection overall. In order to illustrate that the existing legal framework assigns differentiated responsibilities, Part II outlines the relevant provisions of LOAC, particularly the proportionality and precautionary principles. Part III then highlights certain political factors which reinforce differentiated obligations, including the impacts of non-governmental organization (NGO) and media monitoring, 'lawfare', and public perceptions of state behaviour. Both these sections also note how differentiated obligations affect humanitarian protection. Part IV identifes certain limits to the differential obligations supported by the current interplay of law and politics, and provides examples of commitments beyond this limit. Finally, Part V provides some general conclusions which underscore LOAC's modern relevance to technologically-asymmetrical warfare and humanitarian protection.

http://tinyurl.com/38893-Krech

Territorial sovereignty and neutrality in cyberspace

Wolff Heintschel von Heinegg. In: International law studies Vol. 89, 2013, p. 123-156

One of the most difficult issues in cyber conflict is the application of territorial sovereignty and other geographic principles to an activity that defies the traditional notions of borders. The structure of the internet and the protocols by which it operates, including the inability to direct the path over which internet traffic travels, raise questions about the application of law of armed conflict provisions, such as the doctrine of neutrality, to cyber conflict. This paper analyzes the doctrine of neutrality in cyber conflict and argues that most provisions are still applicable to international armed conflicts but that some evolution would add clarity in the cyber age.

http://tinyurl.com/38854-Heintschel

Terrorism and international humanitarian law

Ben Saul. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 208-231. - Cote 303.6/228

This chapter focuses on the threshold issue when international humanitarian law (IHL) applies to violence involving terrorism or terrorist groups, in the context of international or non-international armed conflicts. It discusses the particularly complex problem of 'transnational' violence and the geographical and temporal scope of hostilities. It then considers the legal consequences of the classification of conflicts, as regards targeting, detention, substantive criminal liabilities, and criminal trial procedure. Overall the challenge of terrorism has principally impelled a clarification of existing IHL norms but without generating terrorism-specific rules or refashioning IHL's basic norms. Terrorists can be targeted for direct participation in hostilities; administratively detained where they are dangerous; and prosecuted for war crimes. Human rights law applies alongside the lex specialis of IHL to supplement its rules in certain areas, particularly as regards detention in non-international conflict. There is no need for any special status of 'terrorist' in IHL, which would only serve to diminish existing humanitarian protections. The chapter

concludes with observations about the impact of international counter-terrorism law on the effectiveness of IHL, including its balance between military necessity and humanitarian protection.

Terrorism and military trials

Detlev Vagts. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 271-281. - Cote 303.6/228

The geography of military commissions is curious. The most prominent state using military commissions is the United States (US), which is the focus of this chapter. They are also used in various dictatorial and authoritarian regimes around the world. At times military tribunals have been active in Israel, particularly in the occupied territories. Military courts were also notoriously used by various Latin American military governments in suppressing domestic opponents. While England also established special courts for Northern Ireland (the Diplock courts) in response to (peacetime) IRA terrorism from 1973 to 2007, these courts were staffed with civilian judges and were designed only to ensure that jurors were not endangered. In general, governments are tempted to use military courts because of their perceived procedural advantages: governments may be able to exercise a greater degree of executive control over the judicial process, from the appointment of judges to the rules of procedure and evidence. However, as this chapter will show, over time both international law and domestic constitutional guarantees have increasingly imposed significant constraints on a state's freedom of action to design and utilize military trials of suspected terrorists, including because of human rights-based concerns. This chapter begins with a survey of the restrictions on military commissions imposed by international treaties and, in the case of the US, by its Constitution.

Terrorism and targeted killings under international law

Emily Crawford. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 250-270. - Cote 303.6/228

Targeted killing has become part of the conventional military and security strategy of a number of states in their operations against terrorist suspects, with Israel, the US and Russia among the most notable that have openly employed such tactics. Controversy has arisen regarding whether, as the perpetrator states have asserted, such killings should be considered as part of an ongoing 'war' against terrorist organizations, thus judged according to the law on the use of force (jus ad bellum) and the law of armed conflict (jus in bello or international humanitarian law (IHL), or whether the struggle against terrorist groups should be considered within a law enforcement framework, thus engaging international human rights law (IHRL). This chapter examines these issues.

Terrorism and the international law of occupation

David Kretzmer. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 232-249. - Cote 303.6/228

Terrorist acts may be carried out in times of both peace and armed conflict. They may be committed in the sovereign territory of a state or in territory occupied by that state during an armed conflict. If we take the simplest definition of terror – acts of violence against persons not taking an active part in hostilities in an armed conflict in order to spread terror among the population – such acts are already unlawful under all domestic legal systems, as well as under military law which applies in occupied territory. This chapter is concerned not with the application of domestic law or military law to terrorism but with the norms of international law that apply to terrorism in occupied territory. Territory is regarded as occupied when, in the course of an international armed conflict, it falls under the actual authority of a hostile army. Since states may not acquire territory through use of force, the occupying power does not acquire sovereignty over the occupied territory. At the same time, as the main feature of the occupying power's authority is the inability of the legitimate government of the occupied territory to exercise governmental authority there, international law places obligations on the occupying power to fill the void on a temporary basis.

Terrorism, war crimes and the International Criminal Court

Roberta Arnold. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 282-297. - Cote 303.6/228

Over a decade since the adoption of the Rome Statute for an International Criminal Court (ICC) in 1998, this chapter considers whether the jurisprudential developments after the 11 September 2001 terrorist attacks may have paved the way to prosecute acts of terrorism as an international crime within the ICC's jurisdiction. Following the launching of the United States' 'war on terror' against Al Qaeda in response to 9/11, lawyers had to be creative to identify the applicable legal regime and to discern, in particular, whether acts of terrorism may be prosecuted under the international law of armed conflict (LOAC). This chapter first examines the jurisprudence of the International Tribunal for the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) to assess whether, notwithstanding the initial exclusion of a separate

crime of terrorism from the ICC's jurisdiction, there may be new legal arguments that terrorism may be prosecuted as a war crime under Article 8 of the ICC Statute. Part 2 gives an overview of the applicable legal framework and the limits set by the ICC Statute; Part 3 then examines the existing jurisprudence supporting the view that acts of terrorism may be prosecuted as war crimes; and Part 4 draws this chapter's conclusions.

"Thou shall not kill" : the use of lethal force in non-international armed conflicts

David Kretzmer, Aviad Ben-Yehuda and Meirav Furth. In: Israel law review Vol. 47, issue 2, July 2014, p. 191-224. - Cote 345.27/134 (Br.)

The assumption of this article is that when a state is involved in an international armed conflict it may employ lethal force against combatants of the enemy unless they are hors de combat. Hence, even when it would be feasible to do so, it has no duty to apprehend enemy combatants rather than use force against them. Does this same norm apply in non-international armed conflicts occurring in the territory of a single state (internal conflicts)? The writers argue that the answer is in the negative. Despite the attempt in recent years to narrow the differences between the norms that apply in non-international armed conflicts (NIACs) and international armed conflicts (IACs), there are still significant differences between the two types of armed conflict, which justify the application of different norms in this context. Common Article 3 of the Geneva Conventions refers only to humanitarian norms and does not imply that the norms relating to the conduct of hostilities in IACs apply also in NIACs. While customary international law may allow states to use lethal force in a NIAC in the actual conduct of hostilities, there is no basis for assuming that the norm that ostensibly applies in IACs relating to use of such force outside the context of hostilities applies in NIACs too. The jurisprudence of the International Criminal Tribunal for the former Yugoslavia, which is the main source for the arguments on closing the gap between IACs and NIACs, relates only to humanitarian norms and has never addressed extending the permissive IAC norms of the law of armed conflict (LOAC) to NIACs. Finally, in an internal armed conflict the state has a dual capacity: it must respect and ensure the human rights of all persons subject to its jurisdiction, and it is a party in an armed conflict with some of those persons. In such a situation, the only context in which the state may deviate from regular norms of law enforcement is the actual context of hostilities, in which application of such norms is not feasible. In other contexts, its human rights obligations prevail.

https://ext.icrc.org/library/docs/ArticlesPDF/38840.pdf

Training children for armed conflict : where does the law stand ?

Elijah Oluwatoyin Okebukola. In: International criminal law review Vol. 14, issue 3, 2014, p. 588-618

This article considers the question of criminal liability for training child soldiers. None of the legal instruments prohibiting recruitment and use of child soldiers expressly relates to training child soldiers. This raises the question, on the one hand, whether a trainer can be held liable for training as a distinct offence from recruiting or using child soldiers. On the other hand, it raises the question whether a trainer is necessarily liable for recruitment or use of child soldiers. In an attempt to answer these questions, this article highlights the distinct factual and legal differences between recruitment, training and use of child soldiers. This exercise demonstrates that the law is not clear on the criminal liability of a trainer especially if the trainer is not factually involved in recruitment or use of child soldiers. The article concludes that the express clarification of the nature and extent of criminal liability for training child soldiers will improve the legal regimes for the protection of children in armed conflict.

http://booksandjournals.brillonline.com/content/journals/10.1163/15718123-01403003

The United States and international humanitarian law : building it up, then tearing it down

Morris Davis. In: North Carolina journal of international law and commercial regulation Vol. 39, issue 4, summer 2014, p. 983-1028. - Cote 345.2/959 (Br.)

This article examines the development and the objectives of modern international humanitarian law, particularly the principle of distinction intended to limit the effects of war on those not directly involved in the conflict. It looks at actions the United States took after the terrorist attacks on September 11, 2001, that undermine the foundations upon which international humanitarian law rests. It also looks at how these actions weaken the legal and moral authority of the United States and casts doubt upon its claim to be securely bound to the highest standards of conduct in times of war.

http://tinyurl.com/38903-Davis

War crimes in modern warfare

Karl Zemanek. In: Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen = Rivista svizzera di diritto internazionale e europeo = Swiss review of international and european law 2014/2, 24e année, p. 207-240

Modern methods in warfare make it difficult to attribute responsibility for war crimes. The paper examines that in three instances: private military and security companies (PMSCs), lethal autonomous robots (LARs) and computer network attacks (CNAs). With PMSCs the crucial question is whether the hiring contract proves a sufficient link to engage the hiring state's responsibility for the company's misconduct. Since LARs are not operated by a human, the options for assigning individual criminal responsibility are doubtful. CNAs suffer from the as yet unsure technical means to definitely establishing their source. Although CNSs targeting a civilian object are likely war crimes, the technical impossibility of establishing the source prevents the verification of either state or individual responsibility.

Women and private military and security companies : one more piece for the puzzle

Catarina Prata. - In: Gender violence in armed conflicts. - Lisboa : Instituto da Defesa Nacional, 2013. - p.43-60. - Cote 362.8/208

The first part introduces the phenomenon of Private Military and Security Companies (PMSC), to clearly understand what are we talking about when we pronounce the acronym PMSC. The second part addresses two main questions: the relationship that has been observed between PMSC employees and civilian women, on one hand; and between PMSC and women as their workers, on the other. The third part sums up the regulation attempts and clarify the role that gender has played on them. As conclusion, this chapter defends that the time has come to take into consideration the gender perspective and even further, to take gender seriously when we talk about armed conflicts, in general, and PMSC in particular.

http://www.ces.uc.pt/myces/UserFiles/livros/1097_idncaderno_11.pdf#page=44

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October 2014

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