BIBLIOGRAPHY
1st Issue 2020

International Humanitarian Law

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

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December 2020

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Introduction

The International Committee of the Red Cross Library

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

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

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

The Library is open to the public from Monday to Friday (9 am to 1 pm).

Origin and purpose of the IHL bibliography

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

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

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

In short, the bibliography can be useful for developing and strengthening IHL knowledge, helping ICRC delegations, National Societies, schools, universities, research centres etc. to build up their library's IHL collection, and keeping track of topical IHL issues being tackled by academics. It is also useful for authors in the process of writing articles, books and theses and legal professionals who work on IHL on a daily basis to see what has been written on a specific IHL subject.

How to use the IHL Bibliography

Part I: Multiple entries for readers who only need to check specific subjects

The first part is tailored for such readers, with 15 IHL categories that have been identified in conjunction with ICRC legal and communication advisers. An additional "Countries/Regions" category has been added for a regional approach. Each article, book and chapter is classified under every relevant category. This enables readers to swiftly identify references of interest without trawling through the whole bibliography. To avoid making the document too long, this first part only provides bibliographic references. For the abstract, please refer to the second part of the bibliography

Part II: All entries with abstract for readers who need it all

Rather than going through the first part and coming across repeated references, readers can skip to the second part where all the documents are listed alphabetically (by title), together with an abstract. The abstract is either that produced by the author or the publisher, where provided, or is drawn up by the IHL reference librarian responsible for the bibliography. As a result of a fruitful partnership with the University of Toronto, a number of abstracts are now also produced by students involved in the International Human Rights Program (IHRP).

Access to document

Whenever an article is electronically available in full text, a link allows you to access the document directly. Some links are restricted to subscribers while others may be limited to ICRC staff. All documents are available for loan at the ICRC Library. In case your local library cannot provide you with some of the documents, requests for copies or scans (in a reasonable amount) can be sent to library@icrc.org

Chronology

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

Contents

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

Sources

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

Disclaimer

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

Subscription and feedback

Please send your request for subscription or feedback to library@icrc.org with the subject heading "IHL bibliography subscription/feedback".

I. General issues

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

Accounting for the ENMOD Convention : Cold War influences on the origins and development of the 1976 Convention on environmental modification techniques

by Emily Crawford. - In: International law and the Cold War. - Cambridge : Cambridge University Press, 2020. - p. 81-97

Asia-Pacific states and the development of international humanitarian law

Sandesh Sivakumaran. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 118-138
https://doi.org/10.1017/9781108667203.009

The banality of humanity (as an absolute) : a response to Frédéric Mégret

Knut Traisbach. - In: The limits of human rights. - Oxford : Oxford University Press, 2019. - p. 297-304
https://doi.org/10.1093/oso/9780198824756.003.0020

The Cold War history of the Landmines Convention

Treasa Dunworth. - In: International law and the Cold War. - Cambridge : Cambridge University Press, 2020. - p. 315-336

Le Commentaire mis à jour de la Première Convention de Genève : un nouvel outil pour générer le respect du droit international humanitaire

Lindsey Cameron... [et al.]. In: Revue internationale de la Croix-Rouge : sélection française Vol. 97, 2015/4, 19 p.
https://library.icrc.org/library/docs/DOC/irrc-900-cameron-henckaerts-fre.pdf

Les conflits armés en mutation

Jérôme de Hemptinne. - Paris : Pedone, 2019. - 358 p.

The development of the Geneva Conventions

Borhan Uddin Khan and Mohammad Nazmuzzaman Bhuian. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 12-39
https://doi.org/10.1163/9789004375543_003

Le droit international humanitaire et les défis posés par les conflits armés contemporains : engagement renouvelé en faveur de la protection dans les conflits armés à l'occasion du 70e anniversaire des Conventions de Genève

CICR. - Genève : CICR, novembre 2019. - 92 p.
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Soliman M. Santos. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 374-399
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The laws of war and the structure of masculine power

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https://law.unimelb.edu.au/mjil/issues/issue-archive/191

La légalité de l'emploi de la force en droit international : "du donné au construit"

par Louis Balmond. - In: Droit, humanité et environnement : mélanges en l'honneur de Stéphane Doumbé-Billé. - Bruxelles : Bruylant, 2020. - p. 1103-1121

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Gérald Sawicki. - In: La Grande Guerre et son droit. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 49-60

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Teasingly inconclusive ? Teasing out from the travaux préparatoires the drafters' intentions of the so-called 'homeland battlefield unprivileged belligerents' under the 1949 Conventions

Yutaka Arai-Takahashi. In: Israel yearbook on human rights, Vol. 49, 2019, p. 71-116
https://doi.org/10.1163/9789004404601_004

II. Types of conflicts

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

Administrative detention by non-state armed groups : legal basis and procedural safeguards

Maria Gavrilova. In: Israel law review : a journal of human rights, public and international law, Vol. 53, no. 1, 2020, p. 35-70
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https://doi.org/10.1017/9781108667203.040

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Automatic criminal liability for unlawful confinement (imprisonment) as a war crime ? : a potential consequence of denying non-state armed groups the power to detain in NIACs

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https://doi.org/10.1007/978-94-6265-339-9_6

The battle for the recognition of wars of national liberation

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David A. Wallace and Christopher W. Jacobs. In: University of Pennsylvania journal of international law, Vol. 40, no. 3, 2019, p. 643-693
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The Korean War (1950-1953) and the treatment of prisoners of war

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The law enforcement paradigm under the laws of armed conflict : conceptualizing Yesh Din v. IDF chief of staff

Shelly Aviv Yeini. In: Harvard national security journal, vol. 10, 2019, p. 461-488
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The law of armed conflict implications of covered or concealed cyber operations : perfidy, ruses, and the principle of passive distinction

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Claus Kress. In: Israel yearbook on human rights, Vol. 49, 2019, p. 1-38
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Hanne Cuyckens and Christophe Paulussen. In: Journal of conflict and security law, Vol. 24, no. 3, Winter 2019, p. 537-565
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The Syrian war : between justice and political reality

Hilly Moodrick-Even Khen, Nir T. Boms and Sareta Ashraph. - Cambridge : Cambridge University Press, 2020. - XX, 315 p.

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Nader I. Diab. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 321-349
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Keiichiro Okimoto. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 156-179
https://doi.org/10.1017/9781108667203.011

Wired warfare 3.0 : protecting the civilian population during cyber operations

Michael N. Schmitt. In: International review of the Red Cross, Vol. 101, no. 910, 2019, p. 333-355
https://library.icrc.org/library/docs/DOC/irrc-910-schmitt.pdf

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Anticipating operational naval warfare issues in international humanitarian law that may arise in the event of a conflict in the South China Sea

Rob Mclaughlin. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 703-716
https://doi.org/10.1017/9781108667203.040

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Attack decision-making : context, reasonableness, and the duty to obey

Geoffrey S. Corn. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 325-374
https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-12

Combined exercises and international humanitarian law training : fostering a culture of norm compliance ?

Dale Stephens. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 670-687
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Dialoguing with Islamic fighters about international humanitarian law : towards a relational normality

Matthias Vanhullebusch. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 656-669
https://doi.org/10.1017/9781108667203.037

Human rights obligations of non-state armed groups : an assessment based on recent practice

Jean-Marie Henckaerts and Cornelius Wiesener. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 195-227
https://doi.org/10.1007/978-94-6265-339-9_8

Humanitarianism in Chinese traditional military ethics and international humanitarian law training in the People's Liberation Army

Ru Xue. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 93-106
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https://doi.org/10.1017/9781108667203.023

The prosecution of foreign fighters in Western Europe : the difficult relationship between counter-terrorism and international humanitarian law

Hanne Cuyckens and Christophe Paulussen. In: Journal of conflict and security law, Vol. 24, no. 3, Winter 2019, p. 537-565
https://doi.org/10.1093/jcsl/krz027

Rules of engagement and the international law of military operations

J. F. R. Boddens Hosang. - Oxford : Oxford University Press, 2020. - XXI, 339 p.
https://doi.org/10.1093/oso/9780198853886.001.0001

Thou shalt not kill : social psychological processes and international humanitarian law among combatants

Emanuele Castano, Sabina Čehajić-Clancy and Daniel Muñoz-Rojas. In: Peace and conflict : journal of peace psychology, Vol. 26, no. 1, 2020, p. 35-46
https://library.ext.icrc.org/library/docs/ArticlesPDF/48551.pdf

Wartime military sexual enslavement in the Asia-Pacific

Linton, Suzannah. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 281-307
https://doi.org/10.1017/9781108667203.018

What are 'armed non-state actors' ? : a legal and semantic approach

Annyssa Bellal. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 21-46
https://doi.org/10.1007/978-94-6265-339-9_2

IV. Multinational forces

Detention in non-international armed conflicts

Emily Crawford. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 251-266
https://doi.org/10.1017/9781108667203.016

Detention operations in non-international armed conflicts between international humanitarian law, human rights law and national standards : a NATO perspective

Steven Hill and Leonard Holzer. In: Israel yearbook on human rights, Vol. 49, 2019, p. 116-130
https://doi.org/10.1163/9789004404601_005

The "legal pluriverse" surrounding multinational military operations

ed. by Robin Geiss and Heike Krieger. - Oxford : Oxford University Press, 2020. - XX, 479 p.
https://doi.org/10.1093/oso/9780198842965.001.0001

The legal protection of personnel of United Nations peacekeeping operations in times of NIAC

Keiichiro Okimoto. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 79-111
https://doi.org/10.1007/978-94-6265-339-9_4

V. Private entities

Beyond banning mercenaries : the use of private military and security companies under IHL

Martina Gasser and Mareva Malzacher. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 47-77
https://doi.org/10.1007/978-94-6265-339-9_3

VI. Protection of persons

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

Compliance with humanitarian rules on the protection of children by non-state armed groups : the UN's managerial approach

Marcos D. Kotlik. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 387-425
https://doi.org/10.1007/978-94-6265-339-9_14

Criminalising rape and sexual violence in armed conflicts : evolving criminality and culpability from the Geneva Conventions to the Bangladesh International Crimes Trial

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https://doi.org/10.1163/9789004375543_010

Le déplacement durant les conflits armés : comment le droit international humanitaire protège en temps de guerre et pourquoi c'est important

Cédric Cotter. - Genève : CICR, novembre 2019. - 71 p.
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Etude critique du Manuel de Tallinn sur la participation directe aux hostilités : du partage d'informations militaires sur les réseaux sociaux

Maxime Lismonde. In: Revue belge de droit international, Vol. 51, 2018-2, p. 583-615

Forced transfer of aliens during armed conflict

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XII. Implementation

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

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XIII. International human rights law

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

British justice, war crimes and human rights violations : the age of accountability

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ALGERIA

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CAMBODIA

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CANADA

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CHINA

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GERMANY

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The Syrian war : between justice and political reality

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UNITED KINGDOM

British justice, war crimes and human rights violations : the age of accountability

Susan L. Kemp. - Cham : Palgrave MacMillan, 2019. - XXV, 488 p.

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UNITED STATES

Accounting for the ENMOD Convention : Cold War influences on the origins and development of the 1976 Convention on environmental modification techniques

by Emily Crawford. - In: International law and the Cold War. - Cambridge : Cambridge University Press, 2020. - p. 81-97

High-tech civilians, participation in hostilities, and criminal liability : reconciling U.S perspectives

Matthew T. King. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 175-210
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USSR

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"Treaty after trauma" : "protection for all" in the Fourth Geneva Convention

Gilad Ben-Nun. - In: History and international law : an intertwined relationship. - Cheltenham ; Northampton : E. Elgar, 2019. - p. 103-134

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The Vietnam War and the development of international humanitarian law

Keiichiro Okimoto. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 156-179
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WEST BANK

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All with Abstracts

Accounting for the ENMOD Convention : Cold War influences on the origins and development of the 1976 Convention on environmental modification techniques

by Emily Crawford. - In: International law and the Cold War. - Cambridge : Cambridge University Press, 2020. - p. 81-97

This chapter is concerned with tracing the history of the drafting of the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD). In seeking to understand how and why ENMOD came about, the chapter locates its emergence in the extant superpower rivalry between the USSR and USA around the time of the war in Indochina. Its provisions, it is argued, reflect the complex roles of those powers within the Cold War – as scientific innovators, military superpowers, ideological adversaries and hesitant bilateralists – and survives as a quintessential juridical exemplar of Cold War thought and practice.

Administrative detention by non-state armed groups : legal basis and procedural safeguards

Maria Gavrilova. In: Israel law review : a journal of human rights, public and international law, Vol. 53, no. 1, 2020, p. 35-70

The realities of contemporary armed conflicts with a complex interweaving net of actors are rarely reminiscent of classic combat scenarios envisaged by the drafters of the Geneva Conventions. The scarcity of conventional regulation of non-international armed conflicts (NIACs), coupled with the non-state character of the majority of detaining powers, lead to lack of clarity regarding the legal regime of detention of persons captured by non-state armed groups (NSAGs). In the absence of an explicit authorisation for internment under the international humanitarian law applicable to NIACs, recent developments in case law have induced a scholarly debate on what is the legal basis for administrative detention carried out by these actors. The article analyses key arguments presented by both sides of the debate, concluding that neither side can demonstrate either the existence or the absence of the authorisation in question, while the discussion itself has limited practical value in regulating the conduct of NSAGs. At the same time, the practice of states, although still ambivalent, points to the gradual transformation of mere legality, or the so-called 'inherent power' to intern, into a customary provision providing a legal basis for administrative detention by NSAGs.

https://doi.org/10.1017/S0021223719000219

All the red lines : the Syrian conflict and its assault on international humanitarian law

Sareta Ashraph. - In: The Syrian war : between justice and political reality. - Cambridge : Cambridge University Press, 2020. - p. 79-106

The Syrian war's most fundamental characteristic is the systematic disregard for the most basic rule of international law - and notably international humanitarian law - displayed by its belligerents. The result has been unparalleled human suffering, the scale, complexity, and severity of which are yet to be fully understood. International humanitarian law was established to protect civilians and those participating in hostilities from unnecessary suffering. In Syria, however, inflicting suffering on civilians and hors de combat fighters has been consistently documented as a deliberate strategy of various warring parties to punish individuals and communities for their refusal to submit. This chapter looks briefly at the unrest that preceded the conflict before focusing on those violations of international humanitarian law which quickly became hallmarks of the Syrian war. It will give particular focus to the use of chemical weapons on the battlefield and the investigations to determine the perpetrator(s). Finally, it asks whether the Syrian conflict represents a nadir in the international community's response to a war where international humanitarian law is breached with impunity and, if so, whether the value of the law of wars is being eroded.

Amnesties and international humanitarian law : purpose and scope

ICRC Advisory Service on international humanitarian law. In: International review of the Red Cross, Vol. 101, no. 910, 2019, p. 357-363

States party to the 1949 Geneva Conventions and Additional Protocol I of 1977 have an obligation to take measures necessary to suppress all acts contrary to their provisions. Moreover, States must investigate war crimes allegedly committed by their nationals or on their territory, and other war crimes over which they have jurisdiction, such as on the basis of universal jurisdiction, and, if appropriate, prosecute the suspects. In accordance with these obligations and the limits they impose, States may adopt certain measures during and in the aftermath of armed conflicts to promote reconciliation and peace, one of which is amnesties. International humanitarian law (IHL) contains rules pertaining to the granting and scope of amnesties. Specifically, Article 6(5) of Protocol II additional to the Geneva Conventions relating to non-international armed conflicts (NIACs) provides that, at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict. Importantly, under customary IHL, this excludes persons suspected of, accused of, or sentenced for war crimes in NIACs.

https://library.icrc.org/library/docs/DOC/irrc-910-advisory-service.pdf

Anticipating operational naval warfare issues in international humanitarian law that may arise in the event of a conflict in the South China Sea

Rob Mclaughlin. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 703-716

The law of armed conflict (LOAC) issue currently presenting in the South China Sea context is the challenge of accommodating (or not) the roles of maritime forces and other maritime actors who are not clearly identifiable as 'military', and in discerning whether and how the effects they create are governed by LOAC. Using the South China Sea as an operational context, this chapter will first outline some of the operational reasons for increasing use of maritime militias, as a fundamental contextual background to how and why maritime militias can prove opaque when considered in terms of LOAC characterisations. With this practical context outlined, the chapter will then explore two emergent and interlinked issues in the application of LOAC at sea that arise from this context: conflict characterisation and the status of vessels.

https://doi.org/10.1017/9781108667203.040

The application of grave breaches at the Extraordinary Chambers in the Courts of Cambodia

Kristin Rosella, Göran Sluiter and MarcTiernan. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 564-585

The Extraordinary Chambers in the Courts of Cambodia (ECCC) is a hybrid court established to prosecute the senior leaders of the Democratic Kampuchea (DK) and those persons most responsible for the crimes committed between 17 April 1975 and 6 January 1979. The subject-matter jurisdiction of the Court includes crimes against humanity, genocide, grave breaches of the four Geneva Conventions of 12 August 1949 (Geneva Conventions), and serious violations of the Cambodian Penal Code of 1956. This chapter focuses on ECCC law concerning the prosecution of grave breaches resulting from the international armed conflict (IAC) between Cambodia and Vietnam. It examines to what extent the ECCC contributes to the development of international humanitarian law (IHL), including whether its jurisprudence is consistent with other international jurisprudence and whether, more broadly, the Court interprets and applies grave breaches in accordance with the state of the law in 1975 and current demands of fairness.

https://doi.org/10.1017/9781108667203.032

The application of international humanitarian law by the International Crimes Tribunal of Bangladesh

M. Rafiqul Islam and Nakib Nasrullah. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 586-607

The International Crimes Tribunals (ICTs) of Bangladesh are exclusively national tribunals, operating under the International Crimes (Tribunals) (Amendment) Act (ICT Act 1973 (amended)). These high powered special international crimes tribunals have been prosecuting and punishing individuals who committed, directly or indirectly, crimes against humanity, genocide, war crimes, and other serious crimes under international law during the Bangladesh war of independence from March to December 1971. This chapter examines the judicial application of IHL in the ICTs' cases involving war crimes and related legal issues arising in the course of the trials and from the judgments.

https://doi.org/10.1017/9781108667203.033

The application of the Geneva Conventions in Nepal : domestication as a way forward

Tek Narayan Kunwar. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 608-623

The non-domestication of the Geneva Conventions in Nepal has led to a plethora of complexities in the current context, where the State is striving to establish transitional justice by prosecuting crimes of the past and provide justice to victims. The transitional justice apparatus currently adopted by Nepal has been the subject of wide criticism for having provisions that conflict with the obligation to domesticate, such as granting amnesty for crimes of similar equivalence to grave breaches. The timely domestication of the Geneva Conventions and other relevant treaties, whether international humanitarian law (IHL) or international human rights law (IHRL), would have averted or resolved the conflict between legal obligations and responsibilities that Nepal is currently facing.

https://doi.org/10.1017/9781108667203.034

Asia-Pacific states and the development of international humanitarian law

Sandesh Sivakumaran. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 118-138

This chapter considers the development of international humanitarian law (IHL) by States from the Asia-Pacific region. Following the approach used throughout this volume, the Asia-Pacific region is understood as comprising East Asia, Southeast Asia, South Asia, Australia and New Zealand, Polynesia, Melanesia and Micronesia. The Asia-Pacific region is thus a broad one and there is no single 'Asia-Pacific contribution' to IHL. Rather, there are different, numerous, multi-faceted contributions from individual States of the region.

https://doi.org/10.1017/9781108667203.009

Assessing LOAC compliance and discourse as new technologies emerge : from effects-driven analysis to "what effects ?"

Laurie R. Blank. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 27-44

This chapter explores the consequences for effective discourse about law of armed conflict compliance of new technologies that intentionally or effectively mask the effects of an attack, the location or identify of the attackers, or even the very existence of an attack at all during armed conflict. The first section frames the problem that new technologies may pose for assessing LOAC compliance, highlighting what may be, in essence, a new "effects problem." These problems include situations where the effects of an attack are unclear or cannot be seen at all, where the connection between the weapon or attacker and the effects cannot be identified, and where a harm may occur but it is unclear or impossible to tell that there was an attack. This section also briefly introduces the methodology for assessing LOAC implementation and compliance in the context of targeting and the dangers of the effects-driven analysis for both the goals of the law and the law's future development. The second section then addresses the consequences of this potential

new “effects problem,” examining the challenges of legal analysis in the absence of externally identifiable information about what happened, who suffered what effects, or who launched what type of weapon or attack. In addition, this section seeks to identify pressure points for LOAC analysis in the context of new technologies that place stressors on the traditional tools and touchstones of legal analysis.

https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-2

Attack decision-making : context, reasonableness, and the duty to obey

Geoffrey S. Corn. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 325-374

Section II of this chapter reviews the proportionality rule, considering both implementation complexities and the criticality of effective implementation. Section III summarizes the law establishing the duty to obey orders and the limits of that duty. Section IV outlines the targeting process in order to provide the context for considering how to most effectively implement the proportionality obligation. This includes exploring the differences between deliberate and time-sensitive attack decision-making and assessing the fundamental differences between “individualized” deliberate attacks and operations conducted pursuant to the concept of mission command. Section IV also proposes how these different operational contexts necessitate a very different implementation focus. Section V considers the intersection of the duty to obey and implementation of the proportionality obligation, and how this intersection indicates the need to reconsider the relationship between the law of disobedience and fully effective implementation of such negative obligation.

https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-12

Automatic criminal liability for unlawful confinement (imprisonment) as a war crime ? : a potential consequence of denying non-state armed groups the power to detain in NIACs

Manuel J. Ventura. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 149-168

The question of whether international humanitarian law (IHL) provides for the power of detention to parties in a non-international armed conflict (NIAC) has been, of late, highly contentious. This chapter considers the issue from the perspective of international criminal law (ICL). It submits that if IHL does not provide for a power of detention in NIACs, then non-State armed groups (NSAGs) that engage in such conduct will most likely commit that war crime of unlawful confinement (imprisonment) as a violation of the laws and customs of war and simultaneously violate domestic criminal law. This has profound consequences. One of the incentives that NSAGs have to follow IHL is the possibility that, if they abide by its principles, they will not stand liable for was crimes. Further, IHL actively encourages the provision of amnesties to members of NSAGs at the end of the NIAC, but this can only extend to domestic crimes and not to war crimes. It is submitted that a situation whereby ICL liability is but a foregone conclusion for the mere act of detention - where no reprieve in the form of an amnesty is available - has a potentially negative effect on the incentive of NSAGs to abide by IHL standards when it comes to how detention is carried out. This should be kept in mind when considering the questions of whether IHL provides for an authority to detain in NIACs.

https://doi.org/10.1007/978-94-6265-339-9_6

Autonomous weapon systems and international law : aspects of international humanitarian law, individual accountability and state responsibility

Yannick Zerbe. In: Swiss review of international and European law, Vol. 29, no. 4, 2019, p. 581-606

With the use of artificial intelligence, so-called autonomous weapons systems could one day operate freely, choosing and eliminating targets without human involvement. With the seemingly inevitable proliferation of these systems, some will eventually violate international humanitarian law. Consequently, the establishment of legal responsibility for potential war crimes will be seriously impeded by the absence of a human in the command chain. Therefore, the individual responsibility regime under IHL would in many instances fail to hold a military commander or

manufacturer of an AWS responsible for its wrongful actions. However, since the regime of state responsibility under the IHL framework does not require a mental element, it is preferable to that of individual responsibility, in order to avoid accountability gaps for the actions of AWSs. A strict responsibility regime for AWSs should furthermore be established to assure that states are held responsible for any damage cause by their AWSs.

The banality of humanity (as an absolute) : a response to Frédéric Mégret

Knut Traisbach. - In: The limits of human rights. - Oxford : Oxford University Press, 2019. - p. 297-304

This chapter is a comment on a reflection by Frédéric Mégret on the limits of the laws of war. It proposes a jurisprudence of limits that focuses less on absolute ideals but on the compromising and enabling space 'in-between' these absolutes. Relying on Hannah Arendt's views on different conceptions of humanity, the comment critically engages with a thinking in terms of inherent opposing interests and oscillations between them. A conception of limits as reproducing inherent absolutes is disabling and passive. Instead, limits can be understood as facilitating a space that enables us to judge and to act, also through compromise. International humanitarian law and international human rights law, perhaps more than other areas of international law, depend on preserving and actively seeking this politically relevant space.

https://doi.org/10.1093/oso/9780198824756.003.0020

The battle for the recognition of wars of national liberation

Jochen von Bernstorff. - In: The battle for international law : South-North perspectives on the decolonization era. - Oxford : Oxford University Press, 2019. - p. 52-70

The chapter revisits the third world struggle for a full legal recognition of 'wars of national liberation' in the 1960s and 70s. Supported by famous United Nations (UN) resolutions, the growing number of 'newly independent states' had managed to confer increasing institutional legitimacy to the still-ongoing struggles for independence by incriminating colonialism and racism, as well as by actively promoting support for third-world self-determination. Armed revolts of independence movements against colonial or racist rule between 1945 and 1975, for example in Indonesia, Vietnam, Algeria, Kenya, Namibia, Angola, Guinea, and Western Sahara, figured as 'wars of national liberation' in various UN resolutions. Led from beginning to the victorious end by Georges Abi-Saab, the G77 battle for the full recognition of wars of national liberation framed these wars as 'defensive' military actions against continuing foreign 'aggression' through colonialism. During the 1960s and early 1970s, this move was strongly opposed by most Western authors, who argued that these conflicts were internal struggles and thus merely 'civil wars' or legitimate reactions to 'terrorist' activities. The chapter argues that even though the third world could ultimately secure a victory in this legal struggle, it could not prevent that Cold War interventionism of the superpowers and the former metropoles, as well as proxy-wars, nationalism and militarization further destabilized the societies in the 'newly independent states'.

Between sovereignty and race : the bombardment of hospitals in the Italo-Ethiopian War and the colonial imprint of international law

Nicola Perugini and Neve Gordon. In: State crime journal, Vol. 8, no. 1, 2019, p. 104-125

Italy's war crimes during the 1935-1936 invasion of Ethiopia have been broadly documented by different historians of Italian colonialism. However, its systematic bombardment of medical facilities operated by different Red Cross Societies is much less known. Relying on archival materials, we show how the fascist regime presented these attacks as legitimate reprisal; it was, the Italians claimed, the Ethiopian forces who had violated international law, particularly the principle of distinction, when they used medical facilities to hide. Reconstructing the debates about the Red Cross medical units, we show how Ethiopia's sovereign status rendered international law applicable, since the war was carried out betwen two internationally recognized countries rather than between a sovereign state and its colonial subjects. Simultaneously, however, Ethiopia's status as a sovereign state was extremely precarious. The African country was successfully framed by both Italy and the Red Cross as uncivilised through the creation of an artificial link between the ostensible inability to follow the principle of distinction (i.e. hiding behind medical units) and the population's race. The move from sovereignty to race is, we claim, illuminating because it reveals how the inclusion of Ethiopia into the family of nations not only

did not undermine the colonial imprint of international law, but also helped cement it. It is therefore crucial to think about the process of colonial inclusion into the liberal order of humanity against the grain, and to reveal how integration through sovereignty can be transmogrified into racist exclusion.

https://library.ext.icrc.org/library/docs/ArticlesPDF/48536.pdf

Beyond banning mercenaries : the use of private military and security companies under IHL

Martina Gasser and Mareva Malzacher. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 47-77

In the aftermath of several incidents involving private military and security companies (PMSCs) in the wars in Iraq and Afghanistan, many have argued that PMSCs were operating in a 'legal black hole' where no law applied. Since then, the use of PMSCs in war zones has continued and - due to new circumstances - evolved. Indeed, States still heavily rely on contractors in wars all around the world and due to a digitalization process PMSCs fulfil an ever-broader range of functions. Despite the clear picture of the private security sector that many believe they have, the term 'PMSC' now describes a wide array of private actors with very different profiles. In tandem, a regulation for PMSCs has also been developed in recent years. In 2008, the Montreux Document was signed. This instrument defines how international law applies to the activities of PMSCs when they are operating in an armed conflict zone. Two years later, the International Code of Conduct for Private Security Service Providers was finalized. At the same time, several countries have passed regulations on the use of PMSCs on their own territory and abroad. This chapter examines and categorizes the existing market, as well as new forms of private security services that have developed in recent years. Furthermore, it analyses how international humanitarian law can and should be applied to the different types of services offered. Finally, it provides an overview of the existing international initiatives aimed at regulating PMSCs and briefly examines, in this respect, different examples of national regulation.

https://doi.org/10.1007/978-94-6265-339-9_3

Bringing terrorists to justice in the context of armed conflict : interaction between international humanitarian law and the UN conventions against terrorism

Alejandro Sánchez Frías. In: Israel law review : a journal of human rights, public and international law, Vol. 53, no. 1, 2020, p. 71-99

The participation of foreign fighters on the side of terrorist groups has raised many questions about the legal basis for the criminal prosecution of acts of terror during armed conflicts. In cases regarding the commission of terrorist crimes with transnational elements, such as the foreign nationality of the alleged perpetrator, cooperation with other states in matters such as extradition or mutual legal assistance can be crucial. This study will analyse two regimes that may constitute a legal basis for cooperation in criminal matters against acts of terror committed during armed conflicts: (i) the rules on criminal responsibility under international humanitarian law (IHL), and (ii) the United Nations framework of anti-terrorist conventions. IHL has been seen by many as the only framework applicable to acts committed during armed conflicts. In contrast, the position adopted in this article is that IHL does not necessarily exclude the application of other regimes to acts committed during armed conflicts, which can serve as a complementary tool in international efforts for the prevention and suppression of terrorism.

https://doi.org/10.1017/S0021223719000220

British justice, war crimes and human rights violations : the age of accountability

Susan L. Kemp. - Cham : Palgrave MacMillan, 2019. - XXV, 488 p.

This book examines the UK approach to investigating international crimes and serious human rights violations. In 2010, the United Nations Secretary General referred to the emerging system of international justice, including the creation of the International Criminal Court, as the 'Age of Accountability.' However, the UK has sometimes struggled to comply with its international law obligations. Using examples from the post-World War II period to 2018, interviews with leading UK military lawyers and newly disclosed official documents, this work explains the legal duties,

how the UK military and civilian justice systems investigate alleged military misconduct and highlights the challenges involved. It provides suggestions on strengthening domestic law and policy and its importance for the UK's legitimacy as an exporter of rule of law expertise.

Challenges of hybrid warfare to the implementation of international humanitarian law in the Asia-Pacific

Hitoshi Nasu. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 220-230

This chapter critically considers various challenges that hybrid warfare will pose to the implementation of international humanitarian law (IHL) under the unique set of geopolitical circumstances that prevails in the Asia-Pacific. It contributes to the emerging volume of literature on the challenge of hybrid warfare, with two unique elements that characterize the potential theatre of warfare in the Asia-Pacific: the philosophical uniqueness in the indigenous conception of warfare, which may not accord with the western warfighting tradition; and the geographical uniqueness with the vast ocean spreading across the region. After a brief review of the concept of hybrid warfare and its potential application to the geopolitical context of the Asia-Pacific, this chapter examines how the existing structure and rules of IHL can be exploited for gaining tactical advantages in hybrid warfare. With a focus on hostilities in the maritime domain, this examination addresses three potential area of exploitation: (1) a legal 'grey zone' created due to the classification of conflicts, (2) identification and distinction of legitimate military objectives; and (3) determination of the legal status of captives.

https://doi.org/10.1017/9781108667203.014

Chemical weapons and non-state actors

Yasmin Naqvi and Olufemi Elias. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 115-148

In multiple international fora, the international community has unanimously condemned the use of chemical weapons by anyone in any circumstances as a violation of international law. However, the legal basis for these strong statements is not immediately apparent. This chapter undertakes a review of applicable international legal instruments and sources, including international humanitarian law, the Chemical Weapons Convention and resolutions of the United Nations Security Council and General Assembly, to examine the legal veracity of the statement. The review of these legal instruments and the practice of the international community would appear to lead to a conclusion that any use of chemical weapons by a non-State actor is prohibited as a matter of customary international law.

https://doi.org/10.1007/978-94-6265-339-9_5

The Chemical Weapons Convention in the Asia-Pacific

Treasa Dunworth. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 267-280

This chapter explores the Chemical Weapons Convention (CWC) in the Asia-Pacific region. Part 2 provides a short overview of the background to and terms of the CWC itself. Part 3 considers the participation and engagement by the Asia-Pacific in the treaty's development and its implementation. Part 4 explores the non-participation by the Democratic Peoples' Republic of Korea (DPRK); Part 5 discusses the use, and subsequent abandonment, of chemical weapons by Japan in China from 1937 to 1945 and includes an analysis of the contribution the CWC has been able to make to this ongoing problem.

https://doi.org/10.1017/9781108667203.017

The Cold War history of the Landmines Convention

Treasa Dunworth. - In: International law and the Cold War. - Cambridge : Cambridge University Press, 2020. - p. 315-336

This chapter attempts to explore three ideas. First, that there is in fact considerable work and effort invested in regulating and prohibiting landmines since the end of the Second World War, and the 1997 treaty in large part rested on that earlier work. Indeed, the success of the Landmines Convention cannot be properly understood without this historical context. Second, the longer

history in turn reveals an important story of the developing world actively engaged in pursuing limits on indiscriminate weapons, and actively engaged in the pursuit of disarmament. While this changed across time as the developing world itself fractured and shifted, it remains an important part of the story of disarmament efforts in the Cold War, much of which has yet to be explored. Finally, the story exposes the fallacy that 'humanitarian disarmament' is a creature of the post–Cold War era in the sense that especially from the South (but generally as well), there was deep and abiding concern about the humanitarian impacts of indiscriminate weapons.

Les colonies israéliennes en Cisjordanie, un crime de guerre ?

Ghislain Poissonnier and Eric David. In: La revue des droits de l'homme, No 16, 2019, 35 p.

La politique de colonisation israélienne en Cisjordanie constitue-elle le crime de transfert, direct ou indirect, par une Puissance occupante d'une partie de sa population civile, dans le territoire qu'elle occupe ? La question est actuellement examinée, à la demande de la Palestine, par le Procureur de la Cour pénale internationale. L'implantation par Israël de colonies de peuplement en territoire palestinien occupé comporte les éléments constitutifs du crime de guerre de l'article 8, § 2, b), viii), du Statut de Rome, à savoir son élément légal, son élément matériel et son élément moral. Il sera dès lors aisé au Procureur de la Cour pénale internationale d'établir la responsabilité pénale des dirigeants israéliens, qui organisent la politique de colonisation.

https://doi.org/10.4000/revdh.7353

Combined exercises and international humanitarian law training : fostering a culture of norm compliance ?

Dale Stephens. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 670-687

There exists an uncritical assumption within the framework of the four Geneva Conventions of 1949 that the broad dissemination of International Humanitarian Law (IHL) principles, coupled with an associated general training regime, will invariably facilitate greater operational compliance with IHL by military forces. Such a perspective has been correctly characterised as a necessary, but perhaps not sufficient, basis for confidence in the capacity to enhance meaningful norm compliance. The focus of this chapter is to briefly survey the frequency and character of combined exercises and training in the Asia-Pacific region to gauge the capacity of such activities to foster a culture of norm compliance. However, such a focus faces the immediate challenge that there is currently precious little empirical data that reveals how and why such exercises do support norm compliance. Despite this lack of empirical data, there does exist an increasing volume of academic literature evidencing a tendency towards norm acceptance as a feature of professional military culture across nations. Equally relevant, over the past thirty years training in IHL has been increasingly perfected to identify optimal approaches that highlight effective techniques for generating norm compliance. This chapter tracks these developments. It assesses the approaches to enhanced training techniques, the role of an international legal military culture and the pathways to norm internalisation that underpin contemporary joint and combined exercises. It is the central argument of this chapter that combined exercises provide a valuable platform for IHL training and norm internalisation and reflect 'best practice' IHL training experience. It is an implicit consequence that such exercises in turn ensure greater compliance with IHL in battle space contexts, though support for this conclusion derives more from social theory than empirical data tracking.

https://doi.org/10.1017/9781108667203.038

Command responsibility

Miles Jackson. - In: Modes of liability in international criminal law. - Cambridge : Cambridge University Press, 2019. - p. 409-431

The doctrine of command responsibility was developed and applied to both military and civilian superiors at the Nuremberg and Tokyo trials. It received conventional acceptance in articles 86 and 87 of Additional Protocol I to the Geneva Conventions, and is widely incorporated into national military manuals. Whatever the doubts embedded in its origins, there is no dispute today as to command responsibility's status in treaty and customary international law. It creates a specific form of omissions liability for superiors - military and civilian - who fail to prevent or

punish the crimes of their subordinates. This chapter provides an overview of the doctrine of command responsibility and assesses its constituent elements, uncontested and contested.

Le Commentaire mis à jour de la Première Convention de Genève : un nouvel outil pour générer le respect du droit international humanitaire

Lindsey Cameron... [et al.]. In: Revue internationale de la Croix-Rouge : sélection française Vol. 97, 2015/4, 19 p.

Depuis leur publication, respectivement dans les années 50 et 80, les Commentaires des Conventions de Genève de 1949 et de leurs Protocoles additionnels de 1977 sont devenus une référence fondamentale pour l'application et l'interprétation de ces traités. Le Comité international de la Croix-Rouge (CICR), qui s'est entouré d'un groupe d'éminents spécialistes, a entrepris de mettre à jour ces Commentaires afin de prendre en compte l'évolution du droit et de la pratique et de présenter les interprétations qui prévalent aujourd'hui. La version actualisée du Commentaire de la Première Convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne est désormais finalisée. Le présent article fournit un aperçu du processus de cette mise à jour et de la méthodologie utilisée. Il résume également les principales évolutions observées dans l'interprétation des règles conventionnelles et reflétées dans la nouvelle édition du Commentaire.

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Compliance with humanitarian rules on the protection of children by non-state armed groups : the UN's managerial approach

Marcos D. Kotlik. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 387-425

The framework created by the United Nations (UN) to address the situation of children affected by armed conflicts relies on a Monitoring and Reporting Mechanism implemented by personnel on the ground and supervised by the UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, with the endorsement of the UN Security Council. It produces information that may be employed by multiple actors and aims to ensure compliance with basic humanitarian rules and reduce grave violations suffered by children. States and non-state armed groups that are listed as violators as encouraged to engage in dialogue with UN personnel on the ground toward to adoption of action plans that will lead them to compliance. This chapter examines this framework as a predominantly managerial approach to non-compliance, highlighting its positive features as well as its shortcomings.

https://doi.org/10.1007/978-94-6265-339-9_14

Conflict classification and cyber operations : gaps, ambiguities and fault lines

David A. Wallace and Christopher W. Jacobs. In: University of Pennsylvania journal of international law, Vol. 40, no. 3, 2019, p. 643-693

This article examines whether the conflict classification paradigm for international humanitarian law ("IHL") established by the 1949 Geneva Conventions is adequate to regulate armed conflicts that center, in whole or in part, on cyber operations. The analysis herein, presented in seven parts, answers that question affirmatively, but posits that the advent of cyber operations has exposed certains gaps, ambiguities, and fault lines in IHL's conflict classification framework. After the introduction, part II of the article provides four examples of situations of violence - three of which amount to armed conflicts under IHL and one that does not meet the definitional criteria of armed conflict under IHL. Part III gives an overview of conflict classification under IHL. Parts IV and V examine international and non-international armed conflicts, respectively. Part VI highlights four overraching tensions between IHL's conflict classification and cyber operations.

https://scholarship.law.upenn.edu/jil/vol40/iss3/3/

Conflit armé interne et compétence universelle en Suisse : terrorisme, lutte contre-insurrectionnelle et violations du droit humanitaire dans la décision Nezzar (Tribunal pénal fédéral, Cour des plaintes, Nezzar, 30 mai 2018)

Olivier Beauvallet. In: Revue de science criminelle et de droit pénal comparé, no 4, 2018, p. 847-859

> À la suite de la dénonciation de faits criminels, le Ministre public de la Confédération suisse, avait ouvert une enquête pour crimes de guerre commis en Algérie entre 1992 et 1994. Au terme de ses investigations, le parquet décidait de classer les poursuites, aux motifs que la preuve n'était pas rapportée d'un conflit armé ayant opposé les forces gouvernementales et des groupements adverses. Il estimait en outre que les infractions étaient prescrites. En tant que juridiction d'appel, la Cour des plaintes annule cette décision. Elle examine d'abord la situation en Algérie et estime que les critères d'intensité des combats et d'organisation des belligérants permettent de qualifier les hostilités de conflit armé non international. Elle précise ensuite le régime de prescription des différentes infractions et la compétence des juridictions pénales suisses. Cette décision élargit le champ des poursuites initialement entreprises pour crimes de guerre afin d'y inclure le crime de torture, voire celui de crimes contre l'humanité.
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> https://library.icrc.org/library/docs/ArticlesPDF/48407.pdf

Les conflits armés en mutation

Jérôme de Hemptinne. - Paris : Pedone, 2019. - 358 p.

> Le morcellement du champ d'application du droit international humanitaire en diverses catégories de conflits armés, internationaux et non internationaux, de haute et de basse intensité, ne s'harmonise pas facilement avec la nature des hostilités contemporaines. Celles-ci se laissent difficilement enfermer, une fois pour toutes, dans l'une ou l'autre de ces catégories. En effet, de nos jours, rares sont les conflits armés qui sont en permanence internationaux ou non internationaux, de haute ou de basse intensité. Qu'il soit afghan, centrafricain, congolais, irakien, israélo-palestinien, ivoirien, libyen, malien, somalien, syrien, ukrainien ou yéménite, ces conflits évoluent tous au fur et à mesure de leur déroulement, au gré des interventions et retraits de forces armées externes, des contrôles que ces forces exercent, puis perdent, sur d'autres forces, des structurations et déstructurations des groupes armés en combat, des variations d'intensité des opérations militaires ou des pertes et regains d'effectivité des belligérants. L'objet de cet ouvrage est précisément d'analyser les contours de ces processus de mutation et leurs répercussions sur le droit applicable. Il est également de montrer que, dans la plupart des conflits armés d'aujourd'hui, lorsque ces processus se combinent entre eux ou se succèdent, le système de classification des conflits armés envisagé par le droit international humanitaire apparaît de plus en plus obsolète et nécessite donc d'être repensé.

Conventions internationales, ports coloniaux et Première Guerre mondiale ou un droit de la guerre commandé par la géographie

Bernard Durand. - In: La Grande Guerre et son droit. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 277-322

> Ce chapitre revient sur les événements majeurs qui ont marqué les liens entre ports coloniaux, conventions internationales et droit de la guerre, avant d'examiner les centaines de décisions rendues par quelques Cours ou Conseils des prises qui ont eu à en juger les conséquences. L'auteur privilégie non seulement celles qui ont concerné l'outre-mer, mais surtout celles qui montrent comment l'application des conventions internationales les a conduites à privilégier l'examen minutieux des conditions dans lesquelles les captures ont été effectuées ainsi que les effets qui en ont été déduits. L'auteur relève que la minutie des Cours a été d'autant plus nécessaire que les belligérants attestaient très souvent de cet art par lequel ils essayaient d'échapper aux saisies ou du moins à bénéficier au mieux des règles retenues par les conventions. Il souligne in fine la manière dont le droit des prises et son application ont été aggravés à compter de 1915 au rythme du durcissement du conflit et de l'usage de représailles.

Counter-terrorism law and armed conflict in Asia

Ben Saul. - In: Asia-pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 231-250

This chapter first explores how the regional counter-terrorism conventions of regional organisations in Asia normatively impact on IHL's regulation of armed conflict, both in their articulation of terrorist offences and their intricate web of varied exclusions concerning certain hostilities. Secondly, the chapter explores how the UN Security Council's counter-terrorism sanctions may apply to non-State armed groups (NSAGs) in Asia, potentially both undermining incentives to comply with IHL and adversely affecting humanitarian relief operations. Thirdly, the chapter concludes by showing how national implementation of Security Council Resolution 1373 (2001), which requires domestic criminalisation of terrorism despite not defining it, has enabled States to criminalise hostile acts by members of non-State armed forces which are not unlawful under IHL (such as targeted, proportionate attacks on State military forces or military objectives). Again, an adverse impact of this approach may be to undermine the effectiveness of IHL and its humanitarian purposes, by transnationally 'outlawing' NSAGs.

https://doi.org/10.1017/9781108667203.015

Criminalising rape and sexual violence in armed conflicts : evolving criminality and culpability from the Geneva Conventions to the Bangladesh International Crimes Trial

M Rafiqul Islam. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 215-243

Widespread sexual atrocities were committed by the Pakistani occupation forces and their local collaborating auxiliary forces during the Bangladesh liberation war of 1971. These crimes included rape, gang rape, sexual captivity, sexual slavery, forced pregnancy, the birth of war babies, sexual assault, invasive body searches, and other similar acts. This systematic and pervasive gender-based violence was an integral part of a conscious and deliberate policy and plan of the Pakistani occupation army to destroy the victims' familial importance and their humiliation was meant to be seen, heard, watched, and told as a weapon of war. This chapter traces the evolutionary process of criminalising wartime rape and sexual violence as a prosecutable international crime from the Geneva Conventions to the ongoing international crimes trials in Bangladesh. It examines the extent to which criminality and culpability of wartime rapes and other sexual violence has been articulated and how rape has constituted crimes against humanity, genocide, war crimes, and a weapon of war within the corpus of international criminal norms of prohibition from the Geneva Conventions to Bangladesh.

https://doi.org/10.1163/9789004375543_010

Critical issues in the regulation of armed conflict in outer space

Steven Freeland and Elise Gruttner. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 180-198

The development of technology to enhance the exploration and use of outer space has continued at a rapid rate ever since the space age began in 1957. Most military leaders regard space-related technology as an integral element of their strategic battle platform and state security. This reflects the changing technological nature of armed conflict, which challenges many aspects of international law, including the regulation of warfare. The continuing development of commercial and military space technology challenges the core principle of the 'peaceful purposes' doctrine that underpins the international regulation of outer space. This chapter explores the development of activities in outer space, the regulation of space security and the application of the United Nations (UN) space treaties. With a focus on the laws of war to the use of outer space during armed conflict, it looks at their practical application in the Asia-Pacific region, and offers some reflections as to what is required to properly address the issue.

https://doi.org/10.1017/9781108667203.012

Cyberspace and international humanitarian law : the Chinese approach

Zhang Binxin. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 323-337

This chapter analyses China's attitude to cyberspace and international humanitarian law (IHL). It starts with a discussion of China's overall approach to cyberspace and the role of international law in it. Then next section analyses more specifically China's attitude to the applicability of IHL in cyberspace. Finally, the chapter looks at the 'people's war' tradition of the Chinese military and China's recently adopted national strategy of civil-military integration (CMI), and their possible implications on IHL related issues.

https://doi.org/10.1017/9781108667203.020

Le déplacement durant les conflits armés : comment le droit international humanitaire protège en temps de guerre et pourquoi c'est important

Cédric Cotter. - Genève : CICR, novembre 2019. - 71 p.

Le déplacement, phénomène intrinsèque à la guerre, constitue l'un des problèmes d'ordre humanitaire les plus graves de notre époque. La présente étude montre qu'en cas de déplacement durant des conflits armés, le droit international humanitaire doit faire partie intégrante de la réflexion afin d'établir si les violations du DIH ou le respect de celui-ci ont un effet favorisant ou limitant le déplacement. Pendant plus d'une année, nous nous sommes penchés sur les tendances du déplacement dans une douzaine de pays différents du monde entier. La présente étude est fondée sur les publications existantes, sur des entretiens avec des délégués du CICR et sur de nombreux documents tirés des archives du CICR. Elle tire parti des connaissances des conflits armés et du déplacement que l'organisation rassemble depuis des décennies.

https://library.icrc.org/library/docs/DOC/icrc-4349-001.pdf

Detention by non-state armed groups in NIACs : IHL, international human rights law and the question of the right authorities

Frédéric Mégret. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 169-194

This chapter brings attention to the quite divergent consequences of dealing with the issue of detention by non-State armed groups in non-international armed conflicts under international humanitarian law and international human rights law. The conventional approach to detention in international humanitarian law is that armed groups only have a de facto power, bound by humanitarian obligations. Under the laws of war, the question is partly tied to whether States themselves have the prerogative to detain under Common Article 3 to the 1949 Geneva Conventions and the 1977 Additional Protocol II, a question that is far from settled. Non-State armed groups raise the added problem that they may not be recognized, or be recognized only for the purposes of endorsing humanitarian obligations. If international humanitarian law does not apply to the authority to detain, then the question falls to be resolved by international human rights law. Under the latter, there must be a solid foundation to any deprivation of freedom, and the question cannot simply be one of treating captives humanely. This chapter will suggest that in both cases a theory on non-State actors' 'right authority' is missing when it comes to detaining State troops. Historically, this issue has been obscured by the fact that the right authority has been equated with statehood, but the moment may have come to rediscover how one can identify non-State actors that could be considered privileged in the international legal system.

https://doi.org/10.1007/978-94-6265-339-9_7

Detention in non-international armed conflicts

Emily Crawford. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 251-266

This chapter examines the current practice and scholarly debates surrounding detention in situations of NIAC. The chapter examines the existing rules regarding detention in armed conflict, drawing on examples from the Asia-Pacific region to explore how those rules have been implemented. It then examines the challenges presented by detention in multinational operations, and how the question of the legal authority for detention in NIAC has come to operational and judicial attention. Case law on detention in NIAC, as well as the reception and

application of the recent Copenhagen Process Principles and Guidelines on the Handling of Detainees in International Military Operations, is also explored.

https://doi.org/10.1017/9781108667203.016

Detention operations in non-international armed conflicts between international humanitarian law, human rights law and national standards : a NATO perspective

Steven Hill and Leonard Holzer. In: Israel yearbook on human rights, Vol. 49, 2019, p. 116-130

Detention poses a challenge to coalitions of States and multinational alliances, such as the North Atlantic Treaty Organization (NATO), when conducting military operations in non-international armed conflicts, as treaty law concerning detention or internment of captured persons in NIACs is still very limited. Part I of this article will first set the historical and legal background of NATO's approach to NIAC detention and Part II will then explain how NATO has dealt with this issue in the circumstances of the Kosovo Forces ('KFOR') and the International Security Assistance Force ('ISAF') in Afghanistan. Building on these past observations, the article's Part III will then outline the three major challenges NATO is facing when conducting detention operations in a NIAC. Finally, the article concludes by suggesting NATO as a forum for reducing legal uncertainty in the field of NIAC detention and by highlighting practical examples of how the Alliance is already taking promising steps in this direction.

https://doi.org/10.1163/9789004404601_005

The development of IHL by human rights bodies

Gerd Oberleitner. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 297-319

International human rights bodies have repeatedly been confronted with situations of armed conflict and consequently also with the potential complementary application of human rights and international humanitarian law (IHL) in such situations. Within their human rights-related mandates, the United Nations (UN) Human Rights Council and its special procedures, UN human rights treaty bodies, the European Court of Human Rights, the Inter-American Commission and Court of Human Rights and the African Commission on Human and Peoples' Rights have developed a limited practice in dealing with IHL. In any case, these bodies have displayed different attitudes towards IHL and have contributed in different ways to understanding the links between human rights and IHL. Their practice can be seen as a non-State perspective on IHL with the potential to inform the law's further development. This chapter traces how, on what basis and with which consequences, international human rights bodies contribute to the development of IHL.

https://doi.org/10.1007/978-94-6265-339-9_11

The development of the Geneva Conventions

Borhan Uddin Khan and Mohammad Nazmuzzaman Bhuian. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 12-39

This chapter traces the development of the law of Geneva from its origin in pre-1949 treaty law to the present. It outlines briefly the history of the origin and adoption of the original Geneva Convention of 1864 and its subsequent development which culminated in the adoption of the four Geneva Conventions in 1949, the two Optional Protocols in 1977 and the third Protocol in 2005.

https://doi.org/10.1163/9789004375543_003

Dialoguing with Islamic fighters about international humanitarian law : towards a relational normality

Matthias Vanhullebusch. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 656-669

In order to take into account the effect of the relationships upon the normativity of the law of war, this chapter advances a theory on the relational normativity of international law (TORNIL) that takes into account each of the three sources of its normativity, namely norms, moral values and

relationships. TORNIL combines a Western and Asian epistemological framework (which is particularly relevant in the context of Islamic warfare in Asia) as well as international law and international relations disciplines. TORNIL can assist in structuring ongoing humanitarian debates as to better understand the conduct of Islamic fighters that is responsible for the erosion of the law of war, on the one hand, and to enhance compliance with the law of war through the restoration of the law of war, on the other hand. The second section of this chapter outlines the possible advantages and disadvantages of TORNIL when developing a new humanitarian framework for dialogue with Islamic fighters. The third section applies TORNIL to identify how the erosion of the normativity of the law of war has been inherently affected by the doctrinal development of Islamic juristic authorities as well as the dehumanising discourse on the (non-)Islamic enemy other. The final section proposes a new foundation from which to restore the normativity of the ILW and thus enhance compliance with IHL. It does this, not by virtue of a moral call towards re-engagement with the law of war, but by reminding Islamic fighters about their religious duties under Islamic law in general to respect the creationary unity of mankind before God (vertically) and all other human beings (horizontally) affected by hostilities.

https://doi.org/10.1017/9781108667203.037

Disputed territories and international criminal law : Israeli settlements and the International Criminal Court

Simon McKenzie. - London ; New York : Routledge, 2020. - XII, 245 p.

It has been over 50 years since the beginning of the Israeli occupation of the Palestinian Territories. It is estimated that there are over 600,000 Israeli settlers living in the West Bank and East Jerusalem, and they are supported, protected, and maintained by the Israeli state. This book discusses whether international criminal law could apply to those responsible for allowing and promoting this growth, and examines what this application would reveal about the operation of international criminal law. It provides a comprehensive analysis of how the Rome Statute of the International Criminal Court could apply to the settlements in the West Bank through a close examination of the potential operation of two relevant Statute crimes: first, the war crime of transfer of population; and second, the war crime of unlawful appropriation of property. It also addresses the threshold question of whether the law of occupation applies to the West Bank, and how the principles of individual criminal responsibility might operate in this context. It explores the relevance and coherence of the legal arguments relied on by Israel in defence of the legality of the settlements and considers how these arguments might apply in the context of the Rome Statute. The work also has wider aims, raising questions about the Rome Statute's capacity to meet its aim of establishing a coherent and legally effective system of international criminal justice.

https://doi.org/10.4324/9781003004004

Le droit international humanitaire et les défis posés par les conflits armés contemporains : engagement renouvelé en faveur de la protection dans les conflits armés à l'occasion du 70e anniversaire des Conventions de Genève

CICR. - Genève : CICR, novembre 2019. - 92 p.

Le présent document est le cinquième rapport sur le droit international humanitaire et les défis posés par les conflits armés contemporains établi par le Comité international de la Croix-Rouge à l'intention de la Conférence internationale de la Croix-Rouge et du Croissant-Rouge. Des rapports similaires ont été présentés aux sessions de 2003, 2007, 2011 et 2015 de la Conférence internationale. L'objectif de ces rapports est de donner un aperçu de certains des défis que présentent les conflits armés contemporains pour le droit international humanitaire (DIH), de susciter une réflexion plus large sur ces défis et de passer en revue les différentes actions et positions actuelles ou possibles du CICR dans les domaines qui le concernent. Il couvre ainsi un certain nombre croissant de questions qui suscitent un intérêt croissant de la part des Etats et d'autres acteurs, ainsi que du CICR : l'urbanisation des conflits armés, les nouvelles technologies de guerre, les besoins des personnes civiles dans des conflits de plus en plus prolongés, les groupes armés non étatiques, le terrorisme et la lutte contre le terrorisme, le changement climatique, l'environnement et les conflits armés, ainsi que le renforcement du respect du DIH.

https://library.icrc.org/library/docs/DOC/icrc-4427-001.pdf

Emerging technologies and the principle of distinction : a further blurring of the lines between combatants and civilians ?

Michael W. Meier. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 211-234

New technologies, such as Unmanned Aerial Systems (UAS), also often referred to as Remotely Piloted Aircraft (RPAs) or "drones," Lethal Autonomous Weapons Systems (LAWS), and cyber operations may provide an alternative to waging warfare with large ground forces. These technologies allow States to move soldiers further from the battlefield while enabling States to bring military power to bear that may be more discriminate than current systems. These technologies allow States to use force while reducing the threat of casualties to their own forces and destruction of their own property. However, the development of these technologies brings its own challenges as certain technology can be purchased commercially off the shelf. This chapter will examine the questions surrounding how these particular technologies impact the implementation of the principle of distinction. Section II will look at the principle of distinction itself and the two requirements under the principle. Section III will consider the challenges in the application of this principle with respect to LAWS, cyber capabilities, and RPAs. Section IV will consider the argument put forth by Professors Yoo and Rabkin that the principle of distinction needs to be changed in order for these new technologies to be effective.

https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-8

The end of the war/peace limit on the application of international human rights law : a response to Andrew Clapham

Yuval Shany. - In: The limits of human rights. - Oxford : Oxford University Press, 2019. - p. 319-327

In 'The Limits of Human Rights in Times of Armed Conflict and Other Situations of Armed Violence', Andrew Clapham explains how the dynamics of international human rights law (IHRL) in recent decades, which give effect to foundational principles such as universality and the non-derogability of core humanitarian norms, have extended the limits of IHRL. This comment discusses three sets of concerns, which are also touched upon by Clapham, explicitly or implicitly: the disruptive effect of IHRL on substantive regulations of conflict situations, the functional limits of IHRL monitoring bodies, and the political backlash encountered due to normative and institutional expansion. The comment also offers a number of critical observations on how IHRL has developed so far in relation to armed conflict situations and how should IHRL monitoring bodies apply IHRL in such situations.

https://doi.org/10.1093/oso/9780198824756.003.0022

Ethnic conflicts in Myanmar : the application of the law of non-international armed conflict

Megumi Ochi and Saori Matsuyama. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 338-355

This chapter provides an analysis of the applicable laws of non-international armed conflict (NIAC) to the ethnic conflict in Myanmar which captured the world's attention in 2017: the Rohingya crisis. In addition to other violations, the conflict involving the Rohingya people in Rakhine state saw hundreds of thousands of people fleeing to Bangladesh as a result of violent acts against Rohingya civilians by the military forces and its followers. The chapter first provides an overview of Myanmar's long history of conflict between different groups in order to highlight the complexity and characteristics of Myanmar's ethnic conflicts. Second, the chapter confirms the applicability of the law of NIAC in Myanmar. Myanmar is party to the four Geneva Conventions of 1949 (Geneva Conventions). However, it is not party to the Additional Protocols of 1977. The legal regime of the International Criminal Court (ICC) and the customary rules of international criminal law (ICL) is also applicable to the Rohingya crisis because of the cross-border deportation to Bangladesh of the civilian population. Third, the chapter discusses the threshold of applicability of Common Article 3 of the Geneva Conventions (CA 3) and the customary rules of NIAC. Fourth, it examines whether the threshold of NIAC has been reached in the violent situations in Rakhine state in 2017. The armed conflicts in Kachin and Shan states have a long history and many researchers have examined the conflicts from various perspectives.

By contrast, little research has been conducted on the legal issues with respect to the armed conflict in Rakhine state. In conclusion, this chapter points to the unreasonable consequence of the automatic application of the laws of NIAC to the situation in the Rakhine state. Application of IHL would legitimise the unilateral shootings and killings by the military forces of the civilians who responded to the commander of the armed group's WhatsApp message and participated in the violence with homemade weapons.

https://doi.org/10.1017/9781108667203.021

Etude critique du Manuel de Tallinn sur la participation directe aux hostilités : du partage d'informations militaires sur les réseaux sociaux

Maxime Lismonde. In: Revue belge de droit international, Vol. 51, 2018-2, p. 583-615

En droit international humanitaire, le concept de la participation directe aux hostilités est au cœur du principe de distinction, mais il reste l'un des plus difficiles à cerner. Le développement des cyber-conflits offre de nombreuses opportunités pour les civils de s'impliquer dans les conflits et risque de brouiller davantage la ligne entre civils et combattants. Par exemple, en Syrie, de nombreux civils ont utilisé les réseaux sociaux afin de partager des informations sur le déroulement des hostilités. Ces civils perdent-ils leur protection ? Le Manuel de Tallinn se veut refléter la lege lata applicable aux cyber-conflits. Nous souhaitons donc confronter son interprétation du concept de participation directe aux hostilités à ce nouveau phénomène. Nous essayons de démontrer que le Manuel adopte une interprétation large et dangereuse du seuil de nuisance et du lien de belligérance. Son interprétation ne reflète pas celle généralement acceptée en droit international humanitaire, elle reprend la position du prof. Michael Schmitt. Nous concluons en mettant en garde le lecteur contre l'imposition d'interprétations isolées et invalides dont la légitimité ne découle de rien, si ce n'est l'expertise de son auteur.

"Fire and fury" at the 38th parallel : exploring the law of war's twilight zones in a potential future conflict on the Korean Peninsula

Gregory S. Gordon. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 717-752

This chapter explores the international humanitarian law issues that would arise if the current tension between North Korea and the United States sparked a fresh outbreak of hostilities on the Korean Peninsula. It first reviews the history of the 1950–1953 Korean War and provides the historical and factual predicates necessary to understand the legal issues. It also considers the war crimes that took place during that war. The chapter then analyse the issues that could arise in a modern conflict. In the first instance, it considers what body of law would apply to the various belligerent parties in terms of whether the clash would be considered a non-international armed conflict (NIAC) or an international armed conflict (IAC). After identifying the relevant legal regime, it analyses substantive legal issues, including: (1) the potential for a repeat of 1950–1953 war crimes; (2) issues related to contemporary remnants from that mid-twentieth-century conflict (e.g., use of landmines); (3) issues arising from North Korea's unsavoury reputation as a rogue state (e.g., calling into question the possibility of such tactics as hijacking, torture, use of child soldiers, and use of human shields and other tactics of asymmetrical warfare); and (4) other more complex issues, such as potential civilian participation, explosive weapons in dense urban areas, drone strikes, cyberwarfare and potential use of weapons of mass destruction. Finally, the chapter concludes by combining the historical and legal perspectives to offer insights on the odds and likely nature of any potential future conflict.

https://doi.org/10.1017/9781108667203.041

Forced transfer of aliens during armed conflict

Pablo Antonio Fernández Sánchez. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 146-167

Throughout history, the forcible transfer of civilian populations has been common practice in times of armed conflict or occupation. The Second World War saw emerging a new awareness that such situations were unlawful and should be punished. This marked the beginning of a legal, as opposed to merely social, concern about the issue, which notably took shape in the Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war. It was followed by the gradual establishment of a juridical support structure, culminating in recent times with the

inclusion of all such actions (now classified as crimes) in the Statute of the International Criminal Court. This chapter looks at the international legal regime protecting civilians from forced displacement, covering the principle of non-refoulement, the interdiction of unjustified deportation and forcible transfer and exceptions for military or humanitarian reasons.

https://doi.org/10.1163/9789004375543_007

Four Geneva Conventions of 1949 : a Third World view

Srinivas Burra. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 190-214

Looking at the 1949 Geneva Conventions as the product of particular historical times, this chapter critically evaluates the four Geneva Conventions from the standpoint of the Third World. It underlines that most of the Third World was under colonial rule during the negotiations leading to the adoption of the 1949 Geneva Conventions, preventing these geographical areas from participating to the development of the law. The chapter identifies three issues - colonial occupation, colonial conflicts, and the red cross emblem - and evaluates how the Conventions either failed to address them or prioritized only those aspects which were of concern to the developed and dominant States, while either ignoring these issues or rejecting them in the negotiation process.

https://doi.org/10.1163/9789004375543_009

The Fourth Geneva Convention for civilians : the history of international humanitarian law

Gilad Ben-Nun. - London [etc.] ; New York : I.B. Tauris, 2020. - XIII, 274 p.

The Fourth Geneva Convention, signed on 12th August 1949, defines necessary humanitarian protections for civilians during armed conflict and occupation. One-hundred-and-ninety-six countries are signatories to the Geneva Conventions, and this particular facet has laid the foundations for all subsequent humanitarian global law. How did the world – against seemingly insurmountable odds – draft and legislate this landmark in humanitarian international law? The Fourth Geneva Convention for Civilians draws on archival research across seven countries to bring together the Cold War interventions, founding motives and global idealisms that shaped its conception. Gilad Ben-Nun draws on the three key principles that the convention brought about to consider the recent events where its application has either been successfully applied or circumvented, from the 2009 Gaza War, the war crimes tribunal in the former Yugoslavia and Nicaragua vs. the United States to the contemporary conflict in Syria.

From the vanishing point back to the core : the impact of the development of the cyber law of war on general international law

Kubo Macák. - In: 9th International Conference on Cyber Conflict : defending the core. - Tallinn : NATO CCD COE. - p. 1-14

The law of war was famously described by Sir Hersch Lauterpacht as being `at the vanishing point of international law'. However, in a historical twist, international legal scrutiny of cyber operations emerged and developed precisely through the optics of the law of war. This paper analyses the influence that the development of the cyber law of war has had and might yet have on the `core' of international law, in other words, on general international law. It analyses three key dimensions of the relationship between the law of war and general international law: systemic, conceptual, and teleological. It argues that, firstly, a systemic-level shift has taken place in the discourse, resulting in the academic debate and state focus moving from law-of-war questions to questions of general international law including sovereignty, non-intervention, and state responsibility. A better understanding of this trend should allay the fears of fragmentation of international law and inform the debate about the relationship between the law of war and `core' international law. Secondly, this development has created fertile grounds for certain concepts to migrate from the law of war, where they had emerged, developed or consolidated, into general international law. A case in point is the functionality test, which originated as a compromise solution to determine whether a cyber operation amounts to an `attack' under the law of war, but which may offer additional utility in other areas of international law including the law of state sovereignty and the law of arms control and disarmament. Thirdly, however, it is imperative that the unique teleological underpinning of the law of war is taken into consideration

before introducing its rules and principles to different law. Secondly, this trend has allowed for specific concepts to migrate from the law of war where they had originated, evolved or consolidated and to influence other areas of international law. An illustrative example is the functionality test, which offers significant utility for the law of state sovereignty as well as the law of arms control and disarmament. Thirdly, however, it is imperative that the unique teleological underpinning of the law of war is taken into account before introducing its rules and principles to different normative contexts. Paradoxically, a blanket transplantation of these norms might in practice jeopardise the underlying humanitarian considerations.

Generating respect for the law by non-state armed groups : the ICRC's role and activities

Anne Quintin and Marie-Louise Tougas. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 353-386

The International Committee of the Red Cross (ICRC) has a long experience working with non-State armed groups (NSAGs) in various contexts with the aim of generating respect for international humanitarian law (IHL) by those groups. This chapter discusses the legal bases for the ICRC's work in that respect, concrete ways to integrate IHL into NSAGs' pratice, as well as recent developments. Some of the challenges faced by the ICRC in its work with NSAGs, such as how to take into account NSAGs practice into IHL clarification and development processes, and the risk of criminalizing humanitarian action and IHL dissemination activities with NSAGs by overboard anti-terrorist legislation will also be tackled.

https://doi.org/10.1007/978-94-6265-339-9_13

The Geneva Conventions and enforcement of international humanitarian law

Derek Jinks. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 300-326

This chapter focuses on inter-belligerent enforcement of international humanitarian law (IHL), questioning what mechanisms of enforcement are employed in contemporary IHL and how best to design effective mechanisms. The author addresses these questions through an analysis of some constitutive features of the Geneva Conventions, arguing that the approach to enforcement in the Conventions differs importantly from the approach that characterised the classical law of war. The primary purpose of this paper is to provide a descriptive account of the approach of the Conventions—making clear not only the ways in which the Conventions mark an important decline in certain kinds of reciprocity constraints, but also the ways in which the Conventions encourage, even require, warring parties to retaliate against serious violations of IHL. The paper also offers some reflection on the strengths and weaknesses of this approach—emphasizing not only structural, but also sociological, cognitive, and behavioral considerations. The author concludes that the approach to enforcement in the Conventions, once properly understood and evaluated in light of various structural and psycho-social considerations, minimizes the considerable downside risks associated with the classical approach and offers a plausible, even if importantly qualified, means deterring violations of IHL.

https://doi.org/10.1163/9789004375543_013

The Geneva Conventions and non-international armed conflicts

Noelle Higgins. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 168-189

This chapter analyses the nature and scope of both Common Article 3 of the Geneva Conventions and Additional Protocol II and assesses their success in regulating non-international armed conflicts. Section 1 of the chapter focuses on Common Article 3, its nature and scope, and analyses situations of its application. Section 2 addresses how the legal regime regulating non-international armed conflicts enshrined in Common Article 3 was expanded upon with the adoption of Additional Protocol II, and analyses the strengths and weaknesses of this instrument. Section 3 discusses recent practice in bridging the regulation gap between international armed conflicts and non-international armed conflicts, before the chapter concludes with suggestions as to how the legal framework concerning non-international armed conflicts may progress in the future.

https://doi.org/10.1163/9789004375543_008

Guidelines on investigating violations of international humanitarian law : law, policy, and good practice

Noam Lubell, Jelena Pejic and Claire Simmons. - Geneva : Geneva Academy of international humanitarian law and human rights ; ICRC, September 2019. - 67 p.

Investigations into alleged violations of international humanitarian law (IHL) by the parties to an armed conflict are not only crucial to securing respect for IHL, but also to preventing future violations and enabling redress for victims of past violations. Despite the unquestionable importance of investigations, there is a lack of detail with regard to the international law, principles and standards relevant to investigations in armed conflicts. This is further reflected in the disparate practice across States in the way investigations are carried out. These guidelines aim to bring much needed clarity and support for the conduct of effective investigations into violations of IHL. They are the result of a five-year project, initiated in 2014 by the Geneva Academy of International Humanitarian Law and Human Rights and joined in 2017 by the International Committee of the Red Cross. The resulting publication is based on extensive research and is also informed by a series of expert workshops and engagement with stakeholders. The 16 guidelines are each accompanied by a detailed commentary and provide guidance on the different aspects of investigations into violations of IHL, from the early stages of recording information and identifying the incidents that require investigation, through to the structural and procedural aspects of investigative bodies. The text presents a basis for the conduct of effective investigations, while taking into account the diverse legal and military systems that exist, as well as the legal and practical challenges that can arise. They are an essential tool not only for States aiming to conduct investigations of IHL violations in compliance with international law, but also for other bodies and individuals seeking a more detailed understanding of investigations in armed conflict.

https://www.geneva-academy.ch/research/publications/detail/496-guidelines-on-investigating-violations-of-ihl-law-policy-and-good-practice

High-tech civilians, participation in hostilities, and criminal liability : reconciling U.S perspectives

Matthew T. King. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 175-210

Section I of this chapter explores the effects of technology on the potential civilianization of the battlespace, and the general status of combatants and civilians under the law of armed conflict. Section II then breaks down the U.S. perspectives on civilians involved in hostilities, examining the arguably differing perspectives on civilian status and the legality of their activities on, near, or affecting the battlefield. Section III questions whether these perspectives can be applied uniformly in practice, and probes how the different perspectives can be reconciled—generally through the assertion of rights of a sovereign. It further explores whether a new legal regime is needed or viable to address the status and use of high-tech civilians.

https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-7

Human rights obligations of non-state armed groups : an assessment based on recent practice

Jean-Marie Henckaerts and Cornelius Wiesener. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 195-227

This chapter examines whether and to what extent non-State armed groups can be considered bound by human rights law. To that end, it contrasts the traditional State-centricity of human rights law with the legal framework of international humanitarian law, which applies to States as well as to armed groups. It examines the arguments put forward in favour and against the application of human rights law to non-state groups. Drawing on actual practice, in particular from international bodies, the chapter argues that such groups are at least bound by human rights law when they have control over territory, allowing them to exercise government-like functions. The precise origin of such obligations and exactly which human rights they would include requires further research. The existing human rights machinery and related bodies are ill-equipped to hold armed groups accountable for their human rights violations and provide victims with effective

remedies. Hence, there is a need for further research and political will to close this accountability gap.

https://doi.org/10.1007/978-94-6265-339-9_8

Humanitarianism in Chinese traditional military ethics and international humanitarian law training in the People's Liberation Army

Ru Xue. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 93-106

In 1949, the four Geneva Conventions (Geneva Conventions) on international humanitarian law (IHL) were adopted. Coincidentally in the same year, the People's Republic of China (PRC) was founded. The PRC ratified the four conventions in 1956 and their two Additional Protocols in 1983. The duty to implement these treaties lies mainly with the State parties. The People's Liberation Army (PLA) plays an important role in the PRC's fulfilment of its treaty obligation under the Geneva Conventions in both peace and war time. The subject of this chapter is to examine, in the case of PLA of China, the practical implementation of IHL and the inherent humanitarian spirit in Chinese traditional military ethics on which the philosophy of IHL is based.

https://doi.org/10.1017/9781108667203.007

The ICRC's 'support-based approach' : a suitable but incomplete theory

Raphaël van Steenberghe and Pauline Lesaffre. In: Questions of international law, zoom-in 59, 2019, p. 5-23

The International Committee of the Red Cross (ICRC) recently developed a new theory, entitled 'support-based approach', which deals with foreign interventions by 'one or more States, a coalition of States or an international or regional organization' in a pre-existing non-international armed conflict (NIAC) in support to one of the parties to this conflict. This new theory helps to define the ratione personae scope of application of International Humanitarian Law (IHL). Indeed, its main legal effect is to make the intervening power a new party to the pre-existing NIAC, without requiring the hostilities between this power and its enemy to reach the intensity threshold necessary to trigger a new separate NIAC. Despite seeming reasonable, the ICRC's approach leaves many questions unanswered and raises several issues. This paper will briefly address these issues, namely the added value of the theory in terms of protection, the nature of the supported and supporting powers according to this theory, the precise meaning and implications of its conditions, the applicable law to the NIAC in which the intervening power is involved, and the legal basis of this theory.

http://www.qil-qdi.org/the-icrcs-support-based-approach-a-suitable-but-incomplete-theory/

Implementation of international humanitarian law and the current challenges

Borhan Uddin Khan and Nakib M. Nasrullah. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 262-299

This chapter argues that, despite recent progress, implementations mechanisms of international humanitarian law remain unsufficient, being sometimes inherently defective and often rendered ineffective by a series of theoretical and practical challenges. This chapter focuses on those current challenges to the implementation of IHL. It looks both at the application related challenges rooted in the definitional construct of an armed conflict, its classification and the evolution of means and methods of warfare, and at challenges stemming from a lack of cooperation and political will from concerned conflict states, state parties to the IHL Conventions and the international community.

https://doi.org/10.1163/9789004375543_012

Implementation of international humanitarian law in Southeast Asia : challenges in the prevention of violations

Kelisiana Thynne. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 688-702

As others have pointed out, there have been numerous documentations of violations of international humanitarian law (IHL) in Southeast Asia, but little discussion of how IHL violations have been prevented. Indeed, monitoring where a violation has not taken place is extremely difficult. This chapter will address the complexities of determining how to prevent violations of IHL before presenting some examples of prevention activities, specifically implementation of IHL. The examples are drawn from three countries that differ in their recent experience of conflict. The first is a conflict-affected country, the Philippines; the second a country affected by some situations of violence in the past (in particular Aceh and Timor-Leste), Indonesia; and the third a non-conflict-affected country, Malaysia.

https://doi.org/10.1017/9781108667203.039

Implementation of international humanitarian law obligations in Australia : a mixed record

Yvette Zegenhagen and Geoff Skillen. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 491-505

Australia has a strong track record of international humanitarian law (IHL) implementation despite never having fought a contemporary armed conflict on its own soil. There are several obvious reasons for this, including Australia's history of deploying troops to conflict zones since the Boer War. Through both World Wars, regional Cold War flash points (notably Korea, Malaysia and Vietnam) and more recent conflicts in Iraq (first and second Gulf Wars) and Afghanistan (where Australians are still on active duty), IHL is of enduring relevance to Australia and its armed forces. In addition, IHL is an essential component of Australia's foreign and defence policies, which are both based on strong support for a global 'rules-based international order'. A focus on the Rule of Law and democratic institutions is also seen as a way of building Australia's 'soft power', which is becoming an increasing focus of its foreign policy. A staunch commitment to IHL is but one way of furthering this objective. To provide further insight into how Australia has developed such a strong record of IHL implementation, this chapter presents a panoramic snapshot of the mechanics of domestic implementation of treaty obligations in Australia and how it has achieved this in relation to its IHL obligations (to varying degrees of success) through both legislation and Common Law. It also explores one of the more unique reasons why IHL implementation in Australia is so strong: namely the prominent role of civil society and civic participation in democratic processes within the Australian context.

https://doi.org/10.1017/9781108667203.029

International humanitarian law : a comprehensive introduction

Nils Melzer ; coord. by Etienne Kuster. - Geneva : ICRC, November 2019. - 355 p.

"International Humanitarian Law : A Comprehensive Introduction" is an introductory handbook that aims to promote and strengthen knowledge of international humanitarian law (IHL) among academics, weapon-bearers, humanitarian workers and media professionals. It presents contemporary issues related to IHL in an accessible and practical style, and in line with the ICRC's reading of the law. That, plus its distinctive format – combining "In a nutshell", "To go further" and thematic textboxes – make it the ideal everyday companion for anyone approaching IHL for the first time and curious about conflict-related matters, as well as for military and humanitarian personnel seeking useful guidance on a vast array of topics.

https://library.icrc.org/library/docs/DOC/icrc-4231-002-2019.pdf

International humanitarian law and climate change

Tuiloma Neroni Slade. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 643-655

There cannot be any question now that the issue of climate change is one of serious humanitarian proportions, and not merely an environmental problem. In every part of the world, increased climate variability and greater intensity and frequency of extreme weather events cause and aggravate humanitarian needs in emergencies. Within the Asia-Pacific region large numbers of

communities, especially the poor and most vulnerable, face severe exposure with little hope of effective protection. While an array of necessary climate adaptation work is now underway across the region, many millions of people being impacted and forcibly displaced will remain at high risk and will require substantial humanitarian assistance and protection. Environmental degradation and the competition for water, food and other vital resources are causing or accelerating national and border disputes, or even triggering wider conflict. Against this background and with a focus on the perspective of small islands States, this chapter will examine the relationship between international humanitarian law (IHL) and climate change and the role of IHL in the protection of communities against the impacts and dangers of climate change.

https://doi.org/10.1017/9781108667203.036

International humanitarian law and influence operations : the protection of civilians from unlawful communication influence activities during armed conflict

Pontus Winther. - Uppsala : Svenska Institutet för Internationell Rätt, 2019. - 424 p.

Contemporary armed conflicts are not only fought with physical means and methods. Increasingly, in order to achieve military and political objectives, parties to armed conflicts use communication activities to influence individuals. Armed groups such as ISIS use online propaganda to instil terror and recruit new fighters to their cause. In Syria and other conflict zones, medical personnel, aid workers and journalists are subjected to verbal threats and other types of intimidation. In the conflict in Eastern Ukraine, politicians are publicly discredited by having their pictures displayed on electronic billboards and being labelled as war criminals, while civilians are misled by false messages into assisting the opposing party with identifying targets for artillery fire. At the same time, communication is also used to increase the security for civilians in armed conflict. For example, parties to armed conflicts have an obligation to issue warnings before launching attacks on military objectives that may affect the civilian population. Thus, although communication activities can be used to increase security for civilians in armed conflict, they may also cause physical and mental harm to civilians. This prompts a question of law: Where does the boundary lie between prohibited and lawful use of communication activities as a means of influencing civilians in armed conflict? The purpose of this thesis is to answer this question. It sets out to examine what protection international humanitarian law provides civilians in armed conflict in relation to communication influence activities. In the thesis, it is suggested that international humanitarian law contains a substantial—albeit fragmented—body of principles and provisions protecting civilians from harmful communication influence activities. It is further suggested that, in order to correctly define this protection, the material, personal, geographical and temporal scope of application of international humanitarian law must be properly taken into consideration.

International humanitarian law and non-state actors : debates, law and practice

ed. by Ezequiel Heffes, Marcos D. Kotlik and Manuel J. Ventura. - The Hague : Asser Press, 2020. - XIII, 451 p.

This book challenges the traditional approach to international law by concentrating on international humanitarian law and placing the focus beyond States: it reflects on current legal, policy and practical issues that concern non-State actors in and around situations of armed conflict. With the emergence of the nation-State, international law was almost entirely focused on inter-State relations, thus excluding - for the most part - non-State entities. In the modern era, such a focus needs to be adjusted, in order to encompass the various types of functions and interactions that those entities perform throughout numerous international decision-making processes. The contributions that comprise this volume are oriented towards a broad readership audience in the academic and professional fields related to international humanitarian law, international criminal law, international human rights law and general public international law.

https://doi.org/10.1007/978-94-6265-339-9

International humanitarian law and the Asia-Pacific struggles for national liberation

Kriangsak Kittichaisaree. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 139-155

This chapter analyses the contribution of States in the Asia-Pacific region to the 'freedom fighter' resolutions of the 1960s and 1970s that paved the way for the conclusion of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (AP I). It questions the relevance of Article 1(4) of AP I in the post-colonial landscape in which the independence wars against colonialism were largely over by 1977, leaving only delayed decolonization and foreign military occupation, as in East Timor, or non-international armed conflicts (NIACs) like those in Aceh and Mindanao, and 'below-the-radar' situations such as the one in West Papua. The meaning and importance of a 'national liberation struggle' in the post-colonial Asia-Pacific region have to be considered in the context of the modern-day geopolitics in which these States distinguish between terrorists, insurgents, rebels and traitors taking up arms against them, on the one hand, and genuine freedom fighters, on the other hand.

https://doi.org/10.1017/9781108667203.010

International humanitarian law in Indonesia

Suzannah Linton. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 506-537

The many islands that form the Republic of Indonesia are no strangers to armed conflict and extreme violence. The inhabitants of the archipelago have borne the brunt of foreign aggression, notably in the form of Dutch colonialism and the Japanese occupation during World War II. They have seen a vicious war of independence from the Netherlands that was both accompanied and followed by years of non-international armed conflict (NIAC). In light of this history of armed conflict, it is to some extent understandable that Indonesia came to be an exceptionally militarised society. However, the trigger for the military gaining a stranglehold over modern Indonesia was an alleged Communist coup in 1965 leading to the military carrying out one of the world's most lethal pogroms and seizing the reins of control. It was therefore a highly militarised nation led by the Javanese Army General turned President Suharto that pursued a strong military response to the insurgencies in Aceh and Papua, and then invaded and occupied Portugal's non-self-governing territory of East Timor. Indonesia therefore presents an unusually fertile IHL landscape. The following sections will interrogate the role that IHL actually plays in Indonesian law and procedure, in both the military and civilian frameworks. It will also introduce leading examples of litigation emerging from crimes committed in some of the many armed conflict situations. The concluding section will reflect on the key features that emerge, and also look to the future.

https://doi.org/10.1017/9781108667203.030

International humanitarian law in occupied East Timor : displacement, relocation and famine

Suzannah Linton. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 400-422

This contribution engages with three aspects of the many issues of international humanitarian law (IHL) arising from the Indonesian invasion and occupation of East Timor,1 and 1999 retreat. It takes up the matter of the unlawful displacement and relocation of hundreds of thousands of civilians during the invasion and subjugation of the territory, throughout the years of occupation, and after the 1999 UN-sponsored referendum on the territory's future. The early displacement and relocation led not just to immense suffering and loss, and dislocation of families and communities, but eventually resulted in the further tragedy of famine. The present contribution will then build on the discussion about unlawful displacement and relocation to address the central question of why IHL failed the East Timorese.

https://doi.org/10.1017/9781108667203.024

International humanitarian law in the Indian civilian and military justice systems

Sanoj Rajan. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 475-490

While modern international humanitarian law (IHL) is linked most directly to nineteenth- and twentieth-century Europe, India over the period of its 5,000 years history has developed its own rules of warfare for the protection of non-combatants and civilian populations akin to modern IHL. In the ancient period, implementation of these Dharma-based Hindu and Buddhist principles were followed by the rulers and decision makers as their paramount duty. However, the status of IHL implementation in modern Indian history is not as great as its ancient past despite the comparatively high number of conflicts it has had with its neighbours, along with numerous internal conflict situations which it has been grappling with. Contemporary India is often criticised for its indifference to the effective implementation of its international law commitments, especially IHL obligations. Though a party to the universally ratified four Geneva Conventions of 1949 (Geneva Conventions), India is still not keen on acceding to the Additional Protocols to the Geneva Conventions. Even so, India is managing some IHL obligations through special legislation which it enacted to implement its treaty commitments. Along with this, there are nearly a dozen general laws with IHL-related provisions, which aim to meet the conflict-related challenges in India. Against this backdrop, the present chapter intends to explore the implementation of IHL in India through its civilian and military justice system, by analysing associated legislation and jurisprudence evolved by case law, and thereby bringing out the gaps.

https://doi.org/10.1017/9781108667203.028

International humanitarian law in the Philippines Supreme Court

Sedfrey M. Candelaria. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 538-563

The application of international humanitarian law (IHL) by Philippine courts may be appreciated in two stages of the country's political history. The belligerent occupation of the Philippine Islands by the Japanese Imperial Army during World War II provided the background for the institution of test cases which called for the Philippine Supreme Court's resolution of constitutional issues complexed with IHL principles. The cases chosen by the present writer illustrate the Court's creative use of IHL principles to cases of first impression. After the war, the issues in a post-colonial setting revolved around the emergence of non-State actors and their struggle for self-determination along religious and ideological grounds. Both these latter categories of non-international armed conflict (NIAC) are treated as rebellion in domestic law, and crimes involved have been addressed as domestic crimes such as murder, albeit sometimes some can be subsumed within others.1 The interplay of constitutionalism with IHL, domestic law and new laws related to terrorism and armed conflict, occasioned by novel cases filed before the Supreme Court, provides an insight on how this domestic court carefully nuanced the application of international law to concrete domestic concerns.2 In these cases, we can also see that prosecutors and law enforcement officers have both contended with the characterisation of the violations arising from the armed conflict for the purpose of defining the proper charges before the regular courts. This survey of relevant jurisprudence aims at shedding light on the various complex issues to which the justice system in the Philippines had been exposed to when dealing with several armed conflicts in the nation's history.

https://doi.org/10.1017/9781108667203.031

International law and the problem of change : a tale of two conventions

James Crawford. In: Victoria University of Wellington law review, Vol. 49, no. 4, p. 447-476, November 2018

Extensive efforts have been made in the modern period to suppress the possession and use of both chemical and nuclear weapons. However, progress towards the abolition of these two types of weapons presents a rather sharp contrast, as this case study shows. In this article the conventional prohibitions on the possession and use of these weapons are outlined, including the recent Treaty on the Prohibition of Nuclear Weapons of 2017. This Treaty prohibits the possession and use of nuclear weapons but it has not been (and likely will not be) ratified by any of the States that possess nuclear weapons. There is a further, and consequent, contrast between the two kinds of weapons in terms of whether a customary prohibition on the possession and use of chemical and/or nuclear weapons exists; this is also examined. Ultimately, there are lessons to be learned

in terms of whether international law can change unless those most concerned, in this case the States that possess chemical or nuclear weapons, want it to change.

https://doi.org/10.26686/vuwlr.v49i4.5335

Invisible soldiers : the perfidy implications of invisibility technology on battlefields of the future

Sephora Sultana and Hitoshi Nasu. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 307-324

This chapter first reviews the unique characteristics of invisibility technology and sets out the three criteria of the perfidy rule. It then examines how certain uses of invisibility technology might satisfy, or be used to circumvent, one or more of these criteria, which if cumulatively established would amount to a prohibited act of perfidy. In the course of this discussion, this chapter identifies the gray areas of the perfidy rule and raises questions about the rule's adequacy in regulating the uses of invisibility technology on battlefields in light of various legal and practical challenges that arise therefrom. This chapter explores legal restrictions on the circumstances in which invisibility technology can be lawfully used and suggests certain considerations that should guide States in considering when to employ invisibility technology in armed conflict and in training military units to use it as a method of warfare.

https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-11

Japan and nuclear weapons

Hirose Satoshi. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 440-455

Japan is the only country in the world that has ever experienced nuclear attacks. At the same time, Japanese governments have been relying upon the nuclear deterrence provided by the United States for almost seventy years. These two facts have made Japan's attitude towards nuclear weapons very complicated, controversial and oftentimes contradictory. Needless to say, one can see very strong anti-nuclear sentiments in Hiroshima and Nagasaki, and citizens' activities against nuclear weapons have been very active and popular in Japan. On the other hand, the Japanese Government expressed its position against the adoption of the Treaty Prohibiting Nuclear Weapons in the United Nations in 2017.

https://doi.org/10.1017/9781108667203.026

Jihad and international humanitarian law : three Moro rebel groups in the Philippines

Soliman M. Santos. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 374-399

This chapter presents the conflict in the Mindanao region of the Southern Philippines, and examines variations in the adherence to jihad or the Islamic law of war and to international humanitarian law (IHL) in the case of three major Moro rebel groups. The three groups are the Moro National Liberation Front (MNLF), the Moro Islamic Liberation Front (MILF) and the so-called Abu Sayyaf Group (ASG). All profess adherence to jihad, but only the MNLF and MILF profess adherence to IHL. One might say that jihad, or Islam as the supreme norm, is a common term of reference between them. In this, however, there are variations, just as there are varied interpretations of Islam itself. These real-life case variations are thus also an occasion to connect to the broader debate on whether or not jihad is consistent with IHL, and to what extent it is consistent or inconsistent. More importantly, this chapter concludes with a synthesis and reflections, and makes recommendations on the implications of this for the broader practical work of constructively engaging these non-State armed groups (NSAGs) through terms of reference which they can accept.

https://doi.org/10.1017/9781108667203.023

The Korean War (1950-1953) and the treatment of prisoners of war

Kim Hoedong. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 356-373

During the Korean War, the treatment of prisoners of war (POWs) was not what the Third Geneva Convention calls for. To some extent, and despite their pledges, all sides behaved as if the convention did not exist. This chapter shows clearly the lack of protection for the POWs held by enemy forces. What is important, in the author's view, is that the soldiers of both sides seemed not to know what a POW was, the rights that a POW had, and the way that impacted on how the individual soldier could behave towards the POW. Although many participating countries including the United States, the UK, Australia and China had actively prosecuted Japanese war criminals a few years earlier (including for their egregious abuses of POWs), the lessons of those times and those processes seemed not to have been learned or transmitted.

https://doi.org/10.1017/9781108667203.022

The law enforcement paradigm under the laws of armed conflict : conceptualizing Yesh Din v. IDF chief of staff

Shelly Aviv Yeini. In: Harvard national security journal, vol. 10, 2019, p. 461-488

While the two traditional paradigms for the use of force in international law are law enforcement under international human rights law and conduct of hostilities under laws of armed conflict, this Article examines the possibility of a new paradigm of law enforcement under the laws of armed conflict. In the judgment of Yesh Din v. IDF Chief of Staff (Yesh Din) recently given by the Supreme Court of Israel, the court endorsed this entirely new paradigm, which challenges the traditional distinction between law enforcement and the conduct of hostilities. This Article explores the legal justifications of the paradigm and examines whether it has legal grounds to rely upon. It further demonstrates that the new paradigm is vague, permissive, and extremely under-developed. The new paradigm has the potential to be abused by states picking and choosing the norms they wish to apply from either international human rights law or the laws of armed conflict. It is a common saying that "hard cases make bad law." The arguably problematic judgment of Yesh Din is the result of a complicated and challenging situation that has created bad law indeed.

https://harvardnsj.org/wp-content/uploads/sites/13/2019/06/Law-Enforcement-Paradigm-under-the-Laws-of-Armed-Conflict.pdf

The law of armed conflict implications of covered or concealed cyber operations : perfidy, ruses, and the principle of passive distinction

Gary P. Corn and Peter Pascucci. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 273-306

Before turning to some hypotheticals for consideration, this chapter briefly describes the operational environment of cyberspace, to include the unique operations security challenges it presents. It then turns to a summary of the relevant law of armed conflict rules most pertinent to assessing the lawfulness of conducting cyber operations by means of covered or concealed infrastructure or methods—the rules governing perfidy; the improper use of flags, signs, or symbols; ruses and other permissible deception; and the passive obligation of distinction.

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The law of naval warfare and international criminal law : Germany's federal prosecutor on the Gaza flotilla incident

Claus Kress. In: Israel yearbook on human rights, Vol. 49, 2019, p. 1-38

The incident of the Gaza Flotilla on 31 May 2010 has beaten high waves between Israel and Turkey, the two States most directly concerned and beyond. The incident has given rise to four reports: that of a United Nations (UN) fact-finding mission, that of the 'Turkey Commission', that of the Turkish National Commission of Inquiry, and most importantly, that of the 'Palmer Report'. The legal battle has also reach the International Criminal Court, where it has been a source of procedural controversy, and the decision whether an investigation before the ICC will be opened is still undecided. In this context, Claude Kress notes that it has been understandably far less widely noted that Germany's Federal Prosecutor General had also been called upon to deal with

the matter. On 29 September 2014, the Prosecutor decided not to open an investigation. This article analyses some of the key components of this decision.

https://doi.org/10.1163/9789004404601_002

Law-of-war precautions : a cautionary note

Sean Watts. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - P. 99-147

While the humanitarian benefits of precautions undertaken to protect civilians during attacks are readily apparent, the operational and legal costs of precautions in the attack are less acknowledged. This paper traces the nearly simultaneous growth of modern military information technology and law-of-war precautions. It showcases an array of benefits and costs of advances in military information technology and highlights under appreciated but persistent obstacles to situational awareness and decision making in military operations. It then traces the development by States, and the expansion and refinement by private commentators, of an international legal obligation to take humanitarian precautions in attacks. Finally, it identifies operational costs associated with precautions as free-standing international legal obligations. This paper advises, in light of enforcement competencies and informational realities, that States reexamine precautions and temper public expectations concerning States' willingness and ability to undertake humanitarian precautions as they consider future development of the international law of war.

https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-5

The laws of war and the structure of masculine power

Frédéric Mégret. In: Melbourne journal of international law, Vol. 19, issue 1, 2018, 27 p.

The laws of war may well restrain what can be done in war, but in the process they also enable certain forms of power. This article seeks, drawing on the feminist critique of the laws of war and the study of men and masculinities, to analyse the project of humanising war as specifically a form of masculine domination. It argues that, despite the fact that men suffer in war and that the laws of war seek to protect non-men, the laws of war fundamentally articulate a form of hegemonic masculine power. This is primarily because restraint has always been woven into concepts of manliness as a precarious compromise between ruthless hyper-masculinity and femininity. As a result, the laws of war merely embody a longstanding masculine ideal; what is legal is what is virile and vice versa. In internationalising and legalising that ideal, they then seek to rescue masculinity from its never-ending crisis and, in the process, decide who can partake in the power of dominant masculinity. 'Savages' are typically excluded as both too masculine and too feminine. At a deeper level, the power of restraint is that it creates a debt of gratitude in its 'feminine' beneficiaries, imposes upon them a sort of 'protection racket' and coopts them into its enterprise of reifying masculine domination. This, then, raises complex questions for feminist engagements with the laws of war in a context where demands for reform can quickly lapse into a quiescent toleration of war.

https://law.unimelb.edu.au/mjil/issues/issue-archive/191

Legal classification of the conflict(s) in Syria

Tom Gal. - In: The Syrian war : between justice and political reality. - Cambridge : Cambridge University Press, 2020. - p. 29-55

International law distinguishes between two types of violence: armed conflicts and mere civil disturbances or demonstrations. Armed conflicts are further divided into two types: international armed conflicts (IACs) and non-international armed conflicts (NIACs). This chapter identifies and classifies the different legal types of conflicts or violence that occurred in the territory of Syria since March 2011. Adopting the fragmentation approach, this chapter argues that both of these types of conflicts coexisted in Syria and analyses them according to the legal classifications. It first presents and discusses shortly the legal definitions of IAC and NIAC and addresses the importance of the distinction between them. After delineating the geographical and temporal scope of his argumentation, the author applies this theoretical framework to an analysis of the conflicts that took place in Syria - international and non-international respectively.

The "legal pluriverse" surrounding multinational military operations

ed. by Robin Geiss and Heike Krieger. - Oxford : Oxford University Press, 2020. - XX, 479 p.

The volume aims at the conceptualization and rationalization of the The 'Legal Pluriverse' Surrounding Multinational Military Operations. This term is used to describe the multiplicity of rules that apply to and regulate contemporary multinational missions and the diversity of actors involved. The book intends to systematically compile and take stock of the various legal regimes which make up this pluriverse, to assess how these rules interact, and to expose norm conflicts, areas of legal uncertainty, or protective loopholes. Taken together, the book's individual contributions identify and evaluate approaches to better streamline the different applicable legal frameworks with a view to enhancing cooperation and thereby to ensure the long-term success of multinational military operations.

https://doi.org/10.1093/oso/9780198842965.001.0001

The legal protection of personnel of United Nations peacekeeping operations in times of NIAC

Keiichiro Okimoto. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 79-111

United Nations peacekeeping operations have increasingly been deployed to situations of armed conflict and have frequently been targeted by parties to the conflict. Against this backdrop, the legal protection for personnel of United Nations peacekeeping operations in times of armed conflict has been developed particularly since the 1990s. International humanitarian law and the 1994 Convention on the Safety of United Nations and Associated Personnel are now the principal sources of legal protection for personnel of United Nations peacekeeping operations in times of armed conflict. However, they pose difficulties of a different nature in determining when those personnel are protected and when they are not, particularly when such personnel are engaged in hostilities in situations of non-international armed conflict. This chapter explores these issues in detail and concludes that the practice has not sufficiently evolved to resolve them.

https://doi.org/10.1007/978-94-6265-339-9_4

The legal status and protection of the rights of prisoners of war

Md Jahid Hossain Bhuiyan. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 40-74

Prisoners of war (POWs) should be referred to as victims of events, and not as criminals. As members of the armed forces of their country before their capture, they may have carried out hostile attacks against their enemy, but after their capture they are detained under the power of the enemy. History has demonstrated that they are in a very delicate position. Hence, special protection needs to be awarded to POWs. The sole legitimate goal of armed conflicts is to decrease the military authority of the enemy, not to leave no survivors. Hence, fundamental rights and a minimum standard of treatment that is to be awarded to all POWs is provided by the Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (GC III). This chapter examines the legal position and rights of POWs.

https://doi.org/10.1163/9789004375543_004

La légalité de l'emploi de la force en droit international : "du donné au construit"

par Louis Balmond. - In: Droit, humanité et environnement : mélanges en l'honneur de Stéphane Doumbé-Billé. - Bruxelles : Bruylant, 2020. - p. 1103-1121

La légalité de l'emploi de la force en droit international semble clairement posée par la Charte des Nations unies et le jeu combiné, d'une part, de l'article 2, alinéa 4, qui enjoint aux Etats de s'abstenir de l'emploi ou de la menace d'emploi de la force dans les relations internationales, et, d'autre part, des dispositions du Chapitre VII prévoyant des exceptions en cas d'action collective du Conseil de sécurité et de légitime défense. S'imposent néanmoins la détermination du sens exact et de la portée de la règle et la recherche de l'adéquation du cas particulier à la règle générale. Or ce travail d'interprétation est toujours ouvert. A partir du "donné" constitué par les dispositions de la Charte, les Etats vont donc tenter de construire une argumentation juridique

destinée à convaincre l'opinion publique nationale et internationale, mais également les autres Etats et les organisations internationales, qu'ils ont agi légalement. Le droit international, ou plutôt la politique juridique extérieure, devient alors une composante essentielle de la politique étrangère. Le cadre juridique international peut toutefois constituer pour l'Etat une contrainte limitant sa liberté d'agir conformément à ses intérêts. Il tentera alors de l'aménager, voire de s'en libérer en recherchant une autre justification, le plus souvent sur le terrain de la légitimité.

Lethal autonomous weapons systems : the overlooked importance of administrative accountability

Laura A. Dickinson. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 69-98

The rise of lethal autonomous weapons systems creates numerous problems for legal regimes meant to insure public accountability for unlawful uses of force. In particular, international humanitarian law has long relied on enforcement through individual criminal responsibility, which is complicated by autonomous weapons that fragment responsibility for decisions to deploy violence. Accordingly, there may often be no human being with the requisite level of intent to trigger individual responsibility under existing doctrine. In response, perhaps international criminal law could be reformed to account for such issues. Or, in the alternative, greater emphasis on other forms of accountability, such as tort liability and state responsibility might be useful supplements. But largely absent from this debate is discussion of an alternative form of accountability that often gets overlooked or dismissed as inconsequential, one that we might term "administrative accountability." This article provides a close look at this type of accountability and its potential. Such accountability might take the form of administrative procedures, inquiries, sanctions, and reforms that can be deployed within the military or the administrative state more broadly to respond to an incident in which a violation of international humanitarian law may have occurred. These procedures might result in after-the fact sanctions on individuals who may be implicated in harms even if they would not be deemed criminally responsible or even negligent within a tort law framework. They also might dictate organizational reforms of bureaucratic structures that affect systems of hierarchical or other types of control that are forward-looking in their focus. Administrative accountability may be particularly useful in the case of autonomous systems because the restrictions of criminal law, such as the intent requirement for most crimes, may not apply in many circumstances. Administrative accountability, in contrast, is far more flexible both in the process by which it unfolds and in the remedies available, offering the prospect of both individual sanctions as well as broader organizational reforms.

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Leveraging emerging technology for LOAC compliance

Eric Talbot Jensen and Alan Hickey. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - P. 45-68

Many of the current issues with LOAC compliance are rooted in the limitation that parties to an armed conflict are only required to do what is "feasible" to protect civilians and civilian objects during hostilities. This would, of course, apply to the employment of emerging technologies. However, an understanding of feasibility that is enlightened by the use of emerging technologies will dramatically increase the effectiveness of steps parties to an armed conflict can take to protect the civilian population. Further, the effectiveness and ease of application of these emerging technologies should be reflected in what the international community accepts as feasible actions by the parties to an armed conflict.

https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-3

The limits of human rights

ed. by Bardo Fassbender [and] Knut Traisbach. - Oxford : Oxford University Press, 2019. - XX, 388 p.

This volume engages openly and constructively with the question of what limits of human rights are, and what these limits mean. The contributions focus on conceptual questions of human rights, together providing an exceptionally rich spectrum of viewpoints and arguments across disciplines. The volume brings together a group of distinguished scholars from different disciplines who discuss diverse aspects of limits of human rights from various perspectives and in

different topical settings, without engaging in a deconstruction or denial of human rights. Part IV covers armed conflict.

https://doi.org/10.1093/oso/9780198824756.001.0001

The limits of human rights in times of armed conflict and other situations of armed violence

Andrew Clapham. - In: The limits of human rights. - Oxford : Oxford University Press, 2019. - p. 305-317

Human rights are said to be ill-adapted to times of armed conflict or for dealing with exceptional terrorist threats. Are human rights limited by the applicability of other branches of international law including the laws of war? Are there limits to the work human rights can usefully do in situations of threatened violence when their strict application is said to put lives at risk? This chapter tackles some of the contemporary arguments surrounding the limitations of human rights law in the face of the competing demands of winning the war and killing terrorists. It focuses on killings and detention inside and outside armed conflict. It also asks whether there are limits to the obligations we can impose on armed groups.

https://doi.org/10.1093/oso/9780198824756.003.0021

The limits of the laws of war

Frédéric Mégret. - In: The limits of human rights. - Oxford : Oxford University Press, 2019. - p. 283-295

The dynamism of the tradition of the laws of war is conditional on its limitations. The chapter distinguishes between contingent and inherent limits. Contingent limits are those that are set by the law's environment and which it imagines itself to be up against. They include the fact that the laws of war often seem to be lagging behind social and technological developments, that they lack enforcement, or that they are too embedded in an interstate matrix. These are all significant in their own right, but all relative and susceptible to being overcome. Inherent limits by contrast, are limits that are so woven into the project that they define it. These include the laws of war's embeddedness in a certain concept of international law, their pragmatism, and their constant effort to compromise between military necessity and humanity. Contingent limitations may be overcome, but only at the cost of condoning inherent limitations.

https://doi.org/10.1093/oso/9780198824756.003.0019

NATO rules of engagement : on ROE, self-defence and the use of force during armed conflict

by Camilla Guldahl Cooper. - Leiden ; Boston : Brill Nijhoff, 2020. - XII, 486 p.

In NATO Rules of Engagement, Camilla Guldahl Cooper offers clarity on a topic prone to confusion and misunderstanding. NATO rules of engagement (ROE) are of considerable political, strategic and operational importance, yet many of its concepts lack clarity. The resulting ambiguity may be detrimental for people involved and for mission accomplishment. Through a thorough analysis of the concept, purpose, development and use of NATO ROE, Cooper contributes to improved understanding and implementation of NATO ROE. The book covers all use of force categories and relevant law relating to the use of force during armed conflicts, including the complex concepts of hostile act and hostile intent, direct participation in hostilities, and the increasing reliance on self-defence during armed conflict.

Non-state actors engaging non-state actors : the experience of Geneva Call in NIACs

Ezequiel Heffes. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 427-451

Despite the existence of humanitarian rules binding upon armed non-state actors (ANSAs) in armed conflict, ensuring their respect still remains an important challenge. When dealing with ANSAs, this can be linked to several factors, such as their lack of knowledge of the law, the absence of an incentive to abide by the applicable rules, their fragmented structure, their lack of a centralized command authority and a lack of capacity to implement international humanitarian

law (IHL). Certain humanitarian organizations have attempted to tackle these difficulties by recognizing that engaging with ANSAs is essential in order to enhance the protection of civilians in conflict situations. This chapter aims at presenting the methodology employed by Geneva Call, an international non-governmental organization, when trying to persuade ANSAs to respect humanitarian norms. The following pages wil provide an overview of this process, describing Geneva Call's approach and discussing some its achievements and challenges, in particular in the context of its child protection program.

https://doi.org/10.1007/978-94-6265-339-9_15

Non-state armed groups and the power to detain in non-international armed conflict

Joshua Joseph Niyo. In: Israel law review : a journal of human rights, public and international law, Vol. 53, no. 1, 2020, p. 3-33

The restriction of personal liberty is a critical feature in all conflicts, whether they are of an international character or not. With the increased prevalence of non-international armed conflict and the drastic proliferation of non-state armed groups, it is critical to explore whether such groups can legally detain or intern persons during conflict. This article proposes that there exists a power and a legal basis for armed groups to intern persons for imperative security reasons while engaged in armed conflict. It is suggested that this authorisation exists in the frameworks of both international humanitarian law and international human rights law, as it does for states engaged in such conflicts. It is proposed that such power and legal basis are particularly strong for armed groups in control of territory, and can be gleaned from certain customary law claims, treaty law, as well as some case law on international humanitarian law and human rights. Certain case law of the European Court of Human Rights on detention by de facto non-state entities conceivably reflects a change in traditional thinking on 'legal' detention by armed groups.

https://doi.org/10.1017/S0021223719000207

Oases of humanity and the realities of war : uses and misuses of international humanitarian law and humanitarian principles

Rony Brauman. In: Journal of humanitarian affairs, vol. 1, no. 2, 2019, p. 43-50

The rehabilitation of international humanitarian law (IHL) has become a priority for those who think that the horrors of contemporary wars are largely due to the blurring of the distinction between civilians and combatants and for those who think that campaigning for the respect of IHL could result in more civilised wars. Similarly, respect for humanitarian principles is still seen by many as the best tool available to protect the safety of aid workers. In this text, I argue that both assumptions are misled. The distinction between civilians and combatants, a cornerstone of IHL, has been blurred in practice since the late nineteenth century. In addition, humanitarian agencies claiming to be 'principled' have been victims of attacks as much as others. History and current practice tell us that neither IHL nor humanitarian principles provide safety or can guide our decisions. Accepting their symbolic value, rather than their unrealised potential to protect and solve operational dilemmas, would free humanitarian agencies from endless speculations.

https://doi.org/10.7227/JHA.017

The other side of autonomous weapons : using artificial intelligence to enhance IHL compliance

Peter Margulies. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 147-174

The role of autonomy and artificial intelligence (AI) in armed conflict has sparked heated debate. The resulting controversy has obscured the benefits of autonomy and AI for compliance with international humanitarian law (IHL). Compliance with IHL often hinges on situational awareness: information about a possible target's behavior, nearby protected persons and objects, and conditions that might compromise the planner's own perception or judgment. This paper argues that AI can assist in developing situational awareness technology (SAT) that will make target selection and collateral damage estimation more accurate, thereby reducing harm to civilians. This chapter breaks down SAT into three roles. Gatekeeper SAT ensures that operators have the information they need. Cancellation SAT can respond to contingent events, such as the

unexpected presence of civilians. The most advanced system, behavioral SAT, can identify flaws in the targeting process and remedy confirmation bias. In each of these contexts, SAT can help fulfill IHL's mandate of "constant care" in the avoidance of harm to civilian persons and objects.

https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322-chapter-6

"Pour la défense du droit international" : la France et la violation du droit des gens par l'Allemagne pendant la Première Guerre mondiale

Gérald Sawicki. - In: La Grande Guerre et son droit. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 49-60

Lors de la Première Guerre mondiale, en 1916, fut créé sous la direction de l'éminent juriste Louis Renault un comité intitulé "Pour la défense du droit international" regroupant l'ensemble des professeurs de droit international des universités françaises ralliés à l'idée d'une guerre du droit contre l'Empire allemand. Sous cette appellation parut également une série de publication juridiques, qui avait pour mission de dénoncer toutes les violations du droit des gens commis par ce pays depuis le début du conflit. Ce comité et ces publications réactivaient le thème des "atrocités allemandes" dont la formulation juridique avait été entreprise dès le mois d'août 1914 au sein même des ministères de la Guerre et des Affaires étrangères, notamment par la rédaction de nombreux mémorandums et appels aux puissances signataires de la Convention de la Haye de 1907. En quoi consistaient ces mémorandums, sources originelles et premières du discours officiel français sur les "atrocités allemandes" et autres violations du droit des gens? Comment ces dernières furent-elles conceptualisées et popularisées auprès du grand public? Quelles furent les raisons de la création du comité "Pour la défense du droit international" et de la publication d'ouvrages juridiques qui en résulta?

Pacific Island States and international humanitarian law

Roger S. Clark. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 199-219

The chapter outlines chronologically a series of actions by Pacific people and governments driven by the twin threat of other peoples' conflicts and nuclear radiation to present and future generations of island-dwellers. A particular focus of this chapter is two items of litigation on nuclear weapons in the International Court of Justice. In the first, the Advisory Proceedings on the Legality of the threat or use of nuclear weapons, legal teams representing the Marshall islands, Samoa and Solomon islands combined their resources to present powerful unified arguments. The second is proceedings brought by Marshall Islands endeavouring to enforce treaty and customary law obligations on the nuclear powers to negotiate in good faith to rid the world of these weapons. The chapter also looks at Samoa and Solomon Islands' active participation in the negotiations of the Rome Statute, in particular Samoa's interest in expanding the forbidden weapons provisions of Article 8 of the Rome Statute.

https://doi.org/10.1017/9781108667203.013

Persons aboard medical aircraft who fall into the hands of a neutral power : the scope of their liability to detention under the 1949 Geneva Conventions and the 1977 Additional Protocol I

Yutaka Arai-Takahashi. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 115-145

This paper explores under what circumstances the members of armed forces and their associated civilian personnel who are aboard medical aircraft, and who fall into the hands of a neutral power, are considered liable to detention under the law of neutrality. When flying over a neutral territory, medical aircraft may be summoned to land for inspection by the neutral power. In theory, it is possible that on board the aircraft claiming itself (truly or falsely) to be medical are a variety of passengers or crews who are members of armed forces of a belligerent party (and those of its adversary), associated civilian personnel, and other civilians. Clearly, whether they risk being interned depends not only on the legal status of those persons and the status of the aircraft itself (as a medical transport or otherwise), but also considerably on their health conditions: if they are fit, or wounded, sick and shipwrecked. The paper begins by examining the preliminary issues relating to the definition of medical aircraft, the conditions for a medical aircraft's transit over territories of a neutral state, and to the inspection that can be undertaken by that neutral state.

The paper will then turn to different situations in which a variety of the aforementioned military or civilian associated personnel who are occupants of the (genuine or false) medical aircraft may be considered vulnerable to detention under the law of neutrality.

https://doi.org/10.1163/9789004375543_006

Post-conflict justice : extending international criminal responsibility to non-state entities

Ilya Nuzov. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 229-262

With the proliferation of non-international armed conflicts, transitional justice has gained increased relevance as a range of judicial mechanisms aimed at punishing the wrongdoers while also aiming to reconcile nations torn by civil wars. In the aftermath of hostilities between States and non-state armed groups or between two or more non-state actors (NSAs), international law obliges the former to prosecute participants in hostilities who have committed war crimes, crimes against humanity and genocide. As far as conventional wisdom goes, criminal responsibility is only attendant to individual perpetrators, but a recent pronouncement by the Special Tribunal of Lebanon (STL), along with development in national law targeting entities, other than States, might be changing this paradigm. Building on arguments proffered in other chapters that NSAs have obligations under international law, this chapter argues that in addition to trying individual perpetrators, international criminal jurisdiction should also extend to non-state armed groups, political parties and other collectives that have orchestrated, directed or executed atrocities through their agents. The chapter first analyses, along the lines of the STL, whether liability of collective entities has become a general principle of international law. It then argues that operationalizing international criminal responsibility of NSAs might serve several important transitional justice objectives.

https://doi.org/10.1007/978-94-6265-339-9_9

The post-war history of Japan : renouncing war and adopting international humanitarian law

Hitomi Takemura. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 456-474

In the wake of World War II, Japan renounced war as a sovereign right of the nation and rejected the threat or use of force as a means of settling international disputes. These ideals were written into the Japanese Constitution of 1947. Against this background, this chapter explores three aspects of Japanese engagement with international humanitarian law (IHL). First, Japanese Courts have decided several post-war compensation cases. In light of international law and Japanese law, this chapter analyses the significance and limitations of Japanese case law on post-war compensation claims, including the Shimoda and prisoner of war (POW) forced labour cases. Second, this chapter introduces the unique post-war history of Japanese self-defence forces and contingency legislation that has been adopted by Japan since it developed a system of self-defence forces instead of armed forces. Third, this chapter explains and analyses the Japanese contribution to international peacekeeping operations and international criminal justice through the Japanese legal system. It concludes with future perspectives on Japan and IHL.

https://doi.org/10.1017/9781108667203.027

Principles of distinction, proportionality and precautions under the Geneva Conventions : the perspective of Islamic law

Mohd Hisham Mohd Kamal. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 215-243

The Geneva Conventions define key principles of distinction, proportionality and precautions, which serve to provide protection to individuals who are not or no longer taking direct part in hostilities. This chapter looks at the compatibility of these three principles with Islamic Law. Its author argues notably that members of Muslim armed groups who may consider themselves bound by Islamic Law and not by IHL could still find ground to respect these principles, based on the rules for war included in the Qu'ran and the Sunnah.

https://doi.org/10.1163/9789004375543_011

The prohibition of deportation and forcible transfer of civilian populations in the Fourth Geneva Convention and beyond

Etienne Henry. - In: Revisiting the Geneva Conventions : 1949-2019. - Leiden : Brill Nijhoff, 2019. - p. 75-114

International humanitarian law prohibits 'deportations', 'individual or massive forcible transfers' and 'displacement of population for reasons related to the conflict'. According to a Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia, "the prohibition against deportation serves to provide civilians with a legal safeguard against forcible removals in time of armed conflict and the uprooting and destruction of communities by an aggressor or occupant of the territory in which they reside". The prohibition is thus not only supported by the underlying principle of humanity, but also by the protection of the sovereignty of the occupied territory—the population being one of the three constitutive elements of the State. In this regard, the norm is complemented by the prohibition to 'deport or transfer parts of its own civilian population into the territory it occupies,' set forth in Article 49(6) GC IV. The only exception to the—otherwise absolute—prohibition concerns evacuations, either required to ensure the 'security of the population' or dictated by 'imperative military reasons'. This chapter endeavours to shed light on the historic origins of the prohibition and on its legal basis under current IHL. Finally, close attention will be paid to the limits of the prohibition and to the exceptions provided for in the relevant provisions.

https://doi.org/10.1163/9789004375543_005

The prosecution of foreign fighters in Western Europe : the difficult relationship between counter-terrorism and international humanitarian law

Hanne Cuyckens and Christophe Paulussen. In: Journal of conflict and security law, Vol. 24, no. 3, Winter 2019, p. 537-565

The collapse of the Caliphate, including the resulting surrender of hundreds of fighters to the Syrian Democratic Forces, as well as the tweets from President Trump threatening his allies to release 800 Islamic State fighters if they would not take back their own citizens, has led to an intense debate on what to do with these so-called foreign fighters. Many counter-terrorism experts and international lawyers have argued that these fighters should be brought home and brought to justice before national courts, for moral, legal and long-term security reasons. In the context of national prosecutions, the aim should be to not have a one-size fits all, but rather a tailored approach, ensuring that perpetrators are prosecuted, as much as possible, for the actual crimes they have committed. If we consider foreign fighters to be individuals joining a non-state armed group in an armed conflict, there is by definition an important nexus between foreign fighters and armed conflict. Hence due regard should also be paid to international humanitarian law in the framework of their prosecution. This article will analyse and assess the first cases where the relationship between counter-terrorism and international humanitarian law played a role and aims to provide, based on the direction this discussion is heading, the necessary guidance.

https://doi.org/10.1093/jcsl/krz027

Protection of education in armed conflict situations : Asia-Pacific in focus

Borhan Uddin Khan and Mohammad Nazmuzzaman Bhuian. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 308-322

In contrast to the literature on the applicability of civil and political rights in armed conflict and other situations of violence, internationally recognised economic, social and cultural rights have been largely ignored. The legal guarantees related to work, food, housing, healthcare, social security or education are not generally seen as a priority amid widespread armed violence, since other affected rights relating to life, liberty and security typically attract greater attention. Accordingly, protection of education has never been considered as a priority during and after armed conflict. This chapter argues that the close interaction between international human rights law and international humanitarian law in providing their complimentary protection may guarantee the right to education to meet the need of the new evolution of armed conflict.

https://doi.org/10.1017/9781108667203.019

Punir ensemble : les réactions militaires du 14 avril 2018 à l'emploi d'armes chimiques à Douma (Syrie)

Pierre d'Argent. In: Annuaire français de droit international, 64 (2018), p. 191-211

En réaction à l'emploi allégué d'armes chimiques à Douma en avril 2018, les Etats-Unis, la France et le Royaume-Uni ont mené un raid aérien visant à punir le gouvernement syrien et à le dissuader de recommencer. Cet article revient sur les éléments factuels relatifs à l'emploi allégué d'armes chimiques et son attribution au gouvernement syrien, ainsi que sur le débat concernant la licéité des frappes aériennes au regard du droit international et la configuration de l'éventuelle responsabilité internationale en découlant.

Réflexions prospectives autour de l'encadrement juridique des systèmes d'armes létaux autonomes (SALA) : pour une transposition de la logique ayant presidé à l'interdiction des armes à laser aveuglantes

par Philippe Lagrange. - In: Droit, humanité et environnement : mélanges en l'honneur de Stéphane Doumbé-Billé. - Bruxelles : Bruylant, 2020. - p. 1123-1142

L'enjeu principal en termes d'encadrement juridique des systèmes d'armes létaux autonomes reste la question du degré d'autonomie que l'on pourrait accepter dans la perspective d'une utilisation de ces engins dans le cadre de conflits armés. Ce qui suppose, en préalable à toute autre interrogation, de répondre à une question d'ordre éthique : est-il moral de laisser une machine décider seule de la vie d'un être humain? Une telle hypothèse n'est pas admissible, et un éventuel Protocole VI - ou tout autre instrument international de même portée - ne devrait avoir d'autre ambition que de se concentrer sur le degré d'autonomisation en deçà duquel un système d'armes létal autonome, quel qu'il soit, pourra être employé au combat, condamnant de fait tout autre système d'armes se situant au-dessus de ce standard minimal. Ce principe étant posé, reste à déterminer plus précisément les enjeux humanitaires du développement des systèmes d'armes létaux autonomes et en quoi l'expérience de l'interdiction des armes à laser aveuglantes pourrait utilement être transposée à leur encadrement juridique.

Regulating new weapons technology

Rebecca Crootof. - In: The impact of emerging technologies on the law of armed conflict. - Oxford : Oxford University Press, 2019. - p. 3-26

When confronted with a new weapons technology, international law scholars, military lawyers, and civil society activists regularly raise two questions: Are new regulations needed? And are they needed now? Answering these in the affirmative will lead to a Matryoshka doll-like number of additional questions to determine what form the new regulations should take. Many engaging pieces address these questions by focusing on one exciting or concerning new technology—say, autonomous weapon systems, cyber operations, swarming drones, nanobots, genetically engineered viruses, or transformative artificial intelligence—and its current or likely impact on a law or legal regime. The aim of this chapter, however, is to step back and contemplate more generally whether and when new regulations are appropriate. Accordingly, Section II reviews the main categories of technology-fostered legal disruption, Section III tackles the question of whether a given technology will require new law, and Section IV weighs the respective benefits of precautionary bans, a wait-and-see approach, and proactive regulation.

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Reinterpreting the law to justify the facts : an analysis of international humanitarian law interpretation in Sri Lanka

Isabelle Lassée and Niran Aketell. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 423-439

The Sri Lankan civil war ended in May 2009 with the defeat of the Liberation Tigers of Tamil Eelam (LTTE) by the Sri Lankan armed forces. This chapter examines the work of two domestic commissions created by the Sri Lankan government in response to UN investigations into allegations of serious violations of human rights and international humanitarian law (IHL). It argues that the creation of these commissions as well as the analyses they carried out were part of a larger enterprise intending to justify the conduct of hostilities by the Sri Lankan armed forces and to legitimize IHL violations during the last stages of the conflict. This piece further discusses

the implications of such a strategy with respect to domestic accountability for wartime abuses as well as for global compliance with IHL.

https://doi.org/10.1017/9781108667203.025

The relevance of the concept of due diligence for international humanitarian law

Marco Longobardo. In: Wisconsin international law journal, Vol. 37, no. 1, 2020, p. 44-87

This article explores the relevance of due diligence for international humanitarian law. The article identifies international humanitarian law rules requiring the application of due diligence and demonstrates that the use of the concept of due diligence in international humanitarian law strengthens some well-established ideas on due diligence in general international law. Finally, the article argues that the inclusion of some due diligence obligations in international humanitarian law furthers states' implementation of the branch of law.

https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2020/07/37.1_44-87_Longobardo.pdf

Revisiting the Geneva Conventions : 1949-2019

ed. by Md Jahid Hossain Bhuiyan and Borhan Uddin Khan. - Leiden : Brill Nijhoff, 2019. - XVII, 332 p.

The book is designed to provide an overview of the development, meaning, and nature of international humanitarian law (IHL). It presents a critical review of the protection of the injured, sick and shipwrecked, prisoners of war (POWs) and civilians during times of war, the prevention of forcible transfer of civilians, the four Geneva Conventions from a Third World point of view, the ideals of distinction, proportionality and precaution from the point of view of Islamic law and the issues faced in implementing IHL.

https://doi.org/10.1163/9789004375543

The roles and functions of atrocity-related United Nations commissions of inquiry in the international legal order : navigating between principle and pragmatism

by Catherine E.M. Harwood. - Leiden ; Boston : Brill Nijhoff, November 2019. - XV, 397 p.

In *The Roles and Functions of Atrocity-Related United Nations Commissions of Inquiry in the International Legal Order*, Catherine Harwood explores the turn to international law in atrocity-related United Nations commissions of inquiry and their navigation of considerations of principle (the legal) and pragmatism (the political), to discern their identity in the international legal order. The book traces the inquiry process from establishment and interpretation of the mandate to legal analysis, production of findings and recommendations. The research finds that the turn to international law fundamentally shapes the roles and functions of UN atrocity inquiries. Inquiries continuously navigate between realms of law and politics, with the equilibrium shifting in different moments and contexts.

https://doi.org/10.1163/9789004411241

Rules of engagement and the international law of military operations

J. F. R. Boddens Hosang. - Oxford : Oxford University Press, 2020. - XXI, 339 p.

This study analyses the role and function of the rules on the use of force (rules of engagement (ROE)) for military operations in terms of the interaction between the various bodies of international and national law applicable to such operations and the actual conduct of the operations in question. It explains how ROE act as a linchpin between the law, including the academic study of the law, and the actual conduct of military operations in practice. In order to structure this analysis and explanation, the book offers a brief introduction to general concepts related to rules on the use of force (ROE and otherwise) and the process of planning military operations, followed by in-depth discussions of the application of (the law of) self-defence, international humanitarian law, international human rights law, and international and national criminal law in the context of military operations. Based on the conclusions and observations of the constituent chapters and observations from practice, this book examines the classical conceptual model of ROE and offers a refinement of that model to explain the interaction between

law and ROE. As such, the book serves as a 'bridge' between academic theory and operational practice, as well as between the academic world and the conduct of military operations.

https://doi.org/10.1093/oso/9780198853886.001.0001

Scorched earth in Syria : between crimes against humanity and genocide

Hilly Moodrick-Even Khen and Yael Siman. - In: The Syrian war : between justice and political reality. - Cambridge : Cambridge University Press, 2020. - p. 107-139

After eight devasting years, the armed conflict in Syria seems to be nearing its end, yet the humanitarian crisis is still ongoing. This is due to the enormous scale of international crimes, including war crimes, crimes against humanity, and genocide, characterising the conflict and committed by different parties to the conflict. This chapter discusses the commission of crimes against humanity and genocide since the beginning of the uprisings and focuses on a legal analysis of some of those crimes. The discussion of crimes against humanity in this chapter focuses on specific conduct and the two crimes most documented by the Commission of Inquiry on the Syrian Arab Republic and by Human Rights Watch and Amnesty International: torture and extermination of prisoners in detention facilities of the Syrian government. Regarding genocide, this chapter surveys the evidence for the commission of genocide of the Yazidis by ISIS and focuses on the CoI Syria's factual and legal analysis.

The Syrian war : between justice and political reality

Hilly Moodrick-Even Khen, Nir T. Boms and Sareta Ashraph. - Cambridge : Cambridge University Press, 2020. - XX, 315 p.

Starting as a civil uprising calling for liberal reforms in March 2011, the unrest in Syria rapidly deteriorated into a proxy-led armed conflict involving multiple state-sponsored and non-state actors, including foreign militias and local armed groups. The current state of affairs in Syria, and the uncertainty regarding its future, raise numerous questions for scholars and practitioners of both international law and politics about justice within the context of a changing political reality in Syria. This book contributes to the scholarship on the Syrian war, raising voices from the Middle East and beyond not often heard within this research context. The volume is divided into three sections: Part I sets the factual and legal framework for the Syrian conflict; Part II focuses on the implications of the conflict for the Syrian neighbourhood; and Part III analyses possible post-conflict scenarios. Together, they address the key themes and questions of the conflicts.

Targeting members of non-state armed groups in NIACs : an attempt to reconcile international human rights law with IHL's (de facto) status-based targeting

Nader I. Diab. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 321-349

This chapter explores the relationship between international human rights law and international humanitarian law in the targeting of members of armed groups in non-international armed conflicts. It attempts to flesh out point of convergence between these two branches concerning their respective frameworks on the use of lethal force against persons. In this regard, the chapter analyzes the role played by 'conduct' and 'function' in determining the lawfulness of the use of lethal force in both legal regimes and demonstrates that these are not as far apart on this issue as is generally believed. Hence, by applying the principle of systemic integration, it attempts to use these points of convergence to find a space in human rights law for a quasi-regime of status-based targeting of members of armed groups in non-international armed conflicts. The chapter nonetheless cautions against any exercise of interpretation that overstretches and distorts international human rights law or international humanitarian law. It thus highlights the limits in some circumstances of incorporating the abovementioned status-based regime, as well as guarding against attempts to align both branches to the detriment of their object and purpose.

https://doi.org/10.1007/978-94-6265-339-9_12

Teasingly inconclusive ? Teasing out from the travaux préparatoires the drafters' intentions of the so-called 'homeland battlefield unprivileged belligerents' under the 1949 Conventions

Yutaka Arai-Takahashi. In: Israel yearbook on human rights, Vol. 49, 2019, p. 71-116

This paper engages in extensive investigations into the legislative history of the IIIrd and IVth Geneva Conventions (GCIII and GCIV) adopted in 1949. It seeks to explore if the drafters of the Geneva Conventions excluded from the compass of the GCIV 'unprivileged belligerents' (or 'unlawful combatants') who are trapped on their homeland battlefield. This issue necessitates an examination of the negotiators' thoughts on the scope of Part III of the GCIV, which supplies the nucleus of the GCIV's elaborate protections. This paper is purported as a sequence to the article that the present writer has published in the previous volume of this Yearbook, which has ascertained strengths and weaknesses of various interpretative methods proposed to overcome the same issue.

https://doi.org/10.1163/9789004404601_004

Thou shalt not kill : social psychological processes and international humanitarian law among combatants

Emanuele Castano, Sabina Čehajić-Clancy and Daniel Muñoz-Rojas. In: Peace and conflict : journal of peace psychology, Vol. 26, no. 1, 2020, p. 35-46

This article reports the findings of an empirical study on the attitudes and behavior of combatants from four conflict-ridden countries (Bosnia-Herezegovina, Georgia, Republic of the Congo, and Colombia) who were surveyed by delegates of the International Committee of the Red Cross. The study focused on violations of international humanitarian law (IHL), with a specific emphasis on violence against other human beings. Results indicate that having been victim of violence is positively associated with violent behavior committed in the past, notably by making it more likely for the combatant to be a volunteer in an armed group, rather than a recruit. Also, status of the combatants (volunteer vs. recruited), having committed violations in the past, and knowledge of IHL, jointly predict intentions to respect IHL in the future. Finally, the study found that the self-justification processes of demonization of the enemy predicts lower intentions to respect IHL, but high-knowledge of IHL can act as a remedy.

https://library.ext.icrc.org/library/docs/ArticlesPDF/48551.pdf

Torture in non-international armed conflict and the challenge of universal jurisdiction : the unsuccessful trial of Colonel Kumar Lama

Mandira Sharma. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 624-642

Nepalese Lieutenant Colonel, Kumar Lama, was arrested in the United Kingdom (UK) on 3 January 2013. This was carried out on the basis of universal jurisdiction (UJ) for his alleged involvement in torture in Nepal back in 2005, during Nepal's non-international armed conflict (NIAC). Although the end-result of the case was the acquittal of Kumar Lama, the arrest in itself shocked those enjoying impunity for years in the country. It played a catalytic role, changing the discourse on transitional justice in the country, meaning how Nepal should deal with the violations of human rights and humanitarian law of a ten years long armed conflict (1996–2006). This chapter highlights the strength of UJ in empowering victim's voices for accountability but also unpacks challenges and difficulties.

https://doi.org/10.1017/9781108667203.035

"Treaty after trauma" : "protection for all" in the Fourth Geneva Convention

Gilad Ben-Nun. - In: History and international law : an intertwined relationship. - Cheltenham ; Northampton : E. Elgar, 2019. - p. 103-134

This chapter examines how the drafters of the Fourth Geneva Convention for Civilians ('GC-IV') extended its ratione personae so that no person could be beyond its basic protective scope, as implied by the provisions of its Common Article 3. Based upon hitherto unpublished sources from French, Bulgarian, ICRC and World Jewish Congress archives, it traces the evolvement of the 'protection for all' principle, from the Civilian Convention's very first blueprint uncovered here, through the World Jewish Congress' interventions on behalf of civilians targeted by their own governments in 1948 in Stockholm, and up to the Soviet bloc's unwavering support for this idea at the 1949 Geneva Conference of Plenipotentiaries. Correspondingly, this chapter recalibrates

our understanding of the paramount role played by the Soviet bloc in the securement of Common Article 3's provisions and refutes a commonly-held perception that the Soviet participation in GC-IV's drafting was solely intended for propaganda purposes.

Understanding and preventing attacks on health facilities during armed conflict in Syria

Abdulaziz Omar. In: Risk management and healthcare policy, No. 13, 2020, p. 191-203

Despite healthcare facilities being deemed untouchable in times of conflict, the war in Syria has seen its government as well as opposition forces, target their people and infrastructure as a strategy of war. Violations of medical neutrality and international humanitarian law has led to the loss of countless medical personnel, civilians and health care facilities; setting the country back to health levels last seen thirty years ago. It is evident through the strategy of the Syrian and Russian government that healthcare facilities are being deliberately targeted with humanitarian organizations condemning all parties involved for violating the Geneva Conventions. The report examines the impact of the conflict in Syria on its health facilities and looks at the reasons why these services are under attack and the international response to the conflict. The report concludes by looking into plans currently implemented to protect our healthcare infrastructure during times of war whilst comparing it to past strategies.

https://doi.org/10.2147/RMHP.S237256

L'Union Européenne et le Sahara occidental : le rôle du droit européen dans l'effectivité des obligations internationales erga omnes

Sarah Cassella. In: Annuaire français de droit international, 64 (2018), p. 81-110

L'Union européenne est confrontée depuis plusieurs années à la délicate question de la licéité internationale de la conclusion et de l'application d'accords économiques avec le Maroc permettant l'exploitation des ressources naturelles du Sahara occidental. Alors que la Cour de justice était parvenue à sauvegarder les traités tout en indiquant que leur portée ne pouvait s'étendre à ce territoire en raison de l'opposabilité à l'UE du droit d'autodétermination du peuple sahraoui, la Commission et le Conseil ont choisi de négocier avec le Maroc des amendements à ces accords prévoyant expressément leur application au Sahara occidental, provoquant ainsi de nouveaux recours. Ce contentieux révèle la contribution potentielle du droit européen à l'efficacité d'obligations internationales erga omnes relevant de différents domaines. Si les accords internationaux sont déclarés invalides en droit de l'Union, cela se répercute en effet sur les actes dérivés assurant leur application, sur le droit des Etats membres ainsi que sur les droits et obligations de leurs entreprises.

Uses of IHL by the International Court of Justice : a critical approach towards its role in the international legal arena

Brian E. Frenkel, Sebastián A. Green Martínez and Nahuel Maisley. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 265-295

The function of the International Court of Justice (ICJ) is to decide in accordance with international law such disputes or advisory opinions that are submitted to it. Although the ICJ has consistently applied and contributed to the development of general public international law, in certain areas such as international humanitarian law (IHL), the Court has gone back and forth between authentic contributions and judicial constraint. In other words, while on certain occasions, the ICJ has grounded its decisions on IHL, in other cases it deliberately refrained from doing so, arguably due to the subject matter under consideration or to justify a departure from its previous case law. Instead of describing the decisions rendered by the ICJ regarding IHL issues, this chapter portrays how the Court has selectively applied (and refrained from applying) this legal framework. In doing so, the chapter considers certain factors that may explain this behavior and analyzes them in light of its dual role: as a crucial actor in the pacific settlement of international disputes; and in applying international law.

https://doi.org/10.1007/978-94-6265-339-9_10

The Vietnam War and the development of international humanitarian law

Keiichiro Okimoto. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 156-179

This chapter reviews the main international humanitarian law (IHL) issues that arose during the Vietnam War and how those issues were addressed in subsequent development and codification of this law. The 'Vietnam War' refers to the armed conflict that took place between, on the one hand, North Vietnam and the National Liberation Front (NLF, an armed group formed in South Vietnam in 1960) and, on the other hand, South Vietnam, the United States, and their allies during the 1960s and the 1970s. The conflict had a lasting impact on IHL in many respects due to the gravity of the humanitarian issues that arose during the war. First, at the most fundamental level, many issues arose in determining whether IHL was applicable in the first place and, if so, which IHL rules applied. The conflict also raised the question whether the IHL rules in force at the time were adequate in protecting civilians and civilian objects and regulating the means and methods of warfare that were employed during the conflict. The conflict further highlighted the issue of how combatants who were captured while fighting clandestinely should be dealt with in IHL.

https://doi.org/10.1017/9781108667203.011

Virtuous accomplices in international criminal law

Miles Jackson. In: International and comparative law quarterly, Vol. 68, part 4, October 2019, p. 817-835

Humanitarian actors sometimes have to decide whether to render assistance in situations that put them at risk of liability for aiding and abetting under international criminal law. This is the problem of the virtuous accomplice—the idea that knowingly contributing to the wrongdoing of others might, exceptionally, be the right thing to do. This article explains why the problem arises and clarifies its scope, before turning to criminal law in England and Wales and Germany to assess potential solutions. It argues that the best approach is to accept a defence of necessity—of justified complicity—and shows that such an argument works in international criminal law.

https://ora.ox.ac.uk/objects/uuid:ac3e7a03-b83e-4b54-a65f-4b05e02022fb

Wartime military sexual enslavement in the Asia-Pacific

Linton, Suzannah. - In: Asia-Pacific perspectives on international humanitarian law. - Cambridge : Cambridge University Press, 2020. - p. 281-307

This reflection on international humanitarian law (IHL) in the Asia-Pacific region centralises three of the darkest periods in the region's history. The earliest, chronologically, is the situation of the girls and women from Japanese colonies and occupied territories who were forced to serve as ianfu or 'comfort women' to the Japanese military throughout the expanding empire of the 1930s and 1940s. Then, there were the girls and women who were sexually enslaved by the Pakistani Army and its auxiliaries during the struggle for liberation from which Bangladesh emerged in 1971. The final group comprises the girls and women who were sexually enslaved by the Indonesian military and its auxiliaries in East Timor over 1975–1999. Girls and women from socially conservative societies that prized female chastity were, in large numbers, forced to become sex slaves to professional militaries from Japan, Pakistan and Indonesia respectively. This sexual enslavement of females was directly associated with the armed conflict. It was carried out with both tacit and actual institutional support, sometimes pursuant to orders. Associated with, and part of this sexual enslavement, was a universe of depravity. These predatory crimes are not the only instances of extreme gender violence in the region, but they are emblematic. The accompanying analysis takes the discussion deeper, to a trans-disciplinary understanding of the causes of this practice, and from that to draw lessons for more effective prevention for the present. This discussion is rooted in a contemporary legal understanding, drawn from the conceptualisations used in the Rome Statute of the International Criminal Court (ICC Statute), and based on current IHL and international human rights law (IHRL). These were of course not applicable law when these events took place. A contemporary understanding is, however, essential in a study that seeks to use the past to inform the present and future.

https://doi.org/10.1017/9781108667203.018

Water as a weapon and casualty of conflict : freshwater and international humanitarian law

Peter H. Gleick. In: Water resources management, Vol. 33, issue 5, March 2019, p. 1737–1751

International humanitarian law has failed to adequately address and protect critical basic civilian infrastructure, especially water resources and managed water systems, because the laws themselves are insufficient or inadequately enforced. This paper addresses the role of violence against water and water systems in the context of international humanitarian laws. Data are presented that suggest an increasing trend of water-related conflicts and recent incidents of violence against natural or built water systems are described. Strategies for improving international systems for protecting critical water infrastructure are presented.

Western gunrunners, (Middle-)Eastern casualties : unlawfully trading arms with States engulfed in Yemeni civil war ?

Luca Ferro. In: Journal of conflict and security law, Vol. 24, no. 3, Winter 2019, p. 503-535

According to the United Nations Secretary-General, Yemen today constitutes the worst man-made humanitarian crisis in the world. It is fuelled by extensive third-state involvement, with none of the warring parties championing respect for international human rights and humanitarian law (to put it mildly). Conversely, primary rules of international law already prohibit arms transfers from the moment there is a significant risk that they could be used to commit or facilitate grave breaches, with the recipient's past and present record of respect for international law qualifying as the crucial factor to predict future transgressions. From that perspective, it appears deeply disingenuous for western states to continue transferring military equipment to members of the multilateral coalition in Yemen while maintaining adherence to the international legal framework. This article thus aims to examine whether the legal framework lives up to its noble goals or rather serves to defend state decisions that primarily serve their economic interests. It is structured as follows: Section 1 starts with an overview of the facts, and the focus and aim of this article. Section 2 then sets out the international legal framework as it applies to the trade in conventional arms with states that are involved in a non-international armed conflict. Section 3 analyses key domestic judgments (in the UK, Canada, Belgium and France) to test the available facts against the legal framework as elaborated. Finally, Section 4 concludes.

https://doi.org/10.1093/jcsl/krz021

What are 'armed non-state actors' ? : a legal and semantic approach

Annyssa Bellal. - In: International humanitarian law and non-state actors : debates, law and practice. - The Hague : Asser Press, 2020. - p. 21-46

The terms 'armed non-state actors' (ANSAs), 'organized armed group', 'insurgents' or 'terrorist groups' are not defined in international treaties or international customary law. However, there are legal and political consequences attached to these terms. As an effort to better understand the concept of an ANSA itself and its regulation under international law, this chapter proposes to further reflect on what are ANSAs, by proposing a critical analysis of each of its constitutive terms: 'armed' v. 'non-armed', 'state' v. 'non-state', and 'actors' v. 'individual'. We will see that a multiplicity of meanings and legal consequences can be drawn from each of these apparently straightforward words, which perhaps shows that the concept of an ANSA is not as well understood under international law as one would hope.

https://doi.org/10.1007/978-94-6265-339-9_2

Wired warfare 3.0 : protecting the civilian population during cyber operations

Michael N. Schmitt. In: International review of the Red Cross, Vol. 101, no. 910, 2019, p. 333-355

As a general matter, international humanitarian law is up to the task of providing the legal framework for cyber operations during an armed conflict. However, two debates persist in this regard, the resolution of which will determine the precise degree of protection the civilian population will enjoy during cyber operations. The first revolves around the meaning of the term "attack" in various conduct of hostilities rules, while the second addresses the issue of whether

data may be considered an object such that operations destroying or altering it are subject to the prohibition on attacking civilian objects and that their effects need be considered when considering proportionality and the taking of precautions in attack. Even if these debates were to be resolved, the civilian population would still face risks from the unique capabilities of cyber operations. This article proposes two policies that parties to a conflict should consider adopting in order to ameliorate such risks. They are both based on the premise that military operations must reflect a balance between military concerns and the interest of States in prevailing in the conflict.

https://library.icrc.org/library/docs/DOC/irrc-910-schmitt.pdf

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December 2020

ICRC