BIBLIOGRAPHY
2nd 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 (https://library.icrc.org/library/) one of the most exhaustive resources for IHL research.

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

Origin and purpose of the IHL bibliography

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

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

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

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

How to use the IHL Bibliography

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

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

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

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

Access to document

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

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)

Advanced introduction to international humanitarian law

Robert Kolb. - Cheltenham ; Northampton : E. Elgar, 2014. - XI, 216 p.

The American Revolution 240 years later : was it a just war ?

guest ed. : Glenn Moots. In: Journal of military ethics Vol. 14, issue 1, April 2015, p. 1-97
http://www.tandfonline.com/toc/smil20/14/1#.VZoycOmJiUk

The Ashgate research companion to military ethics

ed. by James Turner Johnson and Eric D. Patterson. - Farnham ; Burlington : Ashgate, 2015. - XVII, 443 p.

Le droit applicable aux opérations de secours transfrontalières

Emanuela-Chiara Gillard. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 229-262
https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Framing the issues in moral terms II : the Kantian perspective on jus in bello

Brian Orend. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 131-141

International humanitarian law

Howard M. Hensel. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 153-167

International humanitarian law and multiculturalism

P. Ishwara Bhat. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 74-106

Just unmanned warfare : old rules for new wars ?

Jai Galliott. - In: Military robots : mapping the moral landscape. - Farnham ; Burlington : Ashgate, 2015. - p. 65-93

A short history of international humanitarian law

Amanda Alexander. In: European journal of international law = Journal européen de droit international Vol. 26, no. 1, February 2015, p. 109-138
http://ejil.oxfordjournals.org/content/26/1/109.full.pdf

II. Types of conflicts

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

The American way of bombing and international law : two logics of warfare in tension

Janina Dill. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 131-144

The American way of bombing : changing ethical and legal norms, from flying fortresses to drones

ed. by Matthew Evangelista and Henry Shue. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - VII, 315 p.

The Arab Spring : a testing time for the application of international humanitarian law

Claire Breen. In: New Zealand yearbook of international law Vol. 11, 2013, p. 159-173
https://library.ext.icrc.org/library/docs/ArticlesPDF/40880.pdf

Battlefield perspectives on the laws of war

by Michael W. Lewis. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 237-265

Clever or clueless ? : observations about bombing norm debates

Charles J. Dunlap. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 109-130
http://scholarship.law.duke.edu/faculty_scholarship/3372/

Cyber espionage or cyberwar ? : international law, domestic law, and self-protective measures

Christopher S Yoo. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 175-194

Cyberwar : law and ethics for virtual conflicts

ed. by Jens David Ohlin, Kevin Govern, Claire Finkelstein. - Oxford : Oxford University Press, 2015. - XXXII, 274 p.

Cyberwar versus cyber attack : the role of rhetoric in the application of law to activities in cyberspace

Laurie R Blank. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 76-101

Deception in the modern, cyber battlespace

William H Boothby. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 195-212

Drone wars : ethical, legal and strategic implications

U.C. Jha. - New Delhi : Knowledge World, 2014. - XVII, 284 p.

Drones and the dilemma of modern warfare

Samuel Issacharoff and Richard Pildes. - In: Drone wars : transforming conflict, law, and policy. - New York : Cambridge University Press, 2015. - p. 388-420

Drones and the law of armed conflict : the state of the art

Gleider I. Hernández. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 53-67

Ethics or politics? : the Palmer Commission report on the 2010 Gaza flotilla incident

Deane-Peter Baker. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 123-145

Guerre aérienne et droit international humanitaire

sous la dir. de Anne-Sophie Millet-Devalle ; Université de Nice-Sophia Antipolis. UFR Institut du droit de la paix et du développement. - Paris : Pedone, 2015. – 343 p.

Humanitarian law, human rights law and the bifurcation of armed conflict

Lawrence Hill-Cawthorne. In: International and comparative law quarterly Vol. 64, part 2, April 2015, p. 293-325
http://tinyurl.com/40671-hill-cawthorne

The law applies, but which law ? : a consumer guide to the laws of war

Charles Garraway. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 87-105

Legal and ethical implications of drone warfare

guest ed.: Michael J. Boyle. In: The international journal of human rights Vol. 19, no. 2, February 2015, p. 105-227 : graph.

The nature of war and the idea of "cyberwar"

Larry May. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 3-15

Non-international armed conflicts in international law

Yoram Dinstein. - Cambridge : Cambridge University Press, 2014. - XXXI, 264 p.

Re-thinking the boundaries of law in cyberspace : a duty to hack ?

Duncan B. Hollis. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 129-174

Regulating drones : are targeted killings by drones outside traditional battlefields legal ?

William C. Banks. - In: Drone wars : transforming conflict, law, and policy. - New York : Cambridge University Press, 2015. - p. 129-159

The rise of non-state actors in cyberwarfare

Nicolò Bussolati. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 102-126

Transnational conflicts and international law

Constantin von der Groeben. - Köln : Institute for International Peace and Security Law, 2014. - 179 p.

Triggering the law of armed conflict ?

by Geoffrey S. Corn. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 33-70

The war on terror and the laws of war : a military perspective

Geoffrey S. Corn... [et al.] ; foreword by Charles J. Dunlap. - Oxford [etc.] : Oxford University Press, 2015. - XXV, 277 p.

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Armed opposition groups and the right to exercise control over public natural resources : a legal analysis of the cases of Libya and Syria

Daniëlla Dam-de Jong. In: Netherlands international law review Vol. 62, issue 1, April 2015, p. 3-24
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Beyond attribution : responsibility of armed non-state actors for reparations in Northern Ireland, Colombia and Uganda

Luke Moffett. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 323-346
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The classification of groups belonging to a party to an international armed conflict

Sondre Torp Helmersen. In: Journal of international humanitarian legal studies Vol. 6, issue 1, 2015, p. 5-16
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Deterring jus in bello violations of superiors as a foundation for military justice reform

Robert Bejesky. In: Wayne law review Vol. 60, no. 2, Winter 2015, p. 395-467
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Establishing direct responsibility of armed opposition groups for violations of international humanitarian law ?

Veronika Bílková. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 263-284

Establishing the direct responsibility of non-state armed groups for violations of international norms : issues of attribution

Annyssa Bellal. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 304-322
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How international humanitarian law treaties bind non-state armed groups

Daragh Murray. In: Journal of conflict and security law Vol. 20, no. 1, Spring 2015, p. 101-131
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International responsibility of armed opposition groups : lessons from state responsibility for actions of armed opposition groups

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International responsibility of the AOG in international law : is there a case for an African approach ?

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Introduction : the challenges of investigating operational incidents

David W. Lovell. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 1-19

The rise of non-state actors in cyberwarfare

Nicolò Bussolati. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 102-126

Self-determination and terrorism : creating a new paradigm of differentiation

Andrew Coffin. In: Naval law review Vol. 63, 2014, p. 31-66
http://tinyurl.com/40536-Coffin

Unlawful combatants : a genealogy of the irregular fighter

Sibylle Scheipers. - Oxford : Oxford University Press, 2015. - XIII, 269 p.

IV. Multinational forces

A deterrent effect of domestic German prosecutions for crimes committed by German military in Afghanistan ? : protecting civilians from inadvertent attacks by friendly foreign forces

Jan Nemitz. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 166-199

The effects of international human rights law on the legal interoperability of multinational military operations

Jerrod Fussnecker. In: The army lawyer May 2014, p. 7-20
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The legality of the use of private military and security companies in UN peacekeeping and peace enforcement operations

Mohamad Ghazi Janaby. In: Journal of international humanitarian legal studies Vol. 6, issue 1, 2015, p. 147-187
http://tinyurl.com/p5zj34k

Peace forces at war : implications under international humanitarian law

Tristan Ferraro... [et al.]. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 108, 2014, p. 149-163

The United Nations in Afghanistan : policy as protection ?

A. Niki Ganz. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 136-165

V. Private entities

International corporate criminal liability for private military and security companies : a possibility ?

Pauline Collins. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 177-202

International legal personality, collective entities, and international crimes

Joanna Kyriakakis. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 79-104

The legality of the use of private military and security companies in UN peacekeeping and peace enforcement operations

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The privatized art of war : private military and security companies and state responsibility for their unlawful conduct in conflict areas

Evgeni Moyakine. - Cambridge [etc.] : Intersentia, 2015. - XVI, 477 p.

Responsibilities of armed opposition groups and corporations for violations of international law and possible sanctions

Jordan J. Paust. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 105-123

Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings

ed. by Noemi Gal-Or, Cedric Ryngaert and Math Noortmann. - Leiden ; Boston : Brill Nijhoff, 2015. - XXIV, 381 p.

VI. Protection of persons

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

About responsibility

Wolfgang Schomburg. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 34-52

The African contribution to the protection of internally displaced persons : a commentary on the 2009 Kampala Convention

Moetsi Duchatellier and Catherine Phuong. - In: Research handbook on international law and migration. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 650-667
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Article 1F(a) exclusion and the determination of those who are "undeserving" of convention refugee status in international law

James C. Simeon. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 273-311

Attaques sur la mission médicale : aperçus d'une réalité polymorphe, le cas de Médecins Sans Frontières

Caroline Abu SaDa, Françoise Duroch, Bertrand Taithe. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 197-218
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Bombing civilians after World War II : the persistence of norms against targeting civilians in the Korean war

Sahr Conway-Lanz. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 47-63

Le cadre juridique applicable à l'insécurité et à la violence touchant les soins de santé dans les conflits armés et autres situations d'urgence

Alexander Breitegger. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 43-91
https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

The care of wounded and sick and the protection of medical personnel in the time of armed conflicts

Mohammad Naqib Ishan Jan and Abdul Haseeb Ansari. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 47-73

Conflict-related sexual violence : achievements and challenges in international criminal law and the role of the military

By A. L. M. de Brouwer. In: Militair-rechtelijk tijdschrift Vol. 108, issue 2, 2015, p. 53-73
https://library.ext.icrc.org/library/docs/ArticlesPDF/40883.pdf

Le droit applicable aux opérations de secours transfrontalières

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https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Enforcing and strengthening noncombatant immunity

James Turner Johnson. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 307-318

How much is too much Pro Patria ? : assessing the limits of a chaplain's role as adviser to the command

Rebecca Ahdoot. In: Naval law review Vol. 63, 2014, p. 1-30
http://tinyurl.com/40535-Ahdoot

International humanitarian law and multiculturalism

P. Ishwara Bhat. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 74-106

International humanitarian law and the protection of internally displaced persons

Stephane Ojeda. - In: Research handbook on international law and migration. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 634-649

Justice and protection of civilians in armed conflicts through the enforcement of the international legal obligations : the case of the Gaza strip

Davide Tundo. - In: Rethinking international law and justice. - Farnham ; Burlington : Ashgate, 2015. - p. 63-80
https://library.ext.icrc.org/library/docs/ArticlesPDF/40724.pdf

The legal consequences of faits accomplis : reconciling victims' and settlers' rights following occupation

Karine Mac Allister. In: Journal of international humanitarian legal studies Vol. 6, issue 1, 2015, p. 17-63 : tabl.
http://tinyurl.com/odwepc6

Ne peut-il jamais être excessif de tuer incidemment des médecins militaires ?

Laurent Gisel. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 143-160
https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Protecting children in armed conflict through complementary processes of political engagement and international criminal law

David S. Koller. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 71-100

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Safety and protection of humanitarian workers

Agnieszka Bienczyk-Missala and Patrycja Grzebyk. - In: The humanitarian challenge : 20 years European Network on Humanitarian Action (NOHA). - London [etc.] : Springer, 2015. - p. 221-252

La santé dans les conflits armés : une approche sous l'angle des droits de l'homme

Katherine H. A. Footer and Leonard S. Rubenstein. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 93-116
https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Sexual violence against men in armed conflicts : insights from International Criminal Tribunal for former Yugoslavia and the War Crimes Chamber of the State Court of Bosnia and Herzegovina

Ioannis P. Tzivaras. In: Annuaire de La Haye de droit international = Hague Yearbook of international law Vol. 26, 2013, p. 57-81

Target practice : do United Nations sanctions protect civilians against Al-Qaida ?

Leah Campbell. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 101-135

Targeting civilians and U.S. strategic bombing norms : plus ça change, plus c'est la même chose ?

Neta C. Crawford. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 64-86

The United Nations in Afghanistan : policy as protection ?

A. Niki Ganz. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 136-165

VII. Protection of objects

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

Armed conflict and environmental damage

U C Jha. - New Delhi : Vij, 2014. - XII, 362 p.

Armed opposition groups and the right to exercise control over public natural resources : a legal analysis of the cases of Libya and Syria

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The bombing of dual-use targets

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VIII. Detention, internment, treatment and judicial guarantees

Detention of combatants and the war on terror

by James A. Schoettler. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 131-191

Do the good intentions of European human rights law really pave the road to IHL hell for civilian detainees in Occupied Territory ?

Nobuo Hayashi. In: Journal of conflict and security law Vol. 20, no. 1, Spring 2015, p. 133-163
http://jcsl.oxfordjournals.org/content/20/1/133.full.pdf

Interrogation and treatment of detainees in the global war on terror

by Richard B. "Dick" Jackson. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 101-130

Is forced feeding in response to hunger strikes a violation of the prohibition of torture and cruel, inhuman, or degrading treatment ?

Walter Ruiz... [et al.]. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 108, 2014, p. 199-217

Treatment of prisoners and detainees

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IX. Law of occupation

Do the good intentions of European human rights law really pave the road to IHL hell for civilian detainees in Occupied Territory ?

Nobuo Hayashi. In: Journal of conflict and security law Vol. 20, no. 1, Spring 2015, p. 133-163
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The legal consequences of faits accomplis : reconciling victims' and settlers' rights following occupation

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The maxim of Thucydides : transparency, fact-finding, and accountability in East Timor

Clinton Fernandes. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 51-70

Protest and its suppression in the Occupied Palestinian Territories and in Turkey

Shlomit Stein, Felix Petersen. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 28, 1/2015, p. 4-12

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X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

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XII. Implementation

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

The African Court on Human and Peoples' Rights and the use of provisional measures for the protection of the civilian population in armed conflict situations

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XIII. International human rights law

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

The African Court on Human and Peoples' Rights and the use of provisional measures for the protection of the civilian population in armed conflict situations

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XV. Contemporary challenges

(Terrorism, DPH, cyber warfare, asymetric war, etc.)

Battlefield perspectives on the laws of war

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YUGOSLAVIA

About responsibility

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The crime of indiscriminate attack and unlawful conventional weapons : the legacy of the ICTY jurisprudence

Christian Ponti. In: Journal of international humanitarian legal studies Vol. 6, issue 1, 2015, p. 118-146
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Disproportionate attacks in international criminal law

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All with Abstracts

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This chapter is the text of Wolfgang Schomburg's commentary "On responsibility", which was presented during the 2013 Joakim Dungel Lectures in International Justice, in which Schomburg addresses several aspects of criminal responsibility in national and international law. He posits that, in national criminal law, individual criminal responsibility may be attached to a failure to act if there is a duty under the law to act such that omission is equated to committing a crime. The international law concept of the responsibility to protect seeks to address the international community's efforts to adequately prevent and punish genocide, war crimes, and crimes against humanity. The notion of transitional justice describes the idea of addressing, conceptualising, and clarifying the necessary steps to regain peace and to work on reconciliation. The chapter concludes by addressing the concept of command responsibility in international criminal law, in particular in light of the Oric case before the International Criminal Tribunal for the former Yougoslavia.

Advanced introduction to international humanitarian law

Robert Kolb. - Cheltenham ; Northampton : E. Elgar, 2014. - XI, 216 p. - Cote 345.2/977

Robert Kolb explores the field of international humanitarian law through questions – which are at times challenging and controversial – in order to get to the very essence of the subject and give a fresh perspective. The result is an exposition both of the law as it stands, through its written and unwritten rules, and also of the uncertainties, gaps, controversies and practical problems which have arisen. IHL is revealed as a living tool, an ever-adapting means to an ever-remaining need of protection during times of armed conflict. Reflecting on current questions regarding the structure of the law, this concise and readable book offers a thought-provoking view of the system as a whole and its practical working. It covers the main principles, applicability issues and implementation of humanitarian law, as well as shedding light on the challenges ahead.

The African contribution to the protection of internally displaced persons : a commentary on the 2009 Kampala Convention

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With the adoption on 22 October 2009 of the African Union Convention for the Protection and Assistance to Internally Displaced Persons in Africa - also known as the Kampala Convention - Africa has acted as a pioneer in the protection of internally displaced persons (IDPs). This convention, which entered into force on 6 December 2006, is the first, and for now only, continent-wide legally binding instrument on the protection of IDPs. The article recalls the process that led to the adoption of the Kampala Convention and the sources and initiatives upon which it was built. It describes the comprehensive framework of protection provided and the responsibilities it creates for the actors involved in the displacement phenomenon (States, non-state armed groups, the African Union and humanitarian actors). The authors conclude by presenting the challenges to overcome in order to successfully implement the Convention.

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The African Court on Human and Peoples' Rights and the use of provisional measures for the protection of the civilian population in armed conflict situations

Frédéric Bostedt. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 331-382. - Cote 345.2/979

In this chapter Frédéric Bostedt discusses the efforts of the African Court on Human and People's Rights in 2011 to protect Libyan persons demonstrating against the regime of Colonel Muamar Gadaffi. Holding that there existed a situation of extreme gravity and urgency, the African Court issued a provisional measure ordering Libya to stop these actions. Bostedt utilises this case as a starting point to analyse how and under what circumstances provisional measures by human rights courts can be used to protect civilians in the case of an armed conflict or similar emergency situations. He posits that human rights courts have generally

developed an adequate procedure to quickly react to a situation and order provisional measures. The substantive requirements for ordering provisional measures do not appear to be high hurdles in a situation of armed conflict, and the requirements of gravity, urgency, and irreparable harm may even be presumed to exist in such situations. Although the scope of provisional measures makes them a suitable tool to protect civilians in armed conflict situations, their binding nature is no guarantee for compliance. The implementation of a provisional measure depends on the state concerned, and the political pressure by supervisory bodies is the only means available for compelling a state to comply.

The American Revolution 240 years later : was it a just war ?

guest ed. : Glenn Moots. In: Journal of military ethics Vol. 14, issue 1, April 2015, p. 1-97

Contient notamment : The declaration of the United Colonies : America's first just war statement / E. Patterson and N. Gill. - The American Revolution : not a just war / G. Frazer. - A contagion of violence : the ideal of jus in bello versus the realities of fighting on the New York frontier during the revolutionary war / J. K. Martin. - Jus in bello, rape and the British army in the American revolutionary war / H. Hoock.

http://www.tandfonline.com/toc/smil20/14/1#.VZoycOmJiUk

The American way of bombing and international law : two logics of warfare in tension

Janina Dill. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 131-144. - Cote 341.226/69

This chapter shows that there are two fundamentally different notions of what the distinction between civilians and combatants in war ought to look like. One is exemplified in recent U.S. doctrine, specifically air force doctrine, which is inspired by a long line of strategic thinking about air power. The other understanding of distinction emerges from a systematic interpretation of the positive international law that defines a legitimate target of attack as codified in the First Additional Protocol to the Geneva Conventions of 3 June 1977. The chapter demonstrates that these diverging notions of what it means to properly distinguish in war are indicative of the struggle between two fundamentally different visions for how combat operations ought to be conducted. The law, when interpreted systematically, aims to regulate warfare by allowing only the targeting of that which needs to be open to engagement if a competition between two militaries is to proceed. It envisions warfare to follow a logic of sufficiency. The alternative approach to distinction prescribes attacking what helps end the war most quickly and achieve its political goals most directly. It is based on a logic of efficiency. The two logics have radically different implications for which parts of a modern society can become objects of attack from the air.

The American way of bombing : changing ethical and legal norms, from flying fortresses to drones

ed. by Matthew Evangelista and Henry Shue. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - VII, 315 p. - Cote 341.226/69

Aerial bombardment remains important to military strategy, but the norms governing bombing and the harm it imposes on civilians have evolved. The past century has seen everything from deliberate attacks against rebellious villagers by Italian and British colonial forces in the Middle East to scrupulous efforts to avoid "collateral damage" in the counterinsurgency and antiterrorist wars of today. This book brings together prominent military historians, practitioners, civilian and military legal experts, political scientists, philosophers, and anthropologists to explore the evolution of ethical and legal norms governing air warfare. Focusing primarily on the United States—as the world's preeminent military power and the one most frequently engaged in air warfare, its practice has influenced normative change in this domain, and will continue to do so—the authors address such topics as firebombing of cities during World War II; the atomic attacks on Hiroshima and Nagasaki; the deployment of airpower in Iraq, Afghanistan, and Libya; and the use of unmanned drones for surveillance and attacks on suspected terrorists in Pakistan, Yemen, Sudan, Somalia, and elsewhere.

An analysis of whether the actions of the 7th cavalry at Wounded Knee Creek on 29 December 1890 were crimes under the applicable law of the time

Grant Dawson. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 13-33. - Cote 345.2/979

This chapter is the text of a lecture given by Grant Dawson at the Inaugural Joakim Dungel Lectures in International Justice on 25 May 2012. The lecture is an attempt to complete a piece of Joakim Dungel's

unfinished scholarship. The chapter first sets the factual and historical stage for the events that unfolded on 20 December 1890 in present day South Dakota, whereby a number of Native Americans and members of the 7th Cavalry of the U.S. Army were killed. The relevant domestic and international law that applied to the situation is identified. This law is then applied to the facts of the incident, in order to ascertain whether any criminal liability could have been assigned to the actions of the 7th Cavalry, especially for the killing of women and children. The chapter concludes that incidents like Wounded Knee can serve as didactic tools to prevent such killings in the future.

The applicability of international law standards to the sanctions of the Security Council

Adil Sahban. In: Annuaire de La Haye de droit international = Hague Yearbook of international law Vol. 26, 2013, p. 239-315

This article aims at defining economic sanctions generally, before presenting the international law standards applicable to the ones adopted by the Security Council. Two preliminary assessments can be made. Firstly, economic sanctions constitute a relatively homogeneous notion. Secondly, the predominant conception of the law of economic sanctions adheres to a low level of legal constraint, especially if compared with other areas of international law such as the law of armed conflict. This predominant view is based on a debatable conception of the powers of the Council, which is itself premised on a maximalist conception of the notion of international community. It remains true that the recent debate on "smart sanction" has resulted in increasing significantly the level of protection of fundamental rights, but the understanding that is presented in this piece is that this debate has focused on due process guarantees applicable to individual sanctions while an ambiguous stance remains towards embargos. This practically results in implicitly validating the idea that embargos are not regulated by legal standards, and that the evolution of the practice of the Council is only a welcome exercise of its discretionary powers rather than the recognition of preexisting legal obligations. This article takes the view that strict legal standards apply to economic sanctions under the UN Charter, the Rome Statute, the Genocide Convention, and several decisions of the ICJ. It proposes an approach based on guiding principles to ensure that sanctions respect jus cogens prohibitions and remain effective at the same time. On the institutional side, it underlines that the evolutionary reading of the UN Charter that has led to conferring new powers to the Council has been a selective one, since no similar approach has been followed concerning the ICJ and UN technical agencies. Lastly, it underlines the progress made at the European level in the protection of fundamental rights and suggests an extension of the same logic of inter-institutional cooperation beyond European borders.

The application and interpretation of international humanitarian law and international criminal law in the exclusion of those refugee claimants who have committed war crimes and/or crimes against humanity in Canada

James C. Simeon. In: International journal of refugee law Vol. 27, issue 1, March 2015, p. 75-106. - Cote 325.3/501 (Br.)

Refugee status determination is difficult by its very nature but it becomes even more complex when the issue of exclusion under article 1F(a) is raised and it is alleged that there are 'serious reasons for considering' that the applicant is 'guilty of having committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments that have been drawn to make provision for such crimes'. The 'War Crimes and Refugee Status' Research Project's Canadian jurisprudence dataset, consisting of 98 article 1F(a) cases, reveals that more than 91 per cent of these cases cite international humanitarian law (IHL) or international criminal law (ICL), but only 13 per cent of the cases cite UNHCR guidelines or directives. Interestingly, nearly two-thirds, 65.8 per cent, of these appeal cases are denied. Five of the most frequently cited judgments in this sample of cases were Ramirez, Moreno, Sivakumar, Harb, and Pushpanathan, in that order. After analyzing these five appeal court judgments in depth, seven legal principles were identified respecting the application and interpretation of IHL and ICL in Canada. The new test for exclusion under article 1F(a) in Canada, 'voluntary, significant and knowing contribution,' leaves a broad area of discretion for refugee law decision makers. This will cause, undoubtedly, legal contention in the appellate courts as the article 1F(a) cases make their way through the judicial process in Canada.

The application of the American and European conventions of human rights in time of war or other public emergencies : some highlights and comparisons

Pablo Antonio Fernández-Sánchez and Francesco Seatzu. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 1-46

The authors survey the application of modern International Human Rights Law (IHRL) and International Humanitarian Law (IHL) as treated by both the Inter-American Court of Human Rights (ACtHR) and the European Court of Human Rights (ECtHR). The authors compare and contrast the idiosyncrasies of each court's application of both sources of law to states of public emergency. Recognizing that both IHL and IHRL may have overlapping application, the authors trace the courts' movement from a regime of lex specialis, in

which IHL was more likely to be applied in states of emergency, to one of complementarity. The authors then consider each courts' governing standards with regards to non-derogable rights in times of war or public emergencies under Articles 15 (European) and 27 (Inter-American) of each court's governing Conventions. While the both Courts are in dialogue on non-derogable rights, the authors' analysis finds the American Court more strictly defines "emergency," attempting to limit the periods in which an emergency can be defined, and has generally attempted to expand its perspective with regard to relevant international law in comparison to the European Court. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

The Arab Spring : a testing time for the application of international humanitarian law

Claire Breen. In: New Zealand yearbook of international law Vol. 11, 2013, p. 159-173. - Cote 345.26/272 (Br.)

This brief note begins with the basics of international humanitarian law (IHL) - its raison d'être and when it applies. It then considers the violence in Libya and Syria respectively. It notes that the violence in Libya quickly passed the threshold for the application of the humanitarian rules governing non-international armed conflict and almost as quickly evolved to include an international armed conflict with the commencement of the United Nations authorised North Atlantic Treaty Organisation military intervention. In contrast, determinations that the violence in Syria comprised a non-international armed conflict were slow and the ongoing high level of civilian casualties suggests the relevant rules of IHL are notable more for their breach than any observance. This notes concludes with some comments on the residual utility of IHL rules as a means to hold alleged violators (both States and individuals) to account.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40880.pdf

Armed conflict and environmental damage

U C Jha. - New Delhi : Vij, 2014. - XII, 362 p. - Cote 363.7/159

This book provides details of the environmental destruction caused during international and non-international armed conflicts and argues that the existing legal regime for the protection of the environment during armed conflict requires substantial modification. It puts forward the view that though it is inconceivable to impose an absolute ban on environmental damage during military operations, strengthening and clarifying the existing laws protecting the environment in times of conflict, and enforcing environment-friendly practices among military forces could go a long way in protecting natural assets of our earth.

Armed opposition groups and the right to exercise control over public natural resources : a legal analysis of the cases of Libya and Syria

Daniëlla Dam-de Jong. In: Netherlands international law review Vol. 62, issue 1, April 2015, p. 3-24. - Cote 363.7/161 (Br.)

This article examines whether international law provides a legal basis for the exploitation of natural resources by armed opposition groups. This issue is particularly pertinent in light of the ongoing armed conflict in Syria — and the 2011 armed conflict in Libya, where third states are looking for ways to provide non-military support to the opposition movement, including by allowing it to export oil. This article examines three potential legal bases for a right for armed opposition groups to exploit natural resources: international humanitarian law, the recognition of the armed opposition group as the representative of the state and its recognition as the representative of the people. While this article concludes that current international law does not allow armed opposition groups to exploit natural resources, it argues in favour of applying the concept of usufruct from international occupation law to internal armed conflicts. On the basis of this concept, highly organised armed opposition groups would be granted a right to exploit the natural resources situated within the territory under their control for the purpose of establishing and maintaining a civilian administration.

http://link.springer.com/content/pdf/10.1007%2Fs40802-015-0007-0.pdf

Article 1F(a) exclusion and the determination of those who are "undeserving" of convention refugee status in international law

James C. Simeon. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 273-311

This article argues that armed conflict is so widespread and endemic in the world today that it is reasonable to expect that Article 1F(a) of the 1951 Convention relating to the status of refugees - which obliges States to deny the benefits of refugee status to certain persons who would otherwise qualify as refugees - would be

used more frequently than appears to the be the case. The article provides a broad overview of the 1951 Convention and of the exclusion clauses. It reviews some of the basic principles of international humanitarian and criminal law as well as how international refugee law intersects with these other branches of public international law. It concludes with a description of the "War crimes and refugee status" research project and a review of how refugee applicants should be excluded from refugee status under Article 1F(a).

The Ashgate research companion to military ethics

ed. by James Turner Johnson and Eric D. Patterson. - Farnham ; Burlington : Ashgate, 2015. - XVII, 443 p. - Cote 345.2/975

Subjects are organized by three major perspectives on the use of military force: the decision whether to use military force in a given context, the matter of right conduct in the use of such force, and ethical responsibilities beyond the end of an armed conflict. Treatment of issues in each of these sections takes account of both present-day moral challenges and new approaches to these and the historical tradition of just war. Military ethics, as it has developed, has been a particularly Western concern and this volume reflects that reality. However, in a globalized world, awareness of similarities and differences between Western approaches and those of other major cultures is essential. For this reason the volume concludes with chapters on ethics and war in the Islamic, Chinese, and Indian traditions, with the aim of integrating reflection on these approaches into the broad consideration of military ethics provided by this volume.

Attaques sur la mission médicale : aperçus d'une réalité polymorphe, le cas de Médecins Sans Frontières

Caroline Abu SaDa, Françoise Duroch, Bertrand Taithe. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 197-218

Cet article se propose de faire une analyse préliminaire des questions liées aux types de violence à l'encontre des missions médicales humanitaires. Partant du constat que la violence peut engendrer un certain désarroi pour une organisation médicale comme Médecins Sans Frontières, dont le passé reste cependant riche d'enseignements et de réponses multiples et sporadiques à ces événements, cet article propose une analyse plus fine des termes et des situations de violence afin de contribuer à l'élaboration d'une campagne de recherche et, dans un deuxième temps, de sensibilisation à ces phénomènes complexes.

https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Banning autonomous killing : the legal and ethical requirement that humans make near-time lethal decisions

Mary Ellen O'Connell. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 224-236. - Cote 341.226/69

Scientific research on fully autonomous weapons systems is moving rapidly. At the current pace of discovery, such fully autonomous systems will be available to military arsenals within a few decades, if not a few years. These systems operate through computer programs that will both select and attack a target without human involvement after the program is activated. Looking to the law governing resort to military force, to relevant ethical considerations, as well as the practical experience of ten years of killing using unmanned systems (drones), the time is ripe to discuss a major multilateral treaty banning fully autonomous killing. Current legal and ethical principles presume a human conscience bearing on decisions to kill. Fully autonomous systems will have the capacity to remove a human conscience not only to extreme distance from a target -- as drones do now -- but also to remove the human conscience from the target in time. The computer of a fully autonomous system may be programmed years before a lethal operation is carried out. Without nearer term decisions by human beings, accountability becomes problematic and without accountability, the capacity of law and ethics to restrain is lost.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2313737

Battlefield perspectives on the laws of war

by Michael W. Lewis. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 237-265. - Cote 303.6/192 (2015)

This chapter addresses the challenges of communicating the laws of war to the combatants who are required to abide by them by examining some of the complex challenges faced by international humanitarian law (IHL) and its tactical implementation as well as how those challenges are overcome in the current environment. The author argues that for IHL to be effective on day-to-day operations for the military, particularly in the context of the US' global war on terror, it must be successfully translated from words on

paper into core beliefs and principles that alter behavior on the battlefield. Moreover, this chapter addresses the challenges of bringing legal principles closer to an environment where the rapidity of the decision-making process might make the difference between life and death. In addition, it explores the recent developments in the conduct of battlefield operations with regards to improvements in air power through the use of drones and in artillery. By describing the process by which combatants internalize the law of armed conflict, this chapter offers suggestions about how law is best injected into the battlefield. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Beyond attribution : responsibility of armed non-state actors for reparations in Northern Ireland, Colombia and Uganda

Luke Moffett. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 323-346. - Cote 345/679

This paper explores the responsibility of armed non-state actors for reparations to victims. Traditionally international law has focused on the responsibility of the state, and more recently the responsibility of convicted individuals before the International Criminal Court, to provide reparations for international crimes. Yet despite the prevalence of internal armed conflict over the past few decades, there responsibility of armed groups for reparations has been neglected in international law. Although there is a tentative emerging basis for armed groups to provide reparations under international law, such developments have not yet crystallized into hard law. However, when considering the more substantive practice of states in Northern Ireland, Colombia and Uganda, a greater effort can be discerned in ensuring that such organizations are responsible for reparations. This paper finds that not only can armed non-state actors be held collectively responsible for reparations, but due to the growing number of internal armed conflict they can play an important role in ensuring the effectiveness of reparations in remedying victims' harm. Yet, finding armed groups responsible for reparations is no panacea for accountability, due to the nature of armed conflicts, responsibility may not be distinct, but overlapping and joint, and such groups may face difficulties in meeting their obligations, thus requiring a holistic approach and subsidiary role for the state.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2279615

Bombing civilians after World War II : the persistence of norms against targeting civilians in the Korean war

Sahr Conway-Lanz. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 47-63. - Cote 341.226/69

In this chapter Sahr Conway-Lanz argues that, in spite of the high number of civilian casualties caused by bombing campaigns of World War II and the Korean War, the moral prohibition against targeting civilians did not disappear during this time in the United States. American leaders continued to claim that US air power was being used in a discriminate manner and almost never advocated the purposeful targeting of civilian populations as such. A certain elasticity in the definition of "military targets" and the emphasis placed on intention in rationalizing harm to civilians may account for the high number of civilian casualties during the Korean War. The chapter also recalls efforts to strengthen the protection of civilians and shield them from direct attack both through the revision of U.S. military manuals and the development of international humanitarian law.

The bombing of dual-use targets

Paul Robinson. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 201-211. - Cote 345.2/975

During the Gulf War of 1990-1 and the war against Yugoslavia in 1999, air forces of the U.S-led coalitions attacked dual-use targets: infrastructure such as electrical generation and transmission systems, bridges and other transportation sites, communications facilities, and other infrastructure with both civilian and military application. Some hold that many dual-use targets should be put off-limits to attack in future conflicts due to the effect on civilians whereas others argue that attacks on dual-use facilities offer an opportunity to wage war more efficiently and humanely than by targeting only fielded military forces. This chapter summarizes the arguments made for and against more restrictive rules on targeting dual-use facilities and puts these in the context of the broader principles of jus in bello. To this end, it first analyzes that constitutes a dual-use target ; second, it looks at what defines a military target and makes somebody or something liable to attack ; and third, it shows how differing concepts of liability play into the debate about dual-use targets.

Le cadre juridique applicable à l'insécurité et à la violence touchant les soins de santé dans les conflits armés et autres situations d'urgence

Alexander Breitegger. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 43-91

Respecter et protéger les blessés et les malades, leur prodiguer des soins, telle est l'idée qui a donné naissance au Mouvement international de la Croix-Rouge et du Croissant-Rouge, et au développement du droit international humanitaire. Le problème qui se pose dans les conflits armés contemporains et autres situations d'urgence, ne réside pas tant dans l'absence de règles internationales que dans la mise en œuvre du droit international humanitaire et du droit international des droits de l'homme qui forment le cadre complémentaire qui régit cette question. Sur fond de diverses manifestations de violence observées par le CICR sur le terrain et de consultations d'experts organisées dans le cadre du projet « Les soins de santé en danger », l'article présente les points communs entre ces deux régimes juridiques, notamment : l'obligation de fournir et de faciliter l'accès à des soins de santé dispensés en toute impartialité ; les interdictions d'attaquer les blessés et malades, et les prestataires de soins de santé ; les interdictions d'entraver arbitrairement l'accès aux soins de santé ; les interdiction de harceler le personnel de santé, en violation de l'éthique médicale ; ou les obligations positives d'assurer des secours médicaux essentiels et une infrastructure de santé et de protéger les prestataires de soins contre les ingérences violentes par d'autres. Enfin, l'article examine les domaines dans lesquels la mise en œuvre du droit international humanitaire et du droit international des droits de l'homme existants s'impose, notamment dans les cadres normatifs, la doctrine et la pratique militaires à l'échelon national, ainsi que la formation du personnel de santé à ces cadres juridiques internationaux et à l'éthique médicale.

https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

The care of wounded and sick and the protection of medical personnel in the time of armed conflicts

Mohammad Naqib Ishan Jan and Abdul Haseeb Ansari. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 47-73

Jan and Ansari outline the historical development of rules relating to the care of the wounded, sick, and those who treat them, by drawing on the Geneva Conventions (GCs), the Hague Conventions (HCs) and the Additional Protocol (AP). The authors state that “wounded” and “sick” are loosely defined to promote greater inclusivity under these categories – for instance, they suggest that individuals who will soon require medical attention, such as expectant mothers, are also encompassed. Medical personnel are broadly defined in Article 8 of AP 1 as any exclusive providers of medical services, and are required to wear identifying clothing. The authors argue that the GCs and AP impose a duty to both respect and protect all three groups. “Respect" means to spare, while “protect” means to offer assistance. Thus, the authors conclude, a wounded enemy cannot be attacked and must be helped. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Clashing over drones : the legal and normative gap between the United States and the human rights community

Daniel R. Brunstetter and Arturo Jimenez-Bacardi. In: The international journal of human rights Vol. 19, no. 2, February 2015, p. 176-198. - Cote 345.26/252

The use of lethal drones by the United States (US) marks a paradox insofar as the US government claims that these strikes respect human rights, while the human rights community – including Human Rights Watch and Amnesty International – raise serious concerns that challenge this claim. Would reconciling these seemingly mutually exclusive human rights narratives regarding drone use lead to the formation of a more robust regime that would provide greater respect for human rights than in the current state of legal and moral ambiguity? In order to explore this question, we examine the evolution of these conflicting discourses through three key frames of legitimation – strategic, legal and normative. We argue that the US government has moved from a strategic-legal framework characterised by a focus on strategic objectives and a permissive view of international humanitarian law to a legal-normative discourse that, by incorporating the principles of just war theory, has restrained the strategic scope of the drone programme while reinforcing the legitimacy of international humanitarian law as the paradigm of choice. Comparatively, we assert that the human rights community has pursued a human rights-centric approach that rejects the more permissive standards of an international humanitarian law-centric legal paradigm, while pushing a normative agenda that seeks to enhance respect for human rights under both international humanitarian law and international human rights law. This includes rejecting the US interpretation of just war principles and appealing to a broader understanding of the right to life norm. Taking these ‘right to life’ considerations seriously raises concerns about whether drones can ever satisfy human rights. In the conclusion, we explore how combining certain elements of these narratives may contribute to an emerging norm on drone use.

The classification of groups belonging to a party to an international armed conflict

Sondre Torp Helmersen. In: Journal of international humanitarian legal studies Vol. 6, issue 1, 2015, p. 5-16

It has been argued that groups of fighters who “belong” to a party to an international armed conflict without fulfilling the requirements of Article 4(A)(2) of Geneva Convention III should be classified as combatants, rather than as civilians. This article questions the reasoning put forward in support of that view, by showing that the arguments may be partly circular, incomplete, and debatable.

http://tinyurl.com/peae7tr

Clever or clueless ? : observations about bombing norm debates

Charles J. Dunlap. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 109-130. - Cote 341.226/69

This chapter gives a military perspective on norms governing airpower. The author underlines the importance of the knowledge of past conflicts to inform the debate, all the while acknowledging that with respect to a highly technological means of warfare such as aerial bombardment, the value of historical examples is temporally limited. He discusses what he calls the "legal cacophony" governing aerial bombardment and shows some sympathy for the position that civilian morale is a legitimate focus in war, calling it "a key element of victory in modern war". He also questions the concept of civilian innocence and the fact that combatants are expected to take more risk than civilians. These ideas are further developed in a discussion of the use of airpower in counterinsurgency operations.

http://scholarship.law.duke.edu/faculty_scholarship/3372/

Compensation claims of individuals for violations of rules on conduct of hostilities : comment on a judgment of the District Court Bonn, Germany : LG Bonn 1 O 460/11, 11 December 2013

Nele Achten. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 28, 1/2015, p. 34-41

The main challenge individuals may encounter when claiming compensation for violations of international humanitarian law (IHL) is the question of the right forum. After a brief summary of judgement of the District Court in Bonn (Germany) on the compensation of individuals for an attack led by the German military in Kunduz (Afghanistan), this article will therefore address the admissibility decision of the Court and compare it with the admissibility decision of other domestic and international courts. Subsequently, the contribution will address the question whether a legal basis to enforce the right to be compensated can be found in international or in domestic law. At the end, the requirements of a secondary norm of compensation will be analysed. While for the lawfulness of an attack the ex-ante (preview) perspective is relevant, in the author's view the right of compensation should be ascertained on an ex-post (retrospective) basis.

Complementary jurisdiction of the ICC : a method to ensure effective prosecution of perpetrators of the most serious crimes

Mostafa Hosain. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 214-240

International Criminal Court (ICC) was established by international community in order to ensure effective prosecution of perpetrators of most serious crimes in order to end impunity. Wherever these crimes are committed, it deeply shocks the conscience of humanity and threats to significant challenge for the ICC was to maintain the balance between State sovereignty and the jurisdiction of the ICC. In such juncture, complementarity system was installed to keep the balance by firstly prioritizing domestic prosecution and in case of failure of such; the ICC is kept as safety net so that impunity in no way is continued. Many questions have been put forward since the establishment of the ICC and many challenges are posed in the functioning of complementarity mechanism. One of the whole complementarity loop is to consider the status of domestic amnesty within the ICC system. The Rome Statute mechanisms as to whether such situation falls under the category of either "unwillingness" or "inability" on the part of the State. This lacuna can be determined by interpreting words of Article 17 of the Statute and looking into the purpose of the Roma Statute. Although it has been viewed that in the long run, the practice of the ICC will provide answers to all such complex issues which will take time for this new institution and hence before the ICC dealing all possible ways so that the ICC may take recourse to such interpretations.

Conflict-related sexual violence : achievements and challenges in international criminal law and the role of the military

By A. L. M. de Brouwer. In: Militair-rechtelijk tijdschrift Vol. 108, issue 2, 2015, p. 53-73. - Cote 362.8/235 (Br.)

Despite the often high occurrence of sexual violence in conflict and its enormous potential to destroy individual lives and communities and societies at large (capable of rising to a national and international peace and security issue), perpetrators of these crimes have often not been prosecuted. Prosecutions before international criminal tribunals are relatively rare and on the national level, conflict-related sexual violence prosecutions are very often minimal or non-existent. Prevention-strategies are furthermore given more thought; yet more needs to be learned and done in order to make the prevention of conflict-related sexual violence more effective. While it is not possible to cover everything of relevance to conflict-related sexual violence, some of the most important achievements and current challenges concerning the understanding, prevention, investigation and prosecution of sexual violence in conflict, with special attention to the role of the military, is addressed in this contribution.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40883.pdf

The crime of indiscriminate attack and unlawful conventional weapons : the legacy of the ICTY jurisprudence

Christian Ponti. In: Journal of international humanitarian legal studies Vol. 6, issue 1, 2015, p. 118-146

The prohibition of indiscriminate attacks, which encompasses either 'indiscriminate attacks' stricto sensu and the so-called 'disproportionate attacks', is at the heart of the law governing the conduct of hostilities, as it aims to implement two cardinal principles of international humanitarian law (ihl), distinction and proportionality. This contribution examines the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (icty) establishing the individual criminal responsibility for indiscriminate attack. The author considers the possible rationale to illustrate why the icty has never adjudicated neither indiscriminate attacks nor disproportionate attacks per se, as separate, autonomous offences under customary international law. It is submitted that a possible reason to explain the prudency of the icty judges when dealing with the crime of indiscriminate attack is that from an international criminal law perspective it is more than a challenge to apply these ihl principles of distinction and proportionality. The author contends that the icty jurisprudence that practically examined the principle of prohibiting indiscriminate attacks by means of unlawful conventional weapons confirm such difficulties. In particular, because the icty failed to fully clarify to what extent an attack by means of indiscriminate and/or inaccurate weapons violating fundamental principles of the conduct of hostilities, such as distinction and proportionality, may amount to the crime of indiscriminate attack.

http://tinyurl.com/qzvr789

Criminalising the denial of a fair trial as a crime against humanity

Shannon Ghadiri. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 200-230. - Cote 345.2/979

In this chapter Shannon Ghadiri examines whether the denial of a fair trial should be considered a crime against humanity. After a review of post-Second World War era cases dealing with the subject, she examines the application of human rights law regarding fair trial rights during national emergencies. Emphasis is placed on the fact that such derogations result in the right to a fair trial finding greater protection during times of war than during times of peace.

Cyber causation

Jens David Ohlin. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 37-54. - Cote 345.26/270

This article argues that the development of increasingly sophisticated and powerful cyber weapons and the increasing threat cyber-attacks poses to States will force the law of war, or international humanitarian law (IHL), to develop a more nuanced, balanced and precise account of causation. It first provides greater insight on why causation is practically irrelevant in traditional basic non-cyber warfare structures of IHL. It also advances several hypothetical cases of cyber-attacks that could trigger the emergence of unprecedented legal situations requiring IHL to develop an account of causation. Exploring causation theories outside frameworks of international law (i.e. in domestic criminal and tort law), this article also acknowledges that some of those theories cannot be properly used or are inappropriate under circumstances where IHL is

applicable, while providing specific examples and counterarguments. Finally, using George Fletcher's distinction between the pattern of subjective criminality and the pattern of manifest criminality, the author demonstrates that causation in IHL must be based (by necessity due to the lack of "fact-finding resources") on the pattern of manifest criminality, applicable by a reasonable third-party observer. In other words, this means that the law regulating cyber warfare should put a particular emphasis on high-levels of transparency in its governing principles, which is somewhat missing in the current state of IHL. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Cyber espionage or cyberwar ? : international law, domestic law, and self-protective measures

Christopher S Yoo. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 175-194 . - Cote 345.26/270

This chapter explores how jus ad bellum and jus in bello, which are two bodies of international law governing conflicts between states, applies to cyber operations, using as its lens prominent examples that have been in the news of late. Although most scholars acknowledge that established international law principles governing when it is appropriate to go to war (jus ad bellum) and the appropriate ways that war may be conducted (jus in bello) apply to cyber incidents recognized as constituting an armed attack, with a few narrow exceptions, jus ad bellum and jus in bello does not govern the type of information gathering or interference that characterize cyber operations such as the type of surveillance described in the confidential documents disclosed by Edward Snowden, or the denial of service attacks directed at Estonia by Russian hackers. Instead, this type of conduct falls under the law of espionage, which is governed almost entirely by domestic law. The final section examines possible self-protective measures for those confronting the risk of cyber attacks.

Cyberwar : law and ethics for virtual conflicts

ed. by Jens David Ohlin, Kevin Govern, Claire Finkelstein. - Oxford : Oxford University Press, 2015. - XXXII, 274 p. - Cote 345.26/270

Cyber weapons and cyber warfare have become one of the most dangerous innovations of recent years, and a significant threat to national security. Cyber weapons can imperil economic, political, and military systems by a single act, or by multifaceted orders of effect, with wide-ranging potential consequences. Unlike past forms of warfare circumscribed by centuries of just war tradition and Law of Armed Conflict prohibitions, cyber warfare occupies a particularly ambiguous status in the conventions of the laws of war. Furthermore, cyber attacks put immense pressure on conventional notions of sovereignty, and the moral and legal doctrines that were developed to regulate them. This book, written by an unrivalled set of experts, assists in proactively addressing the ethical and legal issues that surround cyber warfare by considering, first, whether the Laws of Armed Conflict apply to cyberspace just as they do to traditional warfare, and second, the ethical position of cyber warfare against the background of our generally recognized moral traditions in armed conflict.

Cyberwar versus cyber attack : the role of rhetoric in the application of law to activities in cyberspace

Laurie R Blank. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 76-101. - Cote 345.26/270

This chapter examines the dynamic between international legal norms and rhetoric with regards to "activities in cyberspace", namely cyber attacks, or cyberwar. The author affirms that the terms "cyber attack" or "cyberwar" are overly used to relate to a wide spectrum of broad cyber activities and potential threats that in fact, should not necessarily be included in the "war" paradigm and the legal obligations attached to it [Law of armed conflict]. Therefore, this chapter first examines the consequences of "war" rhetoric in the cyber realm, relating it to the lessons learned from a decade of counterterrorism in the United States. It then focuses on the consequences of the use of the term "cyber attack" by exploring the definitions and legal implications of "armed attack" both in jus ad bellum and in jus in bello. Consequently, the author stresses that when rhetoric blurs definitional categories, conflates legal regimes or inappropriately triggers legal authorities or obligations when it should not, it may have a substantial and detrimental impact on the rights and freedoms individuals enjoy. In light of the author's point of view, the "runaway rhetoric" of cyberwar and cyber attack has the potential to lead to these types of excesses unless careful attention is paid to ensure that this sort of rhetoric does not become law. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Deception in the modern, cyber battlespace

William H Boothby. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 195-212. - Cote 345.26/270

This chapter examines what international law has to say about cyber deception operations in warfare as well as the implications for lawful exploitation of cyber deception methods. The author first examines the likelihood of deception operations in the cyber world and the foreseeable forms they might take. After briefly looking at the history of the use of deception in warfare, it explores its related modern legal boundaries. It traces the development of relevant law, explaining what modern law permits and, respectively, prohibits. Thus, the author explains, inter alia, the distinction between perfidy and ruses as contained in Additional Protocol I to the Geneva Conventions of 1949 to see in which cases cyber attacks breach certain international humanitarian law (IHL) provisions. Finally, the author applies those legal rules to different kinds of cyber deception operations to see whether the law is being challenged by emergent technological advances in warfare and defence systems. The author suggests that certain types of cyber operations will cause the cyber hacker to become the "attacker" and therefore, make him accountable for IHL violations. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Depleted uranium weapons

U.C. Jha. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 240-272

The author argues that depleted uranium (DU) weapons (armour-piercing munitions) cannot be used in military operations without violating international law, and therefore must be considered illegal. While there are no explicit rules or treaties that make them illegal, there are rules regarding the use of weapons during armed conflicts: weapons may only be used against legal military targets, only be used for the duration of the war, not cause undue suffering or superfluous injury, and not severely damage the environment. The International Criminal Tribunal for the Former Yugoslavia (ICTY) Decision on Yugoslavia, the International Court of Justice (ICJ) Decision on Yugoslavia, and resolutions by the UN General Assembly demonstrate an increasingly prevalent view that the use of DU weapons is unacceptable. The use of these munitions in combat poses various short- and long-term hazards to the health of local populations and the environment. When a DU projectile explodes, it disintegrates into particles which can contaminate the surrounding environment and be a health hazard for combatants as well as civilians. The effects of exposure to DU include cancer, renal damage, brain damage, chromosomal aberrations and congenital defects. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Detention of combatants and the war on terror

by James A. Schoettler. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 131-191. - Cote 303.6/192 (2015)

Many sources of treaty law allow the detention of combatants in international armed conflicts. Once detained, international humanitarian law (IHL) prohibits the capturing State from prosecuting those combatants who qualify as "prisoners of war". In this chapter, the author examines the law applicable to the determination of a person's status as a combatant, as it has been applied by the United States in the transnational armed conflict against al-Qaeda and associated forces. The author explains the specificity of that conflict: the members of al-Qaeda fail to qualify as prisoners of war, inter alia, because they do not satisfy legal requirements under IHL. Therefore, this chapter explores the distinction between "privileged belligerents" and "unprivileged belligerents", those who can be prosecuted under the domestic law of the capturing State for any belligerent acts they have committed. The author emphasizes the principal court decisions evaluating the US government's approach, and the response of the executive and legislative branches to this litigation. This chapter also looks at developments with respect to the rights of individuals held in long-term detention by U.S. forces outside the United States. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

A deterrent effect of domestic German prosecutions for crimes committed by German military in Afghanistan ? : protecting civilians from inadvertent attacks by friendly foreign forces

Jan Nemitz. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 166-199. - Cote 345.2/979

This chapter outlines a number of legal and factual issues related to the military involvement of Germany and other foreign troops in the armed conflict in Afghanistan. It starts with a general introduction into the current situation of German and other nations' military presence in Afghanistan. It then addresses the legal basis for Germany's operations in this country, as well as the law applicable during these operations. Subsequently, three legal proceedings are presented which involved acts of German soldiers in the context of the armed conflict in Afghanistan (and Iraq). This is followed by an attempt to show which lessons should be learned from those cases. In so doing, this chapter aims at demonstrating what has been done - and what has yet to be done - to prevent civilians from being victimised in the armed conflict in Afghanistan and elsewhere. In particular, this chapter emphasises the need for proper training of military personnel and

civilians alike in international humanitarian law and international criminal law. While this is merely one element to reduce the number of civilian victims, it is an indispensable factor in any effort to strengthen the protection of civilians.

Deterring jus in bello violations of superiors as a foundation for military justice reform

Robert Bejesky. In: Wayne law review Vol. 60, no. 2, Winter 2015, p. 395-467. - Cote 345.22/262 (Br.)

This article emphasizes that a decisive query to both curbing battlefield crimes, and to cultivating favorable behavior within existing hierarchical dynamics, should center on examining whether there are effectual deterrents to illicit acts during armed combat in the form of anticipated punishment for perpetrators throughout the military hierarchy and whether there are sensible remedies for victims. Expectations about the law and remedies may heighten vigilance when officials issue chain of command directives and may curtail warfare transgressions by subordinates through exemplars of laudatory behavior. By contrast, excessively elastic precedential conceptions of military necessity approaching impunity may pare the success of achieving the policy intent of substantive and procedural reforms.

http://tinyurl.com/40879-bejesky

Development of international criminal law : a long journey

Manoj Kumar Sinha. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 139-160

Attempting to trace a brief outline of the historical development of international criminal prosecution from the execution of William Wallace in 1305 to the establishment of the International Criminal Court in 1998, Sinha chronologically establishes the major turning points in International Criminal Law (ICL). The author describes major events such as the attempts to codify the laws of war by the Hague Conventions of 1899 and 1907, the failure of the Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties after the First World War, the struggles to establish an International Criminal Court in the inter-war period, the Nuremburg and Tokyo Tribunals following WWII, and the establishment of ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda in the early 1990s. In his concluding remarks, Sinha argues that the Rome Statute of 1998 – establishing the International Criminal Court - was a natural conclusion to the processes established by the Nuremburg Tribunals as they interacted with post-Soviet geopolitical realignment and the international community's response to both the Balkan and Rwandan conflicts of the 1990s. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Disproportionate attacks in international criminal law

Francesco Moneta. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 261-296. - Cote 345.2/979

This chapter analyses the notion of disproportionate attack in international humanitarian law and international criminal law. It discusses how the International Criminal Tribunal for the former Yougoslavia has grappled with the practical challenge of defining and applying the war crime of disproportionate attack. Special focus is devoted to questions of the existence of this crime in non-international conflict, of the constituent elements of such a crime, and of the required balancing test between military advantage and injury to civilians. The author provides suggestions on how to address these questions and concludes that further attention to the notion of disproportionate attack from judicial authorities (especially the International Criminal Court) is needed.

Do the good intentions of European human rights law really pave the road to IHL hell for civilian detainees in Occupied Territory ?

Nobuo Hayashi. In: Journal of conflict and security law Vol. 20, no. 1, Spring 2015, p. 133-163

This article cautions against the notion that the good intentions of European human rights law necessarily undermine international humanitarian law. In Al-Jedda, despite some suggestions to the contrary, the European Court did not misconstrue the law of belligerent occupation. The court erred, however, in assuming that the duty of non-detention under Article 5(1) of the European Convention can only be 'displaced' by a counter-duty of security detention. Whereas the law of belligerent occupation does not impose such a counterduty, it does empower the occupation authorities to detain on security grounds, and exercising this power would frustrate observing Article 5(1) and vice versa. The norm conflict was soluble, but the would-be need to modify the scope and/or content of Article 5(1) or the law of belligerent occupation, rendered the European Court ill suited for the task. Nevertheless, the court's ruling against the UK need not

mean that European occupying powers suddenly have no choice but to kill rather than detain without charge (and risk lawsuits later) when countering security threats. On the contrary, the law of belligerent occupation helps the occupiers devise Al-Jedda-compliant detention regimes. The judgment's repercussions are direr for the internment of prisoners of war.

http://jcsl.oxfordjournals.org/content/20/1/133.full.pdf

Don't forget the Far East : a modern lesson from the Chinese prosecution of Japanese war criminals after World War II

Nathaniel H. Babb. In: Military law review Vol. 222, Winter 2014, p. 129-155

This article analyses China's approach to prosecuting Japanese war crimes after the Second World War and highlights the value of this model and the practical lessons-learned it offers for prosecuting future war crimes. In particular it surveys how China's three system approach (participation in the International Military Tribunal for the Far East, United States-led trials and domestic trials) could have been used to alleviate or eliminate the key shortcomings of the Special Court for Sierra Leone.

http://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/222-winter-2014.pdf

Le droit applicable aux opérations de secours transfrontalières

Emanuela-Chiara Gillard. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 229-262

Face aux fréquentes difficultés que pose l'assistance aux civils sur des territoires aux mains de l'opposition, des opérations de secours transfrontalières sont parfois envisagées. Celles-ci soulèvent de multiples questions de droit, notamment : l'auteur du consentement, ce qui constitue un refus arbitraire de consentement, les conséquences du refus de consentement, tant pour ceux qui souhaitent apporter une assistance que pour les parties qui refusent leur consentement, et les autres solutions possibles pour apporter une assistance dans ces circonstances.

https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Drone wars : ethical, legal and strategic implications

U.C. Jha. - New Delhi : Knowledge World, 2014. - XVII, 284 p. - Cote 345.26/271

This book discusses the ethical, legal and strategic issues relating to the use of drones in armed conflict. It gives an overview of the system followed by the US in undertaking drone attacks and traces the development of drones through the ages, the civilian and peacetime military uses of these drones as well as the capabilities of select modern drones. It also covers the concept of targeted killings and the legality of such killings under international law, as well as the problems related to the uses of drones in counter-insurgency operations by India. The concluding chapter makes recommendations to promote accountability among those undertaking lethal drone operations.

Drones and the dilemma of modern warfare

Samuel Issacharoff and Richard Pildes. - In: Drone wars : transforming conflict, law, and policy. - New York : Cambridge University Press, 2015. - p. 388-420. - Cote 355/1057

In this chapter, the authors explore the shift from a status-based targeting to an individuation of enemy responsibility and its moral, legal and military consequences. This change is mostly due to the rise of terrorism and the consequent complexity of distinction, while human rights also started to take on more importance. This has led to more targeted killings and the criticized use of drones. According to the authors, drones in themselves do not raise legal issues, since they are a mere technological update for the targeted killing of individuals. Furthermore, they argue that their use is sometimes not only the most appropriate response but also the most humanitarian one, when the security of the civilian population is threatened and greater force would be used instead. They then proceed to analyze the effect of individuation on the government's legal justifications for targeted killings. Individuation is considered necessary as a matter of morality, while citizenship should not matter in the decision. The authors also underline the importance of ex ante and ex post processes safeguarding the core principles of the conduct of hostilities, which will be developed automatically by institutions even without any form of formal judicial review. A formalized process of "lawlike" executive oversight, developed without the courts, has actually been used under President Obama. Finally, they raise the question of the future of warfare, and the coexistence of more traditional contexts of war with this individuated responsibility regime. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Drones and the law of armed conflict : the state of the art

Gleider I. Hernández. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 53-67. - Cote 345.2/979

This chapter records Gleider Hernández's presentation at the 2014 Joakim Dungel Lectures in International Justice. The use of drones (unmanned aerial vehicles) has raised a number of questions with respect to the application of principles relating to jus ad bellum and jus in bello. The author seeks to highlight some points about the efficacy and legality of such operations. He highlights a number of legal questions on which there appears to be consensus as to the legality or illegality of such operations, including the applicability of international human rights law, the organisation and intensity thresholds to be met, and the conduct of hostilities. He also discusses many of the points on which there remains serious divergence of views: the threshold to be met for the invocation of a right to self-defence, the geography of conflict, the standards through which to measure direct participation in hostilities, and the obligation to investigate.

The effects of international human rights law on the legal interoperability of multinational military operations

Jerrod Fussnecker. In: The army lawyer May 2014, p. 7-20. - Cote 345.1/134 (Br.)

The author addresses the effects of international human rights law (IHRL) on legal interoperability in multinational military operations, using the International Security Assistance Force (ISAF) as a case study. As the author argues, understanding the IHRL obligations and policy perspectives of partner nations accentuates issues that underlie the reasons why a troop-contributing nation may not comply with the North Atlantic Treaty Organization's (NATO) standard operating procedures or rules of engagement. The multi-national force is led by a single commanding officer; however, each of the troop-contributing nations limit how their nations' troops may be employed by issuing caveats reflecting their differing international legal obligations and national security policies. These caveats impact the operation's ability to accomplish its mission by creating fissures among troop-contributing nations on vital issues. Caveats often result from disagreement among the troop-contributing nations on two rudimentary international law issues: (1) the legal classification of the military operation, and (2) the applicability of IHRL to the military operation. The experience of the ISAF in Afghanistan has demonstrated a need for the NATO alliance to address these ambiguities in the application of the law of armed conflict and IHRL. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/40538-Fussnecker

The emerging paradigm for operational incident investigation

Rob McLaughlin. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 197-220. - Cote 345.22/260

In this closing chapter Rob Mc Laughlin considers the following questions: what can we learn about the proper conduct of investigations into operational incidents from recent cases, and what does the future hold for legal and military authorities in this area? The key influences over the evolution of investigations in this area are the expansion of the pool of relevant law, the development of technology that enables better communication of information and gathering of evidence (while at the same time raising unrealistic expectations that military operation should be error-free), the greater contribution by NGOs of various sorts, and finally the interconnectedness of states in operational matters which gives rise to even greater complexity (of law, and interested parties) in the investigatory process. There are three features of investigations that the author believes will characterize developments in the next decade and beyond. First, there will be greater demands for transparency of investigations, including about who conducted the investigation, and how. Second, the scope of what counts as an "operational incident" will continue to expand, to encompass the sources of information and intelligence that led to an operation, and other parts of its planning. And third, investigations will remain open-ended, in the sense that both facts and findings may be revisited formally again and again.

Enforcing and strengthening noncombatant immunity

James Turner Johnson. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 307-318. - Cote 345.2/975

While both moral discourse and international law have paid a great deal of attention to the protection of noncombatants in the way of armed conflict, particular characteristics of armed conflicts as they have developed since World War II have tended to erode both the idea of noncombatant immunity and specific efforts to protect noncombatants. This chapter examines the major contours of the treatment of noncombatant immunity in recent moral discourse and in the law of armed conflicts, then turns to the major

challenges to protection of noncombatants posed by the nature of recent armed conflicts. It concludes with some reflections as to how the effort to maintain noncombatant immunity might be strengthened.

Establishing direct responsibility of armed opposition groups for violations of international humanitarian law ?

Veronika Bílková. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 263-284. - Cote 345/679

This chapter scrutinizes the possibility of establishing a new legal regime which would make it possible to hold armed opposition groups per se directly accountable for violations of international humanitarian law (IHL). The first section analyses the regimes of responsibility of States and of individual criminal responsibility, which are already in place under current international law and which ensure an indirect responsibility of AOGs for violations of IHL. The section shows both the potential and the limits of these regimes concluding that there is indeed an accountability gap. The second section discusses the possibility of establishing a regime of direct responsibility of AOGs for violations of IHL. It asserts that although there is a tendency in favour of such a regime, it has so far been prevented from materialising by various political and legal dilemmas, which remain unresolved and also largely unaddressed. After suggesting possible solutions to these dilemmas, the paper concludes that the creation of the regime of direct responsibility of AOGs for violations of IHL is a complex process, which definitely merits further scrutiny and debate.

Establishing the direct responsibility of non-state armed groups for violations of international norms : issues of attribution

Annyssa Bellal. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 304-322. - Cote 345/679

This chapter focuses on attribution of non-State armed group conduct from an empirical perspective. Despite the absence of a formal international judicial forum with jurisdiction over non-State actors, many international organisations as well as NGOs have put in place "monitoring" mechanisms that address the conduct of non-State actors. In the context of this chapter, the work of three different types of mechanisms are explored: the UN Commission of Inquiry and Fact-Finding missions, the reports on the monitoring of the Geneva Call Deed of Commitment, and the UN Security Council work on children in armed conflict.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2455827

Ethics or politics? : the Palmer Commission report on the 2010 Gaza flotilla incident

Deane-Peter Baker. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 123-145. - Cote 345.22/260

This chapter examines in detail the report of one of the investigations launched into the "Gaza flotilla incident": the investigation established by the UN-Secretary General and widely known as the Palmer Commission. In May 2010, the MV Marmara and a number of other vessels seeking to break the blockade of Gaza were boarded by Israeli soldiers, leading to the death of nine persons. This incident led to the creation of a number of investigations, each resulting in quite different conclusions about whether and how Israel had contravened international law. The author is concerned to test two of the key findings of the Palmer Commission Report against the requirement of jus in bello norms. While the Commission concluded that the blockade of Gaza was legal, it found that Israeli action in boarding the vessels was "excessive and unreasonable", and that the loss of life was "unacceptable". The author argues that the Commission's own arguments do not support these findings, and he strongly suggests that they were motivated more by political, than by legal or ethical, considerations.

First anatomy of the Rome Statute during Kampala Conference : a critical evaluation

Anupam Jha. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 161-188

A review conference of the Rome Statute took place in 2010 in Kampala, Uganda, to consider amendments to the treaty that created the International Criminal Court. This article presents the aims and achievements of the review conference. The author highlights the resolution of debated issues by consensus that led to the adoption of amendments on the crime of aggression and on war crimes. He also argues that the system of taking pledges from States is a promising method to secure cooperation from States and concludes that the review conference was successful in addressing many concerns of the international community.

Force protection, military advantage, and "constant care" for civilians : the 1991 bombing of Iraq

Henry Shue. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 145-157. - Cote 341.226/69

In this chapter Henry Shue discusses the complex triangular balance among military advantage, force protection and "constant care" for civilians. He focuses on the 1991 war against Iraq, led by the United States, in which air power played a major role. He draws upon the relevant articles of the First Additional Protocol to the Geneva Conventions, particularly Article 57(3), which he understands to have customary status in international law. He describes the U.S. aerial destruction of the entire Iraqi electrical grid as a violation of the norms of proportionality, an excessive favoring of force protection and military advantage over due care for civilians.

Framing the issues in moral terms II : the Kantian perspective on jus in bello

Brian Orend. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 131-141. - Cote 345.2/975

There is a Kantian perspective on the justice of conduct in war, and it constitutes a principled and vocal variant on the usual understandings offered by the just war tradition and the laws of armed conflict. Starting with Kant's own account, this chapter moves on to identify six distinct propositions which together constitute a contemporary Kantian jus in bello, and then concludes by reflecting intensively on its strengths and weaknesses. As Kant himself argued, "The greatest difficulty in the right of nations has to do precisely with right during war, it is difficult even to form a concept of this or to think of law in this lawless state without contradicting oneself" (Kant 1995b, 117).

Getting drones wrong

Stephanie Carvin. In: The international journal of human rights Vol. 19, no. 2, February 2015, p. 127-141. - Cote 345.26/252

Over the last several years there has been an explosion of scholarly interest in drones, their impact on armed conflict, and the ethics of using such unmanned weaponry. While this attention and inquiry is to be welcomed, an examination of this scholarship reveals that much of it frequently gets drones wrong - focusing too much on the questionable "newness" of the technology, misunderstanding or misapplying the legal principles which govern such conventional weaponry (especially proportionality) and searching for definitive answers from problematic data. This article highlights the trouble with the contemporary debate over drones and sets out a research agenda in a world of murky campaigns and imperfect information.

Guerre aérienne et droit international humanitaire

sous la dir. de Anne-Sophie Millet-Devalle ; Université de Nice-Sophia Antipolis. UFR Institut du droit de la paix et du développement. - Paris : Pedone, 2015. - 343 p. – Cote 341.226/70

Alors que les opérations aériennes sont déterminantes dans la plupart des conflits armés contemporains, le droit qui leur est applicable est révélateur des réticences des puissances militaires à limiter l'usage de l'arme aérienne par des règles spécifiques et adaptées tant aux moyens qu'aux méthodes de guerre. Le droit international humanitaire n'en présente pas moins une forte densité dans la guerre aérienne et une nécessaire fluidité, dans un contexte de développements techniques et d'évolution du cadre stratégique. Les Actes du colloque organisé par le laboratoire GEREDIC (Groupement d'Etudes et de recherches sur le Droit International et Comparé - EA 3180) de l'UFR Institut du Droit de la Paix et du Développement (IDPD) de l'Université Nice Sophia Antipolis analysent les interrogations multiples sur la conformité de l'emploi de l'arme aérienne au droit international humanitaire illustrées par l'opération multilatérale menée en 2011 en Libye pour protéger la population civile, ou encore, plus récemment, par les opérations consistant à fournir un appui aérien aux forces irakiennes contre Daech.

Haditha : a case study in response to war crimes

Tom Ayres. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 87-97. - Cote 345.22/260

In this chapter Brigadier-General Tom Ayes, writing in a private capacity, focuses on US troop activities in Haditha during the Iraq War. In November 2005, Marines were allegedly involved in the deaths of Iraqi civilians in Haditha. Marines involved in the incident, members of the chain of command, and a serving

Judge Advocate were later charged under the US Military's Uniform Code of Military Justice. The disposition of these cases and a brief contrast and comparison to other war crimes in Iraq and Afghanistan are discussed.

How international humanitarian law treaties bind non-state armed groups

Daragh Murray. In: Journal of conflict and security law Vol. 20, no. 1, Spring 2015, p. 101-131

This article examines the legal basis underpinning the application of international humanitarian law treaties to non-state armed groups. Although it is widely accepted that international humanitarian law does bind armed groups, the legal basis remains uncertain and is happily—if somewhat disbelievingly—accepted. Yet, the importance of understanding the legal basis underpinning this attribution is evident, not only in terms of legal clarity and principles such as nullen crimen sine lege, but also, and perhaps more significantly, as a means of facilitating the future regulation of non-state armed groups—and indeed other non-state actors—by means of international treaty law. The customary law, third-party consent and legislative/prescriptive jurisdiction theories are addressed in detail. Significantly, the third-party consent theory is rejected on the basis of the non-applicability of the pacta tertiis principle to non-state actors consequent to such entities distinguished international legal personality. Rejection of the third-party consent theory overcomes a key obstacle vis-à-vis the application of international treaty law to non-state actors, removing any possible legal requirement that armed groups consent to obligations arising under international humanitarian law. The legislative jurisdiction theory is then discussed and accepted as a coherent basis for the direct application of international treaty law to non-state groups, establishing that non-state armed groups may be bound by the treaty obligations of the territorial state. Importantly, this principle may be used as a basis for the future attribution of international treaty law to non-state actors, for example, in the field of human rights.

http://jcsl.oxfordjournals.org/content/20/1/101.full.pdf

How much is too much Pro Patria ? : assessing the limits of a chaplain's role as adviser to the command

Rebecca Ahdoot. In: Naval law review Vol. 63, 2014, p. 1-30

The author examines the obligations assumed by American military chaplains when deployed to domestic detention centers. She finds that international law labels the chaplain as a noncombatant who must refrain from both active and passive participation in hostilities. In American detention facilities however, a chaplain acts as an advisor to the military command as well as a religious provider to prisoners of war. Chaplains must balance their military role with their responsibility to prisoners of war, which threatens their noncombatant status. If military commanders harm detainees based on a chaplain's religious expertise this may transform the chaplain into a combatant. Over time, American joint doctrine has improved to better protect the chaplain's noncombatant status by specifying that the chaplain's role as a religious advisor must be consistent with their role as a noncombatant. These instructions allow chaplains to refuse to comply with orders that may compromise their noncombatant status. Comparatively, naval instructions better protect the chaplain's noncombatant status by prohibiting advisement that would be harmful to the adversary and placing restrictions on commanders' behaviour. A case study of Camp X-Ray at Guantanamo Bay leads the author to determine that chaplains may have exceeded the noncombatant limitations of their role. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/40535-Ahdoot

Humanitarian law, human rights law and the bifurcation of armed conflict

Lawrence Hill-Cawthorne. In: International and comparative law quarterly Vol. 64, part 2, April 2015, p. 293-325

This article offers a fresh examination of the distinction drawn in international humanitarian law (IHL) between international and non-international armed conflicts. In particular, it considers this issue from the under-explored perspective of the influence of international human rights law (IHRL). It is demonstrated how, over time, the effect of IHRL on this distinction in IHL has changed dramatically. Whereas traditionally IHRL encouraged the partial elimination of the distinction between types of armed conflict, more recently it has been invoked in debates in a manner that would preserve what remains of the distinction. By exploring this important issue, it is hoped that the present article will contribute to the ongoing debates regarding the future development of the law of non-international armed conflict.

http://tinyurl.com/40671-hill-cawthorne

Implementation of the Biological Weapons Convention and the Indian state practice

B. C. Nirmal. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 107-138

The 1972 UN Biological Weapons Convention (the Convention) has remained relevant thanks to Review Conferences held every five years and Confidence Building Measures (CBMs), but critically lacks an enforcement protocol. India's approach to the Convention is particularly interesting for study: it has been shaped by its large life science community, bio-technology industry, and firm commitment to UN policies of disarmament and non-proliferation of WMDs including biological weapons. India has used the Review Conferences to air its views on issues related to the Convention, most importantly that the legal norms against biological weapons embodied in the Convention must be strengthened. Specifically, India has argued that the norms detailed in Article I can serve as a shield for the misuse of bio-technology as envisaged under Article X. India believes that the CBMs are not a sufficient replacement for a multilaterally agreed, and legally binding, mechanism for verification of compliance, something that is critically important for collective reassurance about the realization of the provisions of the Convention. India has a broad-based regulatory framework to prevent the misuse of biological sciences and technology, and it wants to assist other States Parties seeking support in strengthening their respective national systems of bio-security. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

India and the International Criminal Court : re-invigorating and re-visiting the non-ratification debate

Anuradha Rajesh Saibaba. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 189-213

This paper aims to critically map the mixed reactions invoked by States with the establishment of the world's first permanent criminal justice forum - the International Criminal Court. India's standoffishness towards the ICC is analysed by assessing the validity and relevance of the reservations expressed by the Indian establishment. The reasons for the marginal representation of Asian States within the ICC regime are also explored. The paper also critically examines the US-Indo partnership in thwarting the ICC's mandate in the sub-continent. Additionally the paper highlights the lacunae of the Indian domestic penal system in addressing some grave crimes and thereby advocates the necessity of ratifying the ICC. The paper concludes by suggesting the way forward to bridge the gap to infuse a culture of human rights and accountability.

International corporate criminal liability for private military and security companies : a possibility ?

Pauline Collins. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 177-202. - Cote 345/679

This chapter is concerned with the corporate legal person of the private military and security corporation (PMSC) and its place in international law, especially regarding enforcement. It opens with a background description of the peculiarities of the PMSC and their significance for international law including the international legal personality of the PMSC. The treatment of the Blackwater Nisor Square incident and consequences for the company are instructive. Informed by this case study, the move towards greater legal person's rights and duties nationally offers a reference template to finding corporate responsibility on the PMSC in international law. In conclusion, doubt is cast on reliance on standard conceptions of criminal conduct for legal persons for international criminal law purposes. Certainly, the state as enforcer presents ongoing difficulties. Therefore, more creative thinking is needed to establish the recognition of corporate criminal liability at the international level.

International humanitarian law

Howard M. Hensel. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 153-167. - Cote 345.2/975

Within the context of the jus in bello component of the just war tradition, over the past century and a half the members of the international community have gradually developed a legal framework designed to limit the use of force in international and non- international armed conflicts. The purpose of this chapter is to examine the sources of that legal framework, which has in recent times come to be commonly known as international humanitarian law. The chapter first examines the principles that serve as the foundational source upon which international humanitarian law is based: military necessity, humanity, distinction, and proportionality. The chapter then delineates two of the other sources of international humanitarian law – conventional and customary international humanitarian law. These sources, combined with judicial opinions, the writings of various, recognized international legal authorities, and informed by the pioneering efforts by a variety of individual groups within the international community, collectively constitute the contemporary, synergistic, normative body of law designed to regulate the conduct of armed conflict across the spectrum of international and non-international violence.

International humanitarian law and multiculturalism

P. Ishwara Bhat. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 74-106

The author explores the relationship between multiculturalism and international humanitarian law (IHL) and concludes that respect for multiculturalism helps balance the necessity for war with the dignity of individuals. The author argues that multiculturalism and IHL are consistent in their approach to impartiality, humanism, and the protection of life, liberty, and culture. Both approaches are also rooted in the promotion of human rights through the rejection of discrimination. The author suggests that cultural conflicts based on racial hatred during the 20th century resulted in the realization of mutual tolerance, contributing to the rise of IHL. Next, the author shows how a multicultural approach to IHL can help prevent conflict by fostering a norm of cultural pluralism that combats against effacement of cultural identities. Further, this approach emphasizes the significance of religious freedom in IHL, which brings mental tranquility to the wounded, sick and detainees during war. The author holds that respecting cultural property is conducive to supporting multiculturalism and argues that states should act cooperatively to safeguard cultural property during conflict. Finally, the author examines the ICRC and argues that the organization is suited to adopt a multicultural approach to IHL based on its objectives, structure, and international role. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

International humanitarian law and the protection of internally displaced persons

Stephane Ojeda. - In: Research handbook on international law and migration. - Cheltenham ; Northampton : E. Elgar, 2014. - p. 634-649. - Cote 325.3/500

This chapter offers an overview of the main treaty and customary rules of international humanitarian law (IHL) that protect armed conflict-induced internally displaced persons throughout all phases of displacement. The author advances that a vast majority of internally displaced persons in the context of armed conflict are forced to (or choose to) flee their homes because IHL - which, inter alia, aims at protecting civilians and those not engaged in hostilities - is violated. This chapter also lists some developments and initiatives that have been undertaken in the past decade in order to strengthen the normative framework related to displacement in armed conflict on the basis of contemporary humanitarian challenges. Furthermore, while mobilizing international human rights law and international criminal law, the author points out that the enforcement of IHL rules remains the most efficient way to prevent the violations and excesses that create the problem of massive population displacement in armed conflict. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

International legal personality, collective entities, and international crimes

Joanna Kyriakakis. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 79-104. - Cote 345/679

The aim of this chapter is to interrogate some of the controversies arising from the claim that collective entities are international legal persons in so much as they have a set of obligations under customary international criminal law, at least in terms of jus cogens crimes. It examines the concept of international legal personality, given that it is at times held up as an automatic shield against claims that such obligations exist. It investigates the issue in the following way. The first part considers the nature of the "legal personality" concept drawing particularly on the insights of Ngaire Naffine developed in the domestic context. The second part then identifies some underlying concerns regarding the recognition of non-state collective actors as duty bearers or rights holders under international law. The final part then provides some preliminary comments as to why an inclusive approach to the actors bound by international criminal law is more consistent with the principles of that field of law, as opposed to an interpretation that limits its obligations exclusively to natural persons.

International responsibility of armed opposition groups : lessons from state responsibility for actions of armed opposition groups

Sten I. Verhoeven. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 285-303. - Cote 345/679

Under current international law, a gap exists with regard to armed opposition group (AOG) responsibility: the State on the territory of which such groups are operational is not always responsible for the latter's acts, nor does international law provide specific rules concerning their direct responsibility. After arguing that direct AOG responsibility may be deduced from Article 10 of the International Law Commission Articles on State Responsibility (which attributes to the State acts of insurrectional movements which subsequently

seize governmental power or create a new State), the author turns to examine how the adoption of rules regarding attribution of conduct could be conceived so that an AOG responsibility regime is workable in practice. Proposing to design attribution rules by analogy to the law on State responsibility, acts of individuals would be attributable to the AOG when they are organs of the AOG, or when acting under the effective control of, or directed by, the AOG. However, before conclusively determining questions of attribution of conduct, the author notes that the need for more in-depth studies on the organisational structure and decision-making processes of insurrectional movements.

International responsibility of the AOG in international law : is there a case for an African approach ?

Francis Kofi Abiew and Noemi Gal-Or. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 347-370. - Cote 345/679

In this chapter the authors argue that the African Court of Justice and Peoples Rights may potentially exercise jurisdiction over armed non-state actor abuses (and not just over States who failed to prevent armed non-state actor abuses). They highlight, in particular, the references to obligations of non-state actors in a variety of African conventions concerning human rights, international criminal law, jus ad bellum and jus in bello. Nevertheless, they are not particularly optimistic as regards the willingness of the Court to enforce these obligations.

Interpretive complexity and the international humanitarian law principle of proportionality

Richard C. Gross... [et al.]. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 108, 2014, p. 81-105

These remarks by Janina Dill, Daniel Cahen and Yoram Dinstein were presented in the context of a panel discussion introduced by Richard Gross during the annual meeting of the American Society of International Law. After each giving a brief introduction on the principle of proportionality, the panelists discuss several fictitious hypotheticals in relation with the following themes: (1) The open-texture, subjectivity, prospectivity, and temporal scope of the principle of proportionality in international armed conflict; (2) The implications of proportionality in international humanitarian law as compared to the much narrower proportionality standard in international human rights law; (3) Whether and to what extent the principle of proportionality is binding de jure in non-international armed conflicts, and/or how the principle of proportionality operates in a "three-block war" where personnel face combat, law enforcement, and peacekeeping duties; and (4) The relevance or otherwise of jus ad bellum proportionality and new just war theories to the interpretation of proportionality in international humanitarian law.

Interrogation and treatment of detainees in the global war on terror

by Richard B. "Dick" Jackson. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 101-130. - Cote 303.6/192 (2015)

The US military has been at the forefront of training and applying the law of war to detention in military operations since well before the adoption of the 1907 Hague Regulations, as exemplified by the Lieber Code. Up until the end of 2001, the humane treatment provided in common article 3 of the Geneva Conventions of 1949 was to be applied in all armed conflicts, and the Third and Fourth Geneva Conventions' standards presumptively to captured individuals. Yet, as the Global War on Terror unfolded in the fall of 2001, those standards started to be challenged and new ones came to be developed in an effort to free interrogators to apply "harsh interrogation techniques", tantamount to torture. Most notably through a president's Military order and memos from the Secretary of Defense, they became a mere vague requirement of humane treatment consistent with military necessity. This chapter describes the arc of change in those policies from elimination of the standards to the congressional and public pressure that ultimately led to their return. The authorization of certain interrogation techniques did not mean, however, that they were necessarily used on the field. Most Judge Advocates kept applying the provisions of the Geneva Conventions and the Army's manuals, although others were later criticized for authorizing the use of brutal interrogation techniques. Investigations and public disclosure of those abuses eventually led to a reaffirmation of the Geneva Conventions standards of treatment from 2005 on. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Introduction : the challenges of investigating operational incidents

David W. Lovell. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 1-19. – Cote 345.22/260

In this introduction David W. Lovell presents an overview of challenges encountered when investigating alleged breaches of international humanitarian law or military disciplinary regulations; namely a lack of will or mechanisms to investigate incidents thoroughly, the independence of the body carrying out the investigation, issues of jurisdiction and applicable law, media attention and international politics. He also clarifies the terminology and presents the case studies further analyzed in the book.

Investigating operational incidents in a military context : law, justice, politics

ed. by David W. Lovell. - Leiden ; Boston : Brill Nijhoff, 2015. - XIII, 259 p. . - Cote 345.22/260

'Operational incidents' denotes misconduct, misdeeds or mishaps that occur on military operations, whether concerning the mistreatment of enemy soldiers, offences against civilians, conflict of varying levels within one's own forces, or accidents that lead to injury or death within a theatre of operations. Alleged breaches of IHL or the disciplinary regulations of particular militaries require at the very least an initial assessment to determine the facts and then, if warranted, a more substantial investigation. The need for robust investigations, however, is not always matched by the will and the ability to undertake them. There is at last a sufficient body of experience on which we can reflect, in this volume, on such investigations, their challenges, and their likely evolution.

Investigating violations of international human rights law and international humanitarian law through an international commission of inquiry : Libya and beyond

Annemarie Devereux. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 99-122. - Cote 345.22/260

This chapter discusses the role of International Commissions of Inquiry (ICOI) in investigating human rights and humanitarian law violations and uses the example of the International Commission of Inquiry for Libya to highlight some of the legal and methodological challenges which arise in conducting such investigations. The discussion deliberately encompasses violations of both human rights and humanitarian law, given the application of both sets of law in armed conflict and the potential dual characterization of many factual scenarios.

Is forced feeding in response to hunger strikes a violation of the prohibition of torture and cruel, inhuman, or degrading treatment ?

Walter Ruiz... [et al.]. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 108, 2014, p. 199-217.

This panel discussion features a wide range of viewpoints on the legal, philosophical and ethical issues associated with the forced feeding of detainees in response to hunger strikes. In particular, the panelists discuss the specific context of Guantanamo and the interplay between international humanitarian law and international human rights law.

Judicial "law-making" in the jurisprudence of the ICTY and ICTR in relation to protecting civilians from mass violence : how can judge-made law be brought into coherence with the doctrine of the formal sources of international law ?

Robert Heinsch. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 297-330. - Cote 345.2/979

This chapter examines the value of decisions of international criminal tribunals against the background of the legacy of the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda. Starting from the observation that both tribunals, during their 20 years of existence, have contributed considerably to the extension of the scope of legal protection of victims of mass atrocities, Heinsch looks at how this sometimes progressive jurisprudence can be harmonised with the assumption of article 38(1)(d) of the Statute of the International Court of Justice that decisions of international courts and tribunals can only be seen as subsidiary sources of international law. Discussing the current academic discourse on the normative value of decisions of international criminal courts, Heinsch comes to the conclusion that article 38(1)(d) is not fully reflective of the current reality of the status of sources of international law. The author suggests that the value of decisions of international tribunals should rather be seen as a quasi-formal source of international law, having the capacity not only to crystallize newly-developing customary international law, but also to create new rules of customary international law for the protection of victims of armed conflicts and mass atrocities.

Just unmanned warfare : old rules for new wars ?

Jai Galliott. - In: Military robots : mapping the moral landscape. - Farnham ; Burlington : Ashgate, 2015. - p. 65-93. - Cote 341.67/765

Premised on a carefully delimited duty of states to employ unmanned systems in the context of obligations owed by states to their citizens under the military-state contract, this chapter explores the moral restraint that should be exercised in the use of these unmanned systems. The first section introduces just war theory as the moral framework of choice for examining the problems associated with the use of unmanned systems. The second and third sections acquaint the reader with the two sets of principles that just war theory has developed into over time : jus ad bellum and jus in bello. The fourth and final section defends just war theory as the most useful tool for assessing the moral justifiability of the use of unmanned systems.

Justice and protection of civilians in armed conflicts through the enforcement of the international legal obligations : the case of the Gaza strip

Davide Tundo. - In: Rethinking international law and justice. - Farnham ; Burlington : Ashgate, 2015. - p. 63-80. - Cote 345.22/261 (Br.)

The chapter engages the issues of justice and protection of civilians in armed conflict : do the existing legal tools provide civilians with the due protection of the law ? More importantly, are they being fully implemented by those mandated to respect and ensure respect for the rights of civilians? Rethinking justice in international law - notably in humanitarian and human rights law - requires acknowledging the lack of enforcement of the existing legal mechanisms. If implemented fully and in good faith, these will likely contribute to enhancing the protection of human rights and providing justice for civilians in armed conflicts. In territories such as the Gaza Strip - where the prolonged conflict has inhibited all basic human rights with the complicity of the international community - there is a pressing need to safeguard civilians against the burden of wars. The chronic lack of justice must be reversed and victims be granted the equal protection of the law.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40724.pdf

The law applies, but which law ? : a consumer guide to the laws of war

Charles Garraway. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 87-105. - Cote 341.226/69

In this chapter Charles Garraway gives a historical perspective on the development of international humanitarian law. The laws of war were originally developed for the protection of combatants, yet over time emphasis has shifted to the protection of civilians. He identifies a growing influence of human rights law on international humanitarian law, where the standards of the former are higher than those of the traditional laws of war. He provides examples from the European Court of Human Rights, which has heard cases related to Russia's conflict in Chechnya and to the Kosovo conflict. He also discusses the relationship between law and ethics.

Legal and ethical implications of drone warfare

guest ed.: Michael J. Boyle. In: The international journal of human rights Vol. 19, no. 2, February 2015, p. 105-227 : graph.. - Cote 345.26/252

Contient notamment : Getting drones wrong / S. Carvin. - A means-methods paradox and the legality of drone strikes in armed conflict / C. Martin. - Clashing over drones : the legal and normative gap between the United States and the human rights community / D. R. Brunstetter and A. Jimenez-Bacardi.

The legal consequences of faits accomplis : reconciling victims' and settlers' rights following occupation

Karine Mac Allister. In: Journal of international humanitarian legal studies Vol. 6, issue 1, 2015, p. 17-63 : tabl.

This paper discusses the legal consequences following the transfer of settlers into occupied territories more precisely the dichotomy between the rights of settlers the rights of protected persons victims. At the heart of the matter are the questions: What to do with settlers transferred into occupied territories in the post-conflict period? Should settlers be removed from the territory where they were transferred to allow victims to access restitution? In the alternative, should settlers be considered to have acquired a de facto ‘right to stay’ or a right not to be expelled under international human rights law the principle of humanity? Do settlers have rights? Do all settlers have the same rights? There is no consensual answer to these sensitive questions where

proposed solutions vary on a spectrum from collective expulsion to the unconditional integration of settlers. Emerging from a case analysis is an international response to settler transfer that is complaisant of fait accompli resulting in a balance tilting in favor of the status quo to the not infrequent detriment of protected victims' rights. This article attempts to reconcile conflicting rights by proposing a response framework cognizant of all relevant branches of international law.

http://tinyurl.com/odwepc6

The legality of the use of private military and security companies in UN peacekeeping and peace enforcement operations

Mohamad Ghazi Janaby. In: Journal of international humanitarian legal studies Vol. 6, issue 1, 2015, p. 147-187

Outsourcing military and security services to the private sector is an emerging trend under international law. The shift to using private military and security companies (pmscs) in countries such as Iraq and Afghanistan has brought attention to the role that these companies may play in fulfilling functions that are normally monopolised by States or international organisations. The reliance of the UN on pmscs has increased considerably in recent years, leading to the question of the legality of their use in various UN operations. This paper focuses on two main aspects of the UN's use of such companies; (i) The engagement of pmscs in peacekeeping operations, either when hired by the UN directly or when hired by a State and subsequently seconded to the UN; and (ii) The participation of pmscs in peace enforcement measures adopted by the UN Security Council according to Chapter vii of the UN Charter. This paper argues that the use of pmscs in peacekeeping operations is lawful under international law, while their use in peace enforcement operations is not.

http://tinyurl.com/p5zj34k

The maxim of Thucydides : transparency, fact-finding, and accountability in East Timor

Clinton Fernandes. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 51-70. - Cote 345.22/260

This chapter discusses the investigation of war crimes and crimes against humanity under Indonesian occupation in East Timor. The author raises the issue of justice - or its absence - in cases where the alleged wrongs have been undertaken in an expeditionary operation by the stronger power and the military justice system of that power is the one responsible for conducting investigations. He reminds us that power is an essential element in some investigations, and particularly in the initial decision about whether to investigate. He examines how civil society groups have attempted to close the investigatory gap, and suggests further ways in which transparency, fact-finding and accountability might be introduced.

The nature of war and the idea of "cyberwar"

Larry May. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 3-15. - Cote 345.26/270

This article reflects on the traditional concept of war and armed conflict and its application to the cases of modern cyber attacks and cyber warfare. The author highlights that extending the traditional concept of war with its particular legal set of rules to include cyberwar is problematic in many ways, especially from legal and theoretical perspectives. The article reviews the evolution of the concept of war and armed conflict in relation to various definitions provided by philosophers and historical legal thinkers. It also overviews the legal dimensions associated with the concept of war to demonstrate the gap with the modern concept of cyberwar. The author argues that modern cyber attacks do not reach the intensity of an armed conflict and, in this case, they should not be subject to the laws and customs of war, particularly regarding the intentional killing of human beings (allowed under certain conditions by international humanitarian law). Additionally, this article advocates that there are good reasons to think of cyber attacks more like embargoes than the type of lethal attacks that war has traditionally involved especially because they do not involve the use of arms. Moreover, the author addresses the difficult challenge of the classification of cyber attacks and cyber warfare while assessing the serious implications for world peace and security that can be posed by the way countries perceive the nature of cyber attacks. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Ne peut-il jamais être excessif de tuer incidemment des médecins militaires ?

Laurent Gisel. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 143-160

Le personnel et les biens sanitaires militaires, ainsi que les combattants blessés et malades, sont protégés contre les attaques directes en vertu du principe de distinction consacré par le droit international humanitaire. Selon certains auteurs, toutefois, les principes de proportionnalité et de précaution ne les protégeraient pas. La présente note d'opinion explique que les biens sanitaires militaires constituent des biens de caractère civil en vertu des règles régissant la conduite des hostilités. Elle démontre aussi que, au regard de l'objet et du but du Protocole additionnel I aux Conventions de Genève, les victimes incidentes auxquelles on peut s'attendre dans les rangs du personnel sanitaire militaire et les combattants blessés et malades doivent être incluses parmi les victimes incidentes à prendre en considération aux fins de l'application des principes de proportionnalité et de précaution. Ceci découle en particulier de l'interprétation de l'obligation de « respecter et protéger », qui constitue l'obligation fondamentale de la protection spéciale accordée à l'ensemble du personnel sanitaire et des blessés et malades. Cette conclusion est confortée par nombre de manuels militaires ainsi que par les travaux préparatoires et le Commentaire du Protocole additionnel. Elle reflète en outre le droit coutumier.

https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Non-international armed conflicts in international law

Yoram Dinstein. - Cambridge : Cambridge University Press, 2014. - XXXI, 264 p. - Cote 345.27/146

This dispassionate analysis of the legal implications of non-international armed conflicts explores the rules regulating the conduct of internal hostilities, as well as the consequences of intervention by foreign States, the role of the Security Council, the effects of recognition, State responsibility for wrongdoing by both Governments and insurgents, the interface with the law of human rights and the notion of war crimes. The author addresses both conceptual and specific issues, such as the complexities of 'failing' States or the recruitment and use of child soldiers. He makes use of the extensive case law of international courts and tribunals, in order to identify and set out customary international law. Much attention is also given to the contents of available treaty texts (primarily, the Geneva Conventions, Additional Protocol II and the Rome Statute of the International Criminal Court): what they contain and what they omit.

Peace forces at war : implications under international humanitarian law

Tristan Ferraro... [et al.]. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 108, 2014, p. 149-163

These remarks by Tristan Ferraro, Johan Heyns, Mona Ali Khalil and Marten Zwanenburg were made in the context of a panel discussion introduced by Bruce Oswald during the annual meeting of the American Society of International Law. The panelists discuss various issues related to the applicability and application of international humanitarian law (IHL) to multinational forces. They also address the issue of how to deal with the IHL tensions arising from UN personnel as combatants, and UN personnel acting as humanitarian actors, in the same intra-state conflict, as well as the key issues for the future.

The place of international criminal law within the context of international humanitarian law

Chris Black. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 231-260. - Cote 345.2/979

In this chapter Chris Black offers a reflection on the proper place enjoyed by the concept of repression in the broader scheme of international humanitarian law (IHL). He undertakes to demonstrate how IHL's primary focus is to prevent violations rather than responding to them. He argues that it is only within the context of taking corrective (or possibly repressive) action in the event of serious violations of IHL that a potential criminal justice response arises. He then examines the inter-relationship of two different conceptions of IHL and cautions that excessive attention to international criminal prosecutions may undermine IHL's preventative aims.

The privatized art of war : private military and security companies and state responsibility for their unlawful conduct in conflict areas

Evgeni Moyakine. - Cambridge [etc.] : Intersentia, 2015. - XVI, 477 p. - Cote 345.29/222

The use of PMSCs by States in conflict zones may, in certain instances, be considered morally problematic and might enable States to outsource fundamental governmental tasks to essentially private actors without necessarily being held responsible for instances of misconduct. This book investigates the possibility of applying the doctrine of State responsibility to the employment of PMSCs in areas affected by conflicts and to breaches of international law committed by these companies and their personnel. It examines an array of

circumstances in which the unlawful conduct of PMSCs and their staff may be attributed to States under international law and the extent of such attribution. The study further analyzes the application of positive obligations imposed by international law on States and the scope of this application. It is illustrated that not only States hiring PMSCs, but also States where these companies are active, and States where they are registered or incorporated, are to be held responsible when violations of international law are attributed to these States in accordance with certain modes of attribution. In addition, the States in question also bear international responsibility when they fail to comply with their positive duties of result and diligent conduct stemming from the fields of international humanitarian and human rights law.

The problems the European Court of Human Rights faces in applying international humanitarian law

Joana Abrisketa Uriarte. - In: The humanitarian challenge : 20 years European Network on Humanitarian Action (NOHA). - London [etc.] : Springer, 2015. - p. 201-220. - Cote 361/631

The European Court of Human Rights (ECtHR) is increasingly receiving applications relating to armed conflict or other types of situations of violence resulting primarily from the deployment of military forces of the Council of Europe's member States in foreign countries, or even within their own borders. Although the Strasbourg Court almost exclusively relies on the European Convention on Human Rights (ECHR) it could, for specific cases, rely on other bodies of international law, such as international humanitarian law (IHL). This article explores why the Court rarely explicitly refers to IHL principles while judging cases and prefers to examine armed conflict and violence situations in the light of the ECHR. In order to do so, the author examines the relation between IHL and the ECHR through the cases developed by the Strasbourg Court, centering his analysis on three specifics problems faced by the Court: situation of occupation; exercise of overall and/or effective control over part of a foreign territory in the context of an international mission and internal armed conflict. He therefore presents an overview of relevant case law and demonstrates the evolution of the impact – if any – of IHL on the Court's decisions through recent times while highlighting the way(s) it helped to shape the Court's own approach derived from European human rights law concerning armed conflict situations within its jurisdiction. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Proceedings of the fifth international humanitarian law dialogs, August 28-30, 2011 at Chautauqua Institution

ed. by Elizabeth Andersen and David M. Crane. - Washington, DC : The American Society of International Law, 2012. - XI, 388 p. . - Cote 344/649

This volume provides a record of the proceedings of the fifth annual meeting of international prosecutors at Chautauqua Institution from August 28-30, 2011. The theme of these Dialogs was "Widespread and Systematic! – Crimes Against Humanity in the Shadow of Modern International Criminal Law." The international prosecutors, academics, practitioners, and members of the public discussed the evolution of this crime and challenges in its prosecution. The Crimes Against Humanity Initiative, an initiative working towards the development and signing of an International Convention on the Prevention and Punishment of Crimes Against Humanity, is also presented, and its Proposed Convention is included in this volume. The volume also contains the prosecutors' updates regarding the activities of their respective courts and tribunals during the past year.

Promoting and protecting the long-term needs of victims of armed conflict : the potential role of national human rights institutions

Kirsten Roberts. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 385-427. - Cote 345.2/979

This chapter begins by examining the current focus of the international standards for the rights of victims of conflict, with its concentration on justice and justice-linked reparation, as well as examining the more holistic approach to victims that has been taken in relation to other international instruments. Some of the issues faced by victims of conflict are then outlined, in order to demonstrate how justice or monetary compensation may be insufficient to meet victims' needs. The complex policy and practical needs of victims is highlighted through the example of Northern Ireland's system of support for victims and survivors, which indicates that a more holistic approach is warranted and that the needs of victims of conflict should be a focus at the national level. The chapter then examines the role and functions of national human rights institutions (NHRIs) and provides some country-specific examples where NHRIs have already been active in advocating for victims' rights, before concluding with some ideas as to how NHRIs have the potential to be active in reducing the marginalisation of victims going forward.

Proportionality and restraint on the use of force : the role of nongovernmental organizations

Margarita H. Petrova. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 175-190. - Cote 341.226/69

Although the principle of proportionality is indisputably vague and has allowed both critics and defenders of the same military action to rest their arguments on it, in this chapter Margarita Petrova shows how nongovernmental organizations (NGOs) have successfully mobilized it as part of their efforts to ban a specific category of weapons, cluster munitions, and how in turn the achieved prohibition might provide grounds for further limitations on the use of explosive force within populated areas. She argues that NGOs have used principles of proportionality (and discrimination) from international humanitarian law (IHL) as a basis for their arguments but that these principles alone were not sufficient to achieve a prohibition. During the time when NGOs relied exclusively on legal grounds in seeking better civilian protection, their demands were limited to calls for more reliable cluster munitions and the prohibition of their use in populated areas. IHL considerations helped place the issue on the agenda of international talks at the Convention on Certain Conventional Weapons, but they didn't produce new regulations. A breakthrough came when NGOs and supportive states reframed the debate in humanitarian terms and raised political considerations about the cost of civilian casualties in a stand-alone negotiation process for a new treaty that Norway launched in 2007.

Protecting children in armed conflict through complementary processes of political engagement and international criminal law

David S. Koller. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 71-100. - Cote 345.2/979

In this chapter David Koller describes the development of international humanitarian law relating to children and the problems in the enforcement of that law. It traces the evolution of the Children and Armed Conflict agenda of the United Nations and international criminal law as two new means to enforce international humanitarian law. The chapter examines the purported challenges arising at the intersection of the three paradigms of international humanitarian law, criminal accountability, and political engagement. It concludes that the purported conflict between political negotiations and criminal punishment is actually inherent in each paradigm and not a consequence of conflicting paradigms. However, other potential paradigmatic clashes may emerge if the processes of political engagement and criminal accountability are allowed to become unmoored from their international humanitarian law foundations.

The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel

ed. by Philipp Ambach... [et al.]. - Leiden ; Boston : Brill Nijhoff, [2015]. - XVI, 526 p. – Cote 345.2/979

This collection of essays—written by friends and colleagues of Joakim Dungel—focuses on the protection of the innocent during and after war. It is a tribute to Joakim's life and work. Joakim made a significant contribution to international justice and the rule of law, through his service to the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Temporary International Presence in Hebron, and the United Nations Assistance Mission in Afghanistan. He was also a prolific author and published scholarly works on a wide range of issues, including command responsibility, national security interests, the right to humanitarian assistance during internal armed conflicts, and crimes against humanity. This book continues Joakim's work with in-depth analyses of a variety of issues arising under modern conflict, such as the application of international humanitarian law and international human rights law to aerial drone attacks, targeted sanctions, and reparations to victims.

Protest and its suppression in the Occupied Palestinian Territories and in Turkey

Shlomit Stein, Felix Petersen. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 28, 1/2015, p. 4-12

This article provides an analysis of the legal framework and executive treatment of protest in contested social and political settings. In particular, it focuses on protest policing in the Occupied Palestinian Territories and inquiries into policing and prosecution of protest in Turkey. Both cases display extreme forms of state action against protest. Precisely because of their extreme nature, these cases shed light on the legitimate limits of state action in this respect. In short, the comparative analysis shows that problematic forms of protest control are those which utilize law in order to draw artificial lines distinguishing between legitimate and

illegitimate dissent. It further illustrates the political consequences of a normalization of the use of extraordinary means to maintain public order, ultimately leading to the continuous trumping of the right to protest in favour of security interests.

Re-thinking the boundaries of law in cyberspace : a duty to hack ?

Duncan B. Hollis. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 129-174. - Cote 345.26/270

This chapter proposes re-thinking prevailing approaches to legal boundaries in cyberspace generally and for State cyber-operations in particular. The discussion aims to demonstrate that the current emphasis on drawing law from boundaries and boundaries from law does not constitute a sufficient or effective way to regulate cyberspace and its conflicts. Generally speaking, boundaries still remain the indispensable “tool” in order to assess the scope of international law in cyberspace. Understanding the cyberspace and its relationship with international law necessitate to partially disregard such an approach which is based on law-by-analogy. Therefore, a suitable approach would be to prioritize tailor-made laws with respect to the law to apply in cyberspace, especially in the field of use of force or international humanitarian law (IHL). This paper claims that law-by-analogy should only apply to avoid gaps that would otherwise exist in the absence of tailor-made law. Given the complexity of cyberspace, tailor-made laws provide accurate, effective and complete solutions so as to regulate cyberwar. The two first parts of this paper set forth the limits emerging when it comes to applying law-by-analogy approach to jus ad bellum rules. Accordingly, the third part proposes to adopt a new principle (“Duty to hack”), which will offer a flexible solution to deal with the current gaps regarding the conduct of hostilities and the cyberspace. The "Duty to Hack" would require states to use cyber operations in their military operations whenever they are the least harmful means available to achieve military objectives, thus alleviating (but not eliminating) the pressures of fragmentation and providing a clear rule for calibrating military necessity and humanity. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Règles et normes internationales applicables à la fonction policière et aux forces de l'ordre

CICR. - Genève : CICR, janvier 2015. - 70 p. - Cote 345.2/689-1 (2015 FRE)

Cette brochure, qui s’adresse aux personnes exerçant des fonctions d’application des lois, résume les principaux points du manuel "Servir et protéger". Elle passe en revue les principes et règles des droits de l’homme et du droit humanitaire que doivent respecter les responsables de l’application des lois.

https://library.icrc.org/library/docs/DOC/icrc-001-0809-2015.pdf

Regulating drones : are targeted killings by drones outside traditional battlefields legal ?

William C. Banks. - In: Drone wars : transforming conflict, law, and policy. - New York : Cambridge University Press, 2015. - p. 129-159. - Cote 355/1057

This article examines the elements of a lawful targeted killing policy that operates outside of a declared war, such as the military campaign led by the United States against non-state actors. Targeted killing operations employing drones operated by the CIA and US military have become an integral part of the government's counterterrorism strategy. The author analyses the legal basis for targeted killing operations through the case of Anwar al-Awlaki, a US citizen involved in Al-Qaeda who was killed in Yemen. First, he examines domestic law and determines in which conditions, under this framework, an individual can be lawfully targeted. The author then analyses targeted killings under international law. He determines when an individual may be targeted under international humanitarian law (IHL) and international human rights law. Also, the article examines the status of individuals operating drones in international law and in IHL in particular. Finally, the author criticizes the lack of transparency in the US drone program and the absence of substantive criteria for drone use outside of hot battlefields. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Responsibilities of armed opposition groups and corporations for violations of international law and possible sanctions

Jordan J. Paust. - In: Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 105-123. - Cote 345/679

Jordan Paust elaborates on the relationship between the "types of responsibilities" and "types of possible sanction responses", a relationship arising from a historical overview of cases that have come before US Courts, and which provide compelling arguments that the problematique of non-state actor (NSA)

responsibility has existed at least since the mid-19th century. In distinguishing between various types of responsibility: "direct perpetrator, complicity or aiding and abetting, conspiracy, and joint criminal enterprise responsibility", he argues that the actual sanctioning regime applied to the various NSAs reflects the type of responsibility envisaged by the sanctioning actor. Sanctions according to Paust can be political, economic, juridical, and military, and potentially financial and cultural. The effectiveness of sanctions depends on the activities and wealth of the NSA in question.

Responsibilities of the non-state actor in armed conflict and the market place : theoretical considerations and empirical findings

ed. by Noemi Gal-Or, Cedric Ryngaert and Math Noortmann. - Leiden ; Boston : Brill Nijhoff, 2015. - XXIV, 381 p. - Cote 345/679

The central question of this pioneer work on the responsibility of non-state actors (NSAs) and the consequences thereof, is: to whom are such actors, in particular armed opposition groups and business corporations, accountable for their actions in armed conflict and in peace times? Does responsibility in international law apply to these NSAs qua groups? While much has been written about NSAs' rights and participation in the global theatre as well as the responsibility of the state and international organizations for wrongful acts by NSAs, scant attention has been paid to questions of NSA organizational responsibility, in spite of their potential to wreak international havoc. This volume offers innovative insights into this unexplored territory by analyzing responsibility questions from both theoretical and empirical perspectives.

The right to health and international humanitarian law : parallel application for building peaceful societies and the prevention of armed conflict

Amrei Muller. In: Wisconsin international law journal Vol. 32, no. 3, Fall 2014, p. 415-456. - Cote 356/275 (Br.)

This article argues that obligations flowing from the right to health and international humanitarian law (IHL) in peacetime can contribute to preventing armed conflict and to creating lasting peace. Direct IHL obligation on states to "take all necessary measures for the execution" of IHL "without delay" can strengthen obligations under the right to health to adopt strong domestic laws protecting individuals' existing access to health care and setting out a plan for the building and further development of an effective health system. Moreover, the picture of a well-functioning health system that underlies IHL can supplement and concretize obligations under the right to health in times of peace to actively take measures to build a comprehensive health system, even if it cannot be claimed that states have far-reaching (positive) obligations directly under IHL in times of peace. An integrated approach to the implementation of the right to health and health-related IHL obligations at all times, even in times of peace, can be supported by the principle of systemic integration under article 31 (3) (c) of the Vienna Convention on the Law of Treaties. Furthermore, taking into account health-related IHL obligations in times of peace, together with obligations under the right to health, can arguably contribute to strengthening a health system's capacity to react to and cope with emergency situations. If an armed conflict breaks out, this could help limit the direct and indirect public health consequences of such a conflict, and also lead to a swifter re-building of health infrastructure after the conflict has ended.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2598098

The rise of non-state actors in cyberwarfare

Nicolò Bussolati. - In: Cyberwar : law and ethics for virtual conflicts. - Oxford : Oxford University Press, 2015. - p. 102-126. - Cote 345.26/270

This article focuses on the rise of non-state actors in cyberwarfare and its impact on international law as they can operate either alongside or against state actors. The first part of this article considers how digital technologies stimulated an increasing role for non-state actors in the international system, accelerating the demise of the state as primary actor of international law. Moreover, through his analysis, the author examines the classification of non-state actors, their present and future role in cyberwarfare, their relationship with states and their particular structures and modus operandi. The second part evaluates the challenges to international law posed by the non-state actors' involvement in this new paradigm of warfare. The author points out that the digitalization of war strongly enhances the role and the capacity of non-state actors involved, and offers them structural and operative characteristics which deeply challenge the traditional corpus of norms regulating conflicts (international humanitarian law). At the same time, it complicates the attribution of the act and the ability of the state to respond to the threat under the law of self-defense. According to the author, these challenges must be resolved, possibly through a reinterpretation of the relevant norms of international law in light of the peculiarities of cyberwarfare. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Safety and protection of humanitarian workers

Agnieszka Bienczyk-Missala and Patrycja Grzebyk. - In: The humanitarian challenge : 20 years European Network on Humanitarian Action (NOHA). - London [etc.] : Springer, 2015. - p. 221-252. - Cote 361/631

Vulnerability has always been an inherent part of humanitarian aid work notably because of the precarious environment in which it takes place, ranging from natural disasters to armed conflicts. However, in recent years the number of humanitarian worker victims has grown larger, drawing a line between the random incidents and the more purposeful and organized attacks. This raises the question of the actual scope of protection of humanitarian workers and ways to improve it without limiting the humanitarian space. This chapter firstly aims to describe the factors impacting on the safety of humanitarian aid personnel: those external to the workers (i.e. the shift of the nature of conflicts) and those ensuing from the change in the concept and practice of humanitarian aid. Secondly, the authors assess the legal protection of aid workers outside a situation of armed conflict (protection under human rights law) and in an armed conflict (protection of both international humanitarian law and international criminal law). Finally, it offers an overview of the response given by humanitarian actors to security challenges (i.e. codes of conducts, conventions, trainings). [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

La santé dans les conflits armés : une approche sous l'angle des droits de l'homme

Katherine H. A. Footer and Leonard S. Rubenstein. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 93-116

Dans les situations de conflit armé, de troubles civils et de répression, il devient extrêmement difficile, lorsque sont commises des attaques contre le personnel soignant, les établissements de soins, les moyens de transport sanitaires et les patients ou des atteintes aux services de santé, de dispenser des soins au moment où ils sont le plus nécessaires. Le droit international humanitaire (DIH) prévoit une protection efficace des services de santé en temps de conflit armé, mais il n'est pas exempt de lacunes. Par ailleurs, il ne couvre pas les situations qui ne constituent pas un conflit armé. Le présent article souligne l'importance d'aborder ces problèmes sous l'angle des droits de l'homme, en se fondant sur le droit au meilleur état de santé susceptible d'être atteint et sur les droits civils et politiques. Les auteurs considèrent, en particulier, l'Observation générale n° 14 du Comité des droits économiques, sociaux et culturels (relative à l'article 12 du Pacte international sur les droits économiques, sociaux et culturels) comme un cadre normatif permettant de développer encore les obligations des États de respecter le droit à la santé, de le protéger et d'en garantir le plein exercice dans toutes les situations de conflit.

https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Self-determination and terrorism : creating a new paradigm of differentiation

Andrew Coffin. In: Naval law review Vol. 63, 2014, p. 31-66

The author argues that conflicts with national liberation movements (NLMs) must be regarded as international in nature if they follow the rules of international humanitarian law (IHL). If NLMs respect IHL, including the Hague and Geneva Conventions, they can avoid being labelled "terrorists". NLMs seek the human right to self-determination, and thus often develop in situations involving the "subjection of peoples to alien subjugation, domination and exploitation". Peoples claiming the right to external self-determination must demonstrate three things: an existing territorial bond; the violation of internal self-determination where the deprivation of rights is indefinite and sufficient to constitute a threat to the collective identity of the people itself; and an exhaustion of all effective judicial and political remedies. The author then proposes a definition of terrorism that does not overlap with NLMs' right to self-determination. This definition must include at least: the intention to coerce (the mens rea); and the use of at least one action, target, or means or method prohibited by IHL (the actus reus). For example, if an NLM attacks a prohibited target it can no longer be protected as an international conflict and can be addressed as a terrorist group by whichever state is involved in the conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

http://tinyurl.com/40536-Coffin

"Self referrals" by states and criminal prosecutions before the International Criminal Court

V. Seshaiah Shasthri. In: ISIL yearbook of international humanitarian and refugee law Vol. 11, 2011, p. 378-400

Looking into the fact that the first three situations that came before the International Criminal Court (ICC) - namely the Democratic Republic of Congo, Uganda and the Central African Republic - came through the States under Article 14 of the Rome Statute, the author endeavours to examine the process of self-referrals

and the implication for the ICC. He advocates establishing a limited withdrawal option, arguing that the DRC and CAR have relinquished broad, open-ended and unrestricted jurisdiction to the Court through self-referrals.

Sexual violence against men in armed conflicts : insights from International Criminal Tribunal for former Yugoslavia and the War Crimes Chamber of the State Court of Bosnia and Herzegovina

Ioannis P. Tzivaras. In: Annuaire de La Haye de droit international = Hague Yearbook of international law Vol. 26, 2013, p. 57-81

Sexual violence constitutes a set of offences under international law, particularly after the establishment of the ad hoc International Criminal Tribunals and the permanent International Criminal Court. Through the practice and jurisprudence of the courts, was demonstrated that victims of sexual violence during international or internal armed conflicts are mainly women. Nonetheless, there were many cases where sexual violence focused on men. The Former Yugoslavian war was the breeding ground for adjudicating cases concerning sexual violence against men, along with the inclusion of those cases under the jurisdiction of ICTY and further of the War Crimes Chamber of the State Court of Bosnia and Herzegovina. This paper examines how sexual violence against men has been adjudicated before the courts, with particular emphasis on the actual data which was deposited before them.

A short history of international humanitarian law

Amanda Alexander. In: European journal of international law = Journal européen de droit international Vol. 26, no. 1, February 2015, p. 109-138

This article questions the conventional histories of international humanitarian law, which view international humanitarian law as the heir to a long continuum of codes of warfare. It demonstrates instead that the term international humanitarian law first appeared in the 1970s, as the product of work done by various actors pursuing different ends. The new idea of an international humanitarian law was codified in the 1977 Additional Protocols to the Geneva Conventions. Nevertheless, many of the provisions of the Protocols remained vague and contested, and their status, together with the humanitarian vision of the law they outlined, was uncertain for some time. It was only at the end of the 20th century that international lawyers, following the lead of human rights organizations, declared Additional Protocol I to be authoritative and the law of war to be truly humanitarian. As such, this article concludes that international humanitarian law is not simply an ahistorical code, managed by states and promoted by the International Committee of the Red Cross. Rather, it is a relatively new and historically contingent field that has been created, shaped and dramatically reinterpreted by a variety of actors, both traditional and unconventional.

http://ejil.oxfordjournals.org/content/26/1/109.full.pdf

Target practice : do United Nations sanctions protect civilians against Al-Qaida ?

Leah Campbell. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 101-135. - Cote 345.2/979

In this chapter Leah Campbell explores the utility of the UN Security Council's Al-Qaida Sanctions Committee. She outlines the Committee's procedural framework and explores the tension between these procedures and international human rights law. In particular, the chapter looks for a middle ground between the Committee's pre-emptive targeting policy and fundamental due process rights. Finally, Campbell examines domestic implementation of Security Council targeted sanctions and the potential for measures to most effectively protect civilians against threats to international peace and security caused by terrorist acts.

Targeted killing

Laurie R. Blank. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 227-243. - Cote 345.2/975

Targeted killing has become a frequently used and highly controversial tool of operational counterterrorism. This chapter analyzes the international law applicable to targeted killing, both during armed conflict and as a tool of offensive counterterrorism outside of armed conflict. In particular, this discussion highlights key legal and policy debates regarding: the authority to use lethal force, the identification of legitimate targets and enemy personnel, the consequences of civilian participation in such strikes, and the nature and parameters of the rules governing the conduct of strikes. Beyond the legal issues, the practice of targeted killing also raises significant questions regarding the appropriate measures of transparency and accountability that should be provided regarding the legal authority for strikes and the civilian harm caused.

Targeting civilians and U.S. strategic bombing norms : plus ça change, plus c'est la même chose ?

Neta C. Crawford. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 64-86. - Cote 341.226/69

In this chapter Neta C. Crawford analyses the evolution of United States leaders' normative beliefs about targeting civilians with conventional strategic bombing and the evolution of the practices themselves. She argues that these have changed dramatically, from the belief that targeting civilians was militarily necessary and effective to the emergence of the norm of civilian immunity, with the Vietnam War being the turning point. She explores possible reasons for this change, including a new understanding of military necessity and the negative political effects of the loss of moral legitimacy that occurs when civilians are harmed through carelessness or deliberate intention, The Vietnam War, the Gulf War, the Bosnia and Kosovo campaigns as well as post 9/11 wars provide further evidence to support these explanations for the change in bombing norms and practices.

Targeting of persons and property

by Eric Talbot Jensen. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 71-100. - Cote 303.6/192 (2015)

This chapter analyzes the current international law on targeting in a situation of armed conflict. The author first details the relevant law of armed conflict (LOAC) provisions related to the targeting of persons and objects within current treaty law, namely the 1949 Geneva Conventions, their 1977 Additional Protocols and the 1907 Hague Convention. The author also discusses the means used to target and the method of munitions employment. The central issue addressed by the author, however, is the difficulties associated with the targeting of persons and property in the war on terror, specifically individuals who are not members of armed forces and who may not be currently involved in active hostilities or residing in an area of active hostilities. Furthermore, the author considers the legal and policy issues of the United States' current targeting methodology related to the use of drones against suspected enemies of the United States - both foreign and American nationals - overseas as well as on US soil and analyze the legality of attacks that occur outside of a current conflict. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Le territoire palestinien occupé et le droit international humanitaire : réponse à Peter Maurer

Shawan Jabarin. In: Revue internationale de la Croix-Rouge : sélection française Vol. 95, 2013/1 et 2, p. 161-174

Cette note d'opinion présente un point de vue palestinien sur la pertinence et l'efficacité du droit international humanitaire en ce qui concerne Israël et le territoire palestinien occupé. Elle poursuit le débat lancé dans le numéro précédent de la Revue par le président du CICR, Peter Maurer, sur la légalité et les conséquences humanitaires des politiques et pratiques israéliennes à l'égard de certaines questions essentielles liées à l'occupation, à savoir le tracé de la barrière de Cisjordanie, la construction de colonies israéliennes dans le territoire palestinien occupé et l'annexion de Jérusalem-Est. Une réponse d'Alan Baker, ancien conseiller juridique du ministère israélien des Affaires étrangères, à l'article de Peter Maurer avait été publiée dans le même numéro de la Revue.

https://library.icrc.org/library/docs/DOC/irrc-889-890.pdf

Transnational conflicts and international law

Constantin von der Groeben. - Köln : Institute for International Peace and Security Law, 2014. - 179 p. - Cote 345.26/269

Ever since 9/11 the legal classification of transnational conflicts between states and non-state armed groups, such as Al Qaeda, has become a highly debated topic. While repeatedly referred to as the War on Terror, the legal qualification of the conflict between the US and Al Qaeda remains controversial: US military operations in Afghanistan against Al Qaeda and the use of drones against alleged terrorists in Pakistan, Yemen and other states pose the question as to whether this conflict truly qualifies as one single global war. Similarly, transnational conflicts such as the Colombian operation against a FARC base in Ecuador, Israel's fight against Hezbollah in Lebanon, and Turkish operations against the PKK in northern Iraq pose difficulties as they transcend individual nations' political systems and geographical borders. Whether the law of war (i.e. humanitarian law) is applicable to such conflicts and to what extent human rights law binds the states involved is debated. This work aims to provide structure to the current debate and analyzes the applicability of both humanitarian law and human rights law. Furthermore, it examines and explores approaches to

enhance and develop the existing legal framework, including proposed new legal regimes for transnational conflicts. The author argues against the strict separation of international humanitarian law and human rights law and instead borrows from Colombian authorities' experience in their struggle with the FARC to develop an alternate solution, combining both legal regimes in an integrated approach.

Treatment of prisoners and detainees

John Sawicki. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 271-281. - Cote 345.2/975

Efforts to protect prisoners of war and individuals held by combatant forces have an elaborate architecture in the global order. Yet the situation has become increasingly distorted by the rising prominence of non-state actors (illegal combatants) in conflict. This chapter addresses this gray area in three stages : first, to survey the main aspects of the law of war, especially as it illumines the topic of prisoner and detainee status, and second to parse the particular issues surrounding the application of the law on war to prisoners and detainees. Last, attention will be paid to the challenge of Fourth Generation Warfare as it impacts on these contemporary matters.

Trial and punishment for battlefield misconduct

by Dru Brenner-Beck. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 193-236. - Cote 303.6/192 (2015)

This chapter discusses trial and punishment for battlefield misconduct in the United States' "global war on terror" since 2001, examining the basis for the use of military commissions to try alleged violations of the laws and customs of war by suspected terrorist operatives (or "enemy belligerents"). The author reviews the development of military commissions in Guantanamo Bay and the legal framework of the subsequent Military Commissions Acts of 2006 and 2009 passed by the US Congress in the aftermath of the Supreme Court's Hamdan v. Rumsfeld decision. The author argues that the use of courts whose jurisdiction derives from the LOAC for the trial of operatives captured in the course of the armed struggle against transnational terrorism should be considered legitimate. However this legitimacy relies on legal safeguards, such as substantive and procedural limitations that are inherent to the LOAC. Additionally, the author makes his case by detailing several human rights and procedural norms protected by both international law provisions and the US Constitution that seem compatible with the military commissions regime. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

Triggering the law of armed conflict ?

by Geoffrey S. Corn. - In: The war on terror and the laws of war : a military perspective. - Oxford [etc.] : Oxford University Press, 2015. - p. 33-70. - Cote 303.6/192 (2015)

This chapter explores the conditions under which the law of armed conflict (LOAC) is triggered into force in given contexts of violence. Specifically, it addresses the United States' "ambiguous relationship" with the critical predicate triggering the application of the LOAC prior to and after the attacks of September 11 2001 and the so-called global war on terror. The author explores why the US interpretation of the law-triggering equation under the Bush administration generated such criticism and controversy and how it deviated from the long-established American military policy of LOAC application. Additionally, the author reviews the criticism from international legal scholars about this American interpretation and the extension of the concept of "armed conflict". Accordingly, Geoffrey S. Corn argues that the "global war on terror" pattern based on a military response to 9/11 - and therefore relying on LOAC, including for the treatment of detained alleged terrorists - developed by the Bush administration is erroneous. The author demonstrates his point with relevant landmark US Supreme Court rulings in this matter, such as Hamdan v. Rumsfeld, and examples from factual situations where military involvement did not always relate to "armed conflict". Furthermore, this chapter addresses the shift with regard to the US interpretation under the Obama administration regarding the use of "wartime powers" in the struggle against Al Qaeda and explains why this shift did not eliminate any controversy from a legal scholar's perspective. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]

The UK in Basra and the death of Baha Mousa

Rachel Kerr. - In: Investigating operational incidents in a military context : law, justice, politics. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 71-85. - Cote 345.22/260

This chapter discusses the investigation into the death of an Iraqi civilian, Baha Mousa, while in British custody at a military detention centre in Basra. The author considers the legal framework governing British forces in Iraq, including the applicability of international humanitarian law and international human rights law. The case was prosecuted as a war crime in the military justice system and as a violation of the European Convention on Human Rights, however in spite of these proceedings, no one was found directly responsible

for Baha Mousa's death. The author also examines the political ramifications of this case and of other allegations of unlawful killing and abuse for the British Government and Army.

Understanding proportionality in contemporary armed conflict

Paul Gilbert. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 319-334. - Cote 345.2/975

The idea that military operations should be disproportionately harmful is an essential element of just war theory, of which two versions are described. The orthodox conception rules out both the use of means for giving military advantage that are disproportionately harmful to enemy combatants and actions which are excessively costly in civilian casualties. A more recent revisionist view distinguishes the narrow proportionality of military actions against those liable to defensive harm, primarily unjust combatants, from the wide proportionality of acts that unintentionally harm innocents. These accounts are set in the context of some distinctive features of contemporary armed conflict.

The United Nations in Afghanistan : policy as protection ?

A. Niki Ganz. - In: The protection of non-combatants during armed conflict and safeguarding the rights of victims in post-conflict society : essays in honour of the life and work of Joakim Dungel. - Leiden ; Boston : Brill Nijhoff, [2015]. - p. 136-165. - Cote 345.2/979

This chapter discusses the United Nations' efforts to coordinate the protection of civilians in Afghanistan, focusing on the challenges the UN faces in implementing its mandate as shaped by the competing interests of both the Taliban and international military forces on the ground. Although the UN is able to participate in the establishment of norms for the protection of civilians during peace keeping missions, the track record of success in protecting civilians from harm has been mixed, as evidenced by the metrics of civilian casualties. However, the UN's work in raising the awareness of this problem has been effective in reducing even more grievous injury to an already afflicted population.

Unlawful combatants : a genealogy of the irregular fighter

Sibylle Scheipers. - Oxford : Oxford University Press, 2015. - XIII, 269 p. - Cote 345.29/221

Unlawful Combatants brings the study of irregular warfare back into the centre of war studies. The experience of recent and current wars in Afghanistan, Iraq, Libya, and Syria showed that the status and the treatment of irregular fighters is one of the most central and intricate practical problems of contemporary warfare. Yet, the current literature in strategic studies and international relations more broadly does not problematize the dichotomy between the regular and the irregular. Rather, it tends to take it for granted and even reproduces it by depicting irregular warfare as a deviation from the norm of conventional, inter-state warfare. In this context, irregular warfare is often referred to as the 'new wars' and is associated with the erosion of statehood and sovereignty more generally. This obscures the fact that irregulars such as rebels, guerrillas, insurgents and terrorist groups have a far more ambiguous relationship to the state than the dichotomy between the state and 'non-state' actors implies. They often originate from states, are supported by states and/or aspire to statehood themselves. The ambiguous relationship between irregular fighters and the state is the focus of the book. It explores how the category of the irregular fighter evolved as the conceptual opposite of the regular armed forces, and how this emergence was tied to the evolution of the nation state and its conscripted mass armies at the end of the eighteenth century. It traces the development of the dichotomy of the irregular and the regular, which found its foremost expression in the modern law of armed conflict, into the twenty-first century and provides a critique of the concept of the 'unlawful combatant' as it emerged in the framework of the 'war on terror'.

Unmanned aerial vehicles : humanization from international humanitarian law

Hitomi Takemura. In: Wisconsin international law journal Vol. 32, no. 3, Fall 2014, p. 521-546. - Cote 341.67/150 (Br.)

This article begins with a typology of drones followed by a study of legal issues surrounding the use of unmanned aerial vehicles. These include impact on the principles of distinction and proportionality as well as the issue of accountability for breaches of international humanitarian law. The article then gives an overview of the present use and manufacture of drones worldwide and focuses on the Japanese approach to drones, in relation to the tension that recently arose between China and Japan over Chinese drones flying over the disputed territory of the Senkaku/Diaoyu islands in the East China Sea.

https://library.ext.icrc.org/library/docs/ArticlesPDF/40776.pdf

War crimes tribunals after armed conflict

Carla L. Reyes. - In: The Ashgate research companion to military ethics. - Farnham ; Burlington : Ashgate, 2015. - p. 359-369. - Cote 345.2/975

Tasked with implementing the various and broad aims of international criminal justice, war crimes tribunals face unique challenges. Chief among these challenges lie basic questions of jurisdiction, applicable law, and appropriate consequences. This chapter provides an overview of war crimes tribunals and offers a framework for evaluating whether their challenges hamper their effectiveness or provide impetus for their most important contributions to international humanitarian law. The chapter begins by briefly examining the history of war crimes tribunals from Nuremberg to the present, highlighting attempts by each iteration of courts to address their predecessors' challenges. The chapter then investigates the jurisprudential contributions of war crimes tribunals to international humanitarian law, focusing on the additional humanitarian protection for women and children provided by heightened attention to sexual violence during armed conflict. Finally, it concludes with a brief assessment of the current issues facing war crimes tribunals.

The war on terror and the laws of war : a military perspective

Geoffrey S. Corn... [et al.] ; foreword by Charles J. Dunlap. - Oxford [etc.] : Oxford University Press, 2015. - XXV, 277 p. . - Cote 303.6/192 (2015)

Many years after the United States initiated a military response to the terrorist attacks of September 11th, 2001, the nation continues to prosecute what it considers an armed conflict against transnational terrorist groups. Understanding how the law of armed conflict applies to and regulates military operations executed within the scope of this armed conflict against transnational non-state terrorist groups is as important today as it was in September 2001. In The War on Terror and the Laws of War seven legal scholars, each with experience as military officers, focus on how to strike an effective balance between the necessity of using armed violence to subdue a threat to the nation with the humanitarian interest of mitigating the suffering inevitably associated with that use. Each chapter addresses a specific operational issue, including the national right of self-defense, military targeting and the use of drones, detention, interrogation, trial by military commission of captured terrorist operatives, and the impact of battlefield perspectives on counter-terror military operations, while illustrating how the law of armed conflict influences resolution of that issue. This Second Edition carries on the critical mission of continuing the ongoing dialogue about the law from an unabashedly military perspective, bringing practical wisdom to the contentious topic of applying international law to the battlefield.

What's wrong with drones ? : the battlefield in international humanitarian law

Klem Ryan. - In: The American way of bombing : changing ethical and legal norms, from flying fortresses to drones. - Ithaca (Etats-Unis) ; London : Cornell University Press, 2014. - p. 207-223. - Cote 341.226/69

In this chapter, Klem Ryan refutes the notion that drones are no different from other weapons systems - such as helicopters or long-range missiles. He argues that drones have led to a respatialization of the battlefield that undermines important assumptions of international humanitarian law (IHL) as it is conceived in the Hague and Geneva Conventions, namely that belligerents mutually occupy a distinct physical space in which war is conducted. They have the effect of collapsing the key barrier upon which the concepts of combatant identity and distinction rely for their efficacy. Thus drones represent a decisive break with conventional limited war and may render IHL impotent to impose effective restraints on the conduct of future conflicts.

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