

# BIBLIOGRAPHY

## 1st Quarter 2016

### International Humanitarian Law

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



ICRC



**ICRC**

**International Committee of the Red Cross**  
**Library and Public Archives**  
19, avenue de la Paix  
1202 Geneva  
Tel: +41-22-730-2030  
Email: [library@icrc.org](mailto:library@icrc.org)  
April 2016

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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.library.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](mailto:library@icrc.org)

### **Chronology**

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

### **Contents**

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

### **Sources**

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

### **Disclaimer**

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

## **Subscription and feedback**

Please send your request for subscription or feedback to [library@icrc.org](mailto:library@icrc.org) with the subject heading “IHL bibliography subscription/feedback”.

## I. General issues

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

### **Applicable law : jus ad bellum, jus in bello, and the legacy of the UN Compensation Commission**

Veijo Heiskanen and Nicolas Leroux. - In: War reparations and the UN Compensation Commission : designing compensation after conflict. - Oxford [etc.] : Oxford University Press, 2015. - p. 51-80

### **Boundaries of the battlefield : the geographical scope of the laws of war**

Katja Schöberl. - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 71-89

### **The evolution in the legal protection of victims of armed conflict**

Peter Maurer. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 3-8

### **The handbook of the international law of military operations**

ed. by Terry D. Gill and Dieter Fleck ; in collab. with Nils Melzer... [et al.]. - Oxford : Oxford University Press, 2015. - XLVI, 743 p.

### **History and development of the international law of military operations**

William K. Lietzau and Joseph A. Rutigliano. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 14-34

### **Human rights and international humanitarian law : general issues**

Jann K. Kleffner. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 35-62

### **The Lieber Code and the regulation of civil war in international law**

Dapo Akande and Lawrence Hill Cawthorne. In: Columbia journal of transnational law, Vol. 53, no. 3, 2015, p. 638-651  
<http://jtl.columbia.edu/lieber-series-the-lieber-code-and-the-regulation-of-civil-war-in-international-law/>

### **Moral cognition and the law and ethics of armed conflict**

David Traven. In: International studies review, Vol. 17, issue 4, December 2015, p. 556-587  
<https://library.ext.icrc.org/library/docs/ArticlesPDF/42160.pdf>

### **Some considerations concerning the role of the ius ad bellum in targeting**

Terry D. Gill. - In: Targeting : the challenges of modern warfare. - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 101-119

### **Systemic efficacy : “potentially shattering consequences for international law”**

Robert Kolb. - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 299-320

### **The war report : armed conflict in 2014**

ed. by Annyssa Bellal. - Oxford : Oxford University Press, 2015. - LIII, 757 p.

## II. Types of conflicts

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

### **Air law and military operations**

Michael N. Schmitt. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 354-374

### **Armed with a keyboard : Presidential directive 20, cyber-warfare, and the international laws of war**

Matthew Rinear. In: Capital University law review, Vol. 43, no. 3, Summer 2015, p. 679-720

<http://law.capital.edu/Volume43Issue3/>

### **Boundaries of the battlefield : the geographical scope of the laws of war**

Katja Schöberl. - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 71-89

### **Challenges in applying Article 8 of the Rome Statute**

Tim McCormack. - In: For the sake of present and future generations : essays on international law, crime and justice in honour of Roger S. Clark. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 333-355

<https://library.ext.icrc.org/library/docs/ArticlesPDF/42196.pdf>

### **The characterization of armed conflict in the jurisprudence of the ICC**

Anthony Cullen. - In: The law and practice of the International Criminal Court. - Oxford : Oxford University Press, 2015. - p. 762-777

### **Conceptual distinction and overlaps between law enforcement and the conduct of hostilities**

Nils Melzer and Gloria Gaggioli Gasteyer. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 63-92

### **The development of the law of naval warfare from the nineteenth to the twenty-first century : some select issues**

Wolff Heintschel von Heinegg. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 69-93

### **Drones : a proposal for new policy inclusive of independent judicial oversight**

Milena Sterio. In: Wake Forest journal of law and policy, Vol. 5, no. 2, 2015, p. 469-511

<http://lawpolicyjournal.law.wfu.edu/issues/past-issues/volume-52/>

### **The ethics of insurgency : a brief overview**

Michael L. Gross. In: Journal of military ethics, Vol. 14, no. 3-4, October-December 2015, p. 248-271

<http://dx.doi.org/10.1080/15027570.2015.1110441>

### **From inter-state and symmetric to intra-state and asymmetric : changing methods of warfare and the law of armed conflict in the 100 years since World War One**

Emily Crawford. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 95-118

### **The law of cyber targeting**

Michael N. Schmitt. In: Naval war college review, Vol. 68, no. 2, Spring 2015, p. 11-29  
<https://www.usnwc.edu/Publications/Naval-War-College-Review/2015---Spring.aspx>

### **The law of military operations at sea**

Wolff Heintschel von Heinegg. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 375-421

### **Legal challenges in the provision of humanitarian assistance : the case of non-international armed conflicts**

Emilie E. Kuijt. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 145-166

### **Lethal force and drones : the human rights question**

Gloria Gaggioli. - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 91-115

### **The Lieber Code and the regulation of civil war in international law**

Dapo Akande and Lawrence Hill Cawthorne. In: Columbia journal of transnational law, Vol. 53, no. 3, 2015, p. 638-651  
<http://jtl.columbia.edu/lieber-series-the-lieber-code-and-the-regulation-of-civil-war-in-international-law/>

### **Special agreements as a means of enhancing compliance with IHL in non-international armed conflicts : an inquiry into the governing legal regime**

Ezequiel Heffes and Marcos D. Kotlik. In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 1195-1224  
[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-heffes-kotlik.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-heffes-kotlik.pdf)

### **The war report : armed conflict in 2014**

ed. by Annyssa Bellal. - Oxford : Oxford University Press, 2015. - LIII, 757 p.

### **Who can be killed ? : legal targets in non-international armed conflicts**

Patrycja Grzebyk. - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 49-70

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

(Combatant status, compliance with IHL, etc.)

### **Armed non-state actors in international humanitarian and human rights law : foundation and framework of obligations, and rules on accountability**

Konstantinos Mastorodimos. - Farnham ; Burlington : Ashgate, 2016. - LVIII, 241 p.

### **Behaviour in war : the place of law, moral inquiry and self-identity**

Dale Stephens. In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 751-773  
[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-stephens.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-stephens.pdf)

**Comment : perspectives on courts established by armed opposition groups**

**Dieter Fleck.** - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 181-187

**Comment : persuading armed groups to better respect international humanitarian law**

**Olivier Bangerter.** - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 112-124

**Contemplating the true nature of the notion of "responsibility" in responsible command**

**Geoffrey S. Corn.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 901-917  
[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-corn.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-corn.pdf)

**Converting treaties into tactics on military operations**

**Andrew J. Carswell.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 919-942  
[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-carswell.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-carswell.pdf)

**Courts of armed groups : a tool for inducing higher compliance with international humanitarian law ?**

**Jan Willms.** - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 149-180

**Implementing humanitarian norms through non-State armed groups**

**Sandesh Sivakumaran.** - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 125-146

**Is targeting naked child soldiers a war crime ?**

**Joanna Nicholson.** In: International criminal law review, Vol. 16, issue 1, 2016, p. 134-157  
<http://dx.doi.org/10.1163/15718123-01601006>

**The legitimization strategy of the Taliban's code of conduct : through the one-way mirror**

**Yoshinobu Nagamine.** - Basingstoke ; New York : Palgrave Macmillan, 2015. - XXII, 293 p.

**The role of the military legal advisor**

**A.P.V. Rogers and Darren Stewart.** - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 581-609

**Towards effective military training in international humanitarian law**

**Elizabeth Stubbins Bates.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 795-816  
[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-bates.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-bates.pdf)

## IV. Multinational forces

### **Comment : obligations of States contributing to UN peacekeeping missions under Common Article 1 of the Geneva Conventions**

Matthew Happold. - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 382-398  
<http://ssrn.com/abstract=2255546>

### **Ensuring peacekeepers' respect for international humanitarian law**

Siobhán Wills. - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 351-381

### **International responsibility and military operations**

Boris Kondoch and Marten Zwanenburg. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 559-577

## V. Private entities

N/A

## VI. Protection of persons

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

### **The evolution in the legal protection of victims of armed conflict**

Peter Maurer. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 3-8

### **Humanitarian activities carried out across borders in times of armed conflict in the light of state sovereignty and international humanitarian law**

Keiichiro Okimoto. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 121-143

### **Humanitarian assistance and state sovereignty in international law : towards a comprehensive framework**

Emilie Ellen Kujit. - Cambridge : Intersentia, [2015]. - XIX, 625 p.

### **Is targeting naked child soldiers a war crime ?**

Joanna Nicholson. In: International criminal law review, Vol. 16, issue 1, 2016, p. 134-157  
<http://dx.doi.org/10.1163/15718123-01601006>

### **Legal challenges in the provision of humanitarian assistance : the case of non-international armed conflicts**

Emilie E. Kujit. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 145-166

**The price of news from the front line: rethinking the protection of media personnel under international humanitarian law**

Freya Foster. In: Journal of conflict and security law, Vol. 20, no. 3, Winter 2015, p. 451-480

<http://dx.doi.org/10.1093/jcsl/krv008>

**The Security Council working group on children and armed conflict : a legal appraisal of its application and development of international legal standards**

Marjolein Vlieks. In: Human rights and international legal discourse, Vol. 9, no. 2, 2015, p. 242-276 : tabl.

**The UN Security Council's special compliance systems : the regime of children and armed conflict**

Regina Klostermann. - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 313-350

## VII. Protection of objects

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

**Casualties of armed conflict : protecting cultural property**

Kevin Chamberlain. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 189-211 : ill.

**Destruction of cultural heritage in Northern Mali : a crime against humanity ?**

Sebastián Green Martínez. In: Journal of international criminal justice, Vol. 13, no. 5, December 2015, p. 1073-1097

<http://jicj.oxfordjournals.org/content/13/5/1073.full.pdf>

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

**Operational detention and the treatment of detainees**

Jann K. Kleffner. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 518-540

## IX. Law of occupation

**A century of the law of occupation**

Yaël Ronen. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 169-188

**The righting of the law of occupation**

Aeyal Gross. - In: The frontiers of human rights : extraterritoriality and its challenges. - Oxford : Oxford University Press, 2016. - p. 21-54

## X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

### **The 2014 Gaza war : reflections on jus ad bellum, jus in bello, and accountability**

Sharon Weill and Valentina Azarova. - In: The war report : armed conflict in 2014. - Oxford : Oxford University Press, 2015. - p. 360-387

### **Conceptual distinction and overlaps between law enforcement and the conduct of hostilities**

Nils Melzer and Gloria Gaggioli Gasteyger. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 63-92

### **Correcting the record : civilians, proportionality, and jus ad vim**

Avery Plaw and Carlos R. Colon. - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 163-189

### **Humanity considerations cannot reduce war's hazards alone : revitalizing the concept of military necessity**

Yishai Beer. In: European journal of international law = Journal européen de droit international, Vol. 26, no. 4, November 2015, p. 801-828  
<http://www.ejil.oxfordjournals.org/content/26/4/801.full.pdf>

### **The law of cyber targeting**

Michael N. Schmitt. In: Naval war college review, Vol. 68, no. 2, Spring 2015, p. 11-29  
<https://www.usnwc.edu/Publications/Naval-War-College-Review/2015---Spring.aspx>

### **The law of targeting**

Michael N. Schmitt and Eric Widmar. - In: Targeting : the challenges of modern warfare. - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 121-145

### **Means and methods of the future : autonomous systems**

Jeffrey S. Thurnher. - In: Targeting : the challenges of modern warfare. - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 177-199

### **Military advantage : a matter of "value", strategy, and tactics**

Kenneth Watkin. In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 277-364 : diagr.

### **Off target : selection, precaution, and proportionality in the DoD Manual**

Adil Ahmad Haque. In: International law studies, Vol. 92, 2016, p. 31-84  
<http://stockton.usnwc.edu/ils/vol92/iss1/3/>

### **Some considerations concerning the role of the ius ad bellum in targeting**

Terry D. Gill. - In: Targeting : the challenges of modern warfare. - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 101-119

### **Targeted killings in operational law perspective**

Nils Melzer. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 307-331

**Targeting in coalition operations**

**Chris De Cock.** - In: Targeting : the challenges of modern warfare. - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 231-259

**Targeting in operational law**

**Michael N. Schmitt.** - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 269-306

**Targeting : the challenges of modern warfare**

**Paul A. L. Duscheine, Michael N. Schmitt, Frans P.B. Osinga eds..** - The Hague : T.M.C Asser Press ; Springer : Berlin ; Heidelberg, 2016. - XVI, 299 p.

**Who can be killed ? : legal targets in non-international armed conflicts**

**Patrycja Grzebyk.** - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 49-70

## **XI. Weapons**

**Automating the right stuff ? : the hidden ramifications of ensuring autonomous aerial weapon systems comply with international humanitarian law**

**Jason S. DeSon.** In: The Air Force law review, Vol. 72, 2015, p. 85-122  
<http://www.afjag.af.mil/shared/media/document/AFD-150721-006.pdf>

**"Friends of humans" : an argument for developing autonomous weapons systems**

**Christopher P. Toscano.** In: Journal of national security law and policy, Vol. 8, no. 1, 2015, p. 189-246  
<http://jnslp.com/wp-content/uploads/2015/05/Friend-of-Humans.pdf>

**From just war to clean war : the impact of modern technology on military ethics**

**Delphine Hayim.** - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 191-214

**Is Johnny Five alive or did it short circuit ? : can and should an artificially intelligent machine be held accountable in war or is it merely a weapon ?**

**Aaron Gevers.** In: Rutgers journal of law and public policy, Vol. 12, issue 3, Spring 2015, p. 384-425  
[http://www.rutgerspolicyjournal.org/sites/rutgerspolicyjournal.org/files/issues/12\\_3/Gevers\\_FINAL.pdf](http://www.rutgerspolicyjournal.org/sites/rutgerspolicyjournal.org/files/issues/12_3/Gevers_FINAL.pdf)

**Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs**

ed. by **Steven J. Barela.** - Farnham ; Burlington : Ashgate, 2015. - XVIII, 414 p.

**Means and methods of the future : autonomous systems**

**Jeffrey S. Thurnher.** - In: Targeting : the challenges of modern warfare. - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 177-199

**The prohibition to use chemical weapons**

**Thilo Marauhn.** In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 25-44

**Systemic efficacy : “potentially shattering consequences for international law”**

**Robert Kolb.** - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 299-320

**Weapons under the law of military operations**

William H. Boothby. - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 332-353

**Who can be killed ? : legal targets in non-international armed conflicts**

Patrycja Grzebyk. - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 49-70

## XII. Implementation

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

**Applicable law : jus ad bellum, jus in bello, and the legacy of the UN Compensation Commission**

Veijo Heiskanen and Nicolas Leroux. - In: War reparations and the UN Compensation Commission : designing compensation after conflict. - Oxford [etc.] : Oxford University Press, 2015. - p. 51-80

**Armed non-state actors in international humanitarian and human rights law : foundation and framework of obligations, and rules on accountability**

Konstantinos Mastorodimos. - Farnham ; Burlington : Ashgate, 2016. - LVIII, 241 p.

**Australian Red Cross leadership in the promotion of international humanitarian law**

Tim McCormack. In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 969-986  
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**Behaviour in war : the place of law, moral inquiry and self-identity**

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### **The work of Mexico's Interministerial Committee on international humanitarian law**

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**Off target : selection, precaution, and proportionality in the DoD Manual**

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### **Destruction of cultural heritage in Northern Mali : a crime against humanity ?**

**Sebastián Green Martínez.** In: Journal of international criminal justice, Vol. 13, no. 5, December 2015, p. 1073-1097

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### **International responsibility for humanitarian law violations by armed groups**

**Kirsten Schmalenbach.** - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 470-503

## All with Abstracts

### **The 2014 Gaza war : reflections on jus ad bellum, jus in bello, and accountability**

**Sharon Weill and Valentina Azarova.** - In: *The war report : armed conflict in 2014.* - Oxford : Oxford University Press, 2015. - p. 360-387. - Cote 355/1018 (2015)

This chapter assesses key issues related to jus ad bellum, jus in bello, and accountability that are raised by the hostilities. It commences by examining the possibility of invoking the right to self-defence, as the legal justification for the use of force in the Gaza conflict context. The chapter then surveys specific violations of the principles on the conduct of hostilities under international humanitarian law (IHL) committed during the 2014 hostilities by the Israeli military and Palestinian armed groups. The final part discusses the effects of recent developments related to individual accountability for IHL violations in the Israel-Palestine setting with particular attention to the prospects of Palestine's accession to the International Criminal Court (ICC).

### **Air law and military operations**

**Michael N. Schmitt.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 354-374. - Cote 345.25/239 (2015)

This chapter discusses rules governing airspace and aircraft during peacetime and armed conflict. Airspace is classified as national or international. National airspace lies over a State's land, internal waters, archipelagic waters, and territorial seas. International airspace lies over contiguous zones, exclusive economic zones, the high seas, and territory not subject to the sovereignty of any nation. Foreign aircraft may enter national airspace when necessitated by force majeure or distress; every effort must be made to coordinate entry with the concerned authorities. In peacetime, no-fly zones or other restrictions are unlawful without a Security Council mandate. During armed conflict, the establishment of an exclusion or no-fly zone is governed by international humanitarian law and other applicable international law rules. Only military aircraft may engage in attacks. Aircraft involved in civil defence, humanitarian relief, or UN activities enjoy special protection, as do civilian airliners and there are general protections for civilian objects.

### **Applicable law : jus ad bellum, jus in bello, and the legacy of the UN Compensation Commission**

**Veijo Heiskanen and Nicolas Leroux.** - In: *War reparations and the UN Compensation Commission : designing compensation after conflict.* - Oxford [etc.] : Oxford University Press, 2015. - p. 51-80. - Cote 345.22/276 (Br.)

United Nations (UN) Security Council (UNSC) resolution 687 (1991) affirms Iraq's liability for the invasion and occupation of Kuwait, and empowers the UN Compensation Commission (UNCC) to decide claims arising from that liability. Resolution 687 (1991) does not stipulate whether the UNCC was remitted to apply jus in bello, the law of armed conflict, or jus ad bellum, the law of peace. The decisions of the UNCC Governing Council also fail to clarify which body of law is being applied in their decisions. This article argues that the law applied by the Governing Council appears, almost exclusively, to be jus ad bellum. Yet several claims arose in circumstances that should have arguably situated them within the purview of jus in bello. Thus, Iraq may have been assigned liability for more offences, and afforded fewer defenses, than would reasonably apply under jus in bello. The article asserts that this stems from implicit assumptions made by the UNCC about Iraq's liability in connection with its invasion and occupation of Kuwait. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **Armed non-state actors in international humanitarian and human rights law : foundation and framework of obligations, and rules on accountability**

**Konstantinos Mastorodimos.** - Farnham ; Burlington : Ashgate, 2016. - LVIII, 241 p. - Cote 345.29/231

The accountability of armed non-state actors is a neglected field of international law, overtaken by the regimes of state responsibility and individual criminal accountability as well as fears of legitimacy. Yet armed non-state actors are important players in the international arena and their activities have significant repercussions. This book focuses on their obligations and accountability when they do not function as state agents, regardless of the existence or extent of accountability of their individual members. The author claims that their distinct features lead to their classification into three different types: de facto entities, armed non-state actors in control of territory, and common article 3 armed non-state actors. The mechanisms that trigger the applicability of humanitarian and human rights law regimes are examined in detail as well as the framework of obligations. In both cases, the author argues that armed non-state actors should not be treated as entering international law and process exclusively through the state. The study concludes by focusing on

their accountability in international humanitarian and human rights law and, more specifically, to the rules of attribution, remedies and reparations for violations of their primary obligations.

### **Armed with a keyboard : Presidential directive 20, cyber-warfare, and the international laws of war**

**Matthew Rinear.** In: Capital University law review, Vol. 43, no. 3, Summer 2015, p. 679-720. - Cote 345.26/277 (Br.)

This comment examines America's growing dependency on the cyberworld and the significance of international cyber-operations. Additionally, this comment analyzes the complex intricacies of this relatively new form of combat and how Presidential Policy Directive 20's execution may sufficiently comply with the current laws of war. Part II examines how the government and the private sector's ever increasing interconnectivity with cyberspace and the Internet open the door to cyber intrusions. Part III scrutinizes the technical details of cyberattacks –definitional issues, types of attacks, and general tactics used. Part IV analyzes the laws of armed conflict and its application to offensive and defensive cyber-actions, as well as the Directive itself. Finally, taking into account the background and analyses contained within Parts II–IV, Part V supports the proposition that a swift and effective implementation of the Directive is essential to ensure sufficient protection of America's security interests.

<http://law.capital.edu/Volume43Issue3/>

### **Australian Red Cross leadership in the promotion of international humanitarian law**

**Tim McCormack.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 969-986

In this Opinion Note, Tim McCormack highlights the Australian experience of setting up and developing an IHL programme domestically as an example of how IHL can be disseminated and promoted at the national level. The Australian experience is a great success story and can serve as an example for others seeking to do the same.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-mccormack.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-mccormack.pdf)

### **Automating the right stuff ? : the hidden ramifications of ensuring autonomous aerial weapon systems comply with international humanitarian law**

**Jason S. DeSon.** In: The Air Force law review, Vol. 72, 2015, p. 85-122. - Cote 341.67/771 (Br.)

The development of increasingly autonomous aerial weapons systems raises questions about the obligation to ensure their compliance with International Humanitarian Law (IHL). This article addresses the legal dangers that could arise from guaranteeing drone compliance with IHL, concluding that the control of aircrafts should remain with human pilots due to the complexity of war. Robot pilots may be more capable than human pilots in certain aspects of achieving mission success within a learned or programmed IHL framework. However, despite the theoretical advantages, the article points to several scenarios in which robot pilots might be precluded from achieving mission success due to the possibility that balancing IHL constraints and military necessity might be impossible for drone programming. In addition, the use of robot-piloted drones raises the potential for legal problems stemming from the restriction of the IHL principles of proportionality, discrimination, necessity, and reasonableness to a degree where no human could adequately comply. Ultimately, the article concludes that human intervention is necessary in military aircraft, as modern warfare is unsuitably complex and thus legally impractical for robot pilots to perform the necessary missions within the framework of IHL. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://www.afjag.af.mil/shared/media/document/AFD-150721-006.pdf>

### **Behaviour in war : the place of law, moral inquiry and self-identity**

**Dale Stephens.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 751-773

Daniel Munoz-Rojas and Jean-Jacques Fresard's study "The Roots of Behaviour in War" (RBW Study), which came out in 2004, provided very useful insight into how compliance with international humanitarian law may be better ensured. In essence, it emphasized the role of "the law" and associated enforcement mechanisms in achieving optimal results. Emphasis on "persuasion" regarding the values underpinning the law was identified as having a possibly corrosive effect and was to be de-emphasized, if not avoided. Such conclusions raise serious questions. The study's reliance on neutral normativity of "the law" can be overstated. The issue may be less one of checking aberrant behaviour under the law and more one of ensuring that unnecessary harm is curtailed within the law. The assumptions made by the RBW Study concerning the efficacy of the law are too narrow in their avoidance of the moral and ethical questioning that can accompany

legal interpretative approaches. The role of identity and professional culture offers an effective means of ensuring restraint under the law. This article argues that the RBW Study has not stood the test of time and that operational developments have transcended the conclusions made in the study.

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### **Belgium's Interministerial Commission for Humanitarian Law : playing a key role in the implementation and promotion of IHL**

**Frédéric Casier and Alix Janssens.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 1075-1091

The Belgian Interministerial Commission for Humanitarian Law was created in 1987 for the purpose of identifying and coordinating national measures for implementing the Geneva Conventions of 1949 and their Additional Protocols of 1977, which Belgium had just ratified. In the first part of this article, the authors describe the Commission's background, composition, missions and structure. They then explain how, through its work, the Commission helps incorporate the rules of international humanitarian law into domestic law, disseminate these rules and promote compliance with them. In the final part of the article, the authors highlight the key factors underpinning the Commission's success in achieving its missions.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-casier-janssens.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-casier-janssens.pdf)

### **Boundaries of the battlefield : the geographical scope of the laws of war**

**Katja Schöberl.** - In: *Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs.* - Farnham ; Burlington : Ashgate, 2015. - p. 71-89. - Cote 341.67/787

The use of armed drones in operations labelled as counterterrorism has raised important questions about where one can properly apply the rules of international humanitarian law. This has become of particular consequence as UCAVs have made it easier for armed conflict to be conducted well beyond the traditional combat zone, and perhaps without any territorial limit. This contribution gives an overview of the debate and subsequently analyzes the geographical scope of international and non-international armed conflicts both within and outside the territory of belligerent States. It thereby focuses on a possible extraterritorial application of the law of non-international armed conflicts.

### **Bugsplat : US standing rules of engagement, international humanitarian law, military necessity and noncombatant immunity**

**Neta C. Crawford.** - In: *Just war, authority, tradition and practice.* - Washington : Georgetown University Press, 2013. - p. 231-249 . - Cote 345.22/279 (Br.)

This article examines how the United States (US) military's organizational level processes shape, enable, and constrain its actions on the ground. These processes are especially relevant with regards to noncombatant immunity and civilian protection. The article shows how the jus in bello considerations of discrimination and proportionality are institutionalized in the US rules of engagement and standard operating procedures. These considerations shape targeting decisions by dictating the intensity, duration, and magnitude of force to be used, as well as permissible degrees of collateral damage. This article also explores the tension between the prohibition on harming civilians and the exceptions created for military necessity, arguing that the US generally views military necessity as the overriding principle. In light of this prioritization, the article questions what moral responsibility is owed for the incidental and unintended killing of noncombatants, both at the organizational level and on the ground. Also discussed is how the use of algorithms and operations has diffused moral responsibility. The article highlights the importance of critically examining the impact these processes have on the ground in order to recognize military processes that function as imperfect moral agents. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

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### **Building respect for IHL through national courts**

**Sharon Weill.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 859-879

Respect for international humanitarian law (IHL) comes in many forms, one of which is through the practice of domestic courts in addressing IHL-related cases. This article takes a closer look at the structural conditions necessary for the effective enforcement of IHL by domestic courts, elaborates on the spectrum of options that are available to national judges when faced with IHL-related cases, and describes the functional roles of courts in adopting a particular posture. It is demonstrated that even if the structural conditions are fulfilled, this will not necessarily result in the normative application of the law. It appears that national judges are in the process of defining their own roles as independent organs for overseeing the State's acts

during armed conflicts. In that regard, the article outlines a few suggestions for future research on the choices courts make and the conditions necessary for them to effectively handle IHL-related cases.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-weill.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-weill.pdf)

### **Building respect for the rule of law in violent contexts : the Office of the High Commissioner for Human Rights' experience and approach**

**Annyssa Bellal.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 881-900

How does the Office of the High Commissioner for Human Rights (OHCHR) discharge its mandate of "promoting and protecting the effective enjoyment by all of all civil, cultural, economic, political and social rights", especially in armed conflicts and other situations of violence? What are its concrete responsibilities, and how does it work to generate respect for the rule of law on the ground? This article aims to provide an overview of OHCHR's activities, and point to some of the challenges associated with its work to generate respect for the rule of law, in particular in violent contexts. It begins with an overview of the unique mandate of OHCHR and situates it within the broader United Nations human rights machinery. It then gives an account of OHCHR's experience and approach in building respect for the rule of law, including in armed conflicts and post-conflict situations, outlining how this informs OHCHR's field setup. Finally, the article summarizes the main challenges that OHCHR faces in the discharge of its mandate. It highlights the need for more concerted action on the part of human rights/humanitarian protection organizations on the ground, despite differences in mandates and constituencies.

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### **Casualties of armed conflict : protecting cultural property**

**Kevin Chamberlain.** In: *Yearbook of international humanitarian law*, Vol. 17, 2014, p. 189-211 : ill.

The author stresses the importance of protecting cultural property from the effects of armed conflict as its damage or destruction destroys a community's identity and its links with its past, present and future, as well as diminishes the cultural heritage of humankind. The author draws attention to the recent destruction of cultural property in the civil war in Syria and the activities of the so-called Islamic State (ISIL) in Iraq. This chapter analyses the provisions of the principal legal instruments dealing with the protection of cultural property in armed conflict, namely the Convention on the Protection of Cultural Property in the Event of Armed Conflict (The 1954 Hague Convention), the 1954 Protocol for the Protection of Cultural Property in the Event of Armed Conflict and the 1999 Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, as well as other relevant instruments of international law. While the existing legal instruments may be adequate, the problem, as with international law generally, lies in the effective enforcement, particularly in situations of non-international armed conflict where the parties to the conflict have no regard for the dictates of international humanitarian law. But once hostilities have come to an end, it will be possible to bring offenders to justice, if necessary before the International Criminal Court. In the meantime, it is important that there should be widespread adherence to The 1954 Hague Convention and its two Protocols.

### **A century of the law of occupation**

**Yaël Ronen.** In: *Yearbook of international humanitarian law*, Vol. 17, 2014, p. 169-188

The law of occupation, which was first codified around the turn of the twentieth century, has not often been applied in the century that followed, States have always been reluctant to constrain themselves by its rules, and political, social and economic changes that have taken place through the years have gradually made such constraints difficult even with the best of intentions. As a result, the law of occupation developed largely through doctrine and little through practice. The present chapter examines how these factors have affected the law of the definition of occupation and the legitimate scope of intervention by an occupant in the administration of the territory. From without, it addresses the relationship between the law of occupation and other bodies of law, principally the right to self-determination and international human right law; and their impact on the development of criteria for determining the legality of occupation.

### **Challenges in applying Article 8 of the Rome Statute**

**Tim McCormack.** - In: *For the sake of present and future generations : essays on international law, crime and justice in honour of Roger S. Clark.* - Leiden ; Boston : Brill Nijhoff, 2015. - p. 333-355. - Cote 344/670 (Br.)

Writing in honour of Roger Clark, the author advocates for reforming Article 8 of the Rome Statute. Article 8 distinguishes between war crimes in international armed conflicts (IACs) and non-international armed conflicts (NIACs). This distinction creates an additional, unnecessary burden on the Office of the Prosecutor

at the International Criminal Court (ICC), which must prove whether the armed conflict in which specific crimes took place was an IAC or a NIAC. Article 8 also excludes offences in the context of NIACs that should logically exist in both categories. For example, in the case of NIACs, there are glaring omissions for crimes against civilian populations and property. Thus the author proposes replacing Article 8 “with a unitary set of war crimes over which the ICC has jurisdiction in all armed conflicts”. However, some states prefer the distinction, which codified a higher threshold for IACs to ensure domestic civil disturbances remained domestic legal matters. The author also offers two alternative recommendations for reform that maintain the differentiation: expanding the list of offences under Article 8 for NIACs; or replacing part of Article 8 with a relatively flexible provision such as Article 3 of the Statute of the International Criminal Tribunal for the former Yugoslavia. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

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### **The characterization of armed conflict in the jurisprudence of the ICC**

**Anthony Cullen.** - In: *The law and practice of the International Criminal Court.* - Oxford : Oxford University Press, 2015. - p. 762-777. - Cote 344/672

The existence of armed conflict is the most fundamental prerequisite for the exercise of jurisdiction over war crimes. This chapter probes the characterization of armed conflict in the case-law of the ICC. It shows that the ICC has relied heavily on the jurisprudence of the ICTY concerning the conceptualization of non-international armed conflict (e.g. Tadić) and internationalization of prima facie internal armed conflict based on the overall control test. It argues that maintaining the integrity of armed conflict as a concept of international humanitarian law is one of the greatest longer-term challenges facing the Court.

### **Charging war crimes : policy and prognosis from a military perspective**

**Michael A. Newton.** - In: *The law and practice of the International Criminal Court.* - Oxford : Oxford University Press, 2015. - p. 732-761. - Cote 344/672

The Rome Statute was designed to largely align criminal norms with actual state practice based on the realities of warfare. Article 8 embodied notable new refinements (e.g. in relation to disproportionate attack under Article 8(2)(b)(iv)), but did so against a backdrop of pragmatic military practice. This chapter dissects the structure of war crimes under Rome Statute to demonstrate this deliberate intention of Article 8 and then describes the correlative considerations related to charging practices for the maturing institution, including command responsibility. When properly understood and applied in light of the Elements of Crimes, the Court’s charging decisions with respect to war crimes ought to reflect the paradox that its operative provisions are at once revolutionary yet broadly reflective of the actual practice of warfare.

### **Command responsibility under Article 28 of the Rome Statute**

**Alejandro Kiss.** - In: *The law and practice of the International Criminal Court.* - Oxford : Oxford University Press, 2015. - p. 608-648. - Cote 344/672

This chapter discusses the concept of command responsibility under Article 28 of the ICC Statute. This doctrine evolved against the need to rethink the existing concepts of ordinary criminal law in a manner that would address cases of individuals in high positions of authority responsible for mass criminality. There is a plethora of literature and jurisprudence, particularly since the experiences of the ad hoc tribunals, dealing with the most contentious aspects of command responsibility, but many aspects remain unclear. This chapter addresses issues which involve the most significant practical consequences, including the superior-subordinate relationship and the requirement of effective control, the duties imposed on commanders and superiors, the role of causation, and the mental element.

### **Comment : enforcement of international humanitarian law through the human rights organs of the African Union**

**Faustin Zacharie Ntoubandi.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 300-312. - Cote 345.22/265

In this contribution Faustin Zacharie Ntoubandi first considers whether the African Union’s human rights bodies have followed the trend that consists in incidentally enforcing international humanitarian law while discharging their human rights functions. He then briefly examines a few difficulties inherent in the enforcement of international humanitarian law by the African Union’s human rights organs, before concluding with a short personal note on a more appropriate approach which the competent African Union organs may adopt in addressing issues that concern international humanitarian law.

### **Comment : obligations of States contributing to UN peacekeeping missions under Common Article 1 of the Geneva Conventions**

**Matthew Happold.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 382-398. - Cote 345.22/265

Common Article 1 of the 1949 Geneva Conventions imposes, it has been claimed, a legal obligation on third States to intervene when parties to armed conflicts commit, or fail to prevent, atrocities. This chapter considers the extent to which Common Article 1 applies to the activities of United Nations peacekeepers. It is argued that Common Article 1 does impose duties upon troop-contributing States but that they are qualified by the control that the UN exercises over national contingents during peacekeeping operations. In particular, whatever the general scope of the provision, it does not impose any positive obligation on troop-contributing States to ensure respect for international humanitarian law by parties to conflicts which peacekeeping missions seek to police. Such a duty (if it exists) lies solely with the UN.

<http://ssrn.com/abstract=2255546>

### **Comment : perspectives on courts established by armed opposition groups**

**Dieter Fleck.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 181-187. - Cote 345.22/265

In this chapter Dieter Fleck discusses the main proposition of Jan Willms' chapter that "if the leadership of an armed group is genuinely willing to enforce humanitarian law, courts of that armed group have a relatively high potential to be a successful tool for inducing compliance". He proposes to further evaluate whether and under what conditions this potential could be convincingly used beyond the rather few armed conflicts in which such trials happened to take place and he discusses other means for armed opposition groups to improve respect for international humanitarian law.

### **Comment : persuading armed groups to better respect international humanitarian law**

**Olivier Bangerter.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 112-124. - Cote 345.22/265

The opportunities and limitations of persuasion remain misunderstood. Many humanitarian workers - and some academics - yearn for some magic formula that could work wonders in no time, but there is no argument that will change commanders or fighters instantly. Unless there is an understanding that persuasion neither starts nor finishes with arguments, any persuasion attempt will likely be fruitless. This chapter details the main steps that can lead to persuading those armed groups that violate the law to change this situation and those that want to respect it to further improve their behaviour.

### **Comment : the Congolese legal system and the fight against impunity for the most serious international crimes**

**Balingene Kahombo.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 247-260. - Cote 345.22/265

In this chapter Balingene Kahombo discusses the disappointing performance of the Congolese legal system and considers explanations for this disappointing performance: is it due to the archaism of Congolese positive law or the inability of courts and tribunals and of public prosecutors' offices to render justice efficiently? Despite reforms, Congolese positive law still presents numerous flaws, in particular regarding the requirements of a fair trial. The Congolese justice system also remains insufficiently independent from political power.

### **Common Article 1 of the Geneva Conventions : scope and content of the obligation to "ensure respect" : "narrow but deep" or "wide and shallow" ?**

**Robin Geiss.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 417-441. - Cote 345.22/265

In this chapter Robin Geiss examines whether Common Article 1 to the four Geneva Conventions includes an external compliance dimension, that is a duty to ensure respect vis-à-vis other States and/or non-State

actors who violate the Conventions. On the basis of an analysis of the relevant State practice, the author submits that the obligation to ensure respect should be understood as a wide obligation which requires States to take positive measures whenever the Geneva Conventions are infringed.

### **Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations**

**Knut Dörmann and Jose Serralvo.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 707-736

Common Article 1 to the four Geneva Conventions lays down an obligation to respect and ensure respect for the Conventions in all circumstances. This paper focuses on the second part of this obligation, in particular on the responsibility of third States not involved in a given armed conflict to take action in order to safeguard compliance with the Geneva Conventions by the parties to the conflict. It concludes that third States have an international legal obligation not only to avoid encouraging international humanitarian law violations committed by others, but also to take measures to put an end to on-going violations and to actively prevent their occurrence.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-dormann-serralvo.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-dormann-serralvo.pdf)

### **Complicity in violations of international humanitarian law**

**Helmut Philipp Aust.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 442-469. - Cote 345.22/265

This chapter discusses the problem of 'public' complicity in violations of international humanitarian law, i.e. the role of aid or assistance given to wrongful acts on the level between states and international organizations. The contribution presents the applicable international legal framework as it stems from the law of state responsibility and more special rules emanating from international humanitarian law. A particularly important role in this regard is played by Common Article 1 to the Geneva Conventions I-IV which establishes stricter standards for helping states than the general rules pertaining to the law of state responsibility. The contribution discusses the various interpretive problems associated with the applicable legal framework and situates it in the complex environment of contemporary African conflicts. It ultimately suggests that although the legal rules come under strain in these conflicts, there is no need for normative change as especially Common Article 1 provides for the requisite flexibility to hold complicit states and international organizations responsible. The main problem lies in the enforcement of international responsibility.

### **Conceptual distinction and overlaps between law enforcement and the conduct of hostilities**

**Nils Melzer and Gloria Gaggioli Gasteyger.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 63-92. - Cote 345.25/239 (2015)

Forces involved in contemporary military operations are often called upon to assume functions both of law enforcement and of hostilities, each governed by different legal standards. This chapter distinguishes between these two concepts, identifies potential overlaps between them, and determines how the respective legal paradigms governing each type of operation interrelate. The generic concept of law enforcement can be defined as comprising all territorial and extraterritorial measures taken by a State or other collective entity to maintain or restore public security, law and order, or to otherwise exercise its authority or power over individuals, objects, or territory. The generic concept of hostilities refers to the resort to means and methods of warfare between parties to an armed conflict. Within the context of an armed conflict, the paradigms of law enforcement and of hostilities can apply in parallel to different persons and objects at the same time and location.

### **Conclusion : where States fail, non-State actors rise ? : inducing compliance with international humanitarian law in areas of limited statehood**

**Heike Krieger.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 504-551. - Cote 345.22/265

In her concluding contribution, Heike Krieger submits that the international community addresses the challenges for compliance with international humanitarian law which arise from war-torn areas of limited statehood by shifting competences to actors other than the State concerned. In particular, international organizations have developed a mix of instruments in order to enforce international humanitarian law.

However, since these organizations are dependent on their member States, who might be reluctant to accept engagement with armed groups, activities of humanitarian non-State actors have become an important element in efforts to induce compliance. Based on the overall results of the book, Heike Krieger investigates reasons for compliance in war-torn areas of limited statehood and arrives at the conclusion that traditional motives are still relevant and must therefore be addressed by the corresponding mechanisms.

### **The Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014 and the duty to ensure respect for international humanitarian law**

**Matthias Lanz, Emilie Max and Oliver Hoehne.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 1115-1133

While international humanitarian law envisages the possibility of holding formal thematic discussions, only United Nations General Assembly resolutions prompted the depositary of the Geneva Conventions to consult the High Contracting Parties on the opportuneness of conflict-specific conferences. Recalling the precedents of 1999 and 2001 – convened on the basis of the support expressed by the States Parties during related consultations – this article focuses on the Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014, which is likewise related to the Israeli–Palestinian conflict. The result of the conference consists of a declaration reflecting the willingness of the States Parties to further implement Article 1 common to the four Geneva Conventions.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-lanz-max-hoehne.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-lanz-max-hoehne.pdf)

### **Contemplating the true nature of the notion of "responsibility" in responsible command**

**Geoffrey S. Corn.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 901-917

Operating under responsible command is an essential requirement to qualify as a lawful combatant, and is also central to the doctrine of command responsibility. This reveals the inextricable link between the role of the commander and the effective implementation of the international humanitarian law (IHL). Understanding this linkage is vital to ensuring that commanders and other military leaders fulfil their obligation to prepare subordinates to navigate the chaos of mortal combat within the legal and by implication moral framework that IHL provides. Few commanders would question the proposition that responsible commanders prepare their military units to effectively perform their combat missions. However, operational effectiveness is only one aspect of developing a "responsible" command. Because this term is grounded in the expectation of IHL compliance, a truly responsible command exists only when the unit is prepared to execute its operational mission in a manner that fully complies with IHL obligations. This broader conception of a disciplined and effective military unit reflects the true nature of the concept of responsible command, as only military units built on this conception of discipline advance the complementary objectives of military effectiveness and humanitarian respect. Accordingly, the requirement that lawful combatants operate under responsible command is an admonition to all military leaders that truly effective military units are those capable of executing their missions with maximum operational effect within the framework of humanitarian constraint that defines the limits of justifiable violence during armed conflict.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-corn.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-corn.pdf)

### **Converting treaties into tactics on military operations**

**Andrew J. Carswell.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 919-942

Despite widespread State acceptance of the international law governing military use of force across the spectrum of operations, the humanitarian reality in today's armed conflicts and other situations of violence worldwide is troubling. The structure and incentives of armed forces dictate the need to more systematically integrate that law into operational practice. However, treaty and customary international law is not easily translated into coherent operational guidance and rules of engagement (RoE), a problem that is exacerbated by differences of language and perspective between the armed forces and neutral humanitarian actors with a stake in the law's implementation. The author examines the operative language of RoE with a view to facilitating the work of accurately integrating relevant law of armed conflict and human rights law norms. The analysis highlights three crucial debates surrounding the use of military force and their practical consequences for operations: the dividing line between the conduct of hostilities and law enforcement frameworks, the definition of membership in an organized armed group for the purpose of lethal targeting, and the debate surrounding civilian direct participation in hostilities and the consequent loss of protection against direct attack.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-carswell.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-carswell.pdf)

**Correcting the record : civilians, proportionality, and jus ad vim**

**Avery Plaw and Carlos R. Colon.** - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 163-189 . - Cote 341.67/787

Some critics have forcefully rejected US officials' claims that drone strikes away from conventional battlefields meet applicable standards of proportionality on the basis that they do not appear compliant with the requirements of Jus ad Vim (referring to a set of developing rules to regulate the just use of force short of war). The case advanced by these critics involves two key claims: (1) the relevant standards for assessing these strikes are those which they envision for Jus ad Vim; and (2) US drone strikes away from conventional battlefields actually fail to meet the standard they envision for Jus ad Vim. This chapter shows that both claims are doubtful. Moreover, it argues that critics' resort to this elevated Jus ad Vim standard reflects a grudging recognition that the best available evidence generally supports the claims of US officials that the great majority of drone strikes kill no civilians. Likewise, it is far from clear that the cases in which civilians are killed constitute violations of the more conventional jus ad bellum standard of proportionality. The key issue then is not how proportionality should be assessed for Jus ad Vim, but whether the US has compelling grounds for invoking the more conventional jus ad bellum standards.

**Courts of armed groups : a tool for inducing higher compliance with international humanitarian law ?**

**Jan Willms.** - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 149-180. - Cote 345.22/265

This chapter analyses rebel courts and their potential for law enforcement. If insurgent governance can be established even under the condition of armed conflict in areas of limited statehood, armed groups themselves may play a role in law enforcement. Though international law does not forbid such courts, their potential for enforcement and protection of civilians is impaired by the fear of the nation-State that these courts might legitimize insurgent governance. Based on a case study, Jan Willms concludes that there is a limited potential for enforcement and suggests ways to improve it.

**Debate : the role of international criminal justice in fostering compliance with international humanitarian law**

**Chris Jenks and Guido Acquaviva.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 775-794

The Review invited two practitioners to share their perspectives on the concrete effects of international criminal justice on fostering compliance with international humanitarian law. Chris Jenks questions the "general deterrence" role of international criminal justice, contending that the influence of complicated and often prolonged judicial proceedings on the ultimate behaviour of military commanders and soldiers is limited. Guido Acquaviva agrees that "general deterrence", if interpreted narrowly, is the wrong lens through which to be looking at international criminal justice. However, he disagrees that judicial decisions are not considered by military commanders, and argues that it is not the individual role of each court or tribunal that matters; rather, it is their overall contribution to an ever more comprehensive system of accountability that can ultimately foster better compliance with international humanitarian law.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-jenks-acquaviva.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-jenks-acquaviva.pdf)

**Destruction of cultural heritage in Northern Mali : a crime against humanity ?**

**Sebastián Green Martínez.** In: Journal of international criminal justice, Vol. 13, no. 5, December 2015, p. 1073-1097

This article analyses the attacks against moderate Muslim populations allegedly perpetrated in Mali after January 2012 by the group Ansar Dine. In January 2013 the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) discarded the investigation of crimes against humanity in favour of pursuing war crimes allegations. This article critically assesses the factual elements and the OTP decision and concludes that there is, in fact, a reasonable basis to believe that crimes against humanity were committed by the aforementioned group and that the destruction of shrines, tombs and mosques in Timbuktu could be considered a crime against humanity of persecution under the ICC Statute.

<http://jicj.oxfordjournals.org/content/13/5/1073.full.pdf>

## **The development of the law of naval warfare from the nineteenth to the twenty-first century : some select issues**

**Wolff Heintschel von Heinegg.** In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 69-93

This article highlights some developments of the law of naval warfare that have resulted either in the continuing validity of traditional concepts, principles and rules or in a modification of the "old rules". Those modifications were not necessarily agreed upon because of the evolution of weapons technology but rather with a view to enhance the legal protection of victims at sea. The overall assessment of the development of the law of naval warfare is positive because it has indeed produced a higher degree of legal clarity. This certainly holds true for the categories of lawful targets and for methods and means of naval warfare. Nevertheless, there are some issues that are in need of further clarification. While the traditional rule, according to which only warships are entitled to exercise belligerent rights, has survived, the emergence of unmanned maritime systems has created new problems insofar as their legal status is far from clear. Similar questions relate to submarine communications cables, which, despite their overall importance, have so far been neglected. Another aspect that deserves some attention relates to protected vessels, in particular hospital ships, and to protected persons. The latter is of high importance because the status of neutral nationals in times of naval war is not yet fully settled.

## **Direct participation : law school clinics and international humanitarian law**

**Laurie R. Blank and David Kaye.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 943-968

Law school clinics focused on international humanitarian law (IHL) enable students to participate directly in the development and application of IHL through concrete "real world" work – from training to research and fact-finding, litigation to high-level advocacy, and many spaces in between. These opportunities do far more than just contribute to these students' development as effective, reflective lawyers, certainly a key goal of any clinical environment. Clinical IHL work also matches clinical pedagogy with cutting-edge issues in armed conflict to deepen students' law school experiences and enables them to engage in the IHL goals of promotion, implementation and enforcement.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-blank-kaye.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-blank-kaye.pdf)

## **Drones : a proposal for new policy inclusive of independent judicial oversight**

**Milena Sterio.** In: Wake Forest journal of law and policy, Vol. 5, no. 2, 2015, p. 469-511. – Cote 345.22/278 (Br.)

This article argues that the United States (US) must develop a transparent and comprehensive policy on their use of drones across national borders. The US conducts lethal drone strikes in "traditional theaters of war", but also CIA-operated strikes against suspected terrorists located in countries which are not at war with the US. The covert nature of these operations precludes experts and the public from assessing the legality of the US drone program under domestic and international law. The existing US drone policy sheds little light on the government's decision-making process for determining the identity of appropriate targets, and insulates the government from judicial oversight. This unnecessarily prioritizes security over transparency. To properly hold the US executive accountable, independent judicial oversight is needed. Many experts advocate for an adversarial "drone court", composed of federal judges and operating ex parte. The author suggests that a drone court could provide independent judicial oversight over targeting decisions before a lethal strike by evaluating the imminence of the threat posed by a specific target, whether a lethal strike is necessary in response, and ensuring decisions to use lethal force are reached pursuant to clear, well-defined targeting practices. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://lawpolicyjournal.law.wfu.edu/issues/past-issues/volume-52/>

## **Enforcing international humanitarian law through human rights bodies**

**Dominik Steiger.** - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 263-299. - Cote 345.22/265

This chapter begins by shortly comparing the different human rights institutions enforcing the laws of war. It is suggested that human rights bodies as (quasi-)judicial bodies fill a gap left by the absence of an individual complaints procedure for violations of international humanitarian law. Still, the other bodies vested with the power to enforce this body of law, such as the International Committee of the Red Cross (ICRC), also perform important and unique functions. When taking a look at the merits, human rights bodies' findings on the laws of war at first sight tend to be rather cautious with regard to its application. Yet a closer look reveals that human rights bodies in some instances have transferred rules of international

armed conflict to internal armed conflicts and introduced human rights standards, thereby furthering the notion of humanity in armed conflict situations. However, they have not yet solved all questions arising from the parallel application of the two bodies of law.

### **Ensuring national compliance with IHL : the role and impact of national IHL committees**

**Cristina Pellandini.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 1043-1048

Cristina Pellandini considers the role of national international humanitarian law (IHL) committees in this introduction to the three following articles on the work and track record of the national IHL committees of Belgium, Peru and Mexico.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-pellandini.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-pellandini.pdf)

### **Ensuring peacekeepers' respect for international humanitarian law**

**Siobhán Wills.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 351-381. - Cote 345.22/265

Since 1999, the mandates of UN peacekeeping forces regularly include an undertaking to protect civilians coupled with expanding authorities to use force. This development has been welcomed as a way to prevent violations of international humanitarian law. However, Siobhán Wills takes a more sceptical view of these changes in UN peacekeeping. In this contribution, she stresses that the effectiveness of the mandate to protect civilians is determined by the resources of the mission, its other aims, its relation to the host State and other local stakeholders, as well as the interest of the troop-contributing nations. On the basis of a case study about peacekeeping in the DRC and other African States, she illustrates the dilatory effect of these variables. These findings are aggravated if UN peacekeepers' complicity with the host State's violations of international law is at stake, or if peacekeepers themselves violate international humanitarian law. Therefore, Wills suggests revising the understanding of peacekeepers' obligations under international humanitarian law through, inter alia, an extensive interpretation of Common Article 1 of the Geneva Conventions which would require peacekeepers to react to violations of the Conventions by others, provided the peacekeepers are able to do so.

### **The ethics of insurgency : a brief overview**

**Michael L. Gross.** In: *Journal of military ethics*, Vol. 14, no. 3-4, October-December 2015, p. 248-271

Are all forms of guerilla warfare apprehensible? Or can there be such a thing as just guerilla warfare? If so, what would be the reasonable requirements we would make of guerillas in order to consider them just? The remarks below, based on my new book *The Ethics of Insurgency; A Critical Guide to Just Guerilla Warfare* (Cambridge University Press, 2015), summarize my attempts to answer those questions, discussing such issues as legitimate authority, just cause, and compliance with the laws of armed conflict, including the use of human shields and 'soft-war' tactics such as cyber warfare. Three commentators thereafter delve into some of the most central critical questions and objections, to which I subsequently reply.

<http://dx.doi.org/10.1080/15027570.2015.1110441>

### **The evolution in the legal protection of victims of armed conflict**

**Peter Maurer.** In: *Yearbook of international humanitarian law*, Vol. 17, 2014, p. 3-8

As the means, methods and strategy have evolved over centuries, so have the effects of war on its victims. The changing nature of armed conflict, evolving means and methods of combat, and the definition of who is considered a war victim under the law are inextricably linked to the relatively new concept of legal protection of victims of armed conflict, which emerged only at the end of the nineteenth century. Both the definition of victims of conflict and the scope of legal protection may have to be revised as modern warfare changes the conditions and consequences of conflict. To date, the Geneva Conventions have lent themselves to reinterpretation as the nature of conflict has evolved, providing progressively extensive legal protection in different types and situations of conflict. However, it cannot be excluded that a revision or extension of the very foundations of IHL may be necessary at some point in the near future, further expanding the legal protection of victims of armed conflict. It is the duty of the ICRC as the guardian of IHL to consider and propose changes to this body of law to ensure that future victims of conflict will have the necessary legal protection.

**Extraterritorial derogations from human rights treaties in armed conflict**

**Marco Milanovic.** - In: *The frontiers of human rights : extraterritoriality and its challenges.* - Oxford : Oxford University Press, 2016. - p. 55-88. - Cote 345.1/637

This chapter examines one specific question: whether states are allowed to derogate from human rights treaties for situations which take place outside their territories, especially in armed conflict. Can, for instance, the United Kingdom derogate from the European Convention on Human Rights (ECHR) or the International Covenant on Civil and Political Rights (ICCPR) for events that take place in Afghanistan and involve its armed forces deployed there, to the extent that the ECHR and the ICCPR apply in Afghanistan? The wider the geographical scope of human rights treaties, the more relevant the question of extraterritorial derogations. Such derogations might start looking increasingly appealing to states, especially those who have initially miscalculated in arguing that the treaties do not apply at all, and avoided derogating in the fear that doing so would count as an admission that the treaties do apply. Derogations have the potential of bringing both clarity and flexibility to the applicable legal framework, especially in situations of armed conflict and with regard to possible interactions between human rights and international humanitarian law (IHL). Contrary to the dicta in some of the decisions of the House of Lords and the UK Supreme Court, the article argues that extraterritorial derogations are not only permissible, but may even be necessary and desirable, as part of price worth paying for the treaties' extensive and effective application outside states' boundaries. It also elaborates on the relationship between derogations and the various different manifestations of the *lex specialis* principle.

**"Friends of humans" : an argument for developing autonomous weapons systems**

**Christopher P. Toscano.** In: *Journal of national security law and policy*, Vol. 8, no. 1, 2015, p. 189-246. - Cote 341.67/789 (Br.)

The article calls for a refocused debate on the use of autonomous weapons systems (AWSs) in the military. For decades, technological development has enabled militaries to progressively decrease collateral damage. The article argues that AWS development is the inevitable next step for military technology: it offers the possibility of massively decreasing military costs and virtually eliminating collateral damage. Instead of making combat less civilized, AWSs may be better attuned to chivalric and humane norms. AWSs do not require self-defense, nor are they programmed with human emotion or flaw. The article posits that criticisms levelled against AWS technology stem from misunderstandings about robotic automation. Through programming, humans delegate specific tasks and choices to machines, which affords them limited independence within a carefully designed web of practical constraints and legal restrictions. This activity "loop", which a robot may carry out independently, is always capable of being altered by humans. However, the author argues that this loop will eventually allow AWSs to perceive, analyze, and act with greater speed and accuracy - and more perfect adherence to the laws of armed conflict - than humans are naturally able. If states actually endeavor to reduce collateral damage, the article concludes, they must pursue the development of AWS technology. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://jnslp.com/wp-content/uploads/2015/05/Friend-of-Humans.pdf>

**From inter-state and symmetric to intra-state and asymmetric : changing methods of warfare and the law of armed conflict in the 100 years since World War One**

**Emily Crawford.** In: *Yearbook of international humanitarian law*, Vol. 17, 2014, p. 95-118

This article examines the changing methods of warfare over the last 100 years, how the law has adapted to respond to these changing methods, and whether the law as it exists in 2014 is still consonant with armed conflict as it exists in 2014. Over the last century, the preponderant type of armed conflict - international armed conflict - has given way to non-international, transnational, and internal armed conflicts. These newly predominant types of armed conflict have also brought with them new participants, new tactics, and new targets. The law of armed conflict has attempted to keep pace with these developments, adopting new comprehensive treaties in 1949 and 1977 (along with a raft of treaties governing permissible means and methods). However, as these new participants employ new or irregular methods to fight their wars, pressures are brought to bear on the existing law of armed conflict. This chapter will use the First World War and its centennial in 2014 as "bookends" with which to frame the discussion of just how wars have changed over the last 100 years, how the law has responded to such changes, and whether the law needs to continue to change in response to altered methods of armed conflict.

**From just war to clean war : the impact of modern technology on military ethics**  
**Delphine Hayim.** - In: *Legitimacy and drones : investigating the legality, morality and efficacy ofUCAVs.* - Farnham ; Burlington : Ashgate, 2015. - p. 191-214. - Cote 341.67/787

This chapter will posit that the clean war doctrine is progressively supplanting the just war theory as a moral and legal justification for armed conflicts. In other words, cleanliness of effects is replacing the legality/legitimacy of the cause. Technologies for conducting warfare are altering the nature of conflict in that public acceptance of war is now garnered through faith in scientific advances, trust in experts and the use of medico-surgical terminology. This chapter will attempt to grasp to what extent this clean war doctrine leads to a redefinition, or at least to a new interpretation of, international humanitarian law rules and principles. And considering the prospects for developing entirely automated and robotized wars, there will be a highlighting of the moral dimension of the clean war doctrine and the ethical problems that are closely intertwined with the emergence of (semi)-autonomous weapons.

**The handbook of the international law of military operations**

**ed. by Terry D. Gill and Dieter Fleck ; in collab. with Nils Melzer... [et al.].** - Oxford : Oxford University Press, 2015. - XLVI, 743 p. - Cote 345.25/239 (2015)

The second edition of this handbook provides a comprehensive overview and annotated commentary of those areas of international law most relevant to the planning and conduct of military operations. It covers a wide scope of military operations, ranging from operations conducted under UN Security Council mandate to (collective) self-defence and consensual and humanitarian operations and identifies the relevant legal bases and applicable legal regimes governing the application of force and treatment of persons during such operations. It also devotes attention to the law governing the status of forces, military use of the sea and airspace and questions of international (criminal) responsibility for breaches of international law. New developments such as cyber warfare and controversial aspects of law in relation to contemporary operations, such as targeted killing of specific individuals are discussed and analysed, alongside recent developments in more traditional types of operations, such as peacekeeping and naval operations.

**History and development of the international law of military operations**

**William K. Lietzau and Joseph A. Rutigliano.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 14-34. - Cote 345.25/239 (2015)

This chapter traces the historical development of operational law which the international law of military operations is part of. It begins by discussing the development of jus ad bellum—the law that applies to when and under what circumstances the military instrument may be used, and jus in bello the most significant legal regime impacting the international law of military operations. It then turns to the history of the use of military legal advisors, highlighting the challenges legal advisors have faced over time in providing legal advice for present and future operations based on rules formulated for a past conflict. The chapter concludes by considering some of the future challenges faced by military legal advisors.

**Human rights and international humanitarian law : general issues**

**Jann K. Kleffner.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 35-62. - Cote 345.25/239 (2015)

This chapter discusses the relationship between two pivotal components of the international law of military operations: human rights and international humanitarian law. Both fields of law seek to protect individual and human dignity, which explains the substantial material overlap between them. But human rights law and international humanitarian law remain distinct areas of international law. Significant differences remain, not only as regards their historical roots and evolution, normative frameworks, and enforcement mechanisms, but also concerning their respective applicability *ratione materiae, personae, temporis, and loci*. International humanitarian law applies in military operations amounting to an armed conflict while human rights law is generally considered to apply to the extent that individuals are subject to the jurisdiction of a State or international organization. In the event of conflict between a norm of international humanitarian law and a norm of human rights law, the more specific norm prevails in principle.

**Humanitarian activities carried out across borders in times of armed conflict in the light of state sovereignty and international humanitarian law**

**Keiichiro Okimoto.** In: *Yearbook of international humanitarian law*, Vol. 17, 2014, p. 121-143

The purpose of this article is to clarify the extent to which a State may exercise its discretion to decide whether to allow humanitarian organizations to carry out humanitarian activities across borders in times of armed conflict in the light of the principle of State sovereignty and international humanitarian law. In

particular, this article discusses the interplay between the principle of sovereignty and international humanitarian law and clarifies the extent to which the applicable rules of international humanitarian law limit the exercise of the sovereign right to control the entry of humanitarian organizations into a State's territory. The article concludes that, in times of armed conflict, the consent of the State is required in order to carry out humanitarian activities in the territory of the State, including in those parts that are controlled by the enemy State or an armed group, but that the State's discretion to withhold consent is limited by specific rules of international humanitarian law as well as by binding decisions of the Security Council.

### **Humanitarian assistance and state sovereignty in international law : towards a comprehensive framework**

**Emilie Ellen Kujit.** - Cambridge : Intersentia, [2015]. - XIX, 625 p. . - Cote 361/654

The world is currently witnessing a steady influx of humanitarian crises. The result of these crises is an immediate and large-scale need for food, water, shelter and medicine: in other words, the provision of humanitarian assistance. Whereas the need for such assistance may be ascertainable, its provision is not without legal and political challenges, and deprivation of aid is unfortunately all too common. Looking at these challenges and circumstances, several issues can be discerned regarding the legal framework governing the provision of humanitarian assistance. This book aims to systematically address these challenges, with an overarching approach to the provision of humanitarian assistance. Part I sets out the boundaries of the existing framework and addresses the relevant concepts pertaining to the delivery of emergency aid. Part II assesses the currently existing rights of the affected persons and duties of the affected state in the delivery of humanitarian assistance, whereas Part III addresses enforcement possibilities in the absence of (sufficient) provision by the affected state. Lastly, recommendations are provided to ensure the protection of those who need it most.

### **Humanity considerations cannot reduce war's hazards alone : revitalizing the concept of military necessity**

**Yishai Beer.** In: European journal of international law = Journal européen de droit international, Vol. 26, no. 4, November 2015, p. 801-828

The exercise of brute force by militaries, though common, reflects professional incompetency. A well-trained military has an inherent interest in enhancing its operational effectiveness and constraining unnecessary brutality. The law of armed conflict, however, generally ignores the constraining effect of the necessity principle, originally intended to allow only the minimally necessary use of force on the battlefield. Consequently, the prevailing law places the burden of restricting the exercise of brute military force upon humanitarian considerations (and the specific norms derived from them). Humanity alone, however, cannot deliver the goods and substantially reduce war's hazards. This article challenges the current dichotomy between the two pillars – mistakenly assumed to be polar opposites – of the law of armed conflict: necessity and humanity. It calls for the transformation of the military's self-imposed professional constraining standards into a revised legal standard of necessity. Though the necessity principle justifies the mere use of lethal force, it should not only facilitate wielding the military sword but also function simultaneously as a shield, protecting combatants and non-combatants alike from excessive brutality. The suggested transformation would bind and restrain the prospective exercisers of excessive force, political and military alike, and restrict the potential damage that might be caused both intentionally (to combatants) and collaterally (to non-combatants). The combined effect of the current changes in war's pattern and the law of armed conflict, in the military and social thinking of recent decades, and the new strategies available due to the development of new military technologies have all created a new war environment – one that may be ready to leverage the constraining potential of military professionalism into a binding legal standard and norms.

<http://www.ejil.oxfordjournals.org/content/26/4/801.full.pdf>

### **Implementing humanitarian norms through non-State armed groups**

**Sandesh Sivakumaran.** - In: Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region. - Cambridge : Cambridge University Press, 2015. - p. 125-146. - Cote 345.22/265

This chapter is based on two self-evident propositions. First, only States may ratify international humanitarian law treaties. Second, non-international armed conflicts are fought between States and non-State armed groups or between armed groups. The disjunction between these two statements is apparent: one of the parties involved in armed conflicts, namely armed groups, cannot ratify international humanitarian law treaties. Yet – or because of this – armed groups frequently commit themselves to humanitarian norms in general and international humanitarian law norms in particular. This chapter considers some of the issues that are raised by commitments of armed groups. In particular, it assesses ways in which the commitments could be utilized more effectively. Commitments, by themselves, are insufficient

to create a climate of respect for humanitarian norms. At the very least, the norms have to be ‘translated’ into language that is understood by fighters. They must be internalized both within the group and by individual fighters. The commitments also need to be enforced by the group. Accordingly, there is a role to be played by armed groups at each of the stages following the issuance of a commitment. Their role at each of these stages forms the substance of this chapter.

### **Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region**

ed. by Heike Krieger ; assistant ed. Jan Willms. - Cambridge : Cambridge University Press, 2015. - XVII, 557 p. . - Cote 345.22/265

The number of armed conflicts featuring extreme violence against the civilian population in areas with no or little State authority has risen significantly since the early 1990s. This phenomenon has been particularly prevalent in the African Great Lakes Region. This collection of essays evaluates, from an interdisciplinary perspective, the various traditional and alternative instruments for inducing compliance with international humanitarian law. In particular, it explores the potential of persuasion, as well as hierarchical means such as criminal justice on the international and domestic level or quasi-judicial mechanisms by armed groups. Furthermore, it evaluates the role and potential of human rights bodies, peacekeeping missions and the UN Security Council's special compliance system for children and armed conflicts. It also considers how Common Article 1 to the Geneva Conventions and the law of State responsibility could both potentially increase compliance with international humanitarian law.

### **The International Committee of the Red Cross and the promotion of international humanitarian law : looking back, looking forward**

Marion Harroff-Tavel. In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 817-857

In a globalizing world marked by geopolitical upheaval, unprecedented threats to human security, new forms of violence and technological revolutions, particularly in the area of information technology, it is no simple task to raise awareness of international humanitarian law (IHL) applicable to armed conflict and ensure that warring parties comply with this body of law. This article traces the history of the International Committee of the Red Cross's (ICRC) work in promoting IHL from 1864 to the present, juxtaposing this history with important events in international relations and with the organization's (sometimes traumatizing) experiences that ultimately gave rise to innovative programmes. The article summarizes lively debates that took place at the ICRC around such topics as the place of ethics in the promotion of IHL, respect for cultural diversity in the various methods used to promote this body of law, and how much attention should be devoted to youth – as well as the most effective way to do so. The author concludes by sharing her personal views on the best way to promote IHL in the future by drawing on the lessons of the past.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-harroff-tavel.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-harroff-tavel.pdf)

### **The International Court of Justice and international humanitarian law**

Christopher Greenwood. - In: Shielding humanity : essays in international law in honour of Judge Abdul G. Koroma. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 263-288. - Cote 345.22/274 (Br.)

Judge Abdul Koroma served on the bench of the International Court of Justice (ICJ) for eighteen years. Writing in his honour, the author examines the ICJ's jurisprudence on international humanitarian law (IHL) over the years. The author argues that the ICJ made its most important contributions to IHL in the period from 1994–2012. The court faced new issues such as the legality of nuclear weapons. It also had to clarify the obligations of Israel and Uganda, then-occupying powers in Palestine and the Congo, under IHL and international human rights law. The author emphasizes the Court's contribution during this period to reaffirming the important role of IHL, and to developing the relationship between IHL and other areas of international law. However, it is possible that where the Court has made the greatest contribution is the law of belligerent occupation. The ICJ reaffirmed that the laws set out in the 1907 Hague Convention and the 1949 Geneva Conventions remain applicable today, and clarified the circumstances in which the laws become applicable. Finally, the Court has markedly contributed to the enforcement and implementation of IHL, through the adjudication of claims concerning state responsibility. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<https://library.ext.icrc.org/library/docs/ArticlesPDF/42199.pdf>

### **International law and armed conflict in dark times : a call for engagement**

**Naz K. Modirzadeh.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 737-749

This Opinion Note highlights the international humanitarian law (IHL) provisions mandating dissemination of the Geneva Conventions and the Additional Protocols to the civilian population. In referencing three dilemmas concerning contemporary challenges to international law in armed conflict and how each of those dilemmas may result in a "breaking point" or a "turning point", the author argues that it is vitally important not only for armed forces but also for the general public to learn – and actively engage with – IHL both during war and in (relative) peacetime.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-modirzadeh.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-modirzadeh.pdf)

### **International responsibility and military operations**

**Boris Kondoch and Marten Zwanenburg.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 559-577. - Cote 345.25/239 (2015)

This chapter discusses international responsibility of States and international organizations in military operations. International responsibility in the context of military operations refers to the legal consequences arising from wrongful acts committed during such operations. International responsibility entails the obligation to cease the internationally wrongful act if it is continuing, and the obligation to make full reparation in the form of restitution, compensation, rehabilitation, satisfaction, or guarantees of non-repetition. A State is responsible for conduct consisting of an act or omission that is attributable to the State and that breaches an international obligation of the State. International organizations are responsible for conduct attributable to them and which breaches an international obligation of the organization, in principle in the same way as States. The responsibility under international law of an international organization or State for wrongful acts committed during a military operation does not affect the individual criminal responsibility of the perpetrator.

### **International responsibility for humanitarian law violations by armed groups**

**Kirsten Schmalenbach.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 470-503. - Cote 345.22/265

Taking the armed conflicts in the Great Lakes Region as the backdrop, this chapter examines two areas : first, the responsibility of non-State armed groups and their supporting States for the widespread violations of humanitarian law, and second, the responsibility of the invested States for their support of the armed groups and their failure to prevent the latter's atrocities. This study does not address the individual responsibility for atrocities under international criminal law but focuses on the collective responsibility of armed groups and States.

### **Is Johnny Five alive or did it short circuit ? : can and should an artificially intelligent machine be held accountable in war or is it merely a weapon ?**

**Aaron Gevers.** In: *Rutgers journal of law and public policy*, Vol. 12, issue 3, Spring 2015, p. 384-425. - Cote 341.67/788 (Br.)

This article examines the legality of using artificially intelligent (AI) machines in war. The discussion begins by introducing a fictive robot named "Johnny Five." After receiving orders, Johnny malfunctions and murders an entire village. The article then argues that this scenario, while horrifying, is highly unlikely. Further, it is posited that similar AI robots will soon be militarily necessary in order to reduce collateral damage. Strong AI (i.e., "true" AI), which is held here to be fundamentally different from robotic automation, is both feasible and likely in the near future. Various theories of AI development and testing are explored. Ultimately, the article argues that once AI exists allowing robots to think and act like humans, they should be treated like humans. It is conjectured that AI will eventually be identical to human intelligence. Thus, AI robots will be able to comply with the international humanitarian law (IHL) principles of military necessity, distinction, proportionality and humanity. Notwithstanding the improbability of such an event, the article explains that if a robot were to infringe IHL, the robot itself and its commanding officer should be held liable, with the possible addition of the robot's manufacturer. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

[http://www.rutgerspolicyjournal.org/sites/rutgerspolicyjournal.org/files/issues/12\\_3/Gevers\\_FINAL.pdf](http://www.rutgerspolicyjournal.org/sites/rutgerspolicyjournal.org/files/issues/12_3/Gevers_FINAL.pdf)

## **Is targeting naked child soldiers a war crime ?**

**Joanna Nicholson.** In: *International criminal law review*, Vol. 16, issue 1, 2016, p. 134-157

International law prohibits the recruitment and use of children under the age of fifteen to participate actively in hostilities. Such child soldiers constitute military targets under international humanitarian law (IHL), and the prevailing view is that they may be targeted in the same way as their adult counterparts. Although there may be moral or pragmatic reasons for avoiding targeting child soldiers if possible, there is no obligation under international law to treat them differently from an adult fighter.

<http://dx.doi.org/10.1163/15718123-01601006>

## **The law of cyber targeting**

**Michael N. Schmitt.** In: *Naval war college review*, Vol. 68, no. 2, Spring 2015, p. 11-29. - Cote 345.26/280 (Br.)

Cyber activities have become a reality in contemporary warfare. This article examines how international humanitarian law (IHL) may feasibly and effectively govern these activities, arguing that its interpretation must adapt in order to do so. Informed by the Tallinn Manual, the article focuses on IHL norms as they can be applied to cyber operations. Specifics about cyber operations in Estonia, Georgia, and Iran are also included. Wide acceptance for the application of IHL to cyber operations in warfare is complicated by disagreements about whether cyber attacks alone meet the criteria to qualify as international or non-international armed conflicts (IAC/NIAC). While cyber attacks between two or more states may constitute an IAC, cyber exchanges alone are far less likely to meet the criteria for NIACs. Whether such operations are subject to the prohibitions on attacking civilians and civilian objects is also unclear. This is complicated due to the fact that dual-use technology is common in numerous countries. The article also examines application of the rule of proportionality and the requirement to take precautions in attack when conducting cyber operations. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<https://www.usnwc.edu/Publications/Naval-War-College-Review/2015---Spring.aspx>

## **The law of military operations at sea**

**Wolff Heintschel von Heinegg.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 375-421. - Cote 345.25/239 (2015)

This chapter discusses the law of naval warfare. The law of naval warfare is not applicable in non-international armed conflict. Otherwise, the parties to such conflicts would be entitled to interfere with international navigation and aviation in areas beyond the territorial sovereignty of the respective State. Such conduct has not been recognized as in accordance with international law. States that have ordered their armed forces to comply with that law in situations other than international armed conflicts have been guided by purely operational and political considerations. The remainder of the chapter covers naval operations and navigational rights; warships and other platforms; general principles of the law of naval warfare; specially protected enemy vessels and aircraft; legitimate military targets at sea; methods and means of naval warfare; and economic warfare at sea.

## **The law of targeting**

**Michael N. Schmitt and Eric Widmar.** - In: *Targeting : the challenges of modern warfare.* - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 121-145. - Cote 345.25/335

The law of targeting rests at the heart of modern warfare, as well as contemporary controversies over such matters as drones and autonomous weapons. While the weaponry and tactics of targeting continue to evolve with unprecedented advances in technology and innovation, the fundamental principles of targeting law will remain binding rules for the foreseeable future. This chapter examines the law governing who or what is a lawful target, which weapons are permissible, what precautions must be taken prior to an attack, how operations are limited by potential collateral damage and where targeting may take place. A firm understanding of these norms will enable military forces to carry out their missions effectively while minimizing harm to civilians, civilian property and other protected persons and objects.

## **Legal challenges in the provision of humanitarian assistance : the case of non-international armed conflicts**

**Emilie E. Kuijt.** In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 145-166

In the twenty-first century, non-international armed conflicts have become increasingly common. Such conflicts are often characterized by large-scale humanitarian crises, leading to calls by the international community for the provision of assistance. Yet, the factual provision of assistance in such conflicts is not without legal challenges, in particular related to the role of both the state sovereign and that of non-state actors. Obstruction of access to emergency aid by parties to the conflict, depriving those in need of assistance, may lead to legal enforcement issues. This article will address such current issues and offer some solutions in existing international law to ensure protection for those in need.

## **Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs** ed. by **Steven J. Barela.** - Farnham ; Burlington : Ashgate, 2015. - XVIII, 414 p. - Cote 341.67/787

Unmanned combat air vehicles, or in common parlance “drones”, have become a prominent instrument in US efforts to counter an objective (and subjective) cross-border terrorist threat with lethal force. As a result, critical questions abound on the legitimacy of their use. In a series of multidisciplinary essays by scholars with an extensive knowledge of international norms, this book explores the question of legitimacy through the conceptual lenses of legality, morality and efficacy; it then closes with the consideration of a policy proposal aimed at incorporating all three indispensable elements.

## **The legitimization strategy of the Taliban's code of conduct : through the one-way mirror**

**Yoshinobu Nagamine.** - Basingstoke ; New York : Palgrave Macmillan, 2015. - XXII, 293 p. - Cote 345.29/232

The Afghan Taliban are often judged against international norms; what is, however, less known is that they have produced their own set of norms designed to guide their conduct. In this insightful study, Yoshinobu Nagamine examines the Taliban's internal code of conduct, the Layeha. He analyses the Layeha in comparison with Islamic law and international humanitarian law and conducts interviews with Taliban members to understand how they interpret and refer to the Layeha. The results of these interviews give readers and insider's view of the legitimization strategy of the Taliban leadership.

## **Lethal force and drones : the human rights question**

**Gloria Gaggioli.** - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 91-115. - Cote 341.67/787

Armed drones are being used – and are likely to be increasingly used – in situations in which the rules on the conduct of hostilities provided for in international humanitarian law do not apply. This can occur when force is used outside of armed conflict situations, but also, in certain cases, in the context of an ongoing armed conflict. It is often stated that the use of lethal force by means of drones in such scenarios is covered by the law enforcement paradigm mainly derived from human rights law. The practical and legal consequences of this position remain unexplored however: beyond the issue of extraterritorial application of human rights law, can drone attacks be used in law enforcement? Can they (ever) respect the principles of absolute necessity and proportionality? How can an escalation of force procedure be applied in such situations? These are some of the key questions this chapter will investigate.

## **The Lieber Code and the regulation of civil war in international law**

**Dapo Akande and Lawrence Hill Cawthorne.** In: Columbia journal of transnational law, Vol. 53, no. 3, 2015, p. 638-651. - Cote 345.27/148 (Br.)

The Lieber Code was a general codification of the laws of war that was also intended to regulate the conduct of armed forces during the American Civil War. It presented a novel assumption: that the laws of war in international armed conflicts (IAC) should apply in a non-international armed conflict (NIAC). Since the Lieber Code, however, international humanitarian law (IHL) has developed into a bipartite scheme. With the Geneva Conventions of 1949 and subsequent treaties, the applications of IHL were reformed. The legal category of “war” - easily manipulated by states - was replaced with the factual criteria of “armed conflict”. The existence of the relevant factual criteria meant that IHL applied automatically, so states lost their control over that determination. As a result, states refused to apply IHL in its entirety to NIAC, and have repeatedly rejected the harmonization of IHL in treaties drafted since the Lieber Code. The authors then offer various rationales for states' reluctance to harmonize the rules of IHL in IAC and NIAC, including states' fears of limiting their rights in domestic conflicts; that more regulation in NIAC would legitimize armed opposition

groups; and that legitimization of armed militants might “internationalize” conflicts, by encouraging more frequent intervention by other states. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://jtl.columbia.edu/lieber-series-the-lieber-code-and-the-regulation-of-civil-war-in-international-law/>

### **Means and methods of the future : autonomous systems**

**Jeffrey S. Thurnher.** - In: Targeting : the challenges of modern warfare. - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 177-199. - Cote 345.25/335

Autonomous systems will fundamentally alter the way wars are waged. In particular, autonomous weapon systems, capable of selecting and engaging targets without direct human operator involvement, represent a significant shift of humans away from the battlefield. Nations intending to use these emerging technologies must grapple with how best to adjust their targeting processes and procedures to accommodate greater autonomy in weapon systems. This chapter examines these cutting-edge and controversial weapons with a particular emphasis on the legal impact on targeting during international armed conflicts. Initially, this chapter will explore the promising technological advances and operational benefits which indicate these weapon systems may become a reality in the not-so-distant future. The focus will then turn to the unique challenges the systems present to the law of armed conflict under both weapons law and targeting law principles. Next, the examination will shift to two key aspects of targeting most affected by autonomous systems: targeting doubt and subjectivity in targeting. The author ultimately concludes that autonomous weapon systems are unlikely to be deemed unlawful per se and that, while these targeting issues raise legitimate concerns, the use of autonomous weapons under many circumstances will be lawful.

### **Military advantage : a matter of "value", strategy, and tactics**

**Kenneth Watkin.** In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 277-364 : diagr.

The concept of "military advantage" is an underexplored, but essential aspect of the humanitarian law governing targeting. The precise meaning of military advantage has proven difficult to articulate, although in general terms it has a particular resonance with "military necessity". The analysis of military advantage has often centered on two almost polar opposite interpretations : one focused on tactical gains, and the other more strategically on "the advantage anticipated from the attack considered as a whole and not from isolated or particular parts of the attack." Considered together these two approaches only begin to scratch the surface of the complexity of the issue. Separately, they appear to significantly under-represent the challenge facing practitioners, legal analysts and courts when dealing with targeting issues arising from complex contemporary security operations. Practical considerations of military advantage are often masked by the use of terms such as "high-value target", and assessing the "effects" of an attack to achieve a particular objective. The focus of this article is on adding "flesh" to the textual "bones" provided under Additional Protocol I.

### **Moral cognition and the law and ethics of armed conflict**

**David Traven.** In: International studies review, Vol. 17, issue 4, December 2015, p. 556-587. - Cote 345.2/991 (Br.)

In contemporary political science, many believe that normative restrictions on armed conflict are an outgrowth of Western culture and the just war tradition. Drawing on historical evidence, which shows that political actors in Ancient China and the early Islamic empire endorsed civilian protection rules, I claim that such norms are more common than most International Relations (IR) theorists suppose. For IR theory, this raises an important puzzle: how can we explain why similar normative ideas emerged in human societies that are otherwise very different? Building on research in cognitive science, social psychology, and social neuroscience, I argue that most people have natural cognitive and emotional predispositions that bias the emergence and transmission of cultural norms that protect non-combatants. More specifically, capacities for perspective-taking and empathy shape how people interpret the limits of their moral commitments, and when these capacities are engaged, intuitional heuristics affect how they judge the morality of killing in war. What is more, I claim that three key contextual variables moderate the connection between innate moral intuitions and the development of civilian protection norms: (i) societal interdependence, (ii) the social empowerment of marginal actors, and (iii) the creation of norms in argumentative contexts that require impartial moral reasoning. I argue that rationalist and constructivist theories of norm emergence will be able to better explain the emergence, the durability, and the institutional design of the norms of war by incorporating this naturalistic theory of moral cognition.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/42160.pdf>

### **National courts : the situation in the Democratic Republic of the Congo**

**Jean-Michel Kumbu.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 217-246 . - Cote 345.22/265

Conflicts in the Democratic Republic of the Congo have resulted in the commission of the worst and most serious crimes of international law, including massacres and sexual violence on a large scale. However so far very few cases have been brought to justice. This chapter examines the challenges faced by Congolese courts in addressing these crimes and discusses alternatives to Congolese military justice for the punishment of serious international crimes.

### **Off target : selection, precaution, and proportionality in the DoD Manual**

**Adil Ahmad Haque.** In: *International law studies*, Vol. 92, 2016, p. 31-84. - Cote 345.22/275 (Br.)

The United States Department of Defense Law of War Manual misrepresents customary international law governing target selection, precautions in attack and proportionality. Contrary to the Manual's assertions, attackers with a choice of targets for obtaining a similar military advantage must select the target that endangers the fewest civilians; often must avoid harming civilians even at some additional risk to themselves or to their mission; and must refrain from attack if the expected harm to civilians — including to civilians forced to serve as human shields — would be excessive in relation to the anticipated military advantage.

<http://stockton.usnwc.edu/ils/vol92/iss1/3/>

### **Operational detention and the treatment of detainees**

**Jann K. Kleffner.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 518-540. - Cote 345.25/239 (2015)

This chapter discusses the rules governing operational detention and treatment of detainees under international law. The international legal framework governing operational detention consists primarily of international humanitarian law and human rights law, as complemented by applicable Security Council resolutions, secondary UN legislation, rules of regional organizations, status-of-forces, and other bilateral agreements. No person may be detained except on lawful grounds and detention must cease as soon as the lawful grounds for it cease to exist. Detainees are entitled to humane treatment and conditions of detention, without distinction of any kind. No person under detention shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. Enforced disappearances are also prohibited.

### **Peru's National Committee for the study and implementation of international humanitarian law**

**Tania Elizabeth Arzapalo Villón.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 1061-1073

Implementation of international humanitarian law (IHL) in national legislation is necessary to promote compliance with IHL in the event of an armed conflict. Owing to its consultative and interdepartmental nature, the National Committee for the Study and Implementation of International Humanitarian Law (CONADIH) plays a strategic role in promoting its implementation in Peru. To fulfil that role more effectively, CONADIH was strengthened during a structural internal reform of the Peruvian Ministry of Justice and Human Rights (MINJUS), where its presidency lies. Two of the crucial steps to that end were that the presidency fell under a higher authority within the Ministry and the creation of a governing body with decision-making powers regarding IHL and international human rights law, thus leading to the incorporation of IHL into a broad range of public policies.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-arzapalo-villon.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-arzapalo-villon.pdf)

### **A porous humanitarian shield : the laws of war, the Red Cross, and the killing of civilians**

**Margit Bussmann, Gerald Schneider.** In: *The review of international organizations*, 4 September 2015, [23] p. : tabl. graph.. - Cote 362.191/ 1618 (Br.)

An important literature examines the attempts by the international community in inducing or coercing conflict parties in civil wars to refrain from committing atrocities against the civilian population. We examine in this article whether a non-governmental actor, the distinctively neutral and independent International Committee of the Red Cross, whose mission includes the promotion of humanitarian law and the protection of the civilian population, has such a restraining effect on the conflict parties. Our results suggest that the

more time has passed since the ratification of the relevant Geneva Conventions and Protocols, the larger is the risk of civilian victimization. We cannot find evidence that the ICRC's presence in conflict zones and the seminars it conducts to spread humanitarian law make a crucial difference. Case studies of Bosnia and Darfur indicate that shaming strategies and thus a relatively unusual instrument for the traditionally neutral actor did not abate the killings; the statistical evidence in the form of Granger causality tests rather show that the killing and harming precedes the naming and shaming.

### **Prevention in practice : teaching IHL in US legal academia**

**Kate Jastram and Anne Quintin.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 987-1027 : graph.

This paper assesses the evolution of teaching international humanitarian law (IHL) in law schools in the United States since 2007, analyzes progress made in overcoming challenges to more effective integration of IHL content in law school curricula, and provides a measure of the contribution of promotional initiatives and strategies undertaken by the International Committee of the Red Cross (ICRC) to this effort. The findings and recommendations should serve to support law faculty and law schools in the US and elsewhere, as well as the ICRC, in expanding opportunities for teaching and scholarship, and in encouraging law students and professors to pursue their interest in this field.

[https://library.icrc.org/library/docs/DOC/irrc-895\\_896-jastram-quintin.pdf](https://library.icrc.org/library/docs/DOC/irrc-895_896-jastram-quintin.pdf)

### **The price of news from the front line: rethinking the protection of media personnel under international humanitarian law**

**Freya Foster.** In: Journal of conflict and security law, Vol. 20, no. 3, Winter 2015, p. 451-480

The dangers faced by members of the media in conflict zones are widely acknowledged. This article examines the protections offered to media personnel (journalists and other media workers) under international humanitarian law and suggests that, in light of the valuable role that they play in wartime, the current protections offered to them under international humanitarian law are inadequate. It then examines the feasibility of granting media personnel similar protections to those guaranteed to religious and medical personnel under the Geneva Conventions and their additional protocols, finding that in light of certain similarities between the work of these personnel and that of journalists in war-zones, many of the protections offered to medical and religious personnel could be extended to media personnel. Although there are certain unique challenges to improving protections under international humanitarian law in the context of journalists, such as the issue of propaganda and defining who should be considered to be a member of the media, this article concludes that it is both possible and justified to increase the level of legal protection offered to media personnel.

<http://dx.doi.org/10.1093/jcsl/krv008>

### **The prohibition to use chemical weapons**

**Thilo Marauhn.** In: Yearbook of international humanitarian law, Vol. 17, 2014, p. 25-44

A century ago, chemical weapons were used in World War I, with their use during the second battle of Ypres, in particular on 22 April 1915, demonstrating their nature as weapons of mass destruction. On 21 August 2013, during the Syrian civil war, sarin-filled rockets hit the Ghouta suburbs of Damascus, killing a large number of civilians. It is against the background of the indeed limited use of chemical weapons over the last century that the steps towards a nearly universal prohibition thereof are analysed. The starting point is early steps towards only prohibiting the use of chemical weapons (primarily focusing upon the 1899/1907 Hague Regulations and the 1925 Geneva Protocol) and their emerging customary law nature. With the adoption of the 1993 Chemical Weapons Convention, the prohibition of use was strengthened not only in scope but also by linking it to pertinent disarmament and arms control provisions. The latest steps address individual criminal accountability for using chemical weapons as a means of warfare, based upon the 1998 Rome Statute and the 2010 Kampala amendments thereto. As the concluding section illustrates, the effectiveness of a century of pertinent international law making depends on the universality of the prohibition to use chemical weapons and the common efforts of all stakeholders to ensure the integrity of the regime established by these various layers of international law.

### **Promoting respect for IHL by NGOs : the case of ALMA - Association for the promotion of IHL**

**Ido Rosenzweig.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 1029-1042

ALMA – Association for the Promotion of International Humanitarian Law is an Israeli-originated non-governmental organization. ALMA was established with the prime objective of promoting knowledge,

understanding and discussion of IHL. For that purpose, it has established several projects aimed at different audiences and with different goals. Since its establishment in March 2010, ALMA has managed to make its way to the front line through cooperation and dedication. This article provides an overview of ALMA's goals and projects, as well as its challenges and future aspirations in the quest to generate respect for international humanitarian law.

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### **The prosecution of international crimes in relation to the conduct of military operations**

**William J. Fenrick.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 546-558. - Cote 345.25/239 (2015)

This chapter provides an overview of international crimes which may be committed during military operations or which may occur in areas where military operations are being conducted. International crimes which may occur in relation to military operations include war crimes, crimes against humanity, and genocide. All three types of crimes may be prosecuted on the basis of universal jurisdiction, that is, they may be prosecuted by the authorities of any State regardless of where the offence is committed although, usually, the accused must be in the hands of the State authorities which commence the prosecution. Commanders and other superiors are criminally responsible for war crimes, crimes against humanity, or acts of genocide committed by their subordinates. They must also take all practicable measures within their authority to ensure that their subordinates who appear to have committed international crimes are tried before appropriate tribunals and, if found guilty, appropriately punished.

### **The righting of the law of occupation**

**Aeyal Gross.** - In: *The frontiers of human rights : extraterritoriality and its challenges.* - Oxford : Oxford University Press, 2016. - p. 21-54. - Cote 345.1/637

Advocates for applying international human rights law (IHRL) in occupied territories in addition to international humanitarian law (IHL) suggest that doing so would advance the welfare of the occupied people as well as a legal culture of compliance. This chapter, however, argues that the application of IHRL in occupied territories may in fact lead to a radical transformation in the law of occupation because of the conceptual differences that exist between IHL and IHRL. This transformation is not necessarily to the benefit of protected persons living under occupation. The chapter includes discussion of case-law of the International Court of Justice, the Israeli High Court of Justice and the European Court of Human Rights.

### **The role of international criminal prosecutions in increasing compliance with international humanitarian law in contemporary African conflicts**

**Robert Cryer.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 188-216. - Cote 345.22/265

The establishment of international criminal courts is one of the major responses through which the international community tried to address the challenge for compliance which stems from war-torn areas of limited statehood. However, international criminal prosecution is criticized because it is difficult to demonstrate empirical evidence that it fulfils its deterrent and educative purposes in these areas. Robert Cryer addresses this criticism, stressing that the selective approach of international criminal prosecution challenges its legitimacy. He concludes that we ought to approach the possible preventative role of international criminal law and the ICC with humility and an understanding of the limits of criminal justice.

### **The role of the military legal advisor**

**A.P.V. Rogers and Darren Stewart.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 581-609. - Cote 345.25/239 (2015)

This chapter discusses the role of the military legal advisor. States are required to make legal advisors available to the staff of military commanders whose forces are likely to be deployed on military operations. The duty of those legal advisors will be to provide advice that will enable the commander and his staff to carry out the commander's military mission in accordance with the law. The legal advisor may also be required to advise on appropriate legal training for the forces concerned. In addition to legal skills, legal advisors must maintain and develop core military skills, including the use of personal weapons. The remainder of the chapter covers the appointment and tasks of legal advisors; and their functions during the pre-deployment, deployment, and post-deployment phases of military operations.

### **The Security Council working group on children and armed conflict : a legal appraisal of its application and development of international legal standards**

**Marjolein Vliet.** In: Human rights and international legal discourse, Vol. 9, no. 2, 2015, p. 242-276 : tabl.

In 2005, the Security Council established the Security Council Working Group on Children and Armed Conflict in order to help implement its policy to ensure the application of international legal standards for the protection of children in armed conflict. The Working Group makes recommendations that enable the Council to take action of necessity. It is therefore relevant to consider these recommendations from a legal perspective. This paper addresses the question whether the Working Group should be regarded as a policy mechanism at the disposal of the Security Council, which utilises the language of the law for peace-related purposes, or rather as a semi-legal body which engages with and applies international law and which should thus be taken into account as a body that may influence the development of law regarding children in armed conflict. For that purpose, the paper focuses on how the Working Group engages with international law relevant to children in armed conflict. This results in a legal appraisal of the Working Group's application and development of the international legal standards protective of children in armed conflict situations.

### **Some considerations concerning the role of the ius ad bellum in targeting**

**Terry D. Gill.** - In: Targeting : the challenges of modern warfare. - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 101-119. - Cote 345.25/335

This contribution examines the influence of the ius ad bellum upon the targeting process. Specifically, it will examine how the rules of international law relating to the permissibility of the use of force can and do influence the targeting of both objects and persons which constitute military objectives under international humanitarian law and can, alongside other relevant rules and principles of international law and policy considerations, additionally influence the geographical and temporal scope of the targeting process.

### **Special agreements as a means of enhancing compliance with IHL in non-international armed conflicts : an inquiry into the governing legal regime**

**Ezequiel Heffes and Marcos D. Kotlik.** In: International review of the Red Cross, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 1195-1224

Common Article 3 to the four Geneva Conventions encourages the parties to a non international armed conflict to bring into force international humanitarian law provisions through the conclusion of special agreements. Since armed groups are ever more frequent participants in contemporary armed conflicts, the relevance of those agreements as means to enhance compliance with IHL has grown as well. The decision-making process of special agreements recognizes that all the parties to the conflict participate in the clarification and expansion of the applicable rights and obligations in a way that is consistent with the principle of equality of belligerents. This provides incentives for armed groups to respect the IHL rules they have themselves negotiated. However, even upon the conclusion of such agreements, it remains unclear which legal regime governs them. This paper will argue that special agreements are governed by international law instead of domestic law or a sui generis legal regime.

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### **Systemic efficacy : “potentially shattering consequences for international law”**

**Robert Kolb.** - In: Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs. - Farnham ; Burlington : Ashgate, 2015. - p. 299-320. - Cote 341.67/787

International jurist Antonio Cassese identified “potentially shattering consequences for international law” in the UNSC Resolutions passed in the aftermath of the attacks of 9/11. His concern was that they introduced a disruption of crucial legal categories, and this disquiet becomes amplified with the use of drones employing lethal force across international borders. This chapter will address what this strain means to the global structure as we know it. In other words, even if the use of drones were shown to be tactically and strategically efficacious, the resulting damage to the international system could negate such theoretical gains. Under discussion in this chapter is the history of the contemporary global system and the disturbance caused between the bodies of international law that come into play with such action.

### **Targeted killings in operational law perspective**

**Nils Melzer.** - In: The handbook of the international law of military operations. - Oxford : Oxford University Press, 2015. - p. 307-331. - Cote 345.25/239 (2015)

This chapter discusses rules governing targeted killings under international law. The term ‘targeted killing’ refers to military operations involving the use of lethal force aimed at killing selected individuals not in the

physical custody of those targeting them. Its international lawfulness is regulated primarily by human rights law and, in situations of armed conflict, international humanitarian law. Outside the conduct of hostilities in armed conflict, a targeted killing is permissible only in certain specified circumstances. In a situation of armed conflict, it is permissible only where it is cumulatively: directed against a person subject to lawful attack; planned and conducted so as to avoid erroneous targeting, avoiding, or at least minimizing, incidental civilian harm; not expected to cause incidental civilian harm excessive in relation to the military advantage anticipated; suspended when the targeted person surrenders or otherwise falls hors de combat; and not otherwise conducted using prohibited means or methods of warfare.

### **Targeting in coalition operations**

**Chris De Cock.** - In: *Targeting : the challenges of modern warfare.* - The Hague : T.M.C Asser Press ; Berlin ; Heidelberg : Springer, 2016. - p. 231-259. - Cote 345.25/335

In this paper, the author examines the normative framework in coalition operations with respect to the concept of targeting. He considers the complexity of the legal framework, including the mandate and the interplay between international human rights law and the law of armed conflict. The author then considers the implications of the mandate and the use of force used pursuant to it for the applicability of the jus in bello laws regulating the conduct of hostilities. In the second half of the paper, the author examines some legal interoperability problems by reference to the jus in bello laws of targeting, demonstrating the complexity of the targeting decision making process. Finally, he considers the issue of accountability of coalition commanders under the doctrine of command responsibility.

### **Targeting in operational law**

**Michael N. Schmitt.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 269-306. - Cote 345.25/239 (2015)

This chapter discusses the rules governing targeting under international humanitarian law. The core treaty that addresses targeting—Additional Protocol I to the 1949 Geneva Conventions (AP I)—contains provisions on general protection against effects of hostilities. They apply to any land, air, or sea warfare which may affect the civilian population, individual civilians, or civilian objects on land. They further apply to all attacks from the sea or from the air against military objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air. These provisions include the requirement that parties to the conflict distinguish between civilians and combatants, and the prohibition of attacks against civilians unless they directly participate in hostilities. Special protection is also given to persons because of either the humanitarian functions they perform or because they are particularly liable to be harmed.

### **Targeting : the challenges of modern warfare**

**Paul A. L. Duscheine, Michael N. Schmitt, Frans P.B. Osinga eds.** - The Hague : T.M.C Asser Press ; Springer : Berlin ; Heidelberg, 2016. - XVI, 299 p. - Cote 345.25/335

This book offers a multidisciplinary treatment of targeting. It is intended for use by the military, government legal advisers and academics. The book first explores the context of targeting, its evolution and the current targeting process and characteristics. An overview of the legal and ethical constraints on targeting as an operational process follows. It concludes by surveying contemporary issues in targeting such as the potential advent of autonomous weapon systems, 'non-kinetic' targeting, targeting in multinational military operations and leadership decapitation in counter-terrorism operations.

### **Towards effective military training in international humanitarian law**

**Elizabeth Stubbins Bates.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 795-816

The obligation to train troops in international humanitarian law (IHL) is simply stated and its implementation delegated to State discretion. This reflects a past assumption that mere dissemination of IHL would be an effective contribution to the prevention of violations. Academic literature has evolved so that dissemination alone is now known to be insufficient for compliance, while the ICRC's integration model emphasizes the relevance of IHL to all aspects of military decision-making. A separate process, the ICRC/Government of Switzerland Initiative on Strengthening Compliance with IHL, is still in its consultative stages at the time of writing, but may result in voluntary State reporting and/or thematic discussions at meetings of States. This article synthesizes academic and practitioner insights on effective IHL training, and suggests a collaborative rubric for informative, standardized reporting on IHL training. Such a rubric could enable States and researchers to share best practice and future innovations on IHL training, using a streamlined, cost-effective tool.

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## **The UN Security Council's special compliance systems : the regime of children and armed conflict**

**Regina Klostermann.** - In: *Inducing compliance with international humanitarian law : lessons from the African Great Lakes Region.* - Cambridge : Cambridge University Press, 2015. - p. 313-350. - Cote 345.22/265

Focusing on the regime on children and armed conflict, Regina Klostermann analyses the role of the UN Security Council in enforcing the pertinent international norms, in particular through imposing targeted sanctions. On the basis of an interdisciplinary approach, she arrives at the conclusion that the Security Council's special compliance system for children and armed conflict is a promising step towards inducing compliance since it basically fulfils the requirements that political theory has identified as motives for compliance, namely coercion, self-interest and legitimacy.

## **The war report : armed conflict in 2014**

**ed. by Annyssa Bellal.** - Oxford : Oxford University Press, 2015. - LIII, 757 p. - Cote 355/1018 (2015)

The War Report provides detailed information on every armed conflict which took place during 2014, offering an unprecedented overview of the nature, range, and impact of these conflicts and the legal issues they created. In Part I the Report describes its criteria for the identification and classification of armed conflicts under international law, and the legal consequences that flow from this classification. It sets out a list of armed conflicts in 2014, categorizing each as international, non-international, or a military occupation, with estimates of civilian and military casualties. In Part II, each of these conflicts are examined in more detail, with an overview of the belligerents, means and methods of warfare, the applicable treaties and rules, and any prosecutions for, investigations into, or robust allegations of war crimes. Part III of the Report provides detailed thematic analysis of key legal developments which arose in the context of these conflicts, allowing for a more in-depth reflection on cross-cutting questions and controversies.

## **Weapons under the law of military operations**

**William H. Boothby.** - In: *The handbook of the international law of military operations.* - Oxford : Oxford University Press, 2015. - p. 332-353. - Cote 345.25/239 (2015)

This chapter discusses the rules governing the possession and use of weapons during both international and non-international armed conflict, and during internal disturbances that do not constitute an armed conflict. It explains the two customary principles of weapons law applying in armed conflict, namely the superfluous injury/unnecessary suffering and indiscriminate weapons principles; addresses a customary and two conventional law rules relating to the natural environment; and discusses international humanitarian law that prohibits particular weapons technologies. The remainder of the chapter covers non-lethal weapons; the law in relation to the use of nuclear weapons; the rules on the legal review of new weapons; the extent to which the rules that apply during non-international armed conflicts differ from those applying to armed conflict between States; and the different legal arrangements that apply to weapons procurement and use when a situation falls below the armed conflict threshold.

## **Who can be killed ? : legal targets in non-international armed conflicts**

**Patrycja Grzebyk.** - In: *Legitimacy and drones : investigating the legality, morality and efficacy of UCAVs.* - Farnham ; Burlington : Ashgate, 2015. - p. 49-70. - Cote 341.67/787

Combat drones are weapons, and not unique from a legal point of view. However, there continues to be particular difficulties in identifying legal targets in non-international armed conflicts and this chapter addresses those challenges. It delves into the problems related to the principle of distinction between those engaging in hostilities (members of armed groups with a continuous combat function) and civilians who do not directly participate. Additionally, there will be a discussion of the elimination v. the neutralization of legitimate targets – i.e. the obligation to capture if possible, as well as remarks on the problem of accountability for drone strikes performed in violation of International Humanitarian Law.

## **The work of Mexico's Interministerial Committee on international humanitarian law**

**Mariana Salazar Albornoz.** In: *International review of the Red Cross*, Vol. 96, No. 895/896, Autumn/Winter 2014, p. 1049-1059

In the six years since it was created, the Comisión Intersecretarial de Derecho Internacional Humanitario de México, Mexico's Interministerial Committee on International Humanitarian Law, has become one of the region's most active national bodies for the implementation of international humanitarian law (IHL). Its achievements are the result of the efforts of the federal executive branch agencies that form and participate

in the Committee, as well as of the support that the International Committee of the Red Cross and the Mexican Red Cross have provided to facilitate its work. In this article, the author describes the structure and operation of the Committee, as well as the activities it has carried out in fulfilling its mandate to disseminate and promote respect for IHL rules, principles and institutions and further the national implementation of IHL.

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International Committee of the Red Cross  
Library and Public Archives  
19, avenue de la Paix  
1202 Geneva  
Switzerland  
Tel: +41-22-730-2030  
Email: [library@icrc.org](mailto:library@icrc.org)  
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