BIBLIOGRAPHY
1st Quarter 2015

International Humanitarian Law

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

ICRC

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Introduction

The International Committee of the Red Cross Library

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

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

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

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

Origin and purpose of the IHL bibliography

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

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

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

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

How to use the IHL Bibliography

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

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

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

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

Access to document

Whenever an article is electronically available in full text, a link allows you to access the document directly. Some links only work from within ICRC HQ premises such as the library. Some links require an ICRC login. All documents are available for loan at the ICRC Library. "Cote xxx/xxx" refers to the ICRC library call number. In case your local library cannot provide you with some of the documents, requests for copies or scans (in a reasonable amount) can be sent to library@icrc.org

Chronology

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

Contents

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

Sources

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

Disclaimer

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

Subscription and feedback

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

I. General issues

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

Boundaries of the battlefield : a critical look at the legal paradigms and rules in countering terrorism

Jessica Dorsey and Christophe Paulussen. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 219-250
https://library.ext.icrc.org/library/docs/ArticlesPDF/39714.pdf

Crossing borders to target Al-Qaeda and its affiliates : defining networks as organized armed groups in non-international armed conflicts

Peter Margulies and Matthew Sinnot. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 319-345
https://library.ext.icrc.org/library/docs/ArticlesPDF/39719.pdf

Debates and dichotomies : exploring the presumptions underlying contentions about the geography of armed conflict

Laurie R. Blank. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 297-318
https://library.ext.icrc.org/library/docs/ArticlesPDF/39718.pdf

Development of new rules or application of more than one legal regime ?

Dieter Fleck. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 51-70

L'Émir Abdelkader et le droit international humanitaire : colloque international : du 28 au 30 mai 2013 au Cercle national de l'armée, Beni Messous, Alger

[préf. Askar Umarbekov]. - [Alger] : CICR, [2014]. - 70, 22 p.

Histoire du droit international de la santé

Véronique Harouel-Bureloup. - Bordeaux : Les études hospitalières, 2014. - 150 p.

International humanitarian law

Yaël Ronen. - In: International legal positivism in a post-modern world. - Cambridge : Cambridge University Press, 2014. - p. 475-497
https://library.ext.icrc.org/library/docs/ArticlesPDF/40096.pdf

International humanitarian law : answers to your questions

ICRC. - Geneva : ICRC, December 2014. - 96 p.
http://www.cid.icrc.org/library/docs/DOC/icrc-002-0703-2014.pdf

International law, armed conflict and the construction of otherness : a critical reading of Dr. Seuss's "The butter battle book" and a renewed call for global citizenship

John Hursh. In: New York law school law review Vol. 58, no. 3, p. 617-652
http://tinyurl.com/39797-Hursh

Law at the end of war

Deborah N. Pearlstein. In: Minnesota law review Vol. 99, issue 1, November 2014, p. 143-220
http://tinyurl.com/40085-Pearlstein

Nuclear weapons and the separation of jus ad bellum and jus in bello

Jasmine Moussa. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 59-87

Principles of the laws of war in ancient India and the concept of mitigating armed conflicts through controlled fights

Sanoj Rajan. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 333-351
http://dx.doi.org/10.1163/18781527-00501014

Responsibility to protect and the plenitudinal mindset of international humanitarian law

Christopher R. Rossi. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 352-395
http://dx.doi.org/10.1163/18781527-00501012

The strange pretensions of contemporary humanitarian law

Jeremy Rabkin. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 41-70

The war report : armed conflict in 2013

ed. by Stuart Casey-Maslen. - Oxford : Oxford University Press, 2014. - XLIX, 593 p.

II. Types of conflicts

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

Air and missile warfare under international humanitarian law

Yoram Dinstein. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 51/1, 2013, p. 81-91
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Another parochial decision? : the common European asylum system at the crossroad between IHL and refugee law in Diakité

Claudio Matera. In: Questions of international law : zoom in Vol. 12, 2015, p. 3-20
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An autonomous notion of non-international armed conflict in EU asylum law : is there any role for international humanitarian law ?

Alessandro Bufalini. In: Questions of international law : zoom in Vol. 12, 2015, p. 21-36
http://tinyurl.com/40093-Bufalini

Beyond process : the material framework for detention and the particularities of non-international armed conflict

Ramin Mahnad. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 33-51
https://library.ext.icrc.org/library/docs/ArticlesPDF/39708.pdf

Boundaries of the battlefield : a critical look at the legal paradigms and rules in countering terrorism

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Michael N. Schmitt. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 52/1, 2013, p. 93-111
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http://tinyurl.com/40052-Wedderburn

Counter-terrorism and international law since 9/11, including in the EU-US context

Gilles De Kerchove and Christiane Höhn. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 267-295
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Zachary P. Augustine. In: The air force law review Vol. 71, 2014, p. 69-106
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Cyber warfare and international humanitarian law : a matter of applicability

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Cyber wars : applying conventional laws of war to cyber warfare and non-state actors

Shaun Roberts. In: Northern Kentucky law review Vol. 41, no. 3, p. 535-572
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Promoting access to health care in "other situations of violence" : time to reignite the debate on international regulation

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Transnational asymmetric armed conflict under international humanitarian law : key contemporary challenges

Eliav Lieblich with Owen Alterman. - Tel Aviv : Institute for National Security Studies, 2015. - 191 p.

Upping the stakes to win the war against Somali piracy : justifications for a new strategy based on international humanitarian law

Andrew DeMaio. In: George Mason law review Vol. 22, issue 2, Winter 2015, p. 387-437
http://tinyurl.com/40038-DeMaio

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Panagiotis Sergis. - In: La criminalité en mer = Crimes at sea. - Leiden ; Boston : M. Nijhoff, 2014. - p.523-553
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III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Babylon revisited : reestablishing a corps of specialists for the protection of cultural property in armed conflict

Ronald T. P. Alcala. In: Harvard national security journal Vol. 6, issue 1, 2015, p. 206-254
http://harvardnsj.org/wp-content/uploads/2015/02/Alcala-Vol6.pdf

Breaking imaginary barrier : obligations of armed non-state actors under general human rights law : the case of the Optional Protocol to the Convention on the Rights of the Child

Seira Yun. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 213-257
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Central African Republic : from conflict to chaos and back again ?

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Command responsibility : a small-unit leader's perspective

Jeremy Dunnaback. In: Northwestern university law review Vol. 108, issue 4, 2014, p. 1385-1422
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Le conseil juridique opérationnel : comment pense-t-on le droit des conflits armés lors de la planification et la conduite des opérations militaires ? : l'exemple de la Libye

Géry Balcerski. - In: Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité. - Paris : Pedone, 2014. - p. 189-194

Direct participation and the principle of distinction : squaring the circle

Charles Garraway. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 169-190
https://library.ext.icrc.org/library/docs/ArticlesPDF/39794.pdf

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Essential rules of behaviour for police in armed conflict, disturbance and tension : legal framework, international cases and instruments

by Ralph Crawshaw and Leif Holmström. - Leiden ; Boston : Brill Nijhoff, 2015. - XX, 748 p.

Foreign fighters and international law

Sandra Krähenmann. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 317-340

The international humanitarian law notion of direct participation in hostilities : a review of the ICRC interpretive guide and subsequent debate

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Stephen Deakin. In: Journal of military ethics Vol. 13, issue 4, December 2014, p. 320-330
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Outils et méthodes opérationnels d'encadrement de l'usage de la force

Cyrille Pison. - In: Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité. - Paris : Pedone, 2014. - p. 171-182

Upping the stakes to win the war against Somali piracy : justifications for a new strategy based on international humanitarian law

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http://tinyurl.com/40038-DeMaio

The warrior, military ethics and contemporary warfare : Achilles goes asymmetrical

Pauline M. Kaurin. - Farnham ; Burlington : Ashgate, 2014. - VIII, 143 p.

What implications do ad hoc/special agreements have for armed non-state actors ?

by Pushparajah Nadarajah. In: ITPCM international commentary Vol. 9, no. 33, July 2013, p. 47-50
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IV. Multinational forces

Le commandement militaire face au droit des conflits armés : retour d'expérience d'Afghanistan

Bertrand Lavaux. - In: Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité. - Paris : Pedone, 2014. - p. 183-187

The Copenhagen Process and the Copenhagen Process Principles and Guidelines on the Handling of Detainees in International Military Operations : challenges, criticism, and the way ahead

Thomas Winkler. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 258-288
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The Copenhagen process : principles and guidelines

Jacques Hartmann. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 3-32
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(Il)legality of killing peacekeepers : the crime of attacking peacekeepers in the jurisprudence of international criminal tribunals

Magdalena Pacholska. In: Journal of international criminal justice Vol. 13, no. 1, March 2015, p. 43-72 : tabl.
http://jicj.oxfordjournals.org/content/13/1/43.full.pdf

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Mariano J. Aznar and Milena Costas, eds. ; CEDRI, Project Atlas. - Valencia : Psylicom, 2011. - 131 p.

Missions autorisées par le Conseil de sécurité à l'heure de la R2P : au-delà du jus in bello ?

Frédéric Mégret. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 52/2, 2013, p. 205-240
http://tinyurl.com/40242-Megret

L'opération Unified Protector en Libye au regard du droit international humanitaire

Eric David. In: Droits : revue française de théorie, de philosophie et de culture juridiques No 56, 2012, p. 49-58
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Operational challenges of the law on air warfare : the example of Operation Unified Protector

Marvin R. Aaron and David R. D. Nauta. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 52/2, 2013, p. 353-377
http://tinyurl.com/40244-Aaron

Security Council mandates and the use of lethal force by peacekeepers : what place for the laws of war ?

Nigel D. White. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 95-116

Les tensions entre jus ad bellum et jus in bello dans le cadre des mandats du Conseil de sécurité

Vaios Koutroulis. - In: Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité. - Paris : Pedone, 2014. - p. 27-52

V. Private entities

Corporate criminal responsibility for war crimes and other violations of international humanitarian law : the impact of the business and human rights movement

Alex Batesmith. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 285-312

VI. Protection of persons

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

Breaking imaginary barrier : obligations of armed non-state actors under general human rights law : the case of the Optional Protocol to the Convention on the Rights of the Child

Seira Yun. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 213-257
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Child soldiers and peace agreements

Rose Mukhar. In: Annual survey of international and comparative law Vol. 20, issue 1, 2014, p. 73-100
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Child soldiers in 2013 : trends, challenges, and opportunities

Tomaso Falchetta. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 341-360

Children and the International Criminal Court : analysis of the Rome Statute through a children's rights perspective

door Cynthia Chamberlain Bolaños. - [S.l.] : [s.n.], 2014. - XIV, 291 p.
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Civilian social media activists in the Arab Spring and beyond : can they ever lose their civilian protections ?

David Heitner. In: Brooklyn journal of international law Vol. 39, issue 3, 2014, p. 1207-1249
http://tinyurl.com/39799-Heitner

The concept of civilian : legal recognition, adjudication and the trials of international criminal justice

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WESTERN COUNTRIES

The strange pretensions of contemporary humanitarian law

Jeremy Rabkin. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 41-70

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Claire Garbett. - Abingdon ; New York : Routledge, 2015. - XVIII, 182 p.

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Yasmin Naqvi. In: University of Tasmania law review Vol. 33, no. 1, 2014, p. 1-27
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Farewell "specific direction" : aiding and abetting war crimes and crimes against humanity in Perisic, Taylor, Sainovic et al., and US Alien Tort Statute jurisprudence

Manuel J. Ventura. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 511-553

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Liviu Alexandru Lascu. In: Law review Vol. 4, issue 2, July-December 2014, p. 79-95
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Protecting civilians in populated areas during the conduct of hostilities after the Gotovina case

Chiara Redaelli and Stuart Casey-Maslen. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 454-474

Unacceptable risk : use of explosive weapons in populated areas through the lens of three cases before the ICTY

Maya Brehm ; ed. : Roos Boer, Frank Slijper. - Utrecht : Pax, November 2014. - 85 p.
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All with Abstracts

Accountability and protection of UN peacekeepers in light of MONUSCO

Tomas Macura. In: Die Friedens-Warte : journal of international peace and organization Bd. 88, H. 3-4, 2013, p. 143-156

Military personnel involved in United Nations peacekeeping operations have operated without an effective legal framework regulating their conduct since the end of the Cold War. The explosion of peacekeeping as a response to non-international armed conflict has too often resulted in poorly trained and under-equipped peacekeepers facing renewed hostilities because a party to the conflict has breached the terms of a ceasefire agreement. This article critically examines the protection granted to peacekeepers in such situations and how they can be held accountable for serious crimes in the context of international humanitarian law and international criminal law. MONUSCO, the United Nations Organization Stabilisation Mission in the Democratic Republic of Congo, is considered in light of the recent deployment of an intervention brigade to directly confront rebel forces.

Advantageous attacks : the role of advantage in targeting people under the law of armed conflict

Krista Nelson. In: Chicago-Kent journal of international and comparative law Vol. 14, issue 1, Winter 2013, p. 87-116. - Cote 345.25/315 (Br.)

The law of armed conflict (LOAC) requires that attacks on objects promise a military advantage, but allows attacks on certain categories of people regardless of utility. This Article compares the law on targeting people and objects and suggests that the law on targeting people should be reformed to include the advantage requirement that governs the targeting of objects. Other proposals to refine the law on targeting people draw from law enforcement or peacetime human rights law; critics claim that those proposals inappropriately treat war like peace, and armed forces like police. By contrast, this Article's proposal draws from LOAC itself and would help tailor the law to the strategic concerns at the heart of military operations. Indeed, this proposal would advance LOAC's fundamental effort to prohibit useless violence, extending the requirement of advantageous attacks to people.

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Air and missile warfare under international humanitarian law

Yoram Dinstein. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 51/1, 2013, p. 81-91

Rendering homage to Erwin Dahinden's incessant support for efforts aiming to clarify operational law, Yoram Dinstein outlines the Air and Missile Warfare Programme of Legal Education (AMPLE) and Erwin Dahinden's decisive role in launching that project at the Geneva Centre for Security Policy in 2010. He first describes the Air and Missile Warfare Manual (AMW Manual) produced by an international Group of Experts (under the auspices of the Program on Humanitarian Policy and Conflict Research at Harvard University) and finalized by consensus in 2009, which the AMPLE team used as a basic tool. After presenting some general observations on air and missile warfare, the lecture turns to specific issues in air and missile warfare such as the use of drones, the protection of civilians, how neutrality is an important topic in air and missile warfare, and how the Group of Expert dealt with those topics during the drafting of the AMW Manual and its Commentary.

http://tinyurl.com/40238-Dinstein

Anglo-American dissent from the European law of war : a history with contemporary echoes

Jeremy Rabkin. In: San Diego international law journal Vol. 16, no. 1, 2014, p. 1-72. - Cote 345.25/323 (Br.)

Additional Protocol I to the Geneva Conventions (1977) lays down the "basic rule" that attacks must not be directed at "civilian objects" any more than at "civilians." Red Cross commentators and others assert that

the law of war has embraced this "rule" for many centuries. In fact, the leading commentators in Britain and America disputed this rule in the Nineteenth Century and well into the Twentieth Century. They defended naval seizures of private property as a perfectly reasonable war measure, along with raids on private property of the sort exemplified by General Sherman's Georgia campaign in the Civil War. Even European commentators, arguing for complete immunity of civilian objects in war, traced the doctrine not to remote tradition but to the mid-18th Century doctrines of Jean-Jacques Rousseau. In the hands of German interpreters, that doctrine was invoked to justify extreme brutality against "resistance" to invading armies. Even today, the "basic rule" does not serve the reasonable claims of humanity in all circumstances.

http://ssrn.com/abstract=2539257

Another parochial decision? : the common European asylum system at the crossroad between IHL and refugee law in Diakité

Claudio Matera. In: Questions of international law : zoom in Vol. 12, 2015, p. 3-20. - Cote 345.27/145 (Br.)

With its decision on the Diakité case, the Court of Justice of the European Union (CJEU) seemingly delivered another judgment in which it disconnected the EU legal order from the international one, when it held that the definition of armed conflict provided in international humanitarian law is not designed to identify the situations in which international protection ex Articles 2(e) and 15 of the Qualification Directive are applicable. This contribution assesses the extent to which the decision of the CJEU can be interpreted as another example of the parochial attitude the CJEU has displayed when called upon to apply notions or rules stemming from international law for the purpose of clarifying the scope of an internal (EU) provision. This contribution offers a short overview of the positions that IHL and international refugee law have within the EU legal system (section 2), before turning to the analysis of the Diakité affair in which the CJEU found itself at the crossroad between IHL and international refugee law for the purpose of applying the Qualification Directive (section 3). Section 4 will then look into the institutional and substantive consequences of the CJEU decision in Diakité and with some conclusions being drawn in section 5.

http://www.qil-qdi.org/wp-content/uploads/2015/02/02_Diakite_MATERA_FIN.pdf

Applying double effect in armed conflicts : a crisis of legitimacy

Bradley Gershel. In: Emory international law review Vol. 27, issue 2, 2013, p. 741-754. - Cote 345.25/321 (Br.)

Both just-war theory and post-war lex scripta affirm the doctrine of military necessity, which permits the loss of innocent life that is "incidentally unavoidable by the armed conflicts of the war." This qualification is informed by the doctrine of double effect ("DDE"), a product of Catholic theology that serves to legitimize an attack causing "incidental" or "unintended" civilian causalities, provided certain conditions are met. This Article presents an indictment of the DDE as praxis in positive law. Specifically, it challenges whether the DDE as a legal rule is sufficient to legitimize the loss of innocent life, given the didactic presumptions upon which the doctrine rests, its historical development, and the environment within which it is now applied. First, it briefly discusses the DDE's development as a principle of natural law. Second, it discusses the principle's positive development in the law of armed conflict ("LOAC"). Third, it presents a number of significant critiques and responses to the application of the DDE as both a means of moral accountability and its use in armed conflicts. Fourth, it presents the arguments against the DDE as a means of moral assessment of civilian casualties.

http://tinyurl.com/40042-Gershel

Armed conflict and compliance in Muslim states, 1947-2014 : does conflict look different under international humanitarian law ?

Corri Zoli, Emily Schneider, and Courtney Schuster. In: North Carolina journal of international law and commercial regulation Vol. 40, issue 3, Spring 2015, p. 679-738 : graph., tabl.. - Cote 345.22/258 (Br.)

The article introduces a new Muslim State Armed Conflict & Compliance (MSACC) dataset that provides an overview of modern armed conflict and international law compliance behavior for all Muslim states from 1947-2014. The MSACC dataset tracks each modern Muslim state, defined by voluntary state membership in the Organization of Islamic Cooperation (OIC), in both its armed conflict history and compliance record with international humanitarian law (IHL), and the universal international regime governing conduct of hostilities during armed conflict. The dataset encompasses all international (IAC) and non-international (NIAC) armed conflicts as defined by IHL in which a Muslim state acts as a major belligerent party. In using an IHL-based definition of armed conflict, the dataset is distinctive in several ways. First, it relies upon a legal, instead of a political–sociological (i.e., battle deaths) framework for

understanding and defining armed conflict. Second, it disaggregates the complex contemporary conflict spectrum into two streamlined types, international and non-international conflicts, as required by respective threshold triggers under IHL. Third, it focuses holistically on self-identified Muslim states in their actual conflict and compliance behavior, rather than on variables of presumed importance (i.e., regime attributes and other proxies). Finally, it correlates conflict and IHL compliance data in ways that offer new insights into traditional problems of conflict and war. By utilizing this data, one can examine Muslim state conflict trends, including by region, time period, and conflict type (i.e., IAC or NIAC), and provide baseline data for Muslim states that may be correlated with other data (e.g., development reports, security expenditures, human rights).

http://tinyurl.com/40048-Zoli

Autonomous attack : opportunity of spectre ?

Bill Boothby. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 71-88

This article tackles the tricky legal issues associated with autonomy and automation in attack. Having clarified the meanings of these notions, the implications of the rules of weapons law for such technologies are assessed. More challenging issues seem, however, to be raised by the law of targeting, and in particular by the evaluative assessments that are required of attackers, for example in relation to the precautions in attack prescribed by Additional Protocol I. How these rules can sensibly be applied when machines are undertaking such decision-making is therefore addressed. Human Rights Watch has called for a comprehensive ban on autonomous attack technologies and the appropriateness of such a proposal at the present stage of technological development is therefore assessed. The article then seeks to draw conclusions.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39710.pdf

An autonomous notion of non-international armed conflict in EU asylum law : is there any role for international humanitarian law ?

Alessandro Bufalini. In: Questions of international law : zoom in Vol. 12, 2015, p. 21-36. - Cote 345.27/144 (Br.)

The purpose of the present contribution is to show in which measure the case law of the Court of Justice of the European Union (CJUE) and that of international criminal tribunals adopt a differing definition of non-international armed conflict. After examining these different interpretations of the notion of “conflict not of an international character”, attention will be given to the potential fragilities and drawbacks in terms of legal certainty in adopting a definition that diverges from the concept that has already acquired a precise meaning in international humanitarian law. From a more general perspective, notwithstanding the fundamental goal of granting wider protection for asylum seekers in light of the object and purpose of the Qualification Directive, the legal reasoning underlying the adoption of an autonomous concept raises some concerns and possible criticisms as regards the relationship between international and EU law.

http://tinyurl.com/40093-Bufalini

Autonomous weapon systems : the anatomy of autonomy and the legality of lethality

Bradan T. Thomas. In: Houston journal of international law Vol. 37, no. 1, Winter 2015, p. 235-274. - Cote 341.67/323 (Br.)

This comment explores the legal implications and predicted efficacy of autonomous weapon systems, as well as the effects that their use might have on both international humanitarian law and the conduct of hostilities. The defining feature of an autonomous weapon system is its capability of selecting and engaging targets independent of human intervention. While benefits can be realized from such functionality, they are tempered with unclear issues such as the proper identification of civilians, the efficaciousness of substituting robotic calculations for human judgements, command responsibility, and unintended effects on a deploying state's standing in the international community, among others. Because autonomous weapon systems serve essentially as platforms that are capable of supporting a variety of munitions, it is unlikely that they will be categorically considered unlawful per se. Instead, the prospect of legal difficulties emanates from the potential manners in which such systems operate and how design drives decisions on the battlefield. Polarized state views on the development of autonomous weapon systems have set the stage for worldwide forethought and prudence, and this comment aims to aid in the developing discussion.

http://www.hjil.org/articles/hjil-37-1-thomas.pdf

Autonomous weapon systems under international law

researched and written by Nathalie Weizmann. - [Genève] : Geneva Academy of International Humanitarian law and Human Rights, November 2014. - 27 p. - Cote 341.67/56 (Br.)

This Briefing focuses on the international legal implications of developing and using autonomous weapon systems. Section A considers autonomous weapon systems with respect to the law that governs inter-state use of force (jus ad bellum). Section B considers their legality under the international law of law enforcement. Section C assesses their use in armed conflicts under international humanitarian law, notably in regard to the rules on distinction, proportionality, and precautions in attack. Section D examines the international obligation to conduct a legal review of autonomous weapon systems. Section E considers the issue of accountability. A final section offers brief concluding remarks.

http://tinyurl.com/39778-Weizman

Autonomous weapons and human responsibilities

Jack M. Beard. In: Georgetown journal of international law Vol. 45, issue 3, 2014, p. 617-681. - Cote 341.67/60 (Br.)

Although remote-controlled robots flying over the Middle East and Central Asia now dominate reports on new military technologies, robots that are capable of detecting, identifying, and killing enemies on their own are quietly but steadily moving from the theoretical to the practical. The enormous difficulty in assigning responsibilities to humans and states for the actions of these machines grows with their increasing autonomy. These developments implicate serious legal, ethical, and societal concerns. This Article focuses on the accountability of states and underlying human responsibilities for autonomous weapons under International Humanitarian Law or the Law of Armed Conflict. After reviewing the evolution of autonomous weapon systems and diminishing human involvement in these systems along a continuum of autonomy, this Article argues that the elusive search for individual culpability for the actions of autonomous weapons foreshadows fundamental problems in assigning responsibility to states for the actions of these machines. It further argues that the central legal requirement relevant to determining accountability (especially for violation of the most important international legal obligations protecting the civilian population in armed conflicts) is human judgment. Access to effective human judgment already appears to be emerging as the deciding factor in establishing practical restrictions and framing legal concerns with respect to the deployment of the most advanced autonomous weapons.

http://tinyurl.com/39798-Beard

Autonomous weapons and the problem of state accountability

Daniel N. Hammond. In: Chicago journal of international law Vol. 15, issue 2, 2014, p. 652-687. - Cote 341.67/92 (Br.)

Currently in development and expected to become functional in the near future, fully autonomous weapons will have the capacity to operate entirely on their own, selecting targets and completing missions without human involvement. The prospective development of these weapons has raised concerns among some scholars who fear that the weapons would be unable to meet international legal standards. One criticism consistently raised is that in the event one of these weapons commits a war crime or human rights violation, it is not clear who should be held accountable. In this context, critics have focused primarily on whether military officers, designers, or manufacturers could (or should) be held individually liable. Few, however, have explored whether state liability is a viable option. This Comment takes up this inquiry, arguing that state liability would be preferable to individual liability because the state is in the best position to minimize its weapons' potential violations of international law and seems to be the most culpable actor in a moral sense. Nevertheless, although state liability is possible in the abstract, legal and practical barriers make the international legal regime as it stands ill-equipped to ensure that states would actually be held responsible for their weapons' crimes. If state liability is to resolve the accountability problem, the international community will need to make adjustments to this regime.

http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1085&context=cjil

Babylon revisited : reestablishing a corps of specialists for the protection of cultural property in armed conflict

Ronald T. P. Alcala. In: Harvard national security journal Vol. 6, issue 1, 2015, p. 206-254. - Cote 363.8/87 (Br.)

After a brief outline of the development of international rules regarding the protection of cultural property prior to World War II, these early rules are examined in relation to the principles of military necessity,

distinction, and proportionality. In Section III, the Article explores how the United States endeavored to protect cultural property during World War II in light of these rules. Section IV describes the international community's attempt to expand the protections afforded to cultural property following the trauma of World War II. The 1954 Hague Convention and the 1999 Second Protocol serves as the focus of discussion in this section. Section V examines how despite the U.S. experience protecting cultural artifacts during World War II, and the development of more robust legal protections for cultural property that followed, the U.S. military still failed to respect and protect cultural property in Iraq, including sites like the ancient city of Babylon. In Section VI, the Article outlines a proposal to reintegrate "cultural property officers" into the U.S. Army. These officers would help identify and advise commanders on cultural property issues and would serve as the foundation for a more methodical and systematized program of cultural property protection in the armed forces. Ultimately, adequately safeguarding and protecting cultural property in future conflicts will require the military's recommitment to the ideals it embraced when it fielded and supported the "Monuments Men" of World War II.

http://harvardnsj.org/wp-content/uploads/2015/02/Alcala-Vol6.pdf

The benefits and dangers of proportionality review in Israel's High Court of Justice

Michael Kleinman. In: Emory international law review Vol. 29, issue 3, 2015, p. 589-635. - Cote 345.28/116 (Br.)

In the landmark case Beit Sourik Village Council vs. the Government of Israel, the Israeli Supreme Court, sitting as the High Court of Justice (HCJ), grappled with a highly charged question: should a state have to sacrifice its own security to improve human rights? The Court answered in the affirmative and held that certain sections of Israel's controversial security fence could not be built as planned. In these sections, the loss of human rights outweighed the security benefit of placing the fence through certain villages. Scholars from both sides of the political spectrum have voiced strong opinions about this case, and many of these debates have centered on the determinative aspect of the case: the court's proportionality review. This Comment will not grapple with politics, nor will it focus exclusively on the Beit Sourik case. Rather, it will analyze this case and similar cases to argue about the theoretical implications of proportionality review in HCJ decisions. Through an analysis of these cases, this Comment will determine the best way that a court could grapple with the issue of balancing security and the right to life and bodily integrity against other human rights.

http://law.emory.edu/eilr/_documents/volumes/29/3/Comments/kleinman.pdf

Beyond process : the material framework for detention and the particularities of non-international armed conflict

Ramin Mahnad. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 33-51

Deprivation of liberty in non-international armed conflict (NIAC) has suffered no shortage of attention over the last decade with issues surrounding the legal basis and procedural requirements for detention having received the most focused attention. In the course of these debates, international lawyers have looked to rules found in international humanitarian law (IHL) applicable in international armed conflict (IAC) for guidance, and many have argued that as a matter of either law or policy, the procedural aspects of detention in NIAC should be approached in a similar manner. As these discussions have evolved, their focus on grounds and procedure has left another core aspect of IHL relatively unnoticed, along with its potential role in the evolution of NIAC detention law and policy: in addition to providing a procedural framework for detention in armed conflict, IHL also provides material framework for detention that addresses the physical conditions in which detainees are to be held and the way detention and detention facilities are managed. It is often overlooked that in IAC, IHL's accounting for the unique situation of armed conflict does not stop at the right to detain or the grounds and procedures for doing so, but also informs extensive rules on the material aspects of detention. The result is a series of essential and unique protections—often going beyond those found in human rights law—designed to address specific vulnerabilities caused by armed conflict. This article calls attention to this aspect of IHL and asks whether the logic and reasoning that informs the material framework for detention established by the Geneva Conventions should have a role to play in the evolution of law and policy governing the material framework for detention in NIAC.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39708.pdf

Beyond Skynet : reconciling increased autonomy in computer-based weapons systems with the laws of war

Christopher M. Kovach. In: The air force law review Vol. 71, 2014, p. 231-277. - Cote 341.67/61 (Br.)

Autonomous cyberweapons differ from traditional semi-autonomous weapons, such as “fire and forget” weapons that rely upon technology to acquire, track, and engage human-selected targets because in those cases, “human control is retained over the decision to select individual targets and specific target groups for engagement.” In the case of autonomous cyberweapons, this human control is, at best, shared between the programmer and the operator; and in some cases, the operator might exercise almost no control whatsoever. This Article explores how LOAC applies to these autonomous cyberweapons, or software used to launch attacks in the domain of cyberspace. Part I examines whether the laws of war permit the deployment of autonomous cyberweapons. It begins by assessing how the principles of proportionality and distinction apply. Next, since LOAC prohibits any attack that might cause excessive collateral damage when compared to the military advantage gained, this section critically examines the important case of dual-use facilities, meaning the infrastructure jointly used by the military and civilians. Finally, it concludes by exploring what mechanisms are needed to ensure these weapons respect the laws of war. Part II analyzes the composition of non-uniformed DoD personnel in cyberweapons' design phases and how LOAC impacts theirstatus as combatants. Involving non-uniformed personnel, such as civilians and contractors, in the design of autonomous cyberweapons could place them within the reach of LOAC for possible violations of the laws of war. Part III considers DoD's process for formally reviewing an autonomous cyberweapon's compliance with LOAC. With current guidance, there exists a real risk that legal advisors providing on-demand advice during a cyberweapon's operation knows little about the weapon or its capabilities. This section explores the current legal review process for cyberweapons and identifies potential shortfalls. It also offers suggestions for improving the process, grounded in the assumption that, while even the untrained can readily grasp the effects of most conventional weapons, cyberweapons are different.

http://www.afjag.af.mil/shared/media/document/AFD-140922-043.pdf#page=237

Boundaries of the battlefield : a critical look at the legal paradigms and rules in countering terrorism

Jessica Dorsey and Christophe Paulussen. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 219-250

Report of the symposium entitled "The boundaries of the battlefield : a critical look at the legal paradigms and rules in countering terrorism". During the symposium, twenty-seven top panellists and moderators from academia, civil society, governments, the military and multilateral organisations discussed the contours of various approaches states take against non-state actors with the goal of countering terrorism. Specifically, the symposium addressed issues related to uses of force and how these may affect and define the geographic and temporal scope and limitations of the laws of armed conflict in relation to counter-terrorism. Besides this main theme, which operates within the armed conflict paradigm, the symposium also discussed and assessed the law-enforcement paradigm. Specifically, this paper elaborates on a number of key questions raised during the conference; these relate to the temporal and geographical limitations of armed conflict, the interplay between international humanitarian law and international human rights law, as well as the use of drones, the law enforcement approach to counter-terrorism and the possible need for a new framework for countering terrorism.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39714.pdf

Breaking imaginary barrier : obligations of armed non-state actors under general human rights law : the case of the Optional Protocol to the Convention on the Rights of the Child

Seira Yun. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 213-257

This paper seeks to clarify the confusions regarding the relationships between international human rights law and international humanitarian law, the principle of equality of belligerents, and the use of the term “should” in treaties. For this purpose, it examines, as a case study, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, on which doctrine is divided whether Article 4(1) thereof is binding on armed non-State actors. First, this paper reconceptualizes international humanitarian law as a subset of international human rights law, which share the same purpose, mutually reinforce, and depend on each other. Second, drawing on the customary rules of treaty interpretation under the Vienna Convention on the Law of Treaties and through a comprehensive analysis of the authentic texts in other languages and the travaux préparatoires, it argues that the term “should” in the operative part of treaties always creates legally binding obligations and that the equality principle does not strictly apply to norms applicable during peacetime. As such, despite its use of “should” and differential treatment between States and armed non-State actors, Article 4(1) of the Protocol creates a direct human rights obligation on armed non-State actors.

http://dx.doi.org/10.1163/18781527-00501008

The case for regulating fully autonomous weapons

John Lewis. In: Yale law journal Vol. 124, no. 4, January-February 2015, p. 1309-1325. - Cote 341.67/124 (Br.)

The Comment proceeds in three Parts. Part I defines fully autonomous weapons (FAWs) and introduces the legal and ethical issues surrounding these weapons. Part II draws on the history of attempts to regulate weapons systems, including landmines, to explain why regulation is the correct response to FAWs. Part III develops a framework based on the 1996 CCW Amended Protocol on the use of landmines to guide the use of FAWs. Though it is difficult to develop standards for such novel weapons, the momentum around a preemptive ban makes it important to consider whether regulation might instead be an effective response to FAWs. By demonstrating that existing frameworks are capable of regulating FAWs, this Comment aims to integrate FAWs into current debates in international law and to dispel the notion that these weapons raise wholly unique legal challenges.

http://tinyurl.com/40036-Lewis

Central African Republic : from conflict to chaos and back again ?

Annyssa Bellal. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 411-428. - Cote 355/1018 (2013)

In this chapter, three principal questions will be addressed. First, what challenges were raised by the application of huan rights law to the situation in Central African Republic between March 2013 and March 2014, in particular with regard to armed non-state actors ? Second, which entity is entitled to qualify a situation as one falling under international humanitarian law (IHL) and what legitimacy does this qualification have in the international community ? And third, how should certain violations occurring in the country be assessed for the purpose of international criminal law ?

The challenge of prosecuting conflict-related gender-based crimes under Libyan transitional justice

Hilmi M. Zawati. In: Journal of international law and international relations Vol. 10, 2014, p. 44-91. - Cote 345.22/257 (Br.)

This article argues that the incompetence of the current Libyan transitional justice system, manifested in its failure to respond adequately to conflict-related gender-based crimes, impedes access to justice for victims, encourages the culture of impunity, and leaves Libyans' peace-building process open to the danger of collapse. Accordingly, this analysis deals with gender-based crimes in a war setting as a case study and with transitional justice as a combination of a variety of socio-legal approaches to provide both victims and perpetrators with a sense of justice. Finally, this work scrutinizes three key mechanisms for gender-sensitive transitional justice in Libya, involving urgent justice system reform, establishment of an independent truth-seeking and reconciliation commission to investigate gender-based crimes committed by all parties to the recent civil war, and finally the setting up of a Special Court for Libya as a hybrid judicial system for bringing perpetrators to justice and bring justice to victims.

http://www.jilir.org/docs/issues/volume_10/10_5_ZAWATI_FINAL.pdf

The challenges in the implementation of international humanitarian law : report of the workshop on 23 September 2013 in Brussels

Laura de Schryver and Nicolette Pavlovics. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra Vol. 52, no. 2, 2013, p. 439-448

The aim of this workshop was to provide with the right questions to ask in the questionnaire which will be prepared for the Society's 20th Congress in 2015 on the same topic. Each speaker gave a fifteen minute speech about the current challenges the implementation of IHL faces and the progress currently being made: the lacking or defective implementation ; the fact that although big progress has been made in the field of repression through the development of international criminal law, it operates very slowly and not much progress has been made in the field of reparation and compensation ; the lessons to be learned from other areas of law ; the Swiss-ICRC initiative to increase compliance with IHL which has led to a consultation process, which concentrates on the following issues: (1) a regular Meeting of States; (2) a reporting system; (3) fact-finding ; specific responsibilities for countries not directly involved in the armed conflict; the whole set of distinct issues that non-state actors present when it comes to the enforcement of

IHL ; and finally the fact that respecting IHL should be a moral obligation that we have internalized and it is the state's responsibility to transfer this moral apprehension to the individual actors.

http://tinyurl.com/40246-Deschrijver

Charting the legal geography of non-international armed conflict

Michael N. Schmitt. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 52/1, 2013, p. 93-111

This article examines the geographical reach of IHL during an armed conflict between a State and a non-State organized armed group. Its purpose is to explore how location affects the applicability of the differing legal regimes. Discussion will focus predominantly on noninternational armed conflict (NIAC), for that genre of hostilities poses the greatest interpretive conundrums. It is an inquiry of momentous practical importance since IHL's range (or lack thereof) influences operational planning and mission execution, determines how civilians and civilian objects must be protected during hostilities, sets the applicable detention regime, and affords avenues for enforcement of norms that are not otherwise available.

http://heinonline.org/HOL/Page?handle=hein.journals/mllwr52&id=94&collection=journals&index=journals/mllwr

Chemical weapons and the International Criminal Court

by Andreas Zimmermann and Meltem Sener. In: American journal of international law Vol. 108, no. 3, July 2014, p. 436-448

When the contracting parties to the Rome Statute establishing the International Criminal Court met in Kampala in 2010 to discuss possible amendments to the statute, the main focus was, and has thereafter remained, on the crime of aggression. In addition to amending the statute to include the crime of aggression, however, the contracting parties amended Article 8 of the statute to include a broader range of war crimes in noninternational armed conflicts over which the ICC can have jurisdiction – inter alia, by including the use of chemical weapons. The use of chemical weapons by Syrian government forces in 2013 (and perhaps subsequently) has acutely raised questions concerning the extent of the ICC's treaty-based jurisdiction, both under the unamended text of the Rome Statute or in situations where the amendment to Article 8 applies. These events have also provoked consideration concerning the Security Council's legal powers to extend the ICC's jurisdiction to certain crimes involving chemical weapons that would otherwise be beyond its subject matter jurisdiction. These questions are considered in this Note. It considers first, the basis of the now standard view that the use of chemical weapons constitutes a war crime under customary law in both international and noninternational armed conflicts; second, whether despite the intentional omission of references to chemical weapons in the original Rome Statute, the ICC's treaty-based jurisdiction extends in noninternational armed conflicts to the use of chemical weapons by states for which the Kampala amendment to Article 8 is not in force; and third, whether the Security Council may confer such ICC jurisdiction by way of a Security Council referral.

Child soldiers and peace agreements

Rose Mukhar. In: Annual survey of international and comparative law Vol. 20, issue 1, 2014, p. 73-100. - Cote 362.7/24 (Br.)

This paper explores and analyzes the relationship between child soldiers and peace processes. It addresses the protections offered – or lack thereof – by human rights and international humanitarian law to child soldiers in armed conflicts. In particular, the conflict in the Democratic Republic of the Congo ("DRC") is specifically addressed because the DRC conflict from 1996 to 2002 can most likely be classified as a non-international armed conflict – which is what most of today's conflicts are deemed; also because the numerous peace treaties from this time frame primarily failed to provide a lasting peace in the DRC region. The paper argues that in order to achieve sustainable peace in the DRC conflict or any conflict that uses child soldiers, that child soldiers' needs and rights must be addressed in the peace agreement. Furthermore, it is proposed that the peace process must address and ensure there is a structure for accountability and justice of those local leaders who abducted or recruited children under the age of eighteen years as child soldiers. Chapter 2 addresses who a child soldier is and reviews the legal definitions as well as the various international treaties, laws, and conventions designed to offer children special protections and ensure that their best interests are addressed. Chapter 3 looks at Graca Machel's groundbreaking report on the "Impact of Armed Conflict on Children," and the recognition of child soldiers.

Chapter 4 specifically looks at the DRC as a case study. Chapter 5 sets out the paper's conclusions that DDR child-specific programs and justice provisions should be included in peace agreements for there to be sustainable peace.

http://digitalcommons.law.ggu.edu/annlsurvey/vol20/iss1/8/

Child soldiers in 2013 : trends, challenges, and opportunities

Tomaso Falchetta. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 341-360. - Cote 355/1018 (2013)

This chapter first reviews relevant international legal standards under international humanitarian law, human rights law and international criminal law applicable to child soldiers. It then analyses the practice of child recruitment and use by state armed forces : in 2013, the UN reported unlawful recruitement and use of children in the national armies of six states: the DRC, Myanmar, Somalia, Sudan, South Sudan, and Yemen. Beyond national armies, unlawful recruitment and/or use of children by official state forces other than national armies have been documented by the UN and NGOs in at least thirteen states during the last decade. These include paramilitary forces established by law as well as civil defences forces. The third part of this chapter turns to the practices of armed groups' recruitment and use of children in hostilities. Reporting on 2013, the UN Secretary General listed forty-eight armed opposition groups , operating in the following states: Afghanistan, CAR, Colombian, the DRC, Iraq, Mali, Myanmar, the Philippines, Somalia, South Sudan, Sudan, Syria, and Yemen. It finally reviews the opportunities to address child soldiers in conflict and post-conflict situations.

Children and the International Criminal Court : analysis of the Rome Statute through a children's rights perspective

door Cynthia Chamberlain Bolaños. - [S.l.] : [s.n.], 2014. - XIV, 291 p. - Cote 362.7/404

This thesis offers an analysis and recommendations for the ICC to fulfil its mandate, particularly vis-à-vis child victims and witnesses of crimes within the ICC's jurisdiction. It firstly analyses the Rome Statute and other applicable law of the ICC, which give the ICC not only a clear penal mandate, but also require that the ICC respects, as a minimum, the safety and well-being of victims and witnesses, particularly those who are most vulnerable, such as children.

http://hdl.handle.net/1887/24891

Civilian social media activists in the Arab Spring and beyond : can they ever lose their civilian protections ?

David Heitner. In: Brooklyn journal of international law Vol. 39, issue 3, 2014, p. 1207-1249. - Cote 345.29/217 (Br.)

Part I of this Note provides a background of civilian participation in conflict and the use of social media, both before and during the Arab Spring, by examining the dissidents' actions and the regimes' reactions. This examination focuses heavily on the situation in Syria, as its civil war is the closest to a traditional intrastate armed conflict, and dissidents using social media in such a conflict are more likely to cause military harm. Part II addresses the current provisions and interpretations of international law that result in civilian dissidents who use social media, either losing or maintaining their protection from targeting. Part III analyzes and evaluates the different applications of social media activities that may result in the loss of civilian protection in light of the different interpretations of a civilian's direct participation in hostilities. Part IV discusses the strengths and weaknesses of each interpretation of direct participation and propose additional criteria for determining when a social media activist has lost his or her civilian protection. These additional criteria seek to balance a regime's right to defend itself from what could be employed as a new type of military threat against the legitimate rights of a social media activist.

http://tinyurl.com/39799-Heitner

Classic distinctions and modern conflicts in international humanitarian law

Douglas Wedderburn-Maxwell. - [S.l] : [s.n.], 2014. - 52 p. - Cote 345.27/140 (Br.)

International Humanitarian Law has at its core distinctions and classifications: The sphere between jus in bello and jus ad bellum. Between Civilian and Combatant. Between proportional and indiscriminate attack. Between acceptable and prohibited targets. However the two most central distinctions in International Humanitarian Law are the distinction between War and Peacetime and between International and Non-International Armed Conflict. This essay will explore the significance of these two distinctions and how they impact the application and effect International Humanitarian Law has on war. However it will find that war has changed to an extent that it no longer fits into the established classes. These distinctions are

arbitrary, dated, and inflexible serving not to help implement the law but to hinder its application and so fail it's object and purpose of mitigating all suffering in all forms of war.

http://tinyurl.com/40052-Wedderburn

Command responsibility : a small-unit leader's perspective

Jeremy Dunnaback. In: Northwestern university law review Vol. 108, issue 4, 2014, p. 1385-1422. - Cote 345.22/252 (Br.)

The doctrine of command responsibility posits that, when military commanders fail to effectively prevent, suppress, or punish their subordinates' war crimes, the commander may be punished for the subordinates' crimes. Several international criminal statutes have codified this doctrine, but the United States' Uniform Code of Military Justice has not. In light of U.S. law-of-war violations during the Iraq and Afghanistan wars, several legal commentators have called for stronger legal incentives within domestic military law and for the adoption of a formal command responsibility provision. Such measures, it is argued, would place sufficient pressure on senior military commanders to stem the tide of war crimes within the U.S. military. Assuming that a formal command responsibility statute is the best method of redress, this Note argues that a more nuanced approach is needed to introduce the provision domestically. Namely, Congress must shape the provision around the concerns and incentives of small-unit leaders, not senior military commanders. As the United States continues to engage heavily in counterinsurgency warfare, small-unit leaders have taken on increasingly more important roles, both strategically and with regard to preventing law-of-war violations. Accordingly, there is a critical need for lawmakers to draft the statutory elements of a command responsibility so as to minimize the doctrine's costs on small-unit leaders while maximizing these leaders' incentives to enforce the laws of war. Using this framework, this Note argues further that a domestic command responsibility provision should incorporate a negligence mens rea standard in only limited circumstances.

http://scholarlycommons.law.northwestern.edu/nulr/vol108/iss4/6/

Le commandement militaire face au droit des conflits armés : retour d'expérience d'Afghanistan

Bertrand Lavaux. - In: Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité. - Paris : Pedone, 2014. - p. 183-187. - Cote 345/675

L'objet de cet article est d'apporter un témoignage direct et opérationnel sur les difficultés d'ordre juridique auxquelles la brigade française qui s'est déployée en Afghanistan à l'automne 2009 a eu à faire face. L'auteur, déployé à cette époque comme chef des opérations de la Brigade Lafayette, avait en charge l'ensemble des opérations françaises terrestres dans la zone d'action de la Brigade et a donc été directement confronté à la prise en compte nécessaire du droit dans les actions que la Brigade a pu mener. La problématique juridique la plus importante qui a été examinée par le commandement avec son conseiller juridique portait sur le traitement des éventuels prisonniers que la force aurait pu faire.

The Committee on the Elimination of Racial Discrimination and international humanitarian law

David Weissbrodt. - In: Coexistence, cooperation and solidarity : liber amicorum Rüdiger Wolfrum. - Leiden ; Boston : M. Nijhoff, 2012. - p. 633-654. - Cote 345.1/119 (Br.)

This article reviews the jurisprudence of one of the principal human rights treaty bodies, the Committee on the Eliminationa of Racial Discrimination. It examines the CERD's general aproach to interpreting the International Convention on the Elimination of all forms of Racial Discrimination, addressing relevant issues of international law and addressing the rules of international humanitarian law. Part B through E consider relevant decisions and recommendations that CERD has produced to date, including its decision on individual communications, general recommendations, concluding observations and the decisions and recommendations issued through its early-warning measures and urgent procedures, respectively.

The concept of civilian : legal recognition, adjudication and the trials of international criminal justice

Claire Garbett. - Abingdon ; New York : Routledge, 2015. - XVIII, 182 p. - Cote 344/644

The Concept of the Civilian: Legal Recognition, Adjudication and the Trials of International Criminal Justice offers a critical account of the legal shaping of civilian identities by the processes of international criminal justice. It draws on a detailed case-study of the International Criminal Tribunal for the former Yugoslavia to explore two key issues central to these justice processes: firstly, how to understand civilians as a social and legal category of persons and secondly, how legal practices shape victims' identities and redress in relation to these persons. Integrating socio-legal concepts and methodologies with insights from

transitional justice scholarship, Claire Garbett traces the historical emergence of the concept of the civilian, and critically examines how the different stages of legal proceedings produce its conceptual form in distinction from that of combatants. This book shows that the very notions of civilian, protection and redress that underpin current practices of international criminal justice continue to evoke both definitional difficulties and analytic contestation.

The concept of military objectives in international law and targeting practice

Agnieszka Jachec-Neale. - New York ; London : Routledge, 2015. - XIV, 294 p. - Cote 345.25/312

The concept that certain objects and persons may be legitimately attacked during armed conflicts has been well recognised and developed through the history of warfare. This book explores the relationship between international law and targeting practice in determining whether an object is a lawful military target. By examining both the interpretation and its post-ratification application this book provides a comprehensive analysis of the definition of military objective adopted in 1977 Additional Protocol I to the four 1949 Geneva Conventions and its use in practice. Tackling topical issues such as the targeting of TV and radio stations or cyber targets, Agnieszka Jachec-Neale analyses the concept of military objective within the context of both modern military doctrine and the major coalition operations which have been undertaken since it was formally defined.

Le conseil juridique opérationnel : comment pense-t-on le droit des conflits armés lors de la planification et la conduite des opérations militaires ? : l'exemple de la Libye

Géry Balcerski. - In: Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité. - Paris : Pedone, 2014. - p. 189-194. - Cote 345/675

Les militaires qui planifient les opérations prévoient des options militaires, des modes d'emploi de la force, des plans d'opération, qu'ils soumettent à l'approbation de l'autorité politique. Leur but est de proposer des options militaires réalistes, efficaces et viables politiquement. Le bon agencement juridique de leur plan n'est pas à ce stade une priorité. Néanmoins, les options de planification doivent également être viables juridiquement, c'est-à-dire que les responsables qui décideront d'une option militaire, ainsi que ceux qui la mettront en oeuvre, ne verront pas leur responsabilité pénale engagée, et pourront se prévaloir d'avoir le droit pour eux, élément important de légitimation d'une opération, notamment vis-a-vis de l'opinion publique. C'est pas ce biais que sont entrés en jeu les conseillers juridiques ou "LEGAD" (né de la contraction de "legal advisor"). Ils revoient les options et les modes d'action envisagés, et vérifient qu'ils sont conformes aux normes de droit en vigueur, ou, à défaut, évaluent le risque juridique que les options comportent. Cette contribution met en évidence, au travers de l'exemple de la crise libyenne en 2011, les questions juridiques qui se posent au cours d'une opération militaire et les discussions entre experts juridiques qui ont eu lieu sur certains modes d'action envisagés.

Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe

ed. by Caroline Harvey, James Summers and Nigel D. White. - Cambridge : Cambridge University Press, 2014. - XXIV, 383 p. - Cote 345.2/967

The laws of war are facing new challenges from emerging technologies and changing methods of warfare, as well as the growth of human rights and international criminal law. International mechanisms of accountability have increased and international criminal law has greater relevance in the calculations of political and military leaders, yet perpetrators often remain at large and the laws of war raise numerous normative, structural and systemic issues and problems. This edited collection brings together leading academic, military and professional experts to examine the key issues for the continuing role and relevance of the laws of war in the twenty-first century. Marking Professor Peter Rowe's contribution to the subject, this book re-examines the purposes of the laws of war and asks whether existing laws found in treaties and customs work to achieve these purposes and, if not, whether they can be fixed by specific reforms or wholesale revision.

The Copenhagen Process and the Copenhagen Process Principles and Guidelines on the Handling of Detainees in International Military Operations : challenges, criticism, and the way ahead

Thomas Winkler. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 258-288

The article describes some of the key legal questions and challenges encountered and dealt with during the Copenhagen Process on Handling of Detainees in International Military Operations, including the

relationship between international humanitarian law and international human rights law. It also addresses some of the criticism directed at the process, and looks at the way ahead for ensuring the best possible protection of individuals detained during international military operations. The article concludes that the Copenhagen Process Principles and Guidelines does constitute an important step forward in that regard, and that application of the Principles and Guidelines by the participants and the international community more broadly, including by the United Nations Security Council, is paramount in ensuring this common goal.

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The Copenhagen process : principles and guidelines

Jacques Hartmann. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 3-32

This article analyses the outcome of the "Copenhagen Process on the Handling of Detainees in International Military Operations": a five-year multi-stakeholder effort to develop principles and good practices on detention in international military operations. The Process concluded in 2012 when 18 States "welcomed" a set of non-binding "Principles and Guidelines." The Principles and Guidelines address uncertainties surrounding the legal basis for the detention, treatment, and transfer of detainees during international military operations, drawing on both human rights and international humanitarian law. This article comments on the Principles and Guidelines, shedding some light on the context in which they were developed and adopted.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39707.pdf

Corporate criminal responsibility for war crimes and other violations of international humanitarian law : the impact of the business and human rights movement

Alex Batesmith. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 285-312. - Cote 345.2/967

The object of this chapter is to analyse the extent to which what might be described as the business and human rights "movement" is having and impact upon the prosecution of corporations, or their executives and employees, for violations of interantional law, chiefly IHL or ICL, at both the international and domestic levels. The historical and current legal context is examined and the revision of attitudes towards corporate prosecutions discussed. It is demonstrated that the new approach, advocated by proponents of the business and human rights movement, will lead to changes in practice and to the increased likelihood of business actors being held accountable for involvement in international crimes. It is argued that this would better reflect the true culpability for mass crimes committed in modern-day armed conflicts

Counter-terrorism and international law since 9/11, including in the EU-US context

Gilles De Kerchove and Christiane Höhn. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 267-295

The article provides an inside view into the EU's practices and views related to counter-terrorism and international law. It explains the EU's criminal justice approach to the fight against terrorism and provides arguments for the effectiveness of this response in practice. The authors set out the tools for regional law enforcement and judicial cooperation the EU has adopted since 9/11, based on the principle of mutual recognition, as well as EU-US cooperation in this area. It also looks at the role of the military in the fight against terrorism. In a second part, the article deals with questions related to the international legal framework for the fight against terrorism, such as the existence of not of an armed conflict in the legal sense against Al Qaeda. It also explains relevant initiatives in the EU-US context, including the EU-US legal advisers' dialogue, the EU framework to support the closure of Guantánamo and the EU input to the implementing provisions of the National Defense Authorization Act.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39717.pdf

The criminology of war

ed. by Ruth Jamieson. - Farnham ; Burlington : Ashgate, 2014. - XXXV, 553 p. - Cote 345.2/966

Contient notamment : Criminalizing war : criminology as ceasefire / V. Ruggiero. - The transformation of violence in Iraq / P. Green and T. Ward. - Abu Ghraib : imprisonment and the war on terror / A. F.

Gordon. - War and rape : a preliminary analysis / R. Seifert. - A continuum of violence : gender, war and peace / C. Cockburn. - "I didn't want to die so I joined them" / R. Maclure and M. Denov.

A critical discussion of the second Turkel report and how it engages with duty to investigate under international law

Michelle Lesh. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 119-145

The aim of this article is to reflect upon accountability under international law through the framework of a specific example. The Turkel Commission is a public commission of inquiry appointed by the Government of Israel. It issued its second and final report, which addresses Israel's mechanisms for investigating violations of international law according to the laws of war, in February 2013. The Report primarily focuses on International Humanitarian Law (IHL) but also attends to International Human Rights Law (IHRL). The duty to investigate under international law is an evolving process because treaty law lacks detail, particularly regarding the manner of conducting an investigation. Under IHRL that duty has been enriched by the jurisprudence of regional human rights courts and soft law. Under IHL duty (which is even sparser in detail) it has been aided by state practice and the jurisprudence of international tribunals. The Turkel Report is the first major study on the duty to investigate and it informs much of the analysis of this article. The article provides a descriptive review of the Report and a critical discussion of the way this current national development offers a meaningful contribution to the development of the obligation imposed by international law to investigate alleged violations.

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Crossing borders to target Al-Qaeda and its affiliates : defining networks as organized armed groups in non-international armed conflicts

Peter Margulies and Matthew Sinnot. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 319-345

Al-Qaeda's dispersal and the rise of regional terrorist groups such as Al-Shabaab in Somalia have raised the stakes for defining an "organized armed group" (OAG). If an entity fails the OAG test, a state may use only traditional law enforcement methods in responding to the entity's violence. Both case law and social science literature support a broadly pragmatic reading of the OAG definition. While the International Criminal Tribunal for the former Yugoslavia (ICTY) has cited factors such as existence of a headquarters and imposition of discipline, ICTY decisions have found organization when evidence was at best equivocal. Moreover, terrorist organizations reveal surprisingly robust indicia of organization. Illustrating this organizational turn, a transnational network like Al-Qaeda operates in a synergistic fashion with regional groups. Moreover, recent news reports have suggested that current Al-Qaeda leader Dr. Ayman al-Zawahiri has attempted to assert operational control over the specific targeting decisions of Al-Qaeda affiliates, although that effort has not been uniformly successful. Furthermore, while Al-Qaeda does not micromanage most individual operations, it exercises strategic influence, e.g., through a focus on targeting Western interests. When such strategic influence can be shown, the definition of OAG is sufficiently flexible to permit targeting across borders. In addition, the doctrine of co-belligerency, borrowed from neutrality law, provides a basis for targeting that is not confined by state boundaries. Even when these indicia are absent, individuals within non-Al-Qaeda groups may be targetable if they engage in coordinated activity with Al-Qaeda.

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Cyber neutrality : a textual analysis of traditional jus in bello neutrality rules through a purpose-based lens

Zachary P. Augustine. In: The air force law review Vol. 71, 2014, p. 69-106. - Cote 345.26/258 (Br.)

Along with its benefits, military uses of cyberspace present a number of legal challenges, both internationally and domestically. One key challenge is the difficulty of gaining international consensus on whether traditional laws of armed conflict apply to cyber operations. This article analyzes one of the traditional international rules of armed conflict that might limit a primary benefit of cyber operations: the ability to deceive an adversary. The law of neutrality limits certain deceptive behavior in traditional armed conflict. Maneuvering military forces and weaponry along unexpected routes to surprise an enemy has been a staple of warfare throughout history and is a legitimate form of deception so long as the route does not pass through a neutralstate. Does this limitation also prevent maneuvering cyber "forces" or "weaponry" through a neutral state? This article highlights the key neutrality rules that are potentially relevant to activities in cyberspace and then analyze the applicability of these rules to a belligerent's cyber operations. It discusses international standards of attribution and where those standards might present practical problems in applying neutrality rules to cyber activities. It then analyzes the potential neutrality implications of several recently reported malicious cyber activities and concludes that neutrality rules do

place limits on deceptive cyber practices in an armed conflict. But, while individual belligerents generally have the ability to apply neutrality rules to their own conduct in the cyber domain, neutral states will have difficulty establishing neutrality violations by belligerents and will likely have to rely on notifications from the belligerents themselves.

http://www.afjag.af.mil/shared/media/document/AFD-140922-043.pdf#page=75

Cyber-opérations et principe de proportionnalité en droit international humanitaire

Marco Roscini. - In: Internet et le droit international : colloque de Rouen de la Société française de droit international. - Paris : Pedone, 2014. - p. 297-307. - Cote 345.26/266 (Br.)

Ce chapitre explique comment le principe de proportionnalité dans le droit international humanitaire s'applique aux cyber-opérations reconnues comme « attaques » au sens de l'article 49, par. I du premier Protocole additionnel aux Conventions de Genève de 1949 sur la protection des victimes de la guerre. II détermine d'abord que le dommage collatéral attendu sur les civils et les biens de caractère civil comprend non seulement les effets primaires des cyber opérations, mais aussi les effets secondaires et tertiaires, ainsi que ceux causés par la propagation du logiciel malveillant a d'autres systèmes informatiques. En outre, le dommage collatéral pertinent aux fins du calcul de proportionnalité comprend non seulement des dommages matériels aux biens ou aux personnes, mais aussi la perte de fonctionnalité des infrastructures, même si des dommages physiques n'en découlent pas. Quant à l'avantage militaire concret et direct attendu de l'opération, il ne comprend pas la protection des forces attaquantes, mais, lorsque la cyber-attaque est composée de plusieurs actes hostiles, l'avantage militaire est ce qui résulte de l'attaque considérée dans son ensemble. Le chapitre conclut que, si le calcul de la proportionnalité peut s'avérer problématique dans le cyber-contexte, les cyber-opérations peuvent également offrir un moyen de minimiser les dommages collatéraux sur les civils et les biens civils en neutralisant la cible sans la détruire.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40087.pdf

Cyber warfare and international humanitarian law : a matter of applicability

Evangelia Linaki. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 27, 4/2014, p. 169-176

This article deals with the notion of "cyber warfare" within the context of international humanitarian law. As a first step, the terms of "cyber warfare" and "cyber attack" are clarified. Subsequently, an effort is made to look into whether and, if so, under what kind of circumstances a cyber operation can trigger or amount to an armed conflict, by employing the traditional distinction between an international armed conflict and a non-international armed conflict. However, two more criteria are suggested - a consequential approach and the affinity of cyber operations with military operations. According to which international humanitarian law would regulate a cyber operation occurring within the context of an existing armed conflict. Lastly, an analysis of cyber incidents - including "Stuxnet" - is provided, which contributes to the identification of the most important challenge international humanitarian law faces with regard to cyber warfare : attribution of conduct.

Cyber wars : applying conventional laws of war to cyber warfare and non-state actors

Shaun Roberts. In: Northern Kentucky law review Vol. 41, no. 3, p. 535-572. - Cote 345.26/263 (Br.)

Given its vulnerabilities and the ease with which its enemies can obtain cyber weapons, the U.S. should be a leader in advocating that existing international laws of war apply to a cyber-attack launched by both a state and non-state actor. To support this position, this Note proceeds in five parts. Part II provides background information on cyber-attacks and cyber warfare. It also highlights a number of recent cyber-attacks by state and non-state actors. Part III offers historical analysis on current international laws of war with emphasis on the U.N. Charter. Part IV highlights the current challenges and current recommendations on whether international laws of war apply to cyber-attacks. This part outlines a number of popular approaches to the question of whether a cyber-attack constitutes an "armed attack," and whether a non-state actor can commit it. Part V proposes the way forward in addressing the current challenges. Specifically, this Note proposes that a cyber-attack can constitute an "armed attack" under a non-kinetic effects-based approach. Also, this Note argues that non-state actors can commit an "armed attack." To achieve both, this Note proposes defining cyberspace as a hybrid form of common property. Each state should be able to access the Internet, but each state should be responsible for preventing cyber-attacks from being launched within its territory.

http://tinyurl.com/40049-Roberts

Cyberguerre et lex specialis : évolution ou révolution ?

Abdelwahab Biad. - In: Internet et le droit international : colloque de Rouen de la Société française de droit international. - Paris : Pedone, 2014. - p. 253-264. - Cote 345.26/267 (Br.)

Les défis posés par la cyberguerre au droit international sont bien réels. L'emploi des cybertechnologies à des fins militaires représente-t-il une évolution ou une révolution au regard de la lex specialis? Les cyberopérations soulèvent des questions juridiques complexes qui portent sur la pertinence de la définition classique du conflit armé et de l'attaque. Elles concernent aussi la problématique de l'identification de l'auteur d'une cyberattaque dans un contexte d' « anonymat de la belligérance » et la question connexe de la responsabilité de l'Etat en cas de crimes de guerre. Enfin, la notion de « cyberarme » mérite d'être clarifiée au regard de la spécificité de moyen à « double usage » des cybertechnologies.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40088.pdf

Debates and dichotomies : exploring the presumptions underlying contentions about the geography of armed conflict

Laurie R. Blank. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 297-318

An examination of the growing literature on the topic of the geography of armed conflict suggests that the differences of opinion, between and among academics, policymakers and military lawyers, for example, are nearly intractable. Statements about the propriety of a certain target under the law of armed conflict are often met by pronouncements regarding the role of jus ad bellum in cabining the use of force in the territory of another state or the restrictive parameters of the international human rights/law enforcement regime for addressing individuals who pose a threat or danger to others. Indeed, one might easily conclude that the participants in these debates are simply operating in entirely separate analytical paradigms, leading to interesting and challenging intellectual discussions but not to productive conversations that advance the analysis and move beyond the debate to effective potential resolution of a complicated and multi-layered issue. However, unlike pornography or terrorism, where notwithstanding a myriad of different definitions, "you know it when you see it", little agreement exists even on whether there is a specific, definable geography of armed conflict at all. To help move beyond this impasse, this article explores the presumptions underlying the ongoing debates regarding the geography of armed conflict, in an effort to untangle the debates and provide new opportunities and venues for discussion—and thus to help advance the development of the law of armed conflict and other relevant bodies of law. These presumptions appear in particular in four dichotomies that inherently help drive the debates but are brushed aside or not taken into consideration: law versus policy; authority versus obligation; territory versus threat; and submission of the collective enemy versus elimination of an individual threat. For each or any of these dichotomies, the lens through which one views the contrasting positions will then have a significant—if not determinative—effect on considerations and conclusions regarding questions of geography and the battlefield. As a result, recognizing these dichotomies and understanding how they impact the current discourse is critical to any effective conversation, whether in the academic or policy arenas.

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The dehumanization of international humanitarian law : legal, ethical, and political implications of autonomous weapon systems

Markus Wagner. In: Vanderbilt journal of transnational law Vol. 47, no. 5, 2014, p. 1371-1424. - Cote 341.67/140 (Br.)

In the future, a growing number of combat operations will be carried out by autonomous weapon systems (AWS). At the operational level, AWS would not rely on direct human input. Taking humans out of the loop will raise questions of the compatibility of AWS with the fundamental requirements of international humanitarian law (IHL), such as the principles of distinction and proportionality, as well as complicate allocation of responsibility for war crimes and crimes against humanity. This Article addresses the development toward greater autonomy in military technology along three dimensions: legal, ethical, and political concerns. First, it analyzes the potential dehumanizing effect of AWS with respect to the principles of distinction and proportionality and criminal responsibility. Second, this Article explores, from an ethical perspective, the advantages and disadvantages of the deployment of AWS independent of legal considerations. Authors from various fields have weighed in on this debate, but oftentimes without linking their discourse to legal questions. This Article fills this gap by bridging these disparate discourses and suggests that there are important ethical reasons that militate against the use of AWS. Third, this Article argues that the introduction of AWS alters the risk calculus of whether to engage in or prolong an armed conflict. This alteration is likely to make that decision politically more palatable and less risky for the political decision makers.

http://tinyurl.com/40071-Wagner

Destined for an epic fail : the problematic Guantánamo military commissions

David Glazier. In: Ohio State law journal Vol. 75, issue 5, 2014, p. 903-967. - Cote 345.26/261 (Br.)

This article provides the most comprehensive critique of the current Obama administration commissions to date. It identifies key procedural deficiencies undermining their legitimacy, including excessive concentration of authority in the convening authority, limits on the right to counsel of choice, systemic inequalities between prosecution and defense, abuses of classification authority, and potential use of statements obtained through coercion, if not outright torture. Flaws in the substantive law are even more significant. Without valid jurisdiction, any trial is a legal nullity, and procedure becomes irrelevant. The Guantánamo tribunals necessarily draw their authority from the law of war, yet most charges levied to date fail to constitute recognized war crimes. Some charged conduct falls outside the temporal or legal scope of any recognized conflict. Law of war reliance also permits the invocation of unique defenses, including arguments that terrorist targets were valid objects of attack and that civilian deaths were permissible "collateral damage," unavailable in ordinary criminal prosecutions. Pending cases drag through interminable pre-trial proceedings as every aspect of their untested procedure and jurisdiction is subject to challenge, while federal courts continue to routinely return convictions and long sentences in terrorism cases. Moreover, the commissions will be subject to years of additional post-trial and collateral challenges as well. They have already failed one major test before the Supreme Court and two before the D.C. Circuit Court of Appeals, and the future predictably holds more of the same.

http://dx.doi.org/10.2139/ssrn.2419656

Destroying the shrines of unbelievers : the challenge of iconoclasm to the international framework for the protection of cultural property

Kevin D. Kornegay. In: Military law review Vol. 221, Fall 2014, p. 153-179

This article seeks to locate the destruction of the Bamiyan Buddhas within the framework of the post-World War II international laws that were developed to prevent the loss, damage, and destruction of cultural property, defined generally as the tangible constituents of cultural heritage. This article argues that the destruction of the Bamiyan Buddhas was a crime under international law and assesses two possible approaches that have been proposed for criminal prosecution of individuals involved in their destruction. One approach would argue that the destruction of the Bamiyan Buddhas violated the human rights of a particular culture or people; the other would argue that the destruction of the Buddhas was a crime against humanity (crimina juris gentium). After offering an historical overview of cultural-property protections under international law, this article will place the destruction of the Bamiyan Buddhas in its historical and political context before testing the "rights-based" and "crimes-against-humanity" theories for criminal prosecution of the responsible actors by briefly applying each theory to the facts and circumstances surrounding the destruction of the Buddhas. The article will conclude that a "crimes-against-humanity" approach to prosecutions for willful destruction of cultural property offers greater potential to strengthen the protections afforded to cultural property under international law.

http://tinyurl.com/39736-Kornegay

Development of new rules or application of more than one legal regime ?

Dieter Fleck. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 51-70. - Cote 345.2/967

The question whether the laws of war are 'fit for purpose' brings the need to first consider that purpose: is it broadly peace as a common goal in our ever imperfect world? Is it litigating military necessities? Is it protecting the fate of the victims? Is it balancing the rules of fair play in situations of danger and combat stress? Should there be more than one purpose : could the laws of war then be characterised as a multi-purpose set of rules? Is this particular branch more than a simple set of rules, but rather a process that might serve such various purposes? Open for dynamic development, but nevertheless serving as an appropriate tool for authoritative decision-making 'by the use of analogy, by reference to context, by analysis of the alternative consequences'? Any serious assessment will be influenced by a number of different elements : the facts determining the application of the laws of war and the problem of acceptance of a state of armed conflict, the relationship between that legal branch and other disciplines that continue to be relevant during armed conflict; the effect of armed conflict on treaties; the role of national law in military operations; and the interaction of various national contingents, which may be bound to different obligations, but are tasked to cooperate nevertheless.

A dialogue : ethics, law, and the question of detention in non-international armed conflicts

James Turner Johnson. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 53-68

This chapter begins with the observation that non-international armed conflicts pose serious challenges to the efforts to regulate war in both international law and recent ethical discourse, and argues that neither has responded well to these challenges. Various problems in both are identified. The second part of the chapter examines the historical conception of just war accepted as consensual in the West from the high Middle Ages till early in the modern period, arguing that it provides a helpful frame for thinking ethically about non-international armed conflicts. The third section of the chapter carries this reasoning forward, applying it to non-international armed conflicts generally and to the problem of detention in such conflicts specifically.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39709.pdf

Direct participation and the principle of distinction : squaring the circle

Charles Garraway. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 169-190. - Cote 345.2/967

Additional Protocol I in 1977 controversially narrowed the distinction between combatants and civilians. Article 44(3) API has proved to be one of the most controversial provisions in the Protocol. The speed of the transition from civilian to combatant, by simply producing a weapon, has been criticised for shifting the balance between regular and irregular forces too much to the latter's advantage. It also means that civilians are more likely to be targeted. This chapter explores how ICRC has effectively disposed of this with the proposal that members of organised armed groups have a continuous combat function and can be targeted as such. This designation is based on a lasting integration into that group with involvement in the preparation, execution or command of acts that amount to direct participation in hostilities. A person recruited, trained and equipped by the group for direct participation in a conflict can be assumed to have this function, even if not actively engaged in hostilities. However, this does not extend to more peripheral, but still essential, participants, such as financiers, trainers and weapons manufacturers. The ICRC has considered that direct participation depends on three principles: (1) the threshold of harm involved (acts that cause. death, injury and destruction); (2) a direct causal link between an act and this harm (which excludes persons in a supporting role); and (3) a belligerent nexus (the act is in support and to the detriment of parties in a conflict). However the ICRC's Interpretive Guidance has raised as many questions as it has answered.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39794.pdf

Does international criminal law create humanitarian law obligations ? : the case of exclusively non-state armed conflict under the Rome Statute

Alain-Guy Tachou-Sipowo. In: Annuaire canadien de droit international = The Canadian yearbook of international law 2013, p. 289-318. - Cote 345.27/143 (Br.)

This article argues that since the Tadic case before the International Criminal Tribunal for the Former Yugoslavia, a new category of armed conflict has migrated from international criminal law to international humanitarian law: that of armed groups fighting each other within the borders of a state without the intervention of the armed forces of the latter. However, the extent to which the rules of this category of conflict cover issues that may arise in such a conflict has not been comprehensively examined. One may infer, from the war crimes that the Rome Statute of the International Criminal Court criminalizes in this type of conflict, a dozen rules of international humanitarian law. After giving an historical account of the codification of this category of armed conflict, the author argues that there is a need to further develop these rules in order to provide a more comprehensive humanitarian law regime applicable to conflict exclusively between non-state armed groups. The absence of such a comprehensive regime should not, however, be taken as evidence of a legal vacuum. The author suggests that a law enforcement regime resting on international human rights law should be applied to relations between the armed groups and the territorial state, while the warring relationship between the armed groups should fall under the law of armed conflict, including those core customary rules that are now recognized as being equally applicable to international and non-international armed conflict.

http://ssrn.com/abstract=2550438

Does the law of targeting meet twenty-first-century needs ?

William Boothby. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 216-234. - Cote 345.2/967

Is international, as opposed to domestic, law in fact rooted in the past and if so is that a bad thing and, more specifically, does it mean that the law is somehow of reduced relevance when confronted by modern challenges? In seeking to answer these questions by reference to the law of targeting, this contribution starts by considering what, in summarised form, the relevant law consists of. It starts by considering the early beginnings of the law of targeting and how it was developed through the Hague Regulations then analyzes the significance of Additional Protocol I. It then reflects on the ways in which targeting activities have developed in recent decades and considers whether those developments call into question the suitability of the established legal principles and rules. While such an analytical process may appear to address the topic fully, a more complete answer only emerges if we also consider the 'soft law' approaches that we have seen in recent years. The article then then goes on to consider how those processes might interact with the development of substantive law.

Droit international humanitaire coutumier : volume 1 : règles

Jean-Marie Henckaerts et Louise Doswald-Beck ; avec des contributions de Carolin Alvermann, Knut Dörmann et Baptiste Rolle. - Bruxelles : Bruylant ; Genève : CICR, 2011. - LXXIII, 878 p. - Cote 345.2/723 (I 2011 FRE)

Contrairement au droit des traités, le droit international coutumier n'est pas écrit. Pour prouver qu'une norme relève du droit coutumier, il faut démontrer qu'elle reflète la pratique des États et qu'il existe, au sein de la communauté internationale, la conviction qu'une telle pratique est requise par le droit. Dans ce contexte, « pratique » se réfère à la pratique officielle des États, à savoir à leurs déclarations formelles. Une pratique contraire de la part de certains États est possible, car si cette pratique contraire est condamnée par d'autres États ou rejetée par le gouvernement lui-même, la norme originale est en fait confirmée. Cette étude est unique; c'est en effet la première fois qu'une telle étude a été entreprise. L'étude offre au monde entier un code commun de règles applicables aux conflits armés que toutes les parties aux conflits armés sont tenues de respecter.

Drone warfare

John Kaag and Sarah Kreps. - Cambridge ; Malden : Polity, 2014. - IX, 195 p. - Cote 341.67/756

One of the most significant and controversial developments in contemporary warfare is the use of unmanned aerial vehicles, commonly referred to as drones. In the last decade, US drone strikes have more than doubled and their deployment is transforming the way wars are fought across the globe. But how did drones claim such an important role in modern military planning? And how are they changing military strategy and the ethics of war and peace? What standards might effectively limit their use? Should there even be a limit? Drone warfare is the first book to engage fully with the political, legal, and ethical dimensions of UAVs. In it, political scientist Sarah Kreps and philosopher John Kaag discuss the extraordinary expansion of drone programs from the Cold War to the present day and their so-called 'effectiveness' in conflict zones. Analysing the political implications of drone technology for foreign and domestic policy as well as public opinion, the authors go on to examine the strategic position of the United States - by far the world's most prolific employer of drones - to argue that US military supremacy could be used to enshrine a new set of international agreements and treaties aimed at controlling the use of UAVs in the future.

Droning on : some international humanitarian law aspects of the use of unmanned aerial vehicles in contemporary armed conflicts

David Turns. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 191-215. - Cote 345.2/967

This chapter considers the legality of unmanned aerial vehicles (UAVs) and their use in armed conflict from the standpoint of current international humanitarian law (IHL), both in general (legality per se) and specific (legality of use) terms, in light of the many criticisms that have been levelled at these systems. The analysis focuses initially on whether UAVs comply with the regulation of weaponry in IHL generally, before concentrating particularly on the use of UAVs for kinetic application of (potentially) lethal force. The latter entails consideration of their compliance with the law of targeting operations, as well as the question of the legal status of their operators and the consequences of that status, Finally, the question of legal responsiblitiy for the use of drones in armed conflicts is addressed. The chapter concludes that no new

regulatory legal framework is necessary for drones, but that while theyre not inherently unlawful under IHL, their actual use in armed conflict must be compliant with that body of law

L'Émir Abdelkader et le droit international humanitaire : colloque international : du 28 au 30 mai 2013 au Cercle national de l'armée, Beni Messous, Alger

[préf. Askar Umarbekov]. - [Alger] : CICR, [2014]. - 70, 22 p. - Cote 345.2/970

Des experts civils et militaires de plusieurs pays, mais aussi des représentants des trois religions monothéistes, on traité des différents aspects de l'actualité du message humanitaire du fondateur de l'État moderne algérien : l'Émir Abdelkader. Ce dernier prit, dès 1837 plusieurs initiatives pour alléger les souffrances des prisonniers ennemis. Elles vont préfigurer le Code Lieber et la première Convention de Genève. Ces initiatives ont ensuite été formulées par un décret en 1843. Ce décret qui interdit, entre autres, de tuer un prisonnier désarmé stipule en particulier que tout Français capturé au combat sera considéré comme prisonnier de guerre et sera traité avec humanité jusqu'à ce qu'une occasion s'offre pour son échange contre un prisonnier algérien. Ce colloque est l'occasion de saluer l'Émir comme précurseur de la codification du DIH.

Enforcement of violations of IHL : the ICTY statute : crimes and forms of liability

Yasmin Naqvi. In: University of Tasmania law review Vol. 33, no. 1, 2014, p. 1-27. - Cote 344/639 (Br.)

This lecture describes the subject-matter jurisdiction and forms of liability under the ICTY Statute. It first focuses on the interpretational difficulties - and how it has sought to resolve them - that the Tribunal has faced in applying the following dispositions of the Statute: Article 1 - Interpreting 'Armed Conflict'; Article 2 - Qualfying the Conflict and Interpreting the Conditions for 'Grave Breaches' to Apply ; Article 3 - Interpreting 'Serious Violations of the Laws and Customs of War' ; Article 4 - Interpreting 'Genocide' ; Article 5 - Interpreting Acts Constituting 'Crimes Against Humanity'. It then turns to the six forms of individual criminal responsibility under the ICTY Statute, which are captured in Articles 7(1) and 7(3) of the Statute. These are: planning ; instigating ; ordering ; committing (which includes joint criminal enterprise (JCE)) ; aiding and abetting ; and command or superior responsibility.

http://tinyurl.com/39743-Naqvi

Enjeux de la cyberguerre pour la protection des personnes et des biens civils : du principe de distinction au manuel de Tallinn

Karine Bannelier-Christakis. - In: Internet et le droit international : colloque de Rouen de la Société française de droit international. - Paris : Pedone, 2014. - p. 277-295. - Cote 345.26/265 (Br.)

La cyberguerre amplifie les hésitations traditionnelles, tant elle se présente tantôt sous l'aspect inquiétant d'une guerre incontrôlable et tantôt sous celui plus rassurant d'une guerre moins dévastatrice, grâce à des moyens non létaux qui permettraient d'affaiblir l'adversaire sans nécessairement le détruire. Au cœur de ces incertitudes, l'interdiction de diriger des attaques et des opérations militaires contre les personnes et les biens civils nous interroge sur le contenu même du principe et de sa portée. Cette interdiction, et surtout son interprétation, forgée avec pour référentiel principal les armes cinétiques permet-elle d'appréhender toute la complexité des conséquences d'attaques et d'opérations non cinétiques, partiellement ou totalement dématérialisées (I)? Les interrogations que suscitent la détermination du contenu et de la portée de cette interdiction n'ont toutefois de pertinence que si l'on est en mesure de distinguer le domaine civil du domaine militaire et d'attribuer avec certitude les actes de guerre à des entités déterminées. Or, comme nous le verrons, la cyberguerre trouble ces critères élémentaires du principe de distinction rendant sa régulation particulièrement incertaine (II). L'ensemble des remarques s'inscrivent exclusivement dans le cadre du jus in bello. Il ne s'agit pas ici de se demander dans quelle mesure, par exemple, une cyber-attaque pourrait constituer un recours à la force armée ou une agression au sens du jus ad bellum mais uniquement d'analyser la portée et les effets de cyber-opérations se déroulant dans le cadre déjà constitué d'un conflit armé.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40072.pdf

Essential rules of behaviour for police in armed conflict, disturbance and tension : legal framework, international cases and instruments

by Ralph Crawshaw and Leif Holmström. - Leiden ; Boston : Brill Nijhoff, 2015. - XX, 748 p. - Cote 345.29/218

The primary focus of this book is the laws of war, also referred to as the international law of armed conflict and international humanitarian law. There are two aspects to the laws of war, jus ad bellum, the rules governing resort to armed conflict, and jus in bello, the rules governing the conduct of armed conflict. The purpose of the book is to inform police officials about the latter. It is also written for other State officials, including the military, who may carry out police operations, educators and trainers of police and those who monitor or investigate police or otherwise seek to hold them accountable. In addition to considering rules of behaviour in actual armed conflict, the book focuses on police conduct in those forms of conflict that fall below the armed conflict threshold, that is to say situations of internal disturbance and tension. Whilst the laws of war are not legally applicable in such situations, it is argued here that some of its principles and provisions should form an important element in the strategy and tactics of policing civil disturbances, especially when they are serious in terms of scale or intensity of violence.

Facilitating peaceful protests

written by Milena Costas Trascasas and Stuart Casey-Maslen. - [Genève] : Geneva Academy of International Humanitarian law and Human Rights, January 2014. - 33 p. - Cote 345.1/116 (Br.)

In societies that are experiencing economic hardship or political repression, protests are unavoidable. Peaceful protests should be understood as an expression of individual and collective freedom which is essential to the exercise of personal liberty and vital to the life of a democracy. A state that obstructs or prevents peaceful protests, deems them unlawful, or uses force to disperse or deter them, is not only violating the right to freedom of assembly but also creating conditions that invite violence. It is in the state's own interest to ensure that protests can occur, and that they can occur peacefully. The right of assembly for the purpose of peaceful protest has become an increasingly pressing public issue. This Academy Briefing seeks to establish how states can responsibly discharge their obligation not only to allow but also to facilitate it.

http://www.geneva-academy.ch/docs/publications/briefing5_web_singles8.pdf

Farewell "specific direction" : aiding and abetting war crimes and crimes against humanity in Perisic, Taylor, Sainovic et al., and US Alien Tort Statute jurisprudence

Manuel J. Ventura. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 511-553. - Cote 355/1018 (2013)

This chapter considers the extent to which specific direction is an element of the actus reus of aiding and abetting war crimes by analysing jurisprudence in the Perisic, Taylor, and Sainovic et al. cases.

First do no harm : medical ethics in international humanitarian law

by Sigrid Mehring. - Leiden ; Boston : Brill Nijhoff, 2015. - XII, 500 p. - Cote 356/268

Although working on the sidelines of armed conflicts, physicians are often at the centre of attention. First Do No harm: Medical Ethics in International Humanitarian Law was born from the occasionally controversial role of physicians in recent armed conflicts and the legal and ethical rules that frame their actions. While international humanitarian, human rights and criminal law provide a framework of rights and obligations that bind physicians in armed conflicts, the reference to 'medical ethics' in the laws of armed conflict adds an extra-legal layer. In analysing both the legal and the ethical framework for physicians in armed conflict, the book is invaluable to practitioners and legal scholars alike.

Foreign fighters and international law

Sandra Krähenmann. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 317-340. - Cote 355/1018 (2013)

The presence of foreign fighters often transforms the nature of a conflict from a popular insurgency into another battlefield of jihad, as happened in 2013 with the armed conflict in Syria. The term "foreign fighter" is instinctively identified nowadays with "Muslims", "Islamis", or "jihadist" fighters. Positionned as an "intermediate actor category, lost between local rebels, on the one hand, and international terrorists, on the other", foreign fighters have become a distinct phenomemnon characterized by a series of mostly untested assumptions as insurgents and as a potential terrorist threat. This chapter reviews the

phenomenon of foreign fighters in NIAC and the relevance of nationality under applicable international law.

From dissemination towards integration : an ICRC perspective

Philip Spoerri. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 52/1, 2013, p. 113-122

Nowadays, a short reality check indicates that most armed forces around the world still put emphasis on teaching the law rather than creating concrete measures, means or mechanisms for its respect. In short, many soldiers are told and know that they must treat enemy captured personnel with humanity. However, what concrete actions this exactly entails is still left up to their own judgement - good or bad. In contrast, a number of armed forces around the world have gone beyond the mere teaching of the law. It is an opportunity here to share some illustrative examples of how some combat proven armed forces have innovatively complied with their obligations through the revision of their doctrine and the incorporation of measures for the respect of IHL. The article will thus proceed by looking first into doctrine before turning to education and training.

http://heinonline.org/HOL/Page?handle=hein.journals/mllwr52&id=114&collection=journals&index=journals/mllwr

From internment to resettlement of refugees : on US obligations towards MeK defectors in Iraq

Tom De Boer and Marjoleine Zieck. In: Melbourne journal of international law Vol. 15, issue 1, June 2014, p. 1-88. - Cote 400/154 (Br.)

This article focuses on the plight of defectors from the Mujahedin-e Khalq ('MeK'), an Iranian opposition group hosted by Saddam Hussein in Iraq until the United States took control of their main camp, Camp Ashraf, in April 2003. In the period of US control, nearly 600 persons defected from the MeK. The US Army housed the defectors in what was known as the Temporary Internment and Protection Facility ('TIPF'). It was contractually agreed upon that the voluntary internment of the TIPF residents, who were granted refugee status by the United Nations High Commissioner for Refugees in 2006, would end as soon a viable disposition option was available: either voluntary repatriation to Iran, local integration in Iraq or resettlement in a third state. For a group of approximately 200 refugees, none of these options were available when the US closed the TIPF in April 2008. These refugees were advised to make their way to Europe via Iraqi Kurdistan and Turkey. Most of them suffered extreme hardship along the way in the form of detention, refoulement and sometimes torture and death. The plight of the defectors raises a number of legal questions regarding the basis of their internment; the conformity with international humanitarian law in respect of their living conditions and treatment in the TIPF; and the lawfulness of their rather sudden release. The fact that, from the possible dispositions, only resettlement turned out to be appropriate raises the question of whether the US had, under these specific circumstances, an obligation to ensure the continued protection of those under its control by means of resettlement in the US or elsewhere, despite the fact that resettlement is, as a rule, a discretionary act.

http://www.law.unimelb.edu.au/files/dmfile/DeBoerZieck--Depaginated2.pdf

From jus in bello to jus commune humanitatis : the interface of human rights law and international humanitarian law in the regulation of armed conflicts

Frederico Lenzerini. - In: International law for common goods : normative perspectives on human rights, culture and nature. - Oxford ; Portland : Hart, 2014. - p. 61-88. - Cote 345.1/118 (Br.)

The purpose of this chapter is to analyze the interface between human rights law and international humanitarian law in the context of armed conflict - particularly through an assessment of the relevan case-law - in order to ascertain the current status and future perspectives of the never-ending struggle of the international legal movement aimed at humanizing the conduct of war.

From pinciple to practice : US military strategy and protection of civilians in Afghanistan

Astri Suhrke. In: International peacekeeping Vol. 22, no. 1, February 2015, p. 100-118

During its engagement in Afghanistan, the US military seriously tried to mitigate the risk of civilian casualties from airstrikes only when called for by changes in military doctrine emphasizing the need to gain

the support of the population. Consistent efforts by external political and humanitarian actors to reduce casualties by demanding more transparency and clearer lines of accountability for 'collateral damage' had little immediate, observable effect. The case study underlines the contingent nature of progress towards protecting civilians in armed conflict even when a military institution formally accepts the principles of customary international humanitarian law, but concludes that, faute de mieux, strategies to enhance protection through greater accountability and attention to the kind of military ordinance used remain central.

http://www.tandfonline.com/doi/abs/10.1080/13533312.2014.993177#.VQBI-ek5CUk

The future of article 5 tribunals in the light of experiences in the Iraq war 2003

Nicholas Mercer. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 149-168. - Cote 345.2/967

Prior to the Iraq War in 2003, the laws of war had had a comfortable existence in the British Army. They did not apply in Northern Ireland and, although the laws of war applied in both the Falklands War and the first Iraq War in 1991, not only were those wars mercifully short, but sovereign territory was restored almost inlmediately once the ground war was over. In the Iraq War 2003, however, the UK found itself in belligerent occupation with the myriad of legal problems that GC III and IV present in such a situation. in the Iraq War 2003 over half of the prisoners captured by Coalition forces in the UK area of operations (AO) were in civilian clothing. It was this dramatic change on the battlefield that was to make Article 5 tribunals such a problem. Almost as soon as the prisoners were conveyed to the prisoner of war (POW) facility at Um Qsar, not only was it noticeable that a vast number were not in uniform but, predictably, a sizeable number insisted that they were not combatants at all but were civilians innocently caught up in the conflict. As the word spread that detention could be challenged, so too did the numbers seeking to challenge their detention. The United Kingdom suddenly found itself having, potentially, to conduct well in excess of 1,500 Article 5 tribunals as well as coping with all the other inmeasurably difficult tasks that the British Army was encountering as an Army of Occupation, and for which it was so ill-prepared.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39793.pdf

A game of drones : the legality of the use of unmanned aerial vehicles in targeted strikes and targeted killings

Parthan Shiv Vishvanathan. In: AALCO Journal ef International Law Vol 2, Issue 1, 2013, p. 165-180. - Cote 341.67/40 (Br.)

The use of unmanned aerial vehicles, colloquially known as drones, by the United States of America is not a new phenomenon. However, while military forces have used these remotely piloted drones for decades, it is over the last decade that they have seen use as an offensive weapon used for military attacks. While currently drones still require human 'operators' it is foreseeable that these drones will in the future be programmed to be increasingly autonomous. The use of these pilotless drones in active combat raises several ethical, moral and legal questions that must be answered. The aim of this paper is to answer the legal question of whether the use of these drones in targeted killings violates the rules in international humanitarian law.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39744.pdf

Glimpses of international humanitarian law in international claims : three early cases : a comment on Claim of heirs of Jules Brun et al

John R. Crook and Lucy F. Reed. - In: The practice of arbitration : essays in honour of Hans van Houtte. - Oxford ; Portland : Hart, 2012. - p. 295-302. - Cote 345.22/254 (Br.)

Before the Eritrea-Ethiopia Claims Commission, no other insititution has had to address questions of similiar magnitude and complexity arising from military operations and armed conflict. Nevertheless, as the work of the EECC Commissionners progressed, they occasionally came across decisions of past claims commission involving issues similar to those they faced, albeit on a smaller scale. This comment examines three proceedings : the Case of claim of Heirs of Jules Brun from Venezuela's 1892 Revolution, a case of arbitration between Germany, Great Britain and the United States addressing state responsibility for the use of force in military action in a conflict in Samoa, and the claim on Behalf of Vásquez Díaz, decided by the United-States-Panama General Claims Commission.

Gotovina case : an unjust charge or a deliberately erroneous judgment of the International Criminal Tribunal for the Former Yugoslavia ?

Liviu Alexandru Lascu. In: Law review Vol. 4, issue 2, July-December 2014, p. 79-95. - Cote 344/642 (Br.)

This article aims to analyze a recent and controversial decision of the Appeals Chamber of the International Criminal Tribunal for Former Yugoslavia, on November 16, 2012, which acquitted two Croatian generals, famous personalities of the civil war in the former Yugoslavia, who had been tried for perpetrating several war crimes and crimes against humanity by participating to a joint criminal enterprise and for their responsibility as commanders for the criminal acts perpetrated by their subordinates. The Trial Chamber's judgment which condemned these defendants was entirely overturned in a very surprising way, through Appeals Chamber doing a very original interpretation of some legal concepts on which, there was already crystallized a constant jurisprudence of this court.

http://www.internationallawreview.eu/fisiere/pdf/7_3.pdf

The Harmonization Project : improving compliance with the law of war in non-international armed conflicts

Bruce "Ossie" Oswald. In: Columbia journal of transnational law Vol. 53, no. 1, 2014, p. 105-113. - Cote 345.27/142 (Br.)

The Project on Harmonizing Standards for Armed Conflict explores the extent to which it is possible for the treaty law applicable in international armed conflicts to apply to situations characterized as "non-international armed conflicts." The practical aims of the Project are to clarify positive rules, raise the level of human protection, and reduce "multilateral coordination problems in non-international armed conflicts based upon rules that states are already comfortable administering in situations of armed conflict." The Project therefore seeks to clarify and lift the legal standards governing such matters as the humane treatment of individuals by combining both a rule-based and state practice approach. The Project has not been finalized, and the comments that follow are based on the author's understandings of drafts of the Project's findings and the author's discussions with members of the Project's Steering Committee as of August 2014. Although the Project's findings are still being revised, it is nonetheless appropriate to make some comments concerning the likely benefits of the Project

http://tinyurl.com/40064-Oswald

Histoire du droit international de la santé

Véronique Harouel-Bureloup. - Bordeaux : Les études hospitalières, 2014. - 150 p. - Cote 356/228

Le droit international de la santé a pour objectif mondial de permettre à tous de conserver ou de parvenir à la santé, qui est, d'après l'Organisation mondiale de la santé (OMS), « un état de complet bien-être physique, mental et social ». Forgé aux XIXe et XXe siècles, le droit international de la santé provient de deux grandes sources : les politiques mises en œuvre pour lutter contre la propagation de la peste noire et autres épidémies (où les cités italiennes furent pionnières), ainsi que la création du droit humanitaire intervenue à Genève en 1864 pour organiser les secours aux militaires blessés ou malades en temps de guerre. Parallèlement, c'est à Paris en 1851 que se tient la première conférence sanitaire internationale afin de lutter contre l'expansion du choléra, de la peste noire et de la fièvre jaune. La première convention sanitaire internationale ne sera cependant adoptée qu'en 1892 à la conférence de Venise. Puis en 1907, celle de Rome décide de la création à Paris de l'Office international d'hygiène publique, proposée dès 1874 par un médecin français. Après 1918, le monde a changé : les États-Unis prennent aux Européens le leadership mondial et font adopter leur vision de la Société des nations (SDN), laquelle fonde en 1923 son organisation d'hygiène. Puis, en 1945, les réflexions suscitées par le traumatisme de la Seconde Guerre mondiale et la vision universaliste de Roosevelt donnent naissance à l'Organisation des Nations unies (ONU) qui va créer l'OMS, aujourd'hui principal maître d'œuvre du droit international de la santé

How wartime detention ends

Deborah N. Pearlstein. In: Cardozo law review Vol. 36, no. 2, December 2014, p. 625-665. - Cote 400.2/143 (Br.)

Despite efforts by two presidents to end U.S. detention operations at Guantanamo Bay, Cuba, closing Guantanamo has proven to be an extraordinary challenge. Some of the reasons why are historically common problems of prisoner repatriation, such as finding host countries for those who cannot be repatriated without facing the risk of persecution. Yet one significant contemporary obstacle to Guantanamo closure is without identifiable precedent: statutory spending conditions sharply restricting the President's ability to transfer detainees away from the prison. As this essay demonstrates, in none of

the major wars of the past century did Congress impose any such restriction. Rather, for the thousands of prisoners held during these wars, including hundreds of thousands held in the United States, the disposition of prisoners was invariably handled by the executive branch. One need not embrace this historical practice as evidence of constitutional meaning to recognize its salience in current statutory and policy debates. Contrary to contemporary suggestions that the Guantanamo population presents unique challenges, U.S. history reveals prisoner repatriation to be common for prisoners whose home countries were politically unstable or in the midst of continuing conflict; prisoners who still harbored violent intentions toward the United States; and prisoners sympathetic to ideologically committed groups who continued to pose short- and long-term threats to the United States. Such factors are challenges indeed. But, as this essay seeks to demonstrate, they are deeply and historically familiar features of the end of war.

http://www.cardozolawreview.com/content/36-2/PEARLSTEIN.36.2.pdf

How will weapons reviews address the challenges posed by new technologies ?

Bill Boothby. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 52/1, 2013, p. 37-59

The law of weaponry does not simply prohibit or restrict the use of certain weapons, means and methods of warfare but goes on to set out rules designed to ensure that States comply. Those rules on compliance include a kind of self-policing rule in which States are required themselves to assess the legitimacy of what they plan to acquire or produce. It is the purpose of this contribution to consider a number of questions. What exactly are States obliged to assess; what are the criteria against which the assessment should be undertaken, how should the assessment criteria be applied to cyber weapons, autonomous attack capabilities, space weapons and nanotechnology and what does all of this tell us about the relevance and adaptability of modern weapons law to the technological demands of the 21st century? The author does not presume in what follows to seek to predetermine how States should interpret the rules by reference to these technologies. Rather, he seeks to set out his own understanding of the technologies concerned and of the relevant law and to explain his own views on how they interrelate.

http://heinonline.org/HOL/Page?handle=hein.journals/mllwr52&id=38&collection=journals&index=journals/mllwr

Human rights law and nuclear weapons

Louise Doswald-Beck. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 435-460. - Cote 341.67/757

Human rights treaty bodies are required, by virtue of their mandate, to apply the human rights listed within their respective treaties. They have not hesitated to do so for cases relating to hostilities during armed conflict. Human rights violations are also subject to the scrutiny of UN Charter bodies, such as the Human Rights Council, the General Assembly and the Security Council, as well as similar regional bodies. The result is that it is impossible to consider nuclear weapons without analysing their possible effects in the light of HRL. This chapter first outlines the main factors pertinent to the application of HRL to armed conflict situations, including issues relating to jurisdiction. Afterwards, it will examine the most relevant human rights that would be affected by any use of nuclear weapons, most notably the right to life, but also rights relevant to the suffering they cause and their adverse effects on health.

Human rights of Guantánamo detainees under international and US law : revisiting the US Supreme Court cases

Patricia Goedde. In: Journal of East Asia and international law Vol. 7, no. 1, Spring 2014, p. 7-29. - Cote 400.1/23 (Br.)

This article reviews the US Supreme Court cases regarding detention of alleged terror suspects in Guantanamo Bay, Cuba, and examines the interplay between international human rights law and the American Constitution with respect to the executive policies of the Bush Administration to detain terror suspects. The article first references the international human rights legal framework regarding detainees, specifically the Geneva Conventions and the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, and then analyzes seminal cases brought before the Supreme Court by detainees, specifically how the Supreme Court interprets the US Constitution and international law in reaching its decisions regarding detainees at Guantanamo.

While the Supreme Court provided detainees the right to challenge the legality of their detentions through habeas corpus petitions, limitations still exist as to the lack of extraterritorial application of rights protections as well as the domestic judicial failure to redress detainees' subjection to torture and other abusive treatment.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39942.pdf

Humanitarian security regimes

Denise Garcia. In: International affairs Vol. 91, no. 1, January 2015, p. 55-75

This article introduces a novel concept, humanitarian security regimes, and enquires under what conditions they arise and what is distinctive about them. Humanitarian security regimes are driven by altruistic imperatives aiming to prohibit and restrict behaviour, impede lethal technology or ban categories of weapons through disarmament treaties; they embrace humanitarian perspectives that seek to prevent civilian casualties, precluding harmful behavior, protecting and ensuring the rights of victims and survivors of armed violence. The article explores how these regimes appear in the security area, usually in opposition to the aspirations of the most powerful states. The existing regimes literature has mostly taken a functional approach to analyzing cooperation, lacks a humanitarian hypothesis and does not explore the emergence of new regimes in the core area of security. The author argues that in the processes of humanitarian security regime-making, it is the national interest that is restructured to incorporate new normative understandings that then become part of the new national security aspirations. This article intends to fill this gap and its importance rests on three reasons. First, security areas that were previously considered to be the exclusive domain of states have now been the focus of change by actors beyond the state. Second, states have embraced changes to domains close to their national security (e.g. arms) mostly cognizant of humanitarian concerns. Third, states are compelled to re-evaluate their national interests motivated by a clear humanitarian impetus. Three conditions for the emergence of humanitarian security regimes are explained: marginalization and delegitimization; multilevel agency, and reputational concerns.

http://onlinelibrary.wiley.com/doi/10.1111/1468-2346.12186/abstract

(Il)legality of killing peacekeepers : the crime of attacking peacekeepers in the jurisprudence of international criminal tribunals

Magdalena Pacholska. In: Journal of international criminal justice Vol. 13, no. 1, March 2015, p. 43-72

On 28 March 2013, the United Nations (UN) Security Council adopted Resolution 2089 extending the mandate of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO) and creating the Force Intervention Brigade (FIB) - the first-ever offensive combat unit within the structure of a peacekeepingmission.The establishment of the Brigade has raised a number of political and legal controversies, one of which is whether, and under what circumstances, attacking peacekeepers operating under robust mandates entails individual criminal responsibility under international law. The UN press release issued after the combat death of a Tanzanian FIB member, although condemnatory, did not classify the attack as criminal, implying that he may have been a lawful target. In the future, such robust peacekeeping mandates are likely to become more common, raising questions about the boundaries of international humanitarian law for ‘peacekeepers’, and the scope of the international criminal law prohibition on attacking them. This article addresses those questions through the jurisprudence of the ad hoc tribunals, the Special Court for Sierra Leone and the International Criminal Court. Unfortunately, existing jurisprudence fails to adequately accommodate the possibility of peacekeepers becoming parties to the conflict. This article proposes a functional approach based on participation in offensive operations.

http://jicj.oxfordjournals.org/content/13/1/43.full.pdf

India and the Additional Protocols of 1977

Srinivas Burra. In: Indian journal of international law Vol. 53, no. 3, July-Septembre 2013, p. 422-450. - Cote 345.22/251 (Br.)

A decision by a State not to become a party to a treaty provokes us to explore and identify a set of probable reasons for its refusal. A starting point for the identification of reasons for a State's decision to become or not a party to a treaty is to evaluate the substance and the direct obligations that emanate from the concerned treaty. The present article attempts to engage in such an exercise. It deals with the issue of India's refusal to become a party to the Additional Protocols (APs) of 1977 in the backdrop of a recommendation made by a Committee of Experts in this regard. It deals with five salient features of the two APs which have either strengthened the existing Geneva Conventions of 1949 or added new obligations. A narration of these features intends to identifying those aspects of the two Protocols which would have prevented India from becoming a party to them. It critically analyses the position taken by

India with respect to those aspects which are the contribution of the APs. This is primarily based on the positions taken by India during the negotiation of the to Protocols and also its position on related issues at other occasions.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39706.pdf

Institutional approach between IHL and IHRL : current trends in the jurisprudence of the Inter-American Court of Human Rights

Elizabeth Salmón. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 152-185

Recently, the interaction between international human rights law (IHRL) and international humanitarian law (IHL) has been significantly developed by the jurisprudence of the Inter-American Court of Human Rights (IACtHR). This article analyzes this recent trend from the cases of the Santo Domingo Massacre and Afro communities displaced from the Cacarica River Basin (Operation Genesis) of this tribunal to assert its competence not only to use IHL to interpret the Inter-American human rights instruments but, at the same time, to approach a direct use of humanitarian standards, which creates a gray area between the interpretation and application of such area of law. In doing so, the Court resorts to the lex specialis, if the IHL norm is the most specialized for the case, and uses IHL to a limited extent, only to expand the content of human rights, but not to judge on possible violations of IHL, which results in a methodology of pick and choose of IHL provisions.

http://dx.doi.org/10.1163/18781527-00501010

The integration of the human rights component and international humanitarian law in peace missions led by the European Union : international colloquium, Universitat Jaume I, Castellón, Spain, 25-26 November 2010

Mariano J. Aznar and Milena Costas, eds. ; CEDRI, Project Atlas. - Valencia : Psylicom, 2011. - 131 p. - Cote 341.215/257

Contient notamment : EU missions, international humanitarian law (IHL) and international human rights law (IHRL) / M. Sassòli. - Drafting EU missions' mandates and rules of engagement : application and assessment of human rights component and international humanitarian law / S. Kolanowski. - Violations of human rights and international humanitarian law in context of the missions : assessment of EU liability / P. Klein.

The International Committee of the Red Cross and the initiative to strengthen legal protection for victims of armed conflicts

Michael Meyer. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 268-281. - Cote 345.2/967

International humanitarian law (IHL), in its current state, continues to provide an appropriate framework for regulating the conduct of parties engaged in armed conflicts. This was the conclusion reached by the ICRC following a two-year internal study, initiated in 2008, to assess the ongoing relevance of IHL. Notwithstanding this general positive affirmation, the ICRC study also identified four areas in which further development of the rules of IHL would be warranted. While many of those states consulted recognised that each of these areas gives rise to practical concerns, it was felt that working on all four topics at once was unrealistic. Two areas in particular were highlighted for future focus: (1) strengthening legal protection for persons deprived of their liberty, particularly in situations of non-international armed conflict; and (2) strengthening mechanisms for monitoring compliance with IHL. A resolution adopted at the 31st International Conference of the Red Cross and Red Crescent in late 2011 endorsed a programme of work on these two subjects. This chapter explains the key bodies involved in the initiative, the steps already taken, as well as those planned. It also offers initial comments on the possible outcomes and prospects for success

International humanitarian law

Yaël Ronen. - In: International legal positivism in a post-modern world. - Cambridge : Cambridge University Press, 2014. - p. 475-497. - Cote 345.2/971 (Br.)

This chapter considers the evolution of international legal positivism in the context of international humanitarian law (IHL). It espouses an understanding of 'legal positivism' as unity of sources, recognising as law only those norms which are generated by a pre-set legal procedure, independent of any inherent value. It is thus close connected to, although not identical to, the notion of formalism, understood here as

the identification of norms through formal criteria. It is often contended that if state practice on the battlefield is the yardstick to be used to identify rules of IHL, then IHL is in a precarious state, given the prevalence of practice contrary to alleged prohibitions, which puts into doubt the existence of law in the first place, or, where the law had been established, suggests that it has been modified. In addition, it is said that positivist approaches to the sources of IHL hamper its ability to address contemporary realities and challenges, such as the massive involvement of non-state actors in armed conflicts. Classical doctrines on sources of law, as described below, thus encounter difficulties in conceptualising IHL in a manner which retains the latter's legitimacy. This chapter evaluates these claims in light of developments in the theory of sources and in its application specifically to IHL.

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International humanitarian law and the interpretation of "persecution" in article 1A(2) CSR51

Eric Fripp. In: International journal of refugee law Vol. 26, issue 3, October 2014, p. 382-403. - Cote 325.3/7 (Br.)

The article examines the relationship of international humanitarian law (IHL) to the definition of 'persecution' at article 1A(2) CSR51. Armed conflict has been a pervasive part of the human experience, and was within the immediate historical experience of the drafters of CSR51. It is argued that the reference of CSR51 to international human rights law (IHRL) and the receptivity of IHRL to external standards where necessary, enable IHL in appropriate cases to inform the application of a test more generally based upon IHRL. On this understanding IHL indirectly informs the scope of 'persecution' at article 1A(2) through the medium of IHRL.

International humanitarian law and the protection of civilians from the effects of explosive weapons

Maya Brehm. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 235-267. - Cote 345.2/967

This chapter begins by presenting data on the pattern of harm associated with the use of explosive weapons in populated areas. Against this backrgound, an overview of how explosive weapons are regulated under international law is provided. The chapter analyses a number of explosive weapon-specific treaties and evaluates the contribution of expert discussions on "blast and fragmentation weapons" in the 1970s to the regluation of explosive weapons. The chapter then examines constraints that IHL rules governing the conduct of hostilities place on the use of explosive weapons in populated area, with a focus on the prohibition of indiscriminate attacks. The final part identifies some challenges that the use of explosive weapons in populated areas poses for IHL. As the protection of civilians against the effects of hostilities is a cornerstone of IHL, the documented pattern of civilian harm from the use of explosive weapons in populated areas puts the adequacy and effectiveness of IHL into question. The chapter conludes by presenting measures that could help to prevent and reduce harm from explosive violence, thereby effectively strenghtening the relevance of IHL as an important legal framework for protecting civilians in situations of armed conflict.

International humanitarian law : answers to your questions

ICRC. - Geneva : ICRC, December 2014. - 96 p. - Cote 345.2/262 (2014 ENG Br.)

This booklet is an ideal introduction to international humanitarian law. It has been fully revised, and is accessible to all readers interested in the origins, development and modern-day application of humanitarian law.

http://www.cid.icrc.org/library/docs/DOC/icrc-002-0703-2014.pdf

International humanitarian law in the universal periodic review of the UN Human Rights Council : an empirical survey

Lijiang Zhu. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 186-212

In 2006 the UN General Assembly established the Human Rights Council and its Universal Periodic Review (UPR). The functions and procedures of the UPR were mainly elaborated in Human Rights Council Resolution 5/1, adopted on 18 June 2007. The section of the latter resolution describing the basis upon which States' compliance with human rights obligations and commitments is to be assessed includes a reference to international humanitarian law (IHL). However, IHL is mentioned separately from other bases of review in paragraph 2, and there is debate about whether or not IHL constitutes a basis of review,

properly speaking. Nevertheless, the inclusion itself is a positive contribution to IHL in that it incorporated IHL among the standards of reference for the UPR mechanism. An empirical survey of reviews carried out to date shows that States' compliance with their respective IHL obligations have been reviewed in this mechanism, and that those States which were actively opposed to the reference to IHL as basis of review before the adoption of Resolution 5/1 have been shifting to actively make recommendations to other States on the observance of IHL obligations. This demonstrates that IHL has been widely accepted as a basis of review, and that the UPR mechanism has become the only State reporting system in the implementation of IHL.

http://dx.doi.org/10.1163/18781527-00501009

The international humanitarian law notion of direct participation in hostilities : a review of the ICRC interpretive guide and subsequent debate

S. Bosch. In: Potchefstroom electronic law journal Vol. 17, no. 3, 2014, p. 999-1046. - Cote 345.29/219 (Br.)

The phrase "direct participation in hostilities" has a very specific meaning in international humanitarian law (IHL). Those individuals who are clothed with combatant status are authorised to participate directly in hostilities without fear of prosecution, while civilians lose their civilian immunity against direct targeting whilst they participate directly in hostilities. Any civilian activity which amounts to "direct participation in hostilities" temporarily suspends their presumptive civilian protection and exposes them to both direct targeting as a legitimate military target and prosecution for their unauthorised participation in hostilities. Since existing treaty sources of IHL do not provide a definition of what activities amount to "direct participation in hostilities", the ICRC in 2009 released an Interpretive Guide on the Notion of Direct Participation in Hostilities - in the hope of providing a neutral, impartial and balanced interpretation of the longstanding IHL principle of direct participation in hostilities. While not without criticism, the Interpretive Guide aims to respect the customary IHL distinction between "direct participation in hostilities" and mere involvement in the general war effort. The Guide proposes a three-pronged test which establishes a threshold of harm, and requires direct causation together with a belligerent nexus. Collectively, these criteria limit overly-broad targeting policies, while distinguishing occasions of legitimate military targeting from common, criminal activities. Together with these three criteria, the Guide introduces the notion of the revolving door of protection, together with the concept of a "continuous combat function". Both these new concepts have been the subject of criticism, as too the idea that a presumption of non-participation status should apply in cases of doubt. Nevertheless "nothing indicates that the ICRC's interpretive guidance is substantively inaccurate, unbalanced, or otherwise inappropriate, or that its recommendations cannot be realistically translated into operational practice"1 in a way which will ensure that the fundamental principles of distinction and civilian immunity upon which all of IHL is built are observed.

http://dx.doi.org/10.4314/pelj.v17i3.05

International law and child soldiers

Gus Waschefort. - Oxford ; Portland : Hart, 2015. - X, 254 p. - Cote 362.7/402

This book commences with an analysis of the current state of child soldiering internationally. Thereafter the proscriptive content of contemporary norms on the prohibition of the use and recruitment of child soldiers is evaluated, so as to determine whether these norms are capable of better enforcement. An 'issues-based' approach is adopted, in terms of which no specific regime of law, such as international humanitarian law (IHL), is deemed dominant. Instead, universal and regional human rights law, international criminal law and IHL are assessed cumulatively, so as to create a mutually reinforcing web of protection. Ultimately, it is argued that the effective implementation of child soldier prohibitive norms does not require major changes to any entity or functionary engaged in such prevention; rather, it requires the constant reassessment and refinement of all such entities and functionaries, and here, some changes are suggested. International judicial, quasi-judicial and non-judicial entities and functionaries most relevant to child soldier prevention are critically assessed. Ultimately the conclusions reached are assessed in light of a case study on the use and recruitment of child soldiers in the Democratic Republic of the Congo.

International law and drone strikes in Pakistan : the legal and socio-political aspects

Sikander Ahmed Shah. - London ; New York : Routledge, 2015. - VIII, 247 p. - Cote 345/672

While conventional warfare has an established body of legal precedence, the legality of drone strikes by the United States in Pakistan and elsewhere remains ambiguous. This book explores the legal and political issues surrounding the use of drones in Pakistan. Drawing from international treaty law, customary

international law, and statistical data on the impact of the strikes, Sikander Ahmed Shah asks whether drone strikes by the United States in Pakistan are in compliance with international humanitarian law. The book questions how international law views the giving of consent between States for military action, and explores what this means for the interaction between sovereignty and consent. The book goes on to look at the socio-political realities of drone strikes in Pakistan, scrutinizing the impact of drone strikes on both Pakistani politics and US-Pakistan relationships. Topics include the Pakistan army-government relationship, the evolution of international institutions as a result of drone strikes, and the geopolitical dynamics affecting the region.

International law, armed conflict and the construction of otherness : a critical reading of Dr. Seuss's "The butter battle book" and a renewed call for global citizenship

John Hursh. In: New York law school law review Vol. 58, no. 3, p. 617-652. - Cote 345.2/967 (Br.)

While certainly a powerful critique of nuclear arms proliferation, The Butter Battle Book is perhaps even more valuable for its description of how societies progress toward armed conflict. This article examines that process through an international legal framework, questioning when — and even whether — international law generally, or international humanitarian law specifically, could intervene as two states march toward self-annihilation. This article argues that current international law fails to prevent states from reaching such military standoffs. To address this failing, it calls for a progressive international law concerned foremost with human dignity and global citizenship, and less so with strong state sovereignty. Part II provides a concise history of the Yook-Zook conflict, examining the conflict's root cause, its escalation, and its unresolved conclusion. Part III discusses international law in relation to the Yook-Zook conflict. Focusing on the U.N. Charter and international humanitarian law, this Part addresses whether an armed conflict exists, the crime of aggression, and the legality of nuclear weapons. Part IV discusses the construction of otherness. This Part examines the process of constructing the other in relation to international law. In addition, this Part asks how a more progressive international law could address the problem of otherness by looking to the Global Peoples Assembly proposed by Richard Falk and Andrew Strauss and the jurisprudential approach of former International Court of Justice Judge Christopher Weeramantry as possible solutions. Part V concludes.

http://tinyurl.com/39797-Hursh

International law in the age of asymmetrical warfare, virtual cockpits and autonomous robots

Mark Klamberg. - In: International law and changing perceptions of security : liber amicorum Said Mahmoudi. - Leiden : Brill, 2014. - p. 152-170. - Cote 341.67/87 (Br.)

Will the use of unmanned combat air vehicles (UCAVs) affect how we perceive state intervention in the territory of other states? The US uses UCAVs to target enemies as a part of its counterterrorism operations. This has raised several concerns, including a discussion on the relevant legal framework. Should counterterrorism operate under the armed-conflict or law enforcement model? Under what circumstance are targeted killings allowed under international law? This discussion is influenced by the fact that almost all targeted killings are directed against non-State actors and generally carried out while the targeted person is not visibly engaged in active combat. Finally, the use of lethal autonomous robotics (LARS) would increase the distance even more between the person who controls the use of force and the target, in that targeting decisions could be taken by the robots themselves. There are reasons to discuss whether such technology should be added to the arsenals of states. Since robots lack moral agency they cannot be held legally responsible in any accustomed way. How is it possible to address this potential accountability gap?

https://library.ext.icrc.org/library/docs/ArticlesPDF/39945.pdf

Is journalism the new (inter)national battlefield ? : an analysis of the protection offered to journalists in armed conflict

Isabel Düsterhöft. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 27, 4/2014, p. 156-168

The important role that journalists play in covering conflicts and the inherent dangers that they face are often overlooked and underestimated. It is clear that journalists and their essential function in reporting on conflicts are misunderstood and that they have become effective targets in waging war. This article looks at the legal protection available to journalists in times of armed conflict, whether these are respected and how they may be improved. The author argues that with the recent deliberate arrests, attacks and murders of journalists, the dynamic of protecting this profession has changed and their deployment to war zones need to be better weighed and prepared.

"It's a bird ! It's a plane ! It's a non-international armed conflict !" : cross-border hostilities between states and non-state actors

Lindsay Moir. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 71-94. - Cote 345.2/967

Despite occasional suggestions to the contrary, the accurate classification of any given armed conflict as either international or non-international retains its importance, and it is necessary critically to assess recent assertions that these two categories are no longer sufficient. This chapter first recalls the basic framework of international versus non-international armed conflict. The first complication comes with the question as whether an armed conflict exists at all. For example in the case of minor border incidents and the question as to whether or not these necessarily constitute an international armed conflict. The relevant threshold for international armed conflict is not necessarily a high one, and the question is even more problematic in the context of non-international armed conflict where the dividing line between internal disturbances and tensions, which fall short of the relevant threshold, and armed conflict per se can be especially difficult to identify. It then focuses on a situation in which the accurate characterisation of an armed conflict may be problematic, namely, where hostilities between a state (or, indeed, more than one state) on the one hand and a non-state actor on the other - but where hostilities involve military operations on the territory of another state, thereby crossing international frontiers. Although not an entirely new phenomenon, such situations do seem to be becoming more prevalent and have certainly been high on the international legal agenda since the events of 11 September 2001.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39790.pdf

The judgment of the German Bundesverfassungsgericht concerning reparations for the victims of the Varvarin bombing

Sigrid Mehring. In: International criminal law review Vol. 15, issue 1, 2015, p. 191-201

In August 2013, the German Federal Constitutional Court affirmed its stance against claims by individuals for reparations for violations of international humanitarian law that it had developed in previous case law. It denied reparation and compensation to be paid by the Federal Republic of Germany to the relatives of killed civilians and to civilians wounded as a consequence of the destruction of a bridge in the Serbian city of Varvarin. The bridge had been destroyed on 30 May 1999 in the course of the North Atlantic Treaty Organization's (nato) aerial action “Allied Force” against the Federal Yugoslav Republic. The case concerned claims by survivors and family members of persons killed in the attacks. The Court rendered a joint decision on both constitutional claims and found no violation of constitutional rights.

http://dx.doi.org/10.1163/15718123-01501005

Juvenile justice in belligerent occupation regimes : comparing the coalition provisional authority administration in Iraq with the Israeli military government in the territories administered by Israel

Hilly Moodrick-Even Khen. In: Denver journal of international law and policy Vol. 42, issue 2, Winter/Spring 2014, p. 119-161. - Cote 362.7/110 (Br.)

The changing nature of occupation regimes - from belligerent occupations to transformative occupations and from short-term to long-term ones - has bearing on their juvenile justice systems, demanding more protections for the rights of children within these criminal structures. These protections can be awarded either through direct application of human rights law or by amending the specific laws that administer territories under occupation. These transformations affect the legal means for realizing the obligations of the occupying power under the Fourth Geneva Convention (1949) and the Hague Convention and its annexed regulations (1907) ("Hague Regulations"), primarily the duty to ensure the safety and the daily life routine of the occupied population. After a discussion on the mutual application of international humanitarian law and international human rights law in occupied territories through the prism of the objectives of the juvenile justice system in general, and in occupied territories in particular, it is suggested that the longer an occupier rules in an occupied territory, the more likely that human rights law, rather than humanitarian law, will better serve the interest of the occupied population, as the latter has more limited tools for achieving this goal. Hence, in longer-term occupations, there is more room for the application of human rights law as an interpretative and complementary law. With regard to the objectives of juvenile justice systems and given the nature of juvenile justice in general, and in occupied territories in particular, we must see a more extensive application of human rights law in occupation regimes. These claims are substantiated through the analysis of the case study of detention, prosecution, and adjudication of children in formerly occupied Iraq and in the Israeli occupation in the administered territories.

http://tinyurl.com/39919-Moodrick

La mano extendida : the interaction between international law and negotiation as a strategy to end gang warfare in El Salvador and beyond

Emma Mahern. In: Indiana international and comparative law review Vol. 24, no. 3, 2014, p. 767-808. - Cote 172.4/8 (Br.)

This Note reviews the domestic and regional responses to the threat of transnational gangs. It examines various Mano Dura policies throughout Central America, as well as prevention programs and regional agreements and strategies. This Note reviews the available information regarding the truce and the developments that are still happening. It explores the role of the El Salvadorian government and the OAS in negotiating the truce. It also discusses the response from various countries in the region regarding negotiation as a strategy for decreasing violence. The Note then examines the development of international law, and in particular, the ways in which it seeks to restrict and manage violence through International Humanitarian Law (IHL) and International Human Rights Law (IHRL). This Note explores the legal and political limitations of IHL and IHRL in reducing violence in conflicts such as the one in El Salvador. This Note demonstrates how El Salvador's international obligations may inhibit transitional justice and delay the humanitarian goals of the truce. Finally, the Note suggests ways that the international community can support the humanitarian goals embodied in the truce.

https://journals.iupui.edu/index.php/iiclr/article/view/18283/18378

Law at the end of war

Deborah N. Pearlstein. In: Minnesota law review Vol. 99, issue 1, November 2014, p. 143-220. - Cote 345.2/669 (Br.)

As the United States continues to withdraw troops from Afghanistan in the coming year, courts will increasingly face the task of interpreting the dozens of federal laws whose operation depends on the existence of war. The 2009 Military Commissions Act (MCA), for instance, makes offenses triable by military commission "only if the offense is committed in the context of and associated with hostilities." The 2001 Authorization for Use of Military Force (AUMF) empowers the President to target or detain certain individuals only "for the duration of these hostilities." Scholars have long assumed that the determination whether or not the United States is at war is a political question, beyond the power of the courts to consider. This Article challenges that view, demonstrating that courts have repeatedly engaged such questions in statutory interpretation in conflicts past, and arguing that the temporal limits of the AUMF and MCA pose similarly justiciable questions.

http://tinyurl.com/40085-Pearlstein

The law of weaponry from 1914 to 2014 : is the law keeping pace with technological evolution in the military domain ?

by Robin Geiss. - In: Aus Kiel in die Welt : Festschrift zum 100-jährigen Bestehen des Walther-Schücking-Instituts für Internationales Recht = Kiel's contribution to international law : essays in honour of the 100th anniversary of the Walther Schücking Institute for International Law. - Berlin : Duncker and Humblot, 2014. - p. 229-248. - Cote 341.67/68 (Br.)

In 2014, new military technologies such as drones and increasingly autonomous weapons systems as well as cyber- and outer-space capabilities are at issue, the question as to whether international law is keeping pace with technological evolution in the military domain appears to be at least as pertinent today as it was in 1914. Conspicuously, the technological quantum leaps of today are still by and large evaluated and discussed in light of the very same legal principles that informed the legality of weapons systems and military technologies of the First World War-most of which had their roots already in the 19th century. Even though these principles are rightly described as dynamic, i.e. adaptable to the development of new weaponry, they are static in as far as they rest on certain ethical underpinnings that prevailed at the time of their inception. In view of some of the technological sea changes that are at issue today, the ostensible possibility of fully autonomous weapon systems in particular, it must be reconsidered whether the underlying ethical considerations have not also changed, thereby necessitating a more fundamental adaptation of the law than a dynamic interpretation of existing concepts.

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The laws of war and the protection of "war refugees" : reflections on the debate and its future directions

David James Cantor. In: Journal of international criminal justice Vol. 12, no. 5, December 2014, p. 931-951

How can the laws of war — or international humanitarian law (IHL) — contribute to securing refuge from the inhumanity of war, a major driver of refugee flows in today's world? Implicit in this apparently straightforward enquiry is a complex debate about interaction between the domains and rules of IHL and international refugee law. This article aims to illuminate the current contours of this debate by reflecting upon the state-of-the-art thinking developed by the range of new scholarly and practitioner contributions to the 'Refuge from Inhumanity' project — recently published in book form. It identifies three broad areas in which IHL may prove relevant to the protection of war refugees and suggests that they merit special attention not only in their own right but also as a means of informing efforts to interpret refugee law by drawing on the closely related field of international criminal law.

http://jicj.oxfordjournals.org/content/12/5/931.full.pdf

Left in the dark : failures of accountability for civilian casualties caused by international military operations in Afghanistan

Amnesty International. - London : Amnesty International, 2014. - 106 p. - Cote 345.26/262 (Br.)

Thousands of Afghan civilians have been killed since 2001 by international forces, and thousands more have been injured. This report examines the record of accountability for civilian deaths caused by international military operations in the five-year period from 2009 to 2013. In particular, it focuses on the performance of the US government in investigating possible war crimes and in prosecuting those suspected of criminal responsibility for such crimes. Its overall finding is that the record is poor.

https://www.amnesty.org/download/Documents/4000/asa110062014en.pdf

Le lien de connexité entre le crime et le conflit armé dans la définition des crimes de guerre

Jacques B. Mbokani. - In: Vingt ans de justice internationale pénale. - Bruxelles : La Charte, 2014. - p. 33-46. - Cote 344/637

Les crimes de guerre supposent l'établissement préalable d'un conflit armé. Lorsque ce conflit armé est de caractère non-international, il doit impliquer des groupes armés organisés. L'analyse de l'affaire Unosom II permet de revenir sur le sens de cette expression. La qualification des crimes de guerre peut être appliquée aux civils lorsqu'ils entretiennent des liens avec les combattants, en particulier lorsque, dans le cadre d'un conflit armé, ils s'associent aux militaires ou aux milices pour commettre des crimes contre d'autres civils. Les affaires relatives à la tragédie rwandaise de 1994 jugées par la Cour d'assises de Bruxelles permet d'illustrer cette réalité. Enfin, les crimes de guerre supposent que les violations graves de l'article 3 commun sont perpétrées par un camp contre un autre. C'est ce qui permet d'établir le lien de connexité entre un crime et le conflit armé et d'opérer un distinguo entre les crimes de guerre et les crimes contre l'humanité. Lorsqu'il s'agit des violations graves des droits de l'homme perpétrées par un camp contre ses propres membres, il sera difficile d'établir ce lien de connexité. L'affaire Lumumba permet de revenir sur cet élément.

Making every life count : ensuring equality and protection for persons with disabilities in armed conflicts

Ben Saul... [et al.]. In: Monash university law review Vol. 40, no. 1, 2014, p. 148-174. - Cote 345.1/123 (Br.)

This paper considers the implications of article 11 of the Convention on the Rights of Persons with Disabilities (CRPD), which obliges states parties to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and natural disasters. Unusually among human rights conventions, the CRPD explicitly invokes international humanitarian law as a source of states' obligations. This paper focuses on one type of emergency situation, armed conflict. It argues that the CRPD reorients and transforms the protections offered through international humanitarian law by casting them in the language of 'rights', advancing a 'social' model of disability which conceptualises persons with disabilities as rights-bearing agents, rather than as subjects in need of medical attention, welfare and passive protection. The paper also contends that the CRPD approaches disability as a context-specific phenomenon that is the result of society and environment as much as the product of a personal condition. After analysing various rules of

international humanitarian law — including specialised protections for the 'disabled and infirm', protections for the sick and wounded, fundamental guarantees of human treatment, restrictions on weapons during armed conflict, and the prohibition on discrimination — the paper concludes that article 11 makes a profoundly important and novel contribution to both IHL and international human rights law as these affect persons with disabilities.

http://www.law.monash.edu.au/about-us/publications/monlr/issues/past/40-1/mccallum.pdf

The Mavi Marmara incident and the International Criminal Court

Russell Buchan. In: Criminal law forum Vol. 25, issue 3-4, December 2014, p. 465-503. - Cote 347.799/155 (Br.)

On 15 May 2013 the OTP announced that it was conducting a preliminary examination of the events surrounding Israel's enforcement of its naval blockade against the Mavi Marmara on 31 May 2010 in order to determine whether a formal investigation into the incident should be opened. According to Article 53 of the Rome Statute, the OTP shall open a formal investigation where there is a reasonable basis to believe that (a) the ICC possesses temporal, territorial and subject-matter jurisdiction in relation to the situation, (b) it is admissible before the ICC and (c) that a formal investigation would not be contrary to the interests of justice. The application of this framework to the events that occurred on 31 May 2010 is difficult and complex, especially in regard as to whether the situation can be considered of sufficient gravity to warrant the ICC's attention and whether any of the crimes enumerated in Article 5 of the Rome Statute have been committed. This notwithstanding, I argue that there is a reasonable basis to believe that these criteria are satisfied and therefore conclude by encouraging the OTP to open a formal investigation into the situation.

A means-methods paradox and the legality of drone strikes in armed conflict

Craig Martin. In: The international journal of human rights Vol. 19, issue 2, 2015, p. 142-175. - Cote 341.67/150 (Br.)

This article examines the legality of drone strikes. It limits the analysis to conduct within a traditionally defined armed conflict, in order to focus more clearly on the question of whether features inherent to the drone as a weapons system might make it conducive to violations of international law. The article reviews the applicable legal principles from international humanitarian law and international human rights law, and examines the record of civilian deaths caused by drone strikes in Afghanistan. While transparency and accountability are a problem, the study suggests that the drone strike operations may be characterised by more direct systemic violations of international law. In examining such potential violations the article considers the features inherent to the drone as a 'means' of warfare, and the features of the policy and practices that underlie the 'methods' of warfare related to drone strikes, with the aim of determining which is more responsible for any violations. The features of the armed drone as a weapons systems appear to make it more conducive to compliance with international humanitarian law than competing aerial weapons systems. Conversely, aspects of the policy governing drone operations, such as the criteria used for 'signature strikes', are more likely to contribute to violations of international law. However, examining the issue from the perspective of a particular strike, and viewed through the lens of cognitive consistency theory on misperception, the article suggests that the picture may be more complex. Paradoxically, the very features that are most likely to make the drone compliant with international humanitarian law – its ability to linger undetected for protracted periods over potential targets, feeding intelligence back to an operations team that can make targeting decisions in a relatively stress-free environment – may facilitate targeting errors caused by misperception and misinterpretation of the target data. In short, both the 'means' and 'methods' of drone strikes may combine to facilitate violations of international humanitarian law.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40080.pdf

Military objectives 2.0 : the case for interpreting computer data as objects under international humanitarian law

Kubo Macák. In: Israel law review Vol. 48, issue 1, 2015, p. 55-80. - Cote 345.25/318 (Br.)

This article presents the case for a progressive interpretation of the notion of military objectives in international humanitarian law (IHL), bringing computer data within the scope of this concept. The advent of cyber military operations has presented a dilemma as to the proper understanding of data in IHL. The emerging orthodoxy, represented by the 2013 Tallinn Manual on the International Law Applicable to Cyber Warfare, advances the argument that the intangible nature of data renders it ineligible to be an object for the purposes of the rules on targeting in IHL. This article, on the contrary, argues that because of its susceptibility to alteration and destruction, the better view is that data is an object within the meaning of this term under IHL and thus it may qualify as a military objective. The article supports this conclusion by means of a textual, systematic and teleological interpretation of the definition of military objectives found in treaty and customary law. The upshot of the analysis presented here is that data that does not meet the

criteria for qualification as a military objective must be considered a civilian object, with profound implications for the protection of civilian datasets in times of armed conflict.

Military targeting in the context of self-defence actions

James A. Green, Christopher P. M. Waters. In: Nordic journal of international law Vol. 84, issue 1, p. 3-28. - Cote 345.25/316 (Br.)

For self-defence actions to be lawful, they must be directed at military targets. The absolute prohibition on non-military targeting under the jus in bello is well known, but the jus ad bellum also limits the target selection of states conducting defensive operations. Restrictions on targeting form a key aspect of the customary international law criteria of necessity and proportionality. In most situations, the jus in bello will be the starting point for the definition of a military targeting rule. Yet it has been argued that there may be circumstances when the jus ad bellum and the jus in bello do not temporally or substantively overlap in situations of self-defence. In order to address any possible gaps in civilian protection, and to bring conceptual clarity to one particular dimension of the relationship between the two regimes, this article explores the independent sources of a military targeting rule. The aim is not to displace the jus in bello as the 'lead' regime on how targeting decisions must be made, or to undermine the traditional separation between the two 'war law' regimes. Rather, conceptual light is shed on a sometimes assumed but generally neglected dimension of the jus ad bellum's necessity and proportionality criteria that may, in limited circumstances, have significance for our understanding of human protection during war.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40025.pdf

Missions autorisées par le Conseil de sécurité à l'heure de la R2P : au-delà du jus in bello ?

Frédéric Mégret. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 52/2, 2013, p. 205-240

Les opérations autorisées par le Conseil de sécurité se réclamant d'une logique humanitaire sont une hypothèse limite pour réfléchir à l'évolution de l'application du jus in bello en conflit armé. Si l'on craint à raison qu'une prise en compte de la légitimité et de la position propre de chaque partie dans un conflit affecte la mise en œuvre du droit international humanitaire, cela n'est pas nécessairement le cas si cette application différenciée va dans le sens d'obligations accrues à la charge d'une partie. Les opérations à fondement humanitaire engagées par le Conseil de sécurité cumulent à ce titre deux spécificités : d'une part leur fondement humanitaire rend toute violation du droit humanitaire d'autant plus choquante ; d'autre part, leur caractère multilatéral et supranational leur confère plus l'aspect d'une opération de police. Dans ce cadre, il est loisible de repenser la manière dont le droit international humanitaire pourrait être appliqué de manière différenciée, le droit international des droits de l'homme considéré comme applicable, ou encore le contrôle de proportionnalité du jus ad bellum pourrait être réactive. Une telle perspective réduirait utilement le hiatus entre droit et morale, et ne serait pas nécessairement incompatible avec l'évolution des pratiques tendant vers l'asymétrie humanitaire.

http://heinonline.org/HOL/Page?handle=hein.journals/mllwr52&id=207&collection=journals&index=journals/mllwr

Naked soldiers and the principle of discrimination

Stephen Deakin. In: Journal of military ethics Vol. 13, issue 4, December 2014, p. 320-330

Robert Graves's First World War story in his autobiography Goodbye to All That, narrating his refusal to kill an enemy soldier bathing naked on the battlefield, has been made famous in the field of military ethics by Michael Walzer in his Just and Unjust Wars. The story raises the issue of whether soldiers should be granted immunity when behaving in an 'un-warlike' manner. It also relates to the growing understanding in military ethics that only soldiers who pose a direct threat should be attacked and killed. This paper concludes that the traditional legal understanding that all soldiers are liable to be attacked and to be killed is the stronger argument.

http://dx.doi.org/10.1080/15027570.2014.991507

The nature of objects : targeting networks and the challenge of defining cyber military objectives

Heather A. Harrison Dinniss. In: Israel law review Vol. 48, issue 1, 2015, p. 39-54. - Cote 345.25/317 (Br.)

Cyber warfare and the advent of computer network operations have forced us to look again at the concept of the military objective. The definition set out in Article 52(2) of Additional Protocol I – that an object must by its nature, location, purpose or use, make an effective contribution to military action – is accepted as customary international law; its application in the cyber context, however, raises a number of issues which are examined in this article. First, the question of whether data may constitute a military objective is discussed. In particular, the issue of whether the requirement that the definition applies to 'objects' requires that the purported target must have tangible or material form. The article argues on the basis of both textual and contextual analysis that this is not required, but it contends that it may prove to be useful to differentiate between operational- and content-level data. The article then examines the qualifying contribution of military objectives such as their nature, location, purpose or use, and questions whether network location rather than geographical location may be used as a qualifying criterion in the cyber context. The final part of the article addresses the question of whether the particular ability of cyber operations to effect results at increasingly precise levels of specificity places an obligation on a party to an armed conflict to define military objectives at their smallest possible formulation – that is, a small piece of code or component rather than the computer or system itself. Such a requirement would have significant implications for the cyber context where much of the infrastructure is dual use, but the distinction between civilian objects and military objectives is a binary classification.

Navigating conflicts in cyberspace : legal lessons from the history of war at sea

Jeremy Rabkin and Ariel Rabkin. In: Chicago journal of international law Vol. 14, no. 1, Summer 2013, p. 197-258. - Cote 345.26/250 (Br.)

Despite mounting concern about cyber attacks, the United States has been hesitant to embrace retaliatory cyber strikes in its overall defense strategy. Part of the hesitation seems to reflect concerns about limits imposed by the law of armed conflict. But analysts who invoke today's law of armed conflict forget that war on the seas has always followed different rules. The historic practice of naval war is a much better guide to reasonable tactics and necessary limits for conflict in cyberspace. Cyber conflict should be open — as naval war has been — to hostile measures short of war, to attacks on enemy commerce, to contributions from private auxiliaries. To keep such measures within safe bounds, we should consider special legal constraints, analogous to those traditionally enforced by prize courts.

http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1402&context=cjil

New voices : challenging the perplexity over jus in bello proportionality

Joshua Andresen. In: European journal of legal studies Vol. 7, issue 2, Winter 2014, p. 19-35. - Cote 345.25/325 (Br.)

Contrary to the common claim that jus in bello proportionality is an obscure and intractable principle of modern warfare, this paper shows that proportionality balancing has a central role to play in assuring efficient military operations with a minimum number of casualties. Military commanders can and should want to understand proportionality as a requirement to measure military advantage in terms of lives saved and direct their operations toward the most life-saving operations. The targeted killing context in particular highlights the advantage of making proportionality analysis a central component of military strategy in asymmetrical conflicts.

http://ejls.eu/16/Full.pdf#23

The notion of "objects" during cyber operations : a riposte in defence of interpretive and applicative precision

Michael N. Schmitt. In: Israel law review Vol. 48, issue 1, March 2015, p. 81-109. - Cote 345.25/319 (Br.)

This article responds to the two articles published in this journal that criticise the approach taken by the International Group of Experts (IGE) who prepared the Tallinn Manual on the International Law Applicable to Cyber Warfare. Their authors took issue with the approach of the majority of the IGE over the question of whether data qualifies as an 'object' under international humanitarian law such that, for instance, cyber operations that target civilian data violate the prohibition on attacking civilian objects. The majority of the experts took the position that the law had not advanced that far and that pre-existing law could not be definitively interpreted to encompass data within the meaning of 'objects'. In this article, the

Director of the Tallinn Manual Project responds to the authors' criticism of the majority view by explaining and clarifying its reasoning.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2557989

Nuclear weapons and the separation of jus ad bellum and jus in bello

Jasmine Moussa. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 59-87. - Cote 341.67/757

The question addressed is whether use of nuclear weapons, in a manner that violates jus in bello can ever be justified by reason that a state is using force in self-defence or is otherwise acting in compliance with the UN Charter (such as under the authority of the UN Security Council). Section A of this chapter frames the contours of the discussion with preliminary observations regarding use of nuclear weapons in light of the separation principle. Section B puts this discussion into context by examining the implications and the legal and theoretical foundations of the separation principle. Section C analyses the contemporary challenges to the separation principle, beginning with a critique of the ICJ's Nuclear Weapons Advisory Opinion. The section then analyses the implications of the conflation of ad bellum proportionality with in bello proportionality in doctrine and state practice. It surveys contemporary doctrine, which has increasingly challenged the separation principle, particularly in light of the principle of concurrent application of jus ad bellum and jus in bello. It also examines recent state practice challenging the principle and the practice within the UN Security Council, where, arguably, the subordination of in bello considerations to jus ad bellum has been a feature of recently authorised interventions. Section D highlights areas of law where the separation principle has been reaffirmed, asserting that the 'conflationist' trend amounts to misunderstanding and misapplication of the law. It also highlights the contribution of international criminal law and the law of state responsibility to reaffirmation of the separation principle. The chapter concludes that use of nuclear weapons in a manner that violates IHL is also a violation of international law no matter what its legality may be ad bellum.

Nuclear weapons and the unnecessary suffering rule

Simon O'Connor. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 128-147. - Cote 341.67/757

Section A of this chapter summarises the development over time of the unnecessary suffering rule. Section B discusses how the ICJ addressed the rule in its Advisory Opinion and the (limited) extent to which it applied the rule to nuclear weapons. It also looks more particularly at assessments by the Court's judges in their respective separate or dissenting opinions. Section C discusses key factors to be considered when interpreting the rule, including humanitarian concerns and military utility. The predictable long- and medium-term effects of nuclear weapon use are also discussed, as these must inform deliberations regarding compliance with the rule. The conclusion argues that it is almost impossible to conceive of circumstances when engendering the horrific short-, medium- and long-term injuries and suffering among those engaged in combat that are the foreseeable result of neclear weapon use could truly be deemed necessary

Nuclear weapons under international law

ed. by Gro Nystuen, Stuart Casey-Maslen and Annie Golden Bersagel. - Cambridge : Cambridge University Press, 2014. - XVIII, 503 p. - Cote 341.67/757

Nuclear Weapons under International Law is a comprehensive treatment of nuclear weapons under key international law regimes. It critically reviews international law governing nuclear weapons with regard to the inter-state use of force, international humanitarian law, human rights law, disarmament law, and environmental law, and discusses where relevant the International Court of Justice's 1996 Advisory Opinion. Unique in its approach, it draws upon contributions from expert legal scholars and international law practitioners who have worked with conventional and non-conventional arms control and disarmament issues. As a result, this book embraces academic consideration of legal questions within the context of broader political debates about the status of nuclear weapons under international law.

"On target" : precision and balance in the contemporary law of targeting

Michael N. Schmitt and Eric W. Widmar. In: Journal of national security law and policy Vol. 7, no. 3, 2014, p. 379-409. - Cote 345.25/324 (Br.)

Schmitt and Widmar explore the law of targeting within international humanitarian law (IHL) and its application to international and non-international armed conflict. The article examines the "five elements" of a target operation, including the target, the weapon used, the execution of the attack, possible collateral damage and incidental injury, and location of the strike. The authors suggest that a better understanding of

these norms can help international lawyers, policymakers, and operators avoid violations of international law by creating appropriate and well-known boundaries for targeting operations.

http://tinyurl.com/40084-Schmitt

L'opération Unified Protector en Libye au regard du droit international humanitaire

Eric David. In: Droits : revue française de théorie, de philosophie et de culture juridiques No 56, 2012, p. 49-58. - Cote 345.26/260 (Br.)

Examen de l'opération de Unified Protector de l'OTAN en Libye en 2011 au regard du droit international humanitaire. Après un rappel de la chronologie des faits, l'auteur montre que la situation en Libye en 2011 s'apparente à un conflit armé international régi par le droit international humanitaire et que la coalition s'est efforcée de le respecter.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40040.pdf

Operational challenges of the law on air warfare : the example of Operation Unified Protector

Marvin R. Aaron and David R. D. Nauta. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 52/2, 2013, p. 353-377

This article addresses the operational challenges of the law on air warfare during NATO operation Unified Protector (OUP), which was aimed at protecting the Libyan people under the mandate provided by the UN Security Council. The conduct of OUP resulted in the use of force against the Gadaffi-led government of Libya. The authors argue that the Geneva Conventions and Additional Protocol I applied because of the existence of an international armed conflict, to which, among others, NATO as an international organization was a party. The mandate of the UN Security Council provided for the enforcement of an arms embargo and a No-Fly Zone. The arms embargo was (also) enforced in international airspace and waters. The conduct of OUP forces while enforcing the embargo may have been subject to the laws of armed conflict and guided by the law of neutrality, but the wording of the UN Security Council Resolutions certainly limited the permissible use of force. With regard to the No-Fly Zone there are different perspectives on civilian aircraft violating the No-Fly Zone and their status under the laws of armed conflict. The prevailing perspective is that the mere presence of a civilian aircraft in such a zone, does not render it a military objective. Although OUP raised many legal questions, the authors conclude that the conduct of OUP forces has shown that the legal complexity did not lead to violations of the law.

http://heinonline.org/HOL/Page?handle=hein.journals/mllwr52&id=355&collection=journals&index=journals/mllwr

Outils et méthodes opérationnels d'encadrement de l'usage de la force

Cyrille Pison. - In: Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité. - Paris : Pedone, 2014. - p. 171-182. - Cote 345/675

L'ambition de cette étude est de donner un éclairage sur la pratique des Etats en termes de droit international humanitaire et plus particulièrement de jus in bello, qui nécessite de se positionner près du champ de bataille. L'étude s'appuie principalement sur l'expérience de l'auteur comme conseiller juridique militaire français ayant participé à des missions sous commandement OTANT. En prenant deux exemples - les règles opérationnelles d'engagement et la méthodologie d'évaluation des dommages collatéraux - il offre un aperçu des outils, méthodes et principes qui guident l'action des militaires lors de l'application d'une branche du droit difficile d'approche dans un contexte non moins difficile.

The path to better compliance with international humanitarian law

H. E. Nicolas Lang. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 51/1, 2013, p. 131-144

Following the 31st International Conference, Switzerland and the ICRC initiated a process to enable States parties to the Geneva Conventions to develop solutions to the problem of inadequate mechanisms of compliance with IHL. It will not suffice, however, for this process to merely reform existing mechanisms or to replace them. The goal must be to introduce a coherent compliance system that allows States to concern

themselves regularly with IHL in general and with compliance in particular, as well as to exert influence on conflicting parties with the aim of ensuring that they respect their obligations. This article discusses the failings of the current mechanisms and analyses how, with reference to past proposals and the consultations that have taken place within the Swiss-ICRC facilitated process, a coherent and flexible compliance system could be structured and equipped.

http://heinonline.org/HOL/Page?handle=hein.journals/mllwr52&id=132&collection=journals&index=journals/mllwr

The practices of apartheid as a war crime : a critical analysis

Paul Eden. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 89-117

The human suffering caused by the political ideology of apartheid in South Africa during the Apartheid era (1948–1994) prompted worldwide condemnation and a variety of diplomatic and legal responses. Amongst these responses was the attempt to have apartheid recognised both as a crime against humanity in the 1973 Apartheid Convention as well as a war crime in Article 85(4)(c) of Additional Protocol I. This article examines the origins, nature and current status of the practices of apartheid as a war crime and its possible application to the Israeli-Palestinian conflict.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39712.pdf

Principles of the laws of war in ancient India and the concept of mitigating armed conflicts through controlled fights

Sanoj Rajan. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 333-351

While modern international humanitarian law is most directly linked to 19th and 20th century Europe and The Hague and Geneva Conventions, cultures throughout history have developed rules of warfare for the protection of non-combatants and civilian populations. This paper provides an overview of the Dharma-based Hindu and Buddhist norms for conflict in Ancient India, and then proceeds to a detailed examination of the practices of Ankam and Mamamkam on the medieval Malabar Coast from the Sangam period through the rule of the Zamorins of Calicut. Ankams were ad hoc proxy duels between professional fighters conducted to resolve inter-state disputes, while Mamamkam was a periodic contest designed to allow relatively bloodless transfer of power. Both demonstrate an understanding of modern concepts of proportionality, distinction and victims' protection. The paper concludes by enumerating the humanitarian values carried by Ankams and Mamamkam.

http://dx.doi.org/10.1163/18781527-00501014

The procurement and use of armed UAVs by the German military in international and German law

Nicholas English and Tim Rauschning. In: German yearbook of international law = Jahrbuch für internationales Recht Vol. 56, 2013, p.539-555. - Cote 341.67/72 (Br.)

The procurement or armed UAVs is seemingly unproblematic under international law and the German domestic law that it informs upon. Where international and German law do lay down restrictions is in relation to the use of armed UAVs. The systems may be deployed outside of armed conflict under international human rights law only in very limited circumstances, if at all. Under German law, the Bundeswehr can only be deployed within Germany in response to natural disasters or grave accidents, where armed UAVs would be unsuitable, and in times of internal emergency, which sets a very hight threshold. Targeted killing outside of armed conflict contravenes both international and German law and could lead to criminal sanctions under both. In the situation of armed conflict, IHL prescribes a number of prerequisites that must be eveluated on a case-by-case basis to determine what constitutes a necessary and proportionate deprivation of life. German law puts an incread importance on the idea of human dignity, meaning that in some situations the use of armed UAVs may be acceptable under IHL while not being so under German law, which would prefer capture and internment. German law also places more emphasis on the principle of proportionality, which is stronger that its IHL counterpart.

Promoting access to health care in "other situations of violence" : time to reignite the debate on international regulation

Eve Massingham, Kelisiana Thynne. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 105-129

In the last ten years or so, the international community has seen an increase in the suppression of revolutionaries or insurrectionists by authoritarian regimes. There has also been a growing urbanisation of

violence, in which gangs infiltrate urban societies due to a lack of provision of State services. This landscape of violence continually morphs from one dominated by armed conflicts (to which international humanitarian law (ihl) applies) to one that increasingly involves 'other situations of violence' which fall short of the threshold of armed conflict (and which are not regulated by ihl). These 'other situations of violence', whilst wildly disparate in many ways, share the tragedy (also shared with armed conflict) of the impediments they place on access to health care by those left vulnerable as a result of the breakdown of domestic legal order. This paper reviews existing laws and principles, which could apply to 'other situations of violence' such as those found in ihl and human rights law. It makes the case that an international framework could have a stronger presence in the regulation of 'other situations of violence', in order to ensure the protection of those who need it most.

http://dx.doi.org/10.1163/18781527-00501003

Promouvoir des pratiques militaires qui favorisent des soins de santé plus sûrs

CICR. - Genève : CICR, décembre 2014. - 52 p. - Cote 356/267 (FRE)

S'inscrivant dans le cadre de l'initiative « Les soins de santé en danger », ce rapport réunit un ensemble de mesures pratiques à prendre en compte lors de la planification et la conduite d'opérations militaires pour éviter que ces opérations n'aient un impact négatif sur la fourniture des soins de santé pendant un conflit armé. Il résulte de toute une série de consultations qui ont été engagées auprès de militaires du monde entier. Parmi les mesures pratiques recensées, beaucoup devraient trouver leur place dans les textes régissant la pratique militaire : ordres, règles d'engagement, procédures opérationnelles ou autres documents et supports de formation.

http://www.cid.icrc.org/library/docs/DOC/icrc-001-4208.pdf

Prosecution of war crimes by invading and occupying forces : applicable legislation and competent courts

Festus M. Kinoti. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 289-332

The paper considers prosecution of civilians protected under the Fourth Geneva Convention for war crimes, focusing on applicable legislation and competent courts. It first focuses on occupying forces looking at both the issue of applicable legislation and competent courts then shift its focus to invading forces. The paper concludes by briefly recapping its findings and commenting on whether the same strike a proper balance between ensuring prosecution of war criminals and protection of protected civilians.

http://dx.doi.org/10.1163/18781527-00501005

Protecting civilians in populated areas during the conduct of hostilities after the Gotovina case

Chiara Redaelli and Stuart Casey-Maslen. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 454-474. - Cote 355/1018 (2013)

Following the 2011 trial judgement convicting Ante Gotovina for ordering, among others, unlawful artillery attacks on on three cities with the purpose of permanently remove the ethnic Serb civilian population, international humanitarian law (IHL) and military experts filed an amicus curiae stating their belief that the Gotovina judgment "has the potential to become the "Tadic of targeting law". While the Appeals Chamber judgment acquitted Gotovina of all charges, its findings merit discussion in detail as they highlight in stark terms the weaknesses of IHL rules governing the conduct of hostilities. Accordingly, it is argued that protecting civilians demands stricter rules than IHL currently offers, particularly in armed conflicts of a non-international character (NIAC) where those participating directly in hostilities are often located close to - if indeed they are not intermingled with - civilians protected as such. Implementation of and respect for existing rules would obviously bring significant relief, but in hugh-intensity NIACs Gotovina lays bare IHL's inadequacies. The rules governing indiscriminate attacks are far more desirable in military terms than they are for the protection of civilians. In this respect, human rights law and law enforcement rules and stadards on use of force would offer far greater protection.

Protecting persons with disabilities in armed conflict

Megan Burke and Loren Persi Vicentic. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 388-410. - Cote 355/1018 (2013)

This chapter looks at how law and policy endeavour to protect persons with disabilities in conflicts, and area justly given renewed impetus by the Convention on the Rights of Persons with Disabilities (CRPD). It first looks at how customary international humanitarian law and human rights law apply to persons with

disabilities. Based on State reporting on implementation required by the CRPD, it then turns to actions taken by several States in order to protect or plan for protection of persons with disabilities in sutuations of armed conflict: Colombia, Afghanistan, Myanmar, Syria adn South Sudan. Finally, it reviews the practice of regional entities, international organizations and NGOs.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39812.pdf

La protection des prisonniers de guerre en droit international humanitaire

Catherine Maia, Robert Kolb et Damien Scalia. - Bruxelles : Bruylant, 2015. - IV, 643 p. - Cote 400.21/470 DEP

Le régime juridique des prisonniers de guerre est le fruit d'une longue évolution du droit international coutumier et conventionnel. Il est constitué aujourd'hui, pour l'essentiel, de la IIIe Convention de Genève relative au traitement des prisonniers de guerre, du 12 août 1949. Sur certains points, cette Convention a été complétée par le Protocole additionnel relatif à la protection des victimes des conflits armés internationaux, du 8 juin 1977. Ce régime juridique, à l'instar de l'ensemble du droit des conflits armés, n'est toutefois pas une construction figée dans le temps. Pour être véritablement efficace, il doit être adapté en fonction des transformations de la réalité et des divers développements du droit international. Sur la base d'une étude empirique, et de l'analyse des régimes pertinents de protection de la personne humaine, la présente étude s'est précisément donné pour objectif d'évaluer le régime juridique des prisonniers de guerre à la lumière des principaux conflits armés contemporains qui ont éclaté depuis le début des années 1950. Ainsi, c'est en suivant le cours de l'existence du prisonnier de guerre – depuis la détermination de son statut, en passant par sa protection une fois capturé, puis sa libération et son rapatriement – que l'ouvrage invite le lecteur à découvrir, norme par norme, comment le droit en vigueur a été appliqué et à quelles éventuelles difficultés il s'est heurté sur le terrain.

The protection of cultural heritage in armed conflict

Kristin Hausler. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 361-387. - Cote 355/1018 (2013)

As the year 2013 witnessed continued attacks on tangible cultural heritage, it is timely to review the current international legal framework protecting - i.e. respecting and safeguarding - cultural heritage during armed conflicts and assess its effectiveness. In addition to analysing key treaties on the topic, this chapter also considers the role of international courts in the protection of cultural heritage, as well as the role of a number of international organizations. It concludes by summarizing the important role of states in protecting cultural heritage in armed conflicts and in providing a number of recommendations.

Redress and reparation for victims of armed conflict : a critical review of pactice in 2013

Valentina Cadelo. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 554-583. - Cote 355/1018 (2013)

This chapter reviews reparation for victims of armed conflict in light of most recent practice. Section A opens with an overview of the international legal framework surrounding the individual right to reparation for victims of armed conflict under international law, highlighting the most recent treaties and case law that support the existence of this right. The portential obligation of non-state actors to provide reparation is also addressed. Section B looks at the scope of the right to reparation and the different forms of reparation that exist. Given important developments in recognition of a right to reparation for victims of armed conflcit, Section C explores whether such a right is currently enforced and, if not, what are the main obstacles preventing victims from receiving full reparation. Section D offers a critical review of 2013 practice in relation to reparation in three states : Afganistan, Colombia, and Democratic Republic of Congo.

The relationship between economic, social, and cultural rights and international humanitarian law

Gilles Giacca. - In: Economic, social, and cultural rights in international law : contemporary issues and challenges. - Oxford : Oxford University Press, 2014. - p. 308-342. - Cote 345.1/109 (Br.)

This chapter first explores the meaning of economic, social, and cultural (ESC) rights from the perspective of international humanitarian law (IHL). It then examines the general articulation of both human rights law and IHL. It moves, next, to the relevance of ESC rights in the application of IHL. As the UN human rights bodies develop their appproach on the application of human rights law in armed conflict, we are likely to see terms and rules of IHL being complemented or interpreted in the light of the developing law in this area. Finally, the role of IHL in the interpretation of ESC rights is examined to understand how the UN

Committee on ESC Rights, as well as other mechanisms, have referred directly or inderiectly to IHL rules in practice in order to interpret or define the content of certain rights.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39786.pdf

Reparation for damage suffered as a consequence of breaches of the law of war

Natalino Ronzitti. - In: International law for common goods : normative perspectives on human rights, culture and nature. - Oxford ; Portland : Hart, 2014. - p. 103-115. - Cote 345.22/253 (Br.)

Violations of the law of war may happen both as a breach of rules of international armed conflicts or rules of non-international armed conflicts. For the first category, the law to be considered is that contained in the Hague Convention No IV of 1907 and in Protocol I of 1977, additional to the Four Geneva Conventions. Both state that a belligerent is responsible for the conduct of its armed forces. The central issue is determining whether they only regulate State-to-State relations or if they may also be invoked by an individual victim before a domestic tribunal. Until recently, only violations of law in international armed conflicts came into consideration. Jus ad bellum is properly concerned with inter-state violence, whilst the use of force against rebels during a civil war is not regarded as a violation of international law. Jus in bello rules relate both to international and non-international armed conflicts. However, the codification of rules on reparations for violations of jus in bello has, until now, only dealt with international armed conflict. For non-international armed conflict there is no general rule and norms regulating reparations should be extracted from State practice or from general principles of law.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39925.pdf

The reparative effect of truth seeking in transitional justice

Merryl Lawry-White. In: International and comparative law quarterly Vol. 64, part 1, January 2015, p. 141-177

The benefits of a 'holistic' approach to transitional justice are enhanced by considering how synergies between different transitional mechanisms may be optimized. Drawing upon multiple examples, this article explores the potential contribution of truth seeking to reparation efforts at a normative, institutional and operational level. The article emphasizes the importance of an awareness of the reparative potential of truth seeking on the part of those implicated in its design and implementation, as well as an appreciation of the influence of contextual factors on a delicate process. It cannot be conceived of simply as a technocratic exercise, but as an inherent part of empowering victims.

http://dx.doi.org/10.1017/S0020589314000645

Responsabilité de protéger et protection des civils dans les conflits armés : un rapprochement au détriment du droit international humanitaire ?

Raphaël van Steenberghe. In: Revue québécoise de droit international Vol. 6, no 2, 2013, p.129-162. - Cote 361/626 (Br.)

L'article s'interroge sur le rapprochement dont témoigne la pratique récente entre la responsabilité de protéger et la protection des civils dans les conflits armés. Il en analyse le bien-fondé en mettant en lumière les éléments de convergence et de divergence entre les deux notions ainsi que l'influence exercée par la première sur la seconde. Il s'interroge par ailleurs sur les effets, positifs et négatifs, d'un tel rapprochement sur le droit international humanitaire dans la mesure où la notion de protection des civils dans les conflits armés est principalement fondée sur ce droit. L'article conclut que, bien que la responsabilité de protéger et la protection des civils dans les conflits armés se caractérisent par certains traits communs, tels que leur objectif final et les termes généraux dans lesquels se décline leur protection, les deux notions présentent des différences fondamentales, notamment en raison de leur logique sous-jacente propre. Il relève une logique de réaction propre à la responsabilité de protéger dans le domaine de la protection des civils dans les conflits armés. Si ce phénomène présente l'avantage, au niveau de l'application du droit international humanitaire, de porter l'accent sur la possibilité et la nécessité d'une réaction de la communauté internationale en cas de violation de ses règles relatives à la protection des civils, il n'est pas sans risque pour ce droit, notamment celui d'affecter l'élément de neutralité qui le caractérise ou d'entrainer une certaine confusion de la responsabilité première et collective qu'il prévoit avec celles mises en oeuvre par la responsabilité de protéger.

http://rs.sqdi.org/volumes/RQDI_26-2_5_Steenberghe.pdf

The responsibility to protect, and Syria

Alex Conte. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 429-453. - Cote 355/1018 (2013)

This chapter considers the United Nations principle of the "responsibility to protect" (R2P). It adopts a thematic and contextual approach, offering first an overview of the UN principle on R2P, including the UN Strategy on the implementation of the R2P. The UN principle is then examined in the context of protection in armed conflict, critiquing its restictive approach to the "threshold crimes" that trigger the UN's conceptualization of R2P, and examining the boundaries of the principle's international dimensions. The final part of the chapter provides context by considering the applicabilitiy of R2P to the conflict in Syria, including both the failure of the Syrian government to fulfil its responsibilities and the inadequacy of the action by the international community to assuage the conflict or effectively discharge its commitments under the UN principle.

Responsibility to protect and the plenitudinal mindset of international humanitarian law

Christopher R. Rossi. In: Journal of international humanitarian legal studies Vol. 5, issue 1-2, 2014, p. 352-395

The Responsibility to Protect is almost fifteen years old and yet opinions diverge widely about its utility as a tool of international humanitarian law. Scholars and diplomats continue to debate its most discussed feature – the secondary responsibility of the international community to aid suffering populations of internal disputes when the host State or United Nations Charter system fails to do the same. This paper argues that much of the current debate is out of focus and at cross purpose and is due to disconnected strands of a plenitudinal mindset in law, found elsewhere as well in humanitarian law, which tend to view humanitarian law either from structural or substantive perspectives, but not from both perspectives. A unified understanding of the plenitudinal mindset re-focuses the discussion around an important common denominator, the need to bridge legal gaps and avoid the appearance of non liquet in the development of international humanitarian law. Disconnected discussions on the Responsibility to Protect are not as disconnected as they appear because opposing views regard as equally odious the silences and gaps of the United Nations Charter system. Borrowing somewhat from social process theory, this paper highlights the need and ability of international humanitarian law to re-forge the broken chain that can strengthen the Responsibility to Protect.

http://dx.doi.org/10.1163/18781527-00501012

A return to coercion : international law and new weapon technologies

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

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

http://www.hofstralawreview.org/wp-content/uploads/2014/08/CC4.Yoo-Rabkin.final2_.pdf

The right to a remedy and reparation for the use of nuclear weapons

Stuart Casey-Maslen. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 461-480. - Cote 341.67/757

With an understanding that international human rights law is directly relevant to nuclear weapons, and that any use of nuclear weapons outside testing would be highly likely to violate a range of human rights. Such being the case, this chapter suggests how international human rights law could offer remedy and reparation in light of probably massive loss of life and destruction of property resulting from a nuclear weapon strike. In so doing, it looks first at the basis of responsibility under human rights law for nuclear

weapon use before turning to address the right to a remedy and reparation in general. The third section of the chapter considers who would be the duty bearers, for such a duty potentially goes beyond a user state. It then assesses who could be the holders of a right to a remedy for nuclear weapon use: could it extend, for example, to military personnel as well as to civilians injured by an explosion or the effects of nuclear fallout? Fifthly, it looks at the forms of remedy that could be available to claimants, and seek to gauge which might be the most appropriate in case of a nuclear weapon strike. The author advances some conclusions as to the lex lata in this area, as well as his view as to where the law might usefully evolve regarding remedies and reparations for mass atrocities.

Rise of the drones : a study on the legality of drone targeted killings of suspected terrorists

submitted by Olivia Herman. - [S.l.] : [s.n.], 2013-2014. - IV, 74 p. - Cote 345.26/268 (Br.)

The author tries to draw the lines of the two main legal frameworks that govern drone targeted killings, namely international human rights and humanitarian law from the perspective of the right to life. The author tries to determine when the two legal frameworks apply to drone strikes, if there is an interaction between both, and which legal requirements need to be fulfilled for a drone strike to be legal. The author also discusses the rising idea of an armed conflict between a State and a terrorist group and the practice of targeting on the basis of 'suspicion'. A lot of legal ambiguities, uncertainties, and controversies will be shown and the author will try to provide an answer for these issues. However, when considering the application of these legal norms and principles to a case assessment another issue arises, that is the issue of lack of transparency by the States who are conducting these drone targeted killings of suspected terrorists.

http://tinyurl.com/40099-Herman

Robo-wars : the regulation of robotic weapons

Alex Leveringhaus, Gilles Giacca. - Oxford : Oxford Martin School, University of Oxford, 2014. - 31 p. - Cote 341.67/91 (Br.)

This paper gives a clear and concise overview of the technological dimensions of robotic weapons as well as their treatment under existing international legal and ethical frameworks. It assesses the regulatory options currently under discussion, and recommends ways for states, manufacturers and the military to develop a suitable regulatory framework. Recommendations include: prioritising human oversight and control over weapons at all stages of deployment, and ensuring human operators can override the robot at any stage; implementing mechanisms to ensure human operators can be held responsible for deployment and supervision of weapons; for states and the military to work together to define the contexts in which robotic weapons can be used, and prevent illegal use; ensuring new weapons comply with existing legal and ethical restrictions.

http://www.oxfordmartin.ox.ac.uk/downloads/briefings/Robo-Wars.pdf

RPAs and non-international conflict : a strategic/legal assessment

Michael P. Kreuzer. In: Cardozo law review Vol. 36, issue 2, December 2014, p. 667-707. - Cote 345.27/141 (Br.)

Remotely Piloted Aircraft (RPAs) have, in recent years, been among the most controversial weapons systems in the U.S. war on terrorism. Debate rages over their overall effectiveness, their legality outside of recognized war zones, such as Afghanistan, and the precedent U.S. RPAs might set for other state and non-state actors in the future. Rather than focusing on the technology of the RPA platform itself, this Article argues that the RPA enables a type of war against individuals that exposes a significant hole in both international law and conventional understanding of the boundaries of warfare. Rather than focusing on treaties to limit the use of RPAs, the first focus should be in addressing what constitutes war with non-state actors, what its boundaries are, and how such wars begin and end. Defining the parameters for a "just war" against a non-state actor will serve to clarify many of the legal debates surrounding discrimination and proportionality in strikes. Additionally, it will likely increase the effectiveness of the strikes themselves by allowing greater transparency of operations which will enable those employing the RPAs to better exploit the potential strategic effects of the operation.

http://www.heinonline.org/HOL/Page?handle=hein.journals/cdozo36&id=713

Security Council mandates and the use of lethal force by peacekeepers : what place for the laws of war ?

Nigel D. White. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 95-116. - Cote 345.2/967

The chapter explores the gap between the Security Council's mandate and the use of lethal weapons by peacekeepers and its implications for the law applicable to the use of force by peacekeepers. The argument is that the more coercive the mandate becomes, the more it might be expected that peacekeepers use force in accordance with the laws of war. However, the reality is that, unless they (exceptionally) become combatants in an armed conflict, they remain bound by human rights law, specifically, to respect the right to life. The question then becomes whether the human rights legal framework is sufficient to allow peacekeepers to carry out their mandate or whether it is possible to identify a new legal framework as part of an emerging jus post bellum?

Semi-autonomous weapon systems in international humanitarian law : a study of the new decision-making and responsibility issue in international humanitarian law relating to semi-autonomous weapon systems

Ajda Hosseini Ghasemi. - [S.l] : [s.n.], 2014. - 59 p. - Cote 341.67/759 (Br.)

The purpose of this Master thesis is to examine, in detail, how current international law relates to autonomous weapon systems. Artificial intelligence has made war-machines less dependent on human control and thus more autonomous. The use of autonomous weapon systems causes difficulties in establishing responsibility for the implementation of humanitarian law when numerous individuals are involved, and when the actor is a robot. The question of accountability is therefore essential since this issue will arise in the framework of all fully autonomous and semiautonomous weapon systems. The concept of autonomous weapon systems (AWS) will be defined more precisely alongside three different forms of autonomy in order to demonstrate its compliance with current international law. The analysis will begin from the bottom of the decision-making process to gradually eliminate all candidates who do not have sufficient knowledge to assume accountability. The candidates that will be observed are the military personnel, the acquisition team, the programmer or manufacturer, corporations, and lastly, the robot. Each chapter will build upon the next and include a descriptive part in the beginning with an analysis toward the end of the thesis. Parallels will be drawn between the new legal phenomenon and existing legal systems.

http://tinyurl.com/40098-Hosseini

Sexual violence directed against men and boys in armed conflict or mass atrocity : addressing a gendered harm in international criminal tribunals

Valerie Oosterveld. In: Journal of international law and international relations Vol. 10, 2014, p. 107-128. - Cote 362.8/229 (Br.)

This article explores the current state of understanding within international criminal law of sexual violence directed at men and boys, particularly as a crime against humanity or a war crime. It begins by examining how international criminal tribunals have approached male-targeted sexual violence to date, concluding that the tribunals have been uneven in their approach; even so, these cases have been helpful in creating the beginnings of a typology of male sexual violence. The article then turns to identifying three main gaps that must be addressed in order to improve the ability of international criminal tribunals – and, similarly, domestic courts prosecuting international crimes - to address this form of sexual violence. The first gap is an information gap: there is a dearth of systematic data on sexual violence directed against men and boys in armed conflict or atrocity. The result is that relatively little is known about the prevalence, patterns and effects of male sexual violence, and less attention is paid to the issue than should be the case, including in the field of international criminal law. The second gap can be referred to as a social gap. Men and boys may not feel able to speak about their experiences or, if they do, they may not describe themselves as victims of sexual violence. The third gap is a legal gap, which is twofold: a gap in overt recognition and a gap in classification. While rape has been defined in international criminal law in a gender-neutral way, there are other acts of sexual violence visited upon men and boys that are not explicitly named. This lack of overt recognition can be problematic because these acts must be prosecuted under other (broader, less descriptive) headings. When combined with the social gap, the result can be miscategorization. Sexual violence crimes directed at men and boys have been legally (re)classified as torture, cruel treatment or inhumane acts, thereby obscuring the sexual aspects of the harm done to the victims.

http://www.jilir.org/docs/issues/volume_10/10_7_OOSTERVELD_FINAL.pdf

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

Terry D. Gill. In: Yearbook of international humanitarian law Vol. 16, 2013, p. 251-266

This essay provides a commentary on the ongoing discussion of the relationship between the two legal regimes and attendant paradigms of hostilities and law enforcement in armed conflict. The discussion has, to an extent, taken the form of a disconnect between the IHL and IHRL communities. In order to get past this, a plea is made here to apply basic well established tools of legal methodology, to apply both regimes within their respective scope of application and to utilise common sense in determining which regime is the most relevant to a particular situation. This is in the interest of legal coherence and maintaining respect for the law, as well as in the interest of the persons the law is meant to protect.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39716.pdf

The strange pretensions of contemporary humanitarian law

Jeremy Rabkin. - In: Rethinking the law of armed conflict in an age of terrorism. - Lanham [etc.] : Lexington Books, 2012. - p. 41-70. - Cote 345.26/213

What's new in today's world is not the effort to persevere in attempts to restrain the violence of war. The most remarkable novelty is the notion that such restraints can be insisted upon, even when one side ignores them, and even when noncompliant fighters gain systematic advantage from their disregard of the agreed-upon standards. Four general claims will be elaborated in this chapter. First : the seeming premise of today's international humanitarian law - that this law binds the conduct of military operations, regardless of circumstances or consequences - is not the culmination of a time-honored tradition, as sometimes portrayed, but is, in fact, a recent and radical innovation. Second : the current standards were, to a large extent, the products of efforts by anti-Western governments and movements, seeking to change previously accepted standards to their own advantage. Third : advocacy organisations such as the International Red Cross, Human Rights Watch and Amnesty International have strong incentives to embrace an anti-Western view of the relevant standards, albeit one disguised as a neutral or internationalist view. Fourth : many Western governments now give credibility to such efforts, because they no longer expect to engage in actual military operations of their own.

Strengthening international humanitarian law protecting persons deprived of their liberty : regional consultation of government experts, Kuala Lumpur, Malaysia, 10-12 April 2013

report prepared by Sarah McCosker. - Geneva : ICRC, November 2013. - III, [43] p. - Cote 400/155-2

This report summarizes discussions held during the Kuala Lumpur regional consultation of government experts (43 government experts representing 22 States across the Asia Pacific and the Middle East) on strengthening legal protection for persons deprived of their liberty in non-international armed conflict (NIAC). The consultation, which the International Committee of the Red Cross (ICRC) convened pursuant to Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, sought the participants' views (without attribution to governments or individuals) on whether and how the rules of international humanitarian law (IHL) protecting detainees in NIAC should be strengthened.

http://www.cid.icrc.org/library/docs/DOC/icrc-002-4180-02.pdf

Strengthening international humanitarian law protecting persons deprived of their liberty : regional consultation of government experts, Montreux, Switzerland, 10-11 December 2012

report prepared by Ramin Mahnad. - Geneva : ICRC, November 2013. - III, [62] p. - Cote 400/155-3

This report summarizes discussions held during the Montreux regional consultation of government experts (representing 21 States across Europe, North America and Israel) on strengthening legal protection for persons deprived of their liberty in non-international armed conflict (NIAC). The consultation, which the International Committee of the Red Cross (ICRC) convened pursuant to Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, sought the participants' views (without attribution to governments or individuals) on whether and how the rules of international humanitarian law (IHL) protecting detainees in NIAC should be strengthened.

http://www.cid.icrc.org/library/docs/DOC/icrc-002-4180-03.pdf

Strengthening international humanitarian law protecting persons deprived of their liberty : regional consultation of government experts, Pretoria, South Africa, 13-14 November 2012

report prepared by Ramin Mahnad. - Geneva : ICRC, November 2013. - III, [40] p. - Cote 400/155-4

This report summarizes discussions held during the Montreux regional consultation of government experts (representing 27 African countries) on strengthening legal protection for persons deprived of their liberty in non-international armed conflict (NIAC). The consultation, which the International Committee of the Red Cross (ICRC) convened pursuant to Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, sought the participants' views (without attribution to governments or individuals) on whether and how the rules of international humanitarian law (IHL) protecting detainees in NIAC should be strengthened.

http://www.cid.icrc.org/library/docs/DOC/icrc-002-4180-04.pdf

Strengthening international humanitarian law protecting persons deprived of their liberty : regional consultation of government experts, San Jose, Costa Rica, 27-28 November 2012

report prepared by Ramin Mahnad. - Geneva : ICRC, November 2013. - III, [40] p. - Cote 400/155-4

This report summarizes discussions held during the Montreux regional consultation of government experts (representing 23 States from Latin America and the Caribbean) on strengthening legal protection for persons deprived of their liberty in non-international armed conflict (NIAC). The consultation, which the International Committee of the Red Cross (ICRC) convened pursuant to Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, sought the participants' views (without attribution to governments or individuals) on whether and how the rules of international humanitarian law (IHL) protecting detainees in NIAC should be strengthened.

http://www.cid.icrc.org/library/docs/DOC/icrc-002-4180-05.pdf

Strengthening international humanitarian law protecting persons deprived of their liberty : sythesis report from regional consultations of government experts

Legal division, ICRC. - Geneva : ICRC, November 2013. - [55] p. - Cote 400/155-1

This report summarizes the discussions in the four regional consultations of government experts, held during 2012 and 2013, on strengthening legal protection for persons deprived of their liberty in non-international armed conflict (NIAC). The consultations were convened by the International Committee of the Red Cross (ICRC) pursuant to Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent (International Conference). In the consultations, the ICRC sought participants' views on whether and how the rules of international humanitarian law (IHL) protecting detainees in NIAC should be strengthened. The participants were chosen with two factors in mind: balanced regional representation and previous experience with armed conflict. The first regional consultation was held from 13-14 November 2012 in Pretoria, South Africa, and brought together experts from Africa. The second, gathering experts from Latin America and the Caribbean, was held in Costa Rica from 27-28 November 2012. The third assembled experts from Europe, the United States, Canada and Israel, and was held in Montreux, Switzerland from 10-11 December 2012. The fourth, which was held in Kuala Lumpur from 11-12 April 2013, was a gathering of experts from the Asia-Pacific and the Middle East.

http://www.cid.icrc.org/library/docs/DOC/icrc-002-4180-01.pdf

Strengthening international humanitarian law protecting persons deprived of their liberty : thematic consultation of government experts on conditions of detention and particularly vulnerable detainees, Geneva, Switzerland, 29-31 January 2014

report prepared by Ramin Mahnad. - Geneva : ICRC, January 2015. - 77 p. - Cote 400/155-6

At the conclusion of the regional consultations, the experts had identified a broad range of humanitarian and legal issues within each of the four areas discussed; they agreed that the driving principle behind the next steps in the process should be to focus on a concrete and technical assessment of whether and how to strengthen the law to address those issues. The ICRC subsequently planned two thematic consultations for carrying the process forward along these lines. The first – held from 29 to 31 January 2014, and the subject

of the present report – examined issues related to conditions of detention and vulnerable detainee groups in greater detail. In preparing the present thematic meeting, the ICRC took into account the following broad conclusions from the regional consultations: • States generally support an outcome document that will strengthen IHL protecting NIAC related detainees, with the vast majority preferring one that is not legally binding. • Existing IHL applicable in IACs is the first place to turn to see what might be appropriate for an IHL outcome document. • While the views of States differ regarding the interplay between IHL and human rights law, the substantive content of human rights law and internationally recognized detention standards – keeping in mind that they were not necessarily designed with the same balance of military necessity and humanitarian considerations in mind as IHL – may also be valuable sources of reference for a potential IHL outcome document. • The collective experience of States and the practices they have developed to protect detainees can be a source of useful ideas and insights for a potential IHL outcome document, and should continue to be shared going forward. • Regulating the detention activities of non-State armed groups is a particularly sensitive issue that requires further discussion.

http://www.cid.icrc.org/library/docs/DOC/icrc-002-4230.pdf

Le système de réparation de la CPI : analyse à la lumière de l'ordonnance de réparation dans l'affaire Thomas Lubanga Dyilo

Rachelle Kouassi. - In: Vingt ans de justice internationale pénale. - Bruxelles : La Charte, 2014. - p.168-186. - Cote 344/643 (Br.)

Les activités de la CPI étant enclenchées dans les contextes de violations massives, on peut se demander quel pourrait être son rôle dans un processus de justice transitionnelle relativement à la situation des victimes et à la réparation des préjudices qu'elles ont subis. Plusieurs questions sous-jacentes se posent alors: la CPI constitue-t-elle le cadre adéquat pour résoudre les cas de réparations pour des violations massives? La particularité du système de réparation de la CPI est-elle une solution au conflit entre approche judiciaire des réparations et l'ampleur des violations? Quelle pourrait être la contribution d'une juridiction pénale internationale telle que la CPI dans un processus de justice transitionnelle à l'égard des nombreuses victimes? Les questions de réparation devant la CPI qui seront abordées dans le cadre de cet article seront analysées à la lumière des mécanismes de justice transitionnelle. Par ailleurs, première et pour le moment unique décision de la Cour dans le genre, l'ordonnance de réparation de la Chambre de première instance I (Ch. Pl I) dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo (ci-après affaire Lubanga) en constituera la matière d'analyse. Cette décision de la Cour a été rendue dans le contexte de justice transitionnelle de la République démocratique du Congo (RDC). Pour tenter d'apporter des réponses aux préoccupations ci-dessus exposées, une analyse du système de réparation de la CPI sera faite d'une part (§ 1) et quelques défis que devraient relever ce système pour en être la clé du succès seront mis en lumière d'autre part (§ 2).

https://library.ext.icrc.org/library/docs/ArticlesPDF/39931.pdf

Targeted killing in international law : searching for rights in the shadow of 9/11

Saby Ghoshray. In: Indiana international and comparative law review Vol. 24, no. 2, 2014, p. 355-418. - Cote 345.25/313 (Br.)

This Article examines how the lack of accountability in the current targeted killing framework presents a fundamental dilemma of enforcement in international humanitarian law's (IHL) modern applicability. Even though the complementarity between human rights law (HRL) and IHL provides enhanced protection of civilians in some situations, "accountability gaps" and absence of granularity in identifying "legitimate targets" would make a legal case for targeted killing difficult. Similarly, IHL's assertion of lex specialis rule and HRL's dependence on the relationship between individual and a "controlling state" would make the applicability of HRL in cases of targeted killing via drones problematic. This is more prevalent when drone strikes continue to kill innocent civilians. Similarly, IHL's assertion of lex specialis rule does not provide any additional opening for legitimizing targeted killing. Rather, the mounting civilian casualties in this new warfare paradigm compel us to re-examine the key principles of IHL: the principle of distinction, the principle of proportionality, and the principle of military necessity.

https://journals.iupui.edu/index.php/iiclr/article/view/18270/18365

Targeting decisions in the crosshairs of humanitarian law and human rights law

Caitlin MacNamara. In: Creighton international and comparative law journal Vol. 5, no. 2, Spring 2014, p. 1-24. - Cote 345.25/314 (Br.)

Most scholars premise their arguments regarding the appropriate legal regime for targeting in asymmetrical conflicts on the application of either the war paradigm or the law enforcement paradigm exclusively. This paper, however, contends that the degree to which IHRL affects targeting decisions is more complicated than either paradigm is capable of comprehending independently. Accordingly, this

paper proposes that the current nature of armed conflict globally demands a departure from the standard dichotomous rhetoric and a close examination of the rationale underlying application of IHL and IHRL principles individually. Following from such analysis, this paper submits that current jurisprudence supports a sliding scale model based on a mixed paradigm as the most appropriate model to govern targeting decisions in asymmetrical warfare. Part II of this paper provides a brief overview of the governing principles of IHL, the applicable standards of IHRL, the relevant portions of the International Committee of the Red Cross's ("ICRC") publication on customary international law, and a summary of Israeli precedent in the field. Part III uses the principles of IHL and standards of IHRL as interpreted through international and domestic jurisprudence to analyze the emergence of a mixed paradigm and propose support for a sliding scale approach to the additional restraints imposed on targeting by IHRL. Part IV assesses the impact of such an approach on the targeting practices of the United States given its increased reliance on targeted killing operations, addressing both the legality of current U.S. practice as well as options for a legally compliant policy framework going forward.

http://tinyurl.com/39920-MacNamara

Les tensions entre jus ad bellum et jus in bello dans le cadre des mandats du Conseil de sécurité

Vaios Koutroulis. - In: Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité. - Paris : Pedone, 2014. - p. 27-52. - Cote 345/675

La présente contribution examine les relations entre le jus ad bellum et le jus in bello dans le cadre des opérations autorisées par le Conseil de Sécurité de l'ONU (CS). L'objectif est de déterminer, d'une part, s'il existe des tensions entre le mandat de ces opérations et le jus in bello et, d'autre part, si ces tensions sont aussi problématiques pour la séparation entre le jus ad bellum et le jus in bello qu'elles sont prétendues l'être. L'analyse commence par l'identification de l'impact du DIH sur la définition des notions "menace contre la paix", "rupture de la paix" et "acte d'agression", autrement dit, les termes qui déclenchent l'application du chapitre VII de la Charte des Nations Unies. Ensuite, elle s'attarde sur la qualification des conflits dans lesquels les opérations autorisées par le CS sont impliquées afin de déterminer si elle est influencée par la licéité des opérations sur le plan du jus ad bellum. Enfin, elle examine les tensions éventuelles entre le jus ad bellum et le jus in bello dans la mise en oeuvre du mandat des opérations en cause.

Threats of use of nuclear weapons and international humanitarian law

Gro Nystuen. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 148-170. - Cote 341.67/757

This chapter focuses on the extent to which threats of use of nuclear weapons can violate international humanitarian law (IHL). The reason for debating this question, which seems rather limited in scope and impact, is that it appears to play a role in the general confusion that was generated by the International Court of Justice (ICJ)'s Nuclear Weapons Advisory Opinion as regards the separation between jus in bello and jus ad bellum. The Court stated that the threat of use of nuclear weapons would be a violation of not only jus ad bellum as reflected in the UN Charter, but also of IHL. The Court did not, however, substantiate this finding with legal reasoning. The purpose of this chapter is to discuss the validity of this statement, not merely for the sake of clarifying the content of IHL, but more importantly to reinforce the legal foundation for upholding the distinction between jus ad bellum and jus in bello. This chapter concludes that threats are generally not prohibited under IHL, and that the ICJ's claim to the contrary merely underlined the Court's blurring of the boundaries between jus ad bellum and jus in bello.

Transnational asymmetric armed conflict under international humanitarian law : key contemporary challenges

Eliav Lieblich with Owen Alterman. - Tel Aviv : Institute for National Security Studies, 2015. - 191 p. - Cote 345.25/322

This book addresses some of the major challenges that contemporary conflicts, particularly transnational asymmetric armed conflicts, present in the context of international humanitarian law. Against the growing interface between international humanitarian and human rights law, it discusses the normative framework regulating such conflicts as well as particular issues concerning the law on targeting, such as the application of the principles of distinction and proportionality in scenarios of asymmetric conflict. The book defines the different positions in international discourse regarding these dilemmas and seeks wherever possible to reconcile them, at the same time that it highlights instances where there can be no reconciliation. The volume attempts to map the approaches toward some of the most pressing issues on the regulation of contemporary armed conflicts.

The trial of prisoners of war by military courts in modern armed conflicts

Peter Rowe. - In: Contemporary challenges to the laws of war : essays in honour of professor Peter Rowe. - Cambridge : Cambridge University Press, 2014. - p. 313-336. - Cote 345.2/967

Under Geneva Convention III 1949, States have the obligation to ensure that POWs are tried by 'the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power'. The court envisaged is a military court and the Convention goes on to provide that such a court must 'offer the essential guarantees of independence and impartiality as generally recognised'. If a state is unable to provide an independent and impartial military court to try members of its own armed forces, it will fail to comply with its obligations under Geneva Convention III 1949 should it be faced with the need to try a prisoner of war for a crime committed before, or after, capture. On becoming parties to the Geneva Conventions 1949 it is unlikely that states considered the relevance of the form in which their own military courst operate in peacetime. No state would wish to admit that, should the situation arise, it would be unable to comply with its obligations under GCIII. Nevertheless, it may have to do so unless it can provide an independent and impartial military court for members of its own armed forces, before any international armed conflict, in which it is involved, takes place. This chapter considers how a military court could comply with the requiremetns of Geneva Convention III, should it be called upon to try a POW, and the consequences of failing to do so. It also addresses the relationship between IHL and international human rights law in this context.

Unacceptable risk : use of explosive weapons in populated areas through the lens of three cases before the ICTY

Maya Brehm ; ed. : Roos Boer, Frank Slijper. - Utrecht : Pax, November 2014. - 85 p. - Cote 341.67/59 (Br.)

This report examines how military experts assessed the acceptability of explosive weapon use in three cases brought before the Yugoslavia Tribunal (ICTY). The report finds that many experts considered weapons like unguided rockets and grenades inappropriate to use in a city. But the report also finds that existing legal rules for the protection of civilians leave much room for differing interpretations.

http://www.paxforpeace.nl/media/files/pax-rapport-unacceptable-risk.pdf

Upping the stakes to win the war against Somali piracy : justifications for a new strategy based on international humanitarian law

Andrew DeMaio. In: George Mason law review Vol. 22, issue 2, Winter 2015, p. 387-437. - Cote 347.799/157 (Br.)

Part I of this comment gives an overview of the history of piracy, showing how pirates were seen as military enemies, not just criminals. It also explains the origin of the phrase "hostis humani generis" and how states have historically treated pirates. Part II discusses changes in international law that switched pirates' status from military enemies to civilian criminals, but Part II also shows how piracy remained unique within international law. Part III traces the rise of Somali piracy in the twenty-first century and highlights some difficulties nations have encountered when trying to combat Somali piracy. Finally, Part IV argues that pirates may appropriately be defined as combatants and that states may wage war against pirates, their equipment, and infrastructure both on land and at sea.

http://www.georgemasonlawreview.org/wp-content/uploads/2015/02/DeMaio-Website.pdf

Use of chemical weapons in the Syrian conflicts and under international law

Stuart Casey-Maslen and Marina Mattirolo. - In: The war report : armed conflict in 2013. - Oxford : Oxford University Press, 2014. - p. 297-316. - Cote 355/1018 (2013)

After a quick review of chemical warfare in history, this chapter addresses the use of chemical weapons in Syria, looking at the status and content of international legal norms governing chemical warfare, particularly in non-international armed conflict (NIAC).

Use of nuclear weapons and protection of the environment during international armed conflict

Erik V. Koppe. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 247-268. - Cote 341.67/757

This chapter seeks to clarify the scope of the relevant rules of the law of armed conflict and to assess, in abstracto, the legality of the use of nuclear weapons under these rules. It first describes relevant rules of

treaty law, essentially Additional Protocol I of 1977. It then discusses protection of the environment during armed conflict under customary international law.

The use of nuclear weapons as a reprisal under international humanitarian law

Stuart Casey-Maslen. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 171-190. - Cote 341.67/757

This chapter opens with a definition of the notion of a reprisal (distinguishing it from other similar notions) and then assesses the conditions for the exercise of a lawful reprisal under jus in bello. It subsequently applies the principle of lawful reprisals to a series of hypothetical uses of nuclear weapons in an international armed conflict. The specific use of neclear weapons as a means of reprisal poses particular challenges to the applicable law. The chapter then turns to the (disputed) legality of reprisals under the rules applicable to armed conflicts of a non-international character. The conclusion seeks to summarise the law governing the use of nuclear weapons as a reprisal.

Use of nuclear weapons as an international crime and the Rome Statute of the International Criminal Court

Annie Golden Bersagel. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 221-243. - Cote 341.67/757

At the November 2009 Assembly of States Parties to the Rome Statute of the International Criminal Court (the Rome Statute), the Government of Mexico submitted a proposal to ban the use or threat of use of nuclear weapons as a war crime under Article 8 of the Rome Statute. Although the proposal was unsuccessful, it highlights a recurring debate over the status of nuclear weapons under international humanitarian law (IHL). The Rome Statute limits the International Criminal Court (ICC)'s jurisdiction over weapons prohibited under conventional and customary international humanitarian law. This chapter analyses the two provisions of the Rome Statute taht address the Statute's relationship to customary international law: articles 10 and 21. While these provisions attempt to establish a dividing line between the Statute and custom, the distinction is not entirely clear, and is not consistently respected in practice. The chapter then assesses the impact of the Rome Statute's weapons provision on the status of nuclear weapons under international law.

Use of nuclear weapons as genocide, a crime against humanity or a war crime

Stuart Casey-Maslen. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 193-220. - Cote 341.67/757

This chapter discusses the use of nuclear weapons as an international crime, focusing on genocide, war crimes and crimes against humanity, including three modes of liability for such crimes (joint criminal enterprise, joint criminal responsibility (according to control theory) and aiding and abetting an international crime). The Nuclear Weapons Advisory Opinion issued by the International Court of Justice (ICJ) in 1996 did not discuss any of these crimes in detail. The chapter begins by summarising international criminal law (ICL) and its relevance for the use of nuclear weapons. It then looks in turn at the extent to which use of nuclear weapons could be considered an act of genocide, a war crime or a crime against humanity, potentially engaging individual criminal responsibility under ICL not only for the adjudged principal of any violation, but also for a participant of a joint criminal enterprise, an individual sharing joint criminal responsibility or an individual as an aider or abettor.

The use of nuclear weapons under rules governing the conduct of hostilities

Stuart Casey-Maslen. - In: Nuclear weapons under international law. - Cambridge : Cambridge University Press, 2014. - p. 91-127. - Cote 341.67/757

This chapter focuses on the legality of the use of nuclear weapons under three core rules of international humanitarian law (IHL): distinction, proportionality and precautions in attacks. The International Court of Justice (ICJ)'s Nuclear Weapons Advisory Opinion, issued in 1996, is naturally a primary frame of reference. Given, however, that the Court did not discuss either proportionality or precautions in attacks, and that its assessment of distinction was limited to international armed conflict, discussion in this chapter is not restricted to the Court's assessment of the application of IHL. The chapter opens with a review of the fundamental principle whereby parties to an armed conflict do not have an 'unlimited right' to select and use means or methods of warfare. It then looks in turn at the IHL rules of distinction, proportionality and precautions in attack, considering their particular relevance for, and application to, the use of nuclear weapons.

Using targeted sanctions to end violations against children in armed conflict

David S. Koller and Miriam Eckenfels-Garcia. In: Boston university international law journal Vol. 33, issue 1, Spring 2015, p. 1-36. - Cote 362.7/25 (Br.)

This article examines how the United Nations Security Council can more effectively utilize the threat and use of sanctions to contribute to ending grave violations against children in situations of armed conflict. The article reviews the Security Council's efforts to address such violations and observes that the Council has so far made limited use of the possibility of sanctions. Drawing on lessons learned from the Council's general practice in applying sanctions, this article considers that sanctions can play an effective role in influencing the behavior of potential and actual perpetrators of grave violations against children, but that a number of difficult political, practical, and legal challenges first need to be overcome. Taking these challenges into account, this article offers concrete recommendations for deploying the threat and use of sanctions to help put an end to grave violations against children in situations of armed conflict.

http://www.bu.edu/ilj/files/2015/01/Koller-Using-Targeted-Sanctions.pdf

War crimes during armed conflicts at sea

Panagiotis Sergis. - In: La criminalité en mer = Crimes at sea. - Leiden ; Boston : M. Nijhoff, 2014. - p.523-553. - Cote 347.799/156 (Br.)

The aim of this chapter is to highlight the shortcomings of the concept of "war crimes" in naval warfare. The main obstacles, which prevent the criminalization process, are firstly the difficulty of accepting the existence of an "armed conflict" in the maritime milieu, secondly the underdevelopment of the law regulating naval warfare, and finally the intrinsic limitations in the symbiotic relationship between International Criminal Law (ICL) and International Humanitarian Law (IHL). They both negatively affect the legal evaluation of real-time operations, as will become evident later from the analysis of the Mavi Marmara incident in 2010.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39916.pdf

The war report : armed conflict in 2013

ed. by Stuart Casey-Maslen. - Oxford : Oxford University Press, 2014. - XLIX, 593 p. - Cote 355/1018 (2013)

This War Report provides detailed information on every armed conflict which took place during 2013, offering an unprecedented overview of the nature, range, and impact of these conflicts and the legal issues they created. In Part I, the Report describes its criteria for the identification and classification of armed conflicts under international law, and the legal consequences that flow from this classification. It sets out a list of armed conflicts in 2013, categorizing each as international, non-international, or a military occupation, with estimates of civilian and military casualties. In Part II, each of the 28 conflicts identified in Part I are examined in more detail, with an overview of the belligerents, means and methods of warfare, the applicable treaties and rules, and any prosecutions for, investigations into, or robust allegations of war crimes. Part III of the Report provides detailed thematic analysis of key legal developments which arose in the context of these conflicts, allowing for a more in-depth reflection on cross-cutting questions and controversies. The topics under investigation in this Report include US policy on drone strikes, the use of chemical weapons in Syria, the protection of persons with a disability, and national and international war crimes trials. The Report gives a full and accessible overview of armed conflicts in 2013, making it the perfect first port of call for everyone working in the field.

The warrior, military ethics and contemporary warfare : Achilles goes asymmetrical

Pauline M. Kaurin. - Farnham ; Burlington : Ashgate, 2014. - VIII, 143 p. - Cote 355/1050

When it comes to thinking about war and warriors, first there was Achilles, and then the rest followed. The choice of the term warrior is an important one for this discussion. While there has been extensive discussion on what counts as military professionalism, that is what makes a soldier, sailor or other military personnel a professional, the warrior archetype (varied for the various roles and service branches) still holds sway in the military self-conception, rooted as it is in the more existential notions of war, honor and meaning. In this volume, Kaurin uses Achilles as a touch stone for discussing the warrior, military ethics and the aspects of contemporary warfare that go by the name of 'asymmetrical war.' The title of the book cuts two ways-Achilles as a warrior archetype to help us think through the moral implications and challenges posed by asymmetrical warfare, but also as an archetype of our adversaries to help us think about asymmetric opponents.

Weaponising neurotechnology : international humanitarian law and the loss of language

Gregor Noll. In: London review of international law Vol. 2, issue 2, 2014, p. 201-231. - Cote 341.67/45 (Br.)

In recent years, research on military applications of neuroscience has grown in sophistication, raising the question as to whether states using weapon systems that draw on neuroscience are capable of applying international humanitarian law (IHL) to that use. This article argues that neuroweapons largely eliminate the role of language in targeting, render unstable the distinction between superior and subordinate, and ultimately disrupt the premise of responsibility under IHL. It concludes that it is impossible to assess whether future uses of these weapons will be lawful under IHL.

https://library.ext.icrc.org/library/docs/ArticlesPDF/39750.pdf

What implications do ad hoc/special agreements have for armed non-state actors ?

by Pushparajah Nadarajah. In: ITPCM international commentary Vol. 9, no. 33, July 2013, p. 47-50. - Cote 345.22/259 (Br.)

It has been observed that ad-hoc/special agreements with armed non-state actors (ANSAs) are one way of not only ensuring the protection of human beings but of upholding humanitarian and human rights norms in non-international armed conflict for two main reasons. First, these agreements give ANSAs a sense of ownership and responsibility that they may otherwise lack, since they do not participate in the international treaty-making process nor are they party to international treaties. Second, such agreements give ANSAs a degree of recognition both nationally and internationally to represent people whom they may be fighting for.

http://tinyurl.com/400-95-Nadarajah

When gravity fails : Israeli settlements and admissibility at the ICC

Eugene Kontorovich. In: Israel law review Vol. 47, issue 3, 2014, p. 379-399. - Cote 345.28/115 (Br.)

In the wake of the UN General Assembly's recent recognition of Palestinian statehood, the Palestinian government has made clear its intention to challenge in the International Criminal Court (ICC or the Court) the legality of Israeli settlements. This article explores jurisdictional hurdles for such a case. To focus on the jurisdictional issues, the article assumes for the sake of argument the validity of the merits of the legal claims against the settlements. The ICC only takes situations of particular 'gravity'. Yet settlements are not a 'grave breach' under the Rome Statute. No modern international criminal tribunal has ever prosecuted crimes that do not involve systematic violence and physical coercion. The ICC's gravity measure involves the number of persons killed; for settlements it would be zero. Indeed, the ICC Prosecutor triages situations by the numbers of victims; settlements do not appear to have direct individual victims. Finally, the ICC would at most have jurisdiction over settlement activity only from the date of Palestine's acceptance of jurisdiction. Settlement activity in this time frame would not immediately cross the ICC's gravity threshold.

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