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ARMS


Under the Convention on Cluster Munitions, the obligation to clear cluster munition remnants in the responsibility is coupled with an obligation to provide assistance for each State Party "in a position to do so." In other words, clearance of cluster munition remnants is a collective responsibility. Collective responsibility may not, however, be implemented if not accompanied by adequate supervision; which States discharge collective responsibility concretely, as well as when and how it is discharged is open to interpretation, so it can easily be evaded or ignored. This article argues that: (1) the idea of collective responsibility for the clearance of cluster munition remnants in this convention is genuinely supported by the States Parties; and (2) this convention is equipped with a supervisory mechanism for the effective implementation of this collective responsibility. Supervision under the Convention on Cluster Munitions includes Meetings of States Parties, Review Conferences, intersessional meetings, and working groups for thematic discussions. The experience since the entry into force of the convention in 2010 shows that together they function as quasi-constant fora of monitoring, exchange of views, and persuasion. These supervisory mechanisms do not enforce the collective responsibility, but motivate States Parties to implement it.

Law and ethics for autonomous weapon systems: why a ban won't work and how the laws of war can / Kenneth Anderson, Matthew C. Waxman. - In: Washington College of law research paper, No. 11, 2013, 32 p. : photogr.. - Photocopies

Public debate is heating up over the future development of autonomous weapon systems. Some concerned critics portray that future, often invoking science-fiction imagery, as a plain choice between a world in which those systems are banned outright and a world of legal void and ethical collapse on the battlefield. Yet an outright ban on autonomous weapon systems, even if it could be made effective, trades whatever risks autonomous weapon systems might pose in war for the real, if less visible, risk of failing to develop forms of automation that might make the use of force more precise and less harmful for civilians caught near it. Grounded in a more realistic assessment of technology - acknowledging what is known and what is yet unknown - as well as the interests of the many international and domestic actors involved, this paper outlines a practical alternative: the gradual evolution of codes of conduct based on traditional legal and ethical principles governing weapons and warfare.


This chapter outlines the approach taken by the International Committee of the Red Cross with respect to any new weapon introduced by the military. At its core this requires that any new weapon technology, prior to its deployment, be subject to proper legal review to assess its compatibility with IHL. Furthermore, it explores two common assumptions made about "non-lethal" weapons: first, that a class of weapons exists that truly may be characterised as "non-lethal," and second whether there is significant military utility for these "non-lethal" weapons across a wide range of military operations ranging from law enforcement through peacekeeping to counterinsurgency combat.

Weapon system selection and mass-casualty outcomes / Arpad Palfy. - In: Terrorism and political violence, Vol. 15, no. 2, Summer 2003, p. 81-95. - Photocopies

If contemporary terrorism is assumed to be increasing in lethality, and chemical, biological, radiological and nuclear (CBRN) weapons theoretically are assumed to provide interested groups with the ability to achieve a higher kill ratio per incident, why have terrorist organizations, specifically those seeking to produce large amounts of casualties, continued to predominantly employ conventional weapon systems instead of chemical and biological ones? Not negating the possibility of such occurrences, I found that missions and groups specifically seeking to produce large amounts of casualties will prefer employing conventional weapons systems, while
others predominantly focusing on inciting fear, panic and general disruption – regardless of the amount of resultant casualties, may be more tempted to use unconventional weapons.

CHILDREN


This article explores critically the relationship between international human rights standards and the practices of child imprisonment at a global level. Four key issues are afforded close attention: the separation of child and adult prisoners; the provision of ‘child appropriate regimes’; the protection of child prisoners’ rights and the operation of independent complaints and inspection mechanisms. We argue that there is manifest tension between international human rights standards and the practical realities of child imprisonment. Whilst we recognise the vital potentialities of the human rights standards – to pacify the more problematic excesses of child imprisonment – we also remain cognisant of their practical limitations and reserve a sense of scepticism in respect of the concept of ‘rights-based approaches’ to the penal detention of children. Ultimately, we challenge the legitimacy of child imprisonment and recommend its abolition.


Military commanders involved in international armed conflicts are faced daily with the dilemma of making defensible targeting decisions when they encounter under-aged child combatants. This problem is particularly acute in conflicts involving non-state-armed groups, who are notorious for forcibly abducting child soldiers to swell their ranks. Existing international law prohibits the recruitment of children under fifteen years of age into any armed forces. In some instances, international law sets the minimum age for recruitment at eighteen years of age, and there are growing calls for this standard to replace the fifteen-year age limit which has achieved customary international law status. Until such time as this eighteen-year limit has achieved customary international law status, these child soldiers are bound by the existing IHL regime, which affords combatant status (and immunity from prosecution) based on an ability to show membership of an armed force. It is argued that the requirements for full combatant status are probably beyond the reach of the average under-aged child soldier. As a result, they remain classified as civilians, albeit participating directly in hostilities without authorisation. As unlawful participants, these civilians are not only legitimate targets in hostilities (for so long as they participate or engage in the continuous combat function), but they also face the possibility of being criminally prosecuted for their actions once they are captured.

CONFLICT-VIOLENCE AND SECURITY


355/1000

Contient les sections suivantes : Definitions of war, torture, and terrorism. - National security. - Invasion. - Perspectives on torture.
355/999

355/1002

DETENTION

The Copenhagen principles, international military operations and detentions / Bruce "Ossie" Oswald. - In: Journal of international peacekeeping, Vol. 17, no. 1-2, 2013, p. 116-147. - Photocopies
The primary purpose of this article is to introduce the Copenhagen process principles and guidelines so as to better understand how they relate to detentions in military operations. The Copenhagen principles and guidelines were "welcomed" by a number of states in October 2012 and concern the taking and handling of detainees in non-international armed conflicts and peace operations.
400/140 (Br.)

This article analyzes the key-role of cultural codes in the epigenesis of military ethics. Its main argument is that when an official code of military ethics has yet to be formulated, cultural codes tend to become substitutes as guides to conduct. The more that conduct in battle complies with the cultural code, the more it can be assessed as ethical conduct. The article focuses on a case study: The conduct of Israel's military and political leadership during the Yom Kippur War (1973) when dealing with the issue of captivity in general and the reality of the war's 314 Israeli POWs in particular. Because no official Israeli code of ethical conduct to guide and regulate the Israeli leadership's handling of captivity situations has been written to date, we suggest the existence of a "Cultural Code of Captivity" (CCC), an unwritten compendium of values and myths, lying at the foundations of culture. Beyond the particular case of POWs and captivity, the research findings shed light on the general phenomenon of decision-making in situations of hijacking and kidnapping of soldiers and civilians, in wartime as well as during peace.
400.2/137 (Br.)

400/141

400/142
The legal regime governing transfer of persons in the fight against terrorism / Margaret L. Satterthwaite. - Cambridge : Cambridge University Press, 2013. - p. 589-638. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges

Crimes of terrorism are frequently committed by individuals and groups in countries other than those they target. Even when "home-grown” terrorists are responsible for violent acts, they often flee across borders to evade justice. States seeking to punish acts of terrorism therefore regularly need to obtain custody of individuals accused of committing such acts. They may do so by requesting the extradition or deportation of a suspect from a state where the individual is found. States also directly apprehend suspected terrorists in other countries and deliver them to justice before their own or third states' courts through "rendition to justice". Finally, when terrorism occurs in the context of armed conflict, states may move suspects from one state to another through wartime processes such as the transfer of prisoners of war. Because they are carried out in a wide variety of settings, a careful examination of relevant rules of international human rights and humanitarian law is needed. This chapter examines the legal norms governing such transfers and sets out a minimum standard that must be upheld in all settings. This standard is most relevant for informal transfers, since they are almost always accomplished without regard to the full set of protections due to the individual being transferred, therefore this chapter focuses mainly on the minimum rules required when states transfer individuals outside of deportation or extradition proceedings.

303.6/222


The term "terrorist" has been marked by inverted commas not to downplay the extremely serious nature of terrorist acts, but to indicate that the designation has become almost legally meaningless. It is habitually used to cover both violent attacks directed against the general population in peacetime, which are prohibited by several bodies of law, as well as the use of force against legitimate military objectives in armed conflict, which are not prohibited under international humanitarian law (even though they remain prohibited under the domestic law of the detaining state). Thus, any attempt to examine the legal framework governing the response to conduct colloquially labelled "terrorist" must take into account the context in which it took place: peacetime or armed conflict? This chapter attempts to briefly outline the rules governing the treatment of persons detained and their procedural rights based on this contextual distinction, with situation of armed conflict, i.e. international humanitarian law, serving as the starting point. As will be shown, in some cases the rules are the same regardless of the situation at hand, whereas in others they differ. The analysis focuses on (1) the rules governing treatment; and (2) procedural safeguards applicable in detention, in particular security detention.

303.6/222


Selling the pass : habeas corpus, diplomatic relations and the protection of liberty and security of persons detained abroad / Tatyana Eatwell. - In: International and comparative law quarterly, Vol. 62, part 3, July 2013, p. 727-739

On 31 October 2012 the Supreme Court of England and Wales handed down its judgment in Rahmatullah v Secretary of State for Foreign Affairs and Secretary of State for Defence. The case concerns an application for habeas corpus brought by a citizen of Pakistan originally detained by the United Kingdom in Iraq before being transferred into the custody of the United States. Rahmatullah addresses important issues concerning the extraterritorial reach of habeas corpus under English law in respect of persons held in the custody of a foreign State, as well as the international rule of law. The case may be considered a legal victory for persons detained without trial by the US in facilities thought to be beyond the reach of the courts. However, in reality any strength in the arm of the law is drained by the priority given to the conduct of foreign affairs, ‘forbidden territory’ for the courts, over the Court's ruling and the UK's obligations under
international law. The case is examined in the light of similar jurisprudence from US and Australian courts.

This article will question whether denying captured terrorist in preventive detention legal representation is justified in light of the interests at stake in the detention review process, and ultimately assert that this is no longer a defensible model. In so doing, it will consider the fundamental balance between the risks and consequences of error and the feasibility of providing such assistance implicated by the preventive detention process, and how this balance influences the ongoing conclusion that lay representation by a military office is justified by the nature of the preventive detention process. While acknowledging that wartime preventive detentions fall outside the scope of precedents like Powell and Gideon, the article will draw from underlying principles reflected in these decisions to question whether the lay representation by military officers is sufficient to effectively advance the interests implicated in this non-punitive preventive detention process. Finally, the article will consider the probable objections to providing legal representation to detainees to include the feasibility of doing so.

ECONOMY

The obligation to withhold from trading in order not to recognize and assist settlements and their economic activity in occupied territories / Tom Moerenhout. - In: Journal of international humanitarian legal studies, Vol. 3, issue 2, 2012, p. 344-385
This article argues that trade embargoes toward illegal settlements in occupied territories are an obligation under general public international law, when such trade primarily benefits the occupant. In this case, the self-executing duty of non-recognition applies. There is no need for an explicit trade embargo imposed by the United Nations Security Council. For, transferring parts of an occupant's civilian population to occupied territories, and gaining economic benefits from occupation, both violate peremptory norms of public international law. Equally, withholding trade is also permitted under the law of the World Trade Organization (WTO). This article shows that according to Article XXVI.5.(a) of the General Agreement on Tariffs and Trade (GATT), the GATT does not apply to illegal settlements. A WTO panel could reach this conclusion, either by denying jurisdiction through finding that the occupying State has no legal standing or by scrutinizing Article XXVI.5.(a) on its merits. However, if a panel would, erroneously, decide the GATT does apply to settlements; trade sanctions could still be allowed in a dispute settlement. This can be done by either accepting the relevant rules of public international law as an independent defense, or by using it in the interpretation of public moral and security exceptions under GATT Article XX and XXI.

ENVIRONMENT

This article presents both legal and strategic arguments for increasing the level of environmental protection in wartime within the legal context created by Articles 35 and 55 of Additional Protocol I. These provisions bifurcate the legal protection of the environment in armed conflict. Above the threshold, environmental damage is prohibited. Beneath the threshold, other international humanitarian law instruments and customary principles apply and may offer environmental protection, usually by balancing environmental damage against military necessity. The objective of this article is to propose legal and strategic frameworks to be addressed to military decision-makers considering environmentally harmful actions. It argues that the principle of military necessity, including strategic considerations, can be found compatible with enhanced environmental protections.

Droit international de l'environnement / Stéphane Doumbé-Billé... [et al.]. - Bruxelles : Larcier, 2013. - 226 p. ; 24 cm. - (Masters droit). - Index. - ISBN 9782804460693
Le droit international de l'environnement a connu un développement rapide à partir de la deuxième moitié du XXe siècle. Dans le cadre de ce mouvement d'expansion, des centaines de
Textes internationaux et régionaux ont vu le jour pour préserver les différents éléments de l'environnement mondial : la mer, les sols, l'atmosphère, la biodiversité, le climat, les déchets, le transport de produits dangereux, etc. Le présent ouvrage analyse ces différentes règles, leurs sources, leur contenu, leurs auteurs ainsi que les acteurs de leur mise en oeuvre. Le droit international de l'environnement est devenu indispensable pour assurer une protection réelle de l'environnement global. Pourtant, les défis qu'il doit relever sont multiples : renforcer son application, rendre opérationnels ses principes, combler ses lacunes, dégager des moyens institutionnels, juridiques, financiers. Les auteurs entendent mettre à profit leur expérience pratique du droit international de l'environnement au profit de la clarification des règles et des mécanismes.

Environmental protection in armed conflict : filling the gaps with sustainable development / Onita Das. - In: Nordic journal of international law, Vol. 82, no. 1, 2013, p. 103-128

Recent years have witnessed growing concern over the ever more increasing urgent and pervasive global environmental problems. Environmental problems and challenges in relation to armed conflict are amongst them. Such environmental pressures can cause violent or armed conflict which in turn can cause devastating damage and destruction to the environment. This article explores the possibility of utilising the overarching concept of sustainable development and its relevant substantive principles to fill the gaps of environmental protection provided by international humanitarian law. The concept of sustainable development generally refers to development or the process of improving the quality of life of the present generation without compromising the future generations. This article thus reviews the limits of the protection of the environment during armed conflict within the current legal framework and suggests setting out a new, more comprehensive set of Environmental Rules based on the "Berlin Rules" approach. It is argued that these proposed Rules, by comprehensively and clearly prescribing rights and duties in respect of the ecological impact of armed conflict including the integration of the concept of sustainable development, could not only mitigate the impact of conflict-related environmental damage on both the environment and the human population, it could further contribute to the development of international law and conflict-related environmental protection specifically.

From engines for conflict into engines for sustainable development : the potential of international law to address predatory exploitation of natural resources in situations of internal armed conflict / Daniëlla Dam-de Jong. - In: Nordic journal of international law, Vol. 82, no. 1, 2013, p. 155-177

Since the end of the Cold War, natural resources have proven an adequate replacement for external funding of armed conflicts. The prospects for parties to an armed conflict to gain ‘easy’ profits from resource exploitation encourage these parties to engage in predatory practices that are highly detrimental to environmental conservation. The environmental degradation caused by predatory resource exploitation by parties to an armed conflict also severely hampers efforts towards the post-conflict reconstruction of a State. Environmental degradation of land may spark new tensions in the fragile phase of post-conflict reconstruction. In addition, natural resources are an important engine to restart the economy of a war-torn State after the conflict has come to an end. If the resources are severely degraded or even exhausted as a consequence of their exploitation during armed conflict, it becomes even more difficult to kick-start the economy of a State emerging from conflict. This article argues that current international law is not sufficiently equipped to deal with these challenges. The existing regulatory framework is fragmented and imprecise. It is only through case specific responses under Security Council sanctions regimes that the challenges are currently addressed.

The principle of ambituity and the prohibition against excessive collateral damage to the environment during armed conflict / Erik V. Koppe. - In: Nordic journal of international law, Vol. 82, no. 1, 2013, p. 53-82

This article aims to clarify the legal basis of the protection of the environment during armed conflict in general, and of the prohibition against excessive collateral damage to the environment in particular. It is submitted that the legal basis for the conventional and customary
rules which protect the (intrinsic value of the) environment during armed conflict cannot be deduced from the four fundamental principles of the law of armed conflict: the principles of military necessity, distinction, proportionality and humanity. Rather, the specific obligations relating to environmental protection in times of armed conflict flow from the fundamental principle of ambituity. Similar to the principle of humanity, the principle of ambituity, which qualifies as a general principle of law in the sense of Article 38(1)(c) ICJ Statute, provides for an absolute limitation to the necessities of war. As such the principle of ambituity may be used to interpret existing conventional or customary rules of international law during armed conflict, to supplement, or under exceptional circumstances to modify or set aside these rules. With regard to the prohibition against excessive collateral damage to the environment during armed conflict, it is submitted that this prohibition flows from a customary rule which emerged in the 1990s, rather than from Articles 51 and 52 of Additional Protocol I, and which complements Articles 35 and 55 AP I (i.e. for States Parties to AP I). This article argues that any military action which causes collateral damage to the environment must first be assessed under this relatively new customary prohibition; and subsequently, if no breach can be established and if applicable, by reference to Articles 35(3) and 55 AP I. In order to enhance the scope of this prohibition and provide better protection for the environment against collateral damage it is suggested that further investigations should be conducted into the consequences of warfare on the environment.

The protection of the environment in armed conflict: legal obligations in the absence of specific rules / Dieter Fleck. - In: Nordic journal of international law, Vol. 82, no. 1, 2013, p. 7-20

While a general rule of "eco-protection" in armed conflict may be derived from the basic principles of distinction, proportionality, avoidance of unnecessary suffering and humanity, international humanitarian law provides little by way of more specific rules for the protection of the natural environment except for in extreme situations that can rarely be expected to occur. Nevertheless, opinio juris has changed since the adoption of pertinent instruments in 1977. This development needs to be balanced against a still prevailing general reluctance to accept specific ecological obligations and procedures in military operations. Thus a detailed evaluation of planning and decision-making processes appears necessary. Revisiting the San Remo Manual on International Law Applicable to Armed Conflicts at Sea and the ICRC Study on Customary International Humanitarian Law, this article argues that certain qualifications made in these documents relating to requirements of "imperative military necessity" are to be assessed in the light of their specific implications and should be used with caution. Furthermore, it is suggested that pertinent consequences of the International Law Commission's Draft Articles on the Effects of Armed Conflicts on Treaties deserve further study. To this end, interdisciplinary case studies should be conducted to support fact-oriented evaluations of military requirements, ecological assessments and political effects post-conflict, rather than insisting on thresholds for legal regulation that already appeared to be escapist decades ago and which may prove counter-productive in the years to come. New activities aimed at protecting the natural environment in armed conflict should focus on a reaffirmation of existing rules and their effective implementation.

The protection of the natural environment in armed conflict: existing rules and need for further legal protection / Cordula Droege and Marie-Louise Tougas. - In: Nordic journal of international law, Vol. 82, no. 1, 2013, p. 21-52

Considerable research has been conducted, particularly since the Iraq-Kuwait war of 1991, on the legal protection of the environment in armed conflicts. Much of this research has focused either on the specific protections provided in international humanitarian law (IHL), or on the applicability of international environmental law to situations of armed conflict. Rather than focusing on these specific provisions, this article seeks to examine the general protections under IHL, in particular the characterisation of the natural environment as a civilian object and the legal protection flowing from this characterisation – namely the general rules on the conduct of hostilities. After addressing these general rules, it briefly recalls some other relevant provisions of IHL before turning to possible avenues to strengthen the legal protection of the environment in armed conflict by clarifying or further developing IHL in this respect, taking into
account the protection provided by international human rights law and international environmental law.

363.7/148


This article analyses the application of the 1972 United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Convention (the WHC) in the context of the armed conflicts that have taken place in the Virunga National Park (the Park), a natural world heritage site in the Democratic Republic of the Congo (the DRC). Instead of addressing wartime environmental damage under the law of armed conflict, this article seeks to establish how such damage can be addressed using multilateral environmental agreements (MEAs). MEAs often consist of general principles and vague obligations and their relevance or applicability during situations of armed conflict may be questioned. However, a number of MEAs, including the WHC, authorise their convention bodies to develop detailed and substantive obligations applicable to their parties. Thus, the decisions and recommendations adopted by the World Heritage Committee, a body established under the WHC, provide substantive content to the provisions of the WHC. These decisions and recommendations may, however, run counter to the requirements of military necessity thereby affecting the application of the law of armed conflict. While the position adopted by the World Heritage Committee does not inevitably imply a clash between the obligations in the WHC and the law of armed conflict, it does raise the question of whether the outstanding values of world heritage should trump the rules of military necessity and other pressing concerns during armed conflict. On an informal basis, the World Heritage Committee and the UN peacekeeping forces deployed in the DRC have agreed to perform operations that jointly address the interconnected concerns of security and conservation of natural resources in the region of the Park. This cooperative ‘green-keeping’ operation represents a useful approach to regime interaction and the harmonisation of obligations set out in different legal regimes that are applicable to the same subject matter.

363.7/148


The articles in this issue have their origins in the workshop on protection of the environment in relation to armed conflict that was held on 16 and 17 February 2012 at the Faculty of Law, Lund University. The workshop gathered together experts from Europe, the United States and Australia, including leading academics as well as representatives from the International Committee of the Red Cross, the Swedish, Norwegian and Danish Red Cross Societies and the Swedish and Norwegian governments to examine the relevance and adequacy of the existing regime for environmental protection during armed conflict as well as the ability of other international legal mechanisms to contribute to the amelioration of damage to the environment arising as a result of or in relation to armed conflict.

363.7/148

GEOPOLITICS

L’Afrique qui bouge / coord. de ce numéro : Antoine de Ravignan ; Stéphanie Aglietti... [et al.]. - In: Alternatives internationales, Hors-série, no 13, mai 2013, 96 p. : photogr., graph., cartes


323.11/38

This book explores a number of critical issues brought to the forefront of the international community as a result of the uprisings which began in the Middle East and North Africa in early 2011. Particularly prominent among these are issues concerning the right to democracy within international law, self-determination, recognition of newly installed governments, the use of force for humanitarian purposes, protection of human rights, and the prosecution of international crimes. This important volume brings together a multitude of fresh voices and, as events in the Arab world continue to unfold, is certain to make a valuable contribution to a meaningful understanding of the "Arab spring" from a constitutional and international law perspective.


323.15/29


This book chronicles the critical role played by the United Nations in the immediate aftermath of the Guatemalan civil war, which ended in 1996 after more than thirty years of fighting and more than 200,000 lives lost. After playing an active part in mediating the peace, the UN mission, under a General Assembly mandate, took on the challenge of verifying the full accords. As [the author] tells it, this is a story of principled diplomacy under difficult circumstances.

323.12/GTM 6


323.11/ZAR 19

HEALTH-MEDICINE


This contribution discusses the legal and ethical position of military medical personnel during armed conflicts. In such situations two difficult issues arise. Firstly, military health workers frequently become the object of an attack, which is a violation of their neutrality as medical personnel. Secondly, they themselves face difficult issues of "dual loyalty": they need to navigate between the interests of the patient, on the one hand, and that of their employer, the military, on the other. This contribution attempts to clarify and strengthen the legal position of military medical personnel, in particular when it comes to providing medical services around the battlefield. To do so, a basis is sought in the intertwined areas of international humanitarian law (IHL), human rights law (HRL), and medical ethics. It is argued that insufficient attention has been paid to bringing these three discourses together conceptually. It will be shown that these three disciplines provide a somewhat incoherent yet compelling framework for medical personnel during armed conflicts. In a nutshell, this framework guarantees the inviolability and neutrality of medical personnel and it stipulates that medical considerations should prevail over military ones when it comes to priority setting between patients.

345.2/936


Contient notamment : The limits of impartial medical treatment during armed conflict / M. L. Gross. - Refusing to be all that you can be : regulating against forced cognitive enhancement in
the military / L. R. Robbins. - Accidents and experiments : nazi chemical warfare research and medical ethics during the second world war / U. Schmidt. 356/255

HISTORY


HUMAN RIGHTS

Réf. ORG 2 (2013 FRE)

Réf. ORG 2 (2013 ENG)

Whilst, historically, it is probably fair to say that the European court of human rights encountered a relatively limited range of cases in which humanitarian law was relevant, even when given the opportunity to use humanitarian law as just such and interpretative device, it has chosen not to do so. This chapter assesses the approach of the Court to those situations where state forces have been engaged in hostilities and where an appreciation of the rules and application of international humanitarian law might therefore be seen to be necessary or, at least, helpful in addressing the existence of human rights violations. Three such categories can be identified: namely, cases arising in the context of internal armed conflicts; cases involving the extraterritorial use of military force; and article 7 cases, arising from domestic prosecution for violations of the laws of war, and necessitating an understanding of the state of the law in historical context.

Is a state bound by its human rights obligations when its agents operate outside of national territory? And, if so, how do those obligations interrelate with the state's other obligations under international humanitarian law when its counter-terrorism operations coincide with situations of armed conflict. This chapter examines in particular the extraterritorial reach of two fundamental human rights during two situations recognized in international law. These rights are the right to life and the right to liberty and the related procedural safeguard of habeas corpus. The two situations examined are (1) international armed conflict, including occupation and (2) non-international armed conflicts. This paper surveys the jurisprudence on the extraterritorial application of the International covenant on civil and political rights, the American convention on human rights and the American declaration of the rights and duties of man and the European convention on human rights and the extent to which rights in these instruments can be derogated from. It also examines how the treaty bodies supervising these instruments view the
relationship between international human rights and international humanitarian law in situations of armed conflict.

303.6/222


This chapter examines whether and to what extent non-state armed groups can be considered bound by human rights law. First, it discusses the applicability of international humanitarian law to armed groups. It contrasts this with the applicability of international human rights, both treaty law and customary law, to such groups. In doing so, it presents arguments in favour of and against extending human rights obligations to armed groups. It tries to match these arguments with examples from the practice of UN bodies and experts, including UN Security Council. On this basis, it examines whether armed groups can now be considered bound by human rights law as a matter of customary international law. This chapter only addresses this question as a matter of principle and does not examine the practical interaction between humanitarian and human rights law obligations of armed groups, should they be considered to exist.

345.2/913


In February 2012, the Independent International Commission of Inquiry on the Syrian Arab Republic found that opposition groups fighting against the Assad regime are bound by human rights obligations constituting peremptory norms of international law. This finding is innovative for two reasons. First, human rights obligations apply generally to the vertical relation between States and their subjects. Second, whereas it seems accepted that non-state armed groups can have human rights obligations when they control territory, the Commission of Inquiry was unable to confirm that Syrian opposition forces exercised such control over territory. This article examines whether the finding that non-state armed groups are bound by peremptory human rights norms is supported by contemporary international law. Moreover, recent trends in the practice of the United Nations with regard to human rights obligations of non-state actors will be analysed. Even though this article argues that non-state armed groups can have human rights obligations in other situations of violence, it points out particular challenges to their practical application.


This article considers the extension of international human rights law to encompass a particular category of non-state actors (NSAs), namely those that exercise effective territorial control to the exclusion of a government (territorial NSAs). Part I discusses the need for extending international human rights law to NSAs, suggesting that it is particularly appropriate to do so for territorial NSAs. This section also considers the breadth of such an extension. Part II assesses the present state of the law by examining state practice, decisions of judicial and quasi-judicial bodies, and reports of experts in order to determine whether human rights obligations already apply to NSAs as a matter of customary international law. The article concludes with observations about the direction in which the notion of NSA responsibility for human rights violations may be developing at present.

345.1/609 (Br.)


In order to cast light on the relationship between the American convention on human rights as interpreted by the inter-American court of human rights and humanitarian rules, this chapter looks at and comments different cases where these latter were invoked and used. The position of the Court has evolved from the Las Palmas v. Colombia case (2000) to the more recent, Prison Miguel Castro Castro v. Péru (2006). In the former, the Court strongly refused to condemn Colombia for the breach of international humanitarian law and international criminal
After some 20 years of existence, the International Humanitarian Fact-finding Commission (IHFFC) has never received any request for investigation. This ‘technical unemployment’ of IHFFC is surprising because, if among the 72 States that have recognized the competence of the Commission, few are, or were confronted with armed conflicts, such conflicts have not disappeared since 1991, and nothing precludes a third State or an international organization to request a fact-finding mission from the Commission. The object of this short note to describe whether the Commission could deal with human rights violations. Given the lack of practice of the Commission, the following developments remain purely theoretical. The question of the jurisdiction of the Commission with respect to human rights may arise for two reasons: as part of an agreement between two parties to lodge a request with the Commission for an investigation outside the context of an armed conflict; and as part of an armed conflict when an allegation of human rights violation is submitted to the Commission. This chapter contends that the Commission can exercise its jurisdiction in the second case but not in the first one.

This chapter proposes to focus on a series of obligations that are particularly relevant in the context of armed conflicts. First, states have to take measures to protect individuals from the effects of hostilities. Second, states have a duty to account for the fate of persons during times of armed conflicts. Third, states have to take measures to protect individuals against both rebels and paramilitary forces.

This chapter focuses on the process of transformation of proportionality, from a tool designed to operate in the State-individual relationship, to one which applies to the overall process of values-balancing underlying the dynamics of human rights in contemporary international law. This process will be observed through a study of proportionality in the European convention on human rights, probably the most integrated system of human rights protection established thus far, and one which can serve as a model for the development of a more comprehensive system of protection.

Unlike human rights law (HRL), international humanitarian law (IHL) does not provide for standing mechanisms monitoring the implementation of its provisions by States parties. Since the end of the Cold War, the UN human rights bodies have started to deal regularly, albeit not systematically, with violations of IHL even though their mandate is focused on HRL, and they have developed several approaches in this regard. This contribution looks at how the UN human rights bodies, in particular the treaty bodies as expert committees monitoring the implementation of the UN human rights conventions, the Human Rights Council as principal intergovernmental body dealing with human rights, and its Special Procedures as independent experts reporting to the Council, presently address IHL and its relationship to HRL. To what extent are the UN human rights bodies ready to explicitly invoke IHL and monitor its implementation? Which are the key IHL issues raised by these bodies? How do they see the
relationship between IHL and human rights law? And how can we assess their overall contribution to the monitoring of compliance with IHL?

**HUMANITARIAN AID**


**Conjunctures in the history of international humanitarian aid during the twentieth century** / Johannes Paulmann. - In: Humanity : an international journal of human rights, humanitarianism, and development, Vol. 4, no. 2, Summer 2013, p. 215-238


Humanitarian assistance plays a crucial role in the International Community and a strong debate currently revolves around many of its facets: funding sources, adequacy of means, and the solutions adopted to grant universal access to victims. In case of humanitarian emergency, contrasts among the States often arise, as well as conflicts among, or inside, the main International Organizations. Public opinion plays a key role too, by facilitating the achievement of the defined goals as well as by monitoring the development of humanitarian activities to make sure they follow clear and transparent procedures. The search for this transparency is assigned to the media, which are frequently accused of arbitrarily putting forward some emergencies while ignoring others. Or, also, of creating the illusion of a prompt response from the International Community even when this is lacking. The aforementioned debate is amplified by natural disasters and armed conflicts, particularly asymmetric conflicts, where, unfortunately, we witness an increase in civil victims and the killing of humanitarian operators. In situations of conflict, the presence of humanitarian assistance operations are nowadays considered to be not only an important condition for the calling of a truce, but a necessary element to reach, in the words of the UN Secretary General, ‘Global Peace’, which requires the solution of social, economic, cultural and humanitarian problems. Therefore, any obstacle to the delivery of aid is correctly considered as a danger to international peace and security. But this integrated approach is often criticized as it would interfere with the independence of humanitarian operations.

**ICRC-INTERNATIONAL MOVEMENT OF THE RED CROSS AND RED CRESCENT**


There is nowadays a common agreement that Human Rights Law (HRL) applies in peace and wartime. In the former case, its scope of application obviously includes situations of internal violence. This chapter attempts to scrutinise how the ICRC deals with this law in fulfilling its international mandate in either armed conflicts or situations of internal violence. More precisely, it looks at whether the ICRC can or should take HRL into account in performing its mandate; and secondly, how the ICRC makes use of this law in its day-to-day work. The first part of this chapter focuses briefly on the ICRC’s legal nature, some of its main features and its international mandate in case of armed conflicts or situations of internal violence. This part ends with a legal analysis of the ICRC’s competence in dealing with HRL. The second part presents the ICRC position vis-à-vis HRL from an historical perspective. It finally explores from a practical viewpoint the ways the ICRC uses and applies HRL in its day-to-day work.
INTERNATIONAL CRIMINAL LAW

The author examines how technological developments, in particular information availability, affect the doctrine of command responsibility. After a review of the history of the doctrine, he focuses on the knowledge requirement contained in article 28 of the Rome statute of the International Criminal Court as well as the modern commander's duty to take "... all necessary and reasonable measures within his or her power" to prevent or punish the crimes committed by subordinates.
345.25/275

Combat strategies and the law of war in the age of terrorism : the evolving jurisprudence of the crime of rape in international criminal law / Phillip Weiner. - In: Boston College international and comparative law review, Vol. 36, May 2013, p. 1207 - 1236. - Photocopies
For centuries, rape has served as a weapon of war, despite criminal prohibitions forbidding its use. Nevertheless, only in recent decades has international law made significant strides in defining and prosecuting rape as a war crime and crime against humanity. International criminal tribunals prosecuting crimes of sexual violence in prior conflict zones such as Rwanda, Sierra Leone, and the former Yugoslavia have struggled to develop a coherent definition of the elements of rape. This is largely due to the unique aspects of consent and coercion that are inherent within a surrounding context of armed conflict. This article begins by exploring the elements of rape as defined by the major international criminal tribunals existing today, and subsequently examines the manner in which each court considers proof of consent and coercion. It then surveys some of the recent and more progressive developments in rape law jurisprudence both domestically and internationally. Finally, this article recommends several specific steps that international criminal tribunals could employ to more effectively and equitably prosecute rape as a war crime and crime against humanity.
344/605 (Br.)

International humanitarian law and international criminal law are distinct but related fields. The application of international humanitarian law to concrete facts by international tribunals and courts has contributed to the development and clarification of this body of law. However, using a law in the courtroom that was created instead, to be applied on the battlefield poses significant challenges. In the process of such use, the law may have been distorted to fit facts that it was not envisioned to cover. Its use is as a means to punish unwanted behaviour during armed conflicts and to combat impunity risks contorting the balance on which international humanitarian law is based: military necessity and humanity. This chapter highlights some findings by international criminal tribunals and courts that do not sit easily with international humanitarian law as applied by armed forces, and discusses the consequences that applying the laws of armed conflict during criminal trials may have for this branch of international law.
345.2/936

In its 2009 judgment in the case of Prosecutor v Sesay, Kallon and Gbao, the Special Court for Sierra Leone asserted that “the killing of a member of an armed group by another member of the same group does not constitute a war crime”. The current chapter subjects that categorical assertion to critical examination. It concludes that the reasoning of the Special Court for Sierra
Leone is unconvincing and displays a misapprehension of the protective reach of the law of armed conflict.

The links between international criminal law and human rights law are complex, as becomes evident in view of the number of questions raised in this chapter: Are human rights (including the rights of the accused) respected in international criminal law? Are they a source of law for the international criminal courts? What influence do human rights have on international criminal law? Furthermore, to paraphrase the title of the well-known work written on the relationship between human rights law and criminal law: are they the shield or the sword of international criminal law? The purpose of human rights law is to protect individuals when they are confronted by a superior power (legitimate or not), be it the State, the judicial system or the prison system, etc. The situation should be the same in international criminal law, the superior power being in such instances international criminal jurisdictions. However, international criminal law must face two prospects: on the one hand, international law must apply human rights law, on the other hand, it must enforce it. It has to respect human rights law and ensure respect for them. The aim of this chapter is to analyse how this duality of function plays out before the international criminal tribunals.

Prosecution of attacks against peacekeepers in international courts and tribunals / Ola Engdahl. - In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra, 51/2, 2012, p. 249-284
This article analyses the practice of international courts and tribunals regarding attacks against peacekeepers based on judgments of the International Criminal Tribunal for Rwanda, the Special Court Sierra Leone (SCSL) and the Pre-trial Chamber of the International Criminal Court (ICC). Directing attacks against personnel involved in peacekeeping missions, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict, is defined as a specific war crime in the ICC Statute and was later incorporated into the Statute of the SCSL.

Certains jugements du Tribunal pénal international pour le Rwanda (TPIR) ont acquitté des personnes qui occupaient des hautes fonctions politiques dans le gouvernement et l'administration d'un pays - le Rwanda - qui a couvert un génocide (avril-juillet 1994). De tels acquittements sont critiques car le droit positif permettait d'établir la responsabilité pénale des personnes acquittées ainsi que le montre le présent article.


INTERNATIONAL HUMANITARIAN LAW-GENERAL


Fourteen prominent scholars and practitioners have contributed to this book, which contains a rich variety of topics in Avril McDonald fields of expertise. The common thread is that they deal with the human perspectives in their relevant area of expertise. They concentrate on the impact of the developments in international law on humans, whether they are civilians, victims of war or soldiers. This human perspective of law makes this book an appropriate tribute to Avril McDonald and at the same time a unique and valuable contribution to international legal research in present society. A society that becomes more and more characterized by detailed legal systems, defined by institutions that may frequently lack sufficient contact with the people concerned.


The division between peace and war has become increasingly blurred in factual terms in recent decades. Similarly, the law has progressed in a manner that has not necessarily been consistent. The author reviews how the laws covering the use of force in both peace and war have developed separately under the respective headings of the laws of war (also known as the law of armed conflict or international humanitarian law) and human rights law. The increasing overlap between these two bodies of public international law has led to tensions particularly in relation to the conduct of hostilities. The author suggests a way forward to ensure the applicability of the highest standards of protection whilst still enabling military operations to be carried out efficiently within a legal framework.


This contribution explores the role and relevance of chivalry in relation to warfare past and present and its relationship to the law of armed conflict and poses the question whether it still is a principle of that body of the law. It also briefly addresses the question of what its potential relevance is as a guiding principle in the interpretation of legal and extra legal obligations alongside rules contained in conventional and customary law.


Contiene notamment: Personas privadas de su libertad con motivo de conflictos armados internos: la eterna deuda del derecho internacional humanitario / F. M. Achaga. - Terrorismo internacional: aplicabilidad del derecho humanitario, status del “terrorista” y la cuestión de los homicidios selectivos / E. Senes. - Desplazados internos en la jurisprudencia de la Corte

The rules of international humanitarian law of armed conflict are codified in a rather extensive body of treaty law. In addition, extensive research has been conducted into the rules of customary international humanitarian law. The author of this contribution argues that there is another important source of positive international humanitarian law: principles of international humanitarian law. In this chapter, the role of the principles of international humanitarian law, the functions they perform and their legal significance as a source of international humanitarian law will be assessed. With general public international law as its starting point, the chapter discusses the sources of international humanitarian law. It explains the important role of the Martens Clause and provides examples of how the principles of international humanitarian law may be applied in contemporary armed conflicts.


Advancing technology will dramatically affect the weapons and tactics of future armed conflict, including the "places" where conflicts are fought, the "actors" by whom they are fought, and the "means and methods" by which they are fought. These changes will stress even the fundamental principles of the law of armed conflict, or LOAC. While it is likely that the contemporary LOAC will be sufficient to regulate the majority of future conflicts, the international community must be willing to evolve the LOAC in an effort to ensure these future weapons and tactics remain under control of the law. Though many of these advancing technologies are still in the early stages of development and design, the time to act is now. In anticipation of these developments, the international community needs to recognize the gaps in the current LOAC and seek solutions in advance of the situation. As the LOAC evolves to face anticipated future threats, it will help ensure that advancing technologies comply with the foundational principles of the LOAC and future armed conflicts remain constrained by law.


Section 1 looks at the applicability of each of international humanitarian law and international human rights law in the context of the fight against terrorism, as a necessary precursor to the more detailed consideration of the interplay between these branches of the law. Section 2 considers various theoretical approaches to interplay, and the role of the International Court of Justice and human rights courts and bodies to date. Section 3 highlights a few of the many outstanding questions arising in respect of the interrelationship and the lex specialis notion in particular. Section 4 addresses the three issues that demonstrate the implications of these approaches to interplay in different situations of some of the questions they raise.


The debate concerning the interrelation of international human rights law and international humanitarian law is certainly not new within the relevant academic circles. Nevertheless, a comprehensive study of recent State practice in the UN political bodies, that puts the opposition to the applicability of human rights to a real test, adds a new and rather intriguing twist to the matter. It appears that the statements of governments arguing for the exclusive application of
international humanitarian law in armed conflicts are not always supported by their own practice within the UN political bodies. The present article explores the potential influence and importance of this observation for bridging the possible gaps between these two bodies of international law. It further identifies a number of interesting trends in the application of specific human rights norms in armed conflicts.


This book celebrates the scholarship of Richard Baxter, former Judge of the International Court of Justice and former Professor of International Law at Harvard Law School. The volume brings together Professor Baxter's writings on the laws of war, on which he was one of the most influential scholars of the twentieth century. The collection of essays contained in this book once again makes his exceptional writings available to scholars and students in the field. His work remains timely and relevant to today's issues, and offers many analyses which have been borne out in subsequent years. It includes, amongst many wide-ranging topics within the laws of war, Baxter's studies of the Geneva Conventions, human rights in times of war, and the legal problems of international military command. Featuring a new introduction by Professor Detlev Vagts exploring the importance of Baxter's writings, and a Biographical Note by Judge Stephen Schwebel assessing Baxter's life, this book is essential reading for scholars and students of international humanitarian law.

**Interactions between international humanitarian law and international human rights law for the protection of economic, social and cultural rights = Interacción entre el derecho internacional humanitario y el derecho internacional de los derechos humanos para la protección de los derechos económicos, sociales y culturales / Koldo Casla. - In: Revista electrónica de estudios internacionales, Núm. 23, junio 2012, 17 p.. - Photocopies**

Economic, social and cultural rights (ESCR) are at risk on the battlefield. Thus, human rights lawyers must look for legal means to guarantee the best possible protection of these rights in case of war. It is generally accepted nowadays that both international humanitarian law (IHL) and international human rights law (IHRL) are applicable during armed conflicts. Adding on that and based on a procedural and substantive legal analysis, this paper claims that both IHL and IHRL constantly interact in a relation of synergy or norms.


This coursebook is organized in a practical manner. Rather than dealing with the various law of armed conflict topics based on their appearance in key treaty instruments, the book begins by examining the "why" (or purpose) of the law of armed conflict, before turning to the "what" (definition) and "when" (scope of application). The authors then deal serially with the "who" (participants) and the "how" (conduct of hostilities) of the law of armed conflict before concluding with an examination of the ways in which this body of law is implemented and enforced. Alongside more conventional materials (treaty law, domestic and international jurisprudence), woven throughout the book are short first-person vignettes, real stories written by practitioners with operational experience and expertise in the specific topic. Each topic ends with a list of questions to challenge the reader to seek answers to difficult issues.


While it might once have been possible to imagine that international humanitarian law (IHL) simply supplanted human rights law (HRL) during armed conflict, acting as the exclusive body of law governing the conduct of warring parties and occupying forces, the rapid development of HRL after World War II, coupled with the proliferation of non-traditional armed conflicts, have helped drive the development of a consensus view that both bodies of law matter in times of
armed conflict. But the consensus on how they matter is far from specific. How do the laws interact? When they can be read as complimentary? In particular, which law should prevail in the event specific rules in application conflict? All of these questions remain the subject of much scholarship and dispute.

400.2/136 (Br.)


This work explores the changing legal context of modern warfare in light of events over the last decade. The author reviews the status of non-state actors, as individuals and groups become more prominent in international society. Covering post 9/11 events and the resulting changes in the ethos of war, she analyses the role of military companies and examines what their legitimacy means for international society. It also discusses certain "intrinsic" rules in the law of war, such as rules giving individuals the right to be spared genocide, torture, slavery and apartheid and assure them basic democratic rights. The author questions the right of "illegal" combatants to be treated as prisoners of war and suggests that a minimum standard must be afforded to all, whether captured dictators or detainees suspected of terrorism. In the modern world, the individual (the soldier, the civilian, the dictator, the terrorist or the pirate) can no longer behave as they wish. Further new topics include "target killings", the "right to protect" ("R2P" - claimed to be a new form of intervention), the use of unregulated weapons such as drones and robots, the war scenario in outer space and cyber crimes. There is also a discussion of new developments in the field of war crimes including severe criticism of the novel concept "joint criminal enterprise" (JCE), which, in the opinion of the author, undermines the rule of law.

345.2/528 (2013)


345.2/932


This chapter seeks to answer the question of whether the conflicts of norms between international humanitarian law (IHL) and human rights law (HRL) can (or must) be solved in the way that is the most favourable to the individual. The principle of "the most favourable" is however still generally considered to be a rule of norm conflict confined to HRL. Accordingly, even though there is a debate in doctrine as to which norm prevails when HRL and IHL are applied simultaneously (that is, in time of armed conflict), the principle is largely ignored in his respect. This article first examines the purpose of the principle in HRL then it addresses the question of whether such a principle exists in IHL. The article finally considers the extent to which the principle could be taken as a rule of norm conflict (as far as states are concerned) between HRL and IHL norms. The answer differs depending on whether HRL and IHL are considered as two distinct bodies of law or as one body of law designed to serve human beings.

345.2/913


Dr. Robert Heinsch explores the role that customary international law might play in addressing the rapid technological changes in warfare over the last decades. It is a study of the method of formation of rules in this area and does not venture into the substance of new customary law. In particular, this chapter discusses the appropriate standards and test for the formation of new customary international law as the methods of warfare, and matters of "state practice", evolve so dramatically, at least for those states and non-state actors that can access the new technologies.

345.25/275
This book provides a clear and concise explanation of the central principles of international humanitarian law (or the law of armed conflict) while situating them in a broader philosophical, ethical and legal context. The authors consider a range of wider issues relevant to international humanitarian law, including its ethical foundations, relationship to other bodies of international law and contemporary modes of enforcement. This helps to develop a richer context for understanding the law of war and a sound basis for examining the changing nature of contemporary armed conflict. The book also discusses important recent decisions by international courts and tribunals, tracks the historical development of humanitarian principles in warfare and considers the legal position of states, individuals and non-state groups.
345.2/933

This chapter seeks to appraise the tools to which international lawyers and judges have resorted to alleviate the frictions between international humanitarian law (IHL) and human rights law (HRL). After making the argument that the relationship between IHL and HRL should not be seen in terms of conflict but rather in terms of competition, the chapter provides some critical views on the principle lex specialis non derogat generali, which is so commonly used by international lawyers and judges when confronted with possible frictions between IHL and HRL and then reevaluates its relevance in situations of competition of rules short of any real conflict.
345.2/913

This chapter addresses dilemmas of securing justice and accountability, as well as protecting victims of inter/intrastate conflicts. Despite conceptual and legal differences between human rights NGOs and IHL, the latter provides a useful framework and valuable tool for the former in their mutual attempt to safeguard human rights. After examining the dilemmas of seeking justice and accountability for victims of armed conflicts, this chapter outlines a forward-looking approach toward preventing deadly conflicts and egregious human rights violations.
345.2/937 (Br.)

Both international humanitarian law (IHL) and human rights law (HRL) are constituent elements of present-day international law. Thus, one might assume that they are naturally governed by the general principles and rules which make up the conceptual framework of the system of international law as a whole. Yet, regarding the secondary rules that come into play if and when a primary rule of conduct has been breached, it turns out that the modern extension of international law, both ratione personae and ratione materiae, cannot easily be accommodated. All of a sudden, it becomes apparent that international law grew up as inter-State law and that its mechanisms of enforcement were originally framed – or evolved – with a view to accommodating States. Consequently, not only are adjustments necessary; in some instances, the inference cannot be escaped that some of the classic rules are entirely inappropriate in the fields of IHL and HRL. International responsibility is a case in point. Traditionally, it was understood as inter-State responsibility. Accordingly, the rules drawn up by the International Law Commission on Responsibility of States for internationally wrongful acts, taken note of by General Assembly resolution 56/83 of 12 December 2001, dealt exclusively with the international responsibility which a State incurs through unlawful conduct. At that time, a decade ago, it was already a matter of common knowledge that International Organizations may also become liable to make reparation if they violate their obligations under international law.
345.2/913
In this article the author addresses what she considers are the most pressing challenges facing international humanitarian law. The first issue is the trend of IHL being misused to justify killings which are of dubious legality under the law relating to the use of inter-State force. The second issue is the fact that recent findings by human rights procedures have illustrated that a culture of human rights violations leads to serious humanitarian law violations. The two topics have one point in common: the non-respect of other branches of international law can, and increasingly does, have a direct negative effect on a genuine respect for the purpose and spirit of IHL. 345.2/934 (Br.)

INTERNATIONAL HUMANITARIAN LAW-CONDUCT OF HOSTILITIES
Air targeting in operation Unified Protector in Libya: jus ad bellum and IHL issues: an external perspective / Giulio Bartolini. - In: Recueils de la Société internationale de droit militaire et de droit de la guerre, XIX, 2012, p. 242-279
This study analyzes several legal issues related to the military intervention in Libya undertaken within the framework of UN Security Council resolution 1973 (2011). The main areas of interest are: (a) the impact of the mandate's jus ad bellum limitations concerning military operations carried out in the implementation of UN Security Council resolution 1973; (b) international humanitarian law (IHL) issues related to Operation Unified Protector and the mandate's potential impact on the interpretation and application of principles pertaining to the law of armed conflicts.

America's drone wars / Leila Nadya Sadat. - In: Case Western Reserve journal of international law, Vol. 45, no. 1-2, Fall 2012, p. 215-234. - Photocopies
The U.S. practice of targeted killing by remotely-piloted unmanned vehicles in Afghanistan, Pakistan, Yemen, Libya, Iraq and Somalia - popularly referred to as "America's drone wars" - raises the question of the application of humanitarian law principles to the conduct of America's longest-running war. Yet, it not only presents complex issues of international law but difficult moral and ethical questions. Administration officials and some academics and commentators have praised targeted killing as effective and lawful. Others have criticized it as immoral, illegal, and unproductive. This article concludes that conducting targeted killing operations outside areas of active hostilities violates international law. In addition, even in areas in which targeted killings may be lawful, particular uses of drones may violate international humanitarian law if insufficient attention is paid to principles of proportionality and distinction in their use, particularly as regards decisions of whom, how, and when to target an individual for death. 345.25/281 (Br.)

The author argues that, legally, autonomous unmanned systems can be employed only in the rarest of circumstances in light of the legal constraints inherent in the principles of distinction and proportionality. Thus, their potential deployment is limited to such an extent as to render them useless. In a first step, it retraces the history of autonomous weapons and differentiates future generations of autonomous weapon systems (AWS) from the current generation of weapons. It subsequently addresses the potential effect of AWS with respect to two cornerstones of IHL: the principle of distinction and the principle of proportionality. The last part contains concluding observations. 345.25/275

Great resources mean great responsibility: a framework of analysis for assessing compliance with API obligations in the information age / Kimberly Trapp. - Leiden; Boston: M. Nijhoff, 2013. - p. 153-170. - In: International humanitarian law and the changing technology of war
This chapter explores the standard of diligence which should apply in evaluating compliance with the obligations to take precautionary measures, in light of new information technologies, bearing in mind the necessity of a context sensitive appreciation of the capacity of state parties to an armed conflict. While states with the most advanced technological capabilities involved in
long term armed conflicts will be the focus of this chapter (utilising the American experience as a case study), the framework of analysis set out in this chapter also responds to the particular circumstances of less developed states.

How far will the law allow unmanned targeting to go? / Bill Boothby. - Leiden : Boston : M. Nijhoff, 2013. - p. 45-63. - In: International humanitarian law and the changing technology of war

In this chapter, the author considers how the principle of distinction and the targeting rules, particularly the precautions in attack prescribed by article 57 of Additional Protocol I, may limit the utility of such autonomous technology. It concludes that autonomous attack may be legitimate under appropriate, but somewhat restrictive circumstances and explores the legal distinction between positive attack decisions by a person, and the ability of an individual to veto a mechanically made attack decision. In a concluding section, Boothby's chapter considers approaches that may make the use of this advanced technology more acceptable.


In recent years, the use of drones and other unmanned robots in warfare and other situations of violence has increased exponentially, and States continue to invest significantly into increasing the operational autonomy of such systems. While most unmanned robots are unarmed and fulfil functions that do not give rise to particular legal concerns, the use of weaponized robots, including armed drones, has important legal and policy implications. Given that such unmanned weapon systems involve the application of armed force, the international lawfulness of their use is governed primarily by human rights law and, in situations of armed conflict, by international humanitarian law. When the use of armed robots interferes with the territorial sovereignty of other States, it may also raise issues of legality under the UN Charter.


Because a robot cannot replicate human emotive and perceptive traits at the present time, this chapter argues that offensive lethal autonomous robots (OLARs) are inherently illegal under IHL for three reasons. First, the fundamental rules of IHL - including the principles of distinction and proportionality - require the application of judgment and discretion. These terms necessarily refer to human judgment and discretion, which are not reducible to mathematical precision. Second, if technology provides OLARs with human-like judgment and discretion, they must then be legally analyzed as combatants. Under such analysis, OLARs as a class would be illegal, as they do not meet the IHL definition of a "member of an armed force". Finally, this chapter argues that OLARs are so contrary to considerations of humanity and public conscience that they should be banned regardless of the previous two arguments.


This article aims to raise awareness of the potential challenges involved in sending (autonomous) robots to war. Drawing on multiple disciplines, the author finds that the advantages and disadvantages of using robotic soldiers may well allow one to argue either way. However, taking into consideration the principle of humanity as a cornerstone of international humanitarian law, particularly strong concerns arise. Since robots are not able to conceive of ethical and moral concerns in addition to lacking analytical skills, it is held that they are not able to act in accordance with the rules which are applicable during armed conflict. An urgent need is recognised for the international (legal) community to take ownership of the process to regulate the deployment of robots in war situations.
Proportionality and precautions in cyber attacks / Michael A. Newton. - Leiden ; Boston : M. Nijhoff, 2013. - p. 229-249. - In: International humanitarian law and the changing technology of war

This chapter first describes the conceptual roots of the proportionality principle, particularly insofar as the jus ad bellum and jus in bello usages provide a useful contradistinction in the context of cyber operations. It then summarizes the normative contours of the modern lex lata related to proportionality, which is the necessary predicate for the application of its modern formulations to cyber attacks. This chapter concludes that the current formulations of proportionality provide sufficient granularity and flexibility to be well applied to cyberspace. Phrased another way, there is sufficient law to provide operational guidance for the conduct of robust cyber operations without wholly abandoning the humanizing influences that provide the existential foundations of the laws and customs of warfare.


The first part argues that there is no obvious definition of "autonomous weapons", and therefore general statements about them, including those respecting the role of the legal advisor in their use, must reference a clear definition of the term. The second part of the chapter addresses the question itself: what role will a legal advisor play in the use of autonomous weapons? The attempt at an answer starts with a brief discussion of the contents of the legal advice. It then moves to the broader discussion - the discussion at the heart of this chapter - of the framework under which such legal advice might be provided. The chapter then approaches the question of legal advice framework from another angle. If autonomous weapons are comparable to existing means and methods of combat, then legal advice frameworks for those means and methods might be applicable. After considering three such "analogues" the author argues that, indeed, many of the weapons across the autonomous weapons spectrum are comparable to existing means and methods of combat that are currently the subject of legal advice.

INTERNATIONAL HUMANITARIAN LAW-IMPLEMENTATION


On the occasion of the 60th anniversary of the Universal Declaration of Human Rights, the Swiss Government presented an ‘Agenda for Human Rights’. The Swiss Agenda includes an institutional proposal of a World Court of Human Rights established by a multilateral treaty under the auspices of the United Nations. This chapter discusses a consolidated draft statute for the World court submitted by the author of this piece, Julia Kozma and Martin Scheinin. It first recalls the rationale behind the future World court of human rights. It then asks, since legally speaking, it is up to the drafters of the Statute of the World court to decide which treaties shall be subject to the jurisdiction of the Court, if there is a role for international humanitarian law in the course of developing such Statute.


Notwithstanding the lack of express mention of international humanitarian law (IHL) in the African Union (AU) Constitutive Act, there is undeniably an AU commitment to promote, respect and ensure respect for IHL. Such a commitment could be seen in the AU instruments relating to human rights and humanitarian concerns, in its peace and security instruments and activities,

This chapter intends to explore the challenges in the implementation of human rights and international humanitarian law (IHL in peace support operations in order to suggest legal approaches to ensure compliance of the law by belligerents. The implementation mechanisms of human rights and humanitarian law can be classified into three groups, that is, preventive measures to be taken in peacetime; mechanisms to ensure respect during armed conflicts; and mechanisms to repress violations post facto. Although, the twenty-first century is the century of prevention, the regime for the protection of human rights and IHL has largely been reactive and event driven in the face of specific threats or acts of repression, yet prevention is more effective and cheaper than reacting after the fact. Given that observance of the law in prospect is more worthwhile for the victims than punishment of perpetrators retrospect, this discussion examines the following issues: (a) how to ensure compliance of human rights and humanitarian law by the belligerents in an armed conflict; and (b) how to protect civilians in an on-going armed conflict by deterring potential perpetrators of violations. Since the challenges revolve around the implementation and enforcement of human rights and humanitarian law in the current legal regime, it is necessary to contextualize the problems at the outset.


This essay addresses the response of Avril McDonald and others to the behaviour of Israel's military during its 2006 bombing of Qana in Southern Lebanon, which was followed by further aggression in Gaza in 2008–2009. Recalling the responses of states to South Africa's military aggression in the 1980s, this short contribution reflects on Avril's scholarly contributions in order to find a "human face" through advancing international humanitarian law order to restrain Israel's military and to protect civilians.


The contributions contained in this chapter prompt some remarks about the effectiveness of the traditional means of enforcement envisaged by international humanitarian law (IHL) and about the advisability of reinforcing them, eventually grafting on to them some human rights (HR) implementation approaches. We must look at the means of implementation of IHL with some innovative ideas in order to overcome a situation in which the contemporary realities of armed conflicts are frequently paved with regrettable humanitarian defeats.


This chapter considers whether in an age of unlimited information, access to vast volumes of data is truly useful in maximising compliance with LOAC by considering three aspects: the military context in which data contributes to decision-making, which may have an impact on the application of the law; mechanisms by which enhanced levels of data flow may allow for the integration of legal principles in order to enhance LOAC compliance; and whether access to
such enhanced levels of information actually contributes to enhancing LOAC compliance.


A right for individuals to claim reparation under international law is increasingly recognised. However, there is no standard procedure available for the enforcement of such a right, and, based on different reasons like waiver, immunity or non-justiciability, state practice and jurisprudence have often denied an individual holder the enforcement of his or her right. This chapter examines the origin of an individual right under international law. Less in the focus of international lawyers is the fact that violation of human rights or international humanitarian law might give rise to a right to reparation under domestic law as well. Finally, the different possibilities for enforcing a right to reparation along with potential obstacles to the enforcement is outlined.


The notion of truth and the search for it constitute central tenets of transitional justice processes and mechanisms in societies recovering from an armed conflict or from a period of large-scale human rights abuses. Truth lies at the heart of human nature, when victims of international human rights and humanitarian law violations want to know what happened. However, to date, the concept of truth seems to have suffered from the many assumptions that shape the emerging field of transitional justice. The most common of those is that truth should necessarily bring about reconciliation. Similarly the notion of truth would be a straightforward and simple concept. It is only recently that experts and scholars have begun to question such assumptions. Against this backdrop, this chapter therefore intends to go beyond the often oversimplified notion of truth in transitional justice. It seeks to explore some of the various and complex dimensions of the truth to better understand tensions that may exist when, for example, efforts favour the collective dimension of truth for a whole society over the needs of victims as individuals. This chapter then reviews to what extent some of the transitional justice mechanisms contribute to ascertaining the truth in its full complexity. Ultimately in as much as transitional justice requires a combination of mechanisms and processes to achieve its goals, this chapter will show that considering the many facets of the truth about past abuses is critical to ensure victims’ rights are respected.


This contribution addresses the issue of the co-application of human rights law and the law of occupation through the lens of three specific themes. First it asks the question whether the implementation of human rights law can be used as a justification for the occupying power’s “transformative” agenda. Second, it analyzes the role of human rights law in situations of prolonged occupation as an extension of the occupying power’s authority in occupied territory. Finally it addresses the issue of human rights and the use of force in occupied territory.


What role does the law of occupation play in the process of state-building? Whilst the law of occupation presupposes that an occupying power will not restructure the operation and function of a state, but rather, will hold the status quo and ensure that the peoples of occupied territories are not subjected to further chaos, the contemporary practice of occupying powers today -
particularly after the 2003 invasion of Iraq - seems to defy the non-transformational doctrines of international humanitarian law. So, to what extent does it still have relevance in the administration of post-conflict societies? This chapter addresses the aptness of the law of occupation within contemporary understandings of state-building - and broadly considers question "is the law of occupation state-building".

345.28/103 (Br.)

INTERNATIONAL HUMANITARIAN LAW-TYPE OF ACTORS


The purpose of this chapter is to examine the role of those participants who are involved in cyber operations whether as part of a State's armed forces or as civilians directly participating in the hostilities. The requirements for lawful combatancy are reviewed with the aim of exploring how they translate into a medium where anonymity is the norm and distance and proximity are largely irrelevant. Secondly, the specialist nature of new technologies and the downsizing of military forces have resulted in increased civilianisation of State armed forces; thus care must be taken in deciding what roles may be outsourced to civilian contractors without jeopardising their legal protections under international conventions. Likewise, increasing numbers of non-State actors, including so-called "patriotic hackers" are becoming involved in conflicts and may be used as proxies by States keen to benefit from the associated advantage of plausible deniability. In light of these developments, and the ongoing debate in international legal circles regarding the concept of direct participation in hostilities, the second half of the chapter reviews the criteria that were the subject of general agreement in the ICRC expert process to provide guidance on the notion of direct participation and examines how they might apply to participants in cyber operations.

345.25/275

Sacrificing the law of armed conflict in the name of peace : a problem of politics / Matthew E. Dunham. - In: The Air force law review, Vol. 69, 2013, p. 155-197. - Photocopies

Peace operations are the United Nation's (UN's) core business and its most visible activity. Between 1948 and 2012, the UN Department of Peacekeeping Operations (DPKO) conducted sixty-seven peace operations with the general purpose of ending violence. The worldwide presence of peace operation forces is even larger when one adds operations carried out by states under unified command. When conducting peace operations, the DPKO maintains that successful operations are based in the rule of law. This principle clearly follows from one of the major purposes of the UN to "maintain international peace and security... in conformity with the principles of justice and international law." Nevertheless, to sustain political support for some peace operations, the UN and its member states intentionally ignore the applicability of the law of armed conflict (LOAC) by refusing to classify hostilities as an armed conflict and by wrongly denying that peace operation forces have become belligerents in armed conflict.

345.29/193 (Br.)


From 16 to 20 June 2007, the International Security Assistance Force (ISAF) and the Taliban were engaged in a fierce battle over Chora, Afghanistan, resulting in many civilian casualties in and around that capital city. ISAF is a coalition of states established to contribute to the maintenance of security, but which through their frequent engagement in actual warfare have become parties to the armed conflict in Afghanistan. As a result, their actions are governed by international humanitarian law. This includes the prohibition of indiscriminate attacks, i.e. attacks expected to cause civilian casualties at a level excessive in relation to the military advantage anticipated. The hostilities in and around Chora have given rise to the question whether they might have violated this prohibition (a question ultimately answered in the negative). In this debate, self-defence was among the arguments raised in justification. Self-defence usually figures as a standard clause in the rules of engagement. These are texts which, established by commanders, permit or limit the use of force by their armed forces. The chapter briefly discusses the character of these instruments and of the clauses they contain. The focus
is in particular on the self-defence clause. Self-defence may be individual or collective, and it may arise on three different levels: as national self-defence, unit self-defence or individual self-defence. In the closing chapter, the chapter focuses on the relevant Dutch legal system, because the troops involved in the battle over Chora were Dutch forces and collective unit self-defence might have been at issue as an exculpatory argument in that case.

345.2/936

A tour de horizon of issues on the agenda of the mercenaries working group / Gabor Rona. - In: Minnesota journal of international law, Vol. 22, Summer 2013, p. 324-346. - Photocopies

345.29/194 (Br.)

INTERNATIONAL HUMANITARIAN LAW-TYPE OF CONFLICT


In a memorandum of 7 February 2007, President Bush clearly spoke of a US conflict with al Qaeda in Afghanistan or elsewhere throughout the world and drew a distinction between that conflict which was outwith the constructs of the Geneva Convention and the separate conflict with the Taliban, acting as the de facto government of Afghanistan, which he acknowledged was defined by the terms of the Geneva Conventions, even though he held that Taliban fighters did not qualify as prisoners of war under Article 4 of the Third Geneva Convention. But how does this bifurcation of conflict fit into the traditional legal construct? Can one have an armed conflict against a transnational terrorist group and if so, what are the applicable rules?

303.6/222

Can insurgent courts be legitimate within international humanitarian law ? / Parth S. Gejji. - In: Texas law review, Vol. 91, no. 6, 2013, p. 1525-1559 : tabl.. - Photocopies

As armed groups have increasingly resorted to establishing courts and conducting trials, however, other scholars have highlighted a growing need to account for insurgent courts within IHL. This project to account for insurgent courts within IHL leads to three questions: First, is there any interpretation of IHL that would recognize the legitimacy of courts of armed groups? Second, assuming that insurgent courts could be legitimate within IHL, which fair trial guarantees does IHL require of such courts? Third, even if the first two questions can be answered, what types of trials should IHL recognize as an appropriate exercise by an armed group? This Note responds to this discussion of insurgent courts by highlighting some previously ignored interpretive difficulties and argues that any interpretation of IHL that seeks to legitimize insurgent courts leads to problematic solutions.

345.27/127 (Br.)


The doctrine of belligerency often came to the fore in the 19th and early 20th centuries. Since this time it has rarely been used, leading many to claim that the concept has fallen into desuetude. Others maintain that the recognition of belligerency continues to be relevant today. Should the doctrine still have significance, it can contribute to providing more detailed protection for those involved in such conflicts. This article suggests that the doctrine of belligerency is not obsolete, but because of developments in international law and changes in realities on the ground, a number of aspects of the doctrine need to be revisited in order to clarify what the doctrine might look like in a post-World War II world. The concept as traditionally conceived must be adjusted for it to remain relevant.

345.2/936


This chapter first consider the types of actions which constitute so-called "cyber attacks", before analysing in detail the requirements of the concept of an "attack" generally under the existing law of armed conflict, based on the definition provided in Additional Protocol I of 1977. Those
requirements will then be "mapped" to the salient features of "cyber attack" already identified, with a view to identifying the characteristics of "cyber attack" that render them "attacks" under IHL. State practice as to the use of such "cyber attack" in situations of armed conflict is almost non-existent, the sole known example being that of the Russia-Georgia conflict in 2008. Reported examples of "cyber attacks" from that conflict will be considered, as a concluding case study, to illustrate the operation of these principles in practice.


In The Relationship between Economic, Social and Cultural Rights and International Humanitarian Law, Amrei Müller offers a detailed analysis of the legal consequences of the parallel application of economic, social and cultural (ESC) rights and international humanitarian law (IHL) to non-international armed conflicts. With a focus on health related issues, the book covers important topics like the scope of limitations to and derogations from ESC rights, questions related to the integration of the right to health in military-target decisions, states’ obligations to mitigate the adverse public health impact of armed conflicts and obligations relating to the provision of humanitarian assistance. It moves the discussion about the parallel application of IHL and human rights to a new level, highlighting its potential to enhance the protection of people affected by armed conflicts but also the difficulties involved.


Most armed conflicts today are asymmetric by nature, i.e. we see both state actors and non-state actors engaged and fighting against each other. More often than not, the conflicting actors use stigma, by labelling the opponents as terrorists, in order to gain both the public’s and the international community’s support for the use of force. Under the flag of countering terrorism, the parties involved in the conflict claim to protect the human rights of their own constituency while more often than not neglecting the human rights of their political, armed opponents. Against this background, this article reflects on the political implications of non-international armed conflicts for the human rights of the affected people, combatants and non-combatants alike. It sheds light on the consequences of blurring boundaries between these two types of actors for the protection of human rights and discusses some preliminary conclusions for strengthening the regime for human rights protection in non-international armed conflicts.


This chapter focuses on the provisions of the agreements stipulated between a government and an armed opposition group to regulate the relations that originate from internal armed conflict concerning the regulation of the conduct of hostilities and the treatment of persons deprived of their liberty in connection with armed conflict, as well as the protection of human rights. These provisions can be included in the agreements that specifically aim to regulate those very aspects of the relations originating from the conflict or in the agreements having a different object, for example in the pacts establishing a ceasefire. The objective of the inquiry is to verify whether these agreements’ provisions amount to international law regulating an armed conflict, namely international humanitarian law (IHL), or guaranteeing internationally protected human rights.


When the Calderon administration escalated anti-drug efforts in 2006, drug-related violence in Mexico reached unprecedented levels. The growing intensity of drug-related violence has led to
uncertainty over how to classify the violence spreading across Mexico. Much of the public rhetoric argues that Mexico’s drug-related violence has surpassed that which typically characterizes the drug trade and is instead more similar to armed conflict. Due to the changing landscape of Mexican drug violence, an assessment of whether or not the conflict meets the requisite conditions for a non-international armed conflict (NIAC) is needed to determine if the application of international humanitarian law is appropriate. This paper argues that Mexico’s drug war meets the conditions for NIAC status and application of IHL is appropriate. The question of how to respond to drug-related violence is becoming increasingly relevant as the effects of such violence extends to a more diverse geographic area within Mexico. NIAC status plays a central role in the future of anti-drug policy and has the potential to prompt significant changes in the handling of drug-related violence in Mexico. This paper attempts to provide a comprehensive answer to this question and identify the potential implications that recognition as a NIAC will have on Mexican anti-drug policy.

The path to less lethal and destructive war?: technological and doctrinal developments and international humanitarian law after Iraq and Afghanistan / David P. Fidler. - Leiden ; Boston : M. Nijhoff, 2013. - p. 315-336. - In: International humanitarian law and the changing technology of war
This chapter examines the use of “non-lethal” weapons in the context of the counterinsurgency (COIN) campaigns in Iraq and Afghanistan. In a COIN environment, it is essential that military commanders use appropriate and measured levels of force and apply that force precisely so that it accomplishes the mission without unnecessary loss of life or suffering. The author applies some of the lessons learned in Iraq and Afghanistan to the more recent conflicts in Libya and Syria. He explores whether the impact of the COIN doctrine influences military thinking concerning new technologies, in particular “non-lethal” and “less-lethal” technologies, and how this new thinking may affect compliance with IHL.
345.25/275

The paper examines the history and development of the concept of direct participation in hostilities by civilians, which serves as an exception to the principle of civilian or non-combatant immunity. In charting the development of the concept, this paper looks at landmark attempts to legally define the concept of direct participation, including the Israeli Targeted Killings case, and the International Committee of the Red Cross (ICRC) study into direct participation. Using this legal background, this paper then analogises direct participation in the context of cyber hostilities, and critically examines the ways in which civilians may be deemed to be directly participating in cyber hostilities. The paper also posits some solutions to potentially problematic situations raised by civilian participation in cyber warfare.
345.25/282 (Br.)

Why a war without a name may need one: policy-based application of international humanitarian law in the Algerian war / Katherine Draper. - In: Texas international law journal, Vol. 48, no. 3, 2013, p. 575-603. - Photocopies
This note will present analysis of the debate about applicable international law during the Algerian war and will also shed light on some of the concrete consequences that resulted from France’s reluctance to recognize the applicability of the various provisions of the Geneva Conventions. The author begins in part I by laying out relevant historical background to the conflict. In part II, she then analyzes the debate concerning applicable IHL - both the lower threshold of Common Article 3 between internal disturbance and armed conflict not of an international character, as well as the debate about whether the conflict eventually constituted an international armed conflict. This note illustrates that as one of the first major test cases for the applicability of either Common Article 3 or the full corpus of the Geneva Conventions, the Algerian war began a legacy of policy-based application of IHL that continues in the post-9/11 world.
345.27/128 (Br.)
INTERNATIONAL ORGANIZATION-NGO


Where action against terrorism is mandated or authorized by UN Security Council (SC) resolutions adopted under Chapter VII of the UN Charter, do member states’ obligations under international human rights and humanitarian law still apply as they would otherwise? Alternatively, in such situations, are human rights and IHL obligations instead subordinate to state obligations to implement the resolutions of the SC? Examples might include an SC resolution that requires freezing the funds of suspected supporters of al-Qaeda without necessarily affording the due process required by human rights law, or SC resolutions authorizing the use of force (or otherwise necessitating the presence of member states’ armed forces) in circumstances that may give rise to violations of those states’ human rights and humanitarian law commitments. This chapter synthesizes the debate of the interplay of these legal regimes and brings together the international organizations and human rights issues.


The activities of the Security Council in the maintaining or restoring of international peace and security have expanded enormously since the end of the Cold War. The breakthrough for Security Council action was the Kuwait crisis – the invasion of Kuwait by Iraq, and the ensuing successful military action to repel it. On this occasion, the Security Council showed considerable creativity in designing measures to cope with the situation, and not all of them corresponded exactly to what could be anticipated by just reading the relevant texts of the UN Charter. This fact and further developments have fomented a debate which existed already during earlier decades, namely a discourse on the legal basis of the powers of the Security Council and their limitations. The question whether and to what extent the norms of international human rights law and international humanitarian law limit the freedom of action, or the creativity of the Security Council in designing action, is a major part of that debate. The political developments and the ensuing legal debate highlight legal uncertainties. Organs of the United Nations exercise public authority in relation to individuals – which raises the question whether they have to apply human rights in doing so, and whether human rights, thus, limit the freedom of action of UN organs, including the Security Council. Armed forces of the United Nations are involved in military hostilities – which raises the question whether the rules of international law relating to such hostilities if conducted by States apply as well to the military operations conducted by the UN.


This chapter questions whether it was legitimate of the Security Council to treat the National Transitional Council in Libya as a civilian rather than an armed opposition group. It also draws attention to the consequences of not qualifying the situation in Libya as an internal armed conflict, unlike previous military interventions in non-international armed conflict. The core critique of Resolution 1973 lies in the fact that the Security Council took two self-contradictory positions; on one hand it protected civilians in accordance with its general purposes under the UN Charter and its "responsibility to protect" and on the other it offered protection to those groups who might, at other ties or by other people, be classified as an armed opposition group.


The international administration of territories is the performance by an international organization of government functions in a territory, both when it involves all the sectors that comprise the State government (executive, legislative, judicial) and when it involves only a part of them. The
key element is given by the fact that the 'last word' is up to the international organization rather than to the sovereign territorial or local government institutions, if any. As a result, an international territorial administration is not realized when an international organization does not exercise powers of government over a territory, but has only the tasks of supervision, assistance or support to the functioning of public institutions of a State or territory. The international administration of territories had gained new momentum at the end of the 1990s, when the United Nations (UN) created some operations with such a mandate. The exercise of governmental powers by the territorial administrations is limited by the mandate received, and by the rules of international law. The purpose of this study is precisely to determine whether the rules of IHL and those of HRL are applicable in respect of the territorial administrations. Hence it will be necessary to consider also if the control mechanisms included in some international agreements on human rights protection are able to operate with respect to violations that have been carried out within the territorial administrations.


In its reports about human rights in Rwanda, Human Rights Watch makes factual mistakes; it assumes almost per definition that governmental decisions are taken with bad intentions; it insinuates and speculates about what might be, even when it is still "too early to tell" or when deemed "highly unlikely"; it generalises on the basis of only a few individual opinions; it embraces individual opinions as the direct basis for its own judgement without any reflection on the personal background of individual opinions, on the necessity of the measures taken, on alternatives for choices made, on the complexity of political decisions in a post-conflict society, a balance between individual and societal interests or whatever other considerations; everything in a, at times, disrespectful tone. Assuming that Human Rights Watch does not do this on purpose, an explanation is needed. Explanations can be found in a confusion of insider opinions and outsider judgements; neglecting that perceptions, rumours and stereotypes may replace reality in Rwanda; and in the position as a single-sector human rights NGO on the sidelines, choosing for confrontation rather than a critical partnership with the government and the country in general. But how can this happen without anybody correcting these factual mistakes, misinterpretations, speculations and tone? The reason seems to be a lack of internal and external accountability.

**MISSING PERSONS**

**Disappearance cases before the European Court of Human Rights and the UN Human Rights Committee : convergences and divergences / Helen Keller and Olga Chernishova.** - In: Human Rights Law Journal : HRLJ, Vol. 32, no. 7-12, p. 237-249

The legal definition of enforced disappearance formulated in the International convention for the protection of all persons from enforced disappearance (ICED) and in the Rome statute for the International criminal court is relatively recent, but the international prohibition of the conduct essentially constituting disappearance has a much longer history. The absence of a legal definition of disappearance for many decades has not prevented international human rights bodies from tackling the phenomenon. They have addressed it as a crosscutting issue combining several human rights violations. Most prominent is the jurisprudence of the UN Human rights committee and European court of human rights. On the basis of the classical human rights approach, these two bodies have developed a remarkable case-law which, no doubt, contributed to the general acceptance of disappearance as a crime under customary international law by the end of 1990s and paved the way for the adoption of the ICED. This article analyses these two bodies case-law, identifying the convergence and divergences in the results.


This chapter presents successively how international humanitarian law, human rights law and international criminal law contributed, in their own way, to the prohibition and criminalization of
enforced disappearances. It shows that these bodies of law are complementary and that their mutual influence allowed a progressive enhancement of the legal protection of persons against enforced disappearances. Finally, it show how the merger of the rules belonging to these different bodies of law into the Convention against enforced disappearances contributed to strengthen the prohibition of enforced disappearances in international law.

345.2/913

**PROTECTION OF CULTURAL PROPERTY**


In this chapter, contemporary threats to cultural property during armed conflict as well as the obstacles hindering protection are discussed. Throughout the text, examples are taken from Libya where the so-called "Arab Spring" revolt of 2011 developed into an armed conflict. The focus is on the control system of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict because it offers warring parties, as well as states parties to the Convention, the option of mobilising protection during armed conflict. In practice, it has mainly been UNESCO that has undertaken cultural initiatives during armed conflict but the organisation is better suited for peacetime action. The 1999 Second Protocol to the 1954 Convention raised hopes that a supplemented control system would be more effective. In the case of Libya, however, neither the states parties nor the newly set up Intergovernmental Committee opted for combined protection efforts even though Libya hosts a wealth of cultural property and is a state party to the Second Protocol. UNESCO did undertake various protection activities and was joined by other actors in the cultural heritage field, such as the Blue Shield network. It is to be hoped that the Blue Shield network can raise its profile and resources, and combine flexibility of action with humanitarian professionalism. New developments in the area of information technology can also help in strengthening international protection efforts. The fact that a ‘Red Cross for cultural property’ is still urgently needed is an important lesson from the case of Libya. Whatever form future protection efforts will take, they should be based on the current framework offered by international humanitarian law. This will enhance transparency, uniformity of action and increase security for cultural property protectors during armed conflict. 345.2/936

**UNESCO, Palestine and archaeology in conflict / David Keane and Valentina Azarov.** - In: Denver journal of international law and policy, Vol. 41, 2013, p. 309-343. - Photocopies "The Palestinian Ministry of Tourism and Antiquities and Israeli sources estimate that between 1967 and 1992 about 200'000 artifacts were removed from the occupied Palestinian territory annually," with approximately 120'000 removed each year since 1995. This hemorrhaging of Palestinian cultural property is occurring in a context where archaeology has been used by Israel "as a pretext to gain territorial control" and exercise sovereign rights "over Palestinian lands [in order] to further its settlement enterprise" and exploit natural resources. Section II traces the history of archaeological laws and practices in Palestine, from the Ottoman era to contemporary Israeli military orders. Section III examines the rules governing the protection of
cultural property during military occupation under the aegis of the 1954 Hague Convention for
the Protection of Cultural Property in the Event of Armed Conflict, and the consequences of
future Palestinian ratification of the Convention and its 1999 Second Protocol. Section IV tracks
the illicit trade in antiquities from Palestine, and the potential effects that ratification of two
instruments would have on regulation and restitution – particularly, the 1970 UNESCO
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of
Ownership of Cultural Property, and 1995 UNIDROIT Convention on Stolen or Illegally Exported
Cultural Objects. Section V focuses on the underwater cultural heritage off the coast of Gaza
and the maritime zones of legal control granted by the 2001 Convention on the Protection of the
Underwater Cultural Heritage, the first international treaty that Palestine has ratified. Finally,
Section VI assesses the consequences of UNESCO membership, including whether
membership of a U.N. agency means that Palestine can ratify instruments outside of UNESCO's
competence.

PUBLIC INTERNATIONAL LAW

Customary international law in times of fundamental change: recognising grotian
moments / Michael P. Scharf. - Cambridge [etc.] : Cambridge University Press, 2013. - XI,
228 p. ; 23 cm. - Index. - ISBN 9781107610323
345/633

The effect of war on law: what happens to their treaties when states go to war? / Arnold
227-241. - Photocopies
345/632 (Br.)

RELIGION

Military chaplaincy in contention: chaplains, churches and the morality of conflict / ed.
bym Andrew Todd. - Farnham ; Burlington : Ashgate, 2013. - XII, 183 p. ; 24 cm. -
(Explorations in practical, pastoral and empirical theology). - Bibliographie : p. 169-180. Index. -
ISBN 9781409431589
Chaplaincy highlights the need for faith and society to re-engage with vital moral questions.
Military chaplains continue to operate within the dynamic tension between faith communities,
the armed services and society, offering a distinct moral presence and contribution. Drawing the
reader into the world of the military chaplain, this book explores insights into the complex moral
issues that arise in combat (especially in Afghanistan), and in everyday military life, These
include the the increasing significance of the Law of Armed Conflict and the moral significance
of drones. Through the unique chaplain's eye view of the significance of their experience for
understanding the ethics of war, this book offers clearer understanding of chaplaincy in the
context of the changing nature of international conflict (shaped around insurgency and non-state
forces) and explores the response of faith communities to the role of the armed services. It
makes the case for relocating understandings of just war within a theological framework and for
a clear understanding of the relationship between the mission of chaplaincy and that of the
military.
284/33

SEA WARFARE

Unmanned naval vehicles at sea: USVs, UUVs, and the adequacy of the law / comment
100-115. - Photocopies
In this short contribution to the debate, the author focuses briefly on two discrete issues cast up
by unmanned vehicle (UV) technology and its use in the maritime domain: one related to
definition; and one related to a specific operational issue the poise and positioning of maritime
forces.
347.799/146 (Br.)

The case study that forms the starting point for this analysis involves use of lethal force by one State (A) against a non-state actor who is currently in the territory of another State (B). State A claims that the said non-state actor is involved in terrorist activities directed against it or its citizens, and that State B has failed to take action to apprehend him and put an end to his terrorist activities, because it is either unwilling or incapable of doing so. The question for discussion is which regime of international law applies to the action of State A. In analysing this question it is important to distinguish between two separate, though connected, issues: (1) legality of using force in the territory of another state; (2) the right to life of the individual concerned.

Rightly dividing the domestic jihadist from the enemy combatant in the "war against al-Qaeda" : why it matters in rendition and targeted killings / Jeffrey F. Addicott. - In: Case Western Reserve journal of international law, Vol. 45, no. 1-2, Fall 2012, p. 259-302. - Photocopies

The confusion associated with comprehending fundamental legal concepts associated with how America conducts the "war on terror" centers around the unwillingness of the U.S. government to properly distinguish al-Qaeda unlawful enemy combatants from domestic jihadi terrorists. If the American government cannot properly differentiate between an enemy combatant and a domestic criminal, it is little wonder that attendant legal positions associated with investigation techniques, targeted killing, arrest, detention, rendition, trial, and interrogation are subject to never-ending debate. While all al-Qaeda unlawful enemy combatants can be labeled as violent jihadists, not all violent jihadists are unlawful enemy combatants. Without a significant about-face in leadership that is willing to discern the basic difference between an unlawful enemy combatant and a domestic criminal, America's reputation will remain under a cloud of suspicion and confusion regarding the legality of our actions associated with two significant areas of critique: rendition and targeted killing vis-à-vis unlawful enemy combatants in the war on terror.


Terrorism as a crime in international and domestic law: open issues / Claudia Martin. - Cambridge : Cambridge University Press, 2013. - p. 639-666. - In: Counter-terrorism strategies in a fragmented international legal order: meeting the challenges

The existing anti-terrorist conventions, the negotiations on Draft Terrorism convention to combat international terrorism and the Resolutions adopted by the UN Security Council in the aftermath of September 11 have created a patchwork of norms that lack a cohesive approach in articulating acts that constitute terrorism in current international law. The goal of this chapter is to explore two issues that remain unresolved as a result of the lack of definition of terrorism in international law and that have become either an obstacle for combating this crime or have adversely impacted the respect of other rules of international law, especially human rights and
humanitarian law principles. The first of these issues involves the blurring between the notion of terrorism and armed conflict. The second aspect explores the impact that the failure to articulate a definition of terrorism coupled with the obligations arising out of UN Security Council Resolutions and other anti-terrorist treaties have had on the protection of human rights in the domestic jurisdiction of states. Consideration is also made on the impact that the lack of a definition of terrorism has on the international judicial cooperation of states for purposes of prosecuting alleged terrorists.

**WOMEN-GENDER**


To establish the proper context within which the feminist critique of law of armed conflict (LOAC) should be understood, this article first sets out the scope and nature of armed conflict's impacts upon women and girls. After noting different general feminist concepts which are applicable to the assessment of NATO's efforts, this article will then detail the feminist critique of LOAC by examining both LOAC treaty law and customary LOAC. Next, the U.S., Swedish, UN and EU programs will be briefly discussed, so that positive and negative trends and practices may be identified. The article then explores in detail NATO's gender mainstreaming efforts in the areas of infrastructure, doctrine, training and education, and plans and operations; and assesses them against the deficiencies identified by the feminist critique of LOAC. The article concludes that these efforts do not effectively address these deficiencies at the moment, but that trends suggest they might begin to in the near term, and will probably, within certain boundaries, address them meaningfully in the future.

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