BIBLIOGRAPHY
4th Trimester 2013

International Humanitarian Law

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

ICRC

ICRC

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Introduction

The International Committee of the Red Cross Library

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

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

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

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

Origin and purpose of the IHL bibliography

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

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

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

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

How to use the IHL Bibliography

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

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

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

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

Access to document

Whenever an article is electronically available in full text, a link allows you to access the document directly. Some links only work from within ICRC HQ premises such as the library. Some links require an ICRC login. All documents are available for loan at the ICRC Library. At the end of the bibliographic heading, "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)

L'aide humanitaire utilisée pour "gagner les coeurs et les esprits" : un échec coûteux ?

Jamie A. Williamson. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/3, p. 139-169
http://www.cid.icrc.org/library/docs/DOC/irrc-884-williamson-fre.pdf

Le cadre juridique de l'accès humanitaire dans les conflits armés

Felix Schwendimann. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/3, p. 121-138
http://www.cid.icrc.org/library/docs/DOC/irrc-884-schwendimann-fre.pdf

Confronting complexity and new technologies : a need to return to first principles of international law

by Louise Doswald-Beck. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 106, 2012, p. 107-116

The handbook of international humanitarian law

ed. by Dieter Fleck ; in collab. with Knut Dörmann... [et al.]. - Oxford : Oxford University Press, 2013. - 714 p. ;. - Cote 345.2/638 (2013 ENG)

Historical development and legal basis

Mary Ellen O'Connell. - Oxford : Oxford University Press, 2013. - p. 1-42. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

A Hobbesian approach to cruelty and the rules of war

Larry May. In: Leiden journal of international law Vol. 26, no. 2, June 2013, p. 293-313
Only from ICRC headquarters: http://dx.doi.org/10.1017/S0922156513000058

Humanizing the laws of war : selected writings of Richard Baxter

Richard R. Baxter ; Detlev F. Vagts...[et al.]. - Oxford : Oxford University Press, 2013. - VIII, 380 p. :. - Cote 345.2/939

The interaction between investment law and the law of armed conflict in the interpretation of full protection and security clauses

Gleider I. Hernández. - Cambridge : Cambridge university press, 2013. - p. 21-50. - In: Investment law within international law : integrationist perspectives. - Cote 330/59 (Br.)
ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37507.pdf

International humanitarian law and human rights law

Matthew Happold. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 444-466. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cote 355/1002

International humanitarian law transparency

Lesley Wexler. - [S.l.] : [s.n.], [2013]. - [16] p. ;. - Cote 345.26/140 (Br.)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2321703

The islamic law of Qital and the law of armed conflict : a comparison

Niaz A. Shah. - Farnham ; Burlington : Ashgate, 2013. - p. 213-238. - In: The liberal way of war : legal perspectives. - Cote 355/1010

Jus post bellum in the age of terrorism

introductory remarks by Kristen Boon ; remarks by Larry May... et al.. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 106, 2012, p. 331-345

The law of neutrality

Michael Bothe. - Oxford : Oxford University Press, 2013. - p. 549-580. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

Laws of war, morality, and international politics : compliance, stringency, and limits

Henry Shue. In: Leiden journal of international law Vol. 26, no. 2, June 2013, p. 271-292

Only from ICRC headquarters: http://dx.doi.org/10.1017/S0922156513000046

Learning to live with (a little) uncertainty : the operational aspects and consequences of the geography of conflict debate

Laurie R. Blank. In: University of Pennsylvania law review online Vol. 161, p. 347-361. - Cote 342.2/942 (Br.)

http://www.pennlawreview.com/responses/index.php?id=120

The liberal way of war : legal perspectives

ed. by Robert P. Barnidge. - Farnham ; Burlington : Ashgate, 2013. - XX, 306 p. ;. - Cote 355/1010

Peace settlements and international law : from lex pacificatoria to jus post bellum

Christine Bell. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 499-546. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cote 355/1002

Scope of application of international humanitarian law

Jann K. Kleffner. - Oxford : Oxford University Press, 2013. - p. 43-78. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

Spatial conceptions of the law of armed conflict

Louise Arimatsu. - Farnham ; Burlington : Ashgate, 2013. - p. 167-188. - In: The liberal way of war : legal perspectives. - Cote 355/1010

II. Types of conflicts

(Qualification of conflict, international and non-international armed conflict)

An assessment of cyber warfare issues in light of international humanitarian law

Kalliopi Chainoglou. - Farnham ; Burlington : Ashgate, 2013. - p. 189-210. - In: The liberal way of war : legal perspectives. - Cote 355/1010

Between law and reality : "new wars" and internationalised armed conflict

Jed Odermatt. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 19-32. - Cote 345.27/132 (Br.)
http://ojs.ubvu.vu.nl/alf/article/view/321/494

Civil war in Syria and the "new wars" debate

Artur Malantowicz. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 52-60. - Cote 345.26/233 (Br.)
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Cyber conflict and international humanitarian law

Herbert Lin. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 515-531
http://www.cid.icrc.org/library/docs/DOC/irrc-886-lin.pdf

The era of cyber warfare : applying international humanitarian law to the 2008 Russian-Georgian cyber conflict

Lesley Swanson. In: Loyola of Los Angeles international and comparative law review Vol. 32, no. 2, Spring 2010, p. 303-333. - Cote 345.26/237 (Br.)
http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1010&context=ilr

Fundamental standards of humanity : how international law regulates internal strife

Tilman Rodenhäuser. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 3/2013, p. 121-129

The Gaza flotilla incident and the modern law of blockade

James Farrant. In: Naval war college review Vol. 66, no. 3, Summer 2013, p. 81-98. - Cote 347.799/147 (Br.)
http://www.usnwc.edu/Publications/Naval-War-College-Review/2013---Summer.aspx

International humanitarian law in times of contemporary warfare : the new challenge of cyber attacks and civilian participation

Charlotte Lülf. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 2/2013, p. 74-82

International legal implications of Israel's attack on the Gaza aid flotilla

Sari Bashi... [et al.]. In: Proceedings of the 105th annual meeting [of the] American Society of International Law 2011, p. 463-475
Only from ICRC headquarters: http://tinyurl.com/pptwpem

The law of armed conflict at sea

Wolff Heintschel von Heinegg. - Oxford : Oxford University Press, 2013. - p. 463-547. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

The law of non-international armed conflict

Dieter Fleck. - Oxford : Oxford University Press, 2013. - p. 581-610. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

A legal "red line" ? : Syria and the use of chemical weapons in civil conflict

Jillian Blake and Aqsa Mahmud. In: UCLA law review discourse Vol. 61, 2013, p. 244-260. - Cote 341.67/267 (Br.)
http://www.uclalawreview.org/pdf/discourse/61-16.pdf

The legality of the threat or use of nuclear weapons : the ICJ advisory opinion reconsidered

Daniel Thürer. - Wien : Facultas.wuv, 2012. - p. 538-552. - In: Völkerrecht und die Dynamik der Menschenrechte : Liber Amicorum Wolfram Karl. - Cote 341.67/7 (Br.)
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Localised armed conflict : a factual reality, a legal misnomer

Mutsa Mangezi. In: African yearbook on international humanitarian law 2012, p. 79-97

Mexico's drug "war" : drawing a line between rhetoric and reality

Andrea Nill Sánchez. In: Yale journal of international law Vol. 38, issue 2, p. 467-509. - Cote 345.26/239 (Br.)
http://www.yjil.org/print/volume-38-issue-2/mexicos-drug-war-drawing-a-line-between-rhetoric-and-reality

Mexico's drug war, international jurisprudence, and the role of non-international armed conflict status

Michael T. Wotherspoon. In: Journal of international humanitarian legal studies Vol. 3, issue 2, 2012, p. 291-321
Only from ICRC headquarters: http://booksandjournals.brillonline.com/content/10.1163/18781527-00302008

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

Jeremy Rabkin and Ariel Rabkin. In: Chicago journal of international law Vol. 14, no. 1, Summer 2013, p. 197-258. - Cote 347.799/148 (Br.)
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North Korea and cyberwarfare : how North Korea's cyber attacks violate the laws of war

Tom Papain. In: Journal of Korean law Vol. 11, no. 1, December 2011, p. 29-54. - Cote 345.26/238 (Br.)
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Protecting Australian cyberspace: are our international lawyers ready ?

Stephen Tully. In: Australian international law journal Vol. 19, 2012, p. 49-77. - Cote 345.22/220 (Br.)

The relationship between a state and an organised armed group and its impact on the classification of armed conflict

Keiichiro Okimoto. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 33-51. - Cote 345.27/131 (Br.)
http://ojs.ubvu.vu.nl/alf/article/view/322/495

'Restating the law "as it is"' : on the Tallinn manual and the use of force in cyberspace

Lianne J. M. Boer. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 4-18. - Cote 345.26/234 (Br.)
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Sailing close to the wind : human rights council fact-finding in situations of armed conflict : the case of Syria

Thilo Marauhn. In: California western international law journal Vol. 43, issue 2, Spring 2013, p. 401-459. - Cote 345.22/218 (Br.)
http://tinyurl.com/p3q86og

Searching for international rules applicable to cyber warfare : a critical first assessment of the new Tallinn Manual

Dieter Fleck. In: Journal of conflict and security law Vol. 18, no. 2, Summer 2013, p. 331-351

Only from ICRC headquarters: http://jcsl.oxfordjournals.org/content/18/2/331.full.pdf

A taxonomy of armed conflict

Marko Milanovic and Vidan Hadzi-Vidanovic. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 256-314 :. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cote 355/1002

Zero Dark Thirty : a critical evaluation of the legality of the killing of Osama bin Laden under international humanitarian law

Sarah Cunningham. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 2/2013, p. 56-63

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Combatants and non-combatants

Knut Ipsen. - Oxford : Oxford University Press, 2013. - p. 79-113. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

Constraining targeting in noninternational armed conflicts : safe conduct for combatants conducting informal dispute resolution

Peter Margulies. In: Vanderbilt journal of transnational law Vol. 46, no. 4, p. 1041-1077. - Cote 345.29/199 (Br.)

http://www.vanderbilt.edu/jotl/2013/11/

General orders no. 100 : why the Lieber code's requirement for combatants to wear uniforms is still applicable for the protection of civilian populations in modern warfare

Robert Cummings. In: Northern Kentucky law review Vol. 39, no. 4, 2012, p. 785-805. - Cote 345.29/196 (Br.)

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Human rights obligations of non-state armed groups in other situations of violence : the Syria example

Tilman Rodenhäuser. In: Journal of international humanitarian legal studies Vol. 3, issue 2, 2012, p. 263-290

Only from ICRC headquarters: http://booksandjournals.brillonline.com/content/10.1163/18781527-00302005

The impact of military justice reforms on the law of armed conflict : how to avoid unintended consequences

Victor Hansen. In: Michigan State international law review Vol. 21, issue 2, 2013, p. 229-272. - Cote 345.29/200 (Br.)

http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1115&context=ilr

Partiality and weighing harm to non-combatants

David Lefkowitz. - Leiden ; Boston : Brill, 2012. - p. 251-270. - In: Global justice and international affairs. - Cote 345.25/285 (Br.)

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The relationship between a state and an organised armed group and its impact on the classification of armed conflict

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Niaz A. Shah. In: Journal of international humanitarian legal studies Vol. 3, issue 1, 2012, p. 192-229
Only from ICRC headquarters: http://booksandjournals.brillonline.com/content/10.1163/18781527-00301006

Who is a member ? : targeted killings against members of organized armed groups

David McBride. In: Australian yearbook of international law Vol. 30, 2013, p. 47-91. - Cote 345.29/195 (Br.)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2261128

IV. Multinational forces

International organisations' involvement in peace operations : applicable legal framework and the issue of responsibility : proceedings of the 12th Bruges colloquium, 20-21 October 2011 = L'implication des organisations internationales dans les missions de paix : le cadre juridique applicable et la question de la responsabilité : actes du 12e Colloque de Bruges, 20-21 octobre 2011

CICR, Collège d'Europe. In: Collegium No 42, automne 2012, 179 p.. - Cote 172.4/257
https://www.coleurope.eu/sites/default/files/uploads/page/collegium_42_0.pdf

The issue of international humanitarian law applicability to recent UN, NATO and African Union peace operations (Libya, Somalia, Democratic Republic of Congo, Ivory Coast...)

Tristan Ferraro. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 315-323
Only from ICRC headquarters: http://tinyurl.com/qyl97cx

The law of international peace operations

Ben F. Klappe. - Oxford : Oxford University Press, 2013. - p. 611-646. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

Observance of international humanitarian law by forces under the command of international organisations

Arne Willy Dahl. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 345-363

Observance of international humanitarian law by forces under the command of the European Union

Frederik Naert. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 373-404

Prosecution of attacks against peacekeepers in international courts and tribunals

Ola Engdahl. In: The military law and law of war review 51/2, 2012, p. 249-284
Only from ICRC headquarters: http://tinyurl.com/p92stfw

The use of force for humanitarian purposes

Christine Gray. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 229-255. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cote 355/1002

V. Private entities

Private military companies

Chia Lehnardt. - Cheltenham ; Northampton : E. Elgar, 2013. - p.421-443. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cote 355/1002

VI. Protection of persons

Civilian casualties and drone attacks : issues in international humanitarian law

Susan Breau. - Farnham ; Burlington : Ashgate, 2013. - p. 115-138. - In: The liberal way of war : legal perspectives. - Cote 355/1010

Do no harm : the dispute over access to health care between Israel and the Palestinian territories

Emma Glazer. In: Cardozo journal of international and comparative law Vol. 22, no. 1, Fall 2013, p. 51-84. - Cote 345.28/105 (Br.)

http://www.cjicl.com/uploads/2/9/5/9/2959791/glazer.updated.to.editor.1.pdf

Journalists as a protected category : a new status for the media in international humanitarian law

Elizabeth Levin. In: UCLA journal of international law and foreign affairs Vol. 17, issue 1 & 2, Spring 2013, p. 215-250. - Cote 070/15 (Br.)

http://tinyurl.com/oj9p6ur

The liberal discourse and the "new wars" of/on children

Noëlle Quénivet. In: Brooklyn journal of international law Vol. 38, issue 3, 2013, p. 1053-1107. - Cote 362.7/385 (Br.)

http://www.brooklaw.edu/~/media/PDF/LawJournals/BJI_PDF/bji_vol38iii.ashx

The "new wars" of children or on children ? : international humanitarian law and the "underaged combatant"

Noëlle Quénivet. - Farnham ; Burlington : Ashgate, 2013. - p. 139-165. - In: The liberal way of war : legal perspectives. - Cote 355/1010

Protected persons in international armed conflicts

Tom Ruys and Christian De Cock. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 375-420. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cote 355/1002

Protection of religious personnel

Nilendra Kumar. - Oxford : Oxford University Press, 2013. - p. 413-424. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

Protection of the civilian population

Hans-Peter Gasser and Knut Dörmann. - Oxford : Oxford University Press, 2013. - p. 231-320. - In: The handbook of international humanitarian law. - Cote 345.2/638

Protection of the wounded, sick and shipwrecked

Jann K. Kleffner. - Oxford : Oxford University Press, 2013. - p. 321-357. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

Le recours à la force pour protéger les civils et l'action humanitaire : le cas libyen et au-delà

Bruno Pommier. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/3, p. 171-193
http://www.cid.icrc.org/library/docs/DOC/irrc-884-pommier-fre.pdf

The combatant status of "under-aged" child soldiers recruited by irregular armed groups in international armed conflicts

Shannon Bosch. In: African yearbook on international humanitarian law 2012, p. 1-39

VII. Protection of objects

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

Different legal issues related to the protection of cultural property in peacetime and wartime

Jan Hladík. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 106, 2012, p. 453-462

Methods and means of combat

Stefan Oeter. - Oxford : Oxford University Press, 2013. - p. 115-230. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

Protecting cultural heritage : war crimes and crimes against humanity during conflicts and revolutions in North Africa and the Middle East

Edward Phillips. - Leiden ; Boston : M. Nijhoff, 2013. - p. 225-236. - In: The Arab spring : new patterns for democracy and international law. - Cote 323.15/29

Protection of cultural property

Roger O'Keefe. - Oxford : Oxford University Press, 2013. - p. 425-461. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

VIII. Detention, internment, treatment and judicial guarantees

Executive branch policy meets international law in the evolution of the domestic law of detention

Thomas B. Nachbar. In: Virginia journal of international law Vol. 53, no. 2, 2013, p. 201-246. - Cote 400.2/344 (Br.)
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Fundamental standards of humanity : how international law regulates internal strife

Tilman Rodenhäuser. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 3/2013, p. 121-129

The geography of the battlefield : a framework for detention and targeting outside the "hot" conflict zone

Jennifer C. Daskal. In: University of Pennsylvania law review Vol. 161, issue 5, April 2013, p. 1165-1234. - Cote 345.26/235 (Br.)
http://www.pennlawreview.com/print/index.php?id=394

Hamdan v. United States : a death knell for military commissions ?

Jennifer Daskal. In: Journal of international criminal justice Vol. 11, no. 4, September 2013, p. 875-898
Only from ICRC headquarters: http://jicj.oxfordjournals.org/content/11/4/875.full.pdf

Protection of prisoners in armed conflict

Sandra Krähenmann. - Oxford : Oxford University Press, 2013. - p. 359-411. - In: The handbook of international humanitarian law. - Cote 345.2/638 (2013 ENG)

Selling the pass : habeas corpus, diplomatic relations and the protection of liberty and security of persons detained abroad

Tatyana Eatwell. In: International and comparative law quarterly Vol. 62, part 3, July 2013, p. 727-739
Only from ICRC headquarters: http://journals.cambridge.org/abstract_S0020589313000225

IX. Law of occupation

Do no harm : the dispute over access to health care between Israel and the Palestinian territories

Emma Glazer. In: Cardozo journal of international and comparative law Vol. 22, no. 1, Fall 2013, p. 51-84. - Cote 345.28/105 (Br.)
http://www.cjicl.com/uploads/2/9/5/9/2959791/glazer.updated.to.editor.1.pdf

The obligation to withhold from trading in order not to recognize and assist settlements and their economic activity in occupied territories

Tom Moerenhout. In: Journal of international humanitarian legal studies Vol. 3, issue 2, 2012, p. 344-385
Only from ICRC headquarters: http://booksandjournals.brillonline.com/content/10.1163/18781527-00302004

Occupation law during and after Iraq : the expedience of conservationism evidenced in the minutes and resolutions of the Iraqi Governing Council

Jordan E. Toone. In: Florida journal of international law Vol. 24, December 2012, p. 469-511. - Cote 345.28/104 (Br.)
Only from ICRC headquarters: http://tinyurl.com/o7gv3j8

Protection of the civilian population

Hans-Peter Gasser and Knut Dörmann. - Oxford : Oxford University Press, 2013. - p. 231-320. - In: The handbook of international humanitarian law. - Cote 345.2/638

X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

Air targeting in operation Unified Protector in Libya : jus ad bellum and IHL issues : an external perspective

Giulio Bartolini. In: Recueils de la Société internationale de droit militaire et de droit de la guerre XIX, 2012, p. 242-279

Analogy at war : proportionality, equality and the law of targeting

Gregor Noll. In: Netherlands yearbook of international law Vol. 43, 2012, p. 205-230. - Cote 345.25/286 (Br.)

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XII. Implementation

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

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XIII. International human rights law

(Focus on situations of armed conflict and other situations of violence, relations with IHL)

Commissions of inquiry into armed conflict, breaches of the laws of war, and human rights abuses : process, standards, and lessons learned

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XV. Contemporary challenges

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International humanitarian law transparency

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Civil war in Syria and the "new wars" debate

Artur Malantowicz. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 52-60. - Cote 345.26/233 (Br.)
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Human rights obligations of non-state armed groups in other situations of violence : the Syria example

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Selling the pass : habeas corpus, diplomatic relations and the protection of liberty and security of persons detained abroad

Tatyana Eatwell. In: International and comparative law quarterly Vol. 62, part 3, July 2013, p. 727-739
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Executive branch policy meets international law in the evolution of the domestic law of detention

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The geography of the battlefield : a framework for detention and targeting outside the "hot" conflict zone

Jennifer C. Daskal. In: University of Pennsylvania law review Vol. 161, issue 5, April 2013, p. 1165-1234. - Cote 345.26/235 (Br.)
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Yugoslavia

Dealing with the principle of proportionality in armed conflict in retrospect : the application of the principle in international criminal trials

Rogier Bartels. In: Israel law review Vol. 46, issue 2, July 2013, p. 271-315. - Cote 345.25/141 (Br.)

All with Abstracts

L'aide humanitaire utilisée pour "gagner les coeurs et les esprits" : un échec coûteux ?

Jamie A. Williamson. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/3, p. 139-169

Dans cet article, l'auteur explique que l'intégration de l'assistance humanitaire dans les opérations anti-insurrectionnelles tendant à "gagner les cœurs et les esprits" n'a pas été une réussite et que les coûts, sur le plan tant des opérations que du droit, l'emportent manifestement sur les avantages. Il démontre qu'une telle manipulation de l'assistance humanitaire est contraire aux principes fondamentaux du droit international humanitaire. En outre, des recherches de plus en plus nombreuses concluent que l'utilisation de programmes d'aide et de secours à court terme dans les contre-insurrections (COIN) a été inefficace et que, dans des pays comme l'Afghanistan, elle a même pu nuire à l'objectif militaire général qui était de vaincre les insurgés. Alors que les Etats-Unis et l'OTAN mettent progressivement fin à leurs opérations militaires en Afghanistan, le moment est venu pour les militaires et les décideurs politiques de réviser l'ordre donné de gagner les cœurs et les esprits comme stratégie anti-insurrectionnelle afin d'en tirer des enseignements et de reconnaître l'importance d'un espace neutre et indépendant pour l'aide humanitaire.

http://www.cid.icrc.org/library/docs/DOC/irrc-884-williamson-fre.pdf

Air targeting in operation Unified Protector in Libya : jus ad bellum and IHL issues : an external perspective

Giulio Bartolini. In: Recueils de la Société internationale de droit militaire et de droit de la guerre XIX, 2012, p. 242-279

This study analyzes several legal issues related to the military intervention in Libya undertaken within the framework of UN Security Council resolution 1973 (2011). The main areas of interest are: (a) the impact of the mandate's jus ad bellum limitations concerning military operations carried out in the implementation of UN Security Council resolution 1973; (b) international humanitarian law (IHL) issues related to Operation Unified Protector and the mandate's potential impact on the interpretation and application of principles pertaining to the law of armed conflicts.

Analogy at war : proportionality, equality and the law of targeting

Gregor Noll. In: Netherlands yearbook of international law Vol. 43, 2012, p. 205-230. - Cote 345.25/286 (Br.)

This text is an inquiry into how the international community is understood in and through international law. My prism for this inquiry shall be the principle of proportionality in international humanitarian law, relating expected civilian losses to anticipated military advantage. To properly understand proportionality, I have to revert to the structure of analogical thinking in the thomistic tradition. Proportionality presupposes a third element to which civilian losses and military advantage can be related. In a first reading, I develop how this tradition of thought might explain the difficulties contemporary IHL doctrine has in understanding proportionality. If military commanders misconceive the third element as the sovereignty of their own state, they will invariably apply the proportionality principle in a paternalistic manner. This would obviate the most rudimentary idea of equality among states and do away with the common of an international community. In a second reading, I shall explore whether this third element could instead be thought of as a demos, while retaining the existing framework of analogical thinking. My argument is that this secularizing replacement is possible. Practically, its consequence would be a radical change in the task of the responsible military commander determining proportionality. That commander would now need to rethink civilians endangered by an attack as a demos whose potentiality must be preserved.

ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37188.pdf

Armed drones and the ethics of war : military virtue in a post-heroic age

Christian Enemark. - London ; New York : Routledge, 2014. - IX, 150 p. - Cote 341.67/737

This book considers the use of armed drones in the light of ethical principles that are intended to guard against unjust increases in the incidence and lethality of armed conflict. The evidence and arguments presented indicate that, in some respects, the use of armed drones is to be welcomed as an ethically superior mode of warfare. Over time, however, their continued and increased use is likely to generate more challenges than solutions, and perhaps do more harm than good.

An assessment of cyber warfare issues in light of international humanitarian law

Kalliopi Chainoglou. - In: The liberal way of war : legal perspectives. - Farnham ; Burlington : Ashgate, 2013. - p. 189-210. - Cote 355/1010

During the last few decades, the use of computer network attacks in modern warfare has significantly increased. Computer network attacks are operations that, by targeting a data stream , aim to manipulate, disrupt, deny or destroy electronic information that is resident in computers or computer network. In the contemporary battlefield , cyber attacks offer the possibility of attacking military objectives that would otherwise be inaccessible, for example due to the location of the military objectives or the risk of disproportionate civilian injury or damage to civilian objects (see Jensen 2003; O'Donnell and Kraska 2003; Kelsey 2008: 1440-41). In certain circumstances, computer network attacks may reduce the humanitarian impact of military power and provide the kind of precise and tailored effects that a conventional military attack may not produce.

Between law and reality : "new wars" and internationalised armed conflict

Jed Odermatt. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 19-32. - Cote 345.27/132 (Br.)

Even conflicts that may seem internal take place in a globalised context in which international actors play an ever-increasing role. While traditional inter-state wars have diminished, there are few wars that can be described as purely 'internal' in nature. The purpose of this contribution is to discuss how these 'new wars' present a challenge to the non-international/international armed conflict dichotomy. The first part of this contribution briefly examined the international/non-international dichotomy in international law. While this dichotomy is widely criticised by academics, lawyers and in the jurisprudence of international courts and tribunals, it remains an important element in the law of armed conflict, and will not truly be eroded any time soon. The primary reason for this is the fact that states continue to see a fundamental distinction between the two types of conflicts. The second part examined how the dichotomy is extremely difficult to apply to 'new wars', which contain both internal and international elements. It is especially difficult in cases where the support given by outside parties will not amount to the necessary level to 'internationalise' the armed conflict, or where the belligerents are primarily non-state actors. As the Syrian Civil War demonstrates, there really is a 'crisis of compliance'61 in these armed conflicts where significant atrocities are committed on both sides. How the 'old law' of armed conflict will adapt to these new wars remains a critical question for international law.

http://ojs.ubvu.vu.nl/alf/article/view/321/494

Beyond the Call of Duty : why shouldn't video game players face the same dilemmas as real soldiers ?

Ben Clarke, Christian Rouffaer and François Sénéchaud. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 711-737

Video games are influencing users' perceptions about what soldiers are permitted to do during war. They may also be influencing the way combatants actually behave during today's armed conflicts. While highly entertaining escapism for millions of players, some video games create the impression that prohibited acts, such as torture and extrajudicial killing are standard behaviour. The authors argue that further integration of international humanitarian law (IHL) can improve knowledge of the rules of war among millions of players, including aspiring recruits and deployed soldiers. This, in turn, offers the promise of greater respect for IHL on tomorrow's battlefields.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-clarke-rouffaer-senechaud.pdf

Le cadre juridique de l'accès humanitaire dans les conflits armés

Felix Schwendimann. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/3, p. 121-138

Obtenir et maintenir l'accès des acteurs humanitaires aux populations ayant besoin d'aide représente un défi. Il existe en effet toutes sortes d'obstacles à l'accès humanitaire : hostilités en cours, climat d'insécurité, lourdeur fréquente des procédures administratives ou tentatives des parties aux conflits armés pour empêcher l'accès humanitaire. Ces difficultés sont souvent aggravées par la connaissance insuffisante qu'ont les Etats, les groupes armés non étatiques et les organisations humanitaires du cadre juridique. Le présent article a avant tout pour objet de présenter le cadre juridique international qui régit actuellement l'accès humanitaire dans les situations de conflit armé.

http://www.cid.icrc.org/library/docs/DOC/irrc-884-schwendimann-fre.pdf

The catastrophic humanitarian consequences of nuclear weapons : the key issues and perspective of the International Committee of the Red Cross

Lou Maresca. - In: Viewing nuclear weapons through a humanitarian lens. - New York ; Geneva : United Nations, 2013. - p. 131-144. - Cote 341.67/735

This article will highlight the main issues and concerns of the ICRC in relation to nuclear weapons, and provide a summary of the efforts of the International Red Cross and Red Crescent Movement in this area since 1945. It will also offer several observations on what the changing dynamic on nuclear weapons may mean for the ongoing work on this issue.

Categorization and legality of autonomous and remote weapons systems

Hin-Yan Liu. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 627-652

This article reconsiders the status and legality of both autonomous and remote weapons systems under international humanitarian law. Technologically advanced unmanned military systems are being introduced into the modern battlespace with insufficient recognition of their potential challenge to international humanitarian law. The article questions the understanding of both autonomous and remote weapons systems as 'weapons' and seeks to consider how their use may impact existing legal categories. Their use is then specifically situated to consider the legality of their deployment in certain contexts. Finally, the article raises the question of impunity for the use of both autonomous and remote weapons systems that arise from the inability to attribute responsibility for the harm they cause. It is imperative that law and policy are developed to govern the development and deployment of these advanced weapons systems to forestall these likely situations of impunity.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-liu.pdf

Civil war in Syria and the "new wars" debate

Artur Malantowicz. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 52-60. - Cote 345.26/233 (Br.)

The last two decades saw a plethora of contributions to the academic debate on the shifting character of contemporary warfare. Some scholars praised the notion of unique features in the nature of contemporary violent conflicts and thereby coined new terms and approaches, such as 'new wars', 'postmodern wars', 'wars of the third kind', 'peoples' wars', 'privatized wars' or 'hybrid wars'; some, on the contrary, questioned the rationality of such distinctions, believing that these not-so-unique characteristics were long-present in the history of humankind. The most prominent – and hence the most commonly addressed by fellow scholars – among the aforementioned ideas was the one put forward by Mary Kaldor in her profound book "New & Old Wars. Organized Violence in a Global Era". This is why it will become the framework of the following reflection, which is not meant to take sides in the debate but only to offer a brief attempt to review the main arguments of the dispute1 and look into its applicability in the context of the unfolding civil war in Syria.

http://ojs.ubvu.vu.nl/alf/article/view/320/496

Civilian casualties and drone attacks : issues in international humanitarian law

Susan Breau. - In: The liberal way of war : legal perspectives. - Farnham ; Burlington : Ashgate, 2013. - p. 115-138. - Cote 355/1010

In addressing the rules of international humanitarian law that regulate civilian casualties that often accompany the use of drones, this chapter proceeds in three parts. The first section highlights the controversy over how many of these casualties have actually been uninvolved civilians, which engages the thorny issue of direct participation in hostilities. This portion of the chapter reviews the International Committee of the Red Cross (ICRC)'s newly released Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (Melzer 2008a) (hereafter Interpretative Guidance), which was adopted by the Assembly of the International Committee of the Red Cross on 26 February 2009, and assesses whether it provides sufficient clarity in this area. The second section of this chapter briefly reviews issues of targeting and the cardinal principle of proportionality. The third and pivotal section of this chapter introduces the little discussed but very real obligations in international humanitarian law towards missing and dead civilians. Regardless of wether or not the rules of international humanitarian law are complied with, civilians who are killed in these attacks are entitled to a dignified burial.

Combatants and non-combatants

Knut Ipsen. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 79-113. - Cote 345.2/638 (2013 ENG)

Content: General rules. - Combatants. - Non-combatants. - Persons accompanying the armed forces. - Civilian contractors. - Special forces. - Spies. - Special aspects of aerial and naval warfare.

Combined operations, an international war crimes perspective

Arne Willy Dahl. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 364-372

Peace support operations often take place as multinational operations (combined operations), in which forces from several States participate under the command of international organisations. However, combined operations may also take place in an international armed conflict, such as the Gulf War in 1991 where an international coalition stood against Iraq. We have also seen other war-fighting operations executed by multinational forces, i.e. as combined operations. It may be disputed whether International Humanitarian Law applies to Peace Support Operations - in some sort of PSO's, partially, by analogy or not at all. It may also be noted that it is typically those PSO's to which IHL/LOAC does not apply or applies only to a limited degree that are conducted under the command of the United Nations.This presentation focus is combined operations that are under the command of an international organisation and to which IHL/LOAC applies. It covers some legal interoperability aspects horizontally - between participating States - and vertically - between the international organization in command and the participating States.

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Commissions of inquiry into armed conflict, breaches of the laws of war, and human rights abuses : process, standards, and lessons learned

by Philip Alston, Agnieszka Jachec Neale, Heidi Tagliavini. In: Proceedings of the 105th annual meeting [of the] American Society of International Law 2011, p. 81-94

Contient : Introduction : commissions of inquiry as human rights fact-finding tools / P. Alston. - Human rights fact-finding into armed conflict and breaches of the laws of war / A. Jachec Neale. - The August 2008 conflict in Georgia / H. Tagliavini

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The competence of UN Human Right Council Commissions of Inquiry to make findings of international crimes

Catherine Harwood. - [S.l.] : [s.n.], 2013. - 25 p. ;. - Cote 345.22/224 (Br.)

International commissions of inquiry established by the UN Human Rights Council (HRC) have often gone beyond the realm of international human rights law, also making findings of violations of international humanitarian law (IHL) and international criminal law (ICL). This article discusses HRC commissions' practice of making findings of international crimes by exploring two senses of competence: jurisdiction and proficiency. While some claimed sources of ICL jurisdiction are unpersuasive, commissions may have acquired such jurisdiction through practice. However, viewing ICL through a human rights lens has the potential to distort ICL, blur the boundaries between the bodies of law and damage the wider projects of international human rights and international criminal justice.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330808

Conflict without casualties ... a note of caution : non-lethal weapons and international humanitarian law

Eve Massingham. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 673-685

In the last decade considerable expense has been invested in non-lethal weapons development programmes, including by the United States military and other members of the North Atlantic Treaty Organization and members of the European Working Group Non-Lethal Weapons. This paper acknowledges the potential suitability of non-lethal weapons for specific situations arising on the battlefield, but cautions against those who advocate for any weakening of existing international humanitarian law frameworks to provide for greater employment of non-lethal technologies.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-massingham.pdf

Confronting complexity and new technologies : a need to return to first principles of international law

by Louise Doswald-Beck. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 106, 2012, p. 107-116

These remarks were presented in the context of a panel discussion on international humanitarian law and new technology. The author argues that cyber warfare and robots (including drones) might be capable of respecting the basic principles of IHL but nevertheless seriously undermine international law. In this regard the basic principle of international law, in particular the post-Charter grundnorm of international peace and security, need to be revisited in the analysis of the future of these new technologies.

Constraining targeting in noninternational armed conflicts : safe conduct for combatants conducting informal dispute resolution

Peter Margulies. In: Vanderbilt journal of transnational law Vol. 46, no. 4, p. 1041-1077. - Cote 345.29/199 (Br.)

Some evidence suggests that informal negotiators have been either targeted or become collateral damage in U.S. drone strikes. This evidence might be unreliable. However, if it is accurate, even in part, that should be a concern even for those who support the broad outlines of the U.S. targeting strategy. Responding to this concern, this Article argues that informal negotiators from an armed non-state group should receive an "implied safe conduct," not only shielding them from targeting but also imposing an affirmative duty on a state party to a noninternational armed conflict (NIAC) to ensure their safety. The expansion of implied safe conduct suggested here reflects what can be called a "stewardship model" for third-party states, such as the United States, that participate in NIACs in host countries, such as Afghanistan, Pakistan, Somalia, or Yemen. A stewardship model, which this author has also advanced in another recent piece dealing with the interaction of American and international law, seeks to reconcile LOAC and international human rights law in order to promote the preservation of indigenous governance and the transition to civil order in the host state.

http://www.vanderbilt.edu/jotl/2013/11/

Contemporary legal doctrine on proportionality in armed conflicts : a select review

Ben Clarke. In: Journal of international humanitarian legal studies Vol. 3, issue 2, 2012, p. 391-414

In an attempt to impose limits on the level of acceptable incidental civilian suffering during armed conflict, international humanitarian law (IHL) articulates a proportionality formula as the test to determine whether or not an attack is lawful. Efforts to comply with that formula during the conduct of hostilities can involve a host of legal and operational challenges. A recent international conference in Jerusalem, co-sponsored by the delegation of the ICRC in Israel and the Occupied Territories and the Minerva center for human rights at the Hebrew university of Jerusalem, brought together human rights lawyers, military experts and scholars form a variety of disciplines to assess recent developments relating to the proportionality principle in international humanitarian law. This report examines ten conference presentations which offer important insights into: the nature, scope of application and operational requirements of the proportionality principle under IHL; the modalities of investigation and review of proportionality decisions or the challenges involved in proportionality decision-making.

Only from ICRC headquarters: http://dx.doi.org/10.1163/18781527-00302002

Contextualizing military necessity

Nobuo Hayashi. In: Emory international law review vol. 27, issue 1, 2013, p. 189-283. - Cote 345.25/283 (Br.)

Modern theories correctly reject the Kriegsriison doctrine, according to which the laws of war do not override the necessities of war and it is rather the latter that override the former. One such theory holds that unqualified rules of international humanitarian law ("IHL") exclude military necessity being invoked de novo as a ground for deviation therefrom, yet not as a ground for additional restraint thereon. This theory-let us call it "counter Kriegsriison "-is unacceptable for two reasons. First, in none of the three pertinent contexts does military necessity restrict or prohibit militarily unnecessary conduct per se. Seen in a strictly material context of war-fighting, military necessity merely embodies a truism that it is in one's strategic selfinterest to pursue what is materially conducive to success and that it is similarly in one's strategic self-interest to avoid what is not so conducive. Nor, in the context of IHL norm-creation, does military necessity give the law reason to forbid or limit given conduct. Unnecessary evil does, but unnecessary simpliciter does not, mean illegitimate. In positive international humanitarian law, military

necessity functions exclusively as an exceptional clause. If not, or no longer, militarily necessary, deviant conduct simply reverts to being governed by the principal rule. It is the principal rule, rather than the military non-necessity of the conduct or the now inoperative exceptional clause, that renders such conduct unlawful. The second reason for which counter-Kriegsriison is untenable is the same reason for which Kriegsriison is untenable. Positive international humanitarian law has already "accounted for" military necessity. This means that no relevant element of military necessity has survived the process of IHL norm-creation and may consequently be invoked de novo vis-a-vis unqualified rules once this process has validly posited them. Where given conduct is unlawful according to a validly posited IHL rule of an unqualified character, then, even if the conduct constitutes material military necessity, invoking it does not "repair" or "right" the conduct's unlawfulness. Conversely, where given conduct is unqualifiedly lawful according to the applicable rule of positive international humanitarian law. the conduct's lack of material military necessity does not "wrong" or "vitiate" its otherwise conclusive lawfulness.

Only from ICRC headquarters: http://tinyurl.com/nmslu5b

The crime and punishment of states

Gabriella Blum. In: The Yale journal of international law Vol. 38, issue 1, 2013, p. 57-122. - Cote 345.22/217 (Br.)

The moral rhetoric of “crime” and “punishment” of states has been excised from mainstream international law, and replaced with an amoral rhetoric of “threat” and “prevention.” Today, individuals alone are subject to international punishment, while states are subject only to preventive, regulatory or enforcement measures. Through a historical survey of the shift from punishment to prevention in various spheres of international law, the preference for prevention has been motivated by a strong preference for peace over justice as the ultimate goal of the international system. Driving this belief, the author suggests, is an array of considerations, correlating punishment with humiliation and revenge, fearing the effects of collective punishment, doubting the operation of punishment in a decentralized structure built around the principle of sovereign equality, and bemoaning absence of an international institution to adjudicate the criminality of states. However, given existing practices under the paradigm of “prevention,” none of these considerations seems to justify a correlation between peaceful coexistence and an aversion to punishment. Even further, the elimination of a punitive paradigm may implicate normative concerns, even accepting the preference for peace: in fact, a prevention-oriented framework may have its own distorted effects for international peace and security. Drawing on debates over preventive sanctions in U.S. domestic criminal law, it is argued that even though prevention may sound like a less oppressive policy than punishment, it may in fact be far less constrained and more ruthless. At the same time, a preventive paradigm might be paralyzed from operating where there is a crime that does not immediately threaten other international actors. The author demonstrates both possibilities using the contemporary debates over anticipatory self-defense and humanitarian intervention.

Only from ICRC headquarters: http://tinyurl.com/ndbb2e2

Crimes against humanity and the armed conflict nexus : from Nuremberg to the ICC

Hirad Abtahi. - [S.l.] : European Society of International Law, 2013. - 11 p. ;. - Cote 344/80 (Br.)

This study charts the development of the concept of crimes against humanity from the “golden age” of jus in bello into a “golden age” of international criminal justice. In the past two decades, the concept of crimes against humanity has evolved in the legislative and jurisprudential sphere, in that it is no longer shackled to the jus in bello framework. This study will first briefly consider crimes against humanity’s armed conflict nexus during the Golden Age of jus in bello in order to accurately appreciate the subsequent work of practitioners on these crimes. The study then analyses some potential reasons behind the erosion – and yet often perceived presence – of the armed conflict nexus, using the ICC as a case study.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2363608

Cyber conflict and international humanitarian law

Herbert Lin. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 515-531

Conflict in cyberspace refers to actions taken by parties to a conflict to gain advantage over their adversaries in cyberspace by using various technological tools and peoplebased techniques. In principle, advantages can be obtained by damaging, destroying, disabling, or usurping an adversary’s computer systems (‘cyber attack’) or by obtaining information that the adversary would prefer to keep secret (‘cyber espionage’ or ‘cyber exploitation’). A variety of actors have access to these tools and techniques, including nation-states, individuals, organized crime groups, and terrorist groups, and there is a wide variety of

motivations for conducting cyber attacks and/ or cyber espionage, including financial, military, political, and personal. Conflict in cyberspace is different from conflict in physical space in many dimensions, and attributing hostile cyber operations to a responsible party can be difficult. The problems of defending against and deterring hostile cyber operations remain intellectually unresolved. The UN Charter and the Geneva Conventions are relevant to cyber operations, but the specifics of such relevance are today unclear because cyberspace is new compared to these instruments.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-lin.pdf

Dealing with the principle of proportionality in armed conflict in retrospect : the application of the principle in international criminal trials

Rogier Bartels. In: Israel law review Vol. 46, issue 2, July 2013, p. 271-315. - Cote 345.25/141 (Br.)

The principle of proportionality is one of the core principles of international humanitarian law. The principle is not easy to apply on the battlefield, but is even harder to apply retrospectively, in the courtroom. This article discusses the challenges in applying the principle during international criminal trials. It discusses the principle itself, followed by an explanation of the general challenges of dealing with violations of international humanitarian law, and more specifically the rules related to the conduct of hostilities, during war crime trials. The way in which the principle has been used before the International Criminal Tribunal for the former Yugoslavia is examined, including an in-depth discussion of the recent Gotovina case. The second part consists of an evaluation of Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court, and discusses the difficulties the International Criminal Court would face in cases dealing with violations of the principle of proportionality.

Deconstructing terrorism as a war crime : the Charles Taylor case

Kirsten M.F. Keith. In: Journal of international criminal justice Vol. 11, no. 4, September 2013, p. 813-833

For his role in the wartime atrocities in Sierra Leone, Charles Taylor was convicted of the war crime of terrorizing the civilian population. This article critically examines the legal and factual treatment of this war crime in the Taylor Trial Judgment, drawing attention to the Judgment's strengths and weaknesses. While the Chamber's reasoning is shown at times to be inconsistent, particularly in addressing the central question of specific intent, this article highlights the areas of the judgment that could serve as persuasive precedent in future cases. As Taylor's conviction for sexual violence as an underlying act of terrorism demonstrates, terrorism as a war crime has the potential to be used as an umbrella charge encompassing other crimes committed with the purpose of instilling fear in the civilian population.

Only from ICRC headquarters: http://jicj.oxfordjournals.org/content/11/4/813.full.pdf

The design and planning of monitoring, reporting, and fact-finding missions

Rob Grace. - Cambridge (MA) : Program on humantarian policy and conflict research Harvard university, December 2013. - 52 p. - Cote 345.22/223 (Br.)

The design and planning process is crucial to the implementation of monitoring, reporting, and fact-finding (MRF) mechanisms geared toward investigating violations of international law, including human rights, international criminal law, and international humanitarian law. However, many disagreements exist about how MRF actors should weigh different factors in their design and planning decision-making processes. This paper — to provide a point of reference indicating the implications of different methodological choices — examines areas of methodological agreement and disagreement, trends of professional decision-making, and normative perceptions that practitioners hold about best practices regarding the design and planning of MRF mechanisms. Based on an assessment of fifteen MRF missions implemented over the past decade, this paper analyzes how commissioners on these missions interpreted the mission's investigative scope, examines the factors that guided decisions about the activities that the mission would undertake, and offers an overview of common staffing dilemmas. Overall, the paper aims to present a portrait of the state of MRF practice, in terms of how practitioners approach fulfilling their mandates.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2365435

Developing local capacity for war crimes trials : insights from BiH, Sierra Leone, and Colombia

Alejandro Chehtman. In: Stanford journal of international law Vol. 49, issue 2, Summer 2013, p. 297-329. - Cote 344/81 (Br.)

Generally, in post-conflict situations the domestic justice system is in a state of collapse. Doubts exist as to whether alleged perpetrators of international crimes will be prosecuted effectively, or as to whether they will receive a fair trial. International penal interventions are therefore envisaged as a way to assure individual accountability. Yet it has become increasingly clear that these tribunals themselves lack the capacity to deal with the vast majority of cases. If the tribunals' impact is to be enhanced, they will need to rely on national courts. The way out of this circle is for them to develop the capacity of local legal systems. This Article examines the impact of international tribunals on municipal legal systems by providing an in-depth, comparative analysis of four different international or internationalized tribunals and their impact on the respective domestic legal systems. This Article critically examines the main direct and indirect ways in which the international community has sought to develop local capacity for war crimes trials, such as training initiatives, "on the job" knowledge transfer, and the provision of information and access to evidence. Yet, it argues that the focus in this area should be more on the structural or institutional aspects, such as the institutional position of the international or internationalized tribunal vis-a-vis the local judiciary, the law applicable before each tribunal, and the main features of each exit strategy.

Only from ICRC headquarters: http://tinyurl.com/p3ltjzp

Different legal issues related to the protection of cultural property in peacetime and wartime

Jan Hladík. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 106, 2012, p. 453-462

The author first discusses the 2003 UNESCO Declaration concerning the intentional destruction of cultural heritage. He then covers the issue of sanctions under the 1954 Hague Convention for the protection of cultural property in the event of armed conflict and its Second Protocol. Finally, he compares protection provided by the 1954 Hague Convention and its Second Protocol with that provided under the 1972 World Heritage Convention.

Do no harm : the dispute over access to health care between Israel and the Palestinian territories

Emma Glazer. In: Cardozo journal of international and comparative law Vol. 22, no. 1, Fall 2013, p. 51-84. - Cote 345.28/105 (Br.)

Some, including the Israeli government, argue that the West Bank is not an occupied territory, and Israel therefore is not obligated under IHL to the Palestinians living in those territories. This Note focuses on the interplay between Israeli security concerns and whether international humanitarian law (IHL) applies to Israel's obligation to provide health care to residents of the West Bank in this context. It will argue that IHL requires Israel to provide for health care services to Palestinians injured in cross-border fire, but does not mandate that Israel provide all-encompassing medical services to civilians in the West Bank who are seeking medical attention for more routine concerns, such as child birth.

http://www.cjicl.com/uploads/2/9/5/9/2959791/glazer.updated.to.editor.1.pdf

Documenting violations of international humanitarian law from space : a critical review of geospatial analysis of satellite imagery during armed conflicts in Gaza (2009), Georgia (2008), and Sri Lanka (2009)

Joshua Lyons. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 739-763

Since the launch of the first commercial very high resolution satellite sensor in 1999 there has been a growing awareness and application of space technology for the remote identification of potential violations of human rights and international humanitarian law. As examined in the three cases of armed conflict in Gaza, Georgia, and Sri Lanka, analysis of satellite imagery was able to provide investigators with independent, verifiable, and compelling evidence of serious violations of international humanitarian law. Also examined are the important limitations to such imagerybased analysis, including the larger technical, analytical, and political challenges facing the humanitarian and human rights community for conducting satellite-based analysis in the future.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-lyons.pdf

The elements of the crime of genocide and the imperative to protect certain groups : normative shapers in criminal law and humanitarian perspective

Gerhard Kemp and Sina Ackermann. In: African yearbook on international humanitarian law 2012, p. 64-78

This article reviews the legacy of one judgment by an international criminal tribunal : Prosecutor v. Akayesu before the International Criminal Tribunal for Rwanda. It is done not as a revisit per se but to caution against the "flexible" use of criminal law where there are real or perceived humanitarian concerns. The article first critically analyzes the historical contribution of the Trial Chamber's to defining the crime of genocide, specifically its finding on the factual matrix and material elements necessary for criminal liability for genocide. Then it turns to the Trial Chamber's finding that "protected groups" for purposes of the crime of genocide are not limited to the four groups listed in the Genocide Convention and indeed article 2 of the ICTR Statute, but included in "any stable and permanent group". Although the judgment in Akayesu achieved justice at macro level, the Trial Chamber's treatment of criminal law principles and aspects of the definition of genocide are judged more critically.

Engaging with all actors of violence : necessity, duty and dilemmas from an ICRC delegate's perspective

Pierre Gentile. - In: Principled engagement : negotiating human rights in repressive states. - Farnham : Burlington : Ashgate, 2013. - p. 57-73. - Cote 362.191/5 (Br.)

The ICRC works to promote better respect of international humanitarian law (IHL) and other legal norms protecting civilians and people hors de combat and, for that purpose, seeks to establish direct dialogue with all actors in situations of armed conflict or other situations of violence, regardless of their ideological stance or human rights record. In this respect it can be considered a "principle engager". This chapter argues - in line with the ICRC's institutional position - for the necessity for the ICRC to be able to access and engage meaningfully with all actors in situations of violence, including with opposition armed groups. This is a long practice that derives from the organisation's unique mandate and from the fact that IHL binds all parties to an armed conflict (including non-state actors), as opposed to human rights laws which are binding only on states parties. Nevertheless, it must be recognised that the ICRC's stance is not always an easy one to maintain. Thus, this contribution details some of the dilemmas and challenges that ICRC delegates encounter in the field.

The era of cyber warfare : applying international humanitarian law to the 2008 Russian-Georgian cyber conflict

Lesley Swanson. In: Loyola of Los Angeles international and comparative law review Vol. 32, no. 2, Spring 2010, p. 303-333. - Cote 345.26/237 (Br.)

This article argues that existing IHL principles should be used to analyze the legality of cyber attacks. This article explains that IHL principles apply whenever cyber attacks, ascribed to a state, are more than simply sporadic in nature and are intended to cause, or will foreseeably cause, injury, death, damage, or destruction. On the other hand, IHL most likely does not apply in the absence of those consequences. It applies IHL principles to the 2008 Russian-Georgian cyber conflict. Given the complexities and novelties involved in this new kind of warfare, however. It is further proposed that the international community and powerful states should seek to supplement existing IHL principles with more explicit and transparent policies that best correspond to modern Internet technology and address the ways in which this technology can legally be used to carry out cyber attacks.

http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1010&context=ilr

The evitability of autonomous robot warfare

Noel E. Sharkey. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 787-799

This is a call for the prohibition of autonomous lethal targeting by free-ranging robots. This article will first point out the three main international humanitarian law (IHL)/ethical issues with armed autonomous robots and then move on to discuss a major stumbling block to their evitability: misunderstandings about the limitations of robotic systems and artificial intelligence. This is partly due to a mythical narrative from science fiction and the media, but the real danger is in the language being used by military researchers and others to describe robots and what they can do. The article will look at some anthropomorphic ways that robots have been discussed by the military and then go on to provide a robotics case study in which the language used obfuscates the IHL issues. Finally, the article will look at problems with some of the current legal instruments and suggest a way forward to prohibition.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-sharkey.pdf

L'évolution des fonctions du juge pénal international et le développement du droit international humanitaire

Jérôme de Hemptinne ; ed. : Nico Krisch, Mario Prost, Anne van Aaken. - [S.l.] : European Society of International Law, 2013. - 10 p. - Cote 344/79 (Br.)

Les spécificités du droit humanitaire influencent les rôles du juge pénal international et vice versa. D'une part, les particularités de ce droit – notamment son imprécision et son inadaptation à la répression pénale internationale ainsi que sa nécessaire flexibilité – ont amené le juge à exercer des fonctions législatives hors-normes. Selon l'auteur, cet exercice n'est toutefois pas incompatible avec une conception fonctionnelle de la légalité pénale. Manié avec précaution, il peut même s'avérer être un outil essentiel pour éviter que le droit humanitaire ne demeure figé une fois pour toute. D'autre part, les spécificités des fonctions du juge – en particulier sa quête de légitimité et sa volonté d'exercer un pouvoir de réconciliation – ont conditionné le développement du droit humanitaire. En effet, cette recherche de légitimité a amené le juge à constamment veiller à ce que les principes de droit humanitaire qu'il applique soient fondés sur des normes coutumières largement partagées ou sur des sortes de « méta-principes » indiscutables moralement. En outre, soucieux de promouvoir un esprit de réconciliation, le juge a fait une large place aux considérations d'humanité dans son travail d'interprétation de ces principes.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2364079

"Excessive" ambiguity : analysing and refining the proportionality standard

Jason Wright. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 819-854

This article analyses the jus in bello proportionality standard under international humanitarian law to assist judge advocates and practitioners in achieving a measure of clarity as to what constitutes 'excessive' collateral damage when planning or executing an attack on a legitimate military objective when incidental harm to civilians is expected. Applying international humanitarian law, the author analyses existing US practice to evidence the need for states to adopt further institutional mechanisms and methodologies to clarify targeting principles and proportionality assessments. A subjective-objective standard for determining 'excessive' collateral damage is proposed, along with a seven-step targeting methodology that is readily applicable to the US, and all other state and non-state actors engaged in the conduct of hostilities.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-wright.pdf

Executive branch policy meets international law in the evolution of the domestic law of detention

Thomas B. Nachbar. In: Virginia journal of international law Vol. 53, no. 2, 2013, p. 201-246. - Cote 400.2/344 (Br.)

This paper considers the role that the executive branch can play in modifying international law through a specific case: the March, 2011 issuance of Executive Order 13567: Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force. As its title suggests, the Order establishes a system of periodic review for detainees held at Guantanamo Bay, but the release of the Order suggests much more than merely the adoption of new procedures for reviewing detention determinations. In a "Fact Sheet" issued with the Order, the Obama administration suggested some concrete changes to how the United States views the international law of detention, specifically with regard to Additional Protocols I and II of the Geneva Conventions. Those changes, when combined with the content of the Order itself, may signal an even more profound shift in the role of international law in the shaping of the domestic law of detention and in the role of the executive branch in shaping both international and domestic law. The paper proceeds by describing the Order in detail and comparing the procedures adopted in the Order with those that preceded it, namely Combatant Status Review Tribunals and detainee Administrative Review Boards. The paper next analyzes the Order's procedures under Article 75 of Additional Protocol I and Articles 4-6 of Additional Protocol II, as suggested by the Fact Sheet. Finally, the paper considers the broader questions raised by the Order and Fact Sheet's stated approach to the international law of detention. By recognizing an increased role for Additional Protocols I and II, the Order and Fact Sheet go some distance toward providing an avenue for incorporating international human rights norms into the U.S. domestic law of detention, an approach that sharply diverges with previous U.S. positions on the law of armed conflict, and does so through the executive branch operating alone.

Only from ICRC headquarters: http://tinyurl.com/o95gg8u

Finding custom : the ICJ and the international criminal courts and tribunals compared

Yeghishe Kirakosyan. - In: The diversification and fragmentation of international criminal law. - Leiden ; Boston : M. Nijhoff, 2012. - p. 149-161. - Cote 344/108 (Br.)

International criminal tribunals have had frequent recourse to customary international law. Given the flexible nature of this source of law, this recourse might be the one of the main causes of internal fragmentation of substantive international criminal law. The use of customary international criminal law by international criminal courts has been criticized, in particular by continental criminal lawyers who are unfamiliar with the application of unwritten law in criminal proceedings. This chapter will analyse the use of customary international law by international criminal tribunals through a different lens. It will examine whether the method that international criminal courts and tribunals use to determine the existence of a rule of customary international law constitutes an instance of fragmentation in itself. More specifically, this chapter investigates whether and to what extent international criminal courts and tribunals depart from the conventional methodology of identifying custom in the realm of public international law.

ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37174.pdf

Fundamental standards of humanity : how international law regulates internal strife

Tilman Rodenhäuser. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 3/2013, p. 121-129

In recent years an unprecedented uprising of people against despotic regimes or masses standing up to claim fundamental rights can be witnessed. The "Arab Spring" is the most prominent example of such events. States regularly respond to internal disturbances or tensions by arresting large numbers of people or by using of excessive force. This article examines how international law addresses situations of internal disturbances, which do not amount to non-international armed conflicts. It essentially raises the question if fundamental standards of humanity exist that apply at all times and to all actors involved in internal violence - irrespective of the classification of the situation as an armed conflict or the invocation of a state of emergency. Due to the importance of the protection of detained people in such situations, this article focuses particularly on the prohibition or arbitrary detention, the right to fair trial and the right to humane treatment.

The Gaza flotilla incident and the modern law of blockade

James Farrant. In: Naval war college review Vol. 66, no. 3, Summer 2013, p. 81-98. - Cote 347.799/147 (Br.)

Three years on, the Mavi Marmara incident (in May 2010 the Israeli Defense Forces (IDF) boarded a flotilla of ships attempting to breach a blockade in the Mediterranean Sea) remains a valuable case study, because it raises legal issues on several levels. At the grand strategic, when will the international community tolerate the imposition of a blockade, and when will states accept consequent interference with the navigational rights of vessels flying their flags? At the operational, how far from the blockaded coast should the naval commander be prepared to enforce the blockade? At the tactical, what level of force is acceptable for the individual members of a blockade-enforcement boarding party to use? This article considers the incident anew and uses it to establish some principles that might guide maritime doctrine on the future establishment and enforcement of blockades.

http://www.usnwc.edu/Publications/Naval-War-College-Review/2013---Summer.aspx

General orders no. 100 : why the Lieber code's requirement for combatants to wear uniforms is still applicable for the protection of civilian populations in modern warfare

Robert Cummings. In: Northern Kentucky law review Vol. 39, no. 4, 2012, p. 785-805. - Cote 345.29/196 (Br.)

Robert Cummings argues that the United States must maintain its policy concerning the identification and classification of lawful combatants, a policy that finds precedent in Francis Lieber's Civil War-era General Orders No. 100 ("Lieber Code"). Fundamental to this code is the understanding that armed conflict need not result in the death of innocent civilians, nor indiscriminately destroy their property. In order to protect innocent lives, the laws of war demand that combatants distinguish themselves from non-combatants: a lawful combatant must wear a uniform or distinctive insignia. Those granted lawful combatant status are afforded all the legal benefits granted to prisoners of war upon capture, whereas unlawful combatants are not, incentivizing combatants to distinguish themselves. In Cummings' view, because United States is currently engaged in a conflict with enemies who do not distinguish themselves, and who often disappear

into civilian populations, the Lieber Code finds renewed relevance. If followed, it would limit the number of civilian casualties caused by military missions. Elements of the Lieber Code were incorporated into The Hague and Geneva Conventions; however, Additional Protocols I blurred the Code's bright line rules of distinction. The category of those considered lawful combatants was expanded to include non-uniformed combatants. Such an expansion allows for an interpretation of international humanitarian law that includes terrorists and insurgents in the category of lawful combatants. Opposition to this expansion was a primary reason for United States' refusal to ratify the Protocol. United States, however, has occasionally acted in accordance with Additional Protocol I, potentially contributing to a precedent that Cummings does not want to set. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Only from ICRC headquarters: http://tinyurl.com/pwhcpo5

The geography of the battlefield : a framework for detention and targeting outside the "hot" conflict zone

Jennifer C. Daskal. In: University of Pennsylvania law review Vol. 161, issue 5, April 2013, p. 1165-1234. - Cote 345.26/235 (Br.)

The U.S. conflict with al Qaeda raises a number of complicated and contested questions regarding the geographic scope of the battlefield and the related limits on the state's authority to use lethal force and to detain without charge. To date, the legal and policy discussions on this issue have resulted in a heated and intractable debate. On the one hand, the United States and its supporters argue that the conflict — and broad detention and targeting authorities — extend to wherever the alleged enemy is found, subject to a series of malleable policy constraints. On the other hand, European allies, human rights groups, and other scholars, fearing the creep of war, counter that the conflict and related authorities are geographically limited to Afghanistan and possibly northwest Pakistan. Based on this view, state action outside these areas is governed exclusively by civilian law enforcement, tempered by international human rights norms. This Article breaks through the impasse. It offers a new and comprehensive law-of-war framework that mediates the multifaceted security, liberty, and foreign policy interests at stake. Specifically, the Article recognizes the state's need to respond to the enemy threat wherever it is located, but argues that the rules for doing so ought to distinguish between the so-called "hot" battlefield and elsewhere. It proposes a set of binding standards that would limit and legitimize the use of targeted killings and law-of-war detention outside zones of active hostilities — subjecting their use to an individualized threat assessment, a least-harmful-means test, and significant procedural safeguards. The Article concludes by describing how and why this approach should be incorporated into U.S. and international law and applied to what are likely to be increasingly common threats posed by transnational nonstate actors in the future

http://www.pennlawreview.com/print/index.php?id=394

Get off my cloud : cyber warfare, international humanitarian law, and the protection of civilians

Cordula Droege. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 533-578

Cyber warfare figures prominently on the agenda of policymakers and military leaders around the world. New units to ensure cyber security are created at various levels of government, including in the armed forces. But cyber operations in armed conflict situations could have potentially very serious consequences, in particular when their effect is not limited to the data of the targeted computer system or computer. Indeed, cyber operations are usually intended to have an effect in the 'real world'. For instance, by tampering with the supporting computer systems, one can manipulate an enemy's air traffic control systems, oil pipeline flow systems, or nuclear plants. The potential humanitarian impact of some cyber operations on the civilian population is enormous. It is therefore important to discuss the rules of international humanitarian law (IHL) that govern such operations because one of the main objectives of this body of law is to protect the civilian population from the effects of warfare. This article seeks to address some of the questions that arise when applying IHL – a body of law that was drafted with traditional kinetic warfare in mind – to cyber technology. The first question is: when is cyber war really war in the sense of 'armed conflict'? After discussing this question, the article goes on to look at some of the most important rules of IHL governing the conduct of hostilities and the interpretation in the cyber realm of those rules, namely the principles of distinction, proportionality, and precaution. With respect to all of these rules, the cyber realm poses a number of questions that are still open. In particular, the interconnectedness of cyber space poses a challenge to the most fundamental premise of the rules on the conduct of hostilities, namely that civilian and military objects can and must be distinguished at all times. Thus, whether the traditional rules of IHL will provide sufficient protection to civilians from the effects of cyber warfare remains to be seen. Their interpretation will certainly need to take the specificities of cyber space into account. In the absence of better knowledge of the potential effects of cyber warfare, it cannot be excluded that more stringent rules might be necessary.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-droege.pdf

Hamdan v. United States : a death knell for military commissions ?

Jennifer Daskal. In: Journal of international criminal justice Vol. 11, no. 4, September 2013, p. 875-898

In October 2012, a panel of the D.C. Circuit dealt a blow to the United States' post-September 11, 2001 decade-long experiment with military commissions as a forum for trying Guantanamo Bay detainees. Specifically, the court concluded that prior to the 2006 statutory reforms, military commission jurisdiction was limited to violations of internationally-recognized war crimes; that providing material support to terrorism was not an internationally-recognized war crime; and that the military commission conviction of Salim Hamdan for material support charges based on pre-2006 conduct was therefore invalid. Three months later, a panel of the D.C. Circuit reached the same conclusion with respect to conspiracy and solicitation charges, and vacated the conviction and life sentence of Guantanamo Bay detainee Ali Hamza Ahmad al Bahlul. That case is now on appeal to an en banc (full court) panel of the D.C. Circuit. This article analyses the D.C. Circuit's ruling in Hamdan's case, explaining why the ultimate holding is the right one, even though some of the reasoning is flawed, and why the ruling should be upheld on appeal. It also highlights the many unresolved questions and the implications for the future of military commissions at Guantanamo Bay. As the article explains, the D.C. Circuit's rulings are a major victory for the rule of law and a major defeat for commissions.

Only from ICRC headquarters: http://jicj.oxfordjournals.org/content/11/4/875.full.pdf

The handbook of international humanitarian law

ed. by Dieter Fleck ; in collab. with Knut Dörmann... [et al.]. - Oxford : Oxford University Press, 2013. - 714 p. - Cote 345.2/638 (2013 ENG)

Ouvrage en 14 parties : 1. Historical development and legal basis. 2. Scope of application of international humanitarian law. 3. Combatants and non-combatants. 4. Methods and means of combat. 5. Protection of the civilian population. 6. Protection of the wounded, sick and shipwrecked. 7. Protection of prisoners in armed conflict. 8. Protection of religious personnel. 9. Protection of cultural property. 10. The law of armed conflict at sea. 11. The law of neutrality. 12. The law of non-international armed conflicts. 13. The law of international peace operations. 14. Implementation and enforcement of international humanitarian law.

Health and humanitarian assistance : towards an integrated norm under international law

Brigit Toebes. In: Tilburg law review Vol. 18, issue 2, 2013, 133-151. - Cote 356/256 (Br.)

This contribution assesses how a set of health-related norms under international law and ethics apply to situations where humanitarian assistance is provided. It asserts that the right to health, as an international human rights norm, is reinforced by similar standards under international humanitarian law, medical ethics and the International Health Regulations (WHO). Based on this integrated norm, there is a legal obligation to ensure access to a set of essential health-related services during emergencies, and to offer health-related protection. With respect to the duty to deliver such services we suggest that there is a shared responsibility of a number of actors. For the State where the emergency is taking place there is a primary legal responsibility to deliver essential health services. Nonetheless, if the services are (partly) provided by third parties there is a legal duty on the part of this State to respect and to guarantee the safe delivery of the services, and a duty to consent to the delivery of such aid. These duties could potentially also fall upon non-state actors, for example armed opposition groups, if they exercise certain governmental functions and de facto authority over a population. Arguably the international community and donor States have correlated duties to provide a certain amount of assistance and cooperation. Lastly, humanitarian aid organizations and their staff are bound by their professional ethical standards, including the principle of medical neutrality, which requires that medical aid is to be provided to everyone, irrespective of nationality and civil status.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2340472

Historical development and legal basis

Mary Ellen O'Connell. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 1-42. - Cote 345.2/638 (2013 ENG)

Content: Definition of the term "humanitarian law". - Historical development. - Legal sources. - Humanitarian requirements and military necessity. - Binding effect of international law for the soldier. - Tasks of the legal adviser.

A Hobbesian approach to cruelty and the rules of war

Larry May. In: Leiden journal of international law Vol. 26, no. 2, June 2013, p. 293-313

Contrary to the way Hobbes has been interpreted for centuries, the author argues that Hobbes laid the groundwork for contemporary international law and for a distinctly moral approach to the rules of war. The paper has the following structure. First, the author explains the role that the laws of nature play in Hobbes's understanding of the state of war. Second, he explains Hobbes's views of self-preservation and inflicting cruelty. Third, he reconstructs Hobbes's important insight that rationality governs all human affairs, even those concerning war. Fourth, he explicates the idea of cruelty moving from what Hobbes says to a plausible Hobbesian position. Fifth, he addresses recent philosophical writing on how best to understand the rules of war. Sixth, he then turns to legal discussions of cruelty's place in debates about the laws of war, showing how his Hobbesian approach can ground these laws.

Only from ICRC headquarters: http://dx.doi.org/10.1017/S0922156513000058

Human rights in armed conflict : ten years of affirmative state practice within United Nations resolutions

Ilia Maria Siatitsa and Maia Titberidze. In: Journal of international humanitarian legal studies Vol. 3, issue 2, 2012, p. 233-262

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

Only from ICRC headquarters: http://dx.doi.org/10.1163/18781527-00302007

Human rights obligations of non-state armed groups in other situations of violence : the Syria example

Tilman Rodenhäuser. In: Journal of international humanitarian legal studies Vol. 3, issue 2, 2012, p. 263-290

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

Only from ICRC headquarters: http://dx.doi.org/10.1163/18781527-00302005

Human rights protection during extra-territorial military operations : perspectives at international and English law

Alexander Orakhelashvili. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 598-637. - Cote 355/1002

Alexander Orakhelashvili analyzes the international and English jurisprudence regarding the effect of human rights treaties during extra-territorial military operations. The author traces the evolution of jurisprudence relating to Article 1 of the European Convention on Human Rights (ECHR). He concludes that Article 1 focuses on jurisdiction, not territory, which indicates an inherent incorporation of an extra-territoriality element. The exercise of jurisdiction inherently arises from the exercise of a state's authority through its agents. The extra-territorial element in Article 1 is to be given its ordinary meaning. Moreover, the author argues that 'effective control' is not necessary to activate Article 1, nor is Article 1 only meant to be applied regionally. The author then turns to an analysis of English approaches to the ECHR. He submits

that the correct approach to the statutory effect of Article 1 is to focus on the parameters of parliamentary intention. He argues that English courts have a duty to follow the ECHR interpretation of the European Court of Human Rights. Most importantly, the author argues that the content and scope of the ECHR should be ascertained through regular methods of treaty interpretation, namely that jurisdiction should be given its ordinary and natural meaning. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Humanizing the laws of war : selected writings of Richard Baxter

Richard R. Baxter ; Detlev F. Vagts...[et al.]. - Oxford : Oxford University Press, 2013. - VIII, 380 p. - Cote 345.2/939

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

The impact of military justice reforms on the law of armed conflict : how to avoid unintended consequences

Victor Hansen. In: Michigan State international law review Vol. 21, issue 2, 2013, p. 229-272. - Cote 345.29/200 (Br.)

One consequence of the “civilianization” of the military justice systems in Canada the United Kingdom and elsewhere potentially impacts the commander’s own personal criminal liability. The doctrine of command responsibility holds that a commander may be criminally liable for the law-of-war violations committed by the forces under his command if a commander fails to prevent, suppress, or punish law-of-war violations that he either knew about or was reckless or negligent in failing to notice, he can be punished as if he committed the underlying offenses. It is the commander who, by use of all the resources and authority available to him, ensures that his forces do not violate the laws of war. If those forces do, it is in large part attributable to the commander’s failings. If, as a result of the civilianization of military justice, commanders lose a significant portion of the disciplinary authority they have traditionally held, do they no longer occupy that critical position of responsibility over the forces under their command? If they have lost that authority, to whom does the law now turn to for accountability? Does the commander, who has lost some of his authority, lose the ability to maintain discipline through the military justice system, and does he find himself in a situation where he is given responsibility to maintain discipline and control without having sufficient authority to meet that obligation? This article raises and addresses these important questions and it provides a framework for considering military justice reforms that preserve the commander’s critical role in law of war compliance.

http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1115&context=ilr

Implementation and enforcement of international humanitarian law

Silja Vöneky. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 647-700. - Cote 345.2/638 (2013 ENG)

Content: General. - Public opinion. - Reciprocal interests of the parties to the conflict. - Maintenance of discipline. - Reprisals. - Command responsibility. - Penal and disciplinary measures. - Reparation. - Protecting powers and their substitutes. - International fact-finding. - The international Committee of the Red Cross. - Implementation roles of the UN. - The Security Council and International Humanitarian Law. - Diplomatic activities. - The role of non-governmental organizations. - National implementing measures. - Dissemination of humanitarian law. - Personal responsibility of the individual.

Implementation of international humanitarian law in Tanzania : a legal enquiry

Khoti Kamanga. In: African yearbook on international humanitarian law 2012, p. 40-63

At the core of this paper are three fundamental questions that arise in respect of Tanzania. First is whether the Geneva Conventions (and other relevant treaties) have been signed, ratified and "domesticated". Secondly, is the identification of the core, fundamental obligations arising from "expressing consent to be bound" by the Geneva Conventions and their Additional Protocols. Thirdly, to examine the extent to which,

if any, in Tanzania, as a State Party, has honoured its treaty obligations. In pursuing the aforementioned three questions, and to give a regional dimension, the corresponding situation in two of Tanzania's neighbours; that is, Kenya and Uganda, is given, even if in respect to only select national implementation measures.

The "incendiary" effect of white phosphorous in counterinsurgency operations

Shane R. Reeves. In: The army lawyer Issue 6, June 2010, p. 84-90. - Cote 341.67/20 (Br)

Under the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) of the Certain Conventional Weapons Treaty the use of white phosphorus munitions is held to a more restrictive standard when it is employed in an incendiary role as opposed to a non-incendiary role. Recent events may be eroding the acceptability of this dual standard. The findings of the UN's 2010 "Goldstone Report" argued that use of white phosphorus in either role was increasingly likely to generate negative reactions from the international community. The author argues that these findings, combined with the ratification of Protocol III by the US, indicate that it is strategically beneficial for military commanders to voluntarily restrict their use of white phosphorus during counter-insurgency operations. The author suggests this is the case because winning the support of the local population is so critical to success. Accordingly, the author concludes by recommending that commanders should consider using their Rules of Engagement to regulate all uses of white phosphorus, both incendiary and non-incendiary, even when this exceeds what is currently required under international humanitarian law. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

The interaction between investment law and the law of armed conflict in the interpretation of full protection and security clauses

Gleider I. Hernández. - In: Investment law within international law : integrationist perspectives. - Cambridge : Cambridge university press, 2013. - p. 21-50. - Cote 330/59 (Br.)

The present study focuses on the interaction of international investment law with the law governing armed conflict; a phenomenon of increasing importance, given the emergence of situations of violence in states that have, in recent years, actively entered in bilateral investment treaties (BITs). Many of these BITs contain so-called "full protection and security" clauses, which impose a positive obligation on contracting states to take measures to provide a certain measure of protection; the question remains whether this obligation can be said to remain unaffected by the emergence of a situations of armed conflict. This chapter is an attempt to consider the workings of investment law during situations of armed conflict through the prism of public international law. The first section considers the impact of armed conflict in public international law generally, and makes the claim that international humanitarian law constitutes a form of lex specialis, which can come to modify, in case of conflict between them, treaty obligations such as those contained in BITs. The second section examines practice in the investment law sphere in relation to "full protection and security" clauses, in order to assess whether investment law has adopted an approach consistent with international law.

ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37507.pdf

An international call for moratorium on the use of depleted uranium in military weapons

Michael Kabai. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 3/2013, p. 137-141

The use of depleted uranium in military weapons is a commonplace in countries like the US and the UK. It seems, though, the international community is not in favour of the use of depleted uranium in military weapons. The rationale being that the use of depleted uranium in weapons results in environmental damage and severe impact on human health. The paper will examine the international measures results in environmental damage and sever impact on human health. The paper will examine the international measures impacting on the use of depleted uranium in military weapons. It will also examine the case laws on the use of depleted uranium in military weapons. Finally, the paper will argue that the use of depleted uranium in military weapons should be prohibited and that there should be an immediate international moratorium on the use of depleted uranium in military weapons.

The International Court of Justice and the law of armed conflicts

Claus Kress. - In: The development of international law by the International Court of Justice. - Oxford : Oxford University Press, 2013. - p. 263-298. - Cote 345/639

This chapter shows in what way the International Court of Justice has contributed to the development of the law of armed conflict by reviewing its case law. It shows that the court strongly emphasized that the substitution of the concept "international humanitarian law" for that of "laws and customs of war" was not

only a terminological matter, but also signified the liberation of the law of armed conflicts from the normative limitations flowing from the traditional idea of inter-state reciprocity as expressed by traditional concepts such as the si omnes clause and belligerent reprisals. The Court reconceptualized the traditional "laws and customs of war", the codification of which was driven to a significant extent by a utilitarian calculation of state interest, as an integral humanitarian legal regime designed, above all, to ensure respect for the human person. At the same time and despite its clearly articulated humanitarian impetus, the Court, all in all, has been significantly less adventurous than the ICTY when it comes to the progressive development of the law of armed conflicts. This is primarily due to the fact that the occasions on which the Court has had the opportunity to pronounce on questions of the law of armed conflicts have been fairly limited in number, but also because the Court has not fully seized its relatively few opportunities.

ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37563.pdf

International humanitarian law and human rights law

Matthew Happold. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 444-466. - Cote 355/1002

Matthew Happold examines the relationship between international human rights law and international humanitarian law. He examines situations in which both bodies of law simultaneously govern a matter, highlighting the jurisprudence of the International Court of Justice, the Inter-American Court of Human Rights and the European Court of Human Rights. Human rights law is important because it helps regulate state conduct in situations of derogation in civil conflict, which is not covered by humanitarian law. Furthermore, states' human rights obligations apply when they are in effective control of an occupied territory and when they have detained persons outside their national territory. The author concludes that where both bodies of law apply the more general rule will be interpreted in reference to the more specific, with the goal of norm conflict avoidance. In some cases, however, the relative permissiveness of international humanitarian law cannot be reconciled with international human rights law. Attempts to reconcile the two bodies of law can only be done on a case-by-case basis. Because international humanitarian law is not based on an individual rights paradigm, and thus does not provide mechanisms for individual legal redress, individuals will continue to bring complaints regarding armed conflict before human rights bodies. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

International humanitarian law in times of contemporary warfare : the new challenge of cyber attacks and civilian participation

Charlotte Lülf. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 2/2013, p. 74-82

In the past few years, armed conflicts have been increasingly affected by the deployment of modern weapon technologies. As a new phenomenon, cyber space and operations against or through computers come to the fore. But this new technology is not the only challenge. The participation of civilians, especially technical experts, challenges fundamental principles of humanitarian law, as for instance the principle of distinction. One has to question whether traditional humanitarian law and its rules can still be effectively applied to cyber attacks.

International humanitarian law transparency

Lesley Wexler. - [S.l.] : [s.n.], [2013]. - [16] p. ;. - Cote 345.26/140 (Br.)

Demands for enhanced public transparency span the range of IHL activities: the classification of conflicts, the sorting of combatants and civilians, the numbers of civilian casualties, the deployment of unlawful weapons, conditions of detention, the use of coercive interrogation, its facilitation via extraordinary rendition, and punishment for unlawful activities. Part I begins by broadly contextualizing some of the most frequently deployed mechanisms of public transparency (Official acknowledgement by governments, third parties actors revelations, disclosure obligations made mandatory by domestic law, ...). Part II uses a 2010 German ordered air strike in Kunduz, Afghanistan to investigate the role of various transparency mechanisms in the current IHL climate. The strike raised such questions as whether an armed conflict existed, what rules of IHL applied, what the facts on the ground were concerning civilian casualties, and whether government actors had lied or engaged in a cover up. Part III turns to the substantive content of IHL itself to survey existing and possible future transparency requirements. While legal scholars have exhaustively discussed domestic information forcing statutes, they have written much less about how IHL itself can be used as a tool to compel disclosure. While such requirements would still require domestic implementation, they affect transparency on a global scale. This paper concludes by noting the contours of this new IHL frontier. What normative priors inform this frontier? What questions demand further research? What sort of reforms need to be assessed?

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2321703

International legal implications of Israel's attack on the Gaza aid flotilla

Sari Bashi... [et al.]. In: Proceedings of the 105th annual meeting [of the] American Society of International Law 2011, p. 463-475. - Cote

Contient : Law and the Israeli attack on the humanitarian aid flotilla to Gaza / D. L. Khairallah. - Remarks by Sari Bashi, Sarah Weiss Ma'udi and Naz Modirzadeh

Only from ICRC headquarters: http://tinyurl.com/pptwpem

International organisations' involvement in peace operations : applicable legal framework and the issue of responsibility : proceedings of the 12th Bruges colloquium, 20-21 October 2011 = L'implication des organisations internationales dans les missions de paix : le cadre juridique applicable et la question de la responsabilité : actes du 12e Colloque de Bruges, 20-21 octobre 2011

CICR, Collège d'Europe. In: Collegium No 42, automne 2012, 179 p.. - Cote 172.4/257

Session 1 : Applicability/application of IHL to international organisations (IO) involved in peace operations. - Session 2 (panel discussion) : Applicability/application of human rights law to IOs involved in peace operations. - Session 3 : The determination of international responsibility for wrongful acts committed in the course of peace operations. - Session 4 : Effectuating international responsibility during peace operations ? - Session 5 : Individual responsibility for IHL/HRL violations committed during peace operations.

https://www.coleurope.eu/sites/default/files/uploads/page/collegium_42_0.pdf

The islamic law of Qital and the law of armed conflict : a comparison

Niaz A. Shah. - In: The liberal way of war : legal perspectives. - Farnham ; Burlington : Ashgate, 2013. - p. 213-238. - Cote 355/1010

This chapter seeks to demonstrate the broad compatibility between the Islamic law of qital and the law of armed conflict by examining the basics and general principles of both bodies of law. It does this in two parts. The first part discusses and compares the basic principles of the Islamic law of qital - military necessity, distinction, proportionality, humanity and an obligation to accept offers of peace- with similar basic principles of the law of armed conflict. The second part of this chapter discusses and compares some general principles of the Islamic law of qital, related to genocide, war crimes and crimes against humanity, the treatment of war captives, rape as a war crime, civilian immunity, individual criminal responsibility, mutilation, perfidy and ruses of war, child soldiers, safe passage and quarter, hostages and truces and armistices, with identical general principles of the law of armed conflict. Although not discussed in detail in this chapter, it should be pointed out that the grey areas and blind spots of the Islamic law of qital can also be clarified; they can be expanded upon and developed to ensure their compatibility with the law of armed conflict.

The issue of international humanitarian law applicability to recent UN, NATO and African Union peace operations (Libya, Somalia, Democratic Republic of Congo, Ivory Coast...)

Tristan Ferraro. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 315-323

After first underscoring that peace operations (PO) are characterized by the fact that - very often - the troops contributing countries (TCC) and the international organizations (IO) involved tend to deny IHL applicability to their own action, this article addresses in more details three specific contexts. The UN forces in Democratic Republic of Congo context is quite emblematic because until 2006, the UN forces deployed were generally viewed as non-belligerent, thus entitled to protections granted by IHL to civilians. At the end of 2006 then again in 2007 and 2008, the UN forces took part in military against non-state organized armed groups, thus asking the question whether the UN forces should be considered as party to the NIAC in DRC. The "Unified Protector" operation in Libya allows the analysis of the applicability of IHL to TCC and IO under an IAC prism. Arguments have been put forward that TCC were not involved in an armed conflict nor did they carry out military operations whose objective was to submit/defeat the enemy. The African Union's implication in the NIAC in Somalia is interesting because it illustrates how the legitimate use of force in self-defence can turn peace forces into party to a NIAC.

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Journalists as a protected category : a new status for the media in international humanitarian law

Elizabeth Levin. In: UCLA journal of international law and foreign affairs Vol. 17, issue 1 & 2, Spring 2013, p. 215-250. - Cote 070/15 (Br.)

The nature of modern warfare has vastly changed the role of journalists in conflict and, therefore, the reliability of the protections afforded to them. Countries such as the United States have interpreted international humanitarian law in such a way that leaves journalists vulnerable to targeting decisions based solely on the content of their writings. International law must take a firm step forward in not only securing de facto protection for journalists, but in reaffirming their importance to the public. Such a step may best be taken by adopting a new status for journalists. Under this new status, a journalist could not be said to have directly participated in conflict without a proven intention to incite violence and would therefore remain immune from direct targeting no matter how much the content of the reporting supports or undermines the objectives of a belligerent party.

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Jus post bellum in the age of terrorism

introductory remarks by Kristen Boon ; remarks by Larry May... et al.. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 106, 2012, p. 331-345

These contributions critically assess the place of the nonstate actor in the context of jus post bellum in light of the war on terrorism and the increase in intra-state conflict. In particular, they discuss the philosophical justifications for a jus post bellum, its contents and scope, the limits of the concept as compared to transitional justice and the law of peace, and how jus post bellum might be applied to conflicts in Northern Ireland and Afghanistan.

The law of armed conflict at sea

Wolff Heintschel von Heinegg. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 463-547. - Cote 345.2/638 (2013 ENG)

Content: General. - Military objectives and protected objects in armed conflicts at sea. - Special provisions concerning methods of naval warfare. - Hospital Ships.

The law of international peace operations

Ben F. Klappe. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 611-646. - Cote 345.2/638 (2013 ENG)

Content: General. - Applicable law. - Mandates. - Rules of engagement (ROE). - Search, apprehension, and detention. - Child soldiers. - Humanitarian assistance by armed forces.

The law of neutrality

Michael Bothe. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 549-580. - Cote 345.2/638 (2013 ENG)

Content: General. - The rights and duties of neutral states.

The law of non-international armed conflict

Dieter Fleck. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 581-610. - Cote 345.2/638 (2013 ENG)

Content: General. - Applicable law. - Legal distinction between international and non-international armed conflicts. - Compliance. - Termination of hostilities.

Laws of war, morality, and international politics : compliance, stringency, and limits

Henry Shue. In: Leiden journal of international law Vol. 26, no. 2, June 2013, p. 271-292

A person with moral commitments can respect International Humanitarian Law (IHL) only if the permissions granted by it do not depart radically from their basic morality, but the features of contemporary war require considerable departures from morality in the content of any rules applicable to war. The features of the contemporary international political arena, in turn, and especially the dominant interpretation of sovereignty, require that IHL be the same for all parties. But, contrary to the arguments of

some influential analytic philosophers, such 'symmetry' in the laws need not involve their content's departing excessively from basic morality. Insisting on the same rules for all, however, leads to the problem that, other things equal, the more stringent the content of a set of rules, the greater the temptation on the part of self-interested parties to flout the rules. However, a hard-headed view of IHL requires no concessions to terrorists or anti-terrorists.

Only from ICRC headquarters: http://dx.doi.org/10.1017/S0922156513000046

Learning to live with (a little) uncertainty : the operational aspects and consequences of the geography of conflict debate

Laurie R. Blank. In: University of Pennsylvania law review online Vol. 161, p. 347-361. - Cote 342.2/942 (Br.)

This Essay, written as a response to Professor Jennifer Daskal's thought-provoking article on the geography of the battlefield, addresses the debate over the geographical parameters of armed conflict through a focus on the operational consequences of efforts to draw geographical lines setting the parameters of conflict. The question of geographical application of LOAC is both highly relevant in the most pragmatic sense – the difference between being in an area of armed conflict or not can literally be life or death – and also not susceptible to specific and concrete definition. This combination of relevance and thorniness has led not only to extensive debates about how to conceptualize the geographic parameters of the battlespace in an armed conflict but also to alternative paradigms for regulating the use of force through rules-based frameworks, hybrid paradigms or other mechanisms. This essay highlights two primary concerns as a counterpoint to the idea of a new set of rules based on shifting geographical combat zones, even in light of the potential procedural benefits such new rules and frameworks might engender: 1) how the lack of strategic clarity trickles down to affect operational and tactical clarity, and 2) the long-term consequences for the development and implementation of the law of armed conflict.

http://www.pennlawreview.com/responses/index.php?id=120

A legal assessment of the US drone strikes in Pakistan

Shakeel Ahmad. In: International criminal law review Vol. 13, issue 4, 2013, p. 917-930

While assessing the legality of the US drone strikes in Pakistan, this article takes into account the nature of armed conflict which has potential to be converted into an international armed conflict (IAC) from a non-international armed conflict (NIAC). The growing trust-deficit between Pakistan and the US is catalyst for determination of nature of armed conflict. The arguments based on tacit consent of Pakistan no longer stands valid after a clear protest by Pakistani officials at national, bilateral and international level. It also examines the observance of the rules of International Humanitarian Law (IHL) in comparison with official US statements. Continued drone strikes are now being considered as counter-productive and resulting in increased suicide bombing in various cities of Pakistan. The author suggests a collaborative effort by considering other social, political and economic factors to minimize the violation of IHL for desired results.

Only from ICRC headquarters: http://dx.doi.org/10.1163/15718123-01304008

A legal "red line" ? : Syria and the use of chemical weapons in civil conflict

Jillian Blake and Aqsa Mahmud. In: UCLA law review discourse Vol. 61, 2013, p. 244-260. - Cote 341.67/267 (Br.)

This essay analyzes the prohibition on the use of chemical weapons in civil conflicts and applies its findings to the Syrian civil war. International humanitarian law and international criminal law provide a clear ban on the use of chemical weapons in international armed conflict. This prohibition is less clear in noninternational armed conflict, suggesting the need for legal reforms to firmly ban the use of chemical weapons in all armed conflicts. Furthermore, the use of chemical weapons in Syria does not, by itself, cross a legal red line justifying military intervention. Instead, the use of chemical weapons is one factor in determining the existence of a humanitarian crisis requiring strong international action.

http://www.uclalawreview.org/pdf/discourse/61-16.pdf

Legal regulation of belligerent reprisals in international humanitarian law : historical developement and present status

Brian Sang YK. In: African yearbook on international humanitarian law 2012, p. 134-184

This author discusses the ongoing debate over the place of belligerent reprisals in international humanitarian law, and proposes reforms that would allow for the more measured use of such reprisals. Belligerent reprisals are otherwise illegal actions, taken by an aggrieved state only after a prior violation of the law of war by a second state or a non-state actor, in an attempt to coerce the offending party into

changing its conduct. Despite a long-standing history, belligerent reprisals remains highly controversial, with some arguing that their usage leads to immorality and war crimes. Belligerent reprisals were heavily proscribed by the 1977 additional protocols to the Geneva Convention, which banned their use against civilians, civilian objects, cultural property, the natural environment and more. However, many states continue to argue that belligerent reprisals are the only effective recourse against an adversary who intentionally disregards the laws of war, and especially against modern phenomenons such as terrorism. The author concludes by suggesting international law incorporate change to belligerent reprisals. His new conception of belligerent reprisals would place fundamental stress on basic principles such as proportionality, fair notice, and the usage of reprisals only as a last resort. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Légalité et légitimité des drones armés

par Jean-Baptiste Jeangène Vilmer. In: Politique étrangère Vol. 78, 3, automne 2013, p. 119-132

Les drones armés passent pour illégaux au regard du droit international humanitaire. Ils ne sont, en réalité, que les instruments nouveaux de guerres qui s'opèrent de plus en plus à distance de l'adversaire ; et ils permettent même sans doute des frappes plus discriminées que des armes plus classiques. Leur automatisation croissante pose, par contre, nombre de questions que de nouvelles réglementations internationales se doivent de prendre en compte.

The legality of the threat or use of nuclear weapons : the ICJ advisory opinion reconsidered

Daniel Thürer. - In: Völkerrecht und die Dynamik der Menschenrechte : Liber Amicorum Wolfram Karl. - Wien : Facultas.wuv, 2012. - p. 538-552. - Cote 341.67/7 (Br.)

The most serious, insidious and publicly neglected challenge in today's world and international law is the legal status of nuclear weapons. This chapter introduces the subject with some remarks of a historical and rather general nature. It concentrates on the 1996 Nuclear weapons opinion of the International Court of Justice and formulates seven critiques concerning the Opinion based on fundamental principles and concepts of international law. In conclusion, it asks whether the Court would or should decide differently, if it had to deal with the General Assembly's request today.

ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37513.pdf

The liberal discourse and the "new wars" of/on children

Noëlle Quénivet. In: Brooklyn journal of international law Vol. 38, issue 3, 2013, p. 1053-1107. - Cote 362.7/385 (Br.)

The typical war of the last few decades is not one where high technology – unmanned drone, guided missiles – is used; rather, it is a war fought by young people with AK-47 and machetes. Since the early 90s an array of NGOs and individual activists have strongly argued against the use of children – individuals below 18 years of age – in armed conflict and lobbied for laws condemning the recruitment and use of children in hostilities. This article argues that this liberal discourse raises a number of issues. Through a politics of age dictating that a child is anyone under 18 this discourse refuses to acknowledge that childhood/adulthood can be determined in other ways. Moreover, it denies children any agency in deciding whether they wish to participate in the hostilities. To some extent, it might be argued that liberalism has adopted a rather patronising approach towards children in so-called non-liberal States.

http://www.brooklaw.edu/~/media/PDF/LawJournals/BJI_PDF/bji_vol38iii.ashx

The liberal way of war : legal perspectives

ed. by Robert P. Barnidge. - Farnham ; Burlington : Ashgate, 2013. - XX, 306 p. - Cote 355/1010

Examining some of the huge challenges that liberal States faced in the decade after 11 September 2001, the chapters in this book address three aspects of the impact of more than a decade of military action. This book begins by considering four different expressions of universalist moral aspirations, including the prohibition of torture, and discusses migration and 'responsibility to protect,' as well as the United Nations Human Rights Committee's Concluding Observations about security and liberty in the last decade. International humanitarian law and the problems posed by the territorial character of war and the effects of new technologies and child soldiers are also analysed. Finally, Islamic law and its interface with international law is considered from a new perspective, and contributions in this final part offer a different way of thinking about an authentically Islamic modernisation that would be compatible with Western models of political order.

Limiting the killing in war : military necessity and the St. Petersburg Assumption

Janina Dill and Henry Shue. In: Ethics and international affairs Vol. 26, no. 3, 2012, p. 311-333. - Cote 345.25/288 (Br.)

This article suggests that the best available normative framework for guiding conduct in war rests on categories that do not echo the terms of an individual rights-based morality, but acknowledge the impossibility of rendering warfare fully morally justified. Avoiding the undue moralization of conduct in war is an imperative for a normative framework that strives to actually give behavioral guidance to combatants, most of whom will inevitably be ignorant of the moral status of the individuals they encounter on the battlefield and will often be uncertain or mistaken about the justice of their own cause. The article identifies the requirement of military necessity, applied on the basis of what is referred to as the "St. Petersburg assumption", as the main principle according to which a combatant should act, regardless of which side or in which battlefield encounter she finds herself. This pragmatic normative framework enjoys moral traction for three reasons: first, in the circumstances of war it protects human life to a certain extent; second, it makes no false claims about the moral justification of individual conduct in combat operations; and, third, it fulfills morally important functions of law. However, the criterion of military necessity interpreted on the basis of the St. Petersburg assumption does not directly replicate fundamental moral prescriptions about the preservation of individual rights.

ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37182.pdf

Linking humanitarian law and nuclear disarmament action : the case for a nuclear weapons convention

Rebecca Johnson. In: Austrian review of international and European law Vol. 15, 2010, p.173-196. - Cote 341.67/261 (Br.)

The humanitarian case for banning nuclear weapons can be made on three core grounds : ethics, international law, and human security and survival. This article focuses primarily on international humanitarian law and security. After considering basic arguments, it briefly discusses how centralising humanitarian interests over national military concerns makes the achievement of comprehensive nuclear weapons conventions more realisable and practical in the near term than sticking with the step-by-step arms reduction paradigm that keeps faltering and sliding backwards.

ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37506.pdf

Localised armed conflict : a factual reality, a legal misnomer

Mutsa Mangezi. In: African yearbook on international humanitarian law 2012, p. 79-97

Between May and July 2012, a number of statements from individuals within the ICRC suggested that the conflict in Syria could be classified as a non-international armed conflict in certain parts of Syria but not throughout the territory. This article uses the Syrian conflict as the starting point for a discussion of the concept of 'localised armed conflict'. The author explores the consequences of the adoption of this concept in our current international legal framework, focusing specifically on international humanitarian law. The author argues that although it is important to recognize localised armed conflict as a factual reality, as a legal concept it is a misnomer. After giving a brief overview of the traditional approach to the application of international humanitarian law, the author provides reasons for rejecting localised armed conflict as a legal concept. The author argues that the utilization of the concept could significantly undermine the power of international humanitarian law. Specifically, he asserts that the concept is not supported by any of the Geneva Conventions or their Additional Protocols and that its application could undermine the protective purpose of international humanitarian law, complicate military strategy, and create operational difficulties in the application of international humanitarian law. The author concludes that the traditional application of international humanitarian law should be maintained, whereby it is applied throughout an entire state, even if hostilities are localised. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

The mental element in the Rome Statute of the International Criminal Court

Kristina Janjac. - Oisterwijk : Wolf legal, 2013. - 76 p. - Cote 344/609

This book examines the concept of guilt in the Rome Statute of the International Criminal Court as the most significant factor in determining individual criminal responsibility for the most serious violations of international humanitarian law. The Rome Statute provides a general definition of guilt for the first time in the history of international criminal law, since none of the Statutes of previous international Tribunals contained general rules on this matter. The book also questions the regulation of guilt in the Rome Statute in light of the principle of legality.

Methods and means of combat

Stefan Oeter. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 115-230. - Cote 345.2/638 (2013 ENG)

Content: General rules. - Means of combat. -Methods of combat.

Mexico's drug "war" : drawing a line between rhetoric and reality

Andrea Nill Sánchez. In: Yale journal of international law Vol. 38, issue 2, p. 467-509. - Cote 345.26/239 (Br.)

Across the border, lawmakers and public officials in the United States are increasingly confronted with a loaded question: is Mexico's metaphorical drug war transforming into a verifiable armed conflict under the laws of war? This Note argues that the answer is no. Although the current approach is largely inadequate, applying a law-of-war framework is not legally appropriate, nor would it provide the appropriate remedies. The worsening violence in Mexico has rightfully motivated many people to reassess the current anti-cartel strategy. Nevertheless, redefining the situation in Mexico as an armed conflict and recasting drug cartels as terrorists or insurgents would misapprehend the drug cartels' true nature. Further, applying the law of armed conflict framework would trigger a military approach and accompanying legal regime that are ill suited to meet the challenges that drug cartels pose.

http://www.yjil.org/print/volume-38-issue-2/mexicos-drug-war-drawing-a-line-between-rhetoric-and-reality

Mexico's drug war, international jurisprudence, and the role of non-international armed conflict status

Michael T. Wotherspoon. In: Journal of international humanitarian legal studies Vol. 3, issue 2, 2012, p. 291-321

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

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Military necessity as normative indifference

Nobuo Hayashi. In: Georgetown journal of international law Vol. 44, issue 2, 2013, p. 675-782. - Cote 345.25/284 (Br.)

What does it mean to say that international humanitarian law (IHL) "accounts for" military necessity? According to one theory, unqualified IHL rules exclude not only military necessity pleas but also humanity pleas in support of deviant behavior. Three propositions underpin this view. They are, first, that military necessity generates imperatives; second, that the imperatives emanating from military necessity inevitably conflict with those emanating from humanity; and third, that all positive IHL rules embody the military necessity-humanity interplay in the process of their norm-creation. In lieu of what may be termed an "inevitable conflict" thesis, this Article proposes and develops a "joint satisfaction" thesis. In the process of IHL norm-creation, military necessity does not furnish the law with reason to obligate or forbid given conduct. Rather, it only generates permissions. It not only robustly permits pursuing military necessities and avoiding non-necessities; it also permits, albeit moderately, forgoing success and inviting failure. In other words, military necessity is normatively indifferent. By acting as non-indifferently exhorted or demanded by humanity, the belligerent never acts in a manner affirmatively contrary to what military necessity indifferently permits. Where both humanitarian exhortations or demands and military necessity's indifferent permissions are at stake, one always jointly satisfies them by acting in accordance with the former. When the framers of IHL validly posit an unqualified rule regarding given conduct, the rule does two things. First, it unqualifiedly obligates the pursuit of joint military necessity-humanity satisfaction with respect to the conduct in question. Second, this rule extinguishes any indifferent permission, including that emanating from military necessity, not to pursue the said satisfaction. It is for

this reason, rather than the empirically troublesome claim that every positive IHL rule embodies the military necessity-humanity interplay, that unqualified IHL rules admit no military necessity and other de novo indifference pleas. The same does not necessarily hold for non-indifference considerations. It is possible that these latter considerations may survive the process of IHL norm-creation. The mere fact of an IHL rule being validly posited may not resolve the relatively rare, yet genuine, norm conflict that arises where the said rule unqualifiedly obligates certain action while humanity exhorts or demands contrary action.

Only from ICRC headquarters: http://tinyurl.com/q9k3ebp

Nanotechnology and challenges to international humanitarian law : a preliminary legal assessment

Hitoshi Nasu. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 653-672

The introduction of nanotechnology into our civil life and warfare is expected to influence the application and interpretation of the existing rules of international humanitarian law. This article examines the challenges posed to international humanitarian law by the widespread use of nanotechnology in light of four basic rules of international humanitarian law: (1) the obligation to ensure the legality of weapons; (2) distinction; (3) proportionality; and (4) precaution. It concludes by identifying three areas of concern, which arise from widespread use of nanotechnology, for the application of international humanitarian law.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-nasu.pdf

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

Jeremy Rabkin and Ariel Rabkin. In: Chicago journal of international law Vol. 14, no. 1, Summer 2013, p. 197-258. - Cote 347.799/148 (Br.)

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

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New capabilities in warfare : an overview of contemporary technological developments and the associated legal and engineering issues in Article 36 weapons reviews

Alan Backstrom and Ian Henderson. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 483-514

The increasing complexity of weapon systems requires an interdisciplinary approach to the conduct of weapon reviews. Developers need to be aware of international humanitarian law principles that apply to the employment of weapons. Lawyers need to be aware of how a weapon will be operationally employed and use this knowledge to help formulate meaningful operational guidelines in light of any technological issues identified in relation to international humanitarian law. As the details of a weapon's capability are often highly classified and compartmentalized, lawyers, engineers, and operators need to work cooperatively and imaginatively to overcome security classification and compartmental access limitations.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-backstrom-henderson.pdf

The "new wars" of children or on children ? : international humanitarian law and the "underaged combatant"

Noëlle Quénivet. - In: The liberal way of war : legal perspectives. - Farnham ; Burlington : Ashgate, 2013. - p. 139-165. - Cote 355/1010

This chapter rethinks the notion of 'underaged combatant' in international humanitarian law in order to assess whether a change in the law in necessary. It begins by exploring how and why the phenomenon of child soldiering has gained prominence in recent years. It then examines the current legal framework in relation to the recruitment, conscription, enlistment and participation of children in armed conflict. The chapter ends by critically analysing international law in this area through the prism of two values that are

essential to liberal thinkers : universality , the view that liberal values apply across cultures; and autonomy, the idea that each individual is able to take decisions independently. It concludes that the issue of child soldiering is more difficult to grasp than liberal thinkers present it and that the Zero Under 18 Campaign launched by the United Nations Special Representative for Children and Armed Conflict, which well reflects the current liberal approach, is unlikely to be successful because it fails to take into consideration the weight of history, politics and culture.

Non-lethal weapons and force-casualty aversion in 21st century warfare

Chukwuma Osakwe, Ubong Essien Umoh. In: Journal of military and strategic studies Vol. 15, issue 1, 2013, p. 1-20. - Cote 341.67/22 (Br.)

Military Operations Other Than War (MOOTW) such as humanitarian intervention in peacekeeping operations have been the main arguments for the development and deployment of non-lethal weapons. Such weapons which are spin-offs of the current Revolution in Military Affairs (RMA) seek to reduce human casualties in warfare by reducing deaths and neutralising bloodshed. This constitutes a great leap-backward from the destructive arsenals of previous centuries. Previous studies have examined the motivation for the use of non-lethal weapons as being influenced by deterrent capability, civil policing, riot control, and stability and peace support operations. The support for the development and deployment of non-lethal weapons to avert casualties in warfare has been left in relative neglect. This paper argues that the most significant military utility of non-lethal weapons in warfare in 21st century lies in Force-Casualty Aversion (FCA).

http://www.jmss.org/jmss/index.php/jmss/article/view/520

North Korea and cyberwarfare : how North Korea's cyber attacks violate the laws of war

Tom Papain. In: Journal of Korean law Vol. 11, no. 1, December 2011, p. 29-54. - Cote 345.26/238 (Br.)

On July 4th, 2009, North Korea launched the first of three “DDOS” (Distributed Denial of Service) attacks upon the government and private networks of both the United States and South Korea, effectively flooding these networks with millions of requests from computers which were infected with the North Korean botnet virus “MyDoom.” Considered by several experts (including Richard A. Clark) as a precursor of things to come, such attacks are quickly becoming an alternative means of waging war on enemy countries. This is especially true for countries such as North Korea, whose struggling economy and limited resources lead it to attack its enemies in a cheaper - albeit effective – way. In this note, Tom Papain will talk about the laws of war and cyberwar, both in general and as they pertain to the 2009 cyber attacks, and the various treaties which North Korea violated by launching these cyber attacks, including the U.N. Charter Article 2(4), the Geneva Convention, Additional Protocol I, Article 48, and the Hague Cultural Property Convention. In the end, he will talk about possible future developments in the realm of cyberwarfare, including what the International Community should do to combat North Korea’s use of cyber weapons, and efforts by the U.S. and Russia to come up with a treaty regulating cyberwarfare.

ICRC access: https://ext.icrc.org/library/docs/ArticlesPDF/37177.pdf

The obligation to withhold from trading in order not to recognize and assist settlements and their economic activity in occupied territories

Tom Moerenhout. In: Journal of international humanitarian legal studies Vol. 3, issue 2, 2012, p. 344-385

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

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Observance of international humanitarian law by forces under the command of international organisations

Arne Willy Dahl. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 345-363

This lecture concerns international legal interoperability issues arising where forces from several states participate in combined operations under the command of an international organization. First, the source of these issues is discussed followed by various examples ranging from anti-personnel mines to the status and treatment of prisoners of war. Second, the author discusses problems that arise between states and the international organization in command, specifically, whether the command relationship relieves troop-contributing states of their obligation to international law. Seven principles that govern these matters are offered including the host state's need to impose restrictions on the operations of visiting states to avoid liability for acts by those states, a state's responsibility over only the conduct of their personnel and a state's inability to invoke participation in combined operations as a justification for failing to adhere to international law. This last principle was contested when the European Court of Human Rights found the UN, rather than the participating states, liable for failing to adhere to international law in 2007. Lastly, the author recommends that states discuss and resolve matters of legal interoperability prior to deployment by, for example, assigning states to tasks where legal limitations and conflicting legal obligations are avoided. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Observance of international humanitarian law by forces under the command of the European Union

Frederik Naert. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 373-404

This article assesses when and how IHL is applicable in European Union (EU) military operations. The author outlines the types of operations the EU can conduct and examines the legal framework that shapes the actions of EU forces. The author expands on the role of customary international law and international human rights discourse in the planning, command, control and conduct of EU operations. The applicability of IHL in EU operations is best understood through a state-centric paradigm, where the author submits that the IHL obligations in EU military operations primarily rest on the legal duties of states. Additionally, member states have different treaty obligations, which can complicate these operations. It is argued that when IHL does not apply, the EU uses international human rights law as grounded within their treaty obligations, and the obligations of its member states, to guide its conduct in military actions. The author argues that an assessment must be made for each EU operation as to how international law will be applicable to the mission. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Occupation law during and after Iraq : the expedience of conservationism evidenced in the minutes and resolutions of the Iraqi Governing Council

Jordan E. Toone. In: Florida journal of international law Vol. 24, December 2012, p. 469-511. - Cote 345.28/104 (Br.)

The legality of the 2003 invasion of Iraq has attracted intense scholarly and public scrutiny. In an attempt to address the weaknesses in the existing literature on the subject, the Article makes a distinctive contribution: It relies primarily on the minutes kept and resolutions adopted by the Iraqi Governing Council (the "IGC") (the quasi-governmental body established by the Coalition Provisional Authority in June of 2003 and officially recognized in U.N. General Assembly Resolutions 1483 and 1511 prior to its dissolution in June 2004) to examine the relevance of occupation law to contemporary, state-building occupations and, in turn, to determine the degree to which the United States adhered to its legal mandate as the occupying power in Iraq. Relying principally on the insights provided by the hitherto unreferenced resolutions adopted and meeting minutes kept by the IGC, this Article provides compelling justifications for the application of the conservationist principle--the axiom of occupation law--to contemporary, state-building occupations, while also casting incriminating shadows upon the United States' adherence to its obligations under occupation law as the occupying power in Iraq. In addition to examining the relevance of the law of occupation to contemporary occupations and the United States' adherence to this law in its occupation of Iraq, the Article contributes to the growing body of literature on the emerging international legal doctrine, jus post bellum, by outlining three fundamental principles that must supplement the existing proposals related to the jus post bellum law of transformative occupations. Foremost among these principles is the necessity of preserving popular sovereignty during transformative occupations in the form of an executive council made up of elected citizen representatives from the occupied state that have veto power over all proposed reforms to the legal, economic, and political infrastructure of the occupied state.

Only from ICRC headquarters: http://tinyurl.com/o7gv3j8

On banning autonomous weapon systems : human rights, automation, and the dehumanization of lethal decision-making

Peter Asaro. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 687-709

This article seeks to address concerns expressed by some scholars that an international prohibition on autonomous weapon systems might be problematic for various reasons. It argues in favour of a theoretical foundation for such a ban based on human rights and humanitarian principles that are not only moral, but also legal ones. In particular, an implicit requirement for human judgement can be found in international humanitarian law governing armed conflict. Indeed, this requirement is implicit in the principles of distinction, proportionality, and military necessity that are found in international treaties, such as the 1949 Geneva Conventions, and firmly established in international customary law. Similar principles are also implicit in international human rights law, which ensures certain human rights for all people, regardless of national origins or local laws, at all times. I argue that the human rights to life and due process, and the limited conditions under which they can be overridden, imply a specific duty with respect to a broad range of automated and autonomous technologies. In particular, there is a duty upon individuals and states in peacetime, as well as combatants, military organizations, and states in armed conflict situations, not to delegate to a machine or automated process the authority or capability to initiate the use of lethal force independently of human determinations of its moral and legal legitimacy in each and every case. I argue that it would be beneficial to establish this duty as an international norm, and express this with a treaty, before the emergence of a broad range of automated and autonomous weapons systems begin to appear that are likely to pose grave threats to the basic rights of individuals.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-asaro.pdf

Pandora's box ? : drone strikes under jus ad bellum, jus in bello, and international human rights law

Stuart Casey-Maslen. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 597-625

Armed drones pose a major threat to the general prohibition on the inter-state use of force and to respect for human rights. On the battlefield, in a situation of armed conflict, the use of armed drones may be able to satisfy the fundamental international humanitarian law rules of distinction and proportionality (although attributing international criminal responsibility for their unlawful use may prove a significant challenge). Away from the battlefield, the use of drone strikes will often amount to a violation of fundamental human rights. Greater clarity on the applicable legal regime along with restraints to prevent the further proliferation of drone technology are urgently needed.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-casey-maslen.pdf

Partiality and weighing harm to non-combatants

David Lefkowitz. - In: Global justice and international affairs. - Leiden ; Boston : Brill, 2012. - p. 251-270. - Cote 345.25/285 (Br.)

Suppose that under certain conditions, combatants waging a just war are morally permitted to engage in acts that cause collateral damage; that is, harm done to non-combatants as a side effect of an attack on a morally permissible target. Does it matter morally whether those noncombatants who will be harmed are citizens of the same state as the combatants who carry out the attack, or are instead citizens of the state against whom these combatants are waging war? The author refutes attempt to defend partiality to compatriot non-combatants by appeal to an alleged asymmetry between the sacrifice one must make to save others, and the sacrifice one may impose on a third party in order to save those same people. Rather, it is because an attack that causes harm to neutrals involves a distinct moral wrong absent from an attack that harms only compatriot non-combatants, namely a violation of the neutral state's sovereignty. The disvalue of this wrong is great enough that, at least up to a paint, it requires choosing an act that will result in more non-combatant deaths than would result from committing the alternative act under consideration.

Only from ICRC headquarters: https://ext.icrc.org/library/docs/ArticlesPDF/37170.pdf

Peace settlements and international law : from lex pacificatoria to jus post bellum

Christine Bell. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 499-546. - Cote 355/1002

This chapter examines the ways in which peace settlements are producing a lex pacificatoria, a new 'law of the peacemakers', in a range of different areas relating to international conflict and security law. The chapter considers the relationship between this 'lex pax' and proposals for re-invigorating a concept of jus post bellum. The chapter illustrates how the practice of fashioning and implementing peace settlements is forcing a revision of relevant international law, as the traditional assumptions and boundaries of relevant legal regimes do not fit within post-settlement political landscapes, are inadequate for enabling and regulating peace settlement implementation, and do not contain guidance for the dilemmas faced post-settlement. The chapter sets out the relationship between peace agreements and international law, describing the ways in which a lack of fit between peace settlement dilemmas and international legal doctrines has generated new practices and new articulations of international law. Building on earlier arguments, It is argued that these revisions constitute a new lex pacificatoria, or 'law of the peacemakers', in the form of a normativized practice of conflict resolution. The extent to which these new practices constitute 'law' at all is critically evaluated throughout the chapter. In conclusion, it considers whether it is possible, useful and desirable to frame and develop the 'new law' as a new jus post bellum that might supplement existing categories of jus ad bellum and jus in bello. The contemporary peace settlement is a post-Cold War phenomenon.

The power to kill or capture enemy combatants

Ryan Goodman. In: European journal of international law = Journal européen de droit international Vol. 24, no. 3, August 2013, p. 819-853

During wartime a critical legal question involves the scope of authority to choose whether to kill or capture enemy combatants. One view maintains that a combatant is lawfully subject to lethal force wherever the person is found – unless and until the individual offers to surrender. In contrast, this article concludes that important restraints on the use of deadly force were a part of the agreement reached by states and codified in the 1977 First Additional Protocol to the Geneva Conventions. When nations of the world focused their attention on balancing principles of humanity and military necessity, and making higher law, they agreed on two important sets of rules. Under Article 35, states agreed to prohibit the manifestly unnecessary killing of enemy combatants. And, under Article 41, they agreed that combatants who are completely defenceless, at the mercy of enemy forces, shall be considered hors de combat. – including alternative specifications of standards and burdens of proof. Nevertheless, the general constraint – and its key components – should be understood to have a solid foundation in the structure, rules, and practices of modern warfare.

Only from ICRC headquarters: http://ejil.oxfordjournals.org/content/24/3/819.full.pdf

Prévenir et réprimer les crimes internationaux : vers une approche "intégrée" fondée sur la pratique nationale : rapport de la troisième réunion universelle des commissions nationales de mise en oeuvre du droit international humanitaire

rédigé par Anne-Marie La Rosa. - Genève : CICR, juin 2013. - 2 vol. (116, 338 p.) - Cote 345.22/221

Ce rapport prend en considération les travaux et réflexions qui ont suivi la réunion universelle. Il inclut un compte rendu des discussions sur les moyens et solutions permettant de répondre aux défis de l'incorporation du DIH (aspects répressifs) dans le droit national. Il présente également des réflexions sur des sujets d'importance, tels la compétence universelle ou encore le rôle de la sanction dans la prévention des violations graves du DIH. Le volume 2 du rapport, vise à soutenir les efforts des Etats dans les domaines examinés par la réunion universelle.

http://www.cid.icrc.org/library/docs/DOC/icrc-001-4138-1.pdf

Private military companies

Chia Lehnardt. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p.421-443. - Cote 355/1002

This article examines the regulation of private military companies within the framework of international humanitarian law. The author seeks to assess what elements of the legal regime are applicable to private military companies' conduct in conflict situations. The author examines how private military companies are governed, including how these companies can be regulated and whether individuals within these companies are considered to be civilians or combatants. The article is also concerned with whether private military companies are entitled to prisoner of war status provided that they do not violate the laws of war if they take part in hostilities. The article elaborates on when and how these companies can participate in hostilities. The author goes on to expand on state control over the private military entity, and explains that despite these companies not being part of a formal state organ, their actions can still implicate the state if they are seen as acting on behalf of the state. Finally, the article evaluates the peacekeeping capacities of these companies and submits that private military companies undermine international law when they fulfill military functions. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Prosecution of attacks against peacekeepers in international courts and tribunals

Ola Engdahl. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra 51/2, 2012, p. 249-284

This article analyses the practice of international courts and tribunals regarding attacks against peacekeepers based on judgments of the International Criminal Tribunal for Rwanda, the Special Court Sierra Leone (SCSL) and the Pre-trial Chamber of the International Criminal Court (ICC). Directing attacks against personnel involved in peacekeeping missions, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict, is defined as a specific war crime in the ICC Statute and was later incorporated into the Statute of the SCSL.

Only from ICRC headquarters: http://tinyurl.com/p92stfw

Protected persons in international armed conflicts

Tom Ruys and Christian De Cock. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 375-420. - Cote 355/1002

The four Geneva Conventions and the First Additional Protocol of 1977 are the international legal statutes relevant to the protection of persons in the hands of enemy forces during international hostilities. All four Geneva Conventions have been ratified universally and exist separately from 'Hague Law', which regulates the actual conduct of hostilities. This article discusses the protective regimes and basic substantive rules governing the treatment of different categories of individuals captured by the enemy. The authors begin with an overview of the basic criteria by which an individual in an international conflict is classified as a combatant or a civilian. The authors outline the categories of individuals that are subject to attack and some of the practical difficulties that arise from the existing classification scheme. In the remainder of the article, the authors discuss the application of the Geneva Convention regime to various groups in the context of captivity. These groups include persons hors de combat such as prisoners of war and the sick and wounded, as well as special categories of protected persons such as medical personnel, journalists, and civilian women and children. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Protecting Australian cyberspace: are our international lawyers ready ?

Stephen Tully. In: Australian international law journal Vol. 19, 2012, p. 49-77. - Cote 345.22/220 (Br.)

Cyberspace is an important element of Australia's critical national infrastructure. Recent policy developments within this field seek to maintain economic opportunity and protect national security. This article discusses four contemporary threats posed to the Australian military and civilian electronic information infrastructure: 'cyber war' conducted by hostile states, 'cyber conflicts' by foreign combatants, attacks committed by 'cyberterrorists' and the commission of 'cybercrimes'. This article reviews the existing international legal paradigms relevant to each and identifies the issues raised from a survey of the existing literature. It concludes that each paradigm is presently inadequate for addressing the nature of

these threats and calls for further contributions from Australian government, military and international lawyers to articulate a distinctive national perspective on these questions.

Protecting cultural heritage : war crimes and crimes against humanity during conflicts and revolutions in North Africa and the Middle East

Edward Phillips. - In: The Arab spring : new patterns for democracy and international law. - Leiden ; Boston : M. Nijhoff, 2013. - p. 225-236. - Cote 323.15/29

This article highlights the important role played by cultural property in nation building, and the author discusses the failings of the international legal regime put in place to protect such property during times of conflict. Cultural properties - which include, inter alia, architecture, works of art, libraries, museums and archives - are essential emblems of identity and nationhood, embraced equally by different populations within a country. Because of its importance, cultural property is frequently intentionally targeted during times of war, as has been evident in various conflicts in recent years. According to Phillips, the totality of recent experience has raised serious questions about the international legal regime put in place to protect cultural properties. The duty to protect cultural property has been part of customary international law for centuries, and was explicitly codified in a number of treaties following World War Two. However, it has proven difficult for the international community to enforce these commitments. An especially egregious failure can be seen in the destructive way in which the United States treated cultural property during the Iraq War, actions which were met with little denunciation and no international sanctions. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Protection of cultural property

Roger O'Keefe. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 425-461. - Cote 345.2/638 (2013 ENG)

Content: Definition of 'cultural property'. - Respect for cultural property. - Safeguarding of cultural property. - Protection of cultural property during occupation. - Transport of cultural property. - Personnel engaged in the protection of cultural property. - Distinctive marking of cultural property.

Protection of prisoners in armed conflict

Sandra Krähenmann. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 359-411. - Cote 345.2/638 (2013 ENG)

Content: General. - Beginning of captivity. - Conditions of captivity. - Escape of prisoners of war. - Termination of captivity.

Protection of religious personnel

Nilendra Kumar. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 413-424. - Cote 345.2/638 (2013 ENG)

Content: General rules. - Protection of religious personnel. - Legal status of religious personnel retained by a foreign power.

Protection of the civilian population

Hans-Peter Gasser and Knut Dörmann. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 231-320. - Cote 345.2/638 (2013 ENG)

Content : General rules. - Civil defence. - Humanitarian assistance. - Belligerent occupation. - Aliens in the territory of a party to the conflict. - Internment of civilians.

Protection of the wounded, sick and shipwrecked

Jann K. Kleffner. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 321-357. - Cote 345.2/638 (2013 ENG)

Content: Wounded, sick, and shipwrecked persons. - The dead and missing. - Medical units and transport. - Medical personnel. - Medical aircraft Wolf Heintschel von Heinegg. - Hospital and safety zones and localities; neutralized zones. - The distinctive emblem.

Le recours à la force pour protéger les civils et l'action humanitaire : le cas libyen et au-delà

Bruno Pommier. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/3, p. 171-193

La crise libyenne en 2011 a soulevé une fois de plus le problème crucial du choix des moyens d'assurer la protection des civils. Le recours à la force pour la protection des civils agréé par la communauté internationale dans le cadre des opérations militaires menées en Libye a relancé le concept de "guerre humanitaire" et a fait émerger un certain nombre d'enjeux pour les organisations humanitaires opérantes, en particulier pour la notion de l'action humanitaire neutre, impartiale et indépendante. Le présent article fait le point sur ces enjeux humanitaires et notamment sur l'impact que pourrait avoir sur ceux-ci le concept de responsabilité de protéger - qui sous-tendait l'intervention en Libye.

http://www.cid.icrc.org/library/docs/DOC/irrc-884-pommier-fre.pdf

Reflections on proportionality, military necessity and the Clausewitzian war

Rotem M. Giladi. In: Israel law review Vol. 45, issue 2, July 2012, p. 323-340. - Cote 345.25/287 (Br.)

This article explores the significance of the reference, in proportionality analyses, to proper purpose and legitimate ends, given the traditional aversion of international humanitarian law (IHL) to questions of (political) legitimacy. It demonstrates the centrality of that aversion in doctrinal assertions concerning the goals, characteristics and operational strategy of IHL yet argues that, at its historical and conceptual foundations, the law draws on a construction of war that presupposes legitimacy of the political type. That construction remains embedded, though implicit, in contemporary proportionality analyses. Thus, the instrumental understanding of war by Carl von Clausewitz poses several challenges to entrenched contemporary doctrinal claims about the law, how it operates and the effects it produces. This provides an impetus for critical reassessment of the aversion to politics and the interaction between the humanitarian, military and political spheres in the operation of IHL norms. Such critique helps to identify novel strategies of humanitarian protection in war outside the confines demarcated by orthodox doctrine.

Only from ICRC headquarters: https://ext.icrc.org/library/docs/ArticlesPDF/37175.pdf

La relation ambiguë de la Cour européenne des droits de l'homme avec le droit international humanitaire

Yves Sandoz. - In: Scrutinizing internal and external dimensions of European law = Les dimensions internes et externes du droit européen à l'épreuve : liber amicorum Paul Demaret. - Bruxelles [etc.] : P. Lang, 2013. - p. 109-129. - Cote 345.1/50 (Br.)

Cette contribution examine les principaux points qui peuvent faire problème dans la relation sur un plan général, entre le droit international humanitaire et le droit international des droits de l'homme. Elle examine ensuite les liens du droit international humanitaire avec la Convention européenne des droits de l'homme et la manière donc celui-ci est traité par la Cour européenne des droits de l'homme. Elle tente de tirer les principales lignes de force des nombreux arrêts qui touchent à ces liens.

The relationship between a state and an organised armed group and its impact on the classification of armed conflict

Keiichiro Okimoto. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 33-51. - Cote 345.27/131 (Br.)

When an organised armed group is engaged in an armed conflict with government forces, this is normally classified as a non-international armed conflict under international humanitarian law (IHL). However, the nature and degree of the relationship which the armed group has with a third state become crucial in ascertaining whether the armed conflict is, in fact, an international armed conflict. The standard in the law of state responsibility is often applied to define the nature and degree of the relationship. This article critically analyses the application of the standard in the law of state responsibility and suggests that IHL provides sufficient guidance to define the nature and degree of the relationship between an organised armed group and a third state for the purpose of clarifying the type of armed conflict in which the armed group is engaged.

http://ojs.ubvu.vu.nl/alf/article/view/322/495

Reparation and compensation

Natalino Ronzitti. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 638-659. - Cote 355/1002

This article provides an overview of the state of international law on reparations since World War I. The author argues reparations and compensation for violations of jus ad bellum have moved away from a basis in victor/loser relations, where war indemnities were imposed, to one based on legal standards, where war reparations as compensation for violations of international law are imposed. This transition is evidenced by the Versailles Peace Treaty of 1919, under which Germany was punished for illegally using force. The process of reparations as compensation has been repeated in subsequent peace treaties, in various ICJ cases and in the operations of the UN including Security Council Resolution 687 and the UN Compensation Commission. The author also argues that war reparations have evolved to be respectful of the human rights. The article then examines reparations and compensation for violations of jus in bello. It notes recent developments such as the International Law Association's declaration concerning the ability for individuals to seek remedies for serious violations of the laws of war, despite individuals having no locus standi to enforce State responsibility, and the successful incorporation of reparations processes into the work of truth and reconciliation commissions. The author uses these examples as evidence of a possible departure from viewing the violations of the rules of armed conflict as solely a matter for inter-state enforcement. However, the issue of state immunity still remains an obstacle to action by victims before domestic courts. Moreover, the author points to the limitation of poor state compliance with the decisions of international bodies and the paucity of post bellum reparation practice. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

'Restating the law "as it is"' : on the Tallinn manual and the use of force in cyberspace

Lianne J. M. Boer. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 4-18. - Cote 345.26/234 (Br.)

The recently published ‘Tallinn Manual on the International Law Applicable to Cyber Warfare’ arguably constitutes the concluding piece of a debate on the (in)applicability of the prohibition on the use of force in cyberspace. It acknowledges a framework developed by Michael Schmitt, who suggested the use of particular criteria to assess whether force has been used. This article concludes that the foundations for the suggested solutions are unsure and that, contrary to the Manual’s stated goal, it adds to the existing ambiguity rather than clarifies the law on cyberattacks.

http://ojs.ubvu.vu.nl/alf/article/view/323/493

The roles of civil society in the development of standards around new weapons and other technologies of warfare

Brian Rappert... [et al.]. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 765-785

This article considers the role of civil society in the development of new standards around weapons. The broad but informal roles that civil society has undertaken are contrasted with the relatively narrow review mechanisms adopted by states in fulfilment of their legal obligations. Such review mechanisms are also considered in the context of wider thinking about processes by which society considers new technologies that may be adopted into the public sphere. The article concludes that formalized review mechanisms, such as those undertaken in terms of Article 36 of Additional Protocol I (1977) of the Geneva Conventions of 1949, should be a focus of civil society attention in their own right as part of efforts to strengthen standard setting in relation to emerging military technologies.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-rappert-moyes-crowe-nash.pdf

Sailing close to the wind : human rights council fact-finding in situations of armed conflict : the case of Syria

Thilo Marauhn. In: California western international law journal Vol. 43, issue 2, Spring 2013, p. 401-459. - Cote 345.22/218 (Br.)

The article evaluates the facts regarding the involvement of the United Nations Human Rights Council and the probability of development of an armed conflict due to Syria March 2011 event. It informs that the chaotic event started when youngsters wrote anti-government graffiti on the wall of their school in Dara'a, Syria.

It informs that the Security Council reacted lately to the situation and without identifying rules of international law convicted human rights violations.

http://tinyurl.com/p3q86og

Scope of application of international humanitarian law

Jann K. Kleffner. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 43-78. - Cote 345.2/638 (2013 ENG)

Material, personal, geographical and temporal scope of application of IHL.

Searching for international rules applicable to cyber warfare : a critical first assessment of the new Tallinn Manual

Dieter Fleck. In: Journal of conflict and security law Vol. 18, no. 2, Summer 2013, p. 331-351

The new Tallinn Manual on International Law Applicable to Cyber Warfare represents an important professional achievement which is, however, less than comprehensive. The Manual deliberately focuses on (international and non-international) armed conflict, whereas the prohibition of intervention below the threshold of armed attack is not discussed in detail. Dealing with a phenomenon that may arise in future but has hardly occurred so far in the practice of states and non-state actors, the Manual refrains from addressing legal problems of cyber security outside armed conflicts in a systematic manner. It does so even at the risk of misunderstandings for users who may tend to military action in situations where such action would be unlawful, whereas law enforcement and political cooperation would be required. Relevant issues including state sovereignty and sovereign immunity, accountability for cyber operations, effects of armed conflicts on rules applicable in peacetime and criminal jurisdiction are of practical significance in the context of cyber operations and need to be further elaborated. As far as the jus in bello is concerned, the Manual explains important principles and rules as applicable to cyber warfare, but it also takes some controversial positions and thus challenges further efforts to develop best practice standards for the conduct of military operations, solve interoperability problems and address policy issues in a convincing manner. Efforts to improve cyber security in international cooperation deserve to be continued.

Only from ICRC headquarters: http://jcsl.oxfordjournals.org/content/18/2/331.full.pdf

Selecting and applying legal lenses in monitoring, reporting, and fact-finding missions

by Théo Boutruche. - [Cambridge (MA)] : Program on humantarian policy and conflict research Harvard university, October 2013. - 36 p. ;. - Cote 345.22/225 (Br.)

While the existence of monitoring, reporting and fact-finding (MRF) bodies in the international realm is not a new phenomenon, the recent proliferation of such institutions raises a number of policy and legal issues. One issue is that, as MRF bodies are increasingly called to make legal determinations and interpret existing unsettled rules or concepts of international law, these mechanisms' role and practice in this regard attract more legal scrutiny. As a result, the way that MRF missions apply the law — as much as the methodology used to establish facts — can affect the mission's credibility. This paper addresses this issue by focusing on the selection and application of legal lenses in MRF mechanisms. The paper aims at describing and analyzing the current practice to identify strengths, gaps, and challenges, with a view to presenting options to improve the ways that MRF practitioners articulate and apply legal frameworks.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2337437

Selling the pass : habeas corpus, diplomatic relations and the protection of liberty and security of persons detained abroad

Tatyana Eatwell. In: International and comparative law quarterly Vol. 62, part 3, July 2013, p. 727-739

On 31 October 2012 the Supreme Court of England and Wales handed down its judgment in Rahmatullah v Secretary of State for Foreign Affairs and Secretary of State for Defence. The case concerns an application for habeas corpus brought by a citizen of Pakistan originally detained by the United Kingdom in Iraq before being transferred into the custody of the United States. Rahmatullah addresses important issues concerning the extraterritorial reach of habeas corpus under English law in respect of persons held in the custody of a foreign State, as well as the international rule of law.

The case may be considered a legal victory for persons detained without trial by the US in facilities thought to be beyond the reach of the courts. However, in reality any strength in the arm of the law is drained by the priority given to the conduct of foreign affairs, 'forbidden territory' for the courts, over the Court's ruling and the UK's obligations under international law. The case is examined in the light of similar jurisprudence from US and Australian courts.

Only from ICRC headquarters: http://journals.cambridge.org/abstract_S0020589313000225

Silent enim leges inter arma - but beware the background noise : domestic courts as agents of developement of the law on the conduct of hostilities

Yaël Ronen. In: Leiden journal of international law Vol. 26, no. 3, 2013, p. 599-614

This article highlights the challenges to the operation of domestic courts as agents of development of the laws of armed conflict and particularly of the law on the conduct of hostilities. The first part of the article concerns the spillover from various branches of the laws of armed conflict to the law regarding the conduct of hostilities. The second part of the article addresses the structural constraints on domestic courts in deciding issues relating to the laws of armed conflict, focusing on the conflict between their role as guardians of national interests and their judicial commitment to protecting the individual. The cumulative effect of these characteristics of domestic litigation suggests that the laws of armed conflict, and particularly the law on the conduct of hostilities, are not necessarily well served by development through domestic jurisprudence.

Only from ICRC headquarters: http://dx.doi.org/10.1017/S0922156513000265

Sixty years in the making, better late than never ? : the implementation of the geneva conventions act

Christopher Gevers, Alan Wallis and Max du Plessis. In: African yearbook on international humanitarian law 2012, p. 185-200

South Africa adopted the implementation of the Geneva Conventions Act 8 of 2012 sixty years after South Africa acceded to the 1949 Geneva Conventions, and after the Geneva Conventions' "grave breaches" regime has already been "domesticated" through South Africa's implementing legislation in respect of the 1998 Rome Statute of the International Criminal Court. In addition, the relevant portions of the 1949 Conventions - and most of the 1977 Protocols - now form part of customary international law and therefore, are already part of South Africa's law. This raises the question: is the Geneva Conventions Act mere legislative surplusage? After providing an overview of the provisions relating to criminal prosecution, and pointing out where the Act might have gone further in light of comparative foreign legislation, the argument is made that although the Geneva Conventions Act does replicate much of what is already covered in the implementation of the Rome Statute, it adds progressively to South Africa's international criminal law in one key respect: it opens up the possibility of prosecuting war crimes that took place before 2002.

Some legal challenges posed by remote attack

William Boothby. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 579-595

Attacking from a distance is nothing new, but with the advent of certain new technologies, attacks can be undertaken in which the attacker remains very remote from the scene where force will be employed. This article analyses the legal issues raised by attacks employing, respectively, remotely piloted vehicles, autonomous attack technologies, and cyber capabilities. It considers targeting law principles and rules, including distinction, discrimination, proportionality, and the precautions rules, observes that they all apply to remote attack and proceeds to explore the challenges that arise from implementing the legal requirements. Due note is taken of states' legal obligation to review new weapons, methods and means of warfare, an obligation that reinforces the view that existing law will provide the prism through which these new attack technologies must be evaluated by states. The article then discusses how notions of liability apply in relation to remote attack, and considers whether it is depersonalization rather than remoteness in attack that is the critical legal issue.

http://www.cid.icrc.org/library/docs/DOC/irrc-886-boothby.pdf

Spatial conceptions of the law of armed conflict

Louise Arimatsu. - In: The liberal way of war : legal perspectives. - Farnham ; Burlington : Ashgate, 2013. - p. 167-188. - Cote 355/1010

This chapter opens with an overview of the two distinct views that have emerged over the last two decades in response to the changing nature of warfare. Common to both is the anxiety that the modern state is ill-

prepared to respond to the spatial reconceptualisation of the global order. In particular, this chapter explores how the law of armed conflict's spatial preconceptions have been radically challenged through state practice and the decisions of courts. I suggest that this reconstitution of space has engendered an angst that is as much about the pace of change as it is about the outcome produced. The second part of this chapter considers the legal debates surrounding the use of unmanned aircraft systems, or drones, as a tactic in responding to transnational terrorism and suggests that the discomfort that many feel about this technology is symptomatic of a deep set of concerns related to the extended spatial, and temporal, reach of the law of armed conflict. I interrogate whether this reconfiguration of space is disrupting the divide between war and crime and between jus in bello and jus ad bellum. The final part of this chapter reflects upon whether the extended spatial scope of the law of armed conflict is to be welcomed or resisted.

Specific reparation for specific victimization : a case for suitable reparation strategies for war crimes victims in the DRC

Amissi M. Manirabona and Jo-Anne Wemmers. In: International criminal law review Vol. 13, issue 5, 2013, p. 977-1012

The vast number of victims as well as their tremendous needs have to be taken into consideration by the International Criminal Court (ICC) that is dealing with some of the war criminals from the DRC. However, while many international instruments provide war victims with rights to reparation, the ICC is limited in terms of who it considers a victim and what it can offer in terms of reparation. The Trust Fund for victims, however, does not suffer these same limitations. Nevertheless, the Trust Fund is grossly underfunded. Thus, it should be supplemented by a national compensation fund for war victims financed by the international community, the DRC as well as States involved in Congolese armed conflict. As we will see later on, although this research is focused to victims of the DRC armed conflict, many of its lessons might have broader implications and apply to other situations involving war-induced victimization.

Only from ICRC headquarters: http://dx.doi.org/10.1163/15718123-01305002

Suicide attacks : martyrdom operations or acts of perfidy ?

Muhammad Munir. - In: Islam and international law : engaging self-centrism from a plurality of perspectives. - Leiden ; Boston : M. Nijhoff, 2013. - p. 99-123. - Cote 297/153

This work focuses on the use of suicide attacks by Muslims from the perspective Islamic jus in bello. It addresses the following questions: what is the position of Islamic law vis-à-vis suicide attacks? Are they martyrdom operations or perfidious acts? Are there any circumstances imaginable in which such attacks are allowed? Can the heroism of the companions of the Prophet and Imam Husayn on battlefields be considered as equivalent to suicide attacks? Who can carry out such attacks and against whom can they be carried out? Can women, children, and civilians be the target of such attacks? Are suicide attacks allowed by the Layha for the mujahidin in Afghanistan which they claim is based on Islamic law?

Taking humans out of the loop : implications for international humanitarian law

Comment by Markus Wagner. In: Journal of law, information and science Vol. 21, issue 2, 2011/2012, p. 155-165. - Cote 341.67/5 (Br.)

The current generation of unmanned vehicles (UVs) is remotely operated, sometimes from a close distance, sometimes over long distances. And while the use of fully autonomous weapons is still a decade or more away, there has been considerable discussion as to when this goal is to be reached. Until a few years ago, it was commonplace for defense officials to consider retaining humans in the loop as an essential component of warfare even in the future. However, a US Department of Defense (DoD) report in 2009, predicted that the technological challenges regarding fully autonomous systems will be overcome by the middle of the century. Technological development has been particularly rapid regarding unmanned aerial vehicles, followed by a vigorous and concomitant public debate. Focusing largely on the legality of targeted killing, this debate has also brought to light the increasing extent to which UAVs have been used in prosecuting armed conflict in Afghanistan and Pakistan, as well as Iraq. This comment first addresses the difference between the current weapon systems and the next generation of truly autonomous weaponry (Part 2), followed by an overview of the applicable rules of armed conflict (Part 3) before offering some concluding remarks (Part 4).

Only from ICRC headquarters: http://tinyurl.com/q3qbdr2

The Taliban Layeha for Mujahidin and the law of armed conflict

Niaz A. Shah. In: Journal of international humanitarian legal studies Vol. 3, issue 1, 2012, p. 192-229

In 2010 the Taliban issued a third edition of their Layeha. The Layeha contains Rules and Regulations of Jihad for Mujahidin. This article first details the short history of the Layeha published by the Taliban. Subsequently its content is analysed and compared with the international law of armed conflict that applies in conflicts of an international and non-international character. The author demonstrates that, whilst some rules are incompatible or ambiguous, most rules of the Layeha are compatible with the international law of armed conflict. Compliance with the rules that are compatible could help to achieve the objectives of the law of armed conflict: to minimise unnecessary suffering in armed conflict. The author submits that considering that the Taliban are engaged in fighting in Afghanistan and that they have control of or influence in parts Afghanistan, it is encouraging that they have produced such a self-imposed code. Any minimum restraint, whether self-imposed or imposed by municipal or international law, is better than no restraint at all.

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Targeted killings : contemporary challenges, risks and opportunities

Sascha-Dominik Bachmann. In: Journal of conflict and security law Vol. 18, no. 2, Summer 2013, p. 259-288

The use of drones and other forms of targeted killings are being increasingly criticized at the international and domestic level. Before the backdrop of the most recent news that the United Nations has launched an inquiry into the overall legality of such a method of warfare and counterterrorism and its associated loss of civilian life, this article aims to give an overview on targeted killings as a means of warfare. The article asks what constitutes targeted killing and what distinguishes it from assassinations. It reflects on the safeguards, which are necessary to ensure the legality of the targeting process. This article further introduces the reader to an updated account of the use of Unmanned Combat Aircraft Systems, or 'drones', in targeted killings, employed as a means of warfare by the USA in its 'War on Terror'. The US drone campaign in Pakistan also raises questions in respect to State Sovereignty and potential violations of this central tenet of International Law. The article will also touch upon another field of global security, so called 'Hybrid Threats', where the use of targeted killing may have an operational military benefit as part of a holistic counterstrategy. It concludes with a sobering warning that while targeted killing operations may be an effective means of achieving short-term tactical goals within the scope of a wider operational objective, the unregulated and increased use of targeting killings by the USA in the 'War on Terror' would be both immoral as well as illegal in the long run.

Only from ICRC headquarters: http://jcsl.oxfordjournals.org/content/18/2/259.full.pdf

Targeting with drone technology : humanitarian law implications

by Nils Melzer... [et al.] ; introd. remarks by Naureen Shah. In: Proceedings of the 105th annual meeting [of the] American Society of International Law 2011, p. 233-252

Panel on drone technology and humanitarian law implications starting with the presentation by students of Columbia Law School's Human Rights Institute of the research paper "Targeting operations with drone technology : humanitarian law implications". The presentation is followed by a discussion with lead discussants, Nils Melzer and Chris Jenks. Issues discussed include: the scope of armed conflict, the rule of law, clarity of IHL, military necessity, ...

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Targets

David Turns. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 342-374. - Cote 355/1002

This article examines the rules of international humanitarian law in governing targeting. Specifically, information concerning the military operations of the UK army and NATO forces is analysed. The four principles relevant to determining the legality of an attack as set out in the Additional Protocol I (API) of 1977—military necessity, humanity, distinction and proportionality—are analyzed. Distinctions between different types of targets, people versus objects and civilian versus military are discussed, as well as how the rules on targeting have changed from the mid-17th century onwards as the methods of conducting war have changed. It is argued that the interaction and balancing of the four principles helps to determine if an attack is legal under the modern law of targeting. Also addressed are controversies surrounding who is a

direct participant in hostilities, how to deal with voluntary human shields, how to define military objectives, and how to measure proportionality and collateral damage. It is noted that many nations, including some of those that have been in armed conflicts since the 1980s such as the USA, Israel, India and Pakistan, have not yet ratified the API or agreed to the rules on targeting. Finally, the author explores how the laws of targeting affect NATO, British and American practices. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

A taxonomy of armed conflict

Marko Milanovic and Vidan Hadzi-Vidanovic. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 256-314 :. - Cote 355/1002

In this article the authors investigate issues related to the definitions of International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC). By doing so, they hope to show why these two definitions remain the clearest method of categorizing armed conflict. The authors explore several definitional issues related to international conflicts, including: when a conflict should be regarded as an IAC despite the participation of non-universally recognized state-actors; why participation by international organizations like NATO should only complicate IAC qualification if the involved forces cannot be attributed to the contributing state; and when an IAC ought to transition to a NIAC in the event of a defeated regime. Turning to NIAC issues, the authors argue that while most armed conflicts today are non-international, a comprehensive NIAC definition remains elusive. The basic definition is found in Common Article 3 of the Geneva Convention, but NIACs are defined differently under various treaty regimes. After surveying the definitional elements in existing treaties, the authors then investigate how a conflict may remain a NIAC even when crossing international borders, or involving foreign interventions. Finally, the authors argue that when facing 'mixed conflicts' that involve both state and non-state actors, improved compliance with international humanitarian law will result from defining a network of individual IAC and NIAC relationships amongst the actors. They recommend against adding a broad third category like 'Transnational Armed Conflicts' to the existing categories of armed conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

The combatant status of "under-aged" child soldiers recruited by irregular armed groups in international armed conflicts

Shannon Bosch. In: African yearbook on international humanitarian law 2012, p. 1-39

This article examines the status of child soldiers recruited by irregular armed groups engaging in international armed conflict. First, the author considers the existing international legal frameworks governing the recruitment of children by irregular armed groups. Second, she explores the criteria for the designation of combatant status under IHL to child soldiers in irregular armed groups. Difficulties arise when, by participating directly in hostilities, children's presumptive civilian status is compromised and they are considered legitimate targets for the duration of their participation. Considering the dire consequences of being denied combatant or prisoner of war status the author examines the way in which IHL applies to children participating in hostilities as part of an armed force legally defined versus those in irregular armed groups. Moreover, the author examines how the relevant legal standards differ for children who were involuntarily recruited. The author concludes that although children in 'armed forces' are given POW and combatant status privileges, those in irregular groups are considered unlawful participants. Though those in this latter group are liable to prosecution, they are protected by the special benefits extended pursuant to API 77(3) to all children under age fifteen participating in hostilities. Additionally, the author observes that even where recruitment is unlawful or involuntary, child soldiers are still required to distinguish themselves from civilians to avoid forfeiture of POW status. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

The use of force for humanitarian purposes

Christine Gray. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 229-255. - Cote 355/1002

This article discusses the evolution of unilateral humanitarian intervention —specifically, whether governments have a legal right to use military force to stop humanitarian tragedies abroad. The United Nations Charter allows intervention only when authorized by the Security Council under Chapter VII of the Charter. The author analyzes several notable circumstances where countries have nevertheless intervened without this authorization. The US, UK and France justified their unilateral no-fly zones over Iraq in 1991-2003, and over Kosovo in 1999, with rationales including extreme humanitarian need, implied Security Council consent, regional stability, and furtherance of the aims of the international community. These ideas were challenged by non-aligned states led by Russia and China, accusing such missions of violating sovereignty and the UN Charter. The author proceeds to discuss the emerging idea of 'Responsibility to

Protect' (R2P). The interventions in Libya and Côte d'Ivoire in 2011 do not show any shift towards endorsing unilateral action under R2P, as the Security Council authorized both missions, and discussed R2P as a responsibility applying only to the domestic government. The Council's failure to authorize intervention in Syria in 2011, and the subsequent absence of unilateral intervention, also question the strength of R2P. Today deep suspicions exists between Western and non-aligned governments over the motives behind ostensibly humanitarian intervention, undermining progress and clarity in this issue. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Unmanned warfare devices and the laws of war : the challenge of regulation

Andrea Bianchi and Delphine Hayim. In: S+F : Sicherheit und Frieden Issue 2, 2013, p. 93-98. - Cote 341.67/12 (Br.)

Unmanned warfare devices may change the way wars are fought and perceived. Conflicts may no longer be man-to-man battles but become more and more robotized. The current trend toward developing technology in the field of robotic warfare will undoubtedly continue. As of today, there is no specific international treaty or conventional provision prohibiting or regulating the use of unmanned means and methods of war. Without a rapid evolution of the legal framework, there will be a real hiatus between the laws and the reality of conflicts. This article examines the core regulatory challenges triggered by the emergence of new types of autonomous or semi-autonomous warfare devices. Robots present some unquestionable advantages, but also entail great risks regarding their potential capacity to create collateral damages among civilian populations. Besides the crucial question whether robots will be able to respect the IHL principles of distinction and proportionality, the issue of accountability and responsibility for breaches of the laws of war must also be a priority for lawmakers and regulators. The increasing dehumanization of war, coupled with the uncertainty on the ethical and legal limits applicable to the design, development, acquisition, transfer and deployment of military robots, makes regulation of unmanned warfare devices a compelling necessity.

Only from ICRC headquarters: https://ext.icrc.org/library/docs/ArticlesPDF/37187.pdf

War and war crimes : the military, legitimacy and success in armed conflict

James Gow. - London : Hurst, 2013. - IX, 211 p. ;. - Cote 344/604

The laws of war have always been concerned with issues of necessity and proportionality, but how are these principles applied in modern warfare? What are the pressures on practitioners where an increasing emphasis on legality is the norm? Where do such boundaries lie in the contexts, means and methods of contemporary war? What is wrong, or right, in the view of military-political practitioners, in how those concepts relate to today's means and methods of war? These are among the issues addressed by James Gow in his compelling analysis of war and war crimes, which draws upon research conducted over many years with defence professionals from all over the world. Today more than ever, military strategy has to embrace justice and law, with both being deemed essential prerequisites for achieving success on the battlefield. And in a context where legitimacy defines success in warfare, but is a fragile and contested concept, no group has a greater interest in responding to these pressures and changes positively than the military. It is they who have the greatest need and desire to foster legitimacy in war by getting the politics-law-strategy nexus right, as well as developing a clear understanding of the relationship between war and war crimes, and calibrating where war becomes a war crime. - See more at: http://www.hurstpublishers.com/book/war-and-war-crimes/#sthash.NEoIdMBR.dpuf

War crimes

Robert Cryer. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 467-498. - Cote 355/1002

Cryer's chapter traces the conceptual evolution of the law concerning war crimes from its earlier existence as an internationally sanctioned form of domestic criminal law through to its contemporary form as a subset of the international law of armed conflict. Now, international tribunals are empowered to prosecute and punish individual transgressors. Cryer points to significant developments that have informed the evolution of the law governing war crimes, including the 1968 Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Nuremburg International Military Tribunal, international treaties, and customary international law. Cryer also discusses the substantive norms that compose the law concerning war crimes. He begins by analyzing the relationship between the law concerning war crimes and the law of armed conflict and concludes that while very similar, they are subject to different interpretive principles. He then goes on to specify that in order for conduct to constitute a war crime, it must have a nexus to armed conflict. In addressing the material content of the law concerning war crimes, Cryer observes that it is made up of international treaties and customary international law. He concludes that the prosecution of war crimes is one mechanism that can lead to compliance with the law of armed conflict, but argues that in order to truly achieve compliance and

deterrence, a more effective legal system is necessary. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Weapons

Karen Hulme. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 315-341. - Cote 355/1002

The author discusses international law in regards to weapons and to what extent the law is capable of regulating modern weaponry. The author focuses on jus in bello, the central body of law for the regulation of weapons in armed combat. She provides a guiding definition for weapons and the rationale behind regulating weapons in the first place. She then examines three principles governing the legality of weapons: the rules of distinction and proportionality, the prohibition of weapons causing unnecessary suffering, and the rules relating to environmental protection. The author finds that these rules are not always effective in practice and that multilateral arms control measures have proven more effective. She then examines those measures, acknowledging their success in dealing with chemical, biological, and nuclear weapons. Despite the success in these areas, she claims that the law as a whole fails to keep pace with weapons development. She supports this claim with an analysis of modern weapons law as it relates to five weapons of contemporary relevance. These include cluster munitions, improvised explosive devices, white phosphorus, drones and robots, and finally, cyber warfare. Prohibition attempts have been ineffective with some of these weapons, such as the chemical white phosphorus which continues to be used in controversial ways. The author concludes by stressing that the role of civil society in pushing for weapons regulation is the key to achieving successful weapons control. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Who is a member ? : targeted killings against members of organized armed groups

David McBride. In: Australian yearbook of international law Vol. 30, 2013, p. 47-91. - Cote 345.29/195 (Br.)

This paper argues that the most practical and legally correct definition is somewhere between the extreme views of the ICRC on the one hand, and Brigadier General Watkin on the other. It is submitted, to be properly categorized as a 'member of organized armed group' a person does not have to directly inflict harm in one causal step on a recurrent basis. However, neither should 'a cook' be properly considered a 'member of an organized armed group'. A more accurate reflection of who is a legitimately targetable member of an organized armed group is based not on the harm the individual causes, but simply on conduct that shows they intentionally enable the operational activities of the group. Accordingly, this paper submits that a more satisfactory way of defining them will come from simply considering whether they form part of the 'armed force', in a not dissimilar way one might recognise a State Armed force, without recourse to formal membership, or indicia such as uniforms. This is quite a different test to one used to decide whether a civilian has lost his protection from attack, and this article submits it produces a more logical representation of an armed group than a test that is based on an individual's proximity to the causing of harm, let alone one based on the causing of harm in a single causal step.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2261128

Wound, capture, or kill : a reply to Ryan Goodman's "The power to kill or capture enemy combatants"

Michael N. Schmitt. In: European journal of international law = Journal européen de droit international Vol. 24, no. 3, August 2013, p. 855-861

This article examines two issues raised by Professor Goodman's article published in this volume of EJIL: (1) a purported obligation under international humanitarian law (IHL) to minimize harm to enemy fighters; and (2) a purported IHL duty to capture rather than kill when doing so is feasible in the circumstances. It notes that situations in which it is possible to wound rather than kill enemy fighters are rare on the battlefield. However, even when such circumstances do present themselves, there is no obligation under the extant IHL to do so. Similarly, there is no duty to capture rather than kill under the existing law. Nevertheless, the article offers an analysis that would extend hors de combat status to enemy fighters who have been effectively captured, thereby shielding them from attack. Accordingly, the approach would often arrive at the same conclusion as that proposed by Professor Goodman, albeit through a different legal lens. The article concludes by noting that although there is no 'capture-kill' rule in IHL, for operational and policy reasons, capture is usually preferred.

http://ejil.oxfordjournals.org/content/24/3/855.full.pdf

Zero Dark Thirty : a critical evaluation of the legality of the killing of Osama bin Laden under international humanitarian law

Sarah Cunningham. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 2/2013, p. 56-63

Using the framework of international humanitarian law, this essay critically evaluates the legality of one particular targeted killing : the operation in which Osama bin Laden was killed. By determining whether the US was participating in an international or non-international conflict against Al-Qaeda; whether bin Laden was a legitimate military target; and whether the operation itself was conducted within the parameters of international humanitarian law, that is whether it satisfied the requirements of distinction, proportionality and (arguably) necessity, this essay reveals the operation was most likely illegal under international humanitarian law. The essay concludes by discussing the inadequacy of international humanitarian law as it applies to targeted killing, and offers some general lessons to be learned from the operation.