

HOW DOES LAW PROTECT IN WAR?

Cases, Documents and Teaching Materials
on Contemporary Practice
in International Humanitarian Law

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Chapter 1

Remarks on teaching International Humanitarian Law

I. WHY TEACH INTERNATIONAL HUMANITARIAN LAW?

First and foremost, the teachers themselves must be convinced of the need to teach International Humanitarian Law (IHL)! However, students must also understand why they should study it. They will only make the requisite effort if they understand IHL's usefulness and how it relates to their aspirations, ideals and experience.

a) To stimulate legal thinking

In today's world, national laws change rapidly. Lawyers in a given legal system must remain flexible and know the different legal systems in order to identify the solutions at their disposal. The purpose of studying law is not to memorize the constantly changing solutions of positive legislation that can be found in databases and books. The primary aim is to acquire a specific method of reasoning, in order to learn, to choose and develop arguments appropriately and to adopt a certain culture. To teach, explain and discuss the solutions of positive law is largely a methodological exercise the aim of which is to familiarize the student with this specific culture. Just as future computer scientists, economists, philosophers and journalists study Latin, classical Arabic or Sanskrit, future corporate lawyers can study IHL. It is the reasoning mechanisms obtained through learning that they will use later, rather than the exact rules governing the conduct of hostilities, for example.

Not all fields of law offer similarly fruitful training grounds for this purpose. IHL contains principles, such as the distinctions between *jus ad bellum* and *jus in bello* or civilians and combatants, which are ideal terrain for training in legal reasoning. It is only by taking these principles as a starting point that the detailed rules can be understood and applied. In addition, these principles are not pure theory. They have to be taken into account in order to understand and discuss solutions to humanitarian problems mentioned in the daily news. Admittedly, other regimes, such as the treatment of

prisoners of war under the detailed rules of Convention III, allow less scope for legal reasoning and arguments and are less conducive to understanding the interplay of principles and rules. They simply constitute positive law regulating a very important humanitarian problem.

b) To promote "justice" in armed conflicts

Law is not just a method of reasoning, a technique used to justify or refute a solution. It also has to do with justice. It governs human beings. The specificity of human beings is that they have a moral choice. Unlike Nature, human society sets out the boundaries and limits of what is perceived as good and bad. Law not only tries to prescribe the most efficient solutions – those which have the best chance of being respected and are the most adapted to reality – it also tries to serve the interests of human beings and move society forward, to show direction. Furthermore, law tries to protect those who are weaker from those who are stronger, even though it would be more efficient, realistic and easily enforceable to serve the interests of those who hold power. Lawyers who do not understand this aspect of law will perhaps be good craftsmen, but they will not be jurists and will not serve society.

How better to understand this aspect of law than by studying IHL, the branch applicable to the most inhumane, lawless, anarchic and archaic form of human activity, namely war? Where can the position of law in the fascinating interplay between *sollen* (that which should be) and *sein* (that which is) be better observed than by studying, as this book suggests, how law protects in war?

Even those who understand IHL can choose to violate it. Teaching IHL is therefore always, even at universities, a question not only of training but also of education. This implies specific challenges for those teaching IHL and for those studying it.

c) Because it is at the vanishing point and at the cross-roads of international law

The study of international law leads to a more thorough understanding of the nature of domestic law. For instance, it enables students to overcome preconceived ideas based on superficial observation of domestic law, which seems to receive its character from compulsory adjudication by tribunals and enforcement by the police. When studying traditional international law, scholars observe how law can work in a relatively unorganized society, where the subjects are the authors, the addressees and the main organs of application of the rules.

Because it stands at the vanishing point and at the crossroads of international law, IHL fosters understanding of this reality where it undergoes the extreme test, namely in armed conflicts. As explained above, IHL typically shows the relativity of traditional rules of international law and the modern tendencies to go beyond this relativity. One of the syllabuses provided below shows that nearly every aspect usually covered in a general course of international law can be explained and discussed with examples of the rules, phenomena and problems of IHL.

d) *Because all students need to know the basic tenets of IHL*

International law in general, and IHL in particular, should be taught not only because they promote training in legal thinking and understanding of legal mechanisms. They also deserve to be studied because of their content. IHL enables students to understand, as lawyers, a world – and particularly news reports about a world – which is marked by armed conflicts. Even those who are lucky enough to live in countries not presently affected by armed conflicts and who do not wish to deal with international affairs will nevertheless be confronted – as citizens, lawyers and human beings – with asylum-seekers from conflict areas. If they lack the basic reflexes of IHL, they will be like dentists who want to extract a tooth without a basic grounding in blood circulation, infection and physiology.

e) *Because some students will need IHL in their future jobs*

Last but not least, we have to state the obvious. At the time of their basic university training, students have not yet staked out a career path. For some, IHL will be part of their professional training. For instance, future armed forces officers will have to learn how to conduct hostilities, treat civilians and run a POW camp in conformity with IHL, if they want to do their job properly and spare the State serious international problems. In one of the cases presented in this book, the Defence Secretary of the world's most powerful country has to answer technical questions on IHL as he could not – or did not want to – refer them to his experts [See Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part II.]].

For many students, IHL will be an essential tool for accomplishing their mission and protecting the efficiency and image of their armed forces in their own country and in the eyes of the international community. If they do not understand and respect IHL, they run the risk that they will one day face criminal charges.¹

In addition, future diplomats will have to understand the mechanisms for the implementation of IHL and the consequences of the distinction between *jus ad bellum* and *jus in bello* if they want to advise their government on how to vote in international forums, how to react to violations, how to fight terrorism, how to implement a development aid policy, or how to plead before the International Court of Justice. Staff of humanitarian organizations will need the best arguments under IHL when calling for respect for victims of armed conflicts, for access to them, and for the implementation of impartial relief distributions. Finally, attorneys, prosecutors and judges need a thorough understanding of IHL when defending, prosecuting or judging alleged war criminals or when confronted with a trademark case involving the use or misuse of the red cross, red crescent or red crystal emblem.

Obviously, not all the categories of persons mentioned above can have access at university to a course on all the rules of IHL they will need to know in their future career. It is, however, there that they will need to realize that IHL exists, acquire a basic understanding of it, understand the place of IHL in international law and in their own

¹ According to Article 32(2) of the ICC Statute [See Case No. 23, The International Criminal Court], an error of law as to whether a particular type of conduct is a war crime is not a ground for excluding criminal responsibility.

legal system, and learn where to find solutions – in international instruments, in books and on the Internet.

II. HOW TO TEACH INTERNATIONAL HUMANITARIAN LAW?

N.B.: Most of this advice may not be needed, as this Book will be used by experienced teachers who therefore know how to teach, are familiar with their target audience and its mentality and, last but not least, know the strengths and weaknesses of their teaching style. Some of our advice may be rejected either because it is not adapted to the country, the culture or the individuals to be instructed or because it is not adapted to the personality of the teacher. Indeed, teachers can only teach content in which they believe, using methods they believe to be efficient. Their personal commitment and conviction are crucial for the success of education.

However, we do propose, for those who would like to use them, course outlines that can be adapted to the teacher's preferences and the needs of the target group. These "instructions" can be modified to fit the national circumstances, applicable legislation, and even the specific culture of the armed forces. The course outlines, far from being rigid instructions, must be adapted to circumstances in order to permit effective learning.

1. Some general thoughts on learning and teaching

a) How do we learn?

The aim of teaching is to promote learning. Individuals learn when they want to learn, when they know how to learn and when they are able to learn. Wanting to learn, or motivation, is perhaps the most important factor.

It cannot be the objective of a course on IHL to teach participants how to learn. However, it is conceivable that by applying and varying new methods, the students' methods of learning will be enriched.

Learning – and therefore teaching – would be a much easier task if it were clear what makes students understand a subject; then teachers would know exactly which method to use. Reality is quite different, however. Indeed, learning strategies vary from one individual to another, and in general, no one knows which learning strategy should prevail. Teachers must therefore use more than one method to transmit knowledge. The process of learning is complex and many elements have to be considered. Apart from the physiological factors, which we will not deal with here, the cognitive and affective dimensions of learning must be considered.

As regards the cognitive dimension, human beings retain on average only 10% of what they read, 20% of what they hear, 30% of what they see, 50% of what they hear and see simultaneously, 80% of what they say and 90% of what they say and do. This is a strong argument in favour of using interactive methods.

Clearly, the numbers reflect averages. Some individuals receive information better when viewing and reading it, others when hearing and speaking, and others when putting into practice what they have learned. Teachers should therefore try to vary teaching methods to give each of these categories a chance to apply their preferred form of learning. Similarly, according to their learning strategy, students may perform better or worse on certain types of evaluation. Ideally, the latter should therefore be varied and provide students with an opportunity to speak, write, draw or even act.

Learners can also be categorized according to the way they process information. Some have a more analytical approach, proceeding step by step, using a process of inductive logic, perceiving information in an abstract manner. Others have a global approach, processing all information simultaneously, using deductive and intuitive processes and perceiving information in a concrete manner. Teachers should take these categories of learners into account and vary teaching and evaluation methods. Global learners will appreciate knowing at the beginning of a lesson what it is all about (e.g., the learning objectives) and being able to apply the principles being taught through the use of pertinent examples. Global learners have greater difficulties understanding what is important in the course of a speech. Analytical learners will function better if a detailed outline is provided at the beginning of the course. For them, a case study is an opportunity to repeat and apply what they have learned, while for global learners it is often the opener permitting them to learn rules that have been abstract up to that point. Assessment through tests usually demands analytical ability. To give global learners an equal chance, the evaluation should also contain some open questions, giving them an opportunity to explain their reasoning.

The affective dimension, for its part, refers to *stimuli*, to the ability to engage with the subject, and necessarily to the subject's integration within a system of values.

Certainly, the best *stimulus* is success. Do we not say that success breeds success? The more opportunities students have to obtain the impression through conversations, group work and examinations that they are successful in learning, the more they will learn.

The principal motivation to learn is curiosity. Participants should therefore be confronted with questions to which they do not yet know the answers. Second, people are motivated to work if the content of their task is challenging and provides variety. Third, using appropriate teaching methods not only enhances the efficiency of learning, but also helps to motivate students. Fourth, people learn if they feel that if they apply what they are taught, their actions are capable of benefiting humanity. With regard to this last point, we hope that the preceding pages have convinced even the most sceptical of the need to teach IHL in order for its principles to be more widely accepted and applied.

Teachers can use the affective dimension by recognizing the value of the participants' previous experiences, by applying concepts (even if presented in a lecture) that are relevant to the participants' daily lives, by relating the subject to learner concerns and values and by encouraging the expression of emotion. However, this is only possible if they know their "target audience".

“If you want to teach mathematics to Isabelle, the most important thing to know is Isabelle herself.”² Teachers confronted with an audience of 20 or 120 people obviously cannot teach every person by the method most appropriate for that individual. For this reason, it is appropriate to apply a variety of methods and to ensure that participants involve themselves actively in learning, i.e. that they take their education into their own hands. This, in turn, implies that teachers have the responsibility to motivate them. To motivate the participants, the teachers have to know them: their culture, their ideals, their aspirations, their frustrations. Once these details are known, the teachers will have a better understanding of their students. A different atmosphere will be established, giving way to a more familiar environment, which will encourage learning.

The group is not necessarily homogenous. Therefore, teachers need to adapt their language so that it can be understood by all students. They will have to introduce a scale of values that can cover other sets of values. If teachers want to ask the group questions, these must be open and each answer considered reasonable.

To fully exploit the affective dimension, the learners’ interest in the subject must first be sparked. This can be done by relating the subject to the participants’ experience or by making them discover the subject through the presentation of a case study. If a case is studied first, the lecture can provide answers to the questions participants already asked themselves. They are much more likely to retain the answers in this case than in the traditional situation where they obtain answers to questions they never asked. The same objective can be reached when training professionals who already have field experience or some knowledge of the subject: they should first be encouraged to ask questions on the subject and to develop themes according to those questions.

In any case, learners should always be able to first discover their needs for themselves. In addition, teachers have to treat learners as partners in the teaching-learning process, which necessarily implies that learners be informed beforehand precisely what they will learn and how they will learn it. Learners should be encouraged to share their subject-related experiences. What is new should be grounded in what the participants know. They should be encouraged to test their knowledge (e.g., to have a first successful experience in dealing with a case study) and to give feedback, and the teacher should reciprocate by providing feedback to their comments.

Emphasizing the most important points facilitates learning. Students will retain the points more easily if they are reinforced by practical examples. As the Latin proverb says, *repetitio est mater studiorum* (repetition is the mother of studies). Teachers should not hesitate to repeat the most important points, during the lesson, at the end of the lesson and at the end of the course. One way to repeat the most important points, which also takes account of the students’ tendency to forget what they have learned from one lesson to the next, is to begin the lesson with a question-and-answer session on the main points covered in preceding lessons. Such sessions should not be presented as tests but rather should be brief and fun.

From the above, it follows that to instruct a group efficiently on IHL it is at least as important to apply the appropriate teaching methods as it is to learn about IHL. We

2 Pierre Dalceggio, *Profil de l'étudiant universitaire*, Montreal, Service d'aide à l'enseignement, University of Montreal, 1991, p. 1.

have, however, also seen that there is no single appropriate method. Different people learn in different ways.

b) The advantages of interactive teaching methods

As seen above, by varying methods teachers can enliven their lessons and revive flagging interest. They also avoid favouring participants with particular learning styles.

Learning is an active response to information. And its practical application is an even more active response to the acquisition of this knowledge.

It is an illusion to think that learning occurs purely and simply because a student sits and listens to the teacher. In fact, if the course objectives could be achieved in this manner, the course itself would be pointless. The student can take an active part in the learning process, during or after the course, for example by revising the material. Learning becomes even more effective when participants are forced to be active by the methods used. This would be the case, for example, if they had to solve case studies or participate in group discussions. Also, simply providing time for questions may constitute an easy and effective interactive method since it can serve as an opportunity to review the material, to take the pulse of the group's level of understanding, to ask new questions, to maintain interest and to receive feedback.

All teaching requires a minimum of interaction. Interaction between teachers and students must go in both directions. Teachers must communicate comments to the students, but students must also be able to express their views to the teacher. Both parties can thus find out whether their performance meets the expectations of the other. Students worry about whether they have correctly understood what they have been taught in the same way that teachers worry about the comprehension of the material they are teaching. If the student body comprises chiefly adults, the teacher will also want some indication whether the students will apply what they have learned.

Teachers therefore cannot limit themselves to one-way communication. They must be able to monitor and refine the participants' interpretations, ideally as they are being made. They can do this by asking the participants whether they understood, by encouraging questions during or after the lecture, or by adding an evaluation session to the course.

Some teachers may fear that they will lose control of their students if they use interactive methods. The students may fear that they will lose the security that traditional methods of teaching provide. It is nonetheless important to recall that the objective of a course is not to ensure security but rather to encourage a change in behaviour. After all, teachers will have ceded control over the students by the time those students have to put into practice the principles they have been taught...

There are those who object that interactive methods are time consuming. It is true that teachers "emit" less information per time unit using interactive methods than in a lecture. The aim of teaching, however, is not for teachers to "emit" information, but for learners to "receive" it. One of the few incontrovertible truths in the education sciences

is that learners receive, understand and incorporate more information through interactive methods.

c) Using case studies

One of the methods allowing for effective learning is that of case studies. This book contains a vast number of cases taken from the reality of armed conflicts, followed by questions to be considered from the point of view of IHL. These cases can be used for all teaching methods.

Case studies, while enabling the participants to play an active role, also hold their attention, since the facts studied are drawn from reality. They show that learning is a process and enrich the teacher/student relationship. Also, this method develops critical thinking and allows students to become accustomed to accepting diverse opinions. All learning is acquired and integrated into long-term memory more easily when it can be linked to daily life.

Usually, a young graduate coming out of university possesses the most up-to-date theoretical knowledge but lacks experience – the sum of knowledge and skills acquired by solving real-life problems. Experienced professionals can identify the essential and solution-relevant aspects of a real-life situation, understand its structure, and keep their affective and subjective approaches as distinct as possible from their understanding of the facts. Dealing with case studies during an academic career can give a graduate some simulated real-life experience.

Cases relate law to practice, thus giving it content and actuality. When training lawyers, it is very important to establish a link between practice and theory by using concrete examples that illustrate the significance and true meaning of the concepts being taught. The role of the teacher is to suggest appropriate reading for the students, and it falls to the students to make the required effort. The fact that theories provoke many controversies cannot be hidden from participants. The manner in which precedents were decided cannot be contested, only criticized. The last step in a case study often consists in an attempt to conceptualize the case into general rules for future cases. To do this, the teacher may give a lesson in which the participants are free to draw their own conclusions, much as a professional would do if confronted with a concrete case at work. In any event, even if only basic concepts are retained from a case, they will have a greater impact on the behaviour of participants than subtle/sophisticated and theoretically more solid rules that were simply heard, read or memorized.

Theoretically, a subject can be taught exclusively through case studies, without any lectures (and this is how the case system was first applied in about 1914 at Harvard Business School). Owing to time constraints and in an effort to vary teaching methods, most teachers will nevertheless use case studies mainly to teach participants to solve real-life situations by applying the principles they studied using other methods.

This book suggests many case studies. Teachers can, of course, elaborate their own, choosing them in the light of their pedagogical objectives and drawing them from reality.

d) *Group work*

Another interactive method is group work. Today work has become more collaborative, and students will be better prepared to *work* in groups if they have *learned* in groups. Group work also takes advantage of group dynamics, using conformism within the group, social recognition and group success as motivations for learning.

Time limitations mean that group work generally cannot be used to learn new knowledge, but it serves to apply, through case studies and discussions, general principles to particular circumstances. Some consider that the method of teaching through case studies can only be applied by group work. Group work also serves to repeat acquired knowledge. A discussion of the moral dilemmas involved in the practical application of IHL, which is often only practicable in groups, may introduce group members to ways of looking at the problem they would never have thought of. Arguments and counterarguments can be more freely expressed and weighed in a small group than in plenary, and many more participants get an opportunity to express themselves or even to explain a rule, which is the best way to learn it.

Teachers must act as the group's moderators, ensuring that every member has the same opportunity to express an opinion. They should reformulate the participants' opinions, be directive with regard to the form of the discussion, but not take any position on the merits.

It is possible to start teaching a given subject with group work. This will then be followed by a systematic synthesis by the teacher, situating the practical solutions found by the groups in a theoretical framework.

One of the ways to work in groups is through role-playing. This has the disadvantage of focusing attention on the persons and not on the problem and its dynamics. It has the advantage, however, of obliging the participants to be active. Paradoxically, it is also easier for participants to defend a position that is not their own than to play the role of someone (e.g., a commander) acting in a way that the course participants do not really consider appropriate.

e) *Making lectures more effective*

If only because of the number of participants in a course, it is impossible to completely abandon *ex cathedra* presentations, or lectures, when transmitting new knowledge. It is useful to start the lecture by indicating its objective, the outline, and the two or three most important things that should be retained.

The contents of the lecture should be simple and clear and the language used adapted to the audience. Key terms should be repeatedly accompanied by explanations and synonyms from everyday language. It is preferable to give more information on each subject than the public can retain. However, it is also important not to cover more subjects than the audience really should retain. A lecture should end with only one conclusion. Examples and even case studies can be used in a lecture to render it more vivid and relevant. It is very important not to speak longer than announced and not to

read from a text. Even within a lecture, variety can be introduced by supporting some parts with visual aids.

f) The importance of checking the results

Evaluation measures the effect of the teachers' efforts and permits them to improve and refine teaching methods and contents. Evaluation also monitors and measures the progress of participants. Ideally, the evaluation is not done at the end of the course. Otherwise, the teacher has no opportunity to clarify any misunderstandings or to adapt the course, at least the last part, to the participants' specific learning needs.

The main aim of tests should not be pure knowledge but understanding. One of the easiest ways of finding out what the participants have understood is to ask them to explain it in their own words or to apply it to real-life situations. Finally, tests should measure the performance expected by both the teacher and the student. This way each can express their expectations of the course. This method will make it easier to achieve the group's objectives and at the same time ensure that the course is not geared only to the teacher's priorities.

2. Teaching IHL – with this book

a) To link theory and practice

Teaching IHL, as with all legal instruction, consists, on the one hand, of relating concepts and theory to practice, thus giving the rules content, topicality and relevance, and, on the other hand, of relating practice to concepts and theory, thus giving practice a meaning and a sense of direction for future application.

Whether these two operations are separate and which should come first are matters of some debate. Individual teachers have their own approach and individual students their own way of learning. As seen above, education specialists recommend a diversification of teaching methods, to render education more varied and therefore provide for the different learning methods of the students.

In studying international law, and in particular IHL, the study and discussion of practice must, however, play a central role for at least four reasons. First, it is easier to memorize and understand a concept if it can be related – or even applied – to real-life events. Second, in an international society in which States are not only the subjects of international law, but also its legislators and have a central role in the adjudication and enforcement process, practice not only illustrates rules, it also forms the rules. Third, discussing actual contemporary practice is the only way to overcome the popular misconception that international law, in particular IHL, does not work. Fourth, one of the main messages to be retained by students is precisely that IHL is relevant when it is applicable and offers realistic solutions for humanitarian problems arising in contemporary armed conflicts.

One way to implement such a practice-oriented approach would be to teach IHL as suggested in Part II,³ via a review of recent conflicts in the former Yugoslavia, the Great Lakes Region or West Africa exclusively. The various cases referring to Afghanistan and

Iraq⁴ can also be combined to form a case study. At the risk of sounding pessimistic, we fear that by the time this book starts to be distributed, a new conflict will have broken out and illustrate the functions, strengths and weaknesses of IHL.

The different concepts and regimes of IHL will therefore be examined not in their logical order, but as the problems appeared historically in that conflict. Such a way of teaching – which is possible *ex cathedra*, in exercises or seminars – is naturally particularly appropriate for political scientists or those who have a policy-oriented theory of international law.

b) Different methodologies may be used

Whatever the local academic traditions, the willingness and ability of students to prepare lessons seriously, the time available, and the number of students, a practice-oriented approach can in every case be realized. First in an *ex cathedra* lecture by introducing the subject with an example, by illustrating the subject with examples, by explaining one or several cases taken from this book. Ideally, the students would have to prepare the cases before each lesson. Second, such a lecture can be enriched by asking some of the questions suggested in this book – ideally prepared by the students individually or in groups. In this case, all students can prepare the same case or different cases (e.g., on the same subject). Third, the cases contained in this book can be used as real case studies to be discussed by the students, whether playing different real-life roles, taking different conceptual approaches, or choosing freely among the possible answers that can be given to each question. Cases suggested in this book can also be given for a written essay, of four, forty or even a hundred pages (if all the questions are answered and put into their theoretical framework).

c) Choice of outlines: according to the subjects and the duration

In legal studies, depending on the *curricula* prescribed, the time available, and the preferences of the teacher, IHL can be taught, as shown by the outlines suggested, as a separate course, or as a separate chapter in the general course of international law, or in several special courses of international law. The principles, rules and institutions of IHL can also illustrate many fundamental questions and problems of international law – including the basic question of whether and how it is law.

d) Less is sometimes better

In any case, it is preferable to discuss one or a few basic concepts thoroughly, making sure that they are properly assimilated, than to skim over the detailed rules that students will necessarily forget very quickly. This also corresponds to the pedagogical objectives: emphasizing the important notions to remember while adding extra information that does not necessarily have to be remembered.

3 See Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia; Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region; and Case No. 274, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea.

4 See XXXIII, Afghanistan, and XXIV, Third Gulf War.

e) *Laying the groundwork*

Motivation is a crucial element for the success of teaching. Students who do not understand the necessity of IHL or who believe that in any case it cannot be respected in armed conflicts will not study it properly. This is an extra reason to rapidly broach the practical side of IHL and its implementation. This means that succinct reminders of basic truths of international law are necessary. Whatever approach one chooses and with whatever method it is implemented, it seems that before students are willing and able to assimilate the detailed rules and regimes of IHL, they should discuss and understand how international law is law, how it differs from domestic law, how it interacts with contemporary international society, and how law matters in war. Only then will they understand – and will their faith in international law survive – the apparent discrepancy between the humanitarian rules they study and the inhumane reality they see in the newspapers, on television, or while on a field assignment as a soldier or humanitarian worker. For the victims, too, those who know the rules but have come to the conclusion that they do not work are perhaps more dangerous than those who do not know them, because it is easier to overcome ignorance than cynicism.

From this point of view, the tradition of studying the implementation of IHL as one of the last chapters of a course on this branch is questionable.

Making the link with the general problems of international law aims to preserve faith in IHL and therefore the student's motivation. It also corresponds to pedagogical observations according to which a new subject is better understood and remembered when associated with previous knowledge. This also means a renewed and a more detailed examination of what was taught in the course on public international law.

Even for university students, intellectual understanding of the rules is not an aim in itself. The objective of the IHL course should also be to teach students to respect the rules in their future careers. For this reason, it is necessary to link them to the reality of armed conflicts and to show that the rules can be and often are respected. Finally, it is essential that participants understand the military and political utility of respecting these rules and why they are violated.

Experience shows that respect for the rules taught will be obtained more easily if the students have the impression that they decided to respect them of their own volition. The teacher can at best hope to convince them. Sceptical remarks and questions should be treated with the greatest possible respect even if they are not "humanitarian". Everyone's objections must be listened to and discussed. Ideally, it should be left to other students, not the teachers, to reply to such objections and to criticize positions neglecting the interest of war victims.

f) *The basic messages*

Apart from transmitting an understanding that IHL is a reality in contemporary conflicts, the following can be considered to be among the most important messages to be received by the students:

- an understanding of the implementation mechanisms of IHL;

- the relationship between IHL and international human rights law;
- the distinction between *jus ad bellum* and *jus in bello*; and
- the necessity to make a legal distinction between the various categories of conflict and of persons to which different regimes apply under IHL. It is these different categories that make IHL a relatively complicated and typically legal matter, although its principles are obvious and straightforward to understand.

The last two messages, in particular, are not only very important for the understanding of IHL and the protection of war victims but also illustrate the fundamentals of contemporary international law and are ideal training ground for the legal thinking required in all fields of law.

Teaching Tool I

A twenty-lesson course

1. First lesson

A protective regime and its contemporary relevance: protection of civilians, of protected civilians and of protected civilians in occupied territories

To make students aware of real situations and the regulatory needs involved, this lesson could start with the fictitious story of a child in an armed conflict zone living in a village that comes under bombardment by “the enemy”, which then takes control of the village and ill-treats the mother, ultimately forcing the whole family to flee to another region still under the control of the forces formerly controlling the village.

The lesson could then analyse the protection problems raised by this example and discuss the similarities and differences between the answers provided by the IHL of international and of non-international armed conflicts.

The lesson could wrap up with a case study such as **Case No. 175**, UN, Detention of Foreigners.

2. Second lesson

A protective regime and its contemporary relevance: prisoners of war and fighters captured in a non-international armed conflict

To heighten the students’ awareness of real situations and the regulatory needs involved, this lesson could start with the fictitious story of two friends who come to the conclusion that their ethnic group can only survive in its traditional area of settlement if they take up weapons. One joins an organized armed group and receives a uniform, the other fights on his own, basically killing enemy soldiers. Both meet again after having been captured by the enemy, are interrogated about their crimes and face a trial before a “people’s court”.

The lesson could then analyse the protection problems raised by this example and discuss the similarities and differences between the answers provided by the IHL of international and of non-international armed conflicts, both for the uniformed and the non-uniformed fighter.

(For lessons 3-17, similar fictitious examples can be used. The conceptual problems involved can then be discussed and a case from this book used to wrap up the subject.)

3. Third lesson

A protective regime and its contemporary relevance illustrated by means of a case study: protection of the wounded, sick and shipwrecked and use of the emblem

(Illustrated by **Case No. 247**, Colombia, Misuse of the Emblem)

4. Fourth lesson

A protective regime and its contemporary relevance illustrated by means of a case study: protection of the civilian population against the effects of hostilities

(Illustrated by **Case No. 226**, Federal Republic of Yugoslavia, NATO Intervention [Part B.]

5. Fifth lesson

A protective regime and its contemporary relevance illustrated by means of a case study: Means and methods of warfare

(Illustrated by **Case No. 253**, Afghanistan, Operation “Enduring Freedom”)

6. Sixth lesson

A protective regime and its contemporary relevance illustrated by means of a case study: humanitarian assistance and access to victims

(Illustrated by **Case No. 153**, ICJ, Nicaragua v. United States, or **Case No. 177**, UN, Security Council Resolution 688 on Northern Iraq)

7. Seventh lesson

A protective regime and its contemporary relevance illustrated by means of a case study: common Art. 3 in a conflict where structures of authority have collapsed

(Illustrated by **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Part 3] or **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea)

8. Eighth lesson

Historical development and sources

(Illustrated by **Case No. 43**, ICRC, Customary International Humanitarian Law)

- Concept and philosophy
- Historical development and sources of contemporary IHL
- Contemporary efforts to develop IHL and future direction

9. Ninth Lesson

The laws of war in contemporary international law and in the contemporary international community: jus ad bellum and jus in bello under the UN Charter. Reminder of the nature of international law

10. Tenth lesson

Different types of armed conflicts

(Illustrated by Case No. 211, ICTY, The Prosecutor v. Tadic)

- The concept of armed conflict
- The distinction between international and non-international armed conflicts: reasons, relativity and comparison of the two regimes
- Contemporary problems of qualification
- Practical consequences of problems of qualification

11. Eleventh lesson

The law of naval warfare

12. Twelfth lesson

The law of non-international armed conflict

(Illustrated by Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur)

13. Thirteenth lesson

Implementation of IHL: the law – the need for national measures of implementation in peacetime

- Dissemination, its means and its effectiveness
- The example of the (need for) national legislation on the protection of the emblem of the red cross, red crescent or red crystal in the country where the course is being held
- The obligation to ensure respect
- Reaction to violations by States
- The concept of war crimes and the universal obligation to repress them

14. Fourteenth lesson

Implementation of IHL: the players

- Monitoring and control by the Protecting Power and the ICRC

- The International Fact-Finding Commission
- Humanitarian intergovernmental organizations, NGOs and the ICRC: coordination and competition
- The role of the UN Security Council: conflict resolution and humanitarian action
- The prosecution of war crimes by national courts, *ad hoc* tribunals and the International Criminal Court

15. Fifteenth lesson

The ICRC

(Illustrated by **Case No. 214**, ICTY/ICC, Confidentiality and Testimony of ICRC Personnel), and **Document No. 248**, ICRC, Visits to the Detainees: Interviews without Witnesses)

16. Sixteenth lesson

IHL and human rights

(Illustrated by **Case No. 157**, Inter-American Commission on Human Rights, *Coard v. US*)

- Cultural relativity vs. universality of IHL and human rights
- Comparison of the fields of application
- Comparison of protected rights
- Implementation
- Players
- Distinct but complementary means – IHL in the work of the UN Human Rights Commission – The ICRC and human rights

17. Seventeenth lesson

Refugees and displaced persons in IHL

18. Eighteenth – twentieth lessons

Study of a contemporary armed conflict – or of current news from armed conflict areas – from an IHL perspective

Teaching Tool II

An eight-lesson course

1. First lesson

A protective regime and its contemporary relevance illustrated by means of a given conflict

- Either: – Protection of civilians, of protected civilians and of protected civilians in occupied territories
- or: – Prisoners of war and fighters captured in a non-international armed conflict
- or: – Protection of the wounded, sick and shipwrecked and use of the emblem
- or: – Refugees and displaced persons
- or: – Common Art. 3 in a conflict where the structures of authority have collapsed

2. Second lesson

The laws of war in contemporary international law and in the contemporary international community

- Nature and existence of international law
- *Jus ad bellum* and *jus in bello* under the UN Charter
- The complementary character of IHL and International Human Rights Law

3. Third lesson

Historical development and sources

- Concept and philosophy
- Historical development and sources of contemporary IHL
- Contemporary efforts to develop IHL and future direction
- Obtaining a ban on the use of anti-personnel landmines: methods, ICRC role, public opinion, military and economic interests

4. Fourth lesson

The distinction between civilians and combatants – a necessary prerequisite for respect for IHL that is impossible to meet in contemporary armed conflicts?

5. Fifth lesson

Conduct of hostilities

- The protection of the civilian population against effects of hostilities
- Means and methods of warfare
- Humanitarian assistance

6. Sixth lesson

Different types of armed conflicts

- The concept of armed conflict
- The distinction between international and non-international armed conflicts: reasons, relativity and comparison of the two regimes
- Contemporary problems of qualification
- Practical consequences of problems of qualification

7. Seventh lesson

Implementation of IHL – the law

- The need for national measures of implementation in peacetime
- The example of the (need for) national legislation on the protection of the emblem of the red cross, red crescent or red crystal in the country where the course is being held
- The obligation to ensure respect
- Reaction to violations by States
- The concept of war crimes and the universal obligation to repress them

8. Eighth lesson

Implementation of IHL – the players

- Preventive measures, monitoring and control by the ICRC: possibilities and limits inherent in the ICRC's status and approach
- Humanitarian intergovernmental organizations, NGOs and the ICRC: coordination and competition
- The role of the UN Security Council: conflict resolution and humanitarian action
- The prosecution of war crimes by national courts, *ad hoc* tribunals and the International Criminal Court

Teaching Tool III

A four-lesson course

1. First lesson

Principles of IHL and their relevance in contemporary armed conflicts

- Concept and philosophy of IHL
- The distinction between civilians and combatants: a necessary prerequisite for respect for IHL that is impossible to meet in contemporary armed conflicts?

2. Second lesson

The laws of war in contemporary international law and in the contemporary international community

- Nature and existence of international law
- Sources of IHL
- *Jus ad bellum* and *jus in bello* under the UN Charter
- The complementary character of IHL and International Human Rights Law

3. Third lesson

Different types of armed conflicts

- The concept of armed conflict
- The distinction between international and non-international armed conflicts: reasons, relativity and comparison of the two regimes
- Contemporary problems of qualification
- Practical consequences of problems of qualification

4. Fourth lesson

Implementation of IHL

- The need for national measures of implementation in peacetime
- The example of the (need for) national legislation on the protection of the emblem of the red cross, red crescent or red crystal in the country where the course is being held
- Monitoring and control by the ICRC: possibilities and limits inherent in the ICRC's status and approach

- The role of the UN: conflict resolution and humanitarian action
- The prosecution of war crimes by national courts, *ad hoc* tribunals and the International Criminal Court

Teaching Tool IV

A two-lesson course

1. First lesson

IHL and armed conflict in contemporary international law and in the contemporary international community

- Short mention of the basic idea and sources of IHL
- *Jus ad bellum* and *jus in bello* under the UN Charter
- The concept of armed conflict and the distinction between international and non-international armed conflicts: its relevance and irrelevance in contemporary conflicts

2. Second lesson

Implementation of IHL

- The need for national measures of implementation in peacetime
- The example of the (need for) national legislation on the protection of the emblem of the red cross, red crescent or red crystal in the country where the course is being held
- Monitoring and control by the ICRC: possibilities and limits inherent in the ICRC's status and approach
- The role of the UN: conflict resolution and humanitarian action
- The prosecution of war crimes by national courts, *ad hoc* tribunals and the International Criminal Court

Teaching Tool V

A study of one armed conflict

1. **Case Study: The conflicts in the former Yugoslavia**

[See **Case No. 203**, Case Study, Armed Conflicts in the former Yugoslavia]

2. **Case Study: Genocide, Refugees and Armed Conflicts in the Great Lakes Region in Africa**

[See **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region]

3. **Case Study: Armed Conflicts in Sierra Leone, Liberia and Guinea**

[See **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea]

4. **Theoretical course and study of an armed conflict**

The teacher presents the basics during the first four meetings. During the following six meetings (Nos 5 to 10), the students present their solutions to practical issues relating to humanitarian law that arose during the conflicts in the former Yugoslavia [See **Case No. 203**, Case Study, Armed Conflicts in the former Yugoslavia], which the teacher subsequently comments on and puts into perspective. Meetings Nos 11 and 12 cover the implementation of IHL, other IHL-related matters, review and the course evaluation.

The oral presentation (10 minutes maximum per person) counts for 20 per cent of each person's grade, while the written presentation (of 5-10 pages, due one week after the oral) counts for 30 per cent.

A final written exam (during which students are allowed to consult the Geneva Conventions and the Additional Protocols) make up the remaining 50 per cent of each person's grade. The exam consists of 12 questions on subjects discussed in class: four questions testing theoretical knowledge, four essay-type questions, and four fictional cases (similar to the practical cases discussed in the course, but shorter) to be resolved.

It is imperative that students read the theoretical part of the introductory texts (Part I) before each meeting and the practical part of the case study on a given meeting's topic.

PROGRAMME

[The figures in brackets refer to the relevant chapters of Part I.]

Meeting No. 1:

- Presentation of the course and subject matter
- Choice of format for the course
- Presentation of the method of assessment
- Beginning of teacher's introduction
 - Existence of international law
 - Notion, objectives and problems of IHL (Ch. 1)
 - IHL, a branch of public international law (Ch. 2.I)

Meeting No. 2:

- IHL, a branch of public international law
 - Fundamental distinction between *jus ad bellum* (the legality of resorting to force) and *jus in bello* (humanitarian rules to be respected in warfare) (Ch. 2.II)
 - IHL: a branch of international law governing the conduct of States and individuals (Ch. 2.III)
- Historical development of IHL (Ch. 3)
- Sources of contemporary IHL (Ch. 4)

Meeting No. 3:

- Fundamental distinction between civilians and combatants (Ch. 5)
- Combatants and prisoners of war (Ch. 6)
- Protection of the wounded, sick and shipwrecked (Ch. 7)

Meeting No. 4:

- Protection of civilians (Ch. 8)
- Conduct of hostilities (Ch. 9)
- Law of non-international armed conflict (Ch. 12)

Meeting No. 5:

Discussion of points 1-7 of the case study on the former Yugoslavia [See Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia] (conflict breaks out; the conflict in Croatia)

Meeting No. 6:

Discussion of points 8-13 of the case study on the former Yugoslavia [See Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia] (the repatriation of prisoners between Croatia and Yugoslavia; the conflict in Bosnia; “ethnic cleansing”; the prisoners; the siege of Sarajevo)

Meeting No. 7:

Discussion of points 14-18 of the case study on the former Yugoslavia [See Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia] (security zones; the conflict between Croats and Muslims; the enclave of Bihać; establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY); prisoner exchanges)

Meeting No. 8:

Discussion of points 19-22 of the case study on the former Yugoslavia [See Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia] (NATO airstrikes in Bosnia; the Srebrenica massacre; the Dayton Agreement; missing people)

Meeting No. 9:

Discussion of points 23-29 of the case study on the former Yugoslavia [See Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia] (Kosovo, NATO airstrikes against the Federal Republic of Yugoslavia)

Meeting No. 10:

Discussion of points 30-37 of the case study on the former Yugoslavia [See Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia] (the expulsion of Albanians from Kosovo; Kosovo under international administration; Presevo; the former Yugoslav Republic of Macedonia)

Meeting No. 11:

Implementation of IHL (Ch. 13)

Meeting No. 12:

- IHL and human rights law (Ch. 14)
- The International Committee of the Red Cross (ICRC) (Ch. 15)
- Review, and evaluation of the material and course

Final written exam

Teaching Tool VI

Suggested programme for seminars on International Humanitarian Law for post-graduate law students

A. SEMINAR CENTRED ON PENAL ASPECTS

(14 three-hour meetings)

1. Programme

Meeting No. 1:

- Introduction of participants to each other
- Presentation of the course
- Introduction to IHL, 1st part:
 - Definition, ambition and limitations
 - IHL as a branch of international law
 - Field of application

Meeting No. 2:

- Allocation of presentations, discussions and analyses
- Introduction to IHL, 2nd part:
 - Background, historical overview
 - Sources
 - Distinction between civilians and combatants
 - Combatants and prisoners of war
 - The wounded, sick and shipwrecked
 - Protection of civilians

Meeting No. 3:

- Introduction to IHL, 3rd part:
 - Conduct of hostilities
 - Non-international armed conflicts
 - Implementation

Meeting No. 4: *Decision by the International Criminal Tribunal for the former Yugoslavia (ICTY) in Tadic, jurisdiction*

[Case No. 211, ICTY, The Prosecutor v. Tadic [See A]]

One student presents the decision and three others discuss it using the questions asked at the end of the case.

Meeting No. 5: *Tadic decision, merits*

[Case No. 211, ICTY, The Prosecutor v. Tadic [See B and C]]

One student presents the decision and three others discuss it using the questions asked at the end of the case.

Meeting No. 6: *Intervention of the United States in Afghanistan*

[Case No. 253, Afghanistan, Operation "Enduring Freedom," and Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base]

One student presents each case and two others discuss it using the questions asked at the end of the case.

Meeting No. 7: *The ad hoc international criminal tribunals*

Two students present the Statutes of the ICTY [Case No. 210, UN, Statute of the ICTY] and the International Criminal Tribunal for Rwanda (ICTR) [Case No. 230, UN, Statute of the ICTR] and two others discuss them using the questions asked at the end of the case.

Meeting No. 8: *The International Criminal Court (ICC)*

One student presents the ICC Statute [Case No. 23, The International Criminal Court] and three others discuss it using the questions asked at the end of the case.

Meeting No. 9: *Niyonteze decision and the decision of the International Court of Justice (ICJ) in Democratic Republic of the Congo v. Belgium*

[Case No. 241, Switzerland, The Niyonteze Case and Case No. 242, ICJ, Democratic Republic of the Congo v. Belgium]

One student presents each case and two others discuss them using the questions asked at the end of the cases.

Meeting No. 10: *Decision of the Military Court at Ramallah in Military Prosecutor v. Kassem and the Ajuri decision of the Israeli High Court of Justice*

[Case No. 126, Israel, Military Prosecutor v. Kassem and Others and Case No. 133, Israel, Ajuri v. IDF Commander]

One student presents each case and two others discuss them using the questions asked at the end of the cases.

Meeting No. 11: *Belgian paratroopers before the Military Court at Brussels*

[Case No. 198, Belgium, Belgian Soldiers in Somalia]

One student presents the case and two others discuss it using the questions asked at the end of the case.

Meeting No. 12: *Canadian paratroopers before the Court Martial Appeal Court of Canada*

[Case No. 199, Canada, R. v. Brocklebank]

One student presents the decisions and three others discuss them using the questions asked at the end of the case.

Meeting No. 13: *United Nations Peace Forces and IHL*

Two students present opposing views, one for and the other against the applicability of IHL; plenary discussion.

Meeting No. 14: *Evaluation of the course and of IHL in the contemporary world*

All participants discuss:

- The criminalization of armed conflicts
- Failed States
- Conflicts involving “ethnic cleansing”
- The conduct of hostilities against a post-modern society
- Arms proliferation and armed conflict
- Pitfalls for humanitarian organizations

2. Mode of assessment

50% for oral performance, 50% for written papers of about 15 pages on theoretical subjects

3. Suggested research topics (relating to the material covered in the seminar):

1. Is the ICTY a regularly constituted court?
2. The ICTY Statute and the non-retroactivity of penal law
3. Mandatory universal jurisdiction and permissive universal jurisdiction as regards offences against IHL
4. Offences against IHL in non-international armed conflicts and their repression
5. Determining the legal nature of the conflicts in the former Yugoslavia under IHL
6. The notion of protected person in IHL

7. The notion and prosecution of crimes against humanity in customary international law and under the ICTY Statute
8. Attributing a violation of IHL to a State
9. Attributing crimes committed by rebels to a State supporting those rebels with a view to establishing the State's international responsibility and to determining the legal nature of the conflict under IHL
10. A combatant's responsibility for crimes committed by other combatants
11. The role of the Security Council in the ICC Statute
12. The ICTY, ICTR and ICC Statutes: development of IHL or implementing mechanisms?
13. Peace-making and repression of war crimes
14. Application of the Additional Protocols by the ICTY and the ICC
15. Who are the addressees of the IHL of non-international armed conflicts?
16. Convention IV's applicability to the territories occupied by Israel
17. Torture: absolutely prohibited by international law?
18. The obligation to prosecute or extradite in IHL
19. The IHL applicable to United Nations forces
20. The IHL applicable to international forces intervening to stop an internal conflict
21. The IHL applicable to multinational forces engaged in an international armed conflict
22. Applicability of IHL to UNOSOM (United Nations Operation in Somalia) forces
23. Applicability of IHL and International Human Rights Law to the use of firearms
24. Precautions in military attacks and in police operations
25. Superior orders and command responsibility under IHL
26. Implementation of IHL under your country's national legislation
27. The responsibility of detaining States and individuals with regard to the treatment of prisoners under IHL

B. SEMINAR CENTRED ON THE SUBSTANTIVE RULES OF INTERNATIONAL HUMANITARIAN LAW

(13 three-hour meetings)

1. Programme

[The figures in brackets refer to the relevant chapters of Part I.]

Meeting No. 1:

- Introduction of participants to each other
 - Presentation of the course and subject matter
 - Discussion of the method of assessment
 - Teacher's introduction, 1st part:
 - Notion, objectives and problems of IHL (Ch. 1)
 - IHL, a branch of public international law (Ch. 2.I)
 - Fundamental distinction between *jus ad bellum* (the legality of resorting to force) and *jus in bello* (humanitarian rules applicable in the event of war) (Ch. 2.II)
 - IHL: a branch of international law governing the conduct of States and individuals (Ch. 2.III)

Meeting No. 2:

- Allocation of presentations, discussions and analyses
- Teacher's introduction, 2nd part:
 - Fundamental distinction between civilians and combatants (Ch. 5)
 - International and non-international armed conflict (Ch. 12)

Meeting No. 3:

- Teacher's introduction, 3rd part:
 - Implementation of IHL (Ch. 13)
 - IHL and human rights (Ch. 14)
 - The ICRC (Ch. 15)

Meeting No. 4: *The Tadic case* (jurisdiction and merits)

[Case No. 211, ICTY, The Prosecutor v. Tadic]

- *Presentation 1:*
 - The legality of establishing the ICTY
 - The IHL applicable to non-international armed conflicts
 - Criminalization of violations of the IHL applicable to non-international armed conflicts
- *Presentation 2:*
 - Determining the legal nature of the armed conflicts in the former Yugoslavia
 - Notion of protected person
 - A combatant's criminal responsibility for violations committed by another combatant
- *Summary* by the teacher: determining the legal nature of armed conflicts

Meeting No. 5: *Conflicts in the former Yugoslavia I*

- *Presentation 3:*
 - The conflict in Croatia: points 2, 4 and 8 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Presentation 4:*
 - The siege of Sarajevo and exchanges of prisoners: points 13 and 18 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Summary* by the teacher: humanitarian assistance (Ch. 9.IV)

Meeting No. 6: *Conflicts in the former Yugoslavia II*

- *Presentation 5:*
 - Blue helmets and missing persons: points 19 and 22 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Presentation 6:*
 - Kosovo and the NATO intervention: points 23, 24, 26 and 29 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Summary* by the teacher: IHL's applicability to United Nations forces

Meeting No. 7: Conflicts in the former Yugoslavia III

- *Presentation 7:*
 - The NATO air strikes: points 27 and 28 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia; see also Case No. 226, Federal Republic of Yugoslavia, NATO Intervention, and Case No. 227, ECHR, Bankovic and Others v. Belgium and 16 other States]
- *Presentation 8:*
 - Kosovo under international administration, Presevo and the former Yugoslav Republic of Macedonia: points 33-36 of the case study [Case No. 203, Case Study, Armed Conflicts in the former Yugoslavia]
- *Summary* by the teacher: protecting the civilian population against the effects of hostilities (Ch. 9.II)

Meeting No. 8: The Middle East conflict I

- *Presentation 9:* The applicability of Conventions III and IV to the territories occupied by Israel
 - Israel's position on the applicability of Convention IV to the Palestinian territories [Case No. 125, Israel, Applicability of the Fourth Convention to Occupied Territories]
 - Israeli Military Court at Ramallah, Decision in *Prosecutor v. Omar Mahmud Kassem and Others* [Case No. 126, Israel, Military Prosecutor v. Kassem and Others]
- *Presentation 10:* Rulings of Israel's High Court of Justice on the legality of settlements and the blockade of the Gaza Strip
 - *Ayub v. Minister of Defence* [Case No. 127, Israel, Ayub v. Minister of Defence]
 - *Jaber Al-Bassiouni Ahmed and others v. Prime Minister and Minister of Defence* [Case No. 137, Israel, Power Cuts in Gaza]
- *Summary* by the teacher: Convention IV's applicability to the occupied territories (Ch. 8.IV)

Meeting No. 9: Humanitarian diplomacy

- Discussion with a guest speaker active in civil society, government or international service, or the army
- Discussion of the role of third States and the United Nations in implementing IHL

Meeting No. 10: The Middle East conflict II

- *Presentation 11:* Rulings of Israel's High Court of Justice on deportations and on ICRC visits to administrative detainees or hostages
 - *Cheikh Obeid et al v. Ministry of Security* [Case No. 131, Israel, Cheikh Obeid et al. v. Ministry of Security]

- Judgement on deportation cases [Case No. 132, Israel, Cases Concerning Deportation Orders]
- *Presentation 12: The taking of Jenin: massacre or military operation?*
 - Report of the United Nations Secretary-General on Jenin, Document A/ES-10/186, available at <http://www.un.org/peace/jenin>
 - Israel's High Court of Justice, decision in Barakeh and Others v. Minister of Defence [Case No. 134, Israel, Evacuation of Bodies in Jenin]
- *Summary* by the teacher: the protection of civilians in the power of the enemy (Ch. 8)

Meeting No. 11: *The conflict in Sierra Leone, Liberia and Guinea*

[Case No. 274, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea]

- *Presentation 13: Rules of IHL applicable to the multitude of actors*
- *Presentation 14: Violations of IHL*
- *Summary* by the teacher: the protection of the wounded, sick and shipwrecked (Ch. 7)

Meeting No. 12: *The war in Afghanistan and the detainees in Guantánamo*

- *Presentation 15: The conduct of hostilities in Afghanistan* [Case No. 253, Afghanistan, Operation "Enduring Freedom"]
- *Presentation 16: The detainees in Guantanamo and in the United States* [Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base, and Case No. 264, United States, Trial of John Philip Walker Lindh]
- *Summary* by the teacher: the status and treatment of prisoners of war (Ch. 6)

Meeting No. 13: *The conflict in Cyprus and the Canadian soldiers in Somalia*

- *Presentation 17: The decision of the European Court of Human Rights (ECHR) in Cyprus v. Turkey* [Case No. 151, ECHR, Cyprus v. Turkey]
- *Presentation 18: Canadian paratroopers tried for the torture of a Somali by the Court Martial Appeal Court of Canada* [Case No. 199, Canada, R. v. Brocklebank, to Case No. 201 Canada, R. v. Seward]
- *Summary* by the teacher: the differences between police operations and military operations
- Evaluation of the course

2. Proposed method of assessment

- a) 30%: a 20-minute oral presentation on the legal aspects of a case. (In the present work, each case is followed by a "Discussion" consisting of questions suggested by

the teacher, which should be used to discuss the case from the standpoint of IHL. It is neither necessary nor desirable, however, to answer these questions one by one or in order. The questions are asked to make it easier for students to recognize the legal problems involved in each case. In their oral presentations, the students must identify and address the main IHL issues in the case they are dealing with. They should not address problems that have already been identified and handled by other participants in previous oral presentations. They should expect, however, that all numbered questions in the discussion may be raised in class (if necessary, by the teacher) following their presentation.)

- b) 20%: responses to questions on the case presented and asked by the participants and the teacher after the presentation (which may concern all questions in the “Discussion” of the case chosen).
- c) 50%: a research paper (the main legal issue in the case chosen for the oral presentation cannot be chosen as the research topic).

3. List of proposed research topics

- 1. The absolute distinction between *jus ad bellum* and *jus in bello* – necessary or outmoded?
- 2. Mandatory and permissive universal jurisdiction as regards offences against IHL
- 3. Enforcement of IHL in non-international armed conflicts
- 4. Determining the legal nature of conflicts under IHL
- 5. The IHL applicable to the “war on terrorism”
- 6. The notion of protected person in IHL
- 7. Attributing a violation of IHL to a State
- 8. Attributing crimes committed by rebels to a State supporting those rebels with a view to establishing the State’s international responsibility and to determining the legal nature of the conflict under IHL
- 9. A combatant’s responsibility for crimes committed by other combatants
- 10. The role of the Security Council in the ICC Statute
- 11. The Statutes of the international criminal tribunals: development of IHL or implementing mechanisms?
- 12. Advantages and disadvantages for implementing IHL of the establishment of the international criminal tribunals
- 13. Peace-making and repression of war crimes
- 14. Application of the Additional Protocols by the ICTY and the ICC
- 15. Who are the addressees of the IHL of non-international armed conflicts?

16. Convention IV's applicability to the occupied and autonomous Palestinian territories
17. The IHL applicable to United Nations forces
18. The IHL applicable to a NATO military intervention
19. The status and treatment of captured combatants not recognized as prisoners of war
20. Applicability of IHL and International Human Rights Law to the use of firearms
21. Implementation of IHL under your country's national legislation
22. The responsibility of detaining States and individuals with regard to the treatment of prisoners under IHL
23. End of applicability of IHL

Teaching Tool VII

Year-Long Interdisciplinary Seminar on War in the Contemporary World

(Seminar offered to students preparing masters degrees in international law and in international relations at the **Université du Québec à Montréal** (<http://www.uqam.ca>), Canada, during the 2001-02 academic year by Professors **Thierry Hentsch** of the Political Science Department and **Marco Sassòli** of the Law Department.)

1. DESCRIPTION OF THE SEMINAR

The objective of this seminar is to produce supervised research on a current problem relating to the new international reality. This work will give the student the opportunity to demonstrate his or her understanding of the international dimension of political problems, his or her ability to master the relevant sources and the research methods that are suitable to the study of the chosen problem, and his or her ability to analyse the problem's challenges in a critical manner. The content and the subjects will be chosen by the teachers concerned. The work will involve research, writing, presentation and discussion with the group of a major research project on the seminar topic.

Subject and purpose of the seminar: War in the contemporary world

War will be discussed as a particular phenomenon in today's world, as it has been emerging and taking shape for over a decade, following the collapse of the Communist bloc in Eastern Europe. The seminar will focus on the philosophical, political and legal aspects of war in today's world, while putting it into a historical perspective so as to facilitate the understanding of its evolution in recent years. Among the topics covered will be the following: the issue of the legitimacy of war's purposes (*jus ad bellum*), the context in which it is carried out (*jus in bello*), the political and legal problems relating to humanitarian work, the increasing difficulty of distinguishing between civilians and military personnel, the problems resulting from occupation of enemy territory, the issue of sanctions and punitive action.

The first part of the seminar will be devoted to lectures by teaching faculty on the general issues referred to above. These talks will be given in a long-term historical perspective and may use examples from periods prior to 1989. They will also examine recent or current conflicts, mainly in the Middle East and in the Balkans. Students will be more specifically urged to prepare and present talks, from mid-term onwards, on the main concepts relating to the field of study of war and on post-Cold War conflicts (see list below).

2. PROGRAMME FOR THE FIRST SEMESTER

Meeting No. 1

Presentation of the seminar
Philosophy and anthropology of war
Violence and the specific nature of war

Meeting No. 2

War and international relations

- Long-term historical perspective, from Antiquity to the Renaissance
- The Westphalian system and its evolution, from 1648 to today

Meeting No. 3

War and humanitarian policy

- Birth of the humanitarian movement
- Problems of humanitarian policy
- Historical examples of humanitarian dilemmas

Meeting No. 4

War and international law

- The distinction between *jus ad bellum* (the lawfulness or unlawfulness of war) and *jus in bello* (rules to comply with in war)
- The prohibition on the use of force in contemporary international law and exceptions to it
- Introduction to IHL

Meeting No. 5

Specific problems of IHL

- The distinction between international armed conflict and non-international armed conflict
- The distinction between civilians and combatants
- Implementation of IHL: third States, ICRC, United Nations, non-governmental organizations, criminal justice

Meeting No. 6

Students' talks on subjects relating to the factors contributing to armed conflict, the role of international law in the management of armed conflict, and non-international armed conflict

Meeting No. 7

Students' talks on subjects relating to the distinction between *jus ad bellum* and *jus in bello*

Meeting No. 8

Students' talks on subjects relating to the distinction between civilians and combatants

Meeting No. 9

Students' talks on subjects relating to humanitarian work

Meeting No. 10

Introduction to the conflicts in the Eastern Mediterranean

Meeting No. 11

Introduction to the conflicts in the former Yugoslavia

Meeting No. 12

Students' talks on subjects relating to the conflicts in the Eastern Mediterranean

Meeting No. 13

Students' talks on subjects relating to the conflicts in the former Yugoslavia

Proposed method of assessment for the first term

- Presentation and discussion of the chosen research topic: (50%)
- Paper of two pages maximum, presenting ideas on the chosen research topic, to be distributed **one week before** the presentation: (20%)
- Discussion, as "devil's advocate," of written ideas presented by another student: (30%)

3. EXAMPLES OF RESEARCH TOPICS

a. Conceptual problems

1. Anthropological, sociological, political and economic factors contributing to the outbreak of armed conflict
2. The role of international law in the international community's management of armed conflict
3. The influence of the prohibition on the use of force on international relations since 1945

4. The limits of self-defence in international law
5. Usefulness and limits of international military interventions to restore peace
6. Usefulness and limits of international military interventions to deliver humanitarian aid and protect the civilian population
7. Does the distinction between international armed conflict and non-international armed conflict still correspond to reality?
8. The lower threshold of war: an exploration of the boundaries between crime and armed conflict
9. The lower threshold of war: an exploration of the boundaries between political violence and armed conflict
10. The distinction between *jus ad bellum* and *jus in bello* in contemporary conflicts
11. The distinction between *jus ad bellum* and *jus in bello* in non-international armed conflicts
12. The equality of the belligerents before IHL in the age of just wars, international police action and humanitarian intervention
13. The equality of the belligerents before IHL: an outmoded principle in the age of the criminalization of belligerents?
14. The philosophical and ideological origins of the distinction between civilians and combatants
15. The distinction between civilians and combatants in identity-related and resource wars
16. The distinction between civilians and combatants in international interventions against regimes considered criminal
17. Can the distinction between civilians and combatants be maintained in the face of “zero-casualty” military operations?
18. Factors determining compliance or lack of compliance with IHL
19. Humanitarian activities as an alibi for intervening in armed conflict
20. Humanitarian activities as an alibi for failing to resolve armed conflict
21. Humanitarian activities in the absence of States and authorities
22. Implementation of IHL by humanitarian organizations in the absence of a State
23. Humanitarian activities carried out under armed forces leadership
24. Neutrality and impartiality of humanitarian activities in “unstructured” conflicts
25. Neutrality and impartiality of humanitarian activities in view of the criminalization of belligerents

b. Concrete situations*aa. The Middle East*

1. The Arab-Israeli conflict: the last international conflict in a “unipolar” world?
2. The status of Palestine and Palestinians in international law
3. The role of international law in the management and resolution of the conflict in the Near East
4. The territories occupied by Israel: strengths and weaknesses of the Fourth Geneva Convention
5. Applicability of the Fourth Geneva Convention to the autonomous Palestinian territories
6. Role of Israeli settlements in the occupied territories in resolving the conflict
7. Role of humanitarian activities in the Israeli-Palestinian conflict
8. Role of the ICRC in the Israeli-Palestinian conflict
9. Role of the United States of America in the Israeli-Palestinian conflict
10. The Gulf War: an application of the United Nations system for restoring peace?

bb. The former Yugoslavia

1. Conflicts in the former Yugoslavia: end of the distinction between international armed conflict and non-international armed conflict?
2. Compliance and non-compliance with *jus ad bellum* at the outbreak of armed conflict in the former Yugoslavia
3. Impact of third States and the United Nations on the management and resolution of conflicts in the former Yugoslavia
4. Management and prolongation of the conflicts in the former Yugoslavia by humanitarian entities
5. Impact of war crimes and of their repression on the management and resolution of conflicts in the former Yugoslavia
6. Conflict in the former Yugoslavia: the end of the illusion of the same international law for all?
7. Contribution of the ICTY to peace-making
8. Prospects for a withdrawal of international forces from Bosnia-Herzegovina
9. Prospects for a withdrawal of international forces from Kosovo
10. Rules of international law determining the future status of Kosovo

4. PROGRAMME FOR THE SECOND SEMESTER

Each student gives a talk on a theoretical subject relating to the topic of his draft article. The talk is followed by a discussion involving all participants and by teachers' comments.

Meeting No. 1:

Lecture on humanitarian activities (by the political science teacher) and their legal basis (by the international law teacher)

Meeting No. 2:

- **Student's talk:** The concept of international security
- **Student's talk:** The realist conception of war

Meeting No. 3:

- **Student's talk:** The principle of State sovereignty
- **Student's talk:** The concept of defence

Meeting No. 4:

- **Student's talk:** Universalism v. particularism
- **Student's talk:** Holism v. individualism
- **Student's talk:** Interventionism v. isolationism

Meeting No. 5:

- **Student's talk:** The perception of the military through the history of ideas (beginning with Machiavelli)

Meeting No. 6:

- **Student's talk:** International law as a geostrategic tool (in a particular spatiotemporal framework)
- **Student's talk:** The prohibition on the use of armed force, and exceptions allowed under the United Nations Charter

Meeting No. 7:

- **Student's talk:** International legal rules governing humanitarian crisis situations
- **Student's talk:** The concept of humanitarian assistance

Meeting No. 8:

- **Student’s talk:** The concept of distinction between civilians and military personnel
- **Student’s talk:** The definition of the aims of war

Meeting No. 9:

- **Student’s talk:** Neo-Gramscian analysis of peace-keeping in an intra-State war
- **Student’s talk:** The concepts of “unstructured conflict” and “failed State”

Meeting No. 10:

- **Student’s talk:** The strategic interests of the United States of America in the Near East
- **Student’s talk:** Resistance and terrorism

Meeting No. 11:

- **Student’s talk:** Justice in the face of war (theory of the liberal school)
- **Student’s talk:** The Rome Statute of the ICC

Meeting No. 12:

- **Student’s talk:** Historical background of the international community’s policy on recognizing nation-States

Meeting No. 13:

- **Student’s talk:** The concept of humanitarian intervention

Meeting No. 14: Evaluation of the course and of war in the contemporary world

Proposed mode of assessment

1. A 30-45 minute talk on a theoretical subject chosen by the student (in agreement with the teachers) that is one of the theoretical bases of the research topic treated in the draft article. Assessment criteria: understanding of the issues from the standpoint of political science and/or law, coherence, clarity, incorporation of both disciplines’ approaches, form. Due date: the day of the presentation. Weighting: 40%.
2. Writing of a publishable draft article of 15-30 pages on the chosen research topic, to be revised in accordance with the teachers’ suggestions. Assessment criteria: understanding of the issues from the standpoint of political science and law,

choice of problems to be treated, presentation (language, structure, quotations) in conformity with the requirements of a scientific publication, conciseness, originality, exhaustiveness. Weighting: 60%.

Teaching Tool VIII

**Study of International Humanitarian Law
issues in a general course on international law**

INTRODUCTORY REMARK

As mentioned in Chapter 1, Remarks on teaching International Humanitarian Law, nearly every aspect of international law can be explained, discussed and understood using examples taken from IHL. Furthermore, many cases and documents contained in this book discuss or exemplify issues pertaining to branches of international law other than IHL. To facilitate the use of this book for these purposes, including by international law specialists not particularly interested in IHL, each heading below is followed by references to the pertinent passages of Parts I and II.

I. THE NATURE OF INTERNATIONAL LAW

A. The science of international law**1. A normative science**

- a. Difference between *sollen* and *sein*
- b. Purport and advantages of the general and the abstract rule
- c. Conduct, discourse and hypocrisy

[See **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part A. and B.]]

2. Realism and idealism

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., para. 58] and **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Paras 517-534]]

3. Diversity of cultures and values

[See **Case No. 251**, Afghanistan, Separate Hospital Treatment for Men and Women [Part A.]]

4. Dogmatic or practical approach**5. Anglo-Saxon and Romano-Germanic approach**

6. Lawyer's roles

- a. Normative
- b. Practitioner
- c. Legal science specialist

B. Reality and specific character of international law

1. Existence

[See Chapter 2. I, IHL: at the vanishing point of international law, **Introductory text**, Chapter 2. I. 1, Is international law law? **Quotations; Case No. 95**, United States Military Tribunal at Nuremberg, The Ministries Case; **Case No. 171**, Iran/Iraq, UN Security Council Assessing Violations of International Humanitarian Law [Part C. and D.]; **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part B.]]

- IHL, the crucial test of international law

[See Chapter 1. II, The possibility of legal regulation of warfare, **Introductory text**, and Chapter 2. II, Fundamental distinction between *jus ad bellum* (legality of the use of force) and *jus in bello* (humanitarian rules to be respected in warfare), **Introductory text**]

2. Respect

[See Chapter 13. XII, Factors contributing to violations of IHL, **Introductory text**, and Chapter 13. XIII, Non-legal factors contributing to respect for IHL]

3. Decentralization and relativism: comparison between the implementation of international law and that of municipal law

- a. Creation: absence of a distinct, permanent or centralized legislator
- b. Application: absence of an ordinary tribunal that can be unilaterally seized
- c. Execution: no central executive power

4. Self-application and its consequences

- a. Difficulty to establish violations
- b. Need for clear rules

5. Adaptation and stability

[See **Case No. 261**, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part A. and B.]]

6. Expansion

- a. Horizontal
- b. Vertical

7. *Lex lata* and *lex ferenda*

C. The two layers of contemporary international law

1. The law of the society of States

- a. Contents:
 - i. The law necessary for the co-existence of States
 - ii. The growing field of the law of cooperation between States
- b. Characteristics:
 - i. Relativism
 - ii. Dominant role of consent
 - iii. Decentralized reaction to violations

[See **Case No. 215**, ICTY, *The Prosecutor v. Kupreskic et al.* [Para. 530]]

2. The law of the international community composed of six billion human beings

- a. International organization and international organizations
- b. Piercing the corporative veil of the State
 - i. The individual protected by international law (even from his own State)

[See Chapter 2.III.5, The types of relations governed by IHL]

- ii. The individual as the addressee of international criminal law

[See Chapter 13. X, Violations by individuals, and **Case No. 211**, ICTY, *The Prosecutor v. Tadic* [Part A., paras 58 and 128-136]]

c. A hierarchy of rules

[See **Case No. 215**, ICTY, *The Prosecutor v. Kupreskic et al.* [Paras 519 and 520]]

- i. *Jus cogens*
 - ii. *Erga omnes* obligations
- d. The international community
 - i. Concept
 - ii. Use of the notion
 - iii. As a subject of international law?

D. The main characteristics of international law

1. The Westphalian system, its universalization and its obsolescence

2. The central role of the State – human finality

- Application of IHL by and in failed States

[See **Case No. 45**, ICRC, Disintegration of State structures [II.2], and **Document No. 52**, First Periodical Meeting, Chairman's Report [II.2]]

3. Decentralized system – a tendency towards institutionalization

II. SOURCES OF INTERNATIONAL LAW

- Codification and development of IHL in multilateral treaties

[See Chapter 4.1, Treaties]

- The process that resulted in the 1977 Protocols
- The struggle to ban the use of anti-personnel landmines

1. Customary international law

- Difficulties to assess practice and *opinio juris* in IHL

[See Chapter 4. II, Customary law, **Introductory text** and **Quotations**; see also **Case No. 168**, South Africa, S. v. Petane; **Case No. 132**, Israel, Cases Concerning Deportation Orders [47]; **Case No. 43**, ICRC, Customary International Humanitarian Law; **Case No. 276**, Sierra Leone, Special Court Ruling on the Recruitment of Children]

a. The two classical elements

[See **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.*]

- The material element: practice
 - Conduct that constitutes practice
 - The practice of belligerents

[See **Case No. 153**, ICJ, Nicaragua v. United States [Para. 186], and **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., para. 99]]

- The practice of non-belligerents
- Relevance of ICRC practice

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., paras 99 and 109]]

- How many States?
- For how long?
- States specifically concerned

- The psychological element: *opinio juris*
 - Nature: opinion or commitment
 - Possible manifestations

[See **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Paras 527-534 and 540]]

- The two elements are inseparable

b. The persistent objector

c. The codification of international law

[See Chapter 3, Historical development of IHL, and Chapter 4.1, Treaties]

d. The influence of treaties on customary law

[See Chapter 4. II. 2, IHL treaties and customary IHL, **Quotation**; see also **Case No. 153**, ICJ, Nicaragua v. United States [Paras 174-178, 181, 185 and 218]; **Case No. 168**, South Africa, S. v. Petane; **Case No. 132**, Israel, Cases Concerning Deportation Orders [4-7]; **Case No. 76**, Sweden, Report of the Swedish International Humanitarian Law Committee [3.2.2]]

2. General principles of law

[See **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part B, paras 36-85]]

3. General principles of international law

[See Chapter 4. III, Fundamental principles of IHL, **Introductory text**, and **Case No. 153**, ICJ, Nicaragua v. United States [Paras 215 and 218]]

- Elementary considerations of humanity
- The Martens clause

[See **Case No. 153**, ICJ, Nicaragua v. United States [Para. 218]; **Case No. 243**, Colombia, Constitutional Conformity of Protocol II [Para. 22]; **Document No. 55**, Minimum Humanitarian Standards [Part B., paras 84 and 85]]

4. The tendency towards “general international law”

5. Equity

6. Unilateral acts

- Establishment of a non-defended locality

7. Subsidiary sources

a. Jurisprudence

[See **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Paras 537-541]]

b. Writings of publicists

8. “Soft law”

a. Resolutions adopted by international organizations

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., paras 110-112]]

- Resolutions of the International Conference of the Red Cross and Red Crescent

b. Non-binding agreements

9. Hierarchy of norms: *jus cogens*

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 40]; **Case No. 62**, ICJ, Nuclear Weapons Advisory Opinion [Para. 79]; **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Para. 520]]

III. THE SUBJECTS OF INTERNATIONAL LAW

A. States

1. Definition

- a. Components
 - i. Population
 - ii. Territory
 - iii. Government
- b. State sovereignty
- c. Recognition

2. State jurisdiction

- a. Territorial jurisdiction
 - i. The exclusions that result from territorial jurisdiction
 - ii. Obligations that are derived from territorial jurisdiction
 - iii. Defining and delimitating State territory
- b. Personal jurisdiction
 - i. Nationality of individuals
 - ii. Nationality of corporations
 - iii. The nationality of certain properties
- c. State continuity
 - i. Change of government

[See **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part C.]]

 - ii. Recognition of governments
 - iii. Insurrectional movements
- d. State succession

B. International organizations

1. Contractual conception and institutional conception

2. Creation

3. Structure

4. Legal status

5. Powers

C. Other subjects of international law

1. Individuals

- Rights and obligations of individuals according to IHL

[See Chapter 2.III.5.c), Individual-individual, and Chapter 13.X, Violations by individuals]

2. Companies

3. Insurgents

- Functional legal personality of parties to non-international armed conflicts

[See Chapter 12.VIII, Who is bound by the law of non-international armed conflicts? **Introductory text**, and Chapter 12.IX, Consequences of the existence of a non-international armed conflict for the legal status of the parties, **Introductory text**; see also **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A, Art. 10]; **Case No. 243**, Colombia, Constitutional Conformity of Protocol II [Para. 8]; **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A, para. 174]]

4. The Holy See

5. The International Committee of the Red Cross

- Legal status of the International Red Cross and Red Crescent Movement
- Legal status of the ICRC

[See Chapter 15.II.1.f), The relevance of ICRC practice for the development of customary international law, **Quotation**; see also **Case No. 54**, UN, ICRC Granted Observer Status; **Case No. 214**, ICTY/ICC, Confidentiality and Testimony of ICRC Personnel; **Document No. 27**, Agreement between the ICRC and Switzerland]

IV. THE UNITED NATIONS

1. Objectives and principles

2. Legal nature

3. Members

4. The main organs, their system and their jurisdiction

- a. General Assembly
- b. Security Council
- c. Economic and Social Council
- d. Trusteeship Council
- e. International Court of Justice

5. Settlement of disputes

6. Collective security and peacekeeping

a. Security Council enforcement measures

- Applicability of IHL

[See **Case No. 57**, UN, Guidelines for UN Forces; **Case No. 198**, Belgium, Belgian Soldiers in Somalia; **Case No. 22**, Convention on the Safety of UN Personnel]

- Means of implementing IHL

[See **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Part 3.D], and **Case No. 205**, Bosnia and Herzegovina, Constitution of the Safe Areas in 1992-1993]

i. The prosecution of war crimes as peace enforcement

[See **Case No. 190**, Iraq, The End of Occupation; **Case No. 230**, UN, Statute of the ICTR; **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., paras 28-39]]

ii. Peacekeeping and peace-enforcement operations

[See **Case No. 57**, UN, Guidelines for UN Forces; **Case No. 198**, Belgium, Belgian Soldiers in Somalia; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region; **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea]

iii. Applicability of IHL

b. Economic sanctions and IHL

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7]]

7. Specialized agencies

V. FUNDAMENTAL RIGHTS AND OBLIGATIONS OF STATES

- The principle of non-intervention

[See **Case No. 153**, ICJ, Nicaragua v. United States [Paras 207, 219 and 254]]

- IHL applicable to foreign intervention in non-international armed conflicts

- International cooperation in cases of serious violations of IHL

[See **Case No. 139**, UN, Resolutions and Conference on Respect for the Fourth Convention; **Document No. 39**, ICRC, Protection of War Victims [3.1.3]; **Document No. 52**, First Periodical Meeting, Chairman's Report]

- The right to self-determination

[See **Case No. 74**, United Kingdom and Australia, Applicability of Protocol I [Parts A. and B.]; **Case No. 77**, United States, President Rejects Protocol I; **Case No. 167**, South Africa, Sagarius and Others; **Case No. 168**, South Africa, S. v. Petane; **Case No. 284**, The Netherlands, Public Prosecutor v. Folkerts; **Case No. 287**, United States, United States v. Marilyn Buck; **Case No. 286**, The Conflict in Western Sahara]

- The IHL applicable to wars of national liberation

VI. INTERNATIONAL LAW AND MUNICIPAL LAW

[See Chapter 2. III. 5. b), State-State, IHL in the law of treaties, **Introductory text**]

1. Role of municipal law in respect of international law

2. Position of international law in municipal law

a. Monism and dualism

b. Direct application or necessity to transform

- Transformation or direct application of IHL treaties

[See **Case No. 132**, Israel, Cases Concerning Deportation Orders [4 and 5]]

c. Self-executing rules and rules that need legislation for application

[See Chapter 13. II, Measures to be taken in peacetime, **Introductory text**, and II. 4, Legislation for application, **Introductory text**]

3. The dualist system (Canada, United Kingdom)

a. Treaties are not directly applicable

- i. They become domestic law through transformation

[See **Case No. 65**, Canada, Crimes Against Humanity and War Crimes Act; **Case No. 81**, United Kingdom, Interpreting the Act of Implementation; **Case No. 110**, India, Rev. Mons. Monteiro v. State of Goa]

- ii. They help construe domestic law

b. Customary law is part of municipal law

4. The monist system (United States, France, Switzerland)

a. Self-executing treaties and customary law are part of municipal law

- Self-executing and non-self-executing norms of IHL treaties

[See **Case No. 158**, United States, United States v. Noriega [Part B.II.C]; **Case No. 152**, Chile, Prosecution of Osvaldo Romo Mena; **Case No. 241**, Switzerland, The Niyonteze Case [Part A, consid. 9a)]

b. Other treaty-based rules need implementing legislation

- Need for national legislation on war crimes

[See **Case No. 63**, Switzerland, Military Penal Code; **Case No. 64**, Germany, International Criminal Code; **Case No. 66**, Cameroon, Law on the Protection of the Emblem and the Name "Red Cross"; **Case No. 67**, Ghana, National Legislation Concerning the Emblem; **Case No. 68**, Belgium, Law on Universal Jurisdiction; **Case No. 70**, United States, War Crimes Act; **Case No. 241**, Switzerland, The Niyonteze Case [Part A.]

c. The hierarchy of international law in municipal law

5. International law in a federal State

a. Federal States as subjects of international law?

b. Right of federal authorities to conclude treaties on matters falling under the domestic jurisdiction of the federated States?

c. Right to adopt legislation of transformation or implementation?

d. Responsibility of the federal State for the federated States?

VII. THE LAW OF TREATIES

1. Conclusion

- a. International jurisdiction and internal jurisdiction
- b. Procedure of conclusion
 - i. Simplified form and formal form
 - ii. Initialling – authentication – signature – ratification – accession
 - iii. Entry into force
- c. Invalid consent
- d. Reservations
- e. Role of the depository
- f. Registration and publication

2. Interpretation of treaties

[See **Case No. 132**, Israel, Cases Concerning Deportation Orders, and **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., paras 71-93, and C., paras 282-304]]

- a. The text as starting point
- b. Interpretation in context and in the light of the text's object and purpose
- c. Subsequent practice and the remainder of international law
- d. Supplementary recourse to preparatory work

3. Termination and suspension

- a. By consent of the parties
- b. Non-execution
 - No termination or suspension of the applicability of an IHL treaty as a consequence of its breach

[See Chapter 13. IX. 2. c) dd), Applicability of the general rules on State responsibility – but no reciprocity]

- c. Fundamental change of circumstances
- d. *Jus cogens*

4. Treaties between States and international organizations

- Status agreements concluded by the ICRC

[See **Document No. 27**, Agreement between the ICRC and Switzerland]

VIII. THE LAW OF DIPLOMATIC RELATIONS

- The Protecting Powers

[See Chapter 13. IV. 1, The Protecting Power, **Introductory text**]

- The legal status of ICRC delegations and of ICRC delegates

[See **Case No. 214**, ICTY/ICC, Confidentiality and Testimony of ICRC Personnel]

- Diplomatic immunity and prosecution of war crimes

[See **Case No. 23**, The International Criminal Court [Arts 27 and 98]; **Case No. 242**, ICJ, Democratic Republic of the Congo v. Belgium; **Case No. 275**, Sierra Leone, Special Court Ruling on Immunity for Taylor]

IX. STATE JURISDICTION AND ITS DELIMITATION

1. Jurisdiction

- a. Territorial jurisdiction
- b. Jurisdiction of the flag
- c. Active personal jurisdiction
- d. Passive personal jurisdiction?
- e. Jurisdiction of the public authorities
- f. Jurisdiction of protection
- g. Universal jurisdiction
 - The universal obligation to repress grave breaches

[See Chapter 13. X. 2, Violations by individuals, **Introductory text**; see also **Case No. 223**, Switzerland, Military Tribunal of Division 1, Acquittal of G.; **Case No. 241**, Switzerland, The Niyonteze Case [Part B.III.1.c)]; **Case No. 242**, ICJ, Democratic Republic of the Congo v. Belgium [Paras 15 and 45; separate opinion Judge Bula-Bula and dissenting opinion Judge van den Wyngaert, paras 54 and 59]]

h. Delegated jurisdiction

2. Fields of application of municipal law

3. Jurisdiction for implementation

4. Immunities

- a. Of the State
- b. Of State organs
 - Immunities under international law and prosecution for war crimes

[See **Case No. 242**, ICJ, Democratic Republic of the Congo v. Belgium, and **Case No. 275**, Sierra Leone, Special Court Ruling on Immunity for Taylor]

X. THE LAW OF THE SEA

[See Chapter 10, The law of naval warfare]

- Applicability of the United Nations Convention on the Law of the Sea in times of armed conflict
- Hostilities in different maritime zones
- Innocent and transit passage through neutral waters

XI. THE INTERNATIONAL PROTECTION OF THE INDIVIDUAL

- The historical development of IHL

[See Chapter 3, Historical development of IHL]

- Protected person status in IHL

[See Chapter 2. III. 2, Personal scope of application, **Introductory text**, and Chapter 14. I. 2, Protected persons; see also **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., para. 81; Part B., paras 580-608, and Part C., paras 163-169], and **Case No. 216**, ICTY, The Prosecutor v. Blaskic [Part A., para. 127]]

- Comparison of the status of war victims under IHL and International Human Rights Law

[See Chapter 14, IHL and International Human Rights Law, **Introductory text**; Chapter 14. I. 1, Material fields of application: complementarity, **Introductory text**; Chapter 14. I. 3, Relations affected, **Introductory text**; Chapter 14. II, Protected rights, **Introductory text**, p. 346; Chapter 14. III, Implementation, **Introductory text**, p. 348; see also **Case No. 227**, ECHR, Bankovic and Others v. Belgium and 16 other States; **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 101-134]; **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 149-153 and 403-413]]

- The role of human rights bodies in the implementation of IHL

[See Chapter 14. III, Implementation, **Introductory text**; see also **Case No. 20**, The Issue of Mercenaries [Parts C. and D.]; **Case No. 151**, ECHR, Cyprus v. Turkey; **Case No. 157**, Inter-American Commission on Human Rights, Coard v. United States; **Case No. 192**, Inter-American Commission on Human Rights, Tablada [Paras 157-170]; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [3.A.2) and 3.B.1)]; **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts C. and D.]; **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A.]

XII. STATE RESPONSIBILITY

[See Chapter 13. X, Violations by individuals, **Introductory text**; see also **Case No. 53**, International Law Commission, Articles on State Responsibility, and **Case No. 192**, Inter-American Commission on Human Rights, Tablada]

1. Primary and secondary rules

2. Attribution of an unlawful act to a State

- a. Responsibility of a State for "its" acts – how may a State act?
- b. Responsibility of a State for its organs
 - i. Members of armed forces as State organs

- ii. Strict responsibility for violations of the laws of war by members of the armed forces?

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 7, and Part B., para. 26]]

- c. Responsibility for *de facto* organs

[See **Case No. 53**, International Law Commission Articles on State Responsibility [Part A., Art. 8]; **Case No. 153**, ICJ, Nicaragua v. United States [Para. 115]; **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part C., paras 98-145]; **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 123-125]]

- d. Responsibility for individuals acting in the absence of official authorities

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 9]]

- e. Responsibility for acts by insurgents

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 10]]

- i. Responsibility for violations of IHL by parties to a non-international armed conflict
- f. Responsibility for acts acknowledged and adopted by the State
- g. Responsibility for a lack of due diligence with respect to private actors

3. Responsibility for private damages: specific conditions of diplomatic protection

4. Evaluation of the wrongfulness of the act and nature of the violated obligation

5. Degrees of responsibility: the concept of State crime

[See **Case No. 53**, International Law Commission, Draft Articles on State Responsibility [Part A., Chapter III and Arts 40 and 41]]

6. Circumstances precluding wrongfulness

- a. Consent
- b. Self-defence

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 21], and **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 138-139]]

- c. Conduct rendered necessary by a peremptory norm

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 26]]

- d. Measures to counter a wrongful act

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Arts 49 and 50]; **Case No. 74**, United Kingdom and Australia, Applicability of Protocol I; **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Paras 527-536]]

- e. *Force majeure*
 - f. Distress

g. Necessity

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 25]; **Case No. 94**, United States Military Tribunal at Nuremberg, United States v. Alfred Krupp *et al.* [Sect. 4(iii)]; **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 140]]

7. Consequences of responsibility for the State concerned

a. Reparations for violations of *jus ad bellum* and *jus in bello*

[See **Document No. 39**, ICRC, Protection of War Victims; **Case No. 180**, UN Compensation Commission, Recommendations; **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 147-153]]

8. Implementation of responsibility

[See Chapter 13. V, The obligation to ensure respect (common Article 1), **Introductory text**; Chapter 13. X, Violations by individuals, **Introductory text**; **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 593-600]]

- a. How to invoke international responsibility?
- b. The notion of injured State
- c. Loss of the right to invoke international responsibility
- d. Plurality of injured States
- e. Victim States other than the injured State
 - i. The concept of injured State in cases of violations of IHL

[See Chapter 13.V, The obligation to ensure respect (common Article 1), **Introductory text**]

f. Counter-measures

i. The prohibition of reprisals in IHL

[See **Document No. 73**, France, Accession to Protocol I [Part B.]; **Case No. 74**, United Kingdom and Australia, Applicability of Protocol I [Part C.]; **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Paras 527-536]]

ii. Economic sanctions and IHL

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7]]

XIII. INTERNATIONAL ECONOMIC LAW

- Economic sanctions and IHL

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7], and **Case No. 174**, UN Security Council, Sanctions Imposed upon Iraq]

XIV. PROTECTION OF THE ENVIRONMENT

[See **Case No. 38**, The Environment and International Humanitarian Law, and **Case No. 62**, ICJ, Nuclear Weapons Advisory Opinion [Paras 27-33]]

- Protection of the environment in times of armed conflict
- Continued validity of environmental protection treaties even in armed conflicts

XV. THE PEACEFUL SETTLEMENT OF DISPUTES

[See Chapter 13. I, General problems of the implementation of international law and specific problems for IHL, **Introductory text**, and Chapter 13. IX, The international responsibility of the State for violations, **Introductory text**]

- 1. General obligation to settle disputes peacefully**
- 2. Tensions with the tendency for the State to take the law into its own hands**
- 3. Liberty of choice as to the method of settlement**
- 4. Role of the UN organs**
- 5. Framework**
 - a. Negotiations
 - b. Consultations
 - c. Good offices
 - i. The role of the Protecting Power
[See Chapter 13. IV. 1, The Protecting Power, **Introductory text**, see also **Case No. 95**, United States Military Tribunal at Nuremberg, The Ministries Case, and **Document No. 86**, Switzerland Acting as Protecting Power in World War II.]
 - ii. The role of the ICRC and its right of initiative
 - d. Enquiry
 - i. Enquiry procedures provided for by IHL
 - ii. The International Fact-Finding Commission
 - e. Mediation
 - f. Conciliation
 - i. Conciliation procedures and the role of the Protecting Power
 - g. Judicial settlement
 - i. Arbitration
 - ii. Submission to international tribunals

6. The International Court of Justice

- a. Structure
- b. Practical importance
- c. Only States have the capacity to act in justice
- d. Bases of jurisdiction
 - i. Special agreement
 - ii. Treaty
 - iii. Declaration accepting mandatory jurisdiction (the optional clause on mandatory jurisdiction)
- e. Material jurisdiction
 - i. Legal disputes
 - ii. Interested third States
 - iii. Parallel procedures before the Security Council
- f. Advisory opinions
- g. Procedure

XVI. THE USE OF FORCE

1. Historical development

2. State perspective: the ban on the use of force and its exceptions

a. Self-defence

[See **Case No. 62**, ICJ, Nuclear Weapons Advisory Opinion [Paras 94-97], and **Document No. 73**, France, Accession to Protocol I [Part A.]]

- i. As a reaction to armed aggression
- ii. Subsidiary to collective security measures
- iii. Preventive self-defence?
- iv. Self-defence against non-State actors?

[See **Case No. 228**, United States, The September 11, 2001 Attacks, and **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 139]]

v. Collective self-defence

b. Use of force decided or authorized by the Security Council

[See **Case No. 205**, Bosnia and Herzegovina, Constitution of the Safe Areas in 1992-1993, and **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Part 1.B. and C.]]

c. Wars of national liberation

d. Armed intervention with the State's consent

[See **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Part 3.A.], and **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1.B.4]]

e. Armed humanitarian intervention?

[See **Case No. 177**, UN, Security Council Resolution 688 on Northern Iraq; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Part 1.C. and 3.D.]; **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1.B.4]]

f. Armed reprisals?

3. *Jus ad bellum* and *jus in bello*

[See Chapter 2. II, Fundamental distinction between *jus ad bellum* (legality of the use of force) and *jus in bello* (humanitarian rules to be respected in warfare), **Introductory text**; see also **Document No. 96**, United States Military Tribunal at Nuremberg, United States v. Wilhelm List; **Case No. 93**, United States Military Tribunal at Nuremberg, The Justice Trial; **Case No. 74**, United Kingdom and Australia, Applicability of Protocol I [Parts A. and B.]; **Case No. 158**, United States, United States v. Noriega [Part A.II.A]; **Case No. 125**, Israel, Applicability of the Convention to Occupied Territories]

4. The perspective of the United Nations Charter

a. Maintenance of peace and international security by the Security Council

i. The concept of a threat to peace and international security

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A, para. 30]]

ii. Possible Security Council enforcement measures

- Non-military sanctions
- Creation of a criminal tribunal

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., paras 35-39]]

- Economic sanctions

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7]]

- Military sanctions

[See **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part B]]

b. Subsidiary role of the General Assembly

[See **Case No. 139**, UN, Resolutions and Conference on Respect for the Fourth Convention [Part B.]]

c. Peacekeeping operations

[See **Document No. 59**, UN, Review of Peace Operations]

i. Applicability of IHL

[See **Case No. 22**, Convention on the Safety of UN Personnel; **Document No. 57**, UN, Guidelines for UN Forces; **Document No. 59**, UN, Review of Peace Operations [Para. 41]; **Case No. 198**, Belgium, Belgian Soldiers in Somalia; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Part 1.C.2)]; **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1.B.2), 1.B.3) and 2.B]]

ii. A means of implementing IHL?

[See **Case No. 205**, Bosnia and Herzegovina, Constitution of the Safe Areas in 1992-1993, and **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Part 1.B, 1.C.1) and 3.D.]]

5. Principles applicable to the legal use of force

a. Proportionality

b. Necessity

c. Respect for IHL

[See Chapter 2. II, Fundamental distinction between *jus ad bellum* (legality of the use of force) and *jus in bello* (humanitarian rules to be respected in warfare)]

6. Absence of a ban on non-international armed conflicts

XVII. THE LAW OF DISARMAMENT

[See **Document No. 17**, Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; **Document No. 21**, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction; **Document No. 48**, ICRC, Biotechnology, Weapons and Humanity]

XVIII. THE LAW OF NEUTRALITY

- The development of the concept of neutrality from the 1949 Geneva Conventions to the 1977 Additional Protocols
 - Humanitarian assistance by neutral States
 - Providing relief
 - Transit
 - Internment of prisoners of war in neutral countries
- [See **Case No. 250**, Afghanistan, Soviet Prisoners Transferred to Switzerland]
- Naval warfare
 - Innocent and transit passage through neutral waters
 - Neutral shipping in sea warfare

Teaching Tool IX

Aspects of International Humanitarian Law to include in a course on international organizations

1. General points

a) Legal personality

- Legal status of the ICRC

[See Chapter 15.I.2, The legal status of the ICRC]

- The application of IHL to UN forces

[See Chapter 13.VIII.5.a) UN forces as addressees of IHL and protected by IHL, and **Case No. 160**, Eritrea/Ethiopia, Partial Award on POWs [Part A., paras 45-48]]

b) Privileges and immunities

- Privileges and immunities of the ICRC inherent in its mandate in IHL

[See **Case No. 214**, ICTY/ICC, Confidentiality and Testimony of ICRC Personnel]

- Privileges and immunities of the ICRC provided for in status agreements
- Privileges and immunities of the ICRC provided for in its headquarters agreement with Switzerland

[See **Document No. 27**, Agreement between the ICRC and Switzerland]

c) Treaty-making power

- Status agreements and operational agreements concluded by the ICRC

[See **Document No. 27**, Agreement between the ICRC and Switzerland, and **Document No. 28**, Agreement between the ICRC and the ICTY Concerning Persons Awaiting Trial before the Tribunal]

2. The United Nations system

a) Security Council enforcement measures

- Applicability of IHL
- Means of implementation of IHL
 - The prosecution of war crimes as peace enforcement

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., para. 39], and **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part B]]

- Peacekeeping operations

[See **Document No. 59**, UN, Review of Peace Operations]

- Applicability of IHL

[See Chapter 13.VIII.5.a), UN forces as addressees of IHL and protected by IHL]

- The ICRC's observer status at the UN General Assembly

[See Case No. 54, UN, ICRC Granted Observer Status]

- The role of the UN General Assembly in the development of IHL
- The concept of *in situ* protection of the United Nations High Commissioner for Refugees and implementation of IHL
- Reference to IHL in resolutions of the UN Human Rights Council
- Special rapporteurs of the UN Human Rights Council on IHL subjects
- UN human rights monitors and IHL

3. The International Conference of the Red Cross and Red Crescent

- a) The Conference's legal nature
- b) Legal nature of Conference resolutions

4. The International Red Cross and Red Crescent Movement

- a) Status and role of National Red Cross and Red Crescent Societies in IHL

5. The International Committee of the Red Cross

[See Chapter 15, The International Committee of the Red Cross]

- a. The ICRC's position and function in the International Red Cross and Red Crescent Movement
- b. Its legal status
- c. Its principles
- d. Its traditionally mononational character
- e. Its role in the development of IHL
- f. Its mandate under IHL
 - i. In international armed conflicts
 - ii. In non-international armed conflicts
- g. Activities and approach
- h. Importance of IHL in the ICRC's operational practice

6. The International Federation of Red Cross and Red Crescent Societies

Teaching Tool X

Aspects of International Humanitarian Law to include in a course on human rights

1. Historical development

- The development of IHL as a first form of protection for the individual in international law
- The changing structure of the protective regimes of IHL: from inter-State relations to protection of the individual against the State and armed groups

[See Chapter 2. III. 2. a), Passive personal scope of application: who is protected?, and Chapter 14. II. 1. a) Areas in which details provided by IHL are more adapted to armed conflicts]

2. Sources

- IHL as protection of (some) human rights in armed conflicts
[See Chapter 14. II. 1. a) Areas in which details provided by IHL are more adapted to armed conflicts]
- (Human rights-like) Fundamental guarantees of IHL for persons not benefiting from more favourable guarantees under IHL

3. Universalism and cultural relativism

- Law v. rights in IHL and human rights
- Universality of humanitarian values
[See Chapter 1. III, IHL and cultural relativism]
- IHL covering rights in all “three generations” of human rights

4. Protected rights

a) Right to life

- Reference to IHL through the exception for lawful acts of war

[See Chapter 14. III, Implementation, **Introductory text**; see also **Case No. 151**, ECHR, Cyprus v. Turkey]

b) Prohibition of inhumane and degrading treatment

- A state of necessity does not justify it, even in armed conflicts

c) Right to personal freedom

[See **Case No. 138**, Israel, Detention of Unlawful Combatants; **Case No. 157**, Inter-American Commission on Human Rights, Coard v. United States [Paras 42 and 45-59], and **Case No. 262**, United States, President's Military Order]

- Justification for the internment of prisoners of war

[See **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts C. and D], and **Case No. 263**, United States, Hamdan v. Rumsfeld]

- Administrative detention of civilians in IHL

[See **Case No. 131**, Israel, Cheikh Obeid *et al.* v. Ministry of Security; **Case No. 157**, Inter-American Commission on Human Rights, Coard v. United States [Paras 52-59]; **Case No. 170**, ICRC, Iran/Iraq Memoranda]

d) Judicial guarantees

- Is an international tribunal “established by law”?

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., paras 41-48]]

e) Economic, social and cultural rights

[See **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 130-134]]

- Extent of protection in armed conflicts by IHL (health, work, education, etc.)
- Interdependence and indivisibility of protection and assistance in armed conflicts

f) Collective rights

- Right to a healthy environment: protection of the environment in armed conflicts
- Right to self-determination: qualification of national liberation wars in IHL and consequences
- Right to peace: distinction between *jus ad bellum* and *jus in bello*

5. Possible derogation

[See **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., para.127]]

- The hard core common to human rights and IHL

[See **Case No. 157**, Inter-American Commission on Human Rights, Coard v. United States [Para.39]]

- IHL expanding the non-derogable rights in armed conflicts

[See **Case No. 192**, Inter-American Commission on Human Rights, Tablada [Paras 168-170]]

- Gaps in situations of internal strife and tension and attempts to fill them: Minimum Humanitarian Standards

[See **Document No. 55**, Minimum Humanitarian Standards]

- The requirement that derogations must be consistent with other obligations under international law as a reference to IHL in armed conflicts

[See **Case No. 192**, Inter-American Commission on Human Rights, Tablada [Paras 168-170]]

6. Mechanisms for implementation

a) Non-treaty-based

- Reference to IHL in resolutions of the former UN Commission on Human Rights and UN Human Rights Council, reports of country specific or thematic special rapporteurs, the Inter-American Commission on Human

Rights, OSCE (Organization for Security and Co-operation in Europe) mechanisms

[See **Case No. 20**, The Issue of Mercenaries [Parts C and D]; **Case No. 157**, Inter-American Commission on Human Rights, Coard v. United States; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Paras 3.A.2 and 3.B.1]); **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts C. and D.]

- Special rapporteurs of the former UN Commission on Human Rights and UN Human Rights Council on IHL topics

[See **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts C. and D.]

- UN or OSCE human rights monitors and IHL

[See **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Para. 3.D]]

b) Treaty-based

- IHL in the discussions and decisions of the UN Human Rights Committee (incl. on individual communications from States Party to the First Optional Protocol to the International Covenant on Civil and Political Rights), the UN Committee against Torture, the European Court of Human Rights, the European Committee against Torture, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights

[See **Case No. 151**, ECHR, Cyprus v. Turkey; **Case No. 154**, Inter-American Court of Human Rights, Bámaca-Velasquez v. Guatemala; **Case No. 192**, Inter-American Commission on Human Rights, Tablada; **Case No. 245**, Human Rights Committee, Guerrero v. Colombia; and **Case No. 246**, Inter-American Court of Human Rights, The Las Palmeras Case]

- Coordination between the ICRC and the European Committee against Torture in and outside armed conflicts

c) NGOs

- Reference to IHL and/or human rights by NGOs in armed conflicts

[See **Case No. 143**, Amnesty International, Breach of the Principle of Distinction; **Case No. 226**, Federal Republic of Yugoslavia, NATO Intervention [Part A.]; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Para. 2.B.]; **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part A.]; **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 2.A.]; **Case No. 280**, Russian Federation, Chechnya, Operation Samashki; **Case No. 286**, The Conflict in Western Sahara [Part A.]

d) ICRC

- The ICRC and human rights in and outside armed conflicts

7. States as protectors and enforcers of human rights

a) States, protectors of the rights of persons under their jurisdiction

[See **Case No. 227**, ECHR, Bankovic and Others v. Belgium and 16 other States, and **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 107-112]]

b) International human rights law within domestic legal orders

- IHL national implementing legislation

[See **Case No. 63**, Switzerland, Military Penal Code, to **Case No. 70**, United States, War Crimes Act]

- **Judicial enforcement of IHL by domestic courts**

[See **Case No. 81**, United Kingdom, Interpreting the Act of Implementation; **Case No. 82**, United Kingdom, Labour Party Campaign – Misuse of the Emblem; **Case No. 99**, United States, *Ex Parte Quirin et al.*, to **Case No. 105**, Singapore, *Bataafsche Petroleum v. The War Damage Commission*; **Case No. 108**, Hungary, *War Crimes Resolution*; **Case No. 110**, India, *Rev. Mons. Monteiro v. State of Goa*; **Case No. 113**, Malaysia, *Public Prosecutor v. Oie Hee Koi*, to **Case No. 115**, Belgium, *Public Prosecutor v. G.W.*, **Case No. 117**, United States, *United States v. William L. Calley, Jr.*; **Case No. 120**, Nigeria, *Pius Nwaoga v. The State*; **Case No. 126**, Israel, *Military Prosecutor v. Kassem and Others*; **Case No. 132**, Israel, *Cases Concerning Deportation Orders*; **Case No. 152**, Chile, *Prosecution of Osvaldo Romo Mena*; **Case No. 155**, Canada, *Ramirez v. Canada*; **Case No. 158**, United States, *United States v. Noriega*; **Case No. 167**, South Africa, *Sagarius and Others*, to **Case No. 169**, South Africa, *AZAPO v. Republic of South Africa*; **Case No. 195**, Canada, *Sivakumar v. Canada*; **Case No. 198**, Belgium, *Belgian Soldiers in Somalia*; **Case No. 199**, Canada, *R. v. Brocklebank*; **Case No. 222**, United States, *Kadic et al. v. Karadzic*, to **Case No. 223**, Switzerland, *Military Tribunal of Division 1, Acquittal of G.*; **Case No. 238**, France, *Radio Mille Collines*; **Case No. 239**, France, *Dupaquier et al. v. Munyeshyaka*; **Case No. 241**, Switzerland, *The Niyonteze Case*; **Case No. 271**, India, *People's Union for Civil Liberties v. Union of India*; **Case No. 284**, The Netherlands, *Public Prosecutor v. Folkerts*; **Case No. 287**, United States, *United States v. Marilyn Buck*]

- **Application of IHL by and in failed States**

c) **Enforcement by States against violator States**

- **IHL and humanitarian intervention**
- **IHL and economic sanctions**

[See **Case No. 53**, International Law Commission, *Articles on State Responsibility* [Part A., Art. 50, para. 7]]

- **The obligation to ensure respect for IHL**

[See Chapter 13.V, *The obligation to ensure respect (common Article 1)*, **Introductory text**]

- **IHL conditions for humanitarian assistance**

[See Chapter 9.IV, *IHL and humanitarian assistance*, **Introductory text**]

Teaching Tool XI

Aspects of International Humanitarian Law to include in a course on criminal law

1. Compulsory jurisdiction over and criminalization of war crimes

2. War crimes in national penal law

[See **Case No. 63**, Switzerland, Military Penal Code; **Case No. 64**, Germany, International Criminal Code; **Case No. 65**, Canada, Crimes Against Humanity and War Crimes Act; **Case No. 67**, Ghana, National Legislation Concerning the Emblem; **Case No. 68**, Belgium, Law on Universal Jurisdiction; **Case No. 70**, United States, War Crimes Act; **Case No. 241**, Switzerland, The Niyonteze Case]

3. Elements of crime

[See **Case No. 23**, The International Criminal Court [Part A., Art. 30]]

a) Subjective elements – *mens rea*

- Negligence

[See **Case No. 198**, Belgium, Belgian Soldiers in Somalia; **Case No. 199**, Canada, R. v. Brocklebank [Paras 18-66]; **Case No. 201**, Canada, R. v. Seward]

- Intent and negligence in indiscriminate attacks
- Recklessness

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part C., paras 220 and 228], and **Case No. 216**, ICTY, The Prosecutor v. Blaskic [Part A., paras 152 and 179]]

- Mistake of law in violations of IHL
- Motives

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part C., paras 268 and 269]]

b) Objective elements – *actus reus*

- Causing death or serious injury as a necessary result of battlefield crimes
- War crimes arising from failure to act

[See **Case No. 199**, Canada, R. v. Brocklebank [Paras 18-66], and **Case No. 219**, ICTY, The Prosecutor v. Strugar [Part B., paras 334-347]]

4. Non-responsibility or mitigated responsibility

a) Objective causes

- The defence of superior orders against war crimes prosecution

[See **Case No. 23**, The International Criminal Court [Part A., Art. 33]; **Document No. 96**, United States Military Tribunal at Nuremberg, United States v. Wilhelm List; **Case No. 115**, Belgium, Public Prosecutor v. G.W.; **Case No. 117**, United States, United States v. William L. Calley, Jr.; **Case No. 198**, Belgium, Belgian Soldiers in Somalia; **Case No. 199**, Canada, R. v. Brocklebank; **Case No. 243**, Colombia, Constitutional Conformity of Protocol II [Paras 36-40]]

- Can the defences of coercion (duress), necessity and self-defence be invoked against war crimes prosecution?

[See **Case No. 23**, The International Criminal Court [Part A., Art. 31(1)(c) and (d)]; **Case No. 91**, British Military Court at Hamburg, The Peleus Trial; **Case No. 94**, United States Military Tribunal at Nuremberg, United States v. Alfred Krupp *et al.* [Para. (4)(iii) and (vii)]]

- Defence of lawful acts of hostility in wartime

[See **Case No. 114**, Malaysia, Osman v. Prosecutor; **Case No. 126**, Israel, Military Prosecutor v. Kassem and Others; **Case No. 284**, The Netherlands, Public Prosecutor v. Folkerts; **Case No. 287**, United States, United States v. Marilyn Buck]

b) Subjective causes

- The accused was a minor at the time of the crime
- Mental disorders
- Duress

[See **Case No. 155**, Canada, Ramirez v. Canada]

- Prohibition of criminal liability for escapes by prisoners of war and civilian internees

5. Inchoate and group criminality

a) Vicarious liability

b) Liability for conspiracy to commit war crimes

[See **Case No. 23**, The International Criminal Court [Part A., Art. 25]; **Case No. 155**, Canada, Ramirez v. Canada; **Case No. 195**, Canada, Sivakumar v. Canada; **Case No. 199**, Canada, R. v. Brocklebank; **Case No. 200**, Canada, R. v. Boland; **Case No. 201**, Canada, R. v. Seward; **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 532-562]; **Case No. 218**, ICTY, The Prosecutor v. Galic [Part A., paras 168-169]]

- The responsibility of commanders for war crimes committed by subordinates if they “knew or should have known”

[See **Case No. 23**, The International Criminal Court [Part A., Art. 28]; **Document No. 96**, United States Military Tribunal at Nuremberg, United States v. Wilhelm List [Para. 3(x)]; **Document No. 98**, The Tokyo War Crimes Trial; **Case No. 102**, United States, *In re Yamashita*; **Case No. 195**, Canada, Sivakumar v. Canada; **Case No. 201**, Canada, R. v. Seward; **Case No. 241**, Switzerland, The Niyonteze Case; **Case No. 218**, ICTY, The Prosecutor v. Galic [Part A., paras 561-562]; **Case No. 219**, ICTY, The Prosecutor v. Strugar, [Part B., paras 173-177, 367 and 415-418; Part C., paras 297-308]]

- Responsibility for the aid or assistance given to the main perpetrator of the violation
- Responsibility for incitement to commit a crime or ordering the commission of a crime

[See **Case No. 241**, Switzerland, The Niyonteze Case; **Case No. 218**, ICTY, The Prosecutor v. Galic [Part A., paras 609-749]; **Case No. 219**, ICTY, The Prosecutor v. Strugar, [Part B., paras 334-346]]

c) Agreement to commit a crime

d) Common criminal purpose

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part C., paras 178-233], and **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur]

6. Specific crimes

[See **Case No. 216**, ICTY, *The Prosecutor v. Blaskic*]

- Genocide

[See **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [paras 640-642]; **Case No. 228**, Case Study, *Armed Conflicts in the Great Lakes Region* [Para. 1.A.1)]; **Case No. 234**, ICTR, *The Prosecutor v. Jean-Paul Akayesu* [Part A., paras 492-523]; **Case No. 241**, Switzerland, *The Niyonteze Case* [Part B., III.B.]

- Crimes against humanity

[See **Case No. 108**, Hungary, *War Crimes Resolution*; **Case No. 211**, ICTY, *The Prosecutor v. Tadic* [Part B., paras 618-654, and Part C., paras 238-304]; **Case No. 215**, ICTY, *The Prosecutor v. Kupreskic et al.* [Paras 567-636]; **Case No. 216**, ICTY, *The Prosecutor v. Blaskic* [Part A., paras 66-71]; **Case No. 217**, ICTY, *The Prosecutor v. Kunarac, Kovac and Vukovic* [Paras 116-131]]

- War crimes in non-international armed conflicts

[See **Case No. 23**, The International Criminal Court [Part A., Art. 8(2)(c)-(f)]; **Case No. 108**, Hungary, *War Crimes Resolution*; **Case No. 211**, ICTY, *The Prosecutor v. Tadic* [Part A., paras 128-136]; **Case No. 241**, Switzerland, *The Niyonteze Case* [Part A., consid. 3, and Part B., III.1.B.]; **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 161-163]]

- Grave breaches of IHL

[See **Case No. 211**, ICTY, *The Prosecutor v. Tadic* [Part A., paras 79-84], and **Case No. 216**, ICTY, *The Prosecutor v. Blaskic* [Part A., paras 151-158]]

- Other violations of IHL applicable to international armed conflicts

[See **Case No. 216**, ICTY, *The Prosecutor v. Blaskic* [Part A., paras 179-187], and **Case No. 241**, Switzerland, *The Niyonteze Case* [Part B., III.1.B.]

- Misuse of the red cross or red crescent emblem in peacetime

[See **Case No. 82**, United Kingdom, *Labour Party Campaign – Misuse of the Emblem*, and **Case No. 209**, United Kingdom, *Misuse of the Emblem*]

7. Multiple convictions for the same conduct

[See **Case No. 217**, ICTY, *The Prosecutor v. Kunarac, Kovac and Vukovic* [Paras 175-186]; **Case No. 218**, ICTY, *The Prosecutor v. Galic* [Part A., paras 158-163]; **Case No. 219**, ICTY, *The Prosecutor v. Strugar* [Part B., paras 447-455]]

8. Punishment

- Provisions of IHL on the treatment of detainees
- IHL limitations on the death penalty
- Escape is not an aggravating circumstance for prisoners of war and civil internees
- Certain crimes in occupied territory are punishable only by simple imprisonment or internment
- Determining the sentence

[See **Case No. 200**, Canada, *R. v. Boland*; **Case No. 201**, Canada, *R. v. Seward*; **Case No. 241**, Switzerland, *The Niyonteze Case* [Part A., consid. 13, and Part B., III.4.B.]

Teaching Tool XII

Aspects of International Humanitarian Law to include in a course on international criminal law

1. The fundamental importance of international criminal law

- Preventive and stigmatizing effect of the repression of war crimes and importance of individualization and guilt

2. History

- Development of the concept of war crimes in IHL
- Development of the penal provisions of the Geneva Conventions and the Additional Protocols
- The Statute of the International Criminal Court (ICC)

[See **Case No. 23**, The International Criminal Court]

3. Sources – Attempts at codification

- The penal provisions of IHL and the draft code of crimes against the peace and security of mankind
- Art. 8 of the ICC Statute

[See **Case No. 23**, The International Criminal Court]

4. International crimes

- Genocide

[See **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 640-642]; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Para. 1.A.1)]; **Case No. 234**, ICTR, The Prosecutor v. Jean-Paul Akayesu [Part A., paras 492-523]; **Case No. 241**, Switzerland, The Niyonteze Case [Part B., III.B]]

- Crimes against humanity

[See **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Paras 567-636]; **Case No. 216**, ICTY, The Prosecutor v. Blaskic [Part A., paras 66-71]; **Case No. 217**, ICTY, The Prosecutor v. Kunarac, Kovac and Vukovic [Paras 116-131]]

- The concepts of grave breaches of IHL and of war crimes
- The repression of violations of IHL not qualified as grave breaches

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., paras 128-136]]

- War crimes in non-international armed conflicts

[See **Case No. 241**, Switzerland, The Niyonteze Case [Part A., consid. 3, and Part B., III.1.B], and **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 161-163]]

- The extension of the concept of grave breaches to non-international armed conflicts

[See **Case No. 241**, Switzerland, The Niyonteze Case [Part A., consid. 3, and Part B., III.1.B]]

- The different systems used to criminalize international crimes in domestic law

[See **Case No. 63**, Switzerland, Military Penal Code; **Case No. 64**, Germany, International Criminal Code; **Case No. 65**, Canada, Crimes Against Humanity and War Crimes Act; **Case No. 68**, Belgium, Law on Universal Jurisdiction; **Case No. 70**, United States, War Crimes Act; **Case No. 241**, Switzerland, The Niyonteze Case [Part A., consid. 3, and Part B., III.1.B]]

5. Jurisdiction

a) Compulsory universal jurisdiction over grave breaches of IHL

[See Chapter 13. X, Violations by individuals; See also **Case No. 68**, Belgium, Law on Universal Jurisdiction; **Case No. 240**, Switzerland, X. v. Federal Office of Police; **Case No. 238**, France, Radio Mille Collines; **Case No. 239**, France, Dupaquier *et al.* v. Munyeshyaka; **Case No. 241**, Switzerland, The Niyonteze Case [Part B., III.1.c)]; **Case No. 242**, ICJ, Democratic Republic of the Congo v. Belgium [Paras 15 and 45; Separate opinion Judge Guillaume, para. 17; Separate opinion Judge Rezek; Separate opinion Judge Bula-Bula; Dissenting opinion Judge van den Wyngaert, paras 54 and 59]; **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 613-615]]

b) Extraterritorial jurisdiction over crimes committed abroad and criminals currently under foreign jurisdiction in IHL

[See **Case No. 158**, United States, United States v. Noriega, and **Case No. 242**, ICJ, Democratic Republic of the Congo v. Belgium [Individual opinion of Judge Guillaume and dissenting opinion of Judge van den Wyngaert, paras 54 and 59]]

c) Diplomatic and governmental immunity against war crimes prosecution

[See **Case No. 23**, The International Criminal Court [Part A., Arts 27 and 98]; **Case No. 242**, ICJ, Democratic Republic of the Congo v. Belgium; **Case No. 225**, Sierra Leone, Special Court Ruling on Immunity for Taylor]

6. Mutual assistance in criminal matters

[See **Case No. 233**, Luxembourg, Law on Cooperation with the International Criminal Courts]

- Discussion of Art. 88 of Protocol I

7. Extradition

[See **Case No. 158**, United States, United States v. Noriega [Part C.]; **Case No. 240**, Switzerland, X. v. Federal Office of Police; **Case No. 242**, ICJ, Democratic Republic of the Congo v. Belgium]

- The principle *aut dedere aut judicare* in cases involving grave breaches of IHL
- Extradition and transfer to international tribunals

8. National prosecution for international crimes

[See **Case No. 63**, Switzerland, Military Penal Code; **Case No. 64**, Germany, International Criminal Code; **Case No. 65**, Canada, Crimes Against Humanity and War Crimes Act; **Case No. 67**, Ghana, National Legislation Concerning the Emblem; **Case No. 68**, Belgium, Law on Universal Jurisdiction; **Case No. 70**, United States, War Crimes Act; **Case No. 152**, Chile, Prosecution of Osvaldo Romo Mena; **Case No. 158**, United States, United States v. Noriega; **Case No. 198**, Belgium, Belgian Soldiers in Somalia; **Case No. 199**, Canada, R. v. Brocklebank; **Case No. 200**, Canada, R. v. Boland; **Case No. 201**, Canada, R. v. Seward; **Case No. 222**, United States, Kadic *et al.* v. Karadzic; **Case No. 223**, Switzerland, Military Tribunal of Division 1, Acquittal of G.; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Para. 1.F]; **Case No. 238**, France, Radio Mille Collines; **Case No. 239**, France, Dupaquier *et al.* v.

Munyeshyaka; **Case No. 240**, Switzerland, X. v. Federal Office of Police; **Case No. 241**, Switzerland, The Niyonteze Case [Part A., consid. 3, and Part B., III.1.B]]

- Need for IHL national implementing legislation
- Jurisdiction and criminalization based exclusively on international law?
- Practical difficulties for third States to prosecute war crimes
- State criminality before national judicial systems

9. The establishment of the *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda

[See **Case No. 210**, UN, Statute of the ICTY; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Para. 1.E]; **Case No. 230**, UN, Statute of the ICTR]

- Relationship between the ICTY and ICTR statutory provisions on jurisdiction and IHL

[See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A., paras 86-143]]

- No mention of grave breaches of Additional Protocol I in the ICTY Statute, but reference to violations of the laws or customs of war
- The concept of serious violations of common Article 3 and of Protocol II in the ICTR Statute
- Cooperation between the ICRC and the *ad hoc* International Criminal Tribunals

[See **Document No. 28**, Agreement between the ICRC and the ICTY Concerning Persons Awaiting Trials before the Tribunal, and **Case No. 214**, ICTY/ICC, Confidentiality and Testimony of ICRC Personnel]

10. The International Criminal Court

[See **Case No. 23**, The International Criminal Court]

- ICC jurisdiction
 - The principle of complementarity
 - *Ratione temporis*, *ratione personae* and *ratione loci* jurisdictions
- How the ICC differs from the *ad hoc* tribunals (Security Council resolution versus a treaty)
- Initiation of legal proceedings before the ICC
 - The independence of the ICC Prosecutor
 - The Security Council's role

[See **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 608 and 609, and Part B.]; **Case No. 165**, Sudan, Arrest Warrant for Omar Al-Bashir]

- Crimes that are committed during international or non-international armed conflicts and that fall under ICC jurisdiction
- Exclusion of criminal responsibility under Art. 31(1)(c) of the ICC Statute

11. Hybrid tribunals

[See **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Para. 3]]

12. Tension between repression of crimes and reconciliation

[See **Case No. 152**, Chile, Prosecution of Osvaldo Romo Mena [Para. 12]; **Case No. 169**, South Africa, AZAPO v. Republic of South Africa; **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Para. 1.F.1)]; **Case No. 243**, Colombia, Constitutional Conformity of Protocol II [Paras 41-43]; **Case No. 274**, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Para. 3]]

Teaching Tool XIII

Aspects of International Humanitarian Law to include in a course on international refugee law

- The refugee in IHL
 - The displaced person in IHL
 - Requests for a specific instrument
 - Armed conflicts in international refugee law
 - Personal fields of application
 - Persons fleeing within the borders of their country because of an armed conflict: protected by IHL
 - Persons fleeing to a third country because of an armed conflict
 - Protected by the Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organization of African Unity (today the African Union), the 1984 Cartagena Declaration on Refugees and UN General Assembly resolutions
 - Protected by IHL if
 - The third country is the adverse party in an international armed conflict
 - The third country is affected by another armed conflict
 - Voluntary repatriation
- [See **Case No. 228**, Case Study, Armed Conflicts in the Great Lakes Region [Para. 1.B.]]
- Persons fleeing persecution
 - Protected by IHL if the third country is affected by an armed conflict
 - “Protected persons” if the third country is subsequently affected by an international armed conflict, even if they are nationals of the occupying power or of a State having normal diplomatic representation in the third State
 - Loss of refugee status if they have committed war crimes
- [See **Case No. 155**, Canada, Ramirez v. Canada; **Case No. 195**, Canada, Sivakumar v. Canada; **Case No. 241**, Switzerland, The Niyonteze Case [Para. A.10.a)]
- The principle of *non-refoulement* in IHL
 - Implementation
 - Chiefly the responsibility of the United Nations High Commissioner for Refugees (UNHCR)

- ICRC role
 - Under IHL
 - Under its statutory right of initiative
- Role of National Red Cross or Red Crescent Societies
 - As auxiliaries of their authorities
 - As UNHCR implementing agencies
 - Under the general direction of the ICRC
 - Coordinated by their International Federation

Teaching Tool XIV

Aspects of International Humanitarian Law to include in a course on the history of international law

- Law and religion in different cultural traditions
- Humanitarian rules in a community not yet made up of States
- The regulation of armed conflicts within and between medieval empires by “national”, “international” and natural law
- Pre-colonial African customary law
- Islamic rules of warfare: international, national or religious rules
- Grotius, Vitoria, Suarez, de Vattel and the concept of just war
- Vitoria and de las Casas and the conquest of the New World
- IHL in modern international law
 - The concept of international armed conflict after the Peace of Westphalia
 - IHL and the absolutist State
 - IHL in the revolutionary wars
 - IHL as part of nineteenth-century European public law
 - The European origin of modern IHL
 - Hegemony and equality of States
 - IHL applicable to interventions
 - IHL applicable in wars with non-European States and peoples
 - IHL applicable in colonial wars
 - The historical development of IHL as an indicator for the changing structure of contemporary international law
 - Codification
 - Universalization
 - Origins and gradual fading of the distinction between international armed conflicts and non-international armed conflicts
- Multilateralization

[See **Case No. 211**, ICTY, *The Prosecutor v. Tadic* [Part A., paras 96-120]]

- Growing importance of non-State actors
 - Individuals
 - Peoples
 - Insurgents
- Institutionalization
- The UN Charter as the constitution of the international community
- IHL in the post-Cold War world
 - Tendency to blur the distinction between *jus ad bellum* and *jus in bello*
 - Tendency for the distinction between international and non-international armed conflicts to fade

[See **Case No. 211**, ICTY, The Prosecutor v. Tadić]

- International law after 11 September 2001: a hegemonic international law?

[See **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base, and **Case No. 288**, United States, The September 11, 2001 Attacks]

Teaching Tool XV

Aspects of International Humanitarian Law to include in a course on State responsibility

1. Introduction

- State responsibility towards non-State actors

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 28, Commentary, para. 3]]

- International responsibility of non-State actors

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 10, Commentary, para. 16]]

2. Primary and secondary rules

3. Responsibility for an internationally wrongful act and for the injurious consequences of acts that are not prohibited

4. Subsidiarity of the general rules

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 55]]

5. Attribution of an unlawful act to a State

- State responsibility for its armed forces

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 28, Commentary, para. 3]]

- The case of an organ overstepping its authority

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 7, Commentary, para. 4, and B]]

- The organ must have acted in that capacity

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 7, Commentary, para. 4, and B]]

- Responsibility for *de facto* organs

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 8]; **Case No. 153**, ICJ, Nicaragua v. United States [Para. 115]; **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part C., paras 98-145; Part D.]]

- Responsibility for individuals acting in the absence of official authorities

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 9]]

- Responsibility for acts committed by insurgents who accede to power

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 10]]

6. Responsibility for damages to private individuals: specific conditions of diplomatic protection

7. Objective responsibility or responsibility for fault?

8. Need for damages?

9. Plurality of those responsible

- When aiding or assisting

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 16]]

10. Deciding on the unlawfulness of an act and the nature of the obligation violated

11. Degrees of responsibility

A. The concept of State crime

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Chapter III, Commentary, para. 6]]

B. Serious breaches of obligations under peremptory norms

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Chapter III and Arts 40 and 41], and **Case No. 215**, ICTY, *The Prosecutor v. Kupreskic et al.* [Paras 519 and 520]]

C. Consequences of serious breaches under peremptory norms

- Rights and obligations of third States

[See Chapter 13.V, The obligation to ensure respect (common Article 1), **Introductory text**, and Chapter 13. IX, The international responsibility of the State for violations, **Introductory text**; See also **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 41], and **Case No. 123**, ICJ/Israel, Separation Wall/ Security Fence in the Occupied Palestinian Territory [Part A., paras 157-159]]

- **Obligation not to assist the State concerned**

[See **Case No. 139**, UN, Resolution and Conference on Respect for the Fourth Convention [Part F., para. 3]]

12. Circumstances precluding wrongfulness

- Self-defence

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 21], and **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 138 and 139]]

- **Existence of an armed attack**

[See **Case No. 288**, United States, The September 11, 2001 Attacks]

- Necessity

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 25]; **Case No. 94**, United States Military Tribunal at Nuremberg, *United States v. Alfred Krupp et al.* [Section 4(viii)]; **Case No. 123**, ICJ/ Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 140]]

13. Consequences of responsibility for the State

- Reparation

[See Chapter 13.IX.2.b), Compensation; see also **Case No. 180**, UN Compensation Commission, Recommendations; **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 152]; **Case No. 164**, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 593-605]]

14. Implementation of responsibility

- Entitlement to invoke responsibility

- Who is injured?

[See Chapter 13.IX, The international responsibility of the State for violations, **Introductory text**]

- *Erga omnes* obligations

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 48], and **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 155 and 157]]

- Counter-measures

- Notion

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 49]; **Document No. 73**, France, Accession to Protocol I [Part B.]; **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Para. 535]]

- Conditions of legality

- Counter-measures must only be taken to re-establish respect for primary or secondary rules and must be stopped when the rules are respected

[See **Case No. 74**, United Kingdom and Australia, Applicability of Protocol I [Part C.]]

- Obligations not affected by counter-measures

[See Chapter 13. IX. 2. c) dd), But no reciprocity; see also **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 50]; **Case No. 74**, United Kingdom and Australia, Applicability of Protocol I [Part C.]; **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Paras 527-536]]

- Proportionality

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 51]; **Case No. 74**, United Kingdom and Australia, Applicability of Protocol I [Part C.]; **Case No. 215**, ICTY, The Prosecutor v. Kupreskic *et al.* [Para. 535]]

- Counter-measures by third States in the collective interest?

[See **Case No. 53**, International Law Commission, Articles on State Responsibility [Part A., Art. 54]]

15. State responsibility in the era of globalization

Teaching Tool XVI

Teaching International Humanitarian Law in Journalism Faculties¹

[See Case No. 37, Protection of Journalists]

Lesson 1: Origin and development of IHL

- The origin and history of IHL
- Henry Dunant’s role
- Development of IHL and the Red Cross Movement before 1949

Lesson 2:

- Basic provisions of IHL

Lesson 3:

- The Geneva Conventions of 1949 and their Additional Protocols of 1977

Lesson 4:

- Changes in IHL after 1949
- The changing nature of armed conflicts in the twentieth century

Lesson 5: IHL and the protection of victims of armed conflicts

- Correlation between the provisions of IHL and International Human Rights Law

Lesson 6:

- Provisions concerning the civilian population in IHL
 - a. The protection of women and children
 - b. The protection of refugees and displaced persons
- Humanitarian assistance to the civilian population in situations of armed conflict

¹ This outline is based on a course given at the State University in Moscow. Special thanks go to Andrey Raskin, Senior Lecturer at the Faculty of Journalism, Moscow Lomonosov State University, and Stéphane Hankins, ICRC delegate.

Lesson 7:

- Provisions concerning prisoners of war in IHL
- Rendering humanitarian assistance to prisoners of war and the wounded and sick

Lesson 8:

- Protection of the wounded, sick and shipwrecked
- Status of medical personnel in conflict zones

Lesson 9: The implication of IHL for the work of journalists in conflict zones

- Consequences of violations of IHL
- Collective responsibility of States for respect for the rules of IHL
- The activities of the International Criminal Tribunals for the former Yugoslavia and Rwanda and perspective of the International Criminal Court

Lesson 10:

- The activities of the International Committee of the Red Cross (ICRC)

Lesson 11: The work of journalists in conflict zones

- Preparing journalists for missions in conflict zones
- Journalists' identity cards, clothes, symbols, identification signs

Lesson 12:

- Determining the status of journalists in conflict zones
- The procedure of accreditation in conflict zones
- Movement in conflict zones
- The use of armoured vests and other means of protection

Lesson 13:

- Journalists' conduct during bombardment or shelling
- Journalists' conduct in an inhabited locality during hostilities
- Journalists' conduct on the open ground during hostilities
- Journalists' conduct if arrested or captured

Lesson 14:

- The problem of access to the sources of information
 - secret information, confidential information
- The use of means of communication and ways of transmitting information to the editorial office
- The main international institutions present in conflict zones and ways of establishing contact with them

Lesson 15: Role of the national media in an armed conflict

- Propaganda tool used to exacerbate tension between communities
 - Means to promote the government's ideology
 - World War II
 - Means to exacerbate hatred between ethnic groups
 - In the former Yugoslavia

[See **Case No. 226**, Federal Republic of Yugoslavia, NATO Intervention]

- In Rwanda

[See **Case No. 235**, ICTR, The Media Case, and **Case No. 238**, France, Radio Mille Collines]

Lesson 16:

- Role of the media to promote IHL
 - Dissemination
 - Role of the ICRC in promoting the basic tenets of IHL
 - Use of radio, television, newspapers
 - Mobilize public opinion
 - Against violations
 - Behind international assistance efforts
 - Promote justice
 - Means to arrest people who have perpetrated war crimes

Lesson 17: Mass media coverage of armed conflicts and humanitarian issues

- Ways and methods of covering armed conflicts in mass media
- Coverage of the problems facing the civilian population in the conflict zone, refugees and displaced persons, prisoners of war, of humanitarian assistance, of the use of prohibited weapons, etc.

Lesson 18:

- The role and responsibility of mass media when covering international and non-international armed conflicts
- The issues of freedom of the press and ethical journalism in conflict zones

Lesson 19: Television and armed conflict

- The role of television in covering armed conflicts and humanitarian issues in the second half of the twentieth century.
- Legal regulations and ethical norms
- Vietnam: "the first TV war"
- CNN and its experience in covering armed conflicts
- The second Gulf War (1999) and the role of the media
- Kosovo: an armed conflict "live"
- Afghanistan: CNN versus Al-Jazeera

Lesson 20: Journalism and armed conflicts: main problems at the start of the twenty-first century

- The use of computer and television technologies to cover armed conflicts
- The impact of journalism with regard to the changing nature of armed conflicts
- Cooperation between journalists and representatives of non-governmental humanitarian organizations in conflict zones
- Journalism and espionage

Teaching Tool XVII

Droit et forces Armées

Developed by Lieutenant-Colonel Jérôme CARIO, Legal Advisor, Centre de Doctrine d'Emploi des Forces (France)

La fin de la guerre froide et la perspective de meilleures possibilités de faire fonctionner les mécanismes de maintien de la paix et de rétablissement de la paix, prévus dans le cadre des Nations-Unies n'ont pas réussi à contenir la prolifération des conflits armés. Entre le 15 août 1945, date la capitulation du Japon, et le 1er août 2006, on a évalué à 145 le nombre de conflits qui s'étaient déroulés dans 83 pays. Aujourd'hui, on dénombre encore 40 conflits armés toujours réputés actifs.

Le clivage Est-Ouest et la stratégie nucléaire en bannissant de faits, entre Etats, la guerre, ont pu donner à penser qu'elle était un effet heureux des dispositions internationales et serait applicable aussi aux conflits périphériques. Fâcheuse extrapolation dont la fin de la guerre froide n'a pas tardé à révéler l'absurdité.

Aussi ne doit-on pas faire preuve de plus de réalisme et de pragmatisme. En effet les Etats se retrouvent aujourd'hui confrontés à des situations conflictuelles qui n'ont plus rien de la netteté originelle de la guerre traditionnelle, le terrorisme par exemple, parce que s'y opposent le plus souvent des communautés ne possédant de droit aucun des attributs habituels de la souveraineté mais ne s'en livrant pas moins à toutes les extrémités de la violence pour faire prévaloir de manière exclusive leur point de vue.

Les Etats empêtrés dans les contradictions imposées par la communauté internationale, ressentent le légitime besoin de lutter contre cette violence qui échappe à toute règle, à toute codification, mais sont démunis face à des actions se situant d'emblée hors la loi.

Alors qu'est-ce que le droit des conflits armés ? Est-il toujours adapté aux situations conflictuelles actuelles ? Quels sont les principes fondamentaux du droit des conflits armés ?

C'est à ces questions et à la réflexion générale qui en découle que tentera de répondre le cours sur le droit des conflits armés.

INTRODUCTION GENERALE

Le droit des conflits armés (D. C. A.) :

- Historique, caractéristique, instruments ;
- *Jus ad bellum, jus in bello* ;
- *Jus contra bellum, jus post bellum* ;
- Causes et classifications des conflits

I^{ère} Partie : LE *JUS AD BELLUM*

1 Les cadres juridiques des interventions

LE RECOURS A LA FORCE DANS LE CADRE DE LA CHARTE DES NATIONS UNIES

2 Le règlement pacifique des différends

3 Les mesures en cas de menace contre la paix, de rupture de la paix

4 L'action coercitive du Conseil de Sécurité

LE DROIT DES CONFLITS ARMES OU LA LIMITATION DE NUIRE DANS SES MOYENS

6 Les conventions de désarmement

LES RÈGLES D'ENGAGEMENT ET SOFA

7 Élaboration et fins des règles d'engagement

II^{ème} Partie : LE *JUS IN BELLO*

LA PROTECTION DES PERSONNES ET DES BIENS DANS LES CONVENTIONS DE GENEVE :

7 Les Principes du droit dans la guerre

- Principe de discrimination
- Principe de proportionnalité

8 La protection des combattants et des non combattants

9 La protection de la population civile

10 La protection des prisonniers de guerre

11 La protection des lieux et des biens

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Teaching Tool XVIII

Séminaire pour officiers militaires en opération

Developed by Lieutenant-Colonel Jérôme CARIO, Legal Advisor, Centre de Doctrine d'Emploi des Forces (France)

Durée pédagogique du séminaire : 10 jours ouvrés, soit 64 heures.

PREMIERE SEMAINE

1^{er} JOUR

Historique et définitions
Cadres juridiques des interventions nationales et internationales
Cadres juridiques des interventions / cas pratiques

2^{ème} JOUR

Conduite des opérations, principes du Droit des Conflits Armés (DCA)
Cadre juridique / Conventions de désarmement
Protection des lieux et des biens dans la planification
Protection des lieux et des biens / cas pratiques

3^{ème} JOUR

Protection de la population civile et des non-combattants
Protection de la population civile et des non-combattants / cas pratiques
Protection des personnes capturées
Protection des personnes capturées / cas pratiques

4^{ème} JOUR

CICR : La coopération avec les forces armées / cas pratiques sur le CICR
HCR : Réfugiés et personnes déplacées
Coopération HCR / forces armées

5^{ème} JOUR

Exercice de synthèse

DEUXIEME SEMAINE

6^{ème} JOUR

Ethique et droit des conflits armés
La coopération prévôts armée de terre en opérations
Contrôle des foules (Cadre juridique) + cas pratiques

7^{ème} JOUR

Droits de l'homme et DCA
Droits de l'homme et DCA / cas pratiques
Les actions civilo-militaires et l'environnement des forces
LES SOFA (Status-of-Force Agreements)

8^{ème} JOUR

Conduite d'opération et Règles d'engagement
Conduite d'opération et Règles d'engagement / cas pratiques
La coopération Legad (Legal Advisor) / Etat-major
Diffusion et responsabilité du Commandement

9^{ème} JOUR

Responsabilité pénale du militaire en opérations
Droit pénal international / CPI (Cour Pénale Internationale)
Protection juridique des militaires

10^{ème} JOUR

Evaluation finale dans le cadre d'un exercice

Teaching Tool XIX

Séminaire « Droit opérationnel » (at Collège Interarmées de Défense, France)

Developed by Lieutenant-Colonel Jérôme CARIO, Legal Advisor, Centre de Doctrine d'Emploi des Forces (France)

SUJET DU SEMINAIRE

La prise en compte des paramètres juridiques dans la planification et la conduite des opérations.

ANALYSE DU SUJET

Entre les textes nationaux et internationaux du droit de la guerre et les situations qu'ils décrivent, il y a la réalité des conflits qui révèle le pire et le meilleur de l'homme.

Les opérations militaires sont des actions qui ne tolèrent pas l'imprévoyance. Pour être efficaces, elles doivent obéir à un certain nombre de règles dictées par le droit, l'expérience et la réflexion. Si celles-ci ne sont pas suivies, cela peut conduire au désastre. Il y a là, inévitablement, la question de la responsabilité.

Les actions ne surviennent pas d'elles-mêmes. Elles sont produites par des causes, et ceux qui sont à l'origine de l'action doivent s'entourer des précautions d'usage. Il en va de même pour le droit : s'il n'est pas appliqué et respecté, des hommes, des femmes et des enfants qui ne prennent pas, ou plus, part aux combats en pâtiront. Là aussi intervient la question de la responsabilité.

Apprendre le droit est une affaire de spécialistes, le comprendre, le traduire concrètement en mécanismes, en actes clairs sur le terrain est affaire de chefs et fait partie du processus de planification et de conduite des opérations. Sans une responsabilité collective et individuelle, sans une chaîne de commandement forte, les résultats ne seront pas concluants.

Plus les forces armées accorderont d'attention aux règles qui régissent les opérations militaires, plus elles se soucieront du droit international humanitaire, mieux elles l'intégreront pratiquement et seront à même de l'appliquer. Il ne s'agit de rien d'autre que de mettre en œuvre les obligations qui leur incombent. Et ceux qui se font un point d'honneur de les intégrer, de les appliquer et de les faire respecter y gagnent un surcroît de légitimité.

OBJECTIF

Ce séminaire n'a d'autres ambitions que celle de former des chefs militaires aptes à prendre en compte les paramètres juridiques dans la planification et la conduite des opérations, en deux mots à prendre leur responsabilité.

METHODOLOGIE

Ce séminaire est basé sur des interventions de personnes compétentes et spécialisées dans des domaines spécifiques du droit international, et du directeur de séminaire. Les stagiaires participeront à chaque séance par la réalisation d'une fiche en amont à partir de documents qui leur seront fournis.

Chaque séance se fait sur une demi-journée et le directeur du séminaire est présent :

- une heure et demi pour l'intervention.
- une demi-heure pour la restitution de la fiche.
- une heure de débat et réflexion avec l'intervenant et le directeur de séminaire.

SEMINAIRE OPTIONNEL « DROIT OPERATIONNEL »

I. CADRE JURIDIQUE

- Définitions juridiques des conflits
- Cadres juridiques des interventions nationales et internationales
 - Etude de cas le LIBAN objet de la fiche

II. REGLES D'OPERATIONS

- Conduite des opérations, principes du DCA
- Conduite d'opération/ Règles d'engagement
 - Etude de cas l'AFGHANISTAN objet de la fiche

III. PROTECTIONS DES PERSONNES

- Droits de l'homme et forces armées en opérations extérieures
 - Etude de cas le DARFOUR objet de la fiche

IV. GESTION DES PERSONNES CAPTUREES

- Protection des personnes capturées
 - Etude de cas l'AFGHANISTAN objet de la fiche

V. COOPERATION ORGANISATION INTERNATIONALE

- CICR et forces armées : coopération en opérations extérieures
 - Etude de cas donnés par le CICR objet de la fiche

VI. TEMOIGNAGES

- Rôle et coopération avec le Prévost en opérations
- Rôle du Legad et coopération au sein de l'état-major

VII. RESPONSABILITE DE COMMANDEMENT

- Responsabilité pénale au regard du droit national
- Responsabilité pénale au regard du droit pénal international

Les interventions sur *la responsabilité de commandement* se feront, pour la première, au tribunal aux armées de Paris et, pour la seconde, lors d'une visite d'une journée au TPIY (Tribunal Pénal International pour l'ex-Yougoslavie) à La Haye.

Teaching Tool XX

Introduction au droit international humanitaire

Developed by Professor Eric DAVID, Université Libre de Bruxelles, (Belgium)

I. PRINCIPES DE STRUCTURE

A. Principes de structure externes

1. Un droit qui est du droit

« *L'on ne saurait introduire un principe modérateur dans la philosophie de la guerre sans commettre une absurdité* » (Clausewitz)

Pourtant, la guerre est une relation humaine, donc *codifiable*. D'ailleurs, il existe de nombreux mécanismes de contrôle du respect de ce droit.

2. Un droit qui fait partie du droit international

- Sources : conventions et coutumes
- Méthodologie du droit international : *relativité*

3. Un droit simple et complexe

- Un droit simple : un peu de bon sens et de sens moral
 - clause « Martens »
 - « réflexe humanitaire »
 - les violations les plus graves sont toujours des violations des règles les plus élémentaires
- un droit complexe
 - 4 Conventions de Genève 1949 + 3 Protocoles additionnels 1977 et 2006 = Comité International de la Croix-Rouge (CICR)
 - Conventions de La Haye 1907 et 1954 + Protocole 1999
 - Déclaration de Londres 1909
 - Projet de La Haye 1923
 - Protocole de Genève 1925
 - Convention des Nations Unies 1980 + Protocole 1995, 1996, 2003

- Convention de Paris 1993
- Conventions Oslo-Ottawa 1997 ; Dublin, 2008
- Statut de la Cour Pénale Internationale (CPI) 1998
- Circulaire du Secrétaire-général 1999
- Protocole additionnel à la Convention des droits de l'enfant 2000

+ droit international général + droit interne ...

B. Principes de structure internes

1. Un droit indifférent à la légitimité des causes poursuivies

- Egalité des belligérants

2. Un droit à géométrie de moins en moins variable

- ensemble du droit des conflits armés —> conflits armés *internationaux*
 - conflits interétatiques
 - guerres de libération nationale
 - conflits armés non internationaux <— intervention étrangère
- partie du droit des conflits armés —> conflits armés *non* internationaux
 - Art. 3 commun aux 4 Conventions de Genève 1949
 - Art. 19, Convention de La Haye 1954 + Protocole de 1999
 - Protocole additionnel II 1977
 - Convention 1980 (amendée en 2001)
 - Art. 4 du Statut du TPIR 1994
 - Art. 8 § 2, (c)-(f) du Statut de la CPI 1998
- application dès intervention de forces armées
 - intervention *minimale* —> conflits armés internationaux
 - intervention *importante* —> conflits armés non internationaux
- atténuation des différences entre conflits armés internationaux et non internationaux

3. Un droit aux destinataires multiples

- Etats : parties ? réserves ?
- Organisations internationales <— pratique internationale
- Mouvements de libération nationale <—> Conv. Genève 1949
Protocole additionnel I
Convention des Nations Unies 1980

- Collectivités infra-étatiques <—> Dispositions applicables dans les conflits armés internes
- Individus :
 - individus – organes
 - individus – personnes privées si droit *directement applicable*

II. PRINCIPES DE SUBSTANCE

A. Principes généraux

1. Des nécessités contradictoires

- nécessités de la guerre ↘
- nécessités de l'humanité ↗
---> nécessité limitée aux cas *prévus* par le droit des conflits armés

2. L'intérêt des victimes

- en cas de doute, l'intérêt des victimes prime (cf. Protocole additionnel I, titre + préambule, 3^e considérant)
- le droit des conflits armés repose moins sur la réciprocité interétatique que sur l'engagement unilatéral envers les victimes

3. Un droit qui se distingue du droit des relations amicales

- droit des relations amicales (*jus ad* ou *contra bellum*) ≠ droit des conflits armés (*jus in bello*)
- quand le *jus contra bellum* est violé, le *jus in bello* s'applique, mais le *jus contra bellum* ne cesse pas de s'appliquer pour autant

4. Un droit qui n'exclut pas les règles relatives aux droits de l'homme

- droits de l'homme applicables en temps de paix et de guerre
- droit des conflits armés applicable uniquement en temps de guerre

B. Principes du droit de La Haye (droit des conflits armés)

1. On ne peut pas attaquer n'importe qui

- Principe de discrimination quant aux êtres —> attaques limitées aux combattants

2. On ne peut pas attaquer n'importe quoi

- Principe de discrimination quant aux choses —> attaques limitées aux objectifs militaires

3. On ne peut pas attaquer n'importe comment

- Principe de limitation et de proportionnalité :
 - > interdiction ou limitation de l'emploi des certaines armes (maux "inutiles", gaz, bactéries, poison, mines, armes incendiaires, nucléaires ...)
 - > interdiction de certaines méthodes de combat (destructions non justifiées, attaques indiscriminées, perfidie ...)

C. Principes du droit de Genève (droit international humanitaire)

1. Les personnes au pouvoir de l'ennemi doivent être traitées humainement et sans discrimination

- droit et obligation de recueillir et soigner *tous* les blessés, malades et naufragés
- obligation de traiter avec humanité pris. guerre et internés civils (*principes d'inviolabilité, de non-discrimination, de sûreté et de protection*)

2. Combattre (dans un conflit armé international) dans le respect du droit des conflits armés et du droit international humanitaire n'est pas une infraction

- statut de pris. guerre aux combattants capturés
- libération et rapatriement des pris. guerre à la fin des hostilités

3. Les droits des personnes au pouvoir de l'ennemi sont inaliénables

- interrogatoire du pris. guerre

4. Le territoire occupé (dans un conflit armé international) reste un territoire étranger

- l'occupation n'autorise pas l'annexion
- l'occupant doit respecter autant que possible les lois de l'Etat occupé (*principe de normalité*)

5. Violier les lois et coutumes de la guerre engage la responsabilité internationale des auteurs

- une responsabilité classique de droit international
 - fait illicite
 - imputabilité

- cause d'exclusion de l'illicéité
- mise en œuvre
- une responsabilité pénale individuelle
 - origines
 - sources
 - contenu des incriminations
 - imputabilité
 - étendue de l'obligation de répression
 - mise en œuvre de l'obligation de répression

D. Principes de mise en œuvre

1. Par les Etats

- respecter et *faire respecter* le DIH
- diffuser le DIH

2. Par les Puissances protectrices et le CICR

3. Par des systèmes d'enquête

- enquête bilatérale
- enquête par déclaration facultative d'acceptation

CONCLUSION

« *Ne fais pas à ton ennemi plus de mal que le but de la guerre ne l'exige* » (J. Pictet)

Teaching Tool XXI

Droit International Humanitaire

Developed by Professor Michel DEYRA, Law Faculty of Clermont-Ferrand (France), for the Master Droit comparé et Politique Internationale (2009)

INTRODUCTION

- *Jus ad bellum, jus in bello, jus contra bellum, jus post bellum*
- Causes et classifications des conflits
- La protection internationale des droits de la personne : DIDH, DIH et DIR

Définition du DIH : ensemble des règles de droit international applicables dans les conflits armés, internationaux ou non, et qui visent un double objectif : restreindre les droits des combattants dans la conduite des hostilités, protéger les droits des non-combattants, civils et militaires hors de combat.

Historique : du *vae victis* à la bataille de Solferino (24 juin 1859)

Caractéristiques : les postulats de la guerre, les sources conventionnelles, le principe d'égalité des belligérants, le champ d'application matériel, personnel et temporel, les principes de la Croix-Rouge, l'effectivité du DIH.

Le Droit international humanitaire, qui avant tout est un droit d'assistance et de protection des victimes des conflits armés, est aussi celui qui, en définitive, autorise un combattant à porter atteinte à la vie ou à l'intégrité physique d'une personne. C'est le droit qui réglemente l'activité humaine la plus inhumaine qui soit, qui dit comment tuer, blesser, capturer, séquestrer. Même s'il est parfois difficile de se dégager de l'abstraction du Droit, il faut rappeler que le but est de dépasser les grands principes pour les rendre opératoires dans la réalité, et dans la réalité des guerres deux objectifs doivent être poursuivis : restreindre les droits des combattants dans la conduite des hostilités, protéger les droits des non-combattants, civils et militaires hors de combat.

CHAPITRE I. LES REGLES RELATIVES A LA CONDUITE DES HOSTILITES

Section 1 - Les limitations *rationae personae*

Certaines personnes ne peuvent être impliquées dans les hostilités, pas plus d'ailleurs qu'elles ne peuvent y prendre part. Les limitations rationae personae s'expliquent par le fait que ce sont les Etats qui font la guerre pour leurs besoins politico-stratégiques et non les personnes – qui, en règle générale, la subissent. Aussi, seuls les combattants ont le droit

d'attaquer l'ennemi ou de lui résister, mais, attaquants, ils sont soumis à des interdictions et, attaqués, ils ont des obligations.

- §1. La définition des combattants : la notion de combattant, les extensions et les exclusions
- §2. Les interdictions de l'attaquant : interdiction d'attaquer les civils et les personnes hors de combat
- §3. Les obligations de l'attaqué : ne pas utiliser des non-combattants à des fins militaires ; se prémunir contre les effets des attaques

Section 2 - Les limitations *rationae materiae*

*La réglementation des conflits armés est fondée sur la proportionnalité et la discrimination dans le but d'empêcher les souffrances superflues pour les personnes tout en remplissant la mission assignée par les nécessités militaires. Aussi, le principe de limitation *rationae loci* restreint les attaques à des objectifs strictement militaires et interdit donc d'attaquer les biens de caractère civil ou certaines zones spécialement protégées.*

- §1. L'interdiction d'attaquer les biens de caractère civil : les biens culturels et les lieux de culte (la convention de La Haye de 1954), les biens indispensables à la survie de la population civile (interdiction de la famine, licéité de la politique de la terre brûlée), les organismes de Protection civile, les ouvrages et installations contenant des forces dangereuses, l'environnement naturel (Conv. des N. U. du 10/10/1976 et articles 35.3 et 55 du Protocole I.)
- §2. L'interdiction d'attaquer certaines zones : les localités non défendues, les zones neutralisées, les zones et localités sanitaires et les zones démilitarisées (P. I), les établissements et unités sanitaires fixes ou mobiles.

Section 3 - Les limitations *rationae conditionnis* (armes et méthodes)

- §1. Les limitations ou interdictions de certaines armes

L'histoire de l'armement dans les guerres révèlent que trois systèmes d'armes sont apparus : d'abord les armes d'obstruction (cuirasse, armure, fortification), puis les armes de destruction (de la masse en passant par l'arbalète pour arriver aux armes de destruction massive), enfin les armes de communication (manipulation de l'information, leurre) et de l'intelligence artificielle (missiles de croisières, drones). Pour l'instant ce sont surtout les armes de destruction qui sont visées par le DIH. Pour l'instant ce sont celles qui tuent ou mutilent.

Est interdit ou limité l'emploi des armes qui dépassent un certain seuil : celui des exigences de l'humanité face à des pertes inutiles, des maux superflus et des souffrances excessives. Le droit international a évolué dans une double approche au vingtième siècle pour l'interdiction ou la limitation d'emploi de ces armes.

- les armes interdites en raison de leurs effets (Avis de la C.I.J. du 8/7/1996 sur la licéité de l'emploi ou de la menace d'emploi d'armes nucléaires)

- les armes interdites nommément désignées : la Convention du 10 avril 1981 avec cinq Protocoles annexés : armes à éclats non localisables, mines, pièges et autres dispositifs, armes

§2. Les limitations ou interdictions de certaines méthodes de guerre

Le combattant doit avoir du respect pour son adversaire et reconnaître en face de lui un semblable, l'amenant ainsi à renoncer à des procédés de guerre barbares. Alors que les moyens de combat consistent dans les armes utilisées, les méthodes visent l'utilisation de ces armes. Il convient alors de distinguer, dans la conduite des opérations militaires, les procédés et les attaques

- les procédés : la perfidie, le refus de quartier, l'enrôlement forcé, la déportation
- les attaques : les destructions sans nécessité militaire, les actes terroristes, la prise d'otages, les attaques indiscriminées, les représailles armées.

CHAPITRE II. LE TRAITEMENT DES PERSONNES TOMBÉES AU POUVOIR DE L'ENNEMI

Section 1 - La protection du prisonnier de guerre

La captivité de guerre ne doit en aucun cas être perçue comme un châtement ; elle correspond seulement à un manque de liberté, nécessaire afin d'amoindrir le potentiel de guerre de l'ennemi, et temporaire, car les motifs légitimant la détention n'existent que pendant la durée du conflit. Dès lors, les combattants ont droit au statut de prisonnier de guerre, les prisonniers ont droit à un régime de captivité et les captifs ont droit à des garanties.

- §1. Le droit du combattant au statut de prisonnier de guerre : selon la nature du conflit (C.A.I., C.A.N.I., G.L.N.) ; selon la personne capturée : les bénéficiaires de l'article 4, les exclus (espion et mercenaire)
- §2. Le droit du prisonnier de guerre à un régime de captivité : les conditions de l'internement dans le camp (sur un plan matériel, intellectuel et moral, juridique) ; la fin de la captivité (la fin individuelle et la fin collective)
- §3. Le droit du captif à des mécanismes de garantie : les systèmes de prévention (rôle du C.I.C.R. et intervention des captifs) et les systèmes de sanctions (envers l'Etat, envers les individus)

Section 2 - Les secours aux blessés, malades et naufragés

Bien que pour l'hypothèse du naufragé, l'élément marin impose des modalités particulières d'intervention, les deux premières Conventions de Genève expriment des principes identiques en ce qui concerne l'assistance et la protection des blessés, malades et naufragés et les deux corollaires indispensables que sont l'immunité du personnel et des installations sanitaires et le droit d'accès aux victimes.

- §1. L'inviolabilité des blessés, malades et naufragés : Les personnes qui sont protégées (les blessés, malades et naufragés dans leur ensemble sans qu'il soit utile de faire la différence entre les civils et les militaires ; le cas des personnes disparues ou décédées) ; la protection qui est accordée (repris pour les conflits armés non internationaux, les droits reconnus aux blessés, malades et naufragés se situent autour de deux grands axes qui illustrent le principe essentiel de l'inviolabilité de l'homme mis hors de combat : le respect et la protection, le traitement et les soins)
- §2. L'immunité du personnel et unités sanitaires et des zones protégées : pour les personnes qui protègent (protection du personnel sanitaire et religieux, identification du personnel sanitaire et religieux) ; pour les lieux qui protègent (les établissements et unités sanitaires mobiles des services de santé militaires et civils, les dispositions particulières pour les navires-hôpitaux et les aéronefs sanitaires, les zones protégées)
- §3. Le droit d'accès aux victimes, garantie de la protection

Section 3 - La protection de la population civile

La population civile est définie en DIH de façon négative: il s'agit des personnes qui ne font pas partie des forces armées, et, sont donc exclus des populations civiles, les combattants et les membres des forces armées. Avec le développement des conflits identitaires et des conflits déstructurés, la protection des personnes civiles revêt de nos jours une importance primordiale. A côté de celle accordée à l'ensemble de la population civile contre les méthodes et les moyens de guerre, il existe donc une protection de celle-ci contre l'arbitraire de l'ennemi. Le champ d'application rationae personae de la quatrième Convention protège d'une façon générale les personnes civiles qui se trouvent au pouvoir d'une Partie au conflit ou d'une Puissance occupante dont elles ne sont pas les ressortissants ; par ailleurs certaines personnes bénéficient de mesures de protection spécifique.

- §1. La protection générale de la population civile : les étrangers en territoire ennemi (l'article 27 de la quatrième Convention et les articles 75 du premier Protocole et 5 du second Protocole) ; les personnes se trouvant en territoire occupé (droit pour la puissance occupante de prendre les mesures nécessaires à assurer le maintien de l'ordre et la protection de la vie publique, et, pour la puissance occupée de garantir sa population contre l'arbitraire éventuel des forces d'occupation)
- §2. Les garanties spécifiques accordées à certaines personnes Les droits de l'enfant dans la guerre (l'enfant-victime, l'enfant-combattant, l'enfant-réfugié) ; la protection de la femme dans la guerre (la protection en tant que membre de la population civile, la protection contre les effets des hostilités) ; la protection des réfugiés dans les conflits armés ; la protection du personnel religieux ; la protection des journalistes en mission périlleuse.

CONCLUSION : LA MISE EN OEUVRE DU DIH

A défaut d'être toujours respectés, les principes posés par le droit des conflits armés sont généralement bien acceptés par les Etats et même par les Etats-majors. La prise en considération par les forces armées de ce droit est devenue d'autant plus nécessaire, que dans certaines hypothèses, il constitue même le fondement ou les objectifs de leurs missions. Il y a par ailleurs une logique militaire intrinsèque dans les avantages que retire chaque belligérant à réduire l'ampleur et la gravité des dommages et des souffrances infligées à l'ennemi : la connaissance des risques encourus et la confiance dans les règles applicables améliorent la force d'une armée. L'intérêt des deux parties est réciproque, mais le DIH apparaît alors comme un droit du moindre mal, pas du plus grand bien, et l'application de ses principes par un militaire, sans pour autant être assimilée à une loi du moindre droit, ne conduit en aucun cas ce dernier à renoncer à son devoir de patriotisme. L'existence même de ce droit a pour conséquence que certains Etats et certains acteurs de la guerre, en ayant connaissance, tenteront de l'observer ; d'autres Etats et d'autres acteurs, au début largement majoritaires, l'ignoreront, mais il y aura alors un fondement indiscutable pour condamner d'abord moralement puis pénalement leur attitude. Le DIH doit dorénavant être intégré comme une donnée tactique et stratégique dans la conduite des hostilités.

La mise en œuvre de ce droit s'effectue avant, pendant et après un conflit.

Avant : les moyens préventifs : la ratification, la diffusion (relativiser l'impact des violations, prévenir les violations), l'application (« respecter... en toutes circonstances », « respecter... et faire respecter »)

Pendant : Les moyens de contrôle ; rôle des Etats, des Puissances protectrices, du Mouvement international de la Croix-Rouge et du Croissant Rouge, des ONG.

Après : Les moyens répressifs : les incriminations, les mécanismes d'enquête, les sanctions pénales, nationales et internationales.

Reste le débat récurrent sur l'effectivité et l'efficacité du droit des conflits armés, il importe de rappeler clairement que tout juriste sait, d'une part, que le droit n'est pas obligatoire parce qu'il est sanctionné, mais bien qu'il est sanctionné parce qu'il est obligatoire et, d'autre part, que l'ineffectivité – au mieux partielle – est la destinée ordinaire des règles de droit, internes ou internationales.

Face aux violations, ce n'est pas le Droit qui manque, mais les destinataires qui manquent à leurs droits alors que ces règles humanitaires resteront toujours les seules armes des victimes ...

Teaching Tool XXII

International Humanitarian Law

Developed by Professor Kate JASTRAM, University of Berkeley,
Faculty of Law (United States)

"I didn't know what the parameters of the law were anymore."

Moazzam Begg, after signing a confession obtained by torture, in *Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar* (2006), p. 200.

Overview

International Humanitarian Law (IHL), also known as the Law of Armed Conflict, is a set of rules which seek, for humanitarian reasons, to limit the effects of war. It protects persons who are not, or are no longer, participating in the hostilities and restricts the means and methods of warfare. We will discuss rules regulating the conduct of international and other armed conflicts; the historical development of restraints on armed conflict; the distinction between rules governing when to go to war (recourse to armed coercion) and those governing how it should be fought (conduct of armed hostilities); the protections afforded by the 1949 Geneva Conventions and the 1977 Protocols to combatants and noncombatants, including civilians, POWs, the wounded, and the sick; the role of the International Committee of the Red Cross; and the relationship of IHL to other areas of public international law such as human rights and refugee law. We will also discuss current problems facing IHL such as its applicability to non-international armed conflict, the "war on terror", and the Guantanamo detainees. We will consider the means of implementation and enforcement of IHL, including the international tribunals for the former Yugoslavia and Rwanda, and the Statute of the International Criminal Court.

Course Materials

- O'Connell, *International Law and the Use of Force*, 2nd ed. (2009). Available at bookstore. Unless otherwise indicated, reading assignments refer to this.
- Other materials as assigned. Please be aware that we will make extensive use of supplements. Students should devote a paper binder and/or a virtual folder to the additional readings, and allow enough time to print and/or download when preparing for class.
- bSpace page. Please check it regularly for updates, as well as for links to readings.

Books and films on reserve

- *Nuremberg: Tyranny on Trial* (1995). (50 min)
- *The Reckoning: The Battle for the International Criminal Court* (2009). (100 min)
- *Taxi to the Dark Side* (2007). (106 min)
- Begg, *Enemy Combatant: My Imprisonment at Guantanamo, Bagram and Kandahar* (2006).
- Gardam and Jarvis, *Women, Armed Conflict and International Law* (2001).
- Lagouranis and Mikaelian, *Fear Up Harsh: An Army Interrogator's Dark Journey Through Iraq* (2007).
- Lewis, ed., *The War on Terror and the Laws of War: A Military Perspective* (2009).
- Wright, *Generation Kill: Devil Dogs, Iceman, Captain America, and the New Face of American War* (2004).
- Yoo, *War by Other Means: An Insider's Account of the War on Terror* (2006).

I. Introduction: Why study IHL?

Goals for the course (mine and yours) and course requirements

Reading: Introduction, pp. v-vii.

II. *Nuremberg: Tyranny on Trial* (1995)

Why start with Nuremberg?

Assignment: Film to be screened in class (45 min)

Reading: (22 pp.) Ch. 4, pp. 146 (start with 1st full para)-159; Ch. 5, 195-202.

Questions: #5 – 7 on pp. 160-61 (7 is a preview, to think about)

Problem: #8 on pp. 218-9.

III. Basics of public international law

Reading: (16pp) Ch. 6, pp. 223, 229-33, 239-42, 245-8.

Questions: #1 and 3 on p. 272.

IV. The relevance of law to war

Reading: (20 pp) Ch. 3, pp. 94-114.

Questions: #1, 2, and 4 on pp. 114-5, plus:

Based on the reading, what do you think of the argument that international law is an “academic sham”? What aspects of international law might support that argument?

What are some of the criticisms of *jus in bello* and do you think they are justified? Would your answer have been different before the “Global War on Terror”?

V. Gender perspectives on IHL

Reading: (32pp) Gardam and Jarvis, Ch. 1 on “Women, Armed Conflict and International Law” pp. 1-18 in *Women, Armed Conflict and International Law* (Kluwer, 2001). On reserve.

Myers, “Living and Fighting Alongside Men, and Fitting In”, *New York Times*, 17 August 2009. On bSpace.

Buss, “Rethinking ‘Rape as a Weapon of War’”, *Feminist Legal Studies* (2009) 17:145-163, read pp. 153-61 on the Hyper-visibility and Un-visibility of Sexual Violence, and the Conclusion. On bSpace.

Security Council Resolution 1325 (2000). Skim. On bSpace.

Questions: How do you assess the claim that IHL has failed women? Does “The Raped Woman” help disguise or highlight sexual violence in armed conflict? Would you expect female soldiers to be more or less likely to follow the rules of *jus in bello*? What tools are available to the international community to address the particular problems of women in armed conflict?

VI. Historical development of *jus ad bellum*

Reading: (37pp) Ch. 4, pp. 118-38 (skim Treaty of Westphalia, Vienna Congress Treaty, 1907 Hague Convention).

Read also excerpts from 3 articles in the *International Review of the Red Cross* (2005) No. 858, as follows. On bSpace.

(1) al-Zuhili, “Islam and International Law”, read pp. 278-82.

(2) Sinha, “Hinduism and IHL”, read 287-91.

(3) Solomon, “Judaism and the Ethics of War”, skim 296-309 for discussions of *jus ad bellum*.

Questions: # 2 on pp. 159-60. Same question, using readings on Islam, on Hinduism, and on Judaism.

VII. When does the law of armed conflict apply?

Reading: (31pp) Ch. 1, pp. 2-4 (stop at top of p. 4 before Brownlie excerpt), 7-19.

Wingfield, "When is a Cyber Attack an 'Armed Attack?' Legal Thresholds for Distinguishing Military Activities in Cyberspace." *Cyber Conflict Studies Ass'n* (Feb. 1, 2006). Skim Appendix. On bSpace.

Questions: #s 3, 4, 6, 8, and 9 on pp. 19-21.

VIII. Elements of self-defense: Iraq 1990

Reading: (29pp) Ch. 2, pp. 22-51.

Questions: #1, 4, and 5 on pp. 92-3 (re Iraq I)

IX. Elements of self-defense, cont'd

Reading: (34pp) Ch. 7, pp. 274 (1st ¶), 280-310, 322-5.

Questions: #s 1, 3, and 4 on pp. 365-6.

X. Security Council authorization: Iraq 2003

Reading: (41pp) Ch. 2, pp. 51-92.

Questions: #1, 4, 5, and 6 on pp. 92-3.

XI. Security Council authorization, cont'd

Reading: (17pp) Ch. 8, pp. 369-71, 379-80, 415-29.

Question: #7 on p. 431.

XII. Humanitarian intervention and Responsibility to Protect (R2P)

Reading: (14pp) Ch. 6, pp. 262-3. Ch. 7, pp. 362-5.

Global Centre for the Responsibility to Protect, FAQ. On bSpace.
Malcomson, "When to Intervene", *New York Times*, Dec. 14, 2008.
On bSpace.

Question: Are the five criteria of legitimacy for military action in the notion of Responsibility to Protect, set forth in the FAQ as "Under what circumstances would military action be considered?" consistent with or even duplicative of existing law on the use of force, or do they represent an advance in thinking?

XIII. Historical development of *jus in bello*

Reading: (38pp) Ch. 5, pp. 162-72 (skim Lieber Code, but note Art. XVI), 177-83 (skim Hague Annex and Treaty of Versailles), 188 (bottom) – 195 (skim *Quirin*), 202-17.

Questions: #s1, 3, 4, 5, and 6 on pp. 217-8.

XIV. Conduct of hostilities: Legal framework

Reading: (35pp) Henckaerts, "Study on customary international humanitarian law," 87 *Int'l Rev. Red Cross* No. 857 (March 2005) 175-84, 187-97. (19pp) On bSpace. Note also that other excerpts from this article and some of the Rules appear in Ch. 9, pp. 486-99 of the casebook.

Two articles in Vol. 46 of *International Legal Materials*, at <http://www.heinonline.org/HOL/Page?handle=hein.journals/intlm46&id=1&size=2&collection=journals&index=journals/intlm>. You may choose the beginning page of each article from the drop down menu at the top of the page.

Bellinger and Haynes, "US Joint Letter re Customary International Law Study," 46 *ILM* 511-16 (2007). (6pp, including Introductory Note by Dennis Mandsager).

Henckaerts, "Response to Bellinger/Haynes Comments," 46 *ILM* 957-66 (2007). (10pp, including Introductory Note by Dennis Mandsager).

Note generally that excerpts from the Geneva Conventions and Protocols can be found in the casebook, pp. 440-65.

Question: The ICRC and the Bush Administration differed on various aspects of the ICRC's *Study on Customary IHL* (2005). Without going into the merits of the actual rules identified by ICRC and disputed by the US, what are their respective positions on state practice and *opinio juris* as a means of methodology, and on the formulations of the rules and the implications of the Study?

XV. Means and methods of warfare: Targeting

Reading: (24pp) Lewis, "The Law of Aerial Bombardment in the 1991 Gulf War," 97 *Am.J.Int'l.L.* 481 (July 2003). On bSpace. Skip Part II on Preparations. In Part III on Implementation, in the "Target Sets" subsection, read only "Leadership," "Command, control and communication sites," and "Electricity."

Explanatory note:

Horner's Black Hole staff = Lt. General Charles Horner's planning cell in Riyadh
 JFACC = Joint forces air component commander

CENTAF = Air Force Component Central Command.

Questions: How does Lewis evaluate the criticisms of the Al Firdos attack and the Iraqi electrical systems attacks? What is your opinion? Do you think that JAGs did (or can) play a meaningful role in ensuring compliance with IHL? What are the factors supporting, and undermining, the JAG's law-compliance role? What other responsibilities do JAGs have?

Rules of engagement

Reading: Ch. 11, p. 663, Note 8.

Read also Wright, *Generation Kill* (2004), p. 32 (last para) to mid-p. 33, and p.166 (start at bottom with "Still extremely worried...") through p. 176. On reserve.

Explanatory note:

Wright is a journalist who was embedded with a Marines special forces unit operating in Iraq at the very beginning of the US-led invasion, in advance of the main body of ground troops. In this excerpt, they were ordered to clear an airfield reportedly defended by anti-aircraft artillery (AAA) and tanks, in anticipation of a British parachute brigade's arrival.

Names:

It is helpful to have a sense of the chain of command, in descending order. The individuals' names are not so important (the author uses nicknames for officers who do not come off well in the book).

First Reconnaissance Battalion commander: Ferrando

Bravo Company commander: "Encino Man"

2nd platoon commander: Fick ("Captain America" is commander of the 3rd platoon)

2nd platoon's second-in-command: Gunny Wynn

Team leader: Colbert

Team gunner: Trombley

Acronyms:

MOPP: chemical weapons protective gear

ROE: rules of engagement

SAW: machine gun (squad automatic weapon)

Questions: Do you think Colbert's order to Trombley to shoot was justified as a military necessity? Was it a proportionate response to the threat they perceived? Do you agree with Wright's conclusion (on p. 176) about the rules of engagement?

XVI. Richard B. Jackson, Colonel, US Army (Retired)

Special Assistant for Law of War Matters, Office of the Judge Advocate General

Reading: (20pp) Jackson, "Restoring Law to the Battlefield: The Morality and Ethics of the Global War on Terror," 50 *South Texas L. Rev.* 825-36 (2009).

Skim Jackson, "Stick to the High Ground," *The Army Lawyer* (July 2005). Both on bSpace.

XVII. Lawyers and the use of force

Reading: (38pp) All four articles are on bSpace.

Krauss and Lacey, "Utilitarian vs Humanitarian: The Battle Over the Law of War," 32 *Parameters* 73-85 (Summer 2002).

Bilder and Vagts, "Speaking Law to Power: Lawyers and Torture," 98 *Am.J.Int'l L.* 689-95 (2004).

Paust, "Prosecuting the President and His Entourage," 14 *ILSA J. Int'l & Comp. L.* No. 2, 539-46 (Spring 2008).

Kramer and Schmitt, "Lawyers on Horseback? Thoughts on Judge Advocates and Civil-Military Relations," 55 *UCLA L.Rev.*1407, 1423-36 (2008).

Questions: At the Nuremberg Trial, von Ribbentrop was convicted for his legal memoranda justifying aggressive war.

- (1) What do you think are or should be professional and ethical responsibilities of various types of lawyers in this area of law and policy? Consider civilian attorneys working in various government agencies, military lawyers (JAGs), ICRC legal advisers, human rights advocates, and "regular" non-expert lawyers.
- (2) Of the various categories of lawyers listed above, which group(s) have been most skeptical about the law of war? Which are the strongest supporters? What strengths or perspectives would you expect each of these groups to bring? What weaknesses or blind spots? Were you surprised by the views expressed in any of the readings? If you think the law of war needs reform or revision, what role could or should each of these groups play?

XVIII. *Taxi to the Dark Side* (2007)

Assignment: The film will be screened in class. It is 106 minutes, so one showing will take up all of Monday and part of Wednesday. You are also free to watch it on your own time instead of during the regularly scheduled class periods. It is on reserve.

Question: Please write a brief (3-5pp) reflection essay on the film, and submit it to my assistant. What does the film reveal about the role played by military attorneys, civilian attorneys inside and outside the government, and policymakers, in Dilawar's death and/or in US detention and interrogation policies? I've seen the film many times, so you do not need to write a review in the sense of describing the film for someone who has not seen it. You may of course make reference to particular scenes or people in order to illustrate a point.

XIX. Protection of civilians in hostilities

Reading: (23pp) Review GCIV:32 on p. 448.
 Ch. 10 Intro, pp. 510-1; *Calley*, pp. 517-28.
 Review API:51(3) on p. 459.
 Wright, *Generation Kill* (2004), pp. 102- 104. On reserve.
 Eichensehr, "On Target? The Israeli Supreme Court and the Expansion of Targeted Killings," 116 *Yale L. J.* 1873-81 (2007). On bSpace.

- Questions:**
- (1) *Calley* was decided under US law. What principle(s) of IHL was/were involved? Note that it was a 2-1 decision – how would you respond to the concerns expressed in the 1st paragraph of the dissent?
 - (2) In the *Generation Kill* excerpt, were the three men killed combatants or civilians? If civilians, what factors would indicate that they were directly participating in the hostilities? What factors might cause you to doubt that they were directly participating in hostilities?
 - (3) The Israeli Supreme Court interpreted "direct participation in hostilities" in the context of targeted killings. How might the Court's interpretation apply in other, non-'terrorist' situations, for example, the scenario described in the *Generation Kill* excerpt? What elements of Eichensehr's critique are particularly persuasive, or questionable, to you?

XX. Protection of civilians under occupation

Reading: (30pp) Ch. 10, p. 554 Intro (top para); pp. 559-89.
Questions: #7 on pp. 592-3.

XXI. Martin de Boer, Philip Sundel, and Paul Kong

Respectively, Deputy Head of Delegation of the International Committee of the Red Cross for the US and Canada; Deputy Legal Adviser; Public Affairs Officer.

Direct participation in hostilities

Reading: Ch. 9, pp. 499-503.
 ICRC, "Clarifying the notion of direct participation in hostilities," June 30, 2009. On bSpace.

XXII. Rights and duties of belligerents

Reading: (40pp) *Hamdan*, 548 US 557, 628-35 (2006), starting with subsection "ii" until the end of the majority opinion.

Milanovic, "Lessons for human rights and humanitarian law in the war on terror: comparing Hamdan and the Israeli Targeted Killings case" 89 (no. 866) *ICRC Review* 373-89 (June 2007). On bSpace.

Begg, *Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar* (2006), pp. 153-62, 196-202. On reserve.

Explanatory note: You may remember Begg from his appearance in *Taxi to the Dark Side*. He is a second-generation British-born Muslim of Pakistani descent. He was apprehended at his family home in Pakistan in January 2002, and held without charge for three years in US military prisons in Afghanistan and then Guantanamo. In the first excerpt, Begg recounts some of his interrogation and torture at Bagram. In the second, he describes the 'confession' he ultimately signed at Guantanamo.

Questions:

Type of conflict: What do the various readings conclude as to whether the "global war on terror" is an armed conflict? If it is an armed conflict, is it international, non-international, or a third category, and what law applies? If it is not an armed conflict, what law applies?

Status of "fighters": What do the various readings conclude regarding the status of alleged members of the Taliban, of al-Qaeda, and of other terrorist groups – are they combatants, civilians, or a third category? Are they entitled to POW status under GCIII? If not, what rules of law apply to their detention and interrogation? Does Begg know his actual legal status? What is his understanding of the legal rules that govern his detention and interrogation?

XXIII. The torture memos

Reading: (48pp)Ch. 9, In GCIII: Common Article 3 on p. 442; arts. 13, 14, and 17 on pp. 443-4; art. 130 on pp. 445-6. In GCIV, arts. 31 and 32, on p. 448; art. 147 on pp. 449-50.

Jackson, "Interrogation and Treatment of Detainees in the Global War on Terror," Ch. 4 in *The War on Terror and the Laws of War: A Military Perspective* (Lewis, ed.), pp. 137-59 (2009). On reserve.

Yoo, "Interrogation: Law," Ch. 7 in *War by Other Means*, pp. 168-87 (2006). On reserve.

Lagouranis, "Torture", Ch. 26 in *Fear Up Harsh*, pp. 242-9 (2007). On reserve.

Explanatory note: You may remember Lagouranis from his appearance in *Taxi to the Dark Side*. He was an interrogator for the US Army who participated in the torture of Iraqi detainees at Abu Ghraib and other sites. His book is a first hand account of his personal experiences in and reflections on his time in Iraq.

Questions: Based on today's reading as well as *Taxi to the Dark Side*, what legal, policy and political perspectives informed the views of the authors of the torture memos and those who opposed them? What impact did the torture memos have on foreign captives and their American captors?

XXIV. Enforcement

Reading: (26pp) Ch. 9, pp. 479-86.

Schabas, *An Introduction to the International Criminal Court*, 3rd ed., "United States Opposition", pp. 24-32 (2007). On reserve.

Wald, "Foreword: War Tales and War Trials," 106 (no. 6) *Michigan L. R.* 901-12 (April 2008)

XXV. *The Reckoning: The Battle for the International Criminal Court (2009)* screened in class

XXVI. *The Reckoning: conclusion and discussion*

(Pope Gregory Mon)

Questions: What resources, political, financial and otherwise, are available to the ICC Prosecutor? What elements of the Court's record so far might indicate an optimistic or disappointing future for this new institution? What does the Prosecutor's relationship with the Security Council suggest about the relative values of peace and justice?

XXVII. Guantanamo and other dilemmas: Reviewing the lessons of *jus ad bellum* and *jus in bello* in light of current events

(Pope Gregory Wed)

XXVIII. Review session

Final exam to be taken during a 4 hour period

Teaching Tool XXIII

Les règles et les institutions du droit international humanitaire à l'épreuve des conflits armés récents

Developed by Professor Djamchid MOMTAZ, Centre d'étude et de recherche de l'Académie de droit international de La Haye (The Netherlands)

INTRODUCTION : LES CARACTERISTIQUES DES CONFLITS ARMES ASYMETRIQUES ET IDENTITAIRES

PREMIERE PARTIE : LA NECESSITE DE PRECISER LA NATURE JURIDIQUE ET LE CONTOUR DES REGLES DU DROIT INTERNATIONAL HUMANITAIRE

Section I : Les règles protectrices des civils contre l'arbitraire des parties au conflit

A. La protection des civils lors d'un conflit armé international

- i) Qualification des conflits armés internationaux
 - 1) La licéité de l'intervention des Etats tiers dans un conflit armé non international
 - 2) Les critères de qualification d'un conflit armé internationalisé
 - a) Le critère de contrôle effectif
 - b) Le critère de contrôle global
- ii) La protection offerte par le droit international humanitaire
 - 1) La définition de la personne protégée
 - a) Le critère de la nationalité
 - b) Le critère de l'allégeance
 - 2) Le traitement de la personne protégée
 - a) La protection des enfants
 - b) La protection des femmes
 - c) Les personnes internées
 - d) Les actions de secours

B. La protection des civils lors d'un conflit armé non international

- i) Qualification d'un conflit armé non international
 - 1) Les situations de violence ne pouvant être qualifiées de conflits armés
 - a) Les tensions internes
 - b) La « guerre contre le terrorisme »
 - 2) Les situations de violence qualifiées de conflits armés non internationaux
 - a) Les critères retenus par le protocole II additionnel
 - Le contrôle d'une partie du territoire par les insurgés
 - La capacité des insurgés à appliquer le Protocole II additionnel
 - b) Les critères retenus par le Tribunal pénal international pour l'ex Yougoslavie
 - Le conflit opposant deux ou plusieurs groupes armés
 - Le conflit armé prolongé
- ii) La protection du civil ne participant pas directement aux hostilités
 - 1) Définition du civil ne participant pas directement aux hostilités
 - a) Le critère de l'acte accompli par le civil
 - b) Le critère de l'appartenance du civil à un groupe armé
 - 2) Les règles protectrices du civil ne participant pas directement aux hostilités
 - a) Les garanties fondamentales
 - b) Les garanties offertes aux personnes privées de liberté

Section II : Les règles protectrices des civils contre les opérations militaires**A. L'immunité des civils contre l'attaque**

- i) La prétendue exception de la nécessité militaire
- ii) L'exception des représailles armées

B. La protection des civils contre les effets des hostilités

- i) La règle de la proportionnalité
- ii) La règle de précaution

DEUXIEME PARTIE : LA NÉCESSITE D'ADAPTER LES INSTITUTIONS DESTINÉES À ASSURER L'APPLICATION DU DROIT INTERNATIONAL HUMANITAIRE

Section I : Le respect du droit international humanitaire

A. L'obligation des parties à un conflit armé de respecter le droit international humanitaire

- i) Le respect du droit international humanitaire au cours d'un conflit armé international
 - 1) Le rôle des Puissances protectrices
 - 2) Le rôle de la Commission internationale d'établissement des faits
- ii) Le respect du droit international humanitaire au cours d'un conflit armé non international
 - 1) L'obligation des groupes armés au respect du droit international humanitaire
 - 2) L'engagement des parties au conflit armé non international au respect du droit international humanitaire
 - a) Les déclarations unilatérales des groupes armés
 - b) Les accords spéciaux entre les parties au conflit

B. L'obligation des Etats non parties à un conflit armé de « faire respecter » le droit international humanitaire

- i) Le recours aux institutions du droit international humanitaire
 - 1) Les réunions des Etats parties aux instruments du droit international humanitaire
 - 2) La saisine de la Commission internationale d'établissement des faits
- ii) Le recours à des moyens de pression et d'incitation
 - 1) Les mesures prises au niveau national
 - a) Le recours à des contre-mesures licites
 - b) L'incitation des groupes armés au respect du droit international humanitaire
 - 2) Les mesures prises dans le cadre de l'Organisation des Nations Unies
 - a) Le recours à des missions d'établissement des faits
 - b) Le recours à la force armée

Section II : La répression des violations graves du droit international humanitaire

A. La répression par les juridictions pénales nationales

- i) La répression par les juridictions de l'Etat sur le territoire duquel la violation a été commise

- 1) Le fondement de la répression par les juridictions nationales
 - a) La répression fondée sur le droit conventionnel
 - b) La répression fondée sur le droit international coutumier
- 2) L'obligation de ne pas amnistier
 - a) Les amnisties inconditionnelles mises au défi par les organes internationaux
 - b) La pratique étatique récente en matière d'amnistie
- ii) La répression par les juridictions de l'Etat sur le territoire duquel le présumé coupable se trouve
 - 1) La compétence universelle
 - a) Le fondement de la compétence universelle
 - b) Les conditions d'exercice de la compétence universelle
 - 2) L'extradition
 - a) Le fondement juridique de l'extradition
 - b) Les conditions du recours à l'extradition

B. La répression par les juridictions pénales internationales

- i) L'apport des juridictions pénales internationales au développement du droit international pénal
 - 1) La criminalisation des violations des lois et coutumes de guerre commises lors d'un conflit armé international
 - 2) La criminalisation des violations des lois et coutumes de guerre commises lors d'un conflit armé non international
- ii) La contribution des juridictions pénales internationales à la lutte contre l'impunité
 - 1) La non-reconnaissance des amnisties inconditionnelles
 - 2) La coopération des Etats, gage de l'efficacité des juridictions pénales internationales

CONCLUSION :

Une approche du droit international humanitaire plus axée sur le droit international des droits de l'homme

Teaching Tool XXIV

International Humanitarian Law

Developed by Dr. Ray MURPHY, Irish Centre for Human Rights, National University of Ireland, Galway (Ireland)

SEMINAR 1

Introduction to International Humanitarian Law (IHL)

Learning outcome:

- To critically examine the concept and purpose of IHL or the Law of Armed Conflict.
- To familiarise students with basic concepts and the nature of IHL and its relationship to Public International Law.
- To familiarise students with the historical development and legal basis of IHL.
- Customary rules of IHL.
- The *Ius ad Bellum* and *Ius in Bello* rules.

SEMINAR 2

Use of force under international law

Learning outcome:

- To examine the law regulating the use of force in international law and its consequences.
- To analyse the interpretation and application of the UN Charter, Article 2, and Chapters VI, VII and VIII.
- To review international law principles governing the pre-emptive use of force; the responsibility to protect and humanitarian intervention.

SEMINAR 3

International Humanitarian Law, Human Rights Law and International Criminal law.

Learning outcome:

- To familiarise student with the fields of application of all regimes, protected persons and implementation.
- To distinguish between genocide, crimes against humanity and war crimes.

SEMINAR 4**Categorisation of Armed Conflicts – Types of Conflict and Thresholds of Applicability of IHL*****Learning outcome:***

- To distinguish between the legal regimes governing International and Non-International Armed Conflicts.
- To analyse and discuss Common Article 3 and Protocol II.
- Types of non-international armed conflict.
- To explain and apply the criteria for the categorisation of conflict, and outline the legal and practical consequences in situations of armed conflict.
- Transnational conflicts and the war on terror.

SEMINAR 5**Non-International Armed Conflicts*****Learning outcome:***

- To identify the dynamics of non-international armed conflicts;
- To examine the laws regulating the conduct of hostilities during non-international armed conflicts;
- To review the difficulties and challenges in application of the laws and protection of victims during non-international armed conflicts.

SEMINAR 6**Conduct of Hostilities*****Learning outcome:***

- To distinguish between the Law of The Hague and the Law of Geneva.
- To analyse and explain the framework for the protection of the civilian population against the effects of hostilities, and the means and methods of warfare.
- Prohibited attacks, definition of civilian population, military objectives and targets.
- The principles of distinction and proportionality.
- Hague Rules Arts 25-28; Draft Hague Rules on Aerial Warfare 1923 Arts 22-6; Geneva Civilians Convention 1949 Arts 13-26 and 27-34; and Protocol 1 1977 Arts 48-60.

SEMINAR 7

Case Studies

- **Protection of Civilians: The NATO campaign in Kosovo and Russia in Chechnya.**
- **The conduct of hostilities during the Israel/Hizbollah conflict 2006 and Gaza 2009.**

Learning outcome:

- To analyse and explain the legal regime governing the protection of civilians against effects of hostilities, and against arbitrary treatment.
- To identify the legal regime governing refugees and displaced persons under IHL.
- To be able to apply the rules of IHL to contemporary situations of conflict.

SEMINAR 8

War Crimes

Learning Outcome:

To examine the concept of war crimes under IHL, and to analyse Article 8 of the ICC Statute and the elements of the crimes.

SEMINAR 9

Combatants and Prisoners of War: Status and Treatment

Learning outcome:

To explain the general criteria for determining combatant and POW status, and to outline the regulations governing the treatment of POW's.

SEMINAR 10

Implementation of IHL and the Mechanisms of Justice

Learning Outcome:

To distinguish between the national and international means of implementing IHL and the role of the ICC, and the *Ad Hoc* Criminal Tribunals and special courts.

SEMINAR 11**IHL and Peace Support Operations*****Learning Outcome:***

- To identify the relevance of IHL to United Nations and similar peace support operations.
- To assess the relevance of the Convention for the Protection of UN Personnel, and the Secretary-General's Bulletin on Observance by UN forces of international humanitarian law.
- To analyse the implications of the Report of the Panel on United Nations Peacekeeping; the Report of the Rwanda Genocide and the Report of the Fall of Srebrenica.
- To examine the role of IHL in traditional peacekeeping in Lebanon (UNIFIL), and in peace enforcement in Somalia during the UNITAF and UNOSOM II operations.
- To analyse the application of IHL by and in failed states.

SEMINAR 12**The Fourth Geneva Convention for the Protection of Civilians and the rules governing Occupied Territories*****Learning Outcome:***

To distinguish between the different kinds of occupation under international humanitarian law, and the rights and responsibilities of the Occupying Power.

Case studies: The Occupied Territories and the situation in Palestine and other recent situations of occupation.***Learning Outcome:***

To analyse the situation in the Occupied Territories, Democratic Republic of the Congo, Afghanistan and Iraq and the relevance of IHL and the law applicable.

Teaching Tool XXV

International Humanitarian Law

Developed by Professor Beatrice Onica JARKA, University of Titulescu (Romania)

INTRODUCTION TO IHL – WHY STUDYING IHL?

COURSE No. I

Possible Answers:

1. The understanding of events and phenomena widely displayed in the media such as the position of the UN Security Council regarding the Democratic People's Republic of Korea and Iran and the nuclear weapons proliferation, the participation of Romanian troops in peacekeeping operations organized by the UN, NATO or EU, international terrorism, the situation in the Gaza strip and West Bank, international criminal tribunals, etc.
2. A practical and interactive approach of the information transmitted through simulations, the participation of lecturers as IHL professionals and watching of movies on humanitarian issues.
3. The acquirement of information regarding the professional fields in which you will work and, also, the discovery of new fields of interest in the juridical profession
4. The possibility of participation in international competitions, field related conferences, internships at field related institutions, attending summer schools etc.

Chapter I:

THE CHARACTERIZATION OF INTERNATIONAL HUMANITARIAN LAW AND THE APPLICABLE INTERNATIONAL RELATIONS FIELD

1. **The notion of International Humanitarian Law (IHL), a short history of IHL regulations**
 - Brief history of IHL

Watching a movie ON HUMANITARIAN ISSUES (*The Road to Guantanamo*)

COURSE No. II

- 2. The purpose of IHL, the notions of internal and international armed conflict, examples, ceasing of hostilities, truce, capitulation, peace-reaching, neutrality etc.**
 - i. The purpose of IHL
 - ii. International armed conflict
 - iii. Internal armed conflict (Ex: Rwanda)
 - iv. The definition of armed conflict, the geographical and temporal coordinates for the qualification of a situation as an armed conflict
 - v. The ceasing of hostilities: capitulation, truce, *debellatio* and the signing of peace treaties
 - vi. Neutral states

- 3. IHL sources: conventions, customary law and IHL principles**
 - i. Customary norms
 - ii. Treaties
 - iii. IHL principles
 - iv. The relation between IHL and International Law

Chapter II:**IMPLEMENTATION OF IHL**

- 1. Introduction**
- 2. Persons protected by IHL, breaches of IHL, who is responsible?**
- 3. The Protected Power**
- 4. The inquiry commission – the Sleeping Beauty**
- 5. The role of international intergovernmental organizations**
- 6. The role of nongovernmental organizations**
- 7. Diplomatic activities**
- 8. Criminal liability for IHL breaches**
 - i. Implemented by national tribunals, the concept of universal jurisdiction (the Eichmann case)
 - ii. Implemented by International Criminal Tribunals

9. Truth and reconciliation commissions

Exercise: The identification of IHL rules in the bible and the Coran

COURSE No. III

Presentation of the International Committee of the Red Cross, of the National Red Cross Societies in Romania and Their role in implementing IHL

- presentation of the emblems and their role
- representative of the Romanian Red Cross

COURSE No. IV

Chapter III:

LEGAL STATUS OF COMBATANTS

- 1. The importance of differentiating between combatants and civilians, the principle of distinction – a fundamental IHL principle, the importance given by the applicable status**
- 2. The definition of combatants**
 - i. different categories of combatants
 - ii. levee en masse
- 3. International armed conflicts acknowledge combatants as members of the armed forces, who have the right to participate in hostilities and are under the obligation to respect IHL**
- 4. Illegal combatants:**
 - i. Spies
 - ii. Mercenaries
 - iii. Terrorists
 - iv. Saboteurs
- 5. Non-international armed conflicts – the status of persons taking part in the hostilities**

Exercise: Mercenarism – Attempt to improve the existing legal provisions

Chapter IV:**LEGAL STATUS OF PRISONERS OF WAR**

- 1. The evolution of the juridical status**
- 2. The definition of prisoners of war**
- 3. Captivity**
- 4. The rights and obligations of prisoners of war**

Exercise: Debate on the status of the persons detained in Guantanamo bay and Abu Ghraib

COURSE No. V**Chapter V:****MEANS AND METHODS OF WARFARE**

- 1. Principles that govern the means and methods of warfare**
- 2. Weapons**
 - i. Weapons of mass destruction
 - ii. Conventional weapons
 - iii. Non-lethal weapons
- 3. Methods of warfare**
- 4. International terrorism**

COURSE No. VI

Watching a movie on IHL issues (*Hotel Rwanda*)

COURSE No. VII**Chapter VI:****LEGAL STATUS OF THE CIVILIAN POPULATION**

- 1. Legal provisions**
 - i. Before World War II and after World War II:
 - ii. Customary Law

2. The definition of civilians

- i. International armed conflicts
- ii. Non-international armed conflicts

3. Applicable law

- i. The general protection of civil population and civil persons against the dangers resulted from military operations (art. 51 of Additional Protocol I)
- ii. Human shields (art. 28 and 49 of Geneva Convention IV), the problem of volunteer human shields; International armed conflicts, The protection of the civil population in non-international armed conflicts – art. 13-17 of Additional Protocol II
- iii. Military occupation, rights and obligations of the Occupying Power regarding the civil population
- iv. The special status of women and children

COURSE No. VIII

- v. Refugees in International Humanitarian Law – lecture given by the UNHCR Romanian representative

COURSE No. IX

Chapter VII:

**OTHER PERSONS PROTECTED BY IHL:
WOUNDED, SICK, SHIPRECKED, MEDICAL PERSONNEL**

- 1. Brief history**
- 2. Legal provisions**

Chapter VIII:

HUMANITARIAN INTERVENTION

- 1. Definition**
- 2. Who authorizes the humanitarian intervention?**
- 3. Humanitarian intervention vs. Sovereignty**
- 4. The Responsibility to protect**

Chapter IX:

THE PROTECTION OF CULTURAL PROPERTY AND THE ENVIROMENT

1. **The cultural property protected by IHL**
2. **IHL regulations regarding the protection of cultural property**
3. **The environment protected by IHL**

COURSE No. X

SIMULATION – ADOPTING A RESOLUTION RELATIVE TO A HUMANITARIAN INTERVENTION BY THE UN SECURITY COUNCIL

COURSE No. XI

Watching a movie on IHL Issues (*Nuremberg Trial*)

COURSE No. XII

Chapter X:

INTERNATIONAL CRIMINAL JURISDICTION

1. **History**
2. **International Criminal Tribunals**
 - i. The International Military Tribunal in Nurenberg and the International Military Tribunal for the Far East in Tokyo
 - ii. International Criminal Tribunal for the Former Yugoslavia
 - iii. International Criminal Tribunal for Rwanda
 - iv. International Criminal Court
 - v. Special Court for Sierra Leone
 - vi. BIH Criminal Court
3. **International Crimes under the international criminal jurisdiction**
 - i. The juridical elements of international crimes under the international criminal jurisdiction
 - ii. Genocide
 - Specific criminal aspects regarding genocide
 - Specific international aspects regarding genocide

iii. Crimes against humanity

- Specific criminal aspects regarding crimes against humanity
- Specific international aspects regarding crimes against humanity
- The requirement of discriminatory motives for the qualification of crimes against humanity

iv. War crimes

- Common elements for all the war crimes provided by art. 8 of the Rome Statute
- The classification of war crimes

4. The International Criminal Court

Teaching Tool XXVI

International Humanitarian Law

Developed by Professor Ryszard PIOTROWICZ, Aberystwyth University (United Kingdom), as part of a course on Human Rights

Introduction

The obligation to protect human rights is universally accepted – even by those States that in practice breach them. The first part of this course looks at the special situation where human rights are, arguably, under the most extreme threat – during armed conflict, when civil order may have broken down and territory may be occupied by hostile forces, leaving the civilian population particularly vulnerable.

General Reading

There is a vast amount of material available on all aspects of IHL. It is a dynamic field in which there have taken place very significant developments in recent years, particularly with regard to criminal repression of violations of IHL and controls on the types of weapons that may be used in armed conflicts. The books listed below are a few of the recent publications that deal comprehensively with the most essential aspects of IHL. *Schwarzenberger* is included despite its age because it is a classic on the subject.

In addition, you will find extensive commentaries and analyses of all aspects of IHL in the international law journals available in the library. These are too numerous to refer to, although some articles are mentioned in the course outline. You will also find many exceptionally useful articles in the *International Review of the Red Cross* (IRRC), which is available, free, in electronic format at the ICRC's website. This contains some of the very best work on IHL.

M. Sassòli, A. Bouvier and A. Quintin, *How Does Law Protect in War?* (3rd ed, 2011) – also contains an excellent bibliography (introductions to each subject are in the shorter volume 1; relevant primary materials are in volumes 2 & 3)

L. Doswald-Beck and J.-M. Henckaerts, *Customary International Humanitarian Law. Volume 1: Rules* (2005)

E. Wilmschurst and S. Breau (eds), *Perspectives on the ICRC Study on Customary International Humanitarian Law* (2007)

UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (2004)

F. Kalshoven and L. Zegveld, *Constraints on the Waging of War* (3rd ed, 2001), available on pdf at: [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0793/\\$File/ICRC_002_0793.PDF](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0793/$File/ICRC_002_0793.PDF)

H. McCoubrey, *International Humanitarian Law* (2nd ed, 1998)

L. Moir, *The Law of Internal Armed Conflict* (2002)

R. Piotrowicz and S. Kaye, *Human Rights in International and Australian Law* (Part Two – International Humanitarian Law, by Piotrowicz) (2000)

R. Provost, *International Human Rights and Humanitarian Law* (2002)

A. Roberts and R. Guelff, *Documents on the Laws of War* (2000)

A. Cassese, *International Criminal Law* (2003)

G. Werle, *Principles of International Criminal Law* (2005) G. Schwarzenberger, *International Law as Applied by International Courts and Tribunals*. Volume II – *The Law of Armed Conflict* (1968)

M. Walzer, *Just and Unjust Wars* (1977)

Websites

International Committee of the Red Cross (ICRC): <http://www.icrc.org/eng>

War Crimes Tribunal for the Former Yugoslavia: <http://www.un.org/icty/index.html>

International Criminal Court: <http://www.un.org/law/icc/index.html>

United Nations: <http://www.un.org/english/>

International Court of Justice: <http://www.icj-cij.org/>

For primary materials on IHL, see the ICRC website at: <http://www.icrc.org/eng>, then click on **Humanitarian Law**. All your prayers will be answered.

Abbreviations

GCI – 1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

GCII – 1949 Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

GCIII – 1949 Geneva Convention III Relative to the Treatment of Prisoners of War

GCIV – 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War

PI – 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts

PII – 1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts

OUTLINE OF THE COURSE

I. Introduction

II. Sources of IHL and its historical development

III. Scope of application of IHL

IV. Some basic concepts

- V. Protection of combatants
- VI. Protection of civilians
- VII. Protection of cultural property
- VIII. Methods and means of combat
- IX. Non-international armed conflicts
- X. Displaced Persons and IHL
- XI. Collective security operations and IHL
- XII. Criminal repression of breaches of IHL
- XIII. Implementation of IHL
- XIV. The relationship between IHL and human rights law

I. INTRODUCTION

Henckaerts and Doswald-Beck, Ch.32

F. Hampson, "Fundamental Guarantees", in: Wilshurst and Breau, Ch.11

UK Ministry of Defence, Ch.2

IHL as International Law

"...if international law is, in some ways, at the vanishing point of law, the law of war is, perhaps even more conspicuously, at the vanishing point of international law."

(H.Lauterpacht, 1952)

How law applies in war – *jus ad bellum/jus in bello*

Fundamental principles of IHL

- **Civilians shall enjoy general protection against military operations**
- **Attacks are allowed only against military objectives (distinguish between civilian objects and military objectives)**
- **It is prohibited to cause unnecessary losses or excessive suffering (proportionality)**
- **Respect, protect and assist the sick and wounded without discrimination**
- **Captured combatants and civilians in the power of the enemy shall be protected and well treated**

IHL and the soldier's dilemma

In the early morning, a column of tanks and personnel carriers made their way down the road of the heavily populated outskirts of the city. We were hemmed in by the wire fence of an air base on our left and a long narrow hamlet of buildings on our right. We stopped to assess the situation. My mate ducked inside the turret of the tank, saying: "I don't like the look of this". Our radio operator turned to me and said that he'd just heard reports of lots of guerilla soldiers hiding out in the area.

From where I rode, as tank gunner, I had a pretty clear view. Sure enough, through the dust and overcast morning weather, I could see silhouettes darting into positions among the cluster of village houses opposite our platoon of men in the personnel carriers up the road. I could see that the figures were clearly armed. Someone shouted to open fire.

You are the tank gunner. What do you do?

Walzer, Chs 1 and 2.

II. SOURCES OF IHL AND ITS HISTORICAL DEVELOPMENT

Sassòli, Bouvier and Quintin, Vol.1, Chs. 3-4

UK Ministry of Defence, Ch.1

Kalshoven and Zegveld, Chs. 1-2

McCoubrey, Ch.1

Meron, "The Geneva Conventions as Customary Law", (1987) 81 *AJIL* 348

Piotrowicz and Kaye, Ch.6

Moir, Ch.4

Schwarzenberger, Ch.1

"Silent enim leges inter arma"

(Cicero, quite a long time ago)

"There is such a thing as legitimate warfare: war has its laws; there are things which may fairly be done, and things which may not be done..."

(Cardinal Newman, 1864)

Henry Dunant

Martens Clause – In cases not covered by specific instruments, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

Hague law – rules relating to the actual conduct of armed hostilities (eg rules prohibiting or limiting the use of specific means and methods of warfare)

Geneva law – rules of IHL relating to the protection of persons placed *hors de combat* or not taking part in the hostilities (wounded, prisoners of war, civilians)

Status of the Geneva Conventions

- *Report of the Secretary-General of the United Nations on the Establishment of the War Crimes Tribunal for the Former Yugoslavia*, paras 35 and 37: confirm customary status of the Conventions. (1993) 32 *ILM* 1159

Role of ICRC

“Common” law of armed conflict? – *handle with care*

Tadic case (Appeal against jurisdiction) (1996) 35 *ILM* 32, esp. paras 94, 127 [See Case No. 211, The Prosecutor v. Tadic [Part A.]]

III. SCOPE OF APPLICATION OF IHL

Sassòli, Bouvier and Quintin, Ch 2. III.

J. Pejic, “Status of Armed Conflicts”, in: Wilmshurst and Breau, Ch.4

UK Ministry of Defence, Ch 3

D. Fleck (ed), *The Handbook of Humanitarian Law in Armed Conflicts* (1995), Ch 2

M. Sassòli, “The Status of Persons Held in Guantanamo under International Humanitarian Law”, (2004) 2 *Journal of International Criminal Justice* 96-106

When does IHL apply?

- International armed conflicts (IAC)
- Non-international armed conflicts (NIAC)

IAC

GCs I-IV, Art 2(1): IHL applies “to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”

GCs I-IV, Art 2(2): IHL also applies “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no resistance”

PI, Arts.1.3, 1.4, 9

PI, Art 1(4): wars of national liberation also to be treated as IAC

ILC Articles on State Responsibility, Art 8: conflict between government forces and rebel forces within one State becomes international if rebels are *de facto* agents of a third State

NIAC

GCs I-IV, Art 3: applies to cases of “armed conflict not of an international character occurring on the territory of one of the High Contracting Parties”

PII, Art 1(1): applies to all ACs that are not IAC “and which take place on the territory of a ... Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of

its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”

- Gap between Art 3 and PII Art 1
- PII does not cover conflicts within a State where government not involved
- PII does not cover “internal violence and tensions” (riots, isolated and sporadic acts of violence) – Art 1(2)

Prosecutor v Tadic, IT-94-1-AR72, Appeals Chamber, 2 October 1995 [See **Case No. 211**, The Prosecutor v. Tadic [Part A.]]

Para 70: “...an armed conflict exists whenever there is a resort to armed force between States or **protracted** armed violence between governmental authorities and organized armed groups or between such groups within a State.”

Furthermore, IHL applies:

- From beginning of conflict beyond end of hostilities till general conclusion of peace reached
- Re NIAC, till peaceful settlement achieved
- Till then, IHL applies *throughout* territory of States in IAC
- Re NIAC, all territory under control of a protagonist, even if no fighting is taking place there

Terrorism?

If no AC, there is no IHL issue

If AC then IHL applies. Following prohibited:

- Attacks against civilians: PI, Art 51(2); PII, Art 13(2)
- Acts or threats whose main purpose is to spread terror among the civilian population: PI, Art 51(2); PII, Art 13(2)
- Acts of terrorism aimed against civilians in the power of the enemy: GCIV, Art 33; PII, Art 4(2.d)

If IHL indeed applies to all during an AC, it must apply to those who commit terrorist acts during an AC.

Scope of Application of IHL

Personal application

- Usually, enemy nationals
 - Sick, wounded and shipwrecked
 - Prisoners of war
 - Civilians (protected persons)
- International criminal law

Temporal application

IHL applies as soon as AC starts

Tadic Case (Jurisdiction), paras 68-69 [See **Case No. 211**, *The Prosecutor v. Tadic* [Part A.]]

End of application?

- Sometimes hard to say when AC finishes
 - Intensity of hostilities may be reduced or they stop then recur
 - Rules on repatriation of prisoners of war, refugees

Geographical application

Tadic Case (Jurisdiction), paras 68-69 [See **Case No. 211**, *The Prosecutor v. Tadic* [Part A.]]

IV. NON-INTERNATIONAL ARMED CONFLICTS

Sassòli, Bouvier and Quintin, Ch.12

UK Ministry of Defence, Ch.15

Kalshoven and Zegfeld, 69-70, 132-139

McCoubrey, Ch.9

Piotrowicz, 133-138

GCI-IV, common Article 3

PII, Art.4 – fundamental guarantees

PII, Arts.13-17 – protection of civilian population

The protection of human rights during civil wars has already been discussed in several contexts. Here the aim is to give an overview of the types of, and restrictions on, protections available.

V. SOME BASIC CONCEPTS

Apart from the fundamental principles set out in the **INTRODUCTION** section, you should be aware of the following aspects of the Geneva Conventions, which are really separate from the actual rights guaranteed by the Conventions:

Scope

GCs, Art.2; PI, Art.3(1) – apply to declared wars and ACs from the beginning of the conflict

Non-renunciation of rights

GCI-III, Art.7; GCIV, Art.8 – applies to all those in the power of the enemy forces

Grave breaches

GCI, Art.50; GCII, Art.51; GCIII, Art.130; GCIV, Art.147; PI, Arts.11,85
 – especially serious breaches of the law of ACs

Distinction between civilians and combatants

– distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible. The same distinction applies to civilian objects and military objectives (see, eg PI, Art.48). Why?

VI. PROTECTION OF COMBATANTS AND PRISONERS OF WAR**Combatants and Prisoner of War Status**

Sassòli, Bouvier and Quintin, Ch.6

Henckaerts and Doswald-Beck, Ch.33

A. Rogers, "Combatant Status", in: Wilmshurst and Breau, Ch.5

A. Jachec-Neale, "Status and Treatment of prisoners of war and other persons deprived of their liberty", in: Wilmshurst and Breau, Ch.12

UK Ministry of Defence, Ch.4 and Ch.8

Kalshoven and Zegfeld, 58-61, 86-91

McCoubrey, Ch.6

Piotrowicz, 120-125

Entitlement to protection

Definition of protected persons ie, those covered by the GCs as combatants or prisoners of war

1907 Hague Regulations Respecting the Laws and Customs of War on Land, Arts. 1-3, 23(f), 29-31

GCIII, Art.4 – POWs – combatants who have fallen into the power of the enemy – who are members of the armed forces; militias and volunteer corps forming part of such armed forces

Note: armed resistance movements also protected if they meet **four** conditions:

- they are commanded by a person responsible for his or her subordinates;
- they have a fixed distinctive sign recognisable at a distance;
- they bear arms openly;
- they conduct their operations in accordance with the laws and customs of war

PI, Art.8 – equates treatment of civilian and military personnel

PI, Arts.43-45

(note *Prosecutor v Tadic (Appeal)*, paras 91-97: concerning status of irregular forces fighting against the authorities of the *same* State in which they live and operate (1999) 38 *ILM* 1518)

Mercenaries and spies

PI, Arts 46-47

Treatment of POWs (GCIII)

General duties

Art.12 – responsibility of detaining power

Art.13 – obligation of humane treatment

Art.14 – entitlement to respect for POWs’ “persons and honour”; women to be treated “with all the regard due to their sex”.

Art.15 – obligation to provide food, shelter and health care

Art.16 – prohibition on discrimination

US detention of “unlawful belligerents”

US Position:

www.defenselink.mil/news/Jan2002/;

www.whitehouse.gov/news/releases/2002/02/20020207-13.html

J. Aldrich, “The Taliban, al Qaeda, and the determination of illegal combatants”, (2002) 96 *AJIL* 891

McDonald and Sullivan, “Rational interpretation in irrational times”, (2003) 44 *Harvard International Law Journal* 301

A. Rogers, “The use of military commissions to try suspects”, (2002) 51 *ICLQ* 967

Steyn, “Guantanamo Bay: The Legal Black Hole”, (2004) 53 *ICLQ* 1-15

Protection of the sick, wounded and shipwrecked

Henckaerts and Doswald-Beck, Ch.34

A. Bouvier, “Special Aspects of the use of the Red Cross or Red Crescent emblem” (1989) *IRRC*, No.272, pp438-458

<http://www.icrc.org/eng/emblem> – then click on “Use and misuse of the emblem”

S. Bugnion, “Towards a comprehensive solution to the question of the emblem” Nov. 2003

[http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/p0778/\\$File/ICRC_002_0778.PDF](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/p0778/$File/ICRC_002_0778.PDF)!Open

<http://www.icrc.org/eng/emblem> – then click on “The ICRC’s position”

Kalshoven and Zegfeld, 54-58, 117-127

McCoubrey, Chs. 4 and 5

Piotrowicz, 118-122

Sassòli, Bouvier and Quintin, Ch.7

UK Ministry of Defence, Ch.7

Principal protections for the sick, wounded and shipwrecked

- *Obligation of protection and care*
common Art.12 – obligation of respect and protection, humane treatment irrespective of sex, race, nationality, religion, political opinions; special protection of women
PI, Arts.10, 11, 12
- *Wounded and sick to be treated as prisoners of war*
GCI, Art.14; GCII, Art.16
- *Obligation to search for wounded, dead and missing*
GCI, Art.15; GCII, Art.18; PI, Arts.32,33
- *Obligation to record and pass on information concerning identification of wounded, sick and dead*
GCI, Art.16; GCII, Art.19; PI, Art.33

Legal regime for those assisting the sick, wounded and shipwrecked

- *Civilian organisations and personnel may assist wounded, sick and shipwrecked and are not to be punished for doing so*
GCI, Art.18; GCII, Art.21; PI, Art.17
- *Prohibition of attacks on fixed and mobile medical establishments; ships*
GCI, Arts.19-23; GCII, Arts.22-35; PI, Arts.8,9,12-14
- *Obligation to respect and protect medical transports; hospital ships*
GCI, Art.35; GCII, Arts.22-25; PI, Arts.8,22
- *Obligation to respect and protect medical personnel*
GCI, Arts.24-28; GCII, Arts.36-37; PI, Arts.8, 15-16

Significance of the Red Cross emblem

- *The emblem is intended to ensure respect and protection for those using it; hence its use is strictly regulated*
GCI, Arts.38-44; GCII, Arts.41-44; PI, Art.18
- *Prohibition on misuse of the emblem*
GCI, Art.53; GCII, Art.45
Additional Protocol III to the Geneva Conventions relating to the Adoption of an Additional Distinctive Emblem 2005

Protection during Non-international Armed Conflicts

Status of Protocol II

- *Prosecutor v Dusko Tadic (Jurisdiction)*, para.117: asserts that much of the Protocol declares or crystallises emerging rules of customary international law (1996) 35 *ILM* 32 [See **Case No. 211**, *The Prosecutor v. Tadic* [Part A.]]

General provisions

- *Field of application*
common Art.3 – applies to non-international armed conflicts
PII, Art.1

Principal protections for the sick, wounded and shipwrecked

- *Obligation to “collect and care for” sick and wounded*
common Art.3(2)
- *Obligation to respect and protect wounded, sick and shipwrecked; search for and collect*
PII, Arts.7-8

Legal regime for those assisting the sick, wounded and shipwrecked

- *Obligation to respect and protect medical personnel*
PII, Arts.9-10
- *Obligation to respect and protect medical units and transports*
PII, Art.11

Significance of the Red Cross emblem

- *Prohibition on misuse of the emblem*
PII, Art.12

VII. PROTECTION OF CIVILIANS

Protection of the civilian population

Sassòli, Bouvier and Quintin, Ch.8

Henckaerts and Doswald-Beck, Ch.39

S.Breau, “Protected Persons and Objects”, in: Wilmshurst and Breau, Ch.7

UK Ministry of Defence, Ch.9

Kalshoven and Zegfeld, 61-69, 96-116, 137-139

McCoubrey, Ch.7

Piotrowicz, 125-129

Civilian population – GCIV

Part I, Art.4 – those who, at a given moment, and in any manner at all, during a conflict or occupation find themselves in the hands of a party to the conflict or Occupying Power of which they are not nationals

Part II – protections for **all** against the consequences of war

Part III – status and treatment of protected persons

Section I – Provisions common to territories of parties to a conflict and to occupied territories

General protection – GCIV Art.27, first para:

- guarantees granted to all protected persons
- respect for their person, honour, family rights, religion
- right to humane treatment at all times
- protection from violence and threats of violence

Note also general prohibitions under international law of discrimination, torture, inhuman and degrading treatment or punishment

Section II – relates to aliens on territory of party to the conflict

Section III – obligations towards the population of occupied territories; see also Hague Regulations, Arts.42-56

PI, Part IV, Section III (Arts.72-79)

PII, Arts.13-17: general provisions on protection of the civilian population

Protection of women

J. Gardam, “Women, Human Rights and International Humanitarian Law”, (1998) *IRRC* No.324, 421-432

C. Lindsey, “Women and War”, (2000) *IRRC* No.839, 561-579

T. Meron, “Rape as a Crime under International Humanitarian Law”, (1993) 87 *AJIL* 424-428

Moir, 214-219

Sassòli, Bouvier and Quintin, Ch.2. II. 1. b)

Protections against sexual violence

GCIV Art.27, second para:

“Women shall be protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”

PI Art.76.1:

Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

Common Art.3(1)(c) – prohibits outrages upon personal dignity, in particular humiliating and degrading treatment

PII Art.4.2 – prohibits

- (e) outrages upon personal dignity, especially humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault
- (f) slavery

Protections as mothers

GCIV Arts.14, 16, 17, 21, 22, 23: special protections for the wounded and sick, infirm and expectant mothers – entitled to “particular protection and respect” (Art.16, + PI Art. 8(a)).

Protections for female detainees and prisoners of war

GCIII Art.14, second para:

“Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.” (female POWs)

GCIII Arts.25, 97, 108: women POWs to be detained in separate quarters from men

GCIV Arts.76, 85, 124: women detainees to be held separate from men (except for those accommodated with their families)

GCIV Art.97: female detainees may only be searched by a woman

GCIV Art.89: extra food for detained expectant and nursing mothers

GCIV Art.91: entitlement to care no worse than that available to general population

GCIV Art.132: obligation to prioritise release of certain categories of internees, including pregnant women and mothers with young children

PI Art.76.2; “utmost priority” to be given to consideration of cases of detained pregnant women and mothers with dependant infants – where detained for reasons related to the conflict

PII Art.5.2(a): women to be detained separately from men (unless in family unit); and under supervision of women

PII Art.6.4: no death penalty for pregnant women or mothers with young children

Protection of Children

Cohn and Goodwin-Gill, *Child Soldiers. The Role of Children in Armed Conflicts* (1994)

M. Dennis, “Newly Adopted Protocols to the Convention on the Rights of Children”, (2000) 94 *AJIL* 789-796

Moir, 219-221

G. Van Bueren, “The International Legal Protection of Children in Armed Conflicts”, (1994) 43 *ICLQ* 809-826

Human Rights Watch, Reports on the Use of Child Soldiers:
<http://www.hrw.org/campaigns/crp/hrw-reports.htm>

Secretary-General’s Special Representative for Children and Armed Conflict:
<http://www.un.org/special-rep/children-armed-conflict/index.html>

UN High Commissioner for Human Rights Special Representative for Children in Armed Conflict: <http://www.unhchr.ch/html/menu2/7/b/mchildsre.htm>

UNICEF, *Impact of Armed Conflict on Children*: <http://www.unicef.org/graca/>

Geneva rules have following aims:

- shelter children from hostilities
- maintain family unity
- ensure necessary care, relief or protection for those caught in hostilities

Shelter from hostilities

GCIV Art.14: safety zones for wounded, sick and aged, children under fifteen, pregnant women, mothers of children under seven

GCIV Art.50:

- Occupying Power to facilitate proper working of all institutions dealing with care and education of children

- Organize care and education of orphaned children or those separated from their parents (preferably by people with same nationality, language and religion)
- Evacuations generally prohibited (GCIV Art.49, PI Art.78.1, PII Art.17) because they can be used to promote ethnic cleansing, but permitted in limited cases – GCIV Art.17 allows limited evacuation from besieged areas, of wounded, sick, infirm, elderly, children and maternity cases

GCIV Art.51: Occupying Power cannot compel those under eighteen to work

GCIV Arts.24 and 50: children have right to protection of their cultural environment, education and exercise of religion

Maintenance of the family unit

Note restrictions on evacuation, above

Obligation to facilitate reunion of dispersed families: GCIV Art.26, PI Art.74, PII Art.4.3(b)

Obligation to maintain family unit during detention or internment: GCIV Art.82, PI Art.75.5

Protection during hostilities

GCIV Art.38.5 – priority for children under fifteen, pregnant women and mothers of children under seven in distribution of relief supplies

PI Art.8: new-born babies treated as “sick or wounded”

PI Art.77 – measures aimed at protection of children

- Special respect for children; protected against “any form of indecent assault”
- Children under age of fifteen must not take direct part in hostilities
- If children are involved in hostilities, they still get special protection of Art.77
- Detained children to be held separately from adults unless in a family unit
- No death penalty permissible for those under eighteen at time of offence

PII Art.4.3(c-d)

Convention on the Rights of the Child 1989

Art.38

1. States Parties undertake to respect and to ensure respect for rules of International Humanitarian Law applicable to them in armed conflicts which are relevant to the child.
4. In accordance with their obligations under International Humanitarian Law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Child Soldiers

Convention on the Rights of the Child 1989

Art.38

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, states Parties shall endeavour to give priority to those who are oldest.

See also PI Art.77(2)

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000

Art.1 – States to take “all feasible measures” to ensure that armed forces under eighteen do not take “a direct part” in hostilities

Art.2 – prohibition of compulsory recruitment of persons under eighteen into armed forces

Art.3(1) – States to raise minimum age for voluntary recruitment to armed forces to eighteen

ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1989

- prohibits forced or compulsory recruitment of children for use in armed conflict

Punishment of breaches

The law on punishment of those who breach human rights during armed conflict is dealt with separately. Here you should simply note that one of the most important trends in recent developments has been the increasing recognition of the particular vulnerability of women and children.

VIII. PROTECTION OF CULTURAL PROPERTY

Sassòli, Bouvier and Quintin, Ch.9. II. 9. b) aa)

Henckaerts and Doswald-Beck, Ch.12

Kalshoven and Zegveld, 48-51, 175-180

S. Nahlik, “La protection des biens culturels en temps cas de conflit armé”, (1967) 120 (1) *Recueil des Cours* 61-163

S. Bugnion, “The origins and development of the legal protection of cultural property in the event of armed conflict”, <http://www.icrc.org/Web/eng/siteeng0.nsf.html/65SHTJ>

Principal Laws

Hague Regulations 1907, Art 27

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954

Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1999

1954 Convention

Art 1 – definition of cultural property

- Moveable or immoveable property of great importance to the cultural heritage of every people – eg, monuments, works of art, manuscripts, scientific collections
- Buildings whose main purpose is to preserve or exhibit movable cultural property and refuges intended to shelter it during armed conflicts
- Centres containing a large amount of cultural property (as defined above)

Type of protection – general or special

Art 2 – *general protection*: to safeguard and respect

Art 3: safeguarding – obligation to prepare during peace time for safeguarding of cultural property

Art 4 – respect

- obligation not to use protected property for purposes likely to lead to its damage or destruction during armed conflict
- obligation to refrain from acts of hostility against cultural property
- obligation to prohibit, prevent and stop theft, pillage, misappropriation or vandalism against cultural property
- no reprisals against cultural property
- para 2 – obligations may be waived in cases of imperative military necessity

Art 5 – general obligation of occupying power to support competent national authorities in protecting cultural property

Art 6 – distinctive marking – Dutch Ministry of Defence

Art 18 – applies to international conflicts but cf Art 19 – parties to civil war must apply at least those parts of the Convention on respect for cultural property (see Art 4).

Art 8 – *special protection* for limited number of refuges intended to shelter movable cultural property during conflict, as well as centres of significance – has not worked – hence adoption of 1999 protocol.

Art 11 – withdrawal of immunity

- where one party violates immunity of cultural property then the other one does not have to respect it; or
- exceptional cases of unavoidable military necessity

1999 Protocol

- supplements 1954 Convention, which remains in force
- changes to system of general protection
- retains definition of cultural property
- new system of ‘enhanced’ protection (instead of special protection)
- applies to international and civil wars (Art 22)

Art 6 – respect for cultural property – more difficult to justify attacks on cultural property – waiver under Art 4(2) of Convention subject to conditions:

- the cultural property has been made a military objective by its function
- no feasible alternative to achieve the purpose

Art 7 – precautions in attack – obligations to minimize risk to cultural property

Art 8 – precautions against effects of hostilities – as far as possible,

- remove cultural property from vicinity of military objectives
- avoid locating military objectives near cultural property

Art 9 – obligations in occupied territory, to prohibit and prevent:

- illicit exports, removal or transfer of ownership of cultural property
- archaeological excavations (unless required to safeguard the property)
- change to cultural property aimed at hiding or destroying cultural, historical or scientific evidence

Enhanced Protection

Art 10 – criteria for qualification for enhanced protection

- must be of greatest importance for humanity
- protected by domestic legal and administrative measures that recognize the exceptional cultural and historic value and ensure highest level of protection
- not used for military purposes and a declaration made to that effect

Art 24 – Committee for the Protection of Cultural property in the Event of Armed Conflict – places qualifying properties on a special List.

Art 12 – obligation not to attack properties with enhanced protection; nor to use them or their immediate surroundings in support of military action

Art 13(1)(b) – loss of status where property has by its use become a military objective; property may be attacked subject to conditions set out in Art 13(2).

Criminal Responsibility and Jurisdiction

Art 15: serious violations to be made criminal offences under national law

- making CP under EP object of attack
- using CP under EP or its immediate surroundings in support of military action
- extensive destruction or appropriation of CP
- making protected CP the object of attack
- theft, pillage or misappropriation or vandalism of protected CP

IX. METHODS AND MEANS OF COMBAT

Sassòli, Bouvier and Quintin, Ch.9

Henckaerts and Doswald-Beck, Ch.20

UK Ministry of Defence, Ch.s 5 and 6

Kalshoven and Zegveld, 40-48, 91-96, 155-175

McCoubrey, Ch.8

Piotrowicz, 129-133

W. Frelick, "Specific Methods of Warfare", in: Wilmshurst and Breau, Ch.9

S. Haines, "Weapons, Means and Methods of Warfare", in: Wilmshurst and Breau, Ch.10

Hague Convention No.IV (1907), Arts.22-28

- **right of the belligerent to adopt means of injuring the enemy is not unlimited (Art.22)**
- **obligation to avoid causing unnecessary suffering (Art.23(e))**

GC PI

- **In any armed conflict, the right of the parties to the conflict to choose methods or means of warfare is not unlimited (Art.35(1))**
- **It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering (Art.35(2))**

The civilian population must be protected against the effects of hostilities: obligation to distinguish between civilian and military objectives: PI, Art.48

The civilian population, as well as individual civilians, shall not be the object of attack: PI, Art.51(2)

Definition of military objectives: PI, Art.52(2) – see also Art.52(3)

Civilian objectives are not to be made the object of attacks: PI, Art.52(1)

Nuclear Weapons

See the articles cited in Sassòli, Bouvier and Quintin, Ch.9. III. 2. g)

Kalshoven and Zegveld, 169-172

Piotrowicz, 152-158

Piotrowicz, "The World Court judges nuclear weapons unjudgeable", (1996) 70 *Australian Law Journal* 659-962

Legality of the Threat or Use by a State of Nuclear Weapons in Armed Conflict (Advisory Opinion) (Nuclear Weapons Advisory Opinion), (1996) 35 *ILM* 814, paras 74-97

Para.97: "...in view of the present state of international law viewed as a whole...the Court is led to observe that it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake."

Anti-personnel Landmines

See the articles cited in Sassòli, Bouvier and Quintin, Ch.9. III. 2. c) aa)

Kalshoven and Zegveld, 155-169

Piotrowicz, 140-152

Piotrowicz, "Anti-personnel mines: the world nibbles the bullet", (1996) 70 *Australian Law Journal* 693-699

Piotrowicz, "Anti-personnel landmines – the political time bomb under the superpowers' table", (1999) 73 *Australian Law Journal* 100-103

Convention on Prohibitions or Restrictions on the Use of Certain Conventional weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (Inhumane Weapons Convention) 1980

– Protocol II – Prohibitions or Restrictions on the Use of Mines, Booby Traps and other Devices (as amended, 1996)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention) 1999

Cluster Bombs

Convention on Cluster Munitions 2008

Protection of the Environment

A. Bouvier, "Protection of the environment in time of armed conflict", (1991) 73 *IRRC* 567-578

ICRC, *Protection of the Environment in Time of Armed Conflict* (1992)

Specific rules

GCIV, Arts.53, 147

PI, Arts.35-36, 51-52, 54-58

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 – applies mostly to international ACs but see Art.19

Convention on the Prohibition of Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1972, Art. 2; in force 1975. (1972) 11 *ILM* 309

Stockholm Declaration on the Human Environment 1972, Arts. 2, 5-7, 21-22, 26. (1972) 11 *ILM* 1416

Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques (ENMOD) 1977; in force 1978. (1977) 16 *ILM* 88

Security Council Resolution 687 (1991) on Kuwait. (1991) 30 *ILM* 847

Inhumane Weapons Convention 1980 (as amended 1996), Protocol II (landmines), Arts. 3, 10. (1996) 35 *ILM* 1206

Art. 3 – General restrictions on the use, of mines, booby-traps and other devices

Art. 10 – Removal of minefields, mined areas, mines, booby-traps and other devices and international cooperation

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines 1997; in force 1999, (1997) 36 *ILM* 1507

Art. 5 Destruction of anti-personnel mines in mined areas

Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996) 35 *ILM* 809, paras 35-36, 74-98

Individual Responsibility for Environmental Harm

Draft Code of Crimes Against the Peace and Security of Mankind 1996

<http://www.un.org/law/ilc/texts/dcode.htm>

Article 20(g): ‘in the case of armed conflict, using methods or means of warfare not justified by military necessity with the intent to cause widespread, long-term and severe damage to the natural environment and thereby gravely prejudice the health or survival of the population and such damage occurs’

– deemed to be an offence for which there would be individual responsibility at international law

ICC Statute

Certain war crimes for which individual responsibility exists:

Arts.8.2.a.iv, 8.2.b.ii,iv, v, ix, 8.2.b.xvii-xviii, 8.2.b.xx (international conflicts)

Art.8.2.

For the purpose of this Statute, “war crimes” means:

(a.iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(b.ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are

inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123...

X. DISPLACED PERSONS AND IHL

International Review of the Red Cross (2001) No.843, Special issue: 50th Anniversary of the Refugee Convention. *The Protection of Refugees in Armed Conflict* (available at ICRC website: www.icrc.org): in particular the articles by Brett and Lester, Contat Hickel, Forsythe, Jaquemet, Kälin and Krill
Sassòli, Bouvier and Quintin, Ch.8. III.
Henckaerts and Doswald-Beck, Ch.38
R. Piotrowicz, "Displacement and Displaced Persons", in: Wilmshurst and Breau, Ch.13
F. Boucher-Saulnier, *The Practical Guide to Humanitarian Law* (2002), 159-162, 324-331
J. Fitzpatrick, "Temporary Protection of Refugees: Elements of a Formalised Regime", (2000) 94 *AJIL* 279-306
Goldman, "Codification of International Rules on Internally Displaced Persons", (1998) *IRRC* No.324, 463-466
G. Goodwin-Gill and J. McAdam, *The Refugee in International Law* (3rd ed, 2007), Ch.1
A. Helton, *The Price of Indifference* (2002), Ch.3
Lavoyer, "Refugees and Internally Displaced Persons: International Humanitarian Law and the Role of the ICRC", (1995) *IRRC* No.305, 162-180
Lavoyer, "Guiding Principles on Internal Displacement", (1998) *IRRC* No.324, 467-480
R. Piotrowicz and C. van Eck, "Subsidiary Protection and Primary Rights", (2004) 53 *International and Comparative Law Quarterly* pp.107-138, esp. 131-136
UNHCR, *The State of the World's Refugees* (2000), 214-215 and Ch.11
H. Storey and R. Wallace, "War and Peace in Refugee Law Jurisprudence", (2001) 95 *AJIL* 349-366

Introduction: who are refugees?

Situations that cause refugees:

- Internal political circumstances
- Natural disaster
- Armed conflict – international and non-international – population movements – forced deportation and internal displacement

Aim of the lecture: to look

- (i) at the protection of those who were refugees prior to an armed conflict after it commences; and
- (ii) those who become refugees as a consequence of an armed conflict.

Definition of a refugee:

Convention Relating to the Status of Refugees 1951

Art 1A(2): a refugee is anyone who

...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...

OAU: *Convention on the Specific Aspects of Refugee Problems in Africa 1969*

Art 1 (1) – as above

Art 1(2):

The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Principle of non-refoulement

Refugees Convention, Art 33(1):

No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Geneva Conventions

As civilians, generally entitled to same basic protections as other civilians.

GCIIV, Arts 35-46 – aliens in the territory of a party to an armed conflict

GCIIV, Art 44 – refugees with nationality of enemy State not to be treated as enemy aliens if they do not have protection of any government.

GCIIV, Art 45(4) – prohibition on return to a State where the individual fears persecution for political or religious beliefs

GCIIV, Art 49 – prohibition on individual and mass deportations from occupied territories (a grave breach – see GCIIV, Art 147)

GCIIV, Art 70(2) – guarantees for those who fled to a territory subsequently occupied by their own State

PI, Art 73 – stateless persons and refugees to be treated as protected persons

GCs, common Art 3 – "persons taking no active part in hostilities"

PII, Art 17 – prohibition of forced movement of civilians

Internally Displaced Persons

– not a separate category under IHL

Guiding Principles on Internally Displaced Persons

(UN Doc. E/CN.4/1998/53/Add.2); also at Sassòli, Bouvier and Quintin, [See Document No. 56,

UN, Guiding Principles on Internal Displacement]

Definition (para 2):

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

Role of ICRC and UNHCR

European Union law

Temporary Protection

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons...

Art 2 – establishes obligation for Member States to allow aliens to stay on their territory (initially for one year):

- where there has been a mass influx of displaced persons from third countries
- who cannot return in the short term
- who have fled areas of armed conflict or endemic violence; or are at serious risk of, or have been the victims of, systematic or generalized violations of their human rights

Subsidiary Protection

Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

- in force since 20 October 2004

Persons subject to real risk of serious harm if returned to their country of origin, but who do not qualify as refugees (under Refugees Convention) are entitled to subsidiary protection.

Art 15 – defines serious harm to include “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”

Enforcement

ICTY Statute

Art 2 – power to prosecute grave breaches of GCs: para (g) – unlawful deportation or transfer of a civilian

Art 5(d) – deportation a crime against humanity

ICC Statute

Art 7(d) – deportation or forcible transfer a crime against humanity

Art 8 para.2 (a)(vii) – unlawful deportation or transfer a war crime

Art 8 para.2 X(b)(viii) – the deportation or transfer of all or parts of the population of the occupied territory within or outside the territory

XI. COLLECTIVE SECURITY OPERATIONS AND IHL

Sassòli, Bouvier and Quintin, Ch.13. VIII. 5. and the sources cited there

UK Ministry of Defence, Ch.14

Faite and Grenier (eds), *Expert Meeting on Multinational Peace Operations. Applicability of International Humanitarian Law and International Human Rights Law to UN Mandated Forces* (Report), ICRC, Geneva, 2004

M. Goulding, *Peacemonger*, London, 2002, Ch.2 (“United Nations Peace Operations”)

U. Palwankar, “Applicability of international humanitarian law to United Nations peace-keeping forces”, (1993) *International Review of the Red Cross* (no.294) 227

Shraga, “UN Peacekeeping Operations: Applicability of International Humanitarian law and Responsibility for Operations-Related Damage”, (2000) 94 *AJIL* 406

Vité, “L’applicabilité du droit international de l’occupation militaire aux activités des organisations internationales”, (2004) 86 *IRRC* (no.853) 9

Introduction

- definition of collective security operations (CSO)
- nature of the problem – how are armed forces in CSO bound by IHL?

Types of CSO

- multi-national operations without UN authority
- with UN authority
 - under national or regional command
 - under UN command

UN “peace” operations

- under UN command and control
- under national/regional command and control
- four categories
 - peace making
 - peace building
 - peace keeping
 - peace enforcement

Ius ad bellum and *Ius in bello*

- the lack of consent by a state to the intervention does not affect application of IHL – the issue is not whether IHL applies, but rather to what extent it applies to CSOs.

Application of IHL to UN forces

Secretary-General's Bulletin, 6 August 1999

Section 1 – scope – rules in the Bulletin apply to:

- UN forces “in situations of armed conflict”
- actively engaged as combatants
- to extent and for duration of the engagement
- in enforcement actions
- peacekeeping operations where force permitted in self-defence

Section 5 – protection of the civilian population

Section 6 – means and methods of combat

Section 7 – treatment of civilians and persons hors de combat

Section 8 – treatment of detained persons

Section 9 – protection of the wounded, the sick and medical and relief personnel

Convention on the Safety of United Nations and Associated Personnel 1994

Application of IHL to CSOs under UN mandate but not UN command

- these are not UN forces; they are national forces and subject to IHL

Application of IHL to CSOs operating without UN mandate

- subject to IHL

Distinction between international armed conflicts and non-international armed conflicts

- *Prosecutor v Tadic* (Jurisdiction) (1996) 35 *International Legal Materials* 32 [See Case No. 211, *The Prosecutor v. Tadic* [Part A.]]
 - “common” law of armed conflicts (paras 126-7)
 - Protection of civilians from hostilities, especially indiscriminate attacks
 - Protection of civilian objects, especially cultural property
 - Protection of those no longer taking an active part in hostilities
 - Prohibition of certain means of warfare
 - Prohibition of certain methods of conducting hostilities
- Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*

Distinction between armed conflict and occupation

- relevance of Hague Convention IV respecting the laws and customs of war on land and GCIV, especially Arts 13-26, 27-34, 47-78
- state practice

Obligations under human rights law

- *Legality of the threat or use of nuclear weapons*, Advisory Opinion, 8 July 1996, paras 24-5 [See **Case No. 62**, ICJ, Nuclear Weapons Advisory Opinion]
- *Legal consequences of the construction of a wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para 109 [See **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory]
- *Bankovic v Belgium and 16 Other Contracting States*, European Court of Human Rights, 12 December 2001, Application no.52207/99 [See **Case No. 227**, ECHR, Bankovic and Others v. Belgium and 16 Other States]

XII. CRIMINAL REPRESSION OF BREACHES OF IHL

Nuremberg tribunal

Individual responsibility under the Geneva Conventions

ICTY

ICTR

ICC

The establishment of individual criminal responsibility and its evolution in the context of armed conflict

Werle – extensive discussion of the whole subject

Sassöli, Bouvier and Quintin, Ch.13, section X

Henckaerts and Doswald-Beck, Chs 43 and 44

C.Garraway, “War Crimes”, in: Wilshurst and Breau (eds), Ch.15

UK Ministry of Defence, Ch.16

Cassese, esp. Chs.3-5, 18-19

Kalshoven and Zegveld, Ch.6

Piotrowicz, “Crime and punishment, or the establishment of a true international court of justice”, (1998) 72 *Australian Law Journal* 844-850

Piotrowicz and Kaye, Ch.9

Schwarzenberger, Chs.38-44

C.Staker, “Defence of Superior Orders Revisited”, (2005) 79 *Australian Law Journal* 431-447

Wagner, “The development of the grave breaches regime and of individual criminal responsibility by the International Criminal Tribunal for the former Yugoslavia”, (2003) 85 *IRRC* 351-383

Nürnberg Charter 1945

- established international military tribunal to try and punish persons, acting for the European Axis countries, for three types of offence – on the basis that there was individual responsibility for these offences.

Art.6

- (a) *Crimes Against Peace*: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.
- (b) *War Crimes*: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.
- (c) *Crimes Against Humanity*: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal whether or not in violation of the domestic law of the country where perpetrated.

Art.8

The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment.

These provisions were adopted by the International Law Commission in *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*:

1950 Yearbook of the ICL, vol.II

<http://www.un.org/law/ilc/texts/nurnberg.htm>

1. Convention on the Prevention and the Punishment of the Crime of Genocide 1948

78 *United Nations Treaty Series* 277

Article VI: Persons committing genocide or any of the other acts enumerated in Article III (conspiracy to commit, direct and public incitement to commit, attempt to commit, complicity in) shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Art.II – genocide includes:

- killing members of the group
- causing serious bodily or mental harm to members of the group
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- imposing measures intended to prevent births within the group
- forcibly transferring children of the group to another group

2. Geneva Conventions of 12 August 1949

- established notion of grave breaches of international humanitarian law for which there is individual responsibility and duty of States to punish – States have criminal jurisdiction:

GCI, Art.49: obligation to ensure effective penal sanctions for grave breaches

GCI, Art.50: grave breaches include: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

3. Eichmann Case

1961 vol.36 *International Law Reports* 5

4. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984

(1984) 23 *ILM* 1027; (1985) 14 *ILM* 535

Art.1(1): torture can be physical or mental; must be intentionally inflicted; pain or suffering must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Art.4(1): acts of torture must be made criminal offence under national laws.

Art.5(2): universal jurisdiction – States must prosecute or extradite alleged offenders present on their territory.

5. International Criminal Tribunal for the Former Yugoslavia

Statute of the Tribunal (Annex to Report of Secretary General of UN): (1993) 32 *ILM* 1192 [See **Case No. 210**, UN, Statute of the ICTY]

- based on Security Council Resolution 808 (1993)

(i) Report of UN Secretary-General: (1993) 32 *ILM* 163

Paras 6-7, 9: refers to 'grave breaches' of Geneva Conventions: wilful killing, ethnic cleansing, mass killings, torture, rape, pillage, destruction of civilian property, arbitrary arrests.

Paras 33-39: says Geneva Conventions constitute rules of International Humanitarian Law and provide core of customary law applicable 'in international armed conflicts' (para.37).

(ii) Annex

Art.2: power to prosecute for ordering or committing grave breaches of Geneva Conventions (see Art.2 (a-h))

Art.3: power to prosecute war crimes

Art.4: power to prosecute genocide

Art.5: power to prosecute crimes against humanity

Art.7(1): individual responsibility for crimes mentioned in Arts.2-5

Art.7(3): responsibility of superiors

Art.7(4): superior orders not a defence – possible mitigation

7. Draft Code of Crimes Against the Peace and Security of Mankind 1996

1996 *Yearbook of the ILC*, vol.II(2)

<http://www.un.org/law/ilc/texts/dcodefra.htm>

- latest of several such drafts, it anticipates the establishment of the International Criminal Court

Art.2: individual responsibility for crime of aggression (Art.16); crime of genocide (Art.17); crimes against humanity (Art.18); war crimes (Art.20).

Art.3: individuals committing such crimes are liable to punishment.

Art.5: no defence of superior orders, but may mitigate.

Art.7: official position of accused (eg, as Head of State) does not relieve him/her of criminal responsibility.

8. Tadic Case (Tadic IT-94-1)

[See **Case No. 211**, *The Prosecutor v. Tadic* [Part A.]]

(1996) 35 *ILM* 32

(1997) 36 *ILM* 908

<http://www.un.org/icty/tadic/trialc2/judgement/tad-sj970714e.pdf>

<http://www.un.org/icty/tadic/trialc2/judgement/tad-tsj70507JT2-e.pdf>

9. International Criminal Tribunal for Rwanda

[See **Case No. 230**, UN, Statute of the ICTR]

10. International Criminal Court

[See **Case No. 23**, *The International Criminal Court*]

<http://www.un.org/law/icc/index.html>

In force since 2002. The UK is a party.

Principal features

Jurisdiction:

- limited to classic international crimes:

Genocide (Art 6)

Crimes against humanity (Art 7) – the acts concerned must be committed “as part of a widespread or systematic attack directed against any civilian population”

War crimes (Art 8)

Aggression (Art 5)

Note **Art 8.2(b)(viii)**: makes **ethnic cleansing** a war crime – ‘The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.’

– *Individual responsibility*

Art.25(2): 'A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.'

Art.25(3): acts which give rise to responsibility

- doing the crime
- ordering the crime to be committed
- aiding and abetting, including supplying the means to do the goods
- any contribution to commission of a crime by a group of persons with a common purpose

Art.27: no immunity for Heads of State or Government

Art.28: responsibility of commanders

commanders also responsible where those under their authority commit crime and they knew, or should have known, about it.

Art.31(d): exclusion of criminal responsibility

- if crime was committed under duress of a threat of imminent death or serious bodily harm against the accused or another person
- and the accused acted reasonably so as to avoid this threat
- then responsibility is excluded so long as the person 'does not intend to cause a greater harm than the one sought to be avoided'.

– *Superior orders*

Art.33: committing a crime under order *does not* relieve the accused of responsibility, *unless*:

- (i) the accused was obliged to obey the order (the order came from a superior); *and* (ii) the accused did not know the order was unlawful *and* (iii) the order was not manifestly unlawful.

Orders to commit genocide or crimes against humanity are always manifestly unlawful.

Recognition under International Criminal Law of the Special Risks Faced by Women and Children

ICC Statute

Art.6 – genocide – same definition as above

Art.7 – *Crimes Against Humanity*

Acts must be part of a "widespread or systematic attack directed against any civilian population, with knowledge of the attack"

- various offences could apply to women and children, such as torture, but specific offences include:

Art.7.1(g): rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity

Art.7.2(c): ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership and includes the exercise of such power in the course of trafficking in persons, in particular women and children

Art.7.2(f): ‘Forced pregnancy’ means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law...

Art.8 – *War Crimes*

International armed conflicts - includes

- grave breaches of the Geneva Conventions, including:
- Art.8.2(a)(ii) – torture or inhuman treatment, including biological experiments
- Art.8.2(a)(iii) – willfully causing great suffering, or serious injury to body or health

Art.8.2(b)(xxii) – committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions

Art.8.2(b)(xxvi) – conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities

Non-international armed conflicts – includes

- Art 8.2(c)(i)-(ii) – violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment (these are violations of common Art 3 of the GCs)
- Art.8.2(e)(vi) – committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of common Art 3GCs
- Art.8.2(e)(vii) – conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities

Case law of international tribunals on the crime of rape

Prosecutor v Akayesu

Case No ICTR-96-4-T, Judgment of 2 September 1998 [See Case No. 234, ICTR, *The Prosecutor v.*

Jean-Paul Akayesu]

Prosecutor v Furundžija

Case No. IT-95-17/1-T, Judgment of 10 December 1998

See especially paras 165-189

Rape can be prosecuted as a crime against humanity – *Akayesu*, paras 685-697

Rape can be a crime against humanity, a grave breach of the Geneva Conventions, a war crime or an act of genocide – *Furundžija*, para 172

XIII. IMPLEMENTATION OF IHL

Sassòli, Bouvier and Quintin, Ch.13

Henckaerts and Doswald-Beck, Chs 40-41

D. Turns, "Implementation and Compliance", in Wilmshurst and Breau (eds), Ch.14

UK Ministry of Defence, Ch.16, esp. pp411-423

R. Wolfrum, "Enforcement of International Humanitarian Law", in D. Fleck (ed), *The Handbook of Humanitarian Law in Armed Conflicts* (1999), Ch.12

What is IMPLEMENTATION of IHL?

- distinction between enforcement (including reprisals and criminal prosecutions) and implementation

Ways of Implementation

- Dissemination (armed forces, police, in universities and civil society)
- Translation
- Transformation into domestic law
- Legislation for application
- Training of personnel
- Practical measures

GC common Article 1

"The High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances"

See also PI, Art.1

Nicaragua case (Nicaragua v USA) (Merits) (1986), para 220 [See Case No. 153, ICJ, Nicaragua v. United States]:

"... there is an obligation on the United States Government, in the terms of Article 1 of the Geneva Conventions, to "respect" the Conventions and even "to ensure respect" for them "in all circumstances", since such an obligation does not derive only from the Conventions themselves, but from the general principles of humanitarian law to which the Conventions merely give specific expression. The United States is thus under an obligation not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of ... the Geneva Conventions."

Role of ICRC Advisory Services

- Implementation
- Assistance in implementation
- Repression of war crimes
- Support to national committees
- Comments on draft laws

Who can implement IHL?

- Government
- National Red Cross societies
- Human rights bodies
- NGOs
- International Fact-Finding Commission (PI Art.90)
- International tribunals

Measures to be taken in peacetime

- Dissemination (GCI Art.47, GCII Art.48, GCIII Art.127, GCIV Art.144, PI Art.83)
- Translation (GCI Art.48, GCII Art.49, GCIII Art.128, GCIV Art.145, PI Art.84)
- Training of qualified personnel (PI Art.6, 82 (legal advisers in armed forces), 83)

Protecting Powers

- Safeguard interests of Parties by checking and scrutinising application of GCs (GCI-III, Art.8, GCIV, Art.9)
- Lend good offices to help settle disagreements between Parties (GCI-III, Art.11, GCIV, Art.12)
- Visit prisoners of war and civilian internees (GCI-II Art,126, GCIV Art.143)

Role of ICRC

- Humanitarian activities for protection of wounded and sick, medical personnel and chaplains, *with the consent of the parties to the conflict* (GCI-III Art.9, GCIV, Art.10)
- Humanitarian assistance to prisoners of war (GC III Art 125, 126)
- Humanitarian assistance to civilian population of countries in conflict (GCIV, Art.142, 143)
- *De facto* Protecting Power

Implementation in NIACs

GC Art.3

“...The Parties to the conflict should ...endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.”

ICRC may “offer its services to the Parties to the conflict”.

PII, Art.19

“This Protocol shall be disseminated as widely as possible.”

Non-Legal factors that might contribute to respect for IHL

- Military interest
- Public opinion
- Ethical and religious considerations

CONCLUSION

“He knew that the essence of war is violence, and that moderation in war is imbecility.”
(Macaulay, 1831)

Who is closer to reality – Macaulay or Dunant? And who is closer to the truth?

After all that:

- **What are the legal arguments for and against the bombing of Hiroshima and Nagasaki?**
- **The destruction of Warsaw and Dresden? Can one distinguish between the two on the grounds that Dresden was located in the aggressor state?**
- **Can a combatant lawfully shoot a civilian? Can a civilian lawfully shoot a combatant?**
- **Was Saddam Hussein a prisoner of war?**
- **Can you ever lawfully get children to serve in the armed forces?**

XIV. IHL AND HUMAN RIGHTS LAW

Sassòli, Bouvier and Quintin, Ch.14

Doswald-Beck and Vite, “International Humanitarian Law and Human Rights Law”, (1993) *IRRC* No.293, 94-119

Eide, Rosas and Meron, “Combating Lawlessness in Gray Zones Through Minimum Humanitarian Standards”, (1995) 89 *AJIL* 215-223

Green, *Essays on the Modern Law of War* (2nd ed, 1999), Ch. XII

Heintze, “On the relationship between human rights law protection and international humanitarian law”, (2004) 86 *International Review of the Red Cross* 789-814

R. Kolb, “The Relationship between International Humanitarian Law and Human Rights Law: A Brief History of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions”, (1998) *International Review of the Red Cross* 409-419

T. Meron, “The Humanization of Humanitarian Law”, (2000) 94 *AJIL* 239-278

Moir, Ch.5

Provost, *International Human Rights and Humanitarian Law* (2002)

Declaration of Minimum Humanitarian Standards (Turku Declaration) 1990, in: Sassòli, Bouvier and Quintin [See **Document No. 55**, UN, Minimum Humanitarian Standards [Part A.]]

Statement by the President of the ICRC Dr Jakob Kellenberger, to the 59th Annual Session of the UN Commission on Human Rights, 18 March 2003

<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5KTBKK?OpenDocument>

Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities: Minimum Humanitarian Standards, Sassòli, Bouvier and Quintin [See

Document No. 55, UN, Minimum Humanitarian Standards [Part B.]]

The protection of human rights during armed conflicts is not the monopoly of IHL.

What happens to human rights law (HRL) during armed conflicts? The relationship between IHL and HRL is complex but may be divided into three principal areas:

- (i) fields of application
- (ii) types of right protected
- (iii) implementation mechanisms

Fields of application

IHL – during armed conflicts and (to some extent) periods of occupation

HRL – always, *including* during armed conflicts

IHL – applies to specific categories of protected person

HRL – applies to all people under the jurisdiction of the state

IHL – does not allow derogations

HRL – derogations from some rights permitted in certain emergency situations (eg, during armed conflicts)

Rights protected

IHL – protects all types of right: civil and political, economic, social and cultural, group rights – in so far as they are threatened by armed conflict

HRL – applies all the time (not just during armed conflicts) but has different regimes for different types of rights

Implementation

IHL – enforcement after the event – through international criminal law and ‘enforcement’ before and during armed conflict through dissemination of IHL, especially amongst protagonists to the conflict

HRL – treaties aim to establish human rights standards – breaches generally addressed through compensation to individuals affected; (sometimes) amendment to domestic laws

Bankovic and Others v Belgium and 16 other Contracting States [See Case No. 227, ECHR, Bankovic and Others v. Belgium and 16 Other States]

2002 European Court of Human Rights

Application no. 52207/99

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion), 9 July 2004 [See Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory]

<http://www.icj-cij.org/icjwww/idocket/imwp/imwppframe.htm>

esp. paras 102-113; 123-137

Teaching Tool XXVII

International Humanitarian Law

Developed by Professor Marco SASSÒLI, Geneva Academy of International Humanitarian Law and Human Rights (Switzerland), for a Master Programme in IHL

I. Course Programme

Lesson 1

- Mutual introduction: every student introduces himself or herself and indicates a distinction he or she expects to be relevant (e.g. between wounded and able-bodied combatants) and a distinction irrelevant under IHL (e.g. between missile and artillery attacks).
- Presentation of the course and the subject;
- Discussion of the learning and the evaluation method suggested;
- Introduction by the Professor :
 - Concept and purpose of International Humanitarian Law (IHL);

(Read Chapters 1 and 2 in Sassòli/Bouvier/Quintin, to review Lesson 1 and prepare for Lesson 2).

Lesson 2

- Introduction by the Professor (questions by students are strongly encouraged):
 - Situations in which IHL applies: international and non-international armed conflicts;
 - IHL at the vanishing point of international law;
 - Fundamental distinction between *jus ad bellum* (legality of the use of force) and *jus in bello* (humanitarian rules to be respected);
 - Personal, temporal, geographical scope of application of IHL and relations it governs.

(Read introductory texts in Chapters 3 – 5, in Sassòli/Bouvier/Quintin, to prepare for Lesson 3)

Lesson 3

- Introduction by the Professor (questions by students are strongly encouraged):
 - Historical development of IHL;
 - Sources of contemporary IHL;
 - The fundamental distinction between civilians and combatants.

(Read introductory texts in Chapter 6, in Sassòli/Bouvier/Quintin, and read and discuss the Case Studies dealt with in Lessons 4 and 5)

Lesson 4

- Discussion of a Case Study: **Case No. 261**, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base.

Lesson 5

- Discussion of **Case No. 261** (Guantanamo), continued
- Discussion of **Case No. 263**, United States, Hamdan v. Rumsfeld;
- Discussion of **Case No. 267**, United States, The Obama Administration's Internment Standards

(Read introductory texts in Chapter 7, in Sassòli/Bouvier/Quintin, to prepare for Lesson 6)

Lesson 6

Introduction by the Professor (questions by students are strongly encouraged):

- Protection of the wounded, sick and shipwrecked.

(Read and discuss the Case Study dealt with in Lesson 7)

Lesson 7

- Discussion of a Case Study: **Case No. 209**, United Kingdom, Misuse of the Emblem;
- Introduction by the Professor (questions by students are strongly encouraged):
 - Combatants and Prisoners of War.

(Read and discuss the Case Study dealt with in Lesson 8)

Lesson 8

- Introduction by the Professor (questions by students are strongly encouraged):
 - Combatants and Prisoners of War (continued);
 - Discussion of a Case Study: **Case No. 160**, Eritrea/Ethiopia, Partial Awards on POWs (N.B. Read A and paras. 143-163 of B (Repatriation issue)).

Lesson 9

- Discussion of a Case Study: **Case No. 160**, Eritrea/Ethiopia, Partial Awards on POWs, (N.B. Read A and paras. 143-163 of B (Repatriation issue)) (continued).

(Read introductory texts in Chapter 8, (from beginning to IV. Special Rules on Occupied Territories), in Sassòli/Bouvier/Quintin, to prepare for Lesson 10)

Lesson 10

- Introduction by the Professor (questions by students are strongly encouraged):
 - Civilians and refugees.

(Read introductory texts in Chapter 8 on Occupation, (from IV. To end), in Sassòli/Bouvier/Quintin, to prepare for Lesson 11)

Lesson 11

- Introduction by the Professor (questions by students are strongly encouraged):
 - Special rules on occupied territories.

(Read and discuss the Case Study dealt with in Lesson 12)

Lesson 12

- Discussion of a Case Study: **Case No. 175**, UN, Detention of Foreigners

(Read and discuss the Case Study dealt with in Lesson 13)

Lesson 13

- Discussion of a Case Study: **Case No. 123**, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory

(Read introductory texts in Chapters 9 – 11, in Sassòli/Bouvier/Quintin, and read and discuss the Case Study dealt with in Lesson 14)

Lesson 14

- Discussion of a Case Study: **Case No. 226**, Federal Republic of Yugoslavia, NATO Intervention.
- The professor answers students' questions in view of the January exam

JANUARY EXAMS

(Read Document No. 51, ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities)

Lesson 15

- Introduction by the Professor (questions by students are strongly encouraged):
 - Conduct of Hostilities.

Lesson 16

- Introduction by the Professor (questions by students are strongly encouraged):
 - Conduct of Hostilities (continued);
 - Humanitarian Assistance.

(Read Chapter 12 in Sassòli/Bouvier/Quintin, to prepare for Lesson 17)

Lesson 17

- Introduction by the Professor (questions by students are strongly encouraged):
 - The law of non-international armed conflicts.

(Read and discuss the Case Study dealt with in Lessons 18 and 19)

Lesson 18

- Discussion of a Case Study: **Case No. 211**, ICTY, The Prosecutor v. Tadic

Lesson 19

- Discussion of a Case Study: **Case No. 211**, ICTY, The Prosecutor v. Tadic (continued).

(Read introductory texts in Chapter 13, in Sassòli/Bouvier/Quintin, to prepare for Lesson 20)

Lesson 20

- Introduction by the Professor (questions by students are strongly encouraged):
 - Implementation of international humanitarian law.

(Read introductory texts in Chapter 15, in Sassòli/Bouvier/Quintin, and read and discuss the Case Study dealt with in Lesson 21)

Lesson 21

- Introduction by the Professor (questions by students are strongly encouraged):
 - Implementation of international humanitarian law (continued);
- Discussion of ICRC Report on its visits to Abu Ghraib Prison, Iraq, leaked to the media by US sources, available online at: http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.pdf

Lesson 22

- Discussion of ICRC Report on its visits to Abu Ghraib Prison, Iraq, leaked to the media by US sources, available online at: http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.pdf (continued);
- Optional supplementary discussion with the Professor on the ICRC, its activities and approach.

(Read introductory texts and quotations in Chapter 14, in Sassòli/Bouvier/Quintin, and read and discuss the Case Study dealt with in Lesson 23)

Lesson 23

- Discussion of a Case Study: **Case No. 157**, Inter-American Commission on Human Rights, Coard v. United States.

Lesson 24

- Introduction by the Professor (questions by students are strongly encouraged):
 - IHL and Human Rights.

(Read and discuss the Case Study dealt with in Lesson 25)

Lesson 25

- Discussion of a Case Study: **Case No. 290**, Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia.

(Read and discuss the Case Study dealt with in Lesson 26)

Lesson 26

- Discussion of a Case Study: **Case No. 280**, Russian Federation/Chechnya, Operation Samashki.

(Please think about general comments on IHL and the teaching method to prepare for Lesson 27)

Lesson 27

- Reserve for questions
- Evaluation of the course and of the subject

JUNE EXAMS**II. Course Evaluation****Types of Questions on the Written Exams:**

1. **"Case Study Question"**. This is a question based on one or more of the Case Studies dealt with during the course. The question will ask you to analyse one or more of the Case Studies in relation to a particular subject or theme, e.g. "Discuss the interplay between Human Rights and International Humanitarian Law based on the case *Inter-American Commission on Human Rights, Coard et al v. US*". **In answering a Case Study Question, you should deal only with IHL issues which both arise in the Case Study/ies, and fall under the subject or theme to be discussed, but you should deal with all facts of the Case Study/ies relevant for the problem.**
2. **"Hypothetical Question"**. This question will consist of a set of fictional facts that you will have to evaluate under IHL. You will also have to indicate what additional facts you would need to know to evaluate the situation under IHL and how you would judge the situation under IHL depending on those facts, e.g. "A food convoy marked with red crosses is attacked and destroyed by a party to an armed conflict." Students need to indicate that they would need to know whether the conflict is international or non-international, whether the food is destined to the military or to the civilian population and in the latter case whether the convoy is run by the ICRC or the Federation and then indicate whether the marking with red crosses and the destruction of the convoy violated IHL depending on those facts.

Teaching Tool XXVIII

Introduction au droit international humanitaire (Cours Jean Pictet)

Developed by Professor Marco SASSÒLI, Law Faculty, University of Geneva (Switzerland), for a Bachelor Module

Bibliographie

Les lectures préliminaires font respectivement référence aux ouvrages suivants :

- SASSÒLI (Marco), BOUVIER (Antoine), QUINTIN (Anne), *How Does Law Protect in War?*, Genève, CICR, 2011, vol. 1, Outline of International Humanitarian Law (ci-après : Sassòli/Bouvier/Quintin) - **lire uniquement les textes introductifs !** ; **[N.B.:** The Course Outline initially referred to the French version of the publication [Sassòli (Marco) et Bouvier (Antoine A.), *Un droit dans la guerre ?*, Genève, CICR, 2003, vol. 1, Présentation du droit international humanitaire]. However, as the updated French version has not been released yet, all references have been edited to refer to the parts of the present English version.]
- KOLB (Robert), *Ius in Bello, Le droit international des conflits armés*, Bâle/Bruxelles, Helbing & Lichtenhahn/Bruylant, 2003 (ci-après : Kolb) ;
- DEYRA (Michel), *Le droit dans la guerre*, Paris, Gualino, 2009 (ci-après : Deyra)

qui constituent les **lectures préliminaires** à chaque séance.

Rencontre No. 1

Lectures préliminaires

Aucune

Nature de la séance

Exposé par le Professeur

- Introduction
- Méthode d'enseignement et d'apprentissage
- **Chapitre 1** : Notion, objectifs et problématique du droit international humanitaire
- **Chapitre 2 (début)** : Le droit international humanitaire, branche du droit international public
 - I : Le droit international humanitaire : au point de vue du droit international
 - II (début) : Distinction fondamentale entre le *jus ad bellum* (légalité du recours à la force) et le *jus in bello* (règles humanitaires à respecter en cas de guerre)

Rencontre No. 2

Lectures préliminaires

- textes introductifs apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 93-98, 101-102, et 114-115, pour répéter la matière étudiée lors de la 1^{ère} rencontre ; et
- ceux apparaissant dans Sassòli/Bouvier/Quintin aux pp. 121-124, 128-129, 130-131, 132-136, 139-141, 144-148, 149-154 et 158-159 et extraits de Kolb, §§136-182, reproduits dans le recueil, pour préparer la 2^{ème} rencontre;
- articles de référence : 2 et 3 communs aux CG, 4CG III, 4 CG IV, §5 du préambule du PA I, 1§4 du PA I.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 2 (fin)**
 - II (fin) : Distinction fondamentale entre le *jus ad bellum* (légalité du recours à la force) et le *jus in bello* (règles humanitaires à respecter en cas de guerre)
 - III : Le droit international humanitaire : une branche du droit international régissant le comportement des États et des individus
- **Chapitre 3** : L'évolution historique du droit international humanitaire
- **Chapitre 4** : Les sources du droit international contemporain

Rencontre No. 3

Lectures préliminaires

- textes introductifs apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 163-166, 172-173, 177-179, 186 et 191-192 et extraits de Kolb, §§357-366 et 369-370, reproduits dans le recueil ;
- articles de référence : 4(A)§§1-3 et 6 CG III, 43, 44 et 48 PA I.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 5** : La distinction fondamentale entre civils et combattants
- **Chapitre 6** : Les combattants et les prisonniers de guerre

Rencontre No. 4

Lectures préliminaires

- textes introductifs apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 195, 197, 201, 202-203, 206-207, 211-225, extraits de Kolb, §§401-406 et 435-441 et de Deyra, pp. 153-158, reproduits dans le recueil ;
- articles de référence : 12, 19, 21, 24, 38 et 44 CG I, 4, 13, 16 et 27 CG IV, 8(A-B) et 75 PA I.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 7** : La protection des blessés, malades et naufragés
- **Chapitre 8 (début)** : La protection des civils
 - II : La protection des civils contre le traitement arbitraire

Rencontre No. 5

Lectures préliminaires

- textes introductifs apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 226, 231-232, 250-256, reproduits dans le recueil ;
- articles de référence : 2, 44, 45§4, 47 et 49 CG IV, 48-52, 57, 58 et 73 PA I, 43 et 55 La Haye.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 8 (fin)** : La protection des civils
 - III : Les réfugiés et les personnes déplacées en droit international humanitaire
 - IV : Les règles spéciales concernant les territoires occupés
- **Chapitre 9** : La conduite des hostilités
 - II (début) : La protection de la population civile contre les effets des hostilités

Rencontre No. 6

Lectures préliminaires

- textes introductifs et citations apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 257-269, 273-284, 291, 292-295, reproduits dans le recueil ;
- articles de référence : 23 et 59 CG IV, 35-37 et 70 PA I, 18§2 PA II.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 9** : La conduite des hostilités
 - II (fin) : La protection de la population civile contre les effets des hostilités
 - III : Les moyens et méthodes de guerre
 - IV : Le droit international humanitaire et l'assistance humanitaire

Rencontre No. 7

Lectures préliminaires

- textes introductifs et citations apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 301-302, 313-318, 323-326, reproduits dans le recueil ;
- articles de référence : Art. 3 commun aux CG, 49§3 PA I.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 10** : Le droit de la guerre sur mer
- **Chapitre 11** : Le droit de la guerre aérienne
- **Chapitre 12 (début)** : Le droit des conflits armés non internationaux
 - I : Les conflits armés internationaux et non internationaux
 - II : Comparaison entre les régimes juridiques des conflits armés internationaux et non internationaux

Rencontre No. 8

Lectures préliminaires

- textes introductifs et citations apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 343-344, 347-348, 350, 353-357, 360-361, 364, 365-366, 368-369, 372, 373, reproduits dans le recueil ;
- articles de référence : 1 et 3 communs aux CG 146 CG IV, 2(C), 5 et 6 PA I, 1 et 6(5) PII.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 12 (fin)** : Le droit des conflits armés non internationaux
 - III : Les règles substantielles de l'article 3 commun et du Protocole II
 - IV : L'applicabilité des principes généraux relatifs à la conduite des hostilités
 - V : Des analogies nécessaires avec le droit des conflits armés internationaux
 - VI : Les différents types de conflits armés non internationaux
 - VII : Qui est lié par le droit des conflits armés non internationaux
 - VIII : Les conséquences de l'existence d'un conflit armé non international sur le statut juridique des parties
- **Chapitre 13 (début)** : La mise en œuvre du droit international humanitaire
 - I : Les problèmes généraux de la mise en œuvre du droit international et les problèmes spécifiques du droit international humanitaire
 - II : Mesures à prendre en temps de paix
 - III : Le respect par les parties au conflit

- IV : Le contrôle par les Puissances protectrices et le CICR
- V : L'obligation de « faire respecter » (l'article 1 commun)
- VI : Le rôle des Sociétés nationales de la Croix-Rouge ou du Croissant-Rouge
- VII : Le rôle des organisations non-gouvernementales (ONG)

Rencontre No. 9

Lectures préliminaires

- textes introductifs et citations apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 375-376, 380-381, 386-387, 395-412, 417-421, 424-426, 428-430, 434-435, 437-442 et extraits de Deyra, pp. 207-209, reproduits dans le recueil ;
- articles de référence : 50 CG I, 51 CG II, 130 CG III, 147 CG IV, 85-87 PA I.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 13 (fin)** : La mise en œuvre du droit international humanitaire
 - VIII : L'Organisation des Nations Unies
 - IX : la responsabilité internationale de l'État en cas de violations
 - X : La responsabilité pénale de l'individu pour des infractions
 - XI : La mise en œuvre en période de conflit armé non international
 - XII : Les facteurs favorisant les violations du droit international humanitaire
 - XIII : Les facteurs non juridiques contribuant au respect du droit international humanitaire

Rencontre No. 10

Lectures préliminaires

- textes introductifs apparaissant dans Sassòli/Bouvier/Quintin, vol. I, pp. 445, 447, 449-454, 458-460, reproduits dans le recueil.

Nature de la séance

Exposé par le Professeur et réponse à des questions

- **Chapitre 14** : Le droit international humanitaire et les droits de la personne

Rencontre No. 11

Lectures préliminaires

- textes introductifs apparaissant dans Sassòli/Bouvier/Quintin, pp. 465-475, 477, reproduits dans le recueil ;
- articles de référence : 3 et 9 commun aux CG I, II, III, 126 CG III, 10 et 143 CG IV.

Nature de la séance**Exposé par le Professeur et réponse à des questions**

- **Chapitre 15** : Le Comité international de la Croix-Rouge

Rencontre No. 12**Lectures préliminaires**

- **Cas Georgie/Russie**: *Human Rights Watch, "Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia" (2009)* [See Case No. 290, Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia].

Nature de la séance

- **Interrogation des étudiant-e-s inscrits à la prestation complémentaire et discussion du cas avec tou-te-s les étudiant-e-s**
- **Début de l'étude du cas Georgie**

Rencontre No. 13**Lectures préliminaires**

Aucune

Nature de la séance

- **Interrogation des étudiant-e-s inscrits à la prestation complémentaire et discussion du cas avec tou-te-s les étudiant-e-s**
- **Fin de l'étude du cas Georgie**

Rencontre No. 14**Lectures préliminaires**

Aucune

Nature de la séance**Répétition**

Session facultative de répétition, le Professeur répond aux questions des étudiants relatives à l'ensemble de la matière.

Teaching Tool XXIX

La pratique du droit international humanitaire

Developed by Professor Marco SASSÒLI, Law Faculty, University of Geneva (Switzerland), for a Master Module

Généralités :

Le cours se fondera sur le matériel suivant :

SASSÒLI (Marco), BOUVIER (Antoine), Quintin (Anne), *How Does Law Protect in War?* Genève, CICR, 2011, vol. 1, *Outline of International Humanitarian Law*, vol. 2 et vol. 3, *Cases and Documents*, (ci-après : Sassòli/Bouvier/Quintin) [N.B.: The Course Outline initially referred to the French version of the publication [Sassòli (Marco) et Bouvier (Antoine A.), *Un droit dans la guerre ?*, Genève, CICR, 2003]. However, as the updated French version has not been released yet, all references have been edited to refer to the parts of the present English version.]. **Cet ouvrage contient également une bibliographie générale et spécifique à chacun des sujets traités.**

Ce cours repose tout entier sur l'étude de cas. Il n'y aura pas de séance *ex cathedra* au cours de laquelle le Professeur exposera la matière d'un point de vue théorique, **hormis le cas des trois premières séances qui seront consacrées à l'introduction à la matière, destinés aux étudiant-e-s qui n'ont pas encore eu de cours de droit international humanitaire et qui ne veulent pas acquérir la matière par des seules lecture. Ces trois premières séances ne doivent pas être suivies par les étudiants ayant suivi le cours Jean Pictet, donné au Bachelor** [See Teaching Tool XXVIII, Introduction au droit international humanitaire, par Marco Sassòli]. **La quatrième séance est consacrée à un exercice de qualification de conflits contemporains par les étudiant-e-s et elle est également facultative.**

En ce qui concerne l'aspect théorique de la matière tout au long du semestre, les étudiant-e-s sont invité-e-s

- à lire les textes introductifs figurant dans le Sassòli/Bouvier/Quintin vol. 1,
- ou à étudier les livres suivants :
 - KOLB (Robert), *Ius in Bello, Le droit international des conflits armés*, Bâle/ Bruxelles, Helbing & Lichtenhahn/Bruylant, 2^e éd., 2008 ;
 - DEYRA (Michel), *Le droit dans la guerre*, Paris, Gualino, 2009.

Quatre des séances (Nos 5, 7, 8 et 10) seront consacrées à l'étude d'un cas également présenté sous forme de plaidoiries par trois étudiant-e-s différents. En outre, dans le cadre de deux journées durant lesquelles l'Université sera présentée à des Collégiens, l'opportunité sera offerte à **quatre autres étudiants volontaires de plaider une affaire relative à Guantanamo.**

Tous les cas peuvent également faire l'objet de la rédaction de **papiers**. Les cas constituent en outre la matière de l'**examen oral de fin de semestre**.

PROGRAMME DU COURS

Séance No. 1

Lectures et préparations requises

Aucune

Nature de la séance

Exposé par le professeur

- Introduction
- Méthode d'enseignement et d'apprentissage
- Modalités relatives à l'examen final, aux papiers et aux plaidoiries
- Début du cours facultatif d'introduction au droit international humanitaire (DIH)

Séance No. 2

Lectures et préparations requises

Aucune (ou lectures personnelles du Sassòli/Bouvier/Quintin comme indiqué dans « généralités » si l'étudiant-e n'est pas présent au cours d'introduction)

Nature de la séance

Exposé facultatif par le professeur et réponse à des questions

Suite du cours d'introduction au DIH

Séance No. 3

Lectures et préparations requises

Aucune (ou lectures personnelles du Sassòli/Bouvier/Quintin comme indiqué dans « généralités » si l'étudiant-e n'est pas présent au cours d'introduction)

Nature de la séance

Exposé facultatif par le professeur et réponse à des questions

Suite du cours d'introduction au DIH

Séance No. 4

Lectures et préparations requises

- Préparer l'exercice de qualification des conflits [See Teaching Tool XXXI, Exercise on Conflict Qualification] :
 - Pour chaque conflit, identifier si le DIH s'applique ;

- Si oui : le droit des conflits armés internationaux ou le droit des conflits armés non internationaux ?
- Pour préparer les réponses, les étudiant-e-s sont invité-e-s à lire les pp. 121-133 et 323-326 du Sassòli/Bouvier/Quintin.

Nature de la séance

Séance facultative de réponses à des questions par le professeur

Exercice de **qualification des conflits**. Lors de cet exercice, le Professeur interrogera les étudiant-e-s à tour de rôle sur leurs réponses. La participation à cette séance est **facultative et son contenu ne fera pas l'objet de l'examen final**. Il n'existe pas de réponse fautive, mais le silence n'est pas toléré. Toute réponse permet une discussion des enjeux. Vu que la qualification de la situation est le premier pas indispensable pour tout traitement d'un cas en droit international humanitaire, la participation à cet exercice est fortement recommandée et elle facilitera le traitement de tous les autres cas.

Séance No. 5

Lectures et préparations requises

- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- Case No. 263, United States, Hamdan v. Rumsfeld
- Case No. 266, United States, Habeas Corpus for Guantanamo Detainees [Partie II]

Pour les trois cas :

- Lire les textes constitutifs de ces cas ;
- Essayer de répondre à toutes les questions qui y sont relatives.

Nature de la séance

- **Plaidoiries 1**
 1. 1^{er} étudiant – Plaider l'illégalité de la détention à Guantánamo.
 2. 2^{ème} étudiant – Plaider la légalité de la détention à Guantánamo.
- **Discussion**
- **Questions pouvant faire l'objet de papiers:**
 1. La qualification en DIH des situations dans lesquelles les personnes détenues à Guantánamo ont été arrêtées.
 2. Le statut des Talibans détenus à Guantánamo : combattants, civils ou combattants illégaux et la conséquence de ce statut sur le traitement des personnes.
 3. Le statut des membres d'Al Qaida détenus à Guantánamo : combattants, civils ou combattants illégaux et la conséquence de ce statut sur le traitement des personnes.

Séance No. 6

Lectures et préparations requises

- Case No. 209, United Kingdom, Misuse of the Emblem
- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- Case No. 263, United States, Hamdan v. Rumsfeld
- Case No. 266, United States, Habeas Corpus for Guantanamo Detainees [Partie II]

Pour ces cas :

- Lire les textes constitutifs du cas ;
- Essayer de répondre à toutes les questions qui y sont relatives.

Nature de la séance

- **Discussion**
- **Questions pouvant faire l'objet de papiers :**
 1. Les garanties de procédure des personnes détenues à Guantánamo, selon le DIH et selon la Cour suprême des Etats-Unis.
 2. La position de l'administration Obama quant à la base juridique permettant de détenir des individus à Guantánamo.
 3. Les limites à l'usage de l'emblème en temps de paix et en temps de conflit armé mises en évidence par le Cas 209.

Séance No. 7

Lectures et préparations requises

- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory
 - Lire ce cas
 - Essayer de répondre à toutes les questions qui y sont relatives.

Nature de la séance

- **Plaidoiries 2**
 1. 1^{er} étudiant – Expliquer juridiquement pourquoi les articles (DIH) mentionnés au §106 ont été violés.
 2. 2^{ème} étudiant – Expliquer juridiquement pourquoi, et dans quelle mesure, les réquisitions et destructions de propriétés privées violent-elles le DIH.
 3. 3^{ème} étudiant – Quelles sont les faiblesses présentées par l'avis de la Cour ?
- **Discussion**
- **Questions pouvant faire l'objet de papiers :**
 1. L'applicabilité du DIH de l'occupation militaire aux territoires palestiniens sur lesquels Israël construit le mur/clôture de séparation.
 2. Quelles dispositions du DIH sont violées par la construction du mur/clôture de séparation ? Les justifications d'Israël de cette construction sont-elles pertinentes ?

3. Les relations entre DIH et droits humains dans un territoire occupé à l'exemple de la construction du mur/clôture de séparation.

Séance No. 8

Lectures et préparations requises

- **Case No. 226**, Federal Republic of Yugoslavia, NATO Intervention
 - Lire ce cas ;
 - Essayer de répondre à toutes les questions qui y sont relatives.

Nature de la séance

- **Plaidoiries 3**
 1. 1^{er} étudiant – Critiquez, en droit, les conclusions du Rapport, et arguez en faveur de l'ouverture d'une enquête pénale.
 2. 2^{ème} étudiant – Sur la base des faits de cette affaire, expliquez juridiquement en quoi les pays membres de l'OTAN ont-ils violé le DIH par l'attaque de la radio-télévision serbe (1) et du pont (2).
 3. 3^{ème} étudiant – Le Procureur décide finalement de lancer les poursuites. Vous êtes l'avocat du pilote de l'avion ayant bombardé la radio-télévision serbe (1) et le pont (2). Expliquez juridiquement, en droit international pénal, qu'il n'y a pas eu de crimes de guerre.
- **Discussion**
- **Questions pouvant faire l'objet de papiers :**
 1. La notion d'objectif militaire dans le Cas No. 226.
 2. La proportionnalité dans l'attaque dans le Cas No. 226.
 3. Les mesures de précaution à prendre par l'attaquant dans le Cas No. 226.

Séance No. 9

Lectures et préparations requises

- **Case No. 192**, Inter-American Commission on Human Rights, *Tablada*
- **Case No. 157**, Inter-American Commission on Human Rights, *Coard v. United States*

Pour ces deux cas :

- Lire ces cas ;
- Essayer de répondre à toutes les questions qui y sont relatives

Nature de la séance

- **Discussion**
- **Questions pouvant faire l'objet de papiers :**
 1. Sur quelle base la Commission interaméricaine des droits de l'homme pouvait-elle appliquer le DIH dans l'affaire *Tablada*?
 2. Pourquoi le DIH s'appliquait-il à l'attaque de la base de la *Tablada*, pourquoi n'interdisait-il pas de tuer les proches de requérants, et de quelles protections du DIH ces proches bénéficiaient-ils néanmoins?

3. Pourquoi la détention des requérants dans l'affaire Coard violait-elle le DIH et la Déclaration américaine des droits de l'homme?

Séance No. 10

Lectures et préparations requises

- **Case No. 211, ICTY, The Prosecutor v. Tadic**
 - Lire les textes constitutifs de ce cas ;
 - Essayer de répondre à toutes les questions qui y sont relatives.

Nature de la séance

- **Plaidoiries 4** : Vous faites partie de l'équipe de la Défense :
 1. 1^{er} étudiant – Critiquez le jugement du TPIY quant à l'établissement du tribunal.
 2. 2^{ème} étudiant – Critiquez le jugement quant à la qualification du conflit et du statut des personnes.
 3. 3^{ème} étudiant – Critiquez le jugement quant à la méthode d'établissement des règles coutumières par le tribunal et quant à l'incrimination en droit international coutumier des actes de Tadic.
- **Discussion**
- **Questions pouvant faire l'objet de papiers :**
 1. La légalité de l'établissement du TPIY et de la poursuite de Tadic devant ce Tribunal.
 2. Le caractère international ou non international des conflits armés en ex-Yougoslavie selon l'affaire Tadic et Bosnie-Herzégovine c. Serbie-Monténégro.
 3. Le DIH coutumier et le droit international pénal coutumier des conflits armés non internationaux selon l'affaire Tadic.

Séance No. 11

Lectures et préparations requises

- Rapport du CICR sur ses visites à la prison d'Abu Ghraib, Irak, divulgué dans les medias par des sources américaines, disponible (en anglais) sur : http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.pdf
 - Lire et discuter le document.

Nature de la séance

- **Discussion**
- **Questions pouvant faire l'objet de papiers :**
 1. La qualification juridique des personnes détenues à Abu Graïb selon le CICR ; dans quelle mesure est-elle prise en considération pour le traitement exigé à leur égard ?
 2. De quelle manière le CICR établit-il des violations du DIH ?
 3. Quelles sont les méthodes de travail du CICR afin d'obtenir le respect des droits eu égard au traitement des détenus ? Leurs fondements et leurs limites.

4. La confidentialité des rapports du CICR : avantages, inconvénients et limites.

Séance No. 12

Lectures et préparations requises

- Cas No. 241, Switzerland, The Niyonteze Case
 - Lire ce cas ;
 - Essayer de répondre à toutes les questions qui y sont relatives.

Nature de la séance

- **Discussion**
- **Questions pouvant faire l'objet de papiers :**
 1. L'importance de la notion de personne protégée pour la poursuite de crimes de guerre et son application dans l'affaire Tadic.
 2. Pourquoi un tribunal militaire suisse était-il compétent, en DIH et en droit suisse, pour poursuivre M. Niyonteze?
 3. Pourquoi l'art. 3 commun et le Protocole II s'adressaient-ils à M. Niyonteze?

Séance No. 13

Lectures et préparations requises

- Cas No. 280, Russian Federation, Chechnya, Operation Samashki
 - Lire ce cas ;
 - Essayez de répondre à toutes les questions qui y sont relatives.

Nature de la séance

- **Discussion**
- **Questions pouvant faire l'objet de papiers :**
 1. L'applicabilité du DIH à l'opération Samachki et les raisons du non respect du DIH lors de cette opération.
 2. Commentez les faits relatés dans le chapitre 3 du Rapport du point de vue du DIH : Quels évènements constituent clairement des violations? Sur quels évènements auriez-vous besoin de quelles informations supplémentaires pour juger? Quels évènements ne constituaient pas des violations du DIH?
 3. Commentez les décès relatés dans le chapitre 9.2.2. du Rapport du point de vue du DIH : quels décès constituent clairement des violations? Sur quels décès auriez-vous besoin de quelles informations supplémentaires pour juger? Quels décès ne constituaient pas des violations du DIH?

Séance No. 14

Lectures et préparations requises

Préparer des questions à poser au Professeur.

Nature de la séance**Répétition**

Session facultative de répétition, le Professeur répond aux questions des étudiant-e-s

INDICATIONS BIBLIOGRAPHIQUES

En plus de la bibliographie générale figurant aux pp. 91-92 du Sassòli/Bouvier/Quintin, vol. I, les ouvrages suivants peuvent être mentionnés :

- BUIRETTE Patricia et LAGRANGE Philippe, *Le droit international humanitaire*, La Découverte, Paris, 2008, 122 pp.
- FLECK Dieter, *The handbook of international humanitarian law*, OUP, Oxford, 2nd edition, 2008, 770 p.
- HAROUEL-BURELOUP Véronique, *Traité de droit humanitaire*, PUF, Paris, 2005, 556 p.
- KOLB Robert, *Ius in Bello*, *Le droit international des conflits armés*, 2nd édition, Bâle/Bruxelles, Helbing & Lichtenhahn/Bruylant, 2009, 565 p.
- DEYRA Michel, *Le droit dans la guerre*, Paris, Gualino, 2009, 283 p.
- DAVID Eric, *Principes de droit des conflits armés*, Bruxelles, Bruylant, 4^e édition, 2008, 1117 p.

Teaching Tool XXX

International Humanitarian Law

Developed by Professor Yuval SHANY, Hebrew University of Jerusalem (Israel)

Course description:

The course explores the normative, theoretical institutional development of international humanitarian law (IHL). After discussing the policy and philosophical justifications underlying the development of IHL, the course describes its historical growth from the traditional laws of war and surveys the principal instruments and institutions which comprise IHL. Particular attention will be given in this regard to issues such as eligibility for POW status, the norms governing the war on terror, limitations of the means and methods of warfare and the increasing merger of IHL and human rights law. The final part of the course critically examines international attempts to enforce IHL, particularly through the development of international criminal law instruments and institutions, such as the International Criminal Court.

Treaties used throughout the course:

- Hague Convention IV – Laws and Customs of War on Land 1907, 205 Consol. T.S. 277
- Geneva Convention relative to the Treatment of Prisoners of War, 1949, 75 U.N.T.S. 135, entered into force Oct. 21, 1950.
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, 75 U.N.T.S. 287
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, 1125 U.N.T.S. 3
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977, 1125 U.N.T.S. 609
- Rome Statute of the International Criminal Court, 1998, 2187 U.N.T.S

Program of Studies:

Class 1:

The Case for the Legal Regulation of Inter-State Violence

The class discusses the justifications for restricting the conduct of warring parties in order to promote humanitarian goals, and introduces the distinction between *jus ad bellum* (the law governing resort to force) and *jus in bello* (the law governing the conduct of hostilities)

Reading materials:

- Y. Dinstein, *The Conduct of Hostilities under the Law of Armed Conflict* (2004) 4-26
- M. Sassòli, A.A. Bouvier and A. Quintin, *How Does Law Protect in War?* (3rd edition, 2011), Ch. 1 & Ch. 2. II.

Class 2:**Historical Development of IHL**

The class discusses the process of development of IHL from the battle of Solferino (1859) to the conclusion of the Rome Statute (1998). The main focus of discussion would be the classic distinction between Hague law (inter-state oriented IHL) and Geneva law (human-rights oriented IHL).

Reading materials:

- T. Meron, 'The Humanization of Humanitarian Law', 94 *A.J.I.L.* (2000) 239
- Declaration Renouncing the Use, in Time of War, of Certain Explosive Projectiles, 29 November/11 December 1868
- Convention [No. IV] on the Laws and Customs of War on Land, 18 Oct. 1907
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art. 51

Class 3-4:**The General Principles of IHL governing Military Operations**

The class will discuss the principles of military necessity, proportionality, distinction and the prevention of unnecessary suffering (principle of humanity), as they had been developed in treaty law, customary law and in the case law. It will use as primary case studies Israel's targeting killing policy, on the one hand, and NATO's bombing campaign over Yugoslavia, on the other hand.

Reading Materials:

- Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia (2000), para. 1-13; 28-91 [See **Case No. 226**, Federal Republic of Yugoslavia, NATO Intervention [Part B.]]
- H.C.J. 769/02, *Public Committee against Torture v. Government of Israel*, Judgment of 13 Dec. 2006 [See **Case No. 136**, Israel, The Targeted Killings Case]
- H.C.J. 3799/02, *Adalah v. IDF Chief of Central Command*, judgment of 6 Oct. 2005

Class 5:**Regulations of Means of Warfare**

The class will discuss the application of the general principles governing methods of warfare discussed in classes 3-4 to the choice of means of warfare – that is, to the international regime governing the lawfulness of specific weapons and munitions.

Reading materials:

- *Legality of the Threat or Use of Nuclear Weapons*, 1996 I.C.J. 226, at para. 24-97 [See **Case No. 62**, ICJ, Nuclear Weapons Advisory Opinion]
- H.C.J. 8990/02, *Physicians for Human Rights v. Almog*, Judgment of 27 April 2003
- J-M. Henckaerts and L. Dosweld-Beck, *Customary International Humanitarian Law* (2005) 237-296

Class 6:

Prisoners of War and Belligerent Status

The class will discuss the centrality of the institution of POW and belligerency status in regulating the conduct of warfare and elaborate on the various conditions for conferring or denying this status in the light of recent case law in the U.S. and Israel on the matter. The class discussion will also address the right to detain and target individuals taking part in hostilities.

Reading Materials:

- Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949
- Y. Dinstein, *The Conduct of Hostilities under the Law of Armed Conflict* (2004) 27-54
- Cr A 8780/06, *Srur v. Israel*, ILDC 590
- D. Jinks, 'The Declining Significance of POW Status', 45 *Harv. Int'l L.J.* (2004) 367 (optional)

Class 7:

The Law Governing Non-International Armed Conflicts

The class will address the changing nature of the distinction between international and non-international armed conflict and discuss the norms developed to regulate the latter type of conflicts.

Reading materials:

- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
- Case IT-94-1-AR72, *Prosecutor v. Tadic*, Judgment of 2 Oct. 1995, at para. 65-145 [See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part A.]]
- Case IT-04-84-T, *Prosecutor v. Haradinaj*, Judgment of 3 April 2008, at para. 32-100 [See **Case No. 211**, ICTY, The Prosecutor v. Tadic [Part E.]]
- *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006) [See **Case No. 263**, United States, Hamdan v. Rumsfeld]

Class 8-9:**The War on Terror**

The class discusses the applicability of IHL to the war on terror, in particular, to questions of targeted killings and detention of “unprivileged” or “unlawful combatants”

Reading materials:

- Case IT-04-84-T, *Prosecutor v. Boskoski*, Judgment of 10 July 2008, at para. 175-206 [See Case No. 220, ICTY, *The Prosecutor v. Boskoski*]
- N. Melzer, *Targeted Killing in International Law* (2008) 243-298
- CrimA 6659/06, *A v. Israel*, Judgment of 11 June 2008 [See Case No. 138, Israel, *Detention of Unlawful Combatants [Part A.]*]
- D. Jinks, ‘The Applicability of the Geneva Conventions to the “Global War on Terrorism”’, 46 *Va. J. Int’l L.* (2005) 165 (optional)

Class 10-11:**The Law of Occupation**

The class will discuss the basic principles of law governing situations of belligerent occupation, focusing, in particular, on the Israeli/Palestinian and the Iraq case studies. Among the specific issues to be discussed are the conditions for applying the law of occupation, the prohibition against changing the status quo in occupied territories and the nature of the obligations of the occupier vis-à-vis the local population.

Reading materials:

- *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004 I.C.J. 136, at para. 70-162 [See Case No. 123, ICJ/Israel, *Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A.]*]
- *Armed Activities on the Territory of the Congo*, 2005 I.C.J. para. 167-180 [See Case No. 236, ICJ, *Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo*]
- H.C.J. 2056/04, *Beit Sourik Village Council v. Government of Israel*, Judgment of 30 June 2004 [See Case No. 123, ICJ/Israel, *Separation Wall/Security Fence in the Occupied Palestinian Territory [Part B.]*]
- H.C.J. 4764/04, *Physicians for Human Rights v. IDF Chief in the Gaza Strip*, ILDC 17 (IL 2004) [See Case No. 135, Israel, *The Rafah Case*]
- Adam Roberts, ‘Transformative Military Occupation: Applying the Laws of War and Human Rights’, 100 *A.J.I.L.* (2006) 580 (optional)

Class 12:**Application of Human Rights Norms in Times of Armed Conflict**

The class will discuss the theory and practice concerning the co-application of human rights law and IHL in times of armed conflict, emphasizing the centrality of ‘effective control’ as a concept governing such potential co-application and assessing the implications of co-application

Reading materials:

- *Isayeva v. Russia*, Judgment of 24 Feb. 2005 (E.C.H.R.), para. 10-42, 168-200 [See Case No. 282, ECHR, *Isayeva v. Russia*]
- *Al-Skeini v. Secretary of State for Defence*, [2007] UKHL 26
- Michael J. Dennis, 'Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation', 99 *A.J.I.L.* (2005) 119
- Orna Ben Naftali and Yuval Shany "Living in Denial: The Application of Human Rights in the Occupied Territories", 37(1) *Israel Law Review* 17-58, 70-87(2003-2004) (optional)

Class 13-14:

Enforcement of IHL

The class will discuss the problem of enforcing IHL and survey different institutions designed to improve upon the dismal record of compliance of many parties to many conflict. The class will focus, in particular, on development in the field of international criminal law – e.g., the establishment of the ICC – which may serve as effective avenue for enforcing IHL norms.

Reading materials:

- *R v. Bow Street Metropolitan Stipendiary Magistrate; Ex parte Pinoche Ugarte* [1999] 2 All E.R. 97 (H.L.)(opinions of Lord Browne-Wilkinson and Lord Millet)
- G. Triggs, 'Australia's War Crimes Trials: All Pity Choked', in T.L.H. McCormack and G.J. Simpson, eds., *The Laws of War Crimes* (1997) 123
- A. Cassese, *International Criminal Law* (2nd ed., 2008) 317-335

Class 15:

Critical Perspectives

The class will offer some concluding observations on the IHL discourse and on the degree in which it limits or legitimizes power.

Reading materials:

- David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2005) 284-323
- David Kretzmer, *The Occupation of Justice* (2002) 19-29

Teaching Tool XXXI

Exercise on the Classification of Armed Conflicts

Developed by Professor Marco SASSÒLI

Group I deals with questions 1, 2, 17, 19

Group II deals with questions 3-8

Group III deals with questions 9-13 and 18

Group IV deals with questions 14-16, 20 and 21

When a question asks which law applies, you should simply determine whether IHL applies at all and if yes whether IHL of international armed conflicts applies or IHL of non-international armed conflicts. As you are not yet necessarily familiar with IHL, the following rules of IHL may help you in your preparation:

1. *Art. 2 common to the Geneva Conventions defines international armed conflicts, to which the four Geneva Conventions apply, as armed conflicts between two or more High Contracting Parties*
2. *Belligerent occupations are governed by IHL of international armed conflicts, even if they do not encounter armed resistance.*
3. *Art. 3 common applies to armed conflicts “not of an international character occurring in the territory of one of the High Contracting Parties” and obliges in such a conflict “each Party” to comply with some minimum rules.*
4. *Under IHL of international armed conflicts it is not unlawful for members of the armed forces (=combatants) of a party to kill opposing combatants, as long as the latter are not hors de combat, and combatants may not be punished for thus having killed enemy combatants.*
5. *Under IHL of international armed conflicts, everyone who is not a combatant is a civilian (but the US claims that persons who act like combatants but are not lawful members of the armed forces of a party to the conflict are unlawful combatants who may be attacked like combatants) and civilians may only be attacked if and for such time as they directly participate in hostilities.*
6. *Under IHL of international armed conflicts a combatant who has fallen into the power of the enemy is a prisoner of war. Prisoners of war include:*
 - a. *Members of the armed forces of a party to the armed conflict, even if they profess allegiance to a government or authority not recognized by the detaining power*
 - b. *Members of militias, volunteer corps or resistance movements belonging to a party, provided the group has a responsible command, wears a fixed distinctive sign, carries arms openly and complies with IHL.*

7. *A prisoners of war may be interned without any individual procedure until the end of active hostilities, but enjoys during his or her internment the detailed protections of Geneva Convention III. A prisoner of war may only be transferred to another State if that State is willing and able to respect Convention III.*
8. *Under IHL of international armed conflicts, an enemy civilian may not be forcibly transferred out of an occupied territory*
9. *The treaty IHL of non-international armed conflicts does not contain express provisions on issues 3-8.*

A. Angola in 1985

Since its independence from Portugal in 1974, Angola was subject to a non-international armed conflict between the governmental forces of the former national liberation movement MPLA and an armed opposition group made up by the former national liberation movement UNITA. South Africa supported UNITA and South African troops carried out several raids from neighbouring Namibia into Angola. The governmental MPLA forces were supported by Cuban troops.

Question 1: What law applies to the bombardment of a UNITA position by a military aircraft of the governmental forces?

Question 2: What law applies to the bombardment of a governmental army position by a UNITA mortar attack?

Question 3: What law applies to the bombardment of a UNITA position by a Cuban military aircraft?

Question 4: What law applies to the bombardment of a governmental army position by a South African military aircraft?

Question 5: What law protects a UNITA member captured by governmental forces? May he be tried for having killed governmental soldiers?

Question 6: What law protects a government army soldier captured by UNITA forces? May he be tried for having killed UNITA fighters? What if UNITA hands him over to South Africa?

Question 7: What law protects a UNITA member captured by Cuban forces? May Cuba hand him over to the Angolan authorities (taking Art. 12 (2) of Geneva Convention III into account)?

Question 8: What law protects a government army soldier captured by South African forces? May he be tried for having killed South African soldiers? May South Africa hand him over to UNITA (taking Art. 12 (2) of Geneva Convention III into account)?

B. Afghanistan in 2001

In 2001, the Taliban controlled 90% of the Afghan territory, including the capital Kabul. Their government was however recognized as the government of Afghanistan only by Pakistan and the United Arab Emirates. Most other States recognized the Northern Alliance as the government of Afghanistan, which controlled some 10% of the Afghan territory. The Taliban and the Northern Alliance were engaged in an ongoing armed conflict against each other. On 11 September 2001, hijacked airplanes were launched by Al-Qaeda activists against the World Trade Center in New York and the Pentagon in Washington D.C. The head of Al Qaeda, Oussama Bin Laden, was in the Taliban controlled areas of Afghanistan. Despite extradition requests by the U.S. and the UN Security Council, the Taliban did not extradite Bin Laden to the US. The US therefore launched on 7 October 2001 air strikes against Afghanistan and US ground forces supporting forces of the Northern Alliance succeeded to gain control over most of the Afghan territory, including Kabul. In 2002, a traditional Tribal assembly of Afghanistan elected Mr. Karzai as the president of Afghanistan, who continued fighting against the Taliban with the support of US and NATO forces.

Question 9: Does IHL apply to the attacks of 11 September 2001? If so, is it IHL of international or of non-international armed conflicts?

Question 10: What law applies to the bombardment of a Taliban position by a US military aircraft? What if the target was an Al-Qaeda position?

Question 11: What law protects a Taliban fighter captured in November 2001 by forces of the Northern Alliance? What if the Northern Alliance hands him over to the US?

Question 12: What law protects a Taliban fighter captured in November 2001 by US forces? May the US hand him over to the Northern Alliance (taking Art. 12 (2) of Geneva Convention III into account)? May he be punished by the US for having killed US soldiers (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)?

Question 13: What law protects a Taliban fighter captured in 2003 by Canadian forces? May Canada hand him over to the Afghan government (taking Art. 12 (2) of Geneva Convention III into account)? May he be punished by Canada for having killed Canadian soldiers (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)?

Question 14: What law protects an Al Qaeda fighter captured in November 2001 by forces of the Northern Alliance? What if the Northern Alliance hands him over to the US? May he be punished by the US for having killed US soldiers (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)? For having participated in the 11 September 2001 attacks?

C. Iraq in 2003 and 2004

In 2003, the US and some allies attack Iraq and gain rapidly control over Iraq, completely defeating Iraqi governmental forces. Mainly Sunni Iraqis, joined by foreign fighters, some of them belonging to Al Qaeda, continue however fighting against the US occupation by attacks against US forces and against Iraqi civilians who are either Shiites or considered to collaborate with the US. Sometimes entire towns, such as Fallujah, fall under rebel control and US forces use air attacks and artillery to regain control over them. With US support, an Iraqi Interim government was formed. On 8 June 2004, the UN Security Council unanimously adopts Security Council Resolution 1546 (2004), which, 'looking forward to the end of the occupation and the assumption of full responsibility and authority by a fully sovereign and independent Interim Government of Iraq by 30 June 2004', explicitly welcomes that 'by 30 June 2004, the occupation will end.' After 30 June, the fighting in Iraq, between several rebel forces on the one hand, and US forces officially supporting Iraqi forces upon the request of the Iraqi government continue.

Question 15: What law protects an Iraqi resistance fighter captured on 26 June 2004 by the US? By the Iraqi interim government? Does your answer depend on whether the Iraqi resistance fighter was a terrorist? On whether he belonged to the former Iraqi government forces? On whether he complied with the laws of war? On whether he was an Iraqi or a Jordanian national? May the US hand him over to the Iraqi interim government? Deport him to Guantánamo (taking Art. 49(1) of Geneva Convention IV into account)?

Question 16: What law protects an Iraqi resistance fighter captured on 2 July 2004 by the US? By the Iraqi interim government? May the US hand him over to the Iraqi interim government? Deport him to Guantánamo (taking Art. 49(1) of Geneva Convention IV into account)?

D. Lebanon in 2006

On 12 July 2006, Hezbollah, which defines itself as an Islamic Resistance Movement of Lebanon, but also participates in the Lebanese government, captured on the border between Lebanon and Israel 2 Israeli soldiers, killed three and wounded two. Simultaneously, Hezbollah launched several rockets on Israeli forces in Israel. Israel reacted with heavy aerial bombardments of Hezbollah positions, bridges airports and infrastructure in Lebanon and later occupied parts of Southern Lebanon. Hezbollah launched hundreds of rockets on Israeli towns and villages. On 14 August 2006, following UN Security Council Resolution 1701, a cease-fire between Hezbollah and Israel entered into force.

Question 17: What law applies to the bombardment of a Hezbollah position by an Israeli military aircraft?

Question 18: What law applies to the bombardment, by an Israeli military aircraft of an important bridge on the road between Beyrouth and South Lebanon, which serves both civilians to flee and Hezbollah military supplies?

Question 19: What law applies to the bombardment, by an Israeli military aircraft of the electrical power generating station of Beyrouth?

Question 20: What law applies to the bombardment of an Israeli army position by a Hezbollah missile?

Question 21: What law applies to the bombardment of Haifa by Hezbollah missiles?

Question 22: What law protects the two Israeli soldiers captured by Hezbollah? Does this capture constitute a taking of hostages?

Question 23: What law protects a Hezbollah fighter captured by the Israel Defence Forces (IDF)? May he be tried for having killed IDF members (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)?

Question 24: What law protects a Lebanese civilian arrested by IDF in a Southern Lebanese village they occupy? May he be transferred to Israel (taking Art. 49(1) of Geneva Convention IV into account)?

E. Northern Iraq in 2008

Since more than 20 years, the Turkish army is fighting in Eastern Turkey against the Kurdish armed group PKK, which is considered as terrorist by the US, the EU and by Turkey. PKK is mainly based in Turkey, but has also bases in the Kurdish controlled areas of Northern Iraq. In February 2008, 10'000 Turkish soldiers invade Northern Iraq fighting against PKK forces. Iraq protests, but no Iraqi governmental forces intervene in the fighting. In March 2008, Turkey withdraws again from Northern Turkey.

Question 25: What law applies to the bombardment of a PKK position in Northern Iraq by a Turkish military aircraft?

Question 26: What law applies to the bombardment, by a Turkish military aircraft of an important bridge in Northern Iraq, which serves both local civilians and PKK members?

Question 27: What law protects a Turkish soldier captured in Northern Iraq by PKK? Does this capture constitute a taking of hostages?

Question 28: What law protects a PKK fighter captured in Northern Iraq by Turkish troops? May he be tried for having killed Turkish soldiers (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)? May he be transferred to Turkey (taking Art. 49(1) of Geneva Convention IV into account)? Does it matter whether he is a terrorist?

Question 29: What law protects an Iraqi Kurd arrested by Turkish forces in a Northern Iraq? May he be transferred to Turkey (taking Art. 49(1) of Geneva Convention IV into account)? Does it matter whether he is arrested for supporting PKK terrorists?

F. Gaza in 2009

The Gaza Strip came during the Arab-Israeli War of 1967 under control of the IDF. In 2005, IDF withdrew unilaterally, but Israel keeps full control over who and what may enter Gaza. In 2007, Hamas took control of the Gaza strip against the representatives of the Palestinian authority dominated by Fatah. In 2008, Israeli territory adjacent to the Gaza Strip was regularly subject to rocket attacks coming from the Gaza strip. Between 27 December 2008 and 18 January 2009, Israel launched widespread air, missile and artillery attacks against targets in the Gaza Strip and invaded part of the territory.

Question 30: What law applies to the bombardment of a Hamas position by an Israeli military aircraft?

Question 31: May a Hamas member be attacked by Israel even while he does not commit any acts of hostility against Israel?

Question 32: What law applies to the bombardment of an Israeli town by a missile launched by Hamas?

Question 33: What law protects a Hamas fighter captured by the Israel Defence Forces (IDF)? May he be tried for having killed IDF members (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)?

Question 34: What law protects a civilian arrested by IDF in the Gaza Strip?

Teaching Tool XXXII

Fictitious Case Study, War in the Gama Region

[This case study was prepared by Anne Quintin in 2009 and updated by Juliane Garcia in 2010. It was first presented at the ICRC 27th Course on International Humanitarian Law in Warsaw in July 2009.]

News 1

The Utopian Tribune

THE NATIONAL DAILY NEWSPAPER

MONDAY, 17 MAY 2010

War breaks out in the Gama region*From our special correspondent in Ruri*

Just after dawn this morning, Xenian armed forces crossed the border and entered Ruritania. At the same time, half a dozen Xenian air force jets launched an attack against the city of Ro, bombing the main military buildings. Ro is the first big town across the border, and home to a large military compound. The extent of the damages to the buildings and the number of civilian casualties are currently unknown. Ambulances and medical personnel have been dispatched to the vicinity.

Immediately after the attack, Mr Cyl Rator, Ruritania's president, announced publicly that the attack was "an act of aggression against the territorial sovereignty of Ruritania".

A history of violence

The Gama region has a long history of tension and violence.

In 1986, the kingdom of Gama, weary after a decade of civil strife, was partitioned into three newly independent countries: Xenia, Ruritania and Zanadu. While Zanadu rapidly prospered, Xenia and Ruritania remained conflicted by internal tension, chiefly because, at independence, the region of Pafny was attributed to Xenia, where most of the inhabitants are ethnic Telman. The inhabitants of Pafny, however, are Yelmandan in origin and wanted to be part of the new Ruritania, where Yelmandans constitute the majority.

Immediately after partition, tensions erupted in Xenia between the Yelmandans and the Telmans. Most important decision-making and government posts were occupied by Telmans, and the Yelmandans had scant representation in political circles.

The Yelmandans have been struggling for independence ever since, essentially through non-violent means, and the past two decades had been marred by only a few tragic demonstrations.

A few months ago, however, the Yelmandan Liberation Front (YLF), a fanatical group claiming to represent the interests of the Yelmandan community in Pafny, began planting bombs in various cities in Xenia. Groups of YLF fighters engaged in increasingly frequent skirmishes with Xenian police forces, but the YLF had recently embarked on a vast recruitment campaign, and the police soon found themselves overtaken by an armed branch of hundreds of men with de facto control of a part of the territory and under strict YLF command. The Xenian army was sent to Pafny to

break up the rebel organization and restore order.

Last week, a special edition of the *Xenian Gazette* revealed that Ruritania has ties to the rebel group, claiming not only that the YLF is secretly importing weapons and explosives from Ruritania, but also that Ruritania is supporting the YLF's political ambitions by financing operations and providing military training for YLF members. Ruritania immediately denied the allegations, but its president refused to comply with Xenia's request that the YLF members who have taken refuge in

Ruritania be extradited to Xenia for prosecution.

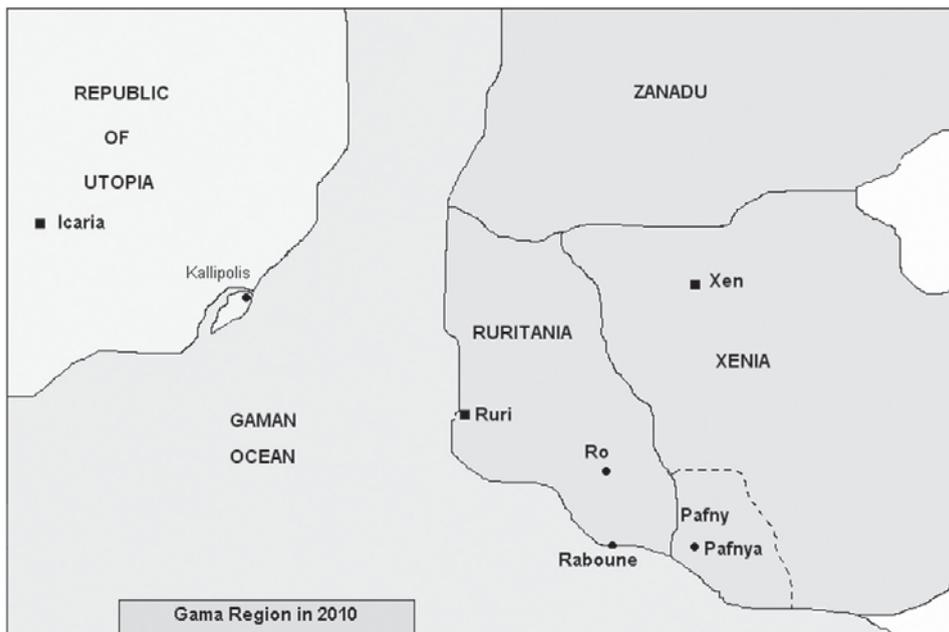
Colonel Abu Xutor, Xenia's head of State and an acknowledged dictator, issued an ultimatum ordering that Ruritania give evidence of its good faith before 17 May. The fact that President Rator did not reply is very likely at the origin of this morning's attack.

Pafny declares independence

Shortly after the attack, the YLF declared Pafny's independence from "Xenia's racist regime". Colonel Xutor immediately responded that the secession

was illegal and that Xenian armed forces, already present in Pafny, would soon restore peace and order.

In an official press release, ICRC President stressed that both Xenia and Ruritania were party to the Geneva Conventions and to the two Additional Protocols of 1977. He reminded all parties to the conflict of their obligation to comply with international humanitarian law in all circumstances, and warned that they must take immediate action to prevent civilian casualties.



News 2

The Utopian Tribune

THE NATIONAL DAILY NEWSPAPER

TUESDAY, 18 MAY 2010

Hostilities intensify in Ruritania*From our special correspondent in Ruri*

Following the surprise bombing of Ro by the Xenian air force, Xenian ground troops have quickly gained control over the city. A few units remain in the area to assert Xenian authority, but the bulk of the troops has moved on towards Ruri, Ruritania's capital.

Until this morning, the Ruritanian government was probably confident that it could win a war against Xenia. Ruritania is known for its military strength, which prevented Xenia from attacking the country for years, but it may not have the capacity to resist on two fronts – Zanadu, Xenia's longstanding ally, declared war on Ruritania at 6 a.m. this morning.

Trapped between two fronts

Ruritania swiftly deployed its air force to the western front, to prevent Zanaduan ships from reaching shore. Many of the ships have been severely damaged and very few have managed to reach shore. Shipwrecked soldiers trying to get out of the water were hit by direct fire from Ruritanian ground troops backed by local villagers throwing hand grenades at the shipwrecked.

At the same time, Ruritanian troops are finding it difficult to stem the Xenian advance and are now resorting to more extreme measures. They have managed to make incursions into Xenian territory, and a few indiscriminate Ruritanian attacks have caused significant military and civilian casualties on the Xenian side, most recently when a dam was destroyed, killing hundreds of civilians. There are also indications that Ruritania is about to deploy chemical weapons against its neighbour.

The Former Combatants Militia (FCM), which is made up of former Ruritanian soldiers who fought during the war of independence that led to the partition of the kingdom of Gama, has turned out in support of the government troops, "to defend once again [their] country against the Xenian oppressor". The FCM is directly affiliated to the Ruritanian Army, but under independent command. Its fighters do not wear uniforms but are easily identified by the green and yellow berets that formed part of their uniforms during the war of independence.

In the meantime, Xenian forces have advanced into the territory of Ruritania and are now approaching the capital, Ruri. They have been aided by the Zanaduan armed forces, which surrounded the city after landing. This morning Xenian and Zanaduan forces made a major break-through, occupying the hills overlooking the city.

"An attack against Ruri could be disastrous"

Peter Happy, the president of Utopia, stressed his concern this morning about a potential full-scale attack on Ruri.

Ruri is a major town with a large civilian population. It is home to Ruritania's main military garrison, important political and cultural buildings, a range of heavy industries (including a nuclear power station and armaments factories) and, in the surrounding countryside, the villas of military and political leaders.

Much of the town is within reach of Xenian and Zanaduan heavy artillery, which may be inaccurate at this distance. The military experts questioned by *The Utopian Tribune* say that Xenian forces also have

one unit of special forces, two highly accurate “smart” missiles and a squadron of aircraft. These can be as accurate as the smart missiles but cloud cover means that they have to

fly low at considerable risk to the pilots; otherwise they have the same accuracy as artillery. Zanadu also has some large antiquated mortars, which are highly destructive but cannot be

targeted with any accuracy. From his part, the ICRC president reminded all parties of their obligations under IHL, as parties to the Conventions and Protocol I.

Hostilities continue in Pafnya

While Ruritania encounters difficulties, the rebels of the Yelmandan Liberation Front (YLF) continue to resist the Xenian forces. Zanadu has sent an attack squadron to help fight the insurgents. This morning, Xenian and Zanaduan aircraft attacked the YLF headquarters in Pafnya, which are located at a busy commercial centre in a densely populated area. The YLF military leaders had got wind of the airstrike and fled the city over night. Only two low-ranking YLF members were killed during the attack, which resulted in dozens of civilian deaths.

CIVIL WAR IN PAFNY

The YLF, widely supported by the Pafnyan population, recently declared that it was engaged in a war of secession with Xenia and that it was willing to respect the laws of armed conflict. Colonel Xutor immediately responded by rejecting all talk of secession and reaffirming his determination to quell the insurgency.

Shooting of wounded YLF rebels

This morning, an amateur video was posted on youtube, showing a Zanaduan soldier shooting dead an unarmed, wounded YLF insurgent during the fighting in Pafnya. The video shows that the insurgent was shot

at close range while he was lying among a group of dead men. The soldier in the video, who was immediately removed from his unit, explained that a few hours earlier, other Zanaduan soldiers had been killed by a booby-trapped body they had found in a nearby house after a shootout with insurgents. “I was scared that this man was another trap, so I wanted to make sure he was dead”, said the soldier during an interview with URTN¹ News.

¹ Utopian Radio and Television Network

INTERVIEW

With Jan Tree, spokesperson of the
Gaman Human Rights Association

*The Gaman Human Rights Association (GHRA) acts for the dissemination of
and respect for human rights norms throughout the Gama region.*

The Utopian Tribune: What is the humanitarian situation in Pafnya today?

Jan Tree: It is not our organization’s role to blame the parties to the conflict, but I dare say that we will very likely face a humanitarian catastrophe if Xenia keeps on disregarding the laws of armed conflict. The past few days have been trying for

the civilian population of Pafny, especially in the city of Pafnya, which has been the object of several attacks.

UT: The GHRA recently reported on the lack of drinking water in Pafnya...

JT: Since the beginning of the conflict, Pafnya has been cut off from normal supply routes

because of the bombing, and it is now running short of essential water and food supplies. The situation was recently aggravated by the bombing of an electricity generator providing power to a small water purification plant.

UT: What are the immediate consequences of the bombing

for the civilian population of Pafnya?

JT: Very simply, the purified water coming out of the plant was used as drinking water by the surrounding villages, which are now limited to collecting rain water. However, as you know, rain water is in very short supply at this time of the year. The situation is therefore extremely worrying there.

UT: The YLF has called for external help for the inhabitants of Pafnya, to which Ruritania has responded by sending water and food to the region. However, we just learnt that yesterday afternoon, the Ruritanian convoys were attacked.

JT: Ruritania was appalled by the humanitarian situation in the Pafny region, and indeed decided to organize convoys of water and cooked rice to be transported by the voluntary members of the Ruritanian Association² to the area. They were bombed by Xenian planes just after they crossed the border. The planes bombed a bridge right when the trucks were crossing. All the drivers were killed.

UT: Was the attack lawful? Did Xenian planes directly target the humanitarian convoys?

JT: The attack provoked a strong public outcry in Ruritania and in Pafny. A Xenian official stated

shortly after the attack that the bridge was often used by the YLF to transport weapons from Ruritania to Pafny, and that the pilots thought the trucks were carrying ammunition. They had orders to shoot at suspicious convoys organized by the YLF. As the convoys were not identified by any signs, the pilots thought they belonged to the YLF and just bombed them. We know that the bridge was frequently used by the YLF to convey weapons to Pafny, so it is difficult to say whether the pilots acted in good faith or not.

² The Ruritanian Association is composed of Ruritanian nationals who are ethnic Yelmandans and are sympathetic to the YLF cause but have no implication in the rebel movement.

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The Utopian Tribune

THE NATIONAL DAILY NEWSPAPER
SATURDAY, 22 MAY 2010

Special edition **Conflict in Gama**

Xenian occupation of Ro

From our special correspondent in Ruri

Confounding all expectations, the battle for Ruri ended yesterday with Ruritania regaining control of the entire city. Xenian and Zanaduan forces were pushed back to the countryside, where they have now settled. Both sides suffered great losses.

According to an official report, Xenia has decided for now to concentrate on Ro in order to strengthen its authority there and consolidate the newly established provisional government.

Mass arrests of suspected YLF supporters

Following acts of resistance carried out in the past few days by the local population, which is largely in agreement with the YLF's cause, the occupying administration passed a new law providing that "*[i]n order to ensure the good administration of the Ruritanian territory, as well as Xenian authorities' security, persons suspected of carrying out acts of resistance, or of having ties with the YLF, may be arrested and prosecuted by a Special Military Court*".

A Xenian official explained that this measure would enable the occupying forces to arrest any person suspected of being sympathetic to the YLF cause. "However", he added, "NGOs and human rights advocates can rest easy: it is very likely that most of them will be released after interrogation if they can prove that they do not support the rebel organization. But proven supporters will be considered a threat to Xenian security and will be sent to a special court created by Colonel Xutor by presidential decree". The ICRC has requested that its delegation in Ruritania be allowed access to the detention centres as soon as they open, but Colonel Xutor has stated that he himself is guaranteeing the prisoners' welfare, and that the ICRC's services are therefore not necessary.

Simultaneously, the occupying administration decided to remove local judges from their posts. Xenian law has been declared the law of the land and replaces Ruritanian law throughout the occupied

territory. Xenian lawyers and administrators, as well as their families, have begun to settle in and around Ro in order to ensure the new law is enforced and to spread the Telman ideology.

Pillage and destruction

Many residents of Ro are trying to flee the city in order to escape from the authoritative rule of the Xenian administration and to reach non-occupied Ruritania. Some of them have managed to pass through Xenian posts in the countryside and reach Ruri. There, they have been interviewed by journalists and explained the situation in Ro. They report that Xenian soldiers have begun breaking into houses and taking private belongings.

"On Wednesday, I was home alone when three Xenian soldiers burst into my house", we were told by one inhabitant of Ro who has fled the occupied zone. "They broke down the door and one of them held a weapon to my face; the two others ran upstairs looking for something. They broke all the doors and turned

everything upside down, asking for weapons and rifles. They were shouting that I was supporting the YLF and were asking where the weapons were. I did not have any and could not give them any. They got very mad and instead took carpets and my television.” The man added, “The next day they came back and took my car, saying that they needed it for military purposes. I thought that they would come back again until there was nothing valuable left in the house so I decided to pack and leave the zone”.

Other persons have reported attacks on cultural buildings in Ro by Xenian soldiers. The Ro Art Gallery has been damaged and many famous paintings and sculptures reported missing by the museum’s manager.

At the same time, monuments dedicated to Yelmandan religion have been destroyed; a Xenian unit is also said to have

vandalized a Yelmandan temple yesterday, breaking religious items and leaving behind garbage and other waste.

Forced recruitment

NGOs are reporting that Xenia is forcibly integrating Ruritanian men in its armed forces, mostly to be sent to the Pafny region to fight the YLF. Reports say that even children and young men are being forcibly recruited. Most of them are between 15 and 18 years of age and are being forced to participate in the hostilities against the YLF, while children below 15 are reported to be used for other activities away from the combat zone, such as cooking, delivering messages and carrying ammunition.

Civilians of Telman origin placed in detention camps

According to the Gaman Human Rights Association

(GHRA), several people have been arrested by the Ruritanian authorities and placed in camps for “security reasons”.

“The Ruritanian authorities told us that people of Telman origin were all supporting Xenia and were therefore potential security threats”, reported Jan Tree, GHRA spokesperson. “Women, men and children have been gathered on the outskirts of the major Ruritanian cities. We have not had access to them yet, but they seem to be well treated and to have sufficient food and access to clear water. However, the camps are packed, so some of the men have been transferred to the local city prisons. Our greatest concern is that, according to one of our sources, these people have been forbidden to practise their Telman rituals, while only ethnic Yelmandan ministers are admitted inside the camps and teaching children.”

CRACKING DOWN ON THE YLF

As the fighting in Pafny between the YLF and Zanaduan-backed Xenian armed and police forces spreads, Colonel Xutor has announced a series of measures aimed at making it easier to fight secessionist groups. In keeping with the Prevention of Terrorism Act (see our editorial in the edition of Wednesday, 26 May), he has recalled, for example, that any civilians suspected of supporting the YLF will be arrested and prosecuted for association with a terrorist enterprise. In an arguable reaction to the YLF’s statement that it was willing to respect the law of armed conflict, Colonel Xutor said, “If they are willing

to abide by the law of armed conflict, we will do so too. But they will not be able to choose only the provisions that best suit them. For example, according to the law, all YLF members are enemies and as such, they can be shot at any time. And this is what we will do.”

Colonel Xutor then declared that Xenian police forces and Xenian and Zanaduan armed forces would be given the right to shoot any YLF member on sight, without a preliminary warning, and at any time. “This will not be limited to members of the YLF who are armed and participating in hostilities.

Any member caught either committing terrorist acts or plotting against Xenia will be treated as an active member of the terrorist organization and will be considered a legitimate target.” Anti-terrorist squads have been deployed in Pafny and ordered to use any means necessary to quash the YLF. This includes tear gas and poison gas, both of which may be lawfully used in Xenia. The GHRA, which has been very active since the beginning of the conflict, has expressed deep concern that Xenia may be using unlawful means and methods of warfare.

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The Utopian Tribune

THE NATIONAL DAILY NEWSPAPER

SUNDAY, 23 MAY 2010

Xenia uses dubious methods in Pafny

Local NGOs have denounced Xenia's use in Pafny of what they allege are unlawful methods of war, and have appealed to the international community to condemn the violations.

Xenia's Trojan horse

Xenian ground forces have been trying unsuccessfully for days to enter Pafnya, encountering stronger-than-anticipated resistance from the YLF. This morning, a YLF leader announced that the city had almost been lost because of "Xenia's outrageous use of perfidious methods". Unable to turn the tide of the battle, the Xenian armed forces allegedly requisitioned three medical

trucks marked with large red crosses that were stationed nearby and entered Pafnya, feigning to be medical personnel attached to the local Red Cross. The YLF was not long in realizing it had been duped and managed to drive the Xenian soldiers out of the city.

Abuses of women and children

A representative of the Gaman Human Rights Association (GHRA) reported yesterday that organized, premeditated sexual attacks were being used as a weapon by Xenian soldiers in Pafny. He added that the Xenian government was resisting international efforts to intervene

and suppressing evidence of the violence. "Although we repeatedly condemn such violence, it persists virtually unchallenged", the GHRA official said. "More and more women are being attacked, and ever younger children are victims of these atrocities".

Other NGOs have also claimed that Xenia is waging a campaign of genocide against Yelmandans in Pafny. When asked about this, the GHRA said that it was too early to say whether the allegations were well-founded, but that it was investigating the matter and would soon release a report with its conclusions.

UN Resolution passed

Last night, the United Nations Security Council finally came to an agreement on the terms of the resolution and the powers granted to the peacekeeping mission. Resolution 1927 (2009) states, inter alia, that:

The Security Council, Expressing its utmost concern at the continuing escalation of hostilities in the Gama region; Emphasizing the need for an immediate end of violence, based

on the complete withdrawal of Xenian armed forces from the territory of Ruritania;

Determined to act for this withdrawal to happen at the earliest;

Also determining that the situation in Gama constitutes a threat to international peace and security;

1. *Calls for* a full cessation of hostilities based upon, in particular, the immediate cessation by Xenia of all

attacks against the territory of Ruritania;

2. *Decides* to establish under its authority a United Nations Operation in Gama (UNOG);
3. Authorizes the deployment of UNOG and the use of all necessary means by UNOG in order to restore peace and security.
4. *Authorizes* UNOG to work with all parties to restore and establish national and local institutions for

representative governance, promote the protection of human rights, and encourage international efforts to promote legal and judicial reform; and

5. *Requests*, consistent with the provisions of Article 16

of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to UNOG, shall for

a 12-month period starting 4 July 2009 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise.

MASSIVE INFLUX OF REFUGEES IN UTOPIA

As a consequence of the conflict raging in Xenia and Ruritania, Utopia has been overrun for days by dozens and even hundreds of migrants seeking asylum. The migrants are arriving by sea in Kallipolis, the main port on Utopia's east coast. Most are Xenians of Yelmandan origin living in the Pafny region, which has been hard hit by the conflict. Others are Ruritanian, often of Yelmandan origin as well, escaping Xenian occupation.

Debate over immigration reopened

Utopia has the highest standard of living in the region and as a result is a magnet for migrants from Gama and the rest of the world.

As the economic crisis tightens its grip on the country, however, voices have been raised denouncing Peter Happy's lax immigration policies. The Prime Minister, desperate to maintain his high popularity with voters, has recently taken a harder line

on immigration, moving away from the ideas advocated by his party. During a speech on the question of asylum-seekers from Xenia and Ruritania, Happy declared that each case should be reviewed individually. "The Geneva Convention of 1951, to which Utopia has been a party since its inception, stipulates that to be granted refugee status, all claimants have to prove they face a real threat of persecution. We must therefore consider each claim individually. This is why we cannot accept every newcomer on the sole basis that he or she is fleeing an armed conflict, as tragic as this may be." At the moment, migrants are being received at tightly packed premises on the Kallipolis Peninsula, where they await determination of their status.

Pacifist soldiers in danger of death

Massive influxes of asylum-seekers are an unfortunate but common consequence of

armed conflicts. People coming from Xenia and Ruritania are typical examples of migrants fleeing unacceptable living conditions. However, among the mass of refugees running from the war, there are some whose cases have generated sympathy among Utopians. Yesterday's newcomers included two Xenian reserve soldiers. They had been called up but decided to desert on learning about the crimes committed by the Xenian army. In Xenia, desertion is a crime of high treason punishable by death. The soldiers decided to walk to Ruritania, then to take the first boat to Kallipolis and ask for political asylum in Utopia. Utopia's people are known for their commitment to a neutral and pacifist tradition, and they applauded the bravery of the soldiers, who refused to become accomplices to the crimes committed by their country.

SETTLEMENT OF AN IDP CAMP IN RABOUNE

From our special correspondent in Ruri

For days, the footpaths around Ro have been invaded by Yelmandan people trying to escape Xenian occupation. The laws recently voted by the Xenian army on the spot (see our article published on Saturday, 22 May 2010), and the occupying forces' aggressive behaviour towards people of Yelmandan origin, have forced numerous inhabitants of Ro to leave the city and seek refuge in a safer region.

As the presence of Xenian ground forces on the major roads to Ruri prevented them from heading to the capital, the

inhabitants of Ro chose to head for the country's southern coast instead, leaving the door open to a possible escape by boat to Utopia if needed.

Hundreds of Yelmandans have been flocking every day to the old port of Raboune, which has become a reception centre for migrants. Most cannot afford the journey to Utopia and end up staying in Raboune, where conditions are rudimentary.

They are not the only people to have settled in Raboune, however. Pafnyans who have managed to cross the border

have also rushed to the camp. The humanitarian associations that are on the scene and doing their best to meet the migrant population's essential needs are now worried because YLF members who fled Pafny have also arrived at the camp. They fear that, if the camp shelters armed rebels, it might become a target for Xenian attacks. Since the Ruritanian government is not able to meet the basic needs of the displaced population because of the ongoing war, it has called for assistance in Raboune camp from the United Nations High Commissioner for Refugees.

Three YLF members killed by a drone

Yesterday morning, three members of the rebel YLF organization were found dead in Zanadu. According to the local police, fragments of what appears to be a small radio-

controlled aircraft were found near the bodies, indicating that the rebels were killed by a drone. The three YLF members were camping in a remote region of Zanadu. According to our

sources, Xenia is the only State in the region to possess drones. At the moment, the Xenian government has refused to answer questions on the matter.

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The Utopian Tribune

THE NATIONAL DAILY NEWSPAPER

WEDNESDAY, 26 MAY 2010

Breaking news:**Zanadu announces its withdrawal from Ruritania as this edition goes to print**

The events of the past few days have sparked a huge public outcry in Zanadu. Following the revelations of the violations committed by Xenia in Ruritania and in Pafny, people have taken to the streets throughout Zanadu to protest against the State's involvement in the conflict. The population is calling for the immediate withdrawal of Zanaduan troops from Ruritania and an official explanation of the acts committed by Zanaduan soldiers. With the approaching general elections, the Zanaduan government has considered it prudent to bow to the population's will and announced its withdrawal from Ruritania. Xenia has refused to comment.

Alarming situation in Pafny*From our special correspondent in Ruri***State of emergency still in force, Colonel Xutor says**

Xenia is slowly regaining control over Pafny. The Xenian police, backed by the national army, have taken command of Pafnya and are restoring order in the city.

Colonel Xutor, in an official statement, declared yesterday that Xenian domestic law still applies in that part of the territory and that YLF members will be treated accordingly. He added that the state of emergency was still in force in spite of the armed conflict and that he had given orders to the police to implement the measures it comprises.

Prevention of Terrorism Act

When the YLF bombing campaign started in March this year, Colonel Xutor declared a state of public emergency and

derogated from the right to liberty. In the days following the declaration, the Xenian Parliament adopted the *Prevention of Terrorism Act*, intended to stem the increase in YLF violent acts. The Act provides, for example, that anyone can be held in a police station for questioning for up to 7 days before being brought before a judicial officer, if the Chief of Police considers this necessary to collect essential evidence. The Act also states that the family may be informed of the detention but that the detained person cannot make contact with anyone during this period. Finally, the Act stipulates that, if considered necessary in order to protect judges and sources of evidence, trials can be held in camera, with unidentified witnesses and hooded judges. It must be remembered that those

found guilty of terrorist acts will incur the most serious penalties, including death.

When the state of emergency was declared three months ago, NGOs reacted and reminded Xenia that it is a party to the International Covenant on Civil and Political Rights. Immediately after Colonel Xutor's statement yesterday, human rights organizations again denounced Xenia's policy, arguing that the ongoing armed conflict in the region means that the laws of war apply as well as the human rights rules that are binding upon Xenia. YLF members should be treated accordingly, and not according to Xenian domestic law.

Police raids against YLF houses

Following yesterday's statement, the police stationed in Pafnya

proceeded to arrest several YLF members. Overnight, law enforcement officials bearing firearms broke into various suspected YLF houses and forcibly arrested a dozen

people, who were then taken to a detention centre in Xenia. The Chief of Police in Pafny said that this was a law enforcement operation not to be assimilated with the armed conflict going

on in the region. The relevant measures of the *Prevention of Terrorism Act* would therefore be applied to the YLF detainees.

YLF leader killed while picnicking with family

The Xenian Ministry of Defence has just made public the killing of an alleged YLF leader yesterday afternoon. The Xenian Army is reported to have located him and shot him dead while he was picnicking in a park near Pafnya with his family. Witnesses said they saw other members of the rebel organization in the park that day. The reasons for their presence in the park are unknown at this stage.

Is torture justified to save human lives?

Pursuant to the *Prevention of Terrorism Act* – the main purpose of which is to give Xenian police forces the capacity to arrest any suspected YLF members or supporters – Colonel Xutor has declared that in a situation as extreme as the fight against terrorism, police forces are now allowed to use any method they deem necessary to save innocent lives.

This declaration is meant to be an answer – and a clear threat to the YLF – to yesterday afternoon’s suicide attacks, which killed dozens of people in the Xenian city of Xubano.

We interviewed Raoul Xorak, Minister of the Interior and Colonel Xutor’s right-hand-man, about this statement.

The Utopian Tribune: *Why did the government take this measure?*

Raoul Xorak: The government cannot allow innocent people to die just because some terrorists decide to blow themselves up on the marketplace. We are determined to take any action in our power to protect the Xenian population. As the Minister of the Interior, and above all as a human being, it was my duty to act.

UT: *The Prevention of Terrorism Act already allows police forces to arrest anyone suspected of belonging to or supporting the YLF. What is the idea behind the additional measure?*

RX: The *Prevention of Terrorism Act* enables us to arrest and detain YLF members and anyone else suspected of planning, ordering or committing terrorist acts. But the law is silent as to the methods of investigation. Don’t get me wrong: this does not mean that everything and anything is allowed. As Colonel

Xutor has said, the aim is simply to give the police every means to stop a terrorist attack before it is too late.

UT: *Doesn’t this allow interrogators to resort to more brutal methods of interrogation, even torture?*

RX: I am telling you, the objective here is to save innocent lives. Let’s imagine the following situation: you know that a bomb is about to explode somewhere within the next three hours, and you have arrested the terrorist who planted the bomb. The thing is, you do not know where the bomb is going to explode, and your mother, your sister or brother, may be one of the victims. What would you do in that situation? You’d do your utmost to prevent that bomb from exploding and killing dozens of people. Besides, the Xenian population has understood that it is all about saving lives, and they are in favour of the decision.

UNOG already facing difficulties in Ruritania

Xenian attacks on UNOG

While UNOG positions have been notified to both countries, we have recorded at least two direct attacks by Xenian forces on UNOG in the first days following the deployment of the peacekeeping mission. These attacks resulted in the deaths of four unarmed peacekeepers, and another 10 UNOG staff were wounded.

UNOG reported about artillery bombardments within 100 metres of the base, some of which hit the base directly. While Ruritania had a base about 200 metres away, a UNOG official said there was no Ruritanian firing taking place within the immediate vicinity of the base that day.

Xenia officially apologised for these attacks, which it justified by the fact that “Ruritania has been firing rockets and artillery attacks from UNOG bases

towards Xenian positions”. We indeed received information that Ruritanian troops were using the vicinity of the UNOG positions as shields for launching their rockets. Such behaviour has been condemned by the international community as it puts the United Nations forces in great danger and constitutes an obvious violation of international humanitarian law. This being said, if Ruritanian attacks were indeed launched nearby UNOG positions, none were fired from within the bases themselves. Therefore, the direct targeting by Xenia, while the country claims to possess modern precision weapons, seems difficult to justify.

UNOG detains seven following skirmishes

Owing to violence in and around Ro, UNOG units were deployed

in the occupied area. However, it seems that the Xenian forces were ordered not to leave the occupied territory, and hostilities erupted between UNOG soldiers and Xenian forces, which some local civilians joined to protest against the occupation. The incident resulted in no deaths, but the UNOG unit involved in the fight captured 5 Xenian soldiers and 2 local Ruritanians who were said to be generating tensions. A UNOG official declared that such persons would for the moment be held in one of the UNOG bases in Ruritania, until their situation is clarified. They would then either be released or kept in detention for purposes of prosecution.

News 6

The Utopian Tribune

THE NATIONAL DAILY NEWSPAPER

SATURDAY, 29 MAY 2010

The end of the war

From our special correspondent in Ruri

After Zanadu's announcement three days ago that it was withdrawing its troops from Ruritania, the face of the war has changed dramatically. Left with only one open front, Ruritania has been able to concentrate its military strength against one enemy. In just a few days, Ruritanian troops have managed to push the Xenian army back and liberate Ro from Xenian occupation. Yesterday, Ruritanian troops reached Pafny

and began to expel Xenian forces from the area. The YLF political leader, Anto Pony, took the opportunity to reassert Pafny's independence and formed a provisional government.

On Friday, the opposition took advantage of Colonel Xutor's momentary weakness following losses in the Xenian army and overthrew him and his government in a coup d'état. The opposition forces, led by Mota

Xandu, quickly seized the State Palace, Colonel Xutor's quarters and the seat of the government. A few hours later, when it became clear that Colonel Xutor's fifteen-year dictatorship was over, the opposition proclaimed itself the transitional government and announced that elections would soon be organized. At the same time, it declared that the time had come to end this deadly war and announced Xenia's surrender.

First disagreements over POW issues

Following the announcement that the war was over, Xenian newspapers, which had previously been heavily censored, began reporting on the situation in the prisoner-of-war and internment camps. A few newspapers revealed that Xenia captured hundreds of Ruritanian soldiers and YLF rebels during the conflict.

Ruritania has already asked for the immediate release of all detained soldiers. In response, Mota Xandu, Xenia's new president, has said they will be freed on condition that Ruritania provides evidence that all Xenian soldiers have also been released. He suggests that Ruritania

release 50 prisoners; once they have reached Xenian soil, Xenia will release 50 Ruritanian soldiers. The operation would be repeated until all the prisoners are free. NGOs have already denounced such an agreement, as it would take months for all the prisoners to be released.

Controversy over YLF status

Another issue concerns the YLF rebels held in detention in a Xenian internment camp. Some of them were captured during combat operations, while others were captured during raids on their homes. All of them have been taken to the Enemy

Combatant Internment Centre (ECIC), a makeshift camp set up by Xenia in the countryside. The newly established Government of Pafny has requested that all YLF members be handed over to Pafny; President Xandu has said that they should be prosecuted for the crimes they committed during the war, starting with their illegal resistance against Xenia. Anto Pony, Pafny's President, has declared that the YLF members detained by Xenia should be considered prisoners of war and treated as such. According to him, Pafny was engaged in a war of national liberation against Colonel Xutor's racist regime, and therefore their

participation in the hostilities cannot be regarded as a crime.

Ruritanian prisoners refuse to go back to their country

Zanadu, for its part, has already declared that it will release,

within the next few days and without conditions, all prisoners of war detained by its forces on its territory. This decision may come back to haunt the government, which is determined to show its readiness to respect the Geneva

Conventions, as several prisoners of war have declared that they do not want to be repatriated to Ruritania. If they are not repatriated, they will require an authorization to stay in Zanadu or to leave for Xenia or Utopia.

“Prisoners of Hell: Detainee Accounts”

The GHRA’s disturbing report on treatment of detainees

The Gaman Human Rights Association (GHRA) has published a report claiming that Xenia did not respect the laws of war regarding the conditions of detention of Ruritanian soldiers and YLF members.

The GHRA starts by denouncing the status determination process established by the Xenian commander of the ECIC, which according to the GHRA’s legal advisers does not respect the laws of war.

“We believe that the YLF members captured by Xenia during the

conflict should be treated as prisoners of war”, says one legal adviser. “But in the ECIC, status determination was made by the ECIC’s commander on visual assessment of each person and no one was determined to be a POW. Xenia has claimed until now that YLF members are unlawful combatants who therefore cannot be granted POW status. It argues that the YLF does not fulfil the conditions to be considered a militia under the Geneva Conventions: most members wear a uniform with a very recognizable black beret, but not all members

were issued berets. Therefore Xenia has concluded that the rebel group as a whole cannot be regarded as combatants”.

The new transitional government today declared that captured YLF members will be detained pending prosecution by a Xenian tribunal.

After the declaration of independence, Pafny requested that YLF members be released and handed over to the Pafnyan government, otherwise the Xenian soldiers detained by the YLF would not be released either.

DETAINEE ACCOUNTS

We reproduce here a few excerpts from the second part of the GHRA report, relating to captured Ruritanian soldiers who were sent to a camp in Zanadu. Many prisoners were transferred to Zanadu towards the end of the conflict, when it became clear that Xenia did not have the technical means to house the enormous number of soldiers it had captured.

Sergeant X¹:

“The first day, I was taken to a small room with a table and two chairs in it. They sat me down and tied me to the chair so that

I could not move. [...] Then they began asking me questions about my identity, to which I responded, but soon they turned to operational questions and asked me where my unit was supposed to attack next. I knew that I was allowed not to answer such questions: we had had training on the laws of armed conflicts and they told us what we were obliged to say in such conditions and what we were allowed not to reveal. [...] But then the soldier interrogating me started to beat me and said that he would beat me until I answered his questions.”

Prisoner X:

“My fellow soldiers and I were captured by Xenian forces on May 21 and then taken to a camp in Xenia. But we only stayed there for the night. [...] The morning after, the Xenian commander told us that we would be taken to the POW camp in Zanadu. He added that Xenia could not waste money on vehicles to transport us to Zanadu, and that we had to walk to the camp. Some of us protested and said that it was a violation of the law. The commander then

¹ The names of the detainees are not revealed.

ordered that their shoes be taken away from them. They had to walk barefoot the whole time. [...] The camp was located about a hundred kilometres away and

therefore it took us days to get there. The Xenian soldiers had cars and motorbikes so they were fine, but it was the most awful days of my life. The weather was

hot and sunny and we were only given water and food twice a day. Some of the prisoners died on the way, and the Xenian soldiers just left them there.”

UNOG soldiers mistreating Ruritanian prisoner

Immediately after the announcement on Wednesday that UNOG had captured members of the Xenian army, together with two local Ruritanians, the Gaman Human Rights Association dispatched a lawyer to the UNOG base, arguing that the captured Ruritanians had a right to legal counsel.

Yesterday, the lawyer mandated by the GHRA publicly announced that one of the Ruritanian prisoners he has visited has been subject to mistreatments by UNOG soldiers. The prisoner reported about being beaten up by UNOG personnel during his first night at the base and being deprived

of sleep. The GHRA immediately requested that the United Nations open an investigation about the prisoner’s allegations.

News 7

The Utopian Tribune

THE NATIONAL DAILY NEWSPAPER

THURSDAY, 1 JULY 2010

Establishment of a special tribunal in Xenia*From our special correspondent in Xen***A hybrid tribunal for Gama**

After the general elections in Xenia, which resulted in a landslide victory for Xandu's party, the new government of Xenia, together with the government of newly independent Pafny and the United Nations, decided to establish a hybrid tribunal to investigate and prosecute violations committed during the conflict in Gama. Those drafting the statute of the tribunal, known as the Special Court for Xenia, based it on the Rome Statute of the International Criminal Court in The Hague.

Several persons have already been arrested and are being detained in Xen State Prison until their trial. The Xenian police have officially released the names of the first defendants to be tried by the Special Tribunal.

Two categories of persons are currently being detained: Xenian nationals accused of having committed or ordered to commit war crimes, and former YLF members involved in so-called terrorist acts.

The accused

The Office of the Prosecutor is already working on a substantial number of cases. Bowing to pressure from human rights associations, the Special Court for Xenia, unlike most international tribunals, will not be limited to high-ranking criminals, but is supposed to prosecute all Xenian nationals suspected of having committed crimes falling under its jurisdiction.

The accused therefore include high-ranking Xenian army officers, such as A. Tux, who as a sergeant is said to have ordered that the Red Cross trucks be taken and used to enter Pafny, and E. Xonck, a Xenian commander at a prisoner-of-war camp at which Ruritanian prisoners were allegedly mistreated. They also include a number of regular troops who will be prosecuted on charges that they committed wrongful acts. Three Xenian soldiers who worked in the same prisoner-of-war camp have been arrested and indicted on charges that they ill-treated the prisoners

under their control. Similarly, another four Xenian soldiers who fought in the conflict against Pafny have also been arrested and charged with rape and other forms of sexual abuse.

The second category of accused is made up of former suspected YLF members who actively participated in the war. For the time being, only three members have been arrested; all are charged with crimes related to the manufacture of the explosive devices used in terrorist attacks against Xenian cities. F. Yala is accused of having manufactured the bombs and his accomplice, G. Ulym, of obtaining the explosive material they contained. The last YLF case is interesting, in that it is not proved that the accused was a member of the terrorist group. K. Nuyhe owns a chemist shop in Pafny and is only suspected of having sold the material in the bombs. The Office of the Prosecutor has had him arrested on the grounds that he can be tried merely because he knew what the explosive material would be used for.

Colonel Xutor's indictment

However, the trial that will attract everyone's attention is that of Colonel Xutor, who has yet to be arrested. The former Xenian dictator faces charges of genocide: it is reported that he intended to destroy the Yelmandan ethnic group in Pafny and ordered that the Xenian troops in Pafny leave

no Yelmandan Pafnyan alive behind. His defence team has already announced that it will deny all charges of genocide. Many scholars have made public statements about the case, which can be expected to go down in history.

The Special Court may still issue arrest warrants for certain other

members of the former Xenian Army, such as Lieutenant Ralf Xoumea, who is accused of ordering the massacre of the civilian population during the siege and attacks on Pafnya and who is said to have sought refuge in Utopia.

Exercise 1 – Scope of application of IHL

News 1

1. What is the nature of the armed conflict between Xenia and Ruritania? What is the applicable law?
2.
 - a. What is the nature of the armed conflict between Xenia and the YLF? At what point can one say that an armed conflict has broken out between Xenia and the YLF? What further elements, if any, would you need to answer this question?
 - b. Does the fact that Ruritania is allegedly providing assistance to the YLF in any way affect the nature of the conflict? What elements should be considered here?
 - c. Does the fact that Pafny declared independence have any effect on the classification of the conflict between Xenia and the YLF? Is it relevant for IHL whether a declaration of independence is successful or not? What is the applicable law in this case?

News 2

3. What are the implications, if any, of Zanadu's involvement in the armed conflict on the latter's legal classification?

Exercise 2 – Wounded and sick

News 2

1. Was the shooting of the shipwrecked soldiers legal under IHL? What provisions apply to the situation?
2. Was the throwing of hand grenades lawful under IHL? Are the rules relating to the protection of the wounded, sick and shipwrecked also binding on civilians? In an international armed conflict, in what, if any, circumstances can the civilian population take up arms to defend its territory against an invading enemy?
3. Was the shooting of the wounded YLF member justified under IHL in the light of the Xenian soldier's explanation?

News 4

4. Was the requisition of the Red Cross trucks by the Xenian ground forces lawful under IHL? What considerations might prompt you to respond differently?

Exercise 3 – Prisoners of war

News 6

1. a. Should POW status be accorded to the groups of people below? What other information might you need to assess their status?
 - ▶ N.B.: Please do not discuss issues related to “unlawful combatants”: This will be dealt with in a later session.

In the hands of Xenia:

 - ▶ Ruritanian soldiers captured during the hostilities
 - ▶ suspected YLF members captured during the hostilities
 - ▶ suspected YLF members captured during house raids
 - ▶ Former Combatants Militia (FCM) members captured during the hostilities, half of whom were not wearing green and yellow berets on capture

In the hands of the YLF:

 - ▶ Xenian soldiers captured during the hostilities
 - b. To what rights, if any, are those to whom you would accord POW status entitled? To what rights, if any, are those to whom you would not accord POW status entitled?
 - c. Do you agree with Xenia that YLF members should be prosecuted for their participation in the hostilities?
2. What do you think of the deal Mota Xandu wishes to make with Ruritania for the POWs’ repatriation? Does Xenia have the right to hold some POWs while waiting for Ruritania to release Xenian POWs?
3. News 6: “Prisoners of Hell: Detainee Accounts”
 - ▶ Do you agree with Sergeant X that POWs have the right to withhold certain information from the Detaining Powers? If so, what information are POWs obliged to transmit? What information are they allowed not to reveal?
 - ▶ What do you think of the conditions in which POWs were transferred to Zanadu, as described by Prisoner X?
 - ▶ Did Xenian soldiers violate IHL by abandoning dead POWs on the way? If so, what should they have done?

Exercise 4 – Civilians

News 3

1. After the publication of the daily news (see Xenian occupation of Ro), the NGO Gaman Human Rights Association (GHRA) wishes to issue an immediate press release.

Your group works for the GHRA's legal division, which is composed of IHL specialists.

- a. The head of the legal division has asked you to list all the events to which IHL might apply and to analyse them accordingly. This will be used for the press release.
- b. Before you can get to work, the GHRA President, who is not specialized in IHL but likes to share his views, suggests that your team take into consideration the points below. You also have to check whether these points are relevant and explain diplomatically to your boss why – or why not.
 - ▶ Does Xenia intend to annex Ro for good, or only to occupy it for the duration of the war?
 - ▶ Do the Special Military Courts established by Xenia sit in occupied territory?
 - ▶ Are the local laws being modified for reasons of military necessity or to maintain public order?
 - ▶ Does Xenia consider that Ruritanian law discriminates against the country's Telman people and thus breaches their human rights?
 - ▶ Have the cultural buildings pillaged and damaged by Xenian forces been registered on the UNESCO World Heritage List?

News 3 & 4

2. Your boss also tells you that the GHRA will be holding a press conference on the methods used by Xenia in general. You should therefore also be ready to answer questions on the detention of people of Telman origin arrested on Ruritanian territory (News 3) and on the treatment of women and children in Pafny (News 4).

Exercise 5 – Refugees, internally displaced persons and IHL

Your group is working for the Office of the United Nations High Commissioner for Refugees (UNHCR). Following the conflict in Gama, several countries from the region have contacted you with questions about refugees and IDPs.

1. The UBA (Utopian Border Agency) needs your help with several tricky asylum claims. The UBA is a Utopian public institution. One of its tasks is to determine the status of asylum-seekers entering Utopian territory and to grant or deny such status in accordance with the 1951 Refugee Convention.

You have to review the claims of the following persons and determine their status.

At the same time, the UBA has asked your opinion of the Prime Minister's declaration (see News 4) and its relevance with regard to refugee law.

► **Situation 1** (see News 4, "Massive influx of refugees in Utopia")

The first person you see is a Xenian national of Yelmandan origin who used to live in Pafny. He tells you that he decided to flee Pafny because of the armed conflict. His main reason for fleeing is not the fighting between the YLF and the Xenian armed forces, but the repeated attacks by the army and the Xenian population against Yelmandan people in general. "Even my neighbours, who are also Xenian of Yelmandan origin, were attacked a few days ago; their house was burnt as well as all their possessions, and their eldest daughter killed. The day after the attack, I decided to leave."

► **Situation 2** (see News 4, "Massive influx of refugees in Utopia")

In front of you stand the two reserve soldiers whose story was related in the press. Following crimes committed by the Xenian army in Ruritania and Pafny, the two men refused to join the army when they were called up and decided to desert.

"We are both pacifists, but we would be ready to take up arms to defend our country should it be in a just cause. But at present, Xenia is violating the law of war and committing atrocities against the civilian population. Our conscience prohibits us from taking part in that. This is why we have decided to desert."

They both face the death penalty if they are sent back to Xenia, where desertion is considered a crime of high treason.

► **Situation 3** (see News 7, "Establishment of a Special Court for Xenia")

Lieutenant Ralf Xoumea, who is wanted by the Special Court for war crimes, has managed to cross the border into Utopia. He now claims political asylum. He asserts that he has received several death threats in letters he believes may have been written by Yelmandans seeking revenge for the crimes he is accused of. He refuses to go back home, as his house is located in a region near Pafny where the majority is Yelmandan. He also denies the charges against him.

2. The Zanaduan government has also called on your help regarding the status of prisoners of war who refuse to be repatriated to Ruritania.

▶ **Situation 4** (see News 6, “First disagreements over POW issues”)

Several Ruritanian POWs, detained in Zanadu during the hostilities, have declared that they do not want to be sent back to their country on release. They fear persecution from the Ruritanian population, which believes that the prisoners should have died for their country instead of being captured. Several sick and wounded POWs who were released during the conflict suffered the wrath of their fellow citizens. Some were found dead, burnt with their houses.

Zanadu asks you whether it has the right not to send these POWs to Ruritania, even though repatriation at the end of hostilities is an obligation under IHL.

Zanadu also asks you whether these POWs are entitled to refugee status. The government, which is not used to dealing with questions related to refugee law, wonders whether refugee status is contingent on persecution by the State as opposed to persecution by other parties.

3. The Ruritanian government also appeals to you about the Raboune camp, located in the south of the country.

▶ **Situation 5** (see News 4, “Settlement of an IDP camp in Raboune”)

Ruritania would like UNHCR to take charge of the IDPs arriving in Raboune, as the government is not in a position to do so because of the war. The Ruritanian government asks you what kind of assistance you can provide to the IDPs.

▶ **Situation 6** (see News 4, “Settlement of an IDP camp in Raboune”)

The Ruritanian government is worried about information provided by local associations that fleeing YLF members have allegedly sought refuge in the Raboune camp. Since those members are believed to be armed, the government fears for the safety of other displaced persons. It asks you what the status of these YLF members is, knowing that they are Xenian nationals. It would like to deport them to Pafny, but is not sure it has the right to do so.

Exercise 6 – Conduct of Hostilities

[This exercise was developed by Mr Paul Berman, Legal Adviser at the Foreign and Commonwealth Office (United Kingdom). The authors would like to thank Mr Berman for agreeing to have his work reproduced as part of the present case study.]

News 2

It is 10.00 on Thursday May 20th 2010

Your group is Xenia's War Cabinet. You have been summoned at 11.00 to present to Colonel Xutor, the Xenian President, with your plan of operations regarding the attack on Ruri. The situation is urgent – advancing Ruritanian forces are likely to recapture the hills by midday tomorrow.

Your group is divided as follow:

- One of your group should be nominated as the Chair and spokesman
- Half of the remaining group should be appointed as the Military Chief of Staff – your principal concern is to ensure that maximum military advantage is taken from the situation while minimising the risks to your own forces
- The other half represent the Foreign Ministry – you are concerned to ensure that there is strict compliance with IHL and the need to maintain Xenia's international reputation as strict adherent to international law. Everyone is alert to the real costs of a continuing conflict.
 - ▶ Discuss whether the targets identified in the list are legitimate military targets according to IHL (you should also use the list of available weapons/ forces mentioned in News 2 "*An attack against Ruri could be disastrous*"; to discuss issues of choice of weapons).

In discussing the legitimacy of the targets, you should consider the list of concerns communicated by the Foreign Ministry in the attached Memorandum.

MILITARY INTELLIGENCE REPORT

The possible targets/operations which have been identified include:

- (A) **Military garrison.** Covers a wide area. Predominantly military personnel. Some civilian suppliers live on site.
- (B) **Nuclear power station.** Outskirts of city. Exclusively supplies military barracks and armaments factory. Defended by artillery unit.
- (C) **Military officers' club.** Located in civilian residential district. Bar also used by journalists reporting on conflict and off-duty civilian suppliers.
- (D) **Armaments factory.** Located in industrial zone. Staffed by civilians.
- (E) **Ruritania TV station.** Regularly broadcasts propaganda essential for on-going support for regime.
- (F) **Downtown shopping centre.** Used by families of senior political figures. Will help to break morale.
- (G) **Ruritania radio station.** Encourages attacks on Xenian civilians. May also send coded instructions to Ruritanian forces.
- (H) **Coal-fuelled power station.** Supplies both barracks and civilian city. Located in industrial zone.
- (I) **Military control and command centre.** Located outside town but in centre of region's only water purification, supply and pumping station.
- (J) **Headquarters of security police.** Adjacent to barracks.
- (K) **Ruri National Art Gallery.** Listed as being under enhanced protection. Military Intelligence HQ has been housed in same building.
- (L) **Ruri Cathedral.** Anti-aircraft unit has been installed in bell tower.
- (M) Bridges across river traversing city. Used by both military and civilians.
- (N) **Area Z.** Agreed demilitarized zone. Used for housing refugees from fighting. Reports that missile launcher has been located in zone.

[The stop-press should be handed out to students during the exercise, in order to underline the difficulties of quick decision-making and bring out issues of proportionality.]

STOP PRESS ! Reports suggest that the President of Ruritania, as ceremonial Commander in Chief, is meeting with Ruritania Military High Command in his country villa at 17.30. Servants and family members will also be present.

FOREIGN MINISTRY MEMORANDUM TO REPRESENTATIVES IN WAR CABINET

Your Excellencies,

I have the honour to refer to your participation in today's War Cabinet.

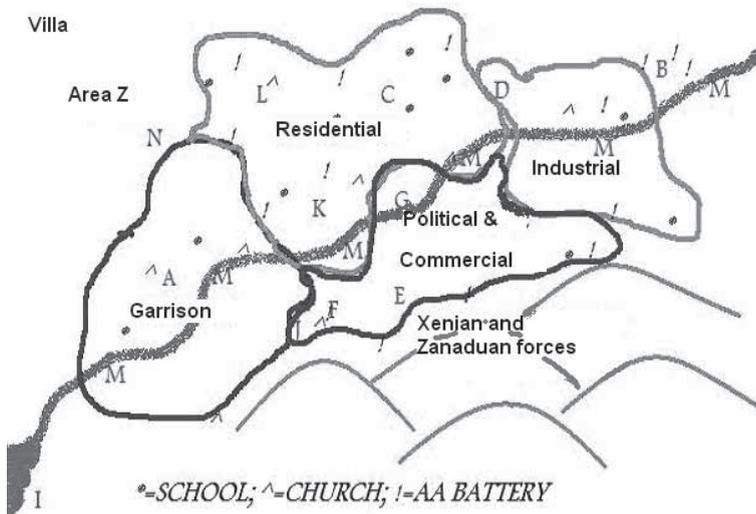
Xenia, Zanadu and Ruritania are all parties to the Geneva Conventions, the 1977 Additional Protocols, the Rome Statute and 1954 Hague Convention (including its 2nd Protocol).

In discussions in the War Cabinet it is respectfully suggested that you may wish to draw attention to the following issues:

- ▶ What are the relevant rules under international humanitarian law ?
- ▶ Are we satisfied that any strikes are solely against the military and military objectives ?
- ▶ Is any risk of harm to civilians and civilian objects proportionate ?
- ▶ Have the appropriate weapons/means of attack been selected ?
- ▶ Does the timing of attack make any difference ?
- ▶ Have any necessary precautions or warnings been provided ?
- ▶ What are the risks to Xenian forces of prosecution before the ICC ?
- ▶ In view of possible representations to the Protecting Power and at the international level, is there evidence that Ruritanian forces have committed violations of IHL in their conduct or location of military/civilian sites ?
- ▶ If so, does this affect the action that might be undertaken by our own forces ?

I have the honour to remain your obedient servant etc. etc.

Chief Legal Adviser to the Xenian Ministry of Foreign Affairs



MAP of RURI

Exercise 7 – Non-international armed conflicts (role plays)

ROLE PLAY No. 1

GROUP 1

Role: Ministry of the Interior, State of Xenia

It is the end of April 2010 (see News 1). The Xenian armed forces are fighting the YLF. The violence has escalated to the point that the situation can be qualified as a non-international armed conflict.

The ICRC delegation in Xen has asked to meet with you (Ministry of the Interior) in order to discuss the following points:

- access to the Pafny region in order to provide assistance to the civilian population there;
- access to Xenian detention facilities in order to visit members of the YLF and other persons detained in connection with the conflict;
- the use of the Red Cross emblem by Xenian forces, as reported in News 3, “Xenia’s Trojan horse”. Since the publication of the news, it has been revealed that the entire purpose of the operation was for Xenian forces to free a hostage held by the YLF and that two YLF members were killed in the course of the operation.

You agree to meet the ICRC delegation. Prepare your arguments for the meeting in accordance with your position.

Your position

- ▶ the ICRC may have access to the civilian population in Pafny but none of the food items, shelter materials or other forms of assistance are to be given to YLF members;
- ▶ the ICRC has no right to have access to Xenian detention facilities;
- ▶ the use of the emblem by the Xenian forces was unintended. You intend to apologize for any confusion this may have created in the eyes of the public. As far as you are concerned, there are no legal implications to this incident, except a confirmation that the YLF is engaging in hostage-taking, a crime under Xenian domestic law.

Your main objective is to show the public that you are working with the ICRC, but you do not want the ICRC to meddle in the prisoners’ conditions of detention.

GROUP 2

Role: ICRC

It is the end of April 2010 (See News 1). The Xenian armed forces are fighting the YLF. The violence has escalated to the point that the situation can be qualified as a non-international armed conflict.

As representatives of the ICRC delegation in Xen, you have asked for a meeting with the Ministry of the Interior of Xenia in order to discuss the following points:

- access to the Pafny region in order to provide assistance to the civilian population there;
- access to Xenian detention facilities in order to visit members of the YLF and other persons detained in connection with the conflict;
- the use of the Red Cross emblem by Xenian forces, as reported in News 3, “Xenia’s Trojan horse”. Since the publication of the news, it has been revealed that the entire purpose of the operation was for Xenian forces to free a hostage held by the YLF and that two YLF members were killed in the course of the operation.

The Ministry of the Interior has agreed to meet you. Prepare your arguments for the meeting in accordance with your position.

Your position

- ▶ You consider that the situation in Xenia is a non-international armed conflict and that you have a legal basis for gaining access to the victims.
- ▶ The humanitarian consequences of the conflict in the Pafny region are not being addressed by the Xenian government, which should therefore allow the ICRC to provide assistance to the civilian population.
- ▶ There are numerous persons detained by Xenia because of their involvement in the conflict. You wish to have the right to verify their conditions of detention and provide them with the possibility of receiving news from their families.
- ▶ You are alarmed by the use made of the emblem by Xenian forces in Pafny and wish to inform the government of the legal implications of the incident.

Your priority is to be granted access to the civilian population and detained persons.

ROLE PLAY No. 2

GROUP 3

Role: Leader of the YLF

It is the end of April 2010 (see News 1). The Xenian armed forces are fighting the YLF. The violence has escalated to the point that the situation can be qualified as a non-international armed conflict, even though Xenia denies this is the case.

The XBC (Xenian Broadcasting Corporation) has released a video in which a member of the YLF is seen mistreating a young Xenian soldier who is hors de combat. The video has shaken Xenian public opinion. Xenia has then demanded that the accused be transferred to the capital Xen for purposes of prosecution. As the leader of the YLF, you refuse to comply with this demand, arguing that the YLF is willing and able to investigate the alleged facts and act accordingly, including by imposing criminal sanctions if needed.

You have agreed to meet the Ministry of the Interior. Prepare your arguments for the meeting in accordance with your position.

Your position

- ▶ You want to be recognized as a party to the conflict and prove your willingness and capacity to respect and implement IHL.
- ▶ You are strongly opposed to the Prevention of Terrorism Act, the aim of which, in your view, is to kill and/or illegally arrest Yelmandan people, in violation of IHL (see News 3, "Cracking down on the YLF"; and News 5, "Alarming situation in Pafny"). You want the Act to be abrogated.
- ▶ You are afraid that Xenia will not respect the fundamental rights of the accused or grant him a fair trial.

GROUP 4**Role: Ministry of the Interior, State of Xenia**

It is the end of April 2010 (see News 1). The Xenian armed forces are fighting the YLF. The violence has escalated to the point that the situation can be qualified as a non-international armed conflict, even though Xenia denies this is the case.

The XBC (Xenian Broadcasting Corporation) has released a video in which a member of the YLF is seen mistreating a young Xenian soldier who is hors de combat. The video has shaken Xenian public opinion. As Xenia's Ministry of the Interior, you have demanded that the accused be transferred to the capital, Xen, for prosecution. The leader of the YLF refuses to comply with your demand, arguing that the YLF is willing and able to investigate the alleged facts and act accordingly, including by imposing criminal sanctions if needed.

You agree to meet the leader of the YLF. Prepare your arguments for the meeting in accordance with your position.

Your position

- ▶ You are being impelled by Xenian public opinion to prosecute the YLF member responsible for mistreating the soldier. Since Xenia's population is becoming more and more critical of the government's management of the conflict, you are desperate to prosecute the YLF member and satisfy public opinion.
- ▶ You consider that the YLF is a terrorist organization under the terms of the Prevention of Terrorism Act and that it does not respect IHL.
- ▶ So far, you have refused to consider that the violence has reached the threshold of an armed conflict, especially because you do not want to give legitimacy to the YLF by recognizing it as a party to the conflict.

Your main objective is to satisfy public opinion.

Exercise 8 – Implementation of IHL

[This exercise was developed by Dr. Heike Spieker, Deputy Director at the German Red Cross. The authors would like to thank Dr. Spieker for agreeing to have her work reproduced as part of the present case study.]

The war has ended, and Mota Xandu, the new Xenian President, has promised that he will take steps to ensure that IHL is correctly implemented and known to the entire population if an armed conflict ever breaks out again. To that end, he has established a commission charged with reviewing the main legal mechanisms relating to IHL.

The Commission is divided into five Working Groups, as detailed in the Overview. Each Working Group will focus on a different legal instrument and will subsequently present its conclusions to the Commission.

Working Groups – Overview

Working Group 1

Implementation of the 1954 Hague Convention on the Protection of Cultural Property and its 1999 Second Protocol

1. What are the key points for implementation?
2. What are the main problems encountered? On the national / international level?
3. What would you recommend be done to improve the situation?

Working Group 2

International Fact-Finding Commission established under P I, Art. 90

1. What are the legal characteristics of the Commission according to P I, Art. 90?
2. If the Commission were to be deployed in Xenia today, what would be its terms of reference?
3. What are the Commission's chances of success and its shortcomings, given the way in which Art. 90 is phrased and with regard to IHL?

Working Group 3

Legal advisers in armed forces

1. What are the tasks of legal advisers in the armed forces?
2. What, in practice, are their chances of success and what obstacles / challenges do they encounter?
3. Do you see any potential for improvement? What would you recommend?

Working Group 4

National committees on IHL

1. What are the mandate and composition of national committees?
2. What, in practice, are their chances of success and what obstacles / challenges do they encounter?
3. What would you recommend? To governments? To National Societies?

Working Group 5

GC I-IV, common Art. 1

1. How do you interpret the provision in Art. 1 that the High Contracting Parties "undertake to respect and to ensure respect for the present Convention in all circumstances"? What is the legal quality of this provision?
2. To whom is common Art. 1 addressed?
3. What innovative measures and instruments might be adopted?