BIBLIOGRAPHY
1st Quarter 2017

International Humanitarian Law

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

ICRC

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Introduction

The International Committee of the Red Cross Library

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

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

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

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

Origin and purpose of the IHL bibliography

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

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

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

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

How to use the IHL Bibliography

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

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

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

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

Access to document

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

Chronology

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

Contents

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

Sources

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

Disclaimer

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

Subscription and feedback

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

I. General issues

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

Basic principles

Nobuo Hayashi. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 89-105

Commentary on the First Geneva Convention : Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

ed. committee: Knut Dörmann... [et al.] ; project team: Jean-Marie Henckaerts... [et al.]. - Cambridge [etc.] : Cambridge University Press ; Geneva : ICRC, 2016. - XXIV, 1344 p.

Le droit international et les guerres de notre temps

Daniel Lagot. - Paris : L'Harmattan, 2016. - 205 p.

Emerging technologies and LOAC signaling

Eric Talbot Jensen. In: International law studies, Vol. 91, 2015, p. 621-640
http://stockton.usnwc.edu/ils/vol91/iss1/17/

The end of armed conflict, the end of participation in armed conflict, and the end of hostilities : implications for detention operations under the 2001 AUMF

Nathalie Weizmann. In: Columbia human rights law review, Vol. 47, no.3, 2016, p. 204-257
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The history of international humanitarian law treaty-making

Frits Kalshoven. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 33-49

International humanitarian law, postcolonialism and the 1977 Geneva Protocol I

Amanda Alexander. In: Melbourne journal of international law, Vol. 17, no. 1, June 2016, p. 1-36
http://law.unimelb.edu.au/mjil/issues/issue-archive/171

International law and the protection of humanity : essays in honor of Flavia Lattanzi

ed. by Pia Acconci... [et al.]. - Leiden ; Boston : Brill Nijhoff, 2017. - XIX, 564 p.

Intervention of humanity or the use of force to halt mass-atrocity crimes, the peremptory prohibition of aggression and the interplay between jus ad bellum, jus in bello and individual criminal responsibility on the crime of aggression

David Donat Cattin. - In: International law and the protection of humanity : essays in honor of Flavia Lattanzi. - Leiden ; Boston : Brill Nijhoff, 2017. - p. 353-396

Law and morality at war

Adil Ahmad Haque. - Oxford : Oxford University Press, 2017. - 285 p.

The law of armed conflict and the use of force

published under the auspices of the Max Planck Foundation for international peace and the rule of law ; ed. under the direction of Frauke Lachenmann, Rüdiger Wolfrum. - Oxford ; New York : Oxford University Press, 2017. - XXXII, 1427 p.

Neutrality revisited

Elizabeth Chadwick. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 455-473

Reciprocity and reprisals

Shane Darcy. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 492-505

The rule of law in war : a liberal project

Louise Arimatsu. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 640-654

Sources of the law of armed conflict

Jann Kleffner. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 71-88

Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette

[Frédéric Joli... [et al.]]. - [Paris] : LGDJ, 2016. - 468 p.

War and armed conflict : the parameters of enquiry

Dino Kritsiotis. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 5-32

II. Types of conflicts

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

Air and missile warfare

Ian Henderson and Patrick Keane. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 282-298

The challenges of cyber warfare to the laws of armed conflict : humanitarian impact and regulation attempts

[Guillaume Juan]. - Glasgow : University of Glasgow, 2016. - 69 p.

Conflict characterisation

Caitlin Dwyer and Tim McCormack. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 50-70

Convergence of norms across the spectrum of armed conflicts : international humanitarian and human rights law

Emily Crawford. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 7-22

Drones and the law : why we do not need a new legal framework for targeted killing

Daphne Eviatar. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 170-198

A ghost in the ivory tower : positivism and international legal regulation of armed opposition groups

Astrid Kjeldgaard-Pedersen. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 32-62
https://doi.org/10.1163/18781527-00701004

How are armed non-state actors bound to apply the law of non-international armed conflicts ?

Nadarajah Pushparajah. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 86-131

Human rights obligations of armed non-state actors in non-international armed conflicts

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The international legal prohibition on perfidy and its scope in non-international armed conflicts

Robert Lawton Pratt. In: Virginia journal of international law digest, Vol. 56, 2016, p. 1-9
https://tinyurl.com/43464-Pratt

Law of naval warfare

David Letts and Rob McLaughlin. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 264-281

The law of naval warfare and china's maritime militia

James Kraska and Michael Monti. In: International law studies, Vol. 91, 2015, p. 450-467
http://stockton.usnwc.edu/ils/vol91/iss1/13/

The rule of law in crisis and conflict grey zones : regulating the use of force in a global information environment

Michael John-Hopkins. - London ; New York : Routledge, 2017. - XII, 333 p.

The scope of application of international humanitarian law in non-international armed conflicts : analysing state practice from Colombia

Julia Liebermann. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict, Vol. 29, 4/2016, p. 146-158

Transnational armed conflicts : an argument for a single classification of non-international armed conflicts

Djemila Carron. In: Journal of international humanitarian legal studies, Vol. 7, issue 1, 2016, p. 5-31
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Urban warfare : proceedings of the 16th Bruges Colloquium, 15-16 October 2015 = La guerre en milieu urbain : actes du 16e Colloque de Bruges,15-16 octobre 2015

CICR, Collège d'Europe. In: Collegium, No 46, automne 2016, 189 p.
https://www.coleurope.eu/fr/recherches/publications/collegium

Victims of drone warfare : stretching the boundaries of conflict; ethics and remote control warfare

Wim Zwijnenburg and Zorah Blok. - In: The future of drone use : opportunities and threats from ethical and legal perspectives. - The Hague : Asser Press, 2016. - p. 209-228

Violations of international humanitarian law by non-state actors during cyberwarfare : challenges for investigations and prosecutions

Dan Saxon. In: Journal of conflict and security law, Vol. 21, no. 3, Winter 2016, p. 555-574
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War and armed conflict : the parameters of enquiry

Dino Kritsiotis. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 5-32

Wars of national liberation and non-international armed conflicts

Matthias Vanhullebusch. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 1-43

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Armed groups under international humanitarian law, human rights law, and international criminal law : what degree of organisation is required ?

by Tilman Rodenhäuser. - Geneva : IHEID, 2016. - XLI, 361 p.

Combatants

Emily Crawford. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 123-138

The definition of civilians in non-international armed conflicts : the perspective of armed groups

Camille Marquis Bissonnette. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 129-155
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IV. Multinational forces

The applicability of the laws of armed conflict to peacekeeping operations

Daphna Shraga. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 420-434

Detention in United Nations peace operations

Katarina Grenfell. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 345-361

NATO responsibility for detention

Mark Dakers. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 296-309

V. Private entities

The legal regime applicable to private military and security company personnel in armed conflicts

Mohamad Ghazi Janaby. - [Dordrecht] : Springer, 2016. - XV, 237 p.

Private military and security companies

Nelleke van Amstel and Rain Liivoja. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 623-639

Private military companies (PMCs) and international criminal law : are PMCs the new perpetrators of international crimes ?

Stella Ageli. In: Amsterdam law forum, Vol. 8, no. 1, Spring 2016, p. 28-47
http://amsterdamlawforum.org/article/view/352

VI. Protection of persons

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

Children and the law of armed conflict : looking beyond the protection paradigm

John Tobin and Elliot Luke. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 351-368

Crimes against civilians during armed conflicts

Patrycja Grzebyk. - In: Prosecuting international crimes : a multidisciplinary approach. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 99-114

The definition of civilians in non-international armed conflicts : the perspective of armed groups

Camille Marquis Bissonnette. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 129-155
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Journalists under fire during armed conflicts : what international law has done?

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https://docs.unocha.org/sites/dms/Documents/Oxford%20Guidance%20pdf.pdf

Protecting civilians living in cities against the effects of hostilities

Nathalie Durhin, Marco Sassòli. In: Collegium, No 46, automne 2016, p. 61-88
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Protection of civilians in the conduct of hostilities

Emanuela-Chiara Gillard. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 157-180

The protection of humanitarian relief : the legal framework

Alison Duxbury. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 403-419

Reparations for child victims of armed conflict : state of the field and current challenges

Francesca Capone. - Cambridge [etc.] : Intersentia, 2017. - XXXII, 275 p.

Sexual and gender-based violence in international criminal law : a feminist assessment of the Bemba case

Marie-Alice D'Aoust. In: International criminal law review, Vol. 17, issue 1, 2017, p. 208-221
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Sexual offences in international law

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Targeting and civilian risk mitigation : the essential role of precautionary measures

Geoffrey Corn and James A. Schoettler. In: Military law review, Vol. 223, issue 4, 2015, p. 785-842

Targeting child soldiers : striking a balance between humanity and military necessity

Sam Pack. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 183-203
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Women and war

Helen Durham and Eve Massingham. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 335-350

"Worse" than child soldiers ? : a critical analysis of foreign children in the ranks of ISIL

Francesca Capone. In: International criminal law review, Vol. 17, issue 1, 2017, p. 161-185
http://booksandjournals.brillonline.com/content/journals/10.1163/15718123-01701003

Wounded and sick, and medical services

James P. Benoit. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 317-334

VII. Protection of objects

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

Al Mahdi before the ICC : cultural property and world heritage in international criminal law

Paige Casaly. In: Journal of international criminal justice, Vol. 14, no. 5, December 2016, p. 1199-1220
https://doi.org/10.1093/jicj/mqw067

Attacks against cultural heritage as a weapon of war : prosecutions at the ICTY

Serge Brammertz... [et al.]. In: Journal of international criminal justice, Vol. 14, no. 5, December 2016, p. 1143-1174
https://doi.org/10.1093/jicj/mqw066

Les biens culturels en temps de guerre : quel progrès en faveur de leur protection ? : commentaire article-par-article du Deuxième Protocole de 1999 relatif à la Convention de la Haye de 1954 pour la protection des biens culturels en cas de conflit armé

Jiri Toman. - Paris : UNESCO, 2015. - 1110 p.
http://unesdoc.unesco.org/images/0023/002341/234159f.pdf

"Blood antiquities" : protecting cultural heritage beyond criminalization

Mark V. Vlasic and Helga Turku. In: Journal of international criminal justice, Vol. 14, no. 5, December 2016, p. 1175-1198
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Cultural property

Jadranka Petrovic. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 369-383

La destruction ciblée des monuments et sites archéologiques en période de conflit armé et la dimension culturelle de la paix internationale

Alexandros Kolliopoulos. In: Annuaire français de droit international, 61, 2015, p. 119-143

Identifying military objectives in cities

Agnieszka Jachec-Neale, Nobuo Hayashi, Charles Barnett. In: Collegium, No 46, automne 2016, p. 17-42
https://www.coleurope.eu/sites/default/files/uploads/page/collegium_46_0.pdf

The ILC special rapporteur's preliminary report on the protection of the environment in relation to armed conflicts : an important step in the right direction

Michael Bothe. - In: International law and the protection of humanity : essays in honor of Flavia Lattanzi. - Leiden ; Boston : Brill Nijhoff, 2017. - p. 213-224

Military objectives

David Turns. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 139-156

The protection of the environment

Roberta Arnold. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 384-402

Water during and after armed conflicts : what protection in international law ?

by Mara Tignino. - Leiden ; Boston : Brill, 2016. - VI, 111 p.

Wounded and sick, and medical services

James P. Benoit. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 317-334

VIII. Detention, internment, treatment and judicial guarantees

The case for strategic U.S. detention policy

Elisabeth Gilman. In: Military law review, Vol. 224, issue 1, 2016, p. 118-175

The convergence of violence around a norm : direct participation in hostilities and its significance for detention standards in non-international armed conflict

Jody M. Prescott. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 65-92

The Copenhagen Process Principles and Guidelines for detention : legal and political challenges

Thomas Winkler. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 335-344

Detention in United Nations peace operations

Katarina Grenfell. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 345-361

Detention under the law of armed conflict

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The end of armed conflict, the end of participation in armed conflict, and the end of hostilities : implications for detention operations under the 2001 AUMF

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http://hrlr.law.columbia.edu/wp-content/uploads/sites/10/2016/03/04_Weizmann.pdf

The forever war, in the hands of others : tracing the real power of U.S. law and policy in the war on terror

Chris Rogers. In: Columbia human rights law review, Vol. 47, no.3, 2016, p. 78-133
http://hrlr.law.columbia.edu/wp-content/uploads/sites/10/2016/03/02_Rogers.pdf

Information and notification concerning detention in non-international armed conflicts

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The limitations of legal reasoning : negotiating the relationships between international humanitarian law and human rights law in detention situations

Sarah McCosker. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 23-64

Management of detention of non-state actors engaged in hostilities : recommendations for future law

Gregory Rose. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 365-417

NATO responsibility for detention

Mark Dakers. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 296-309

Reimagining the wheel : detention and release of non-state actors under the Geneva Conventions

Chris Jenks. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 93-116

U.S. detention of terrorists in the 21st century

William K. Lietzau. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 268-295

The United States, the Torture Convention, and lex specialis : the quest for a coherent approach to the CAT in armed conflict

Ashika Singh. In: Columbia human rights law review, Vol. 47, no.3, 2016, p. 134-203
http://hrlr.law.columbia.edu/wp-content/uploads/sites/10/2016/03/03_Singh.pdf

IX. Law of occupation

Occupation and territorial administration

Eyal Benvenisti. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 435-454

X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

Affirmative target identification : operationalizing the principle of distinction for U.S. warfighters

John J. Merriam. In: Virginia journal of international law, Vol. 56, no. 1, March 2016, p. 83-146
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Air and missile warfare

Ian Henderson and Patrick Keane. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 282-298

Can siege warfare still be legal ?

Françoise Hampson, Sean Watts. In: Collegium, No 46, automne 2016, p. 89-107
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The continued evolution of U.S. law of armed conflict implementation : implications for the U.S. military

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Disguising a military object as a civilian object : prohibited perfidy or permissible ruse of war ?

Kevin Jon Heller. In: International law studies, Vol. 91, 2015, p. 517-539
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The drone : it's in the way that you use it

David Glazier. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 142-169

Emerging technology and perfidy in armed conflict

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http://stockton.usnwc.edu/ils/vol91/iss1/14/

How to work towards reducing the human cost of the use of explosive weapons in populated areas ?

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https://www.coleurope.eu/sites/default/files/uploads/page/collegium_46_0.pdf

Identifying military objectives in cities

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Why drones are different

Stephan Sonnenberg. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 115-141

XII. Implementation

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

The continued evolution of U.S. law of armed conflict implementation : implications for the U.S. military

Bryan Frederick, David E. Johnson. - Santa Monica : Rand : National defense research institute, 2015. - XX, 114 p.

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Universal jurisdiction over war crimes

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XIII. International human rights law

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

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XV. Contemporary challenges

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XVI. Countries/Regions

AFGHANISTAN

The case for strategic U.S. detention policy

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Victims of drone warfare : stretching the boundaries of conflict; ethics and remote control warfare

Wim Zwijnenburg and Zorah Blok. - In: The future of drone use : opportunities and threats from ethical and legal perspectives. - The Hague : Asser Press, 2016. - p. 209-228

COLOMBIA

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DANEMARK

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DEMOCRATIC REPUBLIC OF THE CONGO

Sexual and gender-based violence in international criminal law : a feminist assessment of the Bemba case

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ETHIOPIA

State responsibility

Charles Garraway. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 506-519

EUROPEAN UNION

Towards an EU position on armed drones and targeted killing ?

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U.S. detention of terrorists in the 21st century

William K. Lietzau. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 268-295

The United States, the Torture Convention, and lex specialis : the quest for a coherent approach to the CAT in armed conflict

Ashika Singh. In: Columbia human rights law review, Vol. 47, no.3, 2016, p. 134-203
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Victims of drone warfare : stretching the boundaries of conflict; ethics and remote control warfare

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Why drones are different

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Drones and the law : why we do not need a new legal framework for targeted killing

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Attacks against cultural heritage as a weapon of war : prosecutions at the ICTY

Serge Brammertz... [et al.]. In: Journal of international criminal justice, Vol. 14, no. 5, December 2016, p. 1143-1174
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All with Abstracts

Affirmative target identification : operationalizing the principle of distinction for U.S. warfighters

John J. Merriam. In: Virginia journal of international law, Vol. 56, no. 1, March 2016, p. 83-146. - Cote 342.25/356 (Br.)

Over the past two decades, the United States has required its forces to obtain "positive identification" (PID) of military targets prior to engaging them. PID is defined as a "reasonable certainty that the object of attack is a legitimate military target." However, as this article argues, the PID formulation could stand to be refined. It sets a standard that is at once both too rigid and too narrow; it appears to require a degree of precision that is often impossible to achieve in war, while at the same time providing little guidance on the nature of the information that must inform the decision to attack a target. This article argues for a new, more accurate formulation of the law of armed conflict (LOAC) principle of distinction: the requirement for the affirmative identification of a target. The article traces the evolution of the principle of distinction, identifies the critical characteristics of both war and law that affect the distinction determination, and examines its application in international criminal cases, State practice, treaty law, military manuals, and other sources of international law. It then explores the origins of the PID formulation, demonstrating its inherent flaws and the potential risk posed by continuing to employ it, before proposing a more accurate and comprehensive standard.

https://tinyurl.com/43470-Merriam

Air and missile warfare

Ian Henderson and Patrick Keane. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 282-298. - Cote 345.2/996

Compared with land and naval warfare, air and missile warfare is a relatively recent phenomenon. Unsurprisingly, therefore, the law that applies to air missile warfare draws on both of the other domains, either directly or indirectly, for relevant legal rules and principles. This chapter covers legal rules and principles which clearly apply to air and missile warfare and where the manner of application is reasonably uncontroversial, a further group of rules and principles where there is significant agreement on broad application but not necessarily the specifics and also those issues which remain areas of active controversy.

Al Mahdi before the ICC : cultural property and world heritage in international criminal law

Paige Casaly. In: Journal of international criminal justice, Vol. 14, no. 5, December 2016, p. 1199-1220

At a time when the brutal destruction of cultural heritage is being wielded as a powerful weapon by groups like ISIS against communities around the world, the protection of cultural heritage in the international context has become more crucial than ever. Accordingly, the Al Mahdi case recently before the International Criminal Court (ICC) marks the first time that war crimes for the destruction of cultural heritage have been the principal charge in an international criminal case. This is a promising and timely development in the protection of cultural heritage in the international criminal context (especially considering Al Mahdi's plea of guilt). Although charges for the destruction of cultural heritage have been brought in other international criminal cases, they have always been auxiliary to other charges. In bringing this case, the ICC Prosecutor emphasized that '[t]he destroyed mausoleums were important, from a religious point of view, from an historical point of view, and from an identity point of view.' The question arises: important from whose perspective? Such cultural sites could be deemed important from a universal perspective as part of so-called 'world cultural heritage' or its importance could be established in relation to a certain community or population to whose identity the cultural site is crucial. The author argues that in determining whether future cases based on the war crime of destruction of cultural property should be brought before the ICC, the Prosecutor and Chambers should utilize a relativist approach to identifying the gravity of the destruction in question.

https://doi.org/10.1093/jicj/mqw067

The applicability of the laws of armed conflict to peacekeeping operations

Daphna Shraga. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 420-434. - Cote 345.2/996

This chapter addresses different debates over UN peacekeeping operations and international humanitarian law. It starts with the debate over the applicability of international humanitarian law to UN peacekeeping

operations which spanned the 1990s and ended with the promulgation of the Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law. It then addresses the more complex debate which emerged in the decade that followed over the scope of application of IHL in the specificities of UN operations, the "duality" of peacekeepers (as civilians and combatant), the application of the laws of occupation to UN transitional administrations, the convergence or divergence of IHL and international human rights law and the responsibility of the UN for violations of IHL or IHRL by members of its peacekeeping operations.

Applying the European Convention on Human Rights to the use of physical force : Al-Saadoon

David S. Goddard. In: International law studies, Vol. 91, 2015, p. 402-424

In Al-Saadoon and Others v. Secretary of State for Defence, the High Court of Justice of England and Wales has found that the United Kingdom's obligations under the European Convention on Human Rights (ECHR) can be activated extraterritorially simply through the use by State agents of physical force against an individual. This article explains the judgment and places it in the context of the development of the law both in the United Kingdom and at the European Court of Human Rights (ECtHR). While it remains subject to appeal domestically and its approach may not be followed by the ECtHR, it demonstrates a general trajectory towards greater application of the ECHR and other human rights instruments. In light of this, the article proceeds to consider the impact of the judgment on armed forces. Although that impact should not be overstated, a wider range of the activities of armed forces would undoubtedly be drawn into the ongoing debate concerning the interaction between international human rights law and international humanitarian law (the law of armed conflict).

http://stockton.usnwc.edu/ils/vol91/iss1/11/

Armed groups under international humanitarian law, human rights law, and international criminal law : what degree of organisation is required ?

by Tilman Rodenhäuser. - Geneva : IHEID, 2016. - XLI, 361 p. - Cote 345.29/247

This thesis aims to identify the degree of organization required from non-state armed groups to become party to an armed conflict and thereby bound by the applicable international humanitarian law, to have human rights obligations, and to create a context in which international crimes can be committed. Part 1 identifies three principal criteria that any party to a non-international armed conflict needs to meet: it must be a collective entity with sufficient capacities to engage in hostilities and to ensure respect for basic humanitarian norms. Part 2 aims to conceptualize contemporary international practice regarding human rights obligations of non-state armed groups. It argues that the sources and scope of human rights obligations of armed groups are understood best if three categories of groups are considered: groups exercising quasi-governmental authority, groups exercising de facto territorial control, and groups exercising no territorial control. Part 3 examines the requisite degree of organization of armed groups to create contexts in which crimes against humanity or genocide can be committed. It argues that the degree of power and organization of groups behind these crimes depends on whether the group only instigates or also directs the crimes. This study concludes that the requisite degree of international law or the ability to create contexts in which international crimes can be committed cannot be determined in the abstract. It depends on the specificities of each field of law and the circumstances of the case.

Attacks against cultural heritage as a weapon of war : prosecutions at the ICTY

Serge Brammertz... [et al.]. In: Journal of international criminal justice, Vol. 14, no. 5, December 2016, p. 1143-1174

Contemporary conflicts in Syria, Iraq and elsewhere have prompted increased attention to the destruction of cultural heritage and property as a weapon of war, and as a significant element in broader campaigns of violence against civilian populations involving crimes such as murder, sexual violence and enslavement. It is increasingly evident that cultural property is not simply at risk from incidental harm, but is being intentionally attacked as part of cultural cleansing campaigns. Preventing attacks against cultural property must be the first priority, but accountability should also be a core element in the international community's response to ongoing crimes. This article surveys the prosecution of attacks against cultural property by the International Criminal Tribunal for the former Yugoslavia (ICTY) over the course of its mandate. The aim is to contribute to a better understanding of these crimes and their successful prosecution among scholars, practitioners, policy-makers and the general public alike. Practices and lessons learned from the ICTY can now be a foundation for other national and international criminal courts to build upon.

https://doi.org/10.1093/jicj/mqw066

The attribution of international criminal responsibility for serious violations of human rights and international humanitarian law to senior leaders

Krzysztof Maslo. - In: Prosecuting international crimes : a multidisciplinary approach. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 81-95. - Cote 344/678

Senior political and military leaders rarely execute crimes on their own. They often plan and organize international crimes, instigate actual perpetrators to commit the crimes, order them or aid and abet them. Nevertheless, international law allows to assign individual violations of international human rights law (IHRL) and international humanitarian law (IHL) to those who have not committed international crimes directly, and even to those who were not present at the place of commission of such crimes. This chapter explores the reasons for the criminalization of violations of international law committed by senior leaders. It also addresses the legal basis for attribution to senior leaders of serious violations of IHRL and IHL, and the conditions for such attribution. The author argues that there is a lack of clear rules on attribution in general criminal law, which lead international tribunals to refer to national law and practice, thus entailing freedom of interpretation of these rules and practice. The attribution of a violation is so fundamental to international criminal responsibility that it should be more clearly defined by international law.

Autonomous weapons systems : laws, ethics, policy

ed. by Nehal Bhuta, Robin Geiss... [et al.]. - Cambridge : Cambridge University Press, 2016. - X, 410 p. - Cote 341.67/802

The intense and polemical debate over the legality and morality of weapons systems to which human cognitive functions are delegated (up to and including the capacity to select targets and release weapons without further human intervention) addresses a phenomena which does not yet exist but which is widely claimed to be emergent. This groundbreaking collection combines contributions from roboticists, legal scholars, philosophers and sociologists of science in order to recast the debate in a manner that clarifies key areas and articulates questions for future research. The contributors develop insights with direct policy relevance, including who bears responsibility for autonomous weapons systems, whether they would violate fundamental ethical and legal norms, and how to regulate their development.

Basic principles

Nobuo Hayashi. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 89-105. - Cote 345.2/996

This chapter illustrates the normative process through which the law of armed conflict (LOAC) creates its rules. It does so by identifying major 'ingredients' of the process, elucidating their interplay and reflecting on the consequences that the interplay entails vis-à-vis positive LOAC rules. In addition to military necessity and humanity, chivalry and sovereignty are also considered.

Les biens culturels en temps de guerre : quel progrès en faveur de leur protection ? : commentaire article-par-article du Deuxième Protocole de 1999 relatif à la Convention de la Haye de 1954 pour la protection des biens culturels en cas de conflit armé

Jiri Toman. - Paris : UNESCO, 2015. - 1110 p. - Cote 363.8/62 (FRE)

Le présent commentaire du Deuxième Protocole de 1999 relatif à la Convention de La Haye de 1954 pour la protection des biens culturels en cas de conflit armé analyse les différentes dispositions du Deuxième Protocole sous la forme d'un commentaire. Il examine la protection dont les biens culturels bénéficient en droit pénal international, présente la déclaration de l'UNESCO concernant les destructions intentionnelles du patrimoine culturel, et étudie la mesure dans laquelle le droit international coutumier complète la protection dont bénéficient les biens culturels en vertu de la Convention de La Haye de 1954 et de ses deux Protocoles. Le présent commentaire constitue une traduction revue et augmentée de l'ouvrage qui a été réalisé par le Professeur Jirí Toman en 2009 sur la même problématique en langue anglaise. Il a pour but de fournir un outil technique permettant aux praticiens, diplomates, fonctionnaires internationaux et étudiants de comprendre le système actuel de la protection des biens culturels en cas de conflit armé, et traduit la volonté de l'UNESCO de rendre cette matière accessible au plus grand nombre.

http://unesdoc.unesco.org/images/0023/002341/234159f.pdf

"Blood antiquities" : protecting cultural heritage beyond criminalization

Mark V. Vlasic and Helga Turku. In: Journal of international criminal justice, Vol. 14, no. 5, December 2016, p. 1175-1198

Cultural property has become a source of terrorist funding. This article highlights the renewed attention paid by the international community to the protection of cultural heritage in the wake of the fight against the so-called Islamic State of Iraq and the Levant (ISIL, also known as Islamic State of Iraq and Syria (ISIS) and/or Da'esh). In so doing, the article reviews the panoply of international rules providing protection to cultural heritage — with specific attention to provisions on war crimes and crimes against humanity — and their possible application against ISIS. Moreover, the article discusses a recent case at the International Criminal Court on destruction of cultural heritage in Mali and the newly adopted United Nations measures to counter terrorist financing through trafficking in cultural property. Ultimately, the authors suggest new avenues for combating antiquities trafficking, which include a public–private initiative and labelling certain artefacts as 'blood antiquities', following the example of diamonds linked to armed conflicts and atrocity crimes.

https://doi.org/10.1093/jicj/mqw054

Can siege warfare still be legal ?

Françoise Hampson, Sean Watts. In: Collegium, No 46, automne 2016, p. 89-107. - Cote 345.25/354

During this roundtable, Steven Hill, Françoise Hampson and Sean Watts discussed the issue of siege warfare and its implications in the 21st century. First, Françoise Hampson clarified what is meant by "siege". She argued that a "siege" can be defined by its effects, because it involves the control of movement of persons or goods in and out of a besieged area. She also recalled the various military purposes of a siege, which include the control of cities, bridges and roads, as well as the weakening of the enemy. Hampson then examined the distinction between sieges and blockades. Attention was also given to sieges in situations of occupation. Next, Sean Watts presented the American practice and doctrine concerning siege operations. He stated that military doctrine considers siege as an essential aspect of military operations. He nevertheless highlighted the aversion of the armed forces towards this practice. The two panelists also discussed the use of starvation as a method of warfare. Steven Hill then considered whether or not the civilians living in a besieged area should be evacuated and receive humanitarian assistance. Finally, Sean Watts provided some elements of analysis on the United Nations Security Council Resolution 2139 (2014).

https://www.coleurope.eu/sites/default/files/uploads/page/collegium_46_0.pdf

The case for strategic U.S. detention policy

Elisabeth Gilman. In: Military law review, Vol. 224, issue 1, 2016, p. 118-175

Using a fictional scenario concerning the capture of Osama bin Laden, this article argues that it is imperative for the United States to implement a detention paradigm. Part I explores the development of detention operations under the law of armed conflict (LOAC) in the United States since September 11, 2001 (9/11) and advocates for establishing a world-wide strategic detention capability. Part II paper examines why the United States needs a formal detention and interrogation policy. Part III discusses the evolution of detention and interrogation operations since 9/11. Finally, part IV analyzes the legal framework that allows for a meaningful and effective detention and interrogation program and Part V provides a proposed LOAC detention and interrogation paradigm.

The challenges of cyber warfare to the laws of armed conflict : humanitarian impact and regulation attempts

[Guillaume Juan]. - Glasgow : University of Glasgow, 2016. - 69 p. - Cote 345.26/291

In the context of an overwhelming reliance of military capacities on computer systems and digital networks, the potential threat of cyber warfare seems to gradually leave the domain of science-fiction and open war-fighting to a fifth digital domain beyond land, sea, air and outer space. If the applicability of international law and the core principles of international humanitarian law (IHL) to cyberspace is not controversial, challenges appears when we try to find out "how" these fundamental humanitarian principles will work out in this new domain. Shortcomings in relation to the "uniqueness" of cyberspace already appear with the current rules of IHL, particularly in the light of an effective protection for civilian networks. Despite the unstoppable involvement of cyber capacities in future warfare and the challenges it represent for the rule of the law in IHL, the absence of clear and global standards of "cyber conduct" is striking. Potential solutions for regulation and adaptability of IHL to these new technologies are also inquired.

Challenges on the implementation of Chemical Weapons Convention with special reference to Syrian crisis

B.C. Nirmal. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 44-85

Chemical weapons disarmament is on track. However, the alleged use of chemical weapons in Syria has added a new sense of urgency to it. The use of such weapons despite a global ban has not only exposed the

normative and institutional deficits in the Chemical Weapons Convention (CWC), but has also underlined the need to make it a truly universal regime and to overcome the new challenges associated with the rapid growth of chemical industry worldwide. This article begins with a statement of the problem and then traces the evolution and development of the chemical weapons regime in historical perspective. It is followed by a discussion of States' obligations under the CWC. It then proceeds to give an account of the Organization of the Prohibition of Chemical Weapons as the implementing body of the CWC. The last section of the article is devoted to challenges related to the elimination of chemical weapons in Syria.

Chemical and biological weapons

Robert J. Mathews. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 212-232. - Cote 345.2/996

This chapter commences with an overview of the efforts to prohibit the use of chemical and biological weapons by means of the 1899 and 1907 Hague Conventions and 1925 Geneva Protocol. This is followed by a brief discussion of the negotiation of the Biological Weapons Convention and the Chemical Weapons Convention, including efforts to strengthen the Biological Weapons Convention. The chapter then outlines the role of other international agreements in helping to achieve these humanitarian objectives in our changing world. The chapter concludes with reflections on some of the current and future challenges to the prohibition of chemical and biological weapons.

Children and the law of armed conflict : looking beyond the protection paradigm

John Tobin and Elliot Luke. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 351-368. - Cote 345.2/996

The appalling experience of children in armed conflict has motivated the creation of a complex international architecture to ensure their protection. In 2003, the UN Security Council called for ‘an era of application’ with respect to the various legal norms which the international community has developed in order to protect children associated with armed conflict. This chapter aims to identify the central features and underlying values of these norms. Section 1 provides a brief historical analysis, which reveals a shift in states’ attitudes towards children, moving from a historically instrumentalist vision to the contemporary child protectionist paradigm. Section 2 examines the content of the legal norms, particularly as they relate to the recruitment of children and their participation in conflict, and seeks to identify the applicable law. Finally, Section 3 looks beyond the child protection paradigm that dominates the current understanding and application of the law of armed conflict as it relates to children.

Combatants

Emily Crawford. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 123-138. - Cote 345.2/996

The principle of distinction between civilians and combatants is one of the fundamental principles of international humanitarian law. Inherent in this principle is the need to define who is considered a combatant – one who is lawfully permitted to take active and direct part in the hostilities. This chapter examines the origins and evolution of combatant status, discusses the current rules regarding who may be considered a combatant under international law and what consequences follow when combatant status is denied. This chapter also explores whether international law is evolving to include new categories of persons entitled to combatant status.

Commentary on the First Geneva Convention : Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

ed. committee: Knut Dörmann... [et al.] ; project team: Jean-Marie Henckaerts... [et al.]. - Cambridge [etc.] : Cambridge University Press ; Geneva : ICRC, 2016. - XXIV, 1344 p. . - Cote 345.21/8 (I 2016 ENG)

The application and interpretation of the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 have developed significantly in the sixty years since the ICRC first published its Commentaries on these important humanitarian treaties. To promote a better understanding of, and respect for, this body of law, the ICRC commissioned a comprehensive update of its original Commentaries, of which this is the first volume. The First Convention is a foundational text of international humanitarian law. It contains the essential rules on the protection of the wounded and sick, those assigned to their care, and the red cross and red crescent emblems. This article-by-article Commentary take into account developments in the law and practice to provide up-to-date interpretations of the Convention. The new Commentary has been reviewed by humanitarian-law practitioners and academics from around the world. It is an essential tool for anyone working or studying within this field.

Conflict characterisation

Caitlin Dwyer and Tim McCormack. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 50-70. - Cote 345.2/996

It may seem anachronistic that different rules apply to international armed conflicts (IAC) and non-international armed conflicts (NIAC), and that the legal character of an armed conflict can have significant consequences for combatants, civilians and victims of alleged war crimes. The International Committee of the Red Cross, in the lead up to the 1949 Diplomatic Conference, had proposed that the Conventions should apply to any situation of armed conflict regardless of its legal character but that proposal was rejected by states. Irrespective of the desirability of a simplification in approach, the current state of the law of armed conflict (LOAC) maintains the distinction between the two categories of armed conflict. Section 1 of this chapter briefly outlines the significance of the distinction between IAC and NIAC. Section 2 outlines the treaty provisions relevant to the characterisation of conflicts and identifies the lack of a treaty definition of an armed conflict. Section 3 examines the question of how to characterise armed conflicts, and proposes two key principles: (1) that the legal character of an armed conflict is determined by the nature of the parties to it; and (2) that the only armed conflict which is international is one between two or more opposing states.

The continued evolution of U.S. law of armed conflict implementation : implications for the U.S. military

Bryan Frederick, David E. Johnson. - Santa Monica : Rand : National defense research institute, 2015. - XX, 114 p. – Cote 345.26/292

U.S. policies implementing the Law of Armed Conflict (LOAC) have increasingly restricted military activities over the past two decades. Greater concern for civilian casualties in particular has motivated the U.S. military to take increasing precautions in its planning and deterred it from undertaking military actions anticipated to place civilians at risk. Despite the clear impact of such implementations on military operations in recent years, however, relatively little attention has been paid to assessing their potential future direction. This report aims to fill this gap by surveying potential strategic, technological, and normative trends that may affect the future evolution of U.S. LOAC implementation, and assessing the resulting implications for the U.S. military.

Conventional weapons

Mirko Sossai. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 197-211. - Cote 345.2/996

In this chapter, the author examines the legal framework prohibiting and restricting the use of conventional weapons. After a brief historical overview of the limitations on the use of weapons in war, the role and potential of the Convention on Conventional Weapons as well as the recourse to alternative fora - namely the Anti-Personnel Landmines Convention and the Convention on Cluster Munitions - are analyzed. Consideration is also given to bans and restrictions on the use of conventional weapons in non-international armed conflicts as well as to the use of specific weapons in law enforcement contexts.

Convergence of norms across the spectrum of armed conflicts : international humanitarian and human rights law

Emily Crawford. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 7-22. - Cote 400/164

Despite the apparent lack of comprehensive treaty rules regulating non-international armed conflicts, (NIACs) and the seemingly entrenched legal division between the types of armed conflicts, an examination of the history of IHL actually demonstrates a growing willingness among states to accept the introduction of more rules on permissible conduct in NIACs. The progressive development of the law of armed conflict over the past century has evidenced a growing acceptance of the need for comprehensive guidelines on the conduct of hostilities, whether they are international or non-international. This confluence of norms has been influenced significantly by the emergence in the post-World War II era of international human rights law. The wealth of treaties, declarations and customary law protecting human rights has seen states begin to accept limits on their sovereign power in the name of protecting the rights of their citizens. In turn, the belief that states' rights could only extend so far in their conduct towards their citizens necessarily influenced the conduct of states in non-international armed conflicts. Against this background, this chapter examines how, over the past 60 years, there has been a convergence in the laws relating to armed conflicts, to the point that it is possible to speak of a large body of law applicable in all armed conflicts.

The convergence of violence around a norm : direct participation in hostilities and its significance for detention standards in non-international armed conflict

Jody M. Prescott. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 65-92. - Cote 400/164

The detention of individuals by the United States armed forces since 9/11 has highlighted the lack of international standards applicable to deciding whom should be detained during the course of non-international armed conflicts (NIACs), the condition under which they should be held, and what sort of processes should be implemented to determine whether they should be released. This chapter suggests that the convergence of violence around the norm of direct participation to hostilities dominates the operational relationship between the use of armed force in complex NIACs, and the detention of individual regardless of whether they are perceived by the detaining power to be combatants or protected civilians. It argues that whilst non-state combatants in NIAC might violate domestic criminal laws through their warlike activities, and the line separating NIAC combatants from ordinary criminals might often be blurry, the pervasive influence of the norm of direct participation in hostilities means that international armed conflict (IAC) detention is generally a more appropriate source of principles and standards for detention in NIAC than is international human rights law.

The Copenhagen Process Principles and Guidelines for detention : legal and political challenges

Thomas Winkler. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 335-344. - Cote 400/164

This chapter discusses the reasons which led the Danish government to launch the “Copenhagen Process on the Handling of Detainees in International Military Operations”. It summarizes the discussions which took place during the meetings and consultations, and highlights some of the main challenges faced during process that led to the drafting of the Copenhagen Process Principles and Guidelines (CCPG). It concludes by offering some thoughts on the future of the CCPG.

Crimes against civilians during armed conflicts

Patrycja Grzebyk. - In: Prosecuting international crimes : a multidisciplinary approach. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 99-114. - Cote 344/678

It is debatable if civilians account for the majority of victims of armed conflicts nowadays. However, contemporary practice of international criminal tribunals clearly proves that the attention of prosecutors is focused on crimes against civilians. The first part of this article discusses the criminalization of crimes against civilians in international law. It demonstrates that in fact all core crimes, at least nowadays, have as their purpose the protection of civilians against atrocities. The second part focuses on the difficulties with the identification of civilians as victims of war crimes and problems with attribution of criminal responsibility for attacks directed at civilians. The author argues that these problems are caused by a lack of uniform understanding of basic rules of international humanitarian law. The third part describes the key problems related to the procedural law, which have tremendous impact on the possibility of proving guilt beyond reasonable doubt, which in turn is perceived as a necessary condition of a fair trial.

Cultural property

Jadranka Petrovic. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 369-383. - Cote 345.2/996

This chapter first briefly surveys the current state of international treaty law governing protection of cultural property in armed conflict and then canvasses the rules of customary international law on the subject. This is followed by consideration of the question of the definition of cultural property and then analysis of modes of cultural property protection. The difference between the rules applicable to international and non-international armed conflicts is also addressed. Finally, the chapter discusses the interaction between the law of armed conflict concerning cultural property and international criminal law and pinpoints some issues emanating from this interaction.

A decade later and still on target : revisiting the 2006 Israeli targeted killing decision

Tamar Meshel. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 88-128

The increasing use by States of extraterritorial targeted killing as a counter-terrorism tool in recent years has given rise to controversial questions concerning its legality under international law. This article first explores the international legal regimes purporting to govern State-sponsored targeted killing and evaluates their

ability to effectively regulate it. It then focuses on the use of targeted killing by States against members of non-State terror groups in an international armed conflict. In this regard, the article revisits the 2006 landmark decision of the Israeli Supreme Court in the Targeted Killing case and evaluates its influence and legacy over the past decade. It argues that this decision remains relevant and instructive since it exposes some of the lingering weaknesses of international law in governing the use of targeted killing as a counter-terrorism tool, while at the same time demonstrating how such weaknesses may be overcome within the existing international legal framework. The impact of the decision in this regard is clearly evident in the evolution of Israel's targeted killing practice over the past decade.

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The definition of civilians in non-international armed conflicts : the perspective of armed groups

Camille Marquis Bissonnette. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 129-155

This article analyzes the perceptions of armed groups regarding the concept of civilians in non-international armed conflicts, through their codes of conduct and other commitments. It intends to shed light on the implementation by these non-state actors of the very critical principle of distinction, the exact articulation of is hotly debated in non-international armed conflict. It thus presents the different approaches to the principle of distinction in non-international armed conflict: the specific-act approach, the membership approach, the functional non-privileged combatancy approach, and the direct participation in hostilities with extended temporal scope in light of the commitments and undertakings of various armed groups. It concludes with the findings made on the basis of the study of the commitments made by armed groups, underlying in particular the issues that remain problematic regarding the principle of distinction in non-international armed conflict, as well as the issues on which a consensus in conceivable.

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La destruction ciblée des monuments et sites archéologiques en période de conflit armé et la dimension culturelle de la paix internationale

Alexandros Kolliopoulos. In: Annuaire français de droit international, 61, 2015, p. 119-143

La pratique des destructions ciblées de monuments et sites archéologiques en Irak et en Syrie perpétrée en marge des opérations militaires, notamment par l'Etat islamique d'Irak et du Levant, constitue une violation aussi bien de la Convention de La Haye de 1954 que des principes du droit international humanitaire applicables en cas de conflit armé non international. Elle porte également atteinte au droit de chacun de participer à la vie culturelle ainsi qu'à la diversité culturelle, étant donné que le patrimoine culturel est un élément important de l'identité culturelle. La destruction du patrimoine culturel peut affecter de différentes façons la paix et la sécurité internationales. Face à cette situation, le Conseil de sécurité des Nations Unies a adopté quelques mesures relatives à la protection des biens culturels tandis que l'UNESCO a mis en place des schémas novateurs de coopération et d'assistance.

Detention in United Nations peace operations

Katarina Grenfell. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 345-361. - Cote 400/164

There are times when United Nations (UN) peacekeepers - usually armed military and police personnel - need to detain people. This might be in self-defence, that is to protect the persons of peacekeepers or mission property, or in execution of some other element of the mandate of the peacekeeping operation concerned, for example, to protect civilians under imminent threat of violence. When peacekeepers detain people, a number of legal issues arise. These concern the legal basis to detain, the length of detention, the conditions in which detainees should be kept, and whether, and under what conditions, such persons may be transferred by the UN to local authorities. Addressing these questions, this chapter examines the legal framework for detention in the context of UN peace operations and gives an overview of the UN policy regarding detention, which is currently in the form of the 25 January 2010 "Interim Standard Operating Procedures on Detention in United Nations Peace Operations" ("the Interim SOPs"). It outlines the process leading to the drafting of the Interim SOPs, their scope of application, the main principles on which they are based, the basic procedures that they outline, and offers an analysis of their application in respect of detention of non-state actors during times of non international armed conflict.

Detention under the law of armed conflict

Chris Jenks. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 301-316. - Cote 345.2/996

This chapter addresses what to some has become a legal Gordian Knot - detention during armed conflict. Similarly to Alexander's approach of cutting the knot, this chapter takes a pragmatic approach to detention. This chapter begins by providing an overview of the traditional law of armed conflict applicable to detention during international armed conflict (IAC). Next it provides an overview of the law of armed conflict applicable to non-international armed conflicts (NIAC). From there the chapter explains several of the contemporary challenges to the traditional IAC model. The chapter concludes by proposing that the 1949 Geneva Conventions and the 1977 Additional Protocols, outmoded and seemingly inapplicable though they may be in some respects, offer the most thorough, humane, realistic and readily available option for determining how to treat and when to release non-state actors detained during a NIAC.

Direct participation in hostilities

Michelle Lesh. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 181-194. - Cote 345.2/996

Article 51(3) of Additional Protocol I (for international armed conflicts) and Article 13(3) of Additional Protocol II (for non-international armed conflicts) articulate the limits to the scope of protected civilian status: 'Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.' Civilians who participate in hostilities are often referred to by the accronym DPH. Defining DPH has proven to be problematic. The meaning of these words set out in Article 51(3) has ignited intense debate. A major development in this area of the law occured with the publication of the ICRC Interpretative Guidance on Direct Participation in Hostilities in 2009.The arguments of this chapter engage with those of the Guidance, the most comprehensive legal document on the meaning of 'civilians directly participating in hostilities'.

Disguising a military object as a civilian object : prohibited perfidy or permissible ruse of war ?

Kevin Jon Heller. In: International law studies, Vol. 91, 2015, p. 517-539

A number of scholars have claimed that it is inherently perfidious to kill an enemy soldier by disguising a military object as a civilian object. This essay disagrees, noting that conventional and customary IHL deem at least five military practices that involve making a military object appear to be a civilian object permissible ruses of war, not prohibited acts of perfidy: camouflage, ambush, cover, booby-traps, and landmines. The essay thus argues that attackers are free to disguise a military object as a civilian object as long as the civilian object in question does not receive special protection under international humanitarian law (IHL).

http://stockton.usnwc.edu/ils/vol91/iss1/16/

Domestication of international criminal law : International Crimes Tribunal of Bangladesh : a case study

Sanoj Rajan. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 132-155

It is widely accepted that the criminal prosecution of grave international crimes helps to promote reconciliation in the aftermath of violent conflicts. However, many authors are still expressing doubts about the positive impact of such prosecutions on peace negotiations. This article intends to touch upon two important but controversial aspects of international criminal law: the significance of international criminal law trials for mass violations of human rights and international humanitarian law, and the viability of international criminal law at the domestic level. The principle of complementarity under the International Criminal Court and the emerging trend of proactive complementarity are also analyzed in the light of previous attempts at national prosecution of international crimes. For this purpose, national prosecution of international crimes by the International Crimes Tribunal constituted by the Government of the People's Republic of Bangladesh is studied.

Le droit international et les guerres de notre temps

Daniel Lagot. - Paris : L'Harmattan, 2016. - 205 p. - Cote 345.2/1016

Ce livre présente les aspects essentiels du "droit de la guerre", avec ses grands principes, mais aussi ses ambiguïtés et ses problèmes, et discute la manière dont il a été, ou est interprété et appliqué dans les guerres de notre temps, entre autres en Syrie et en Libye. Parmi les questions générales évoquées, la résolutions "Unis pour la paix" de l'Assemblée générale des Nations Unies, qui lui permet de contourner un veto au Conseil de sécurité, la "responsabilité de protéger", souvent utilisée de manière contestable, le droit des peuples à disposer d'eux-mêmes au regard de l'intangibilité "a priori" des frontières des États... Une partie importante est consacrée au droit international humanitaire de la guerre et à ses ambiguïtés à propos entres autres des "dommages collatéraux" et des armes. Des bilans des actions de l'ONU et de la justice internationale sont également présentés.

The drone : it's in the way that you use it

David Glazier. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 142-169. - Cote 355/1002

This chapter focuses on applicable international and domestic law, contending that while both sides in the drone debate get some points right, each also errs about key legal issues. It begins by considering the circumstances in which states can use lethal force to address threats before examining targeted killing specifics. Even while conceding the United States claim to be in a post-9/11 armed conflict, it find important issues with respect to compliance with both domestic and international laws, including which groups and who within those groups are being targeted; where strikes are taking place; and who is conducting them. The chapter concludes by arguing that U.S. drone proponents are advancing short-sighted legal arguments contravening agreed restrictions on the preventive use of force. This risks starting down a slippery slope towards more killing, by more states, as drone technology proliferates, undermining global respect for human rights and the rule of law, and making the world less safe for all.

Drones and the law : why we do not need a new legal framework for targeted killing

Daphne Eviatar. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 170-198. - Cote 355/1102

In this chapter, Daphne Eviatar reviews the relevant international - international humanitarian law (IHL) and international human rights law (IHRL) - governing states' use of lethal force outside of their borders and discuss the key questions regarding whether or not the United States is involved in an armed conflict with the "associated forces" it targets in drone strikes in Pakistan and Yemen. She then provides an overview of the two main terrorist groups with which the United States claims to be engaged in armed conflict outside of a clear battlefield and relying heavily on the use of drones, and argues that the United States does not appear to be engaged in a lawful, publicly declared armed conflict with them. This situation does not require us to redefine armed conflict or to create a new legal framework to govern U.S. counterterrorism operations. Nor does it require us to create a new international framework under IHL to specifically govern the development and use of drones. Rather, she demonstrates that the extraterritorial application of IHRL is sufficient to govern U.S. covert lethal action in Pakistan and Yemen. She concludes with a discussion of the importance of providing enough information about the drone program to demonstrate compliance with international human rights law.

Emerging technologies and LOAC signaling

Eric Talbot Jensen. In: International law studies, Vol. 91, 2015, p. 621-640

As States seek to weaponize new technologies such as robotics, cyber tools and nanotechnology, the current law of armed conflict (LOAC) that guides the employment of existing weapons will signal rules and principles that should guide national decisions on what new technologies to weaponize and how to do so in a way that ensures compliance with battlefield regulation. LOAC has served this "signaling" function historically with respect to innovative weapon systems such as balloons, submarines, airplanes, and nuclear weapons, and will continue to do so as nations look forward to potentially weaponizing emerging technologies.

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Emerging technologies of warfare

Rain Liivoja, Kobi Leins and Tim McCormack. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 603-622. - Cote 345.2/996

Advances in science and technology have had a major impact on the conduct of war throughout history. On a popular view, the development of warfare has been punctuated by so-called ‘revolutions in military affairs’, periods of rapid change in military thinking and practice; scientific and technological transformations have played a significant role in such change. At the time of writing, we appear to be in the midst of one such revolution in military affairs, namely an information revolution. This revolution has been facilitated by the development of digital computers and their wide adoption in society at large and in military systems in particular. Assuming that there is an ongoing revolution in military affairs, the question arises as to whether it ought to be accompanied by a 'revolution in military legal affairs', or whether the existing law of armed conflict is capable of accommodating recent technological developments. This chapter does not purport to provide a comprehensive answer to this question, nor does it seek to evaluate the lawfulness or otherwise of specific means or methods or warfare. Rather, it addresses some of the key legal implications and regulatory challenges arising from the military applications of certain types of technology. It begins with information technology and the notion of 'cyber warfare'. It then turns to robotics, specifically remotely controlled

automated and autonomous military systems. Finally, it considers nanotechnology. It concludes with a brief reflection on the formal legal review of new means and methods of warfare in the context of emerging technologies of warfare.

Emerging technology and perfidy in armed conflict

Ian Henderson, Jordan den Dulk and Angeline Lewis. In: International law studies, Vol. 91, 2015, p. 468-485

The rule against perfidy in armed conflict — one of the last echoes of honor and social order of war — is threatened by emerging technologies. Specifically, the employment of emerging technologies has muddied the already thin and grey line between acts which contravene the honor of warfare and legitimate ruses of war. In this article, the authors analyze perfidy, treachery and ruses of war as key concepts of international humanitarian law and consider their application to emerging technologies.

http://stockton.usnwc.edu/ils/vol91/iss1/14/

The end of armed conflict, the end of participation in armed conflict, and the end of hostilities : implications for detention operations under the 2001 AUMF

Nathalie Weizmann. In: Columbia human rights law review, Vol. 47, no.3, 2016, p. 204-257. - Cote 400.2/371 (Br.)

When military operations against Al Qaeda, the Taliban and associated forces die down such that one or more NIACs have ended, the United States is no longer participating in one or more NIACs against them, or hostilities have ceased, IHL will require the U.S. to release those alleged members of the Taliban, Al Qaeda and associated forces whom it is holding in connection to the(se) armed conflict(s) and who are not facing any criminal prosecution. These three scenarios are assessed according to distinct tests, each of which must be informed by the facts on the ground. Of course, any of these three moments of transition will also lead to a shift in the legal regime applicable to any new detention or targeting activities, as these would no longer be governed by IHL.

http://hrlr.law.columbia.edu/wp-content/uploads/sites/10/2016/03/04_Weizmann.pdf

Foregoing lex specialis ? : exclusivist v. symbiotic approaches to the concurrent application of international humanitarian and human rights law

by Cedric de Koker and Tom Ruys. In: Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht, Vol. 49, 2016-1, p. 244-292

Developments in the international arena have led to the widespread acceptance of the relevance and continued applicability of international human rights law (IHRL) during armed conflict, raising questions as to its relationship with international humanitarian law (IHL). These questions have become increasingly pressing in light of the expanding extraterritorial application of human rights in recent case law. A closer look at State practice and jurisprudence nonetheless reveals that there is no common approach to managing the co-application of IHL and IHRL. Traditionally, the lex specialis principle has been used to resolve any issues relating to the concurrent application of both bodies of law. Yet, more recently, Courts and legal experts alike have begun looking for alternative methods to translate the interplay between IHL and IHRL into practice. This casts doubts over the continued relevance and adequacy of the lex specialis principle as a one-size-fits-all solution ; at the same time, it remains unclear whether any of the alternative approaches can provide an adequate answer to the IHL/IHRL conundrum. This paper will therefore examine whether the practical challenges in implementing the principle, as identified in legal discourse, justify discarding it and whether the suggested alternative options succeed where lex specialis supposedly fails. Throughout and where necessary, the law and practice relating to internment during international military operations will serve as illustration.

The forever war, in the hands of others : tracing the real power of U.S. law and policy in the war on terror

Chris Rogers. In: Columbia human rights law review, Vol. 47, no.3, 2016, p. 78-133. - Cote 345.22/292 (Br.)

Through two in-depth case studies on Afghanistan and Pakistan, this article traces the influence of the United States and the U.S. Forever War, specifically relating to the United States' use of administrative detention and targeted killings, on political interests, conditions, policymakers' decision making, and civil society at national levels. These qualitative, in-depth case studies illuminate the complex national-level political, legal, historical, and social forces at play. In particular, this article examines the role civil society can play in mitigating the harmful effects of the U.S. Forever War on international law, domestic law, and state practice. The article concludes that the U.S. Forever War is less often a model directly transferred to

other states than it is a foil for national and local actors - but one that nevertheless enables such actors to undermine traditional human rights and humanitarian law protections.

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A ghost in the ivory tower : positivism and international legal regulation of armed opposition groups

Astrid Kjeldgaard-Pedersen. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 32-62

Why do scholars, who generally acknowledge the international legal personality of non-State entities, still question the bindingness of the law of non-international armed conflict on insurgents? This article examines the relationship between the two dominant positivist conceptions of international legal personality and the rights and obligations of insurgents as a matter of positive international law. First, the article illustrates that the evolution of the law of non-international armed conflict corroborates Hans Kelsen's idea that the international legal personality of an entity, be it a State, an armed opposition group, or an individual, is solely contingent upon interpretation of international norms. Second, it shows that the traditional perception of States as exclusive subjects of international law – though never reflected in positive norms governing non-international armed conflict – continues to influence the current debate on the theoretical underpinnings for binding insurgents. The orthodox 'States-only' conception of international legal personality is seemingly so ingrained in the minds of contemporary international lawyers that they inadvertently rely on it when faced with international legal regulation of non-State entities. Finally, the article addresses the implications of these findings for the overall question of international legal obligations of non-State actors.

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The history of international humanitarian law treaty-making

Frits Kalshoven. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 33-49. - Cote 345.2/996

This chapter retraces the history of international humanitarian law treaty-making, from the first IHL treaties to the present. The main IHL instruments are presented chronologically, from the Declaration of Paris (1856) all the way to the Third Additional Protocol to the 1949 Geneva Conventions (2006). For each treaty, the author provides a brief description of the context in which it was adopted.

How are armed non-state actors bound to apply the law of non-international armed conflicts ?

Nadarajah Pushparajah. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 86-131

The parties to the conflict be it the State or armed non-State actors are regulated by the by the law of non-international armed conflict. This article examines how armed non-State actors are bound to apply IHL in order to identify the origin of their obligations in existing international norms. The finding of this article shows the binding nature of the law of non-international armed conflict from the existing international norms, theories and explanations and practices of judicial and other international bodies as well as the practice of armed non-State actors. Further, this article show the capacity and willingness of armed non-State actors to incur the responsibility under the law of non-international armed conflict.

How to work towards reducing the human cost of the use of explosive weapons in populated areas ?

Maya Brehm, Mark Zeitoun, Harry Konings, Thomas de Saint Maurice. In: Collegium, No 46, automne 2016, p. 143-169. - Cote 345.25/354

This roundtable discussion focused on the use of explosive weapons in populated areas and their devastating effects on civilians. First, Maya Brehm explained what is meant by "explosive weapons" and said that close to 90 percent of direct casualties from explosive weapons used in populated areas are civilians. Mark Zeitoun then addressed the consequences of the use of explosive weapons on urban infrastructure and essential services such as energy and water supply, waste management systems and health care. He pointed out that the use of such weapons in populated areas can also have long-term effects. Drawing from his experience as a retired Dutch Army officer and member of the United Nations Protection Force (UNPROFOR) during the siege of Sarajevo, Lieutenant Colonel Harry Konings stressed the importance of ensuring the protection of the civilian population. Next, Thomas de Saint Maurice presented the position and activities of the International Committee of the Red Cross regarding the use of explosive weapons in populated areas. He also recalled a number of international humanitarian law rules, such as the prohibition of indiscriminate or disproportionate attacks. Finally, Maya Brehm reviewed the political efforts undertaken by the international

community to combat the use of large-scale explosive weapons in populated areas, and to limit their devastating effects. Françoise Hampson concluded the session by highlighting the role played by non-military experts on the field when it comes to evaluating the effects of explosive weapons.

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Human rights obligations of armed non-state actors in non-international armed conflicts

Nadarajah Pushparajah. - Oisterwijk [Pays-Bas] : Wolf legal publishers, 2016. - XII, 320 p. - Cote 345.1/651

This book explores the human rights obligations of armed non-state actors in non-international armed conflicts from the existing sources. This book challenges the State-centric view of human rights by breaking the traditional perception of international human rights regime that applies only to State actors. It shows the necessity in considering the capacity of de facto regimes of armed non-state actors to incur human rights obligations in order to protect individuals and groups, and regulate their daily lives in the control areas of these armed non-state actors. Further, this book proves the capacity of armed non-state actors for violating human rights as well as bearing human rights obligations in non-international armed conflicts. The degree of human rights obligations of armed non-state actors, especially regarding civil and political rights, as well as obligations towards some vulnerable groups, has been confirmed in this book. Nevertheless it is very difficult to impose human rights obligations on armed non-state actors without relying on other international norms such as international humanitarian law and international criminal law in non-international armed conflicts since these bodies of law give more detailed provisions to regulate the specific issue. In addition, the success of the fulfilment of obligations in international norms by armed non-state actors mostly depends on their capacity, willingness and intentions, including the ideology of a specific group.

Identifying military objectives in cities

Agnieszka Jachec-Neale, Nobuo Hayashi, Charles Barnett. In: Collegium, No 46, automne 2016, p. 17-42. - Cote 345.25/354

Contient : How can my home, school or church ever be a militay objective? Loss of protection by use, purpose or location / A. Jachec-Neale. - Can a civilian object that has lost its protection against direct attack be destroyed for imperative military reasons? / N. Hayashi. - The obligation to take all feasible precautions to verify that a target is a military objective when using indirect fire in urban areas / Col. C. Barnett.

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The ILC special rapporteur's preliminary report on the protection of the environment in relation to armed conflicts : an important step in the right direction

Michael Bothe. - In: International law and the protection of humanity : essays in honor of Flavia Lattanzi. - Leiden ; Boston : Brill Nijhoff, 2017. - p. 213-224. - Cote 354/717

In 2011, the International Law Commission (ILC) decided to put the “Protection of the environment in relation to armed conflict” on its agenda, and appointed Marie G. Jacobsson as Special Rapporteur. This chapter comments on some of the issues raised by the first report of the Special Rapporteur. The author notes that the approach taken in the report is broader than the usual controversy about the protection of the environment during armed conflict. First, it does not only focus on IHL, but also addresses other norms of international law, including international environmental law. Second, it is not limited to the protection of the environment in time of armed conflict, but also covers the actions taken in preparation to, and after an armed conflict. The author then states that by analyzing the continued application of human rights and international environmental law during armed conflict, the Special Rapporteur makes a salutary contribution to rethinking this relationship. Finally, the author welcomes the exclusion by the Special Rapporteur of the issues concerning natural resources and how their use often lead to violence and armed conflicts, arguing that such questions are too distinct from those pertaining to the conduct of armed conflict and its consequences on the environment.

Impact of human rights law

Noam Lubell and Nancie Prud'homme. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 106-120. - Cote 345.2/996

This chapter examines four central issues that need to be addressed to assess the impact of human rights law on the law of armed conflict and vice versa. It discusses the applicability and extraterritorial applicability of human rights law during armed conflict. It highlights certain areas where human rights law and the law of

armed conflict can influence each other. It examines how the interplay between the disciplines has been articulated, and provides suggestions on how to move forward to clarify the interplay and develop tools to better articulate the interaction between the disciplines.

Individual liability in international law

Robert Cryer. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 538-555. - Cote 345.2/996

International law, on the whole, deals with states. International humanitarian law (IHL), on the other hand, not only imposes duties on states, but also grants certain people (in particular, but not only, 'protected persons' in the Geneva Conventions sense) rights. IHL is not unique in this regard, the law of human rights, for example does the same. IHL, though, also imposes obligations on individuals, and, in certain cases, directly criminalises their violation. This is something international law rarely does. This chapter investigates the development of this phenomenon, the conditions under which violations of IHL become criminalised and a principle of responsibility that is directly linked to IHL – command responsibility.

Information and notification concerning detention in non-international armed conflicts

Bruce "Ossie" Oswald. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 313-334. - Cote 400/164

This chapter deals with two issues relating to the treatment of detainees in non-international armed conflicts (NIACs): (1) the detainees' right to information concerning the reasons for detention, and (2) the detainees' right to notification of other rights which they can exercise whilst in detention. It aims to demonstrate the extent to which international humanitarian law as it applies to NIACs does not adequately provide for the rights of detainees to information and notification, and to explore how those rights may be further enhanced. In order to do so, Part I considers the application of Additional Protocol II in the context of providing information and notification to detainees taken in NIACs and Part II examines the extent to which the practice of providing information and notification to detainees at the point of capture may be further developed.

Internal jus ad bellum

Eliav Lieblich. In: Hastings law journal, Vol. 67, issue 3, 2016, p. 687-748. - Cote 345/718 (Br.)

International law has yet to develop a regime regulating the resort to war (jus ad bellum) within a state, either by governments or opposition groups. Contemporary jus ad bellum, thus, fails to address one of the most atrocious forms of war in the modern international system. This article puts forward a novel theory of internal jus ad bellum, equally applicable to governments as well as opposition groups. It demonstrates that the current blind spot in international law concerning this issue is incoherent and unwarranted. By applying the revisionist approach to just war theory, this article argues that internal resort to armed force can only be morally acceptable if undertaken in self (or other) defense against grave threats. Applying this notion to the international legal sphere, this article claims that collectivist doctrines such as self-determination, sovereignty, or democratic entitlement are not appropriate venues for an acceptable standard of internal jus ad bellum. It proceeds to locate such a possible standard in international human rights law ("IHRL"), which enshrines everyone's right to life. However, as the Article demonstrates, IHRL, as currently understood, fails to serve as an effective framework for internal jus ad bellum, since it collapses, during armed conflict, into international humanitarian law. The article concludes by suggesting an understanding of IHRL that can overcome these limitations and thus serve as a working doctrine of internal jus ad bellum.

http://www.hastingslawjournal.org/category/volume-67/page/3/

International humanitarian law, postcolonialism and the 1977 Geneva Protocol I

Amanda Alexander. In: Melbourne journal of international law, Vol. 17, no. 1, June 2016, p. 1-36. - Cote 345.2/1026 (Br.)

The 1977 Geneva Protocols are the core of the contemporary international humanitarian law regime. This article looks at how Protocol I was drafted and how it introduced and managed significant changes to the ius in bello concerning the character of national liberation movements, the status of irregular belligerents and the protection of civilians. It shows that while the delegates fought passionately over some of these changes, compromised and equivocated over others, there were other changes that they accepted readily, without even regarding them as change. The article examines the disciplinary strategies and conventions that allowed the delegates to conceal change in this way. It argues that the most successful legal changes were enabled by discursive changes that had already taken place outside the legal sphere. Postcolonial discourse and social movements had transformed the available possibilities of speech and thought, rendering the traditional understanding of the law reprehensible. Lawyers were compelled to erase the existing provisions of the law

and posit new ones that were more in line with contemporary sentiment. Many of these new provisions were problematic and paradoxical, but they were all that could be said at the time. The result was a document that was rejected by military states for many years, but survived as a resource that was eventually adopted by more sympathetic lawyers. In this way, the article historicises the provisions of the Protocol I, while showing the influence of external movements and anticolonial thought on international humanitarian law.

http://law.unimelb.edu.au/mjil/issues/issue-archive/171

International law and the protection of humanity : essays in honor of Flavia Lattanzi

ed. by Pia Acconci... [et al.]. - Leiden ; Boston : Brill Nijhoff, 2017. - XIX, 564 p. - Cote 345/717

This volume contains articles by a wide variety of well-known scholars and practitioners, and deals with human rights, international humanitarian law, international criminal law and humanitarian assistance, as well as other areas of international law relating to the protection of humanity. These are topics to which Flavia Lattanzi, in whose honour the volume is being published, has made an outstanding contribution and to which she has given her determined and unrelenting professional and personal commitment. As a former Professor at the Universities of Pisa, Sassari, Teramo and Roma Tre and as Judge ad litem at the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, she has adhered constantly to a number of important principles, as reflected in the research contained in this volume. They include the firm conviction that respect for human rights is an indispensable precondition for durable peace; the notion that grave breaches of human rights, including the refusal to provide assistance to populations in distress, can imply a threat to international peace and security; and that guarantees against human rights violations include the question of the punishment of core crimes under international law.

The international legal prohibition on perfidy and its scope in non-international armed conflicts

Robert Lawton Pratt. In: Virginia journal of international law digest, Vol. 56, 2016, p. 1-9. - Cote 345.25/357 (Br.)

Though both customary international law and Additional Protocol I prohibit perfidy in international armed conflicts (IACs), whether and to what extent this prohibition applies within the context of non-international armed conflicts (NIACs) remains relatively unclear. NIACs, such as the United States' conflict with al Qaeda, include conflicts between states and non-state actors or between non-state actors only. To clarify the extent to which the perfidy prohibition applies in this conflict context, this article begins by presenting the legal and practical arguments for and against applying the prohibition on perfidy to NIACs and subsequently assesses the prohibition's scope using the recent U.S. military commission case against the U.S.S. Cole bombers and the CIA's involvement in a Mossad car bomb operation that killed a Hezbollah leader. From this analysis, the author concludes that the international legal prohibition on perfidy extends to NIACs through customary international law and that a critical component of the crime is the attacker's abuse of law of war protections.

https://tinyurl.com/43464-Pratt

Intervention of humanity or the use of force to halt mass-atrocity crimes, the peremptory prohibition of aggression and the interplay between jus ad bellum, jus in bello and individual criminal responsibility on the crime of aggression

David Donat Cattin. - In: International law and the protection of humanity : essays in honor of Flavia Lattanzi. - Leiden ; Boston : Brill Nijhoff, 2017. - p. 353-396. - Cote 345/717

This chapter seeks to demonstrate how recent normative developments in international law such as the adoption of the Rome Statute and of the legally binding Kampala Amendments on the Crime of Aggression reinforce the theory of Flavia Lattanzi on the legality of humanitarian interventions (or "interventions of humanity"), which must fulfil a strict set of definitional criteria that States have very often failed to respect. It aims at further developing and specifying the content of the doctrine of humanitarian interventions by proposing a normative and, at the same time, pragmatic approach to States' practice that blurs the most essential prescriptions of the jus in bello and the jus ad bellum. In the author's view, States may ultimately be able to align their practice to this approach in light of the progressive development of international criminal law.

Investigations under international humanitarian law

Sasha Radin and Michael N. Schmitt. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 556-571. - Cote 345.2/996

Release of the Goldstone Report on Israel's 2008 Operation Cast Lead in Gaza focused the international community's attention on the nature and scope of the duty to investigate alleged breaches of international humanitarian law (IHL). The report controversially condemned the manner in which Israel conducted investigations into IHL violations allegedly committed during the conflict. Several additional reports followed. Chief among these were a Human Rights Watch examination of the conflict generally and a UN Human Rights Council assessment of Israeli and Palestinian investigations. Such reports highlight a growing tendency on the part of governments, international bodies and non-governmental organisations (NGOs) to pronounce on the success or failure of parties to armed conflicts in investigating and prosecuting alleged war crimes. Sensitive to this reality, the Israeli government tasked an independent commission to examine Israeli compliance with the international law governing investigations. Such scrutiny of the relevant legal norms has led to a more refined understanding of what the duty to investigate under IHL entails. The chapter examines the law governing the duty to investigate and how it operates in cases of possible IHL violations.

It is not self-defense : direct participation in hostilities authority at the tactical level

Randall Bagwell and Molly Kovite. In: Military law review, Vol. 224, issue 1, 2016, p. 1-47 : diagr., tabl.

According to the unclassified annex to the United States Standing Rules of Engagement, U.S. forces have two basis for using force: self-defense or mission accomplishment. However, both often prove to be impractical on the battlefield, thus causing confusion and frustration amongst the troops. The author argues that a third and more suitable basis for the use of force exists - namely the authority to attack any person who is directly participating in hostilities - and should therefore be included in the U.S. use of force policy.

Journalists under fire during armed conflicts : what international law has done?

Anupam Jha. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 397-413

This article looks at the protection of journalists covering armed conflicts under international criminal and humanitarian law. It discusses the international concerns over the protection of journalists and examines the contemporary relevance of the notions of "war correspondent", "independent journalist" and "embedded journalist" under IHL. The author argues that the critical issue is not the legal framework protecting journalists per se, but its enforcement. It is suggested that States should take supplementary steps such as enacting laws protecting journalists covering armed conflicts and prosecuting perpetrators of crimes against journalists.

The latest nuclear war : does the use of depleted uranium armaments and armors constitute a war crime ?

Andrew Womack. In: Vermont law review, Vol. 41, no. 2, 2016, p. 405-428. - Cote 341.67/816 (Br.)

Depleted uranium should never be used as a weapon. The devastation to the environment and the human population is evidenced by multiple reports of scientists and doctors in both the U.S. and abroad. However, the U.S. government continues to avoid the issue to maintain a thrifty way to dispose of its nuclear waste. Unfortunately, it is the men and women fighting in these wars and the innocent civilian populations who pay the ultimate price. The U.N. must move toward an absolute ban on depleted uranium weapons. The U.S. should admit its irresponsibility in using depleted uranium weapons and cooperate with the U.N. to see an international convention come to fruition. Multiple international documents, as well as domestic sources, establish a strong history of enforcing humanitarian principles and fundamental rights during war. Regardless of technology or tactics, fundamental principles of international law prohibit indiscriminate and unnecessary harm toward civilian populations and combatants.

http://lawreview.vermontlaw.edu/wp-content/uploads/2017/01/07-Womack.pdf

Law and morality at war

Adil Ahmad Haque. - Oxford : Oxford University Press, 2017. - 285 p. - Cote 345.2/1022

The laws are not silent in war, but what should they say? What is the moral function of the law of armed conflict? Should the law protect civilians who do not fight but help those who do? Should the law protect soldiers who perform non-combat functions or who may be safely captured? How certain should a soldier be that an individual is a combatant rather than a civilian before using lethal force? What risks should soldiers take on themselves to avoid harming civilians? When do inaccurate weapons become unlawfully indiscriminate? When does 'collateral damage' to civilians become unlawfully disproportionate? Should civilians lose their legal rights by serving, voluntarily or involuntarily, as human shields? Finally, when should killing civilians constitute a war crime? These are the questions that this book answers, contributing

to a cutting-edge international debate. Drawing on the concepts and methods of contemporary moral and legal philosophy, the book develops a normative framework within which the laws of war and international criminal law can be evaluated, criticized, and reformed. While several philosophical works critically examine the moral status of civilians and combatants, this book fills a gap, offering both an account of the laws of war and war crimes, and proposing how the law could be improved from a moral point of view.

The law of armed conflict and the use of force

published under the auspices of the Max Planck Foundation for international peace and the rule of law ; ed. under the direction of Frauke Lachenmann, Rüdiger Wolfrum. - Oxford ; New York : Oxford University Press, 2017. - XXXII, 1427 p. - Cote 345.2/1018

This volume brings together articles on the law of armed conflict and the use of force from the Max Planck Encyclopedia of Public International Law. It provides a thorough overview of all aspects of international humanitarian law.

Law of naval warfare

David Letts and Rob McLaughlin. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 264-281. - Cote 345.2/996

This chapter addresses the law of naval warfare narrowly defined - that is, international humanitarian law which applies to armed conflict at sea. It begins with a brief assessment of the way in which uniquely maritime thematic concerns have influenced the development of the law of naval warfare, focusing upon two of these as indicative examples: the oceans as the venue of armed conflict at sea, and the overt 'stakeholder' status of maritime trade and commerce as an influence upon the development of the law of naval warfare. The chapter then progresses to an account of the major instruments, cases and soft law sources of the law of naval warfare. This is followed by an analysis of those 'means and methods' issues which are generally unique to the law of naval warfare, but remain of enduring utility - issues such as blockade, visit and search, and naval mine warfare. This chapter focuses upon the historical development of the LONW, rather than its likely responses to these many current and future challenges.

The law of naval warfare and china's maritime militia

James Kraska and Michael Monti. In: International law studies, Vol. 91, 2015, p. 450-467

China operates a vast network of fishing vessels that form a maritime militia equipped and trained to conduct intelligence, communications, and targeting support for the People's Liberation Army Navy. Fishing vessels normally are exempt from capture or attack in the law of naval warfare unless they are integrated into the naval forces, but distinguishing between legitimate fishing vessels and maritime militia during naval warfare is virtually impossible.

http://stockton.usnwc.edu/ils/vol91/iss1/13/

The legal regime applicable to private military and security company personnel in armed conflicts

Mohamad Ghazi Janaby. - [Dordrecht] : Springer, 2016. - XV, 237 p. - Cote 345.29/246

This book investigates the modern privatisation of war. It specifically focuses on the legal regime regulating private military and security company (PMSC) personnel in armed conflicts. The law regulating PMSC personnel is analysed from two perspectives. Firstly, can one of the three following legal statuses established by international humanitarian law - "mercenary", "combatant" or "civilian" - be applied to PMSC personnel? Secondly, the book employs a context-dependent methodology to explore the legal regime regulating PMSC personnel. It argues that the legal regime regulating PMSC personnel in armed conflicts depends on who hires them: individual states, the United Nations, non-governmental organisations, or armed groups. This approach represents a departure from previous literature, where attention has primarily been paid to the use of PMSCs by states.

The limitations of legal reasoning : negotiating the relationships between international humanitarian law and human rights law in detention situations

Sarah McCosker. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 23-64. - Cote 400/164

Focusing on the specific context of detention of non-state actors in non-international armed conflicts (NIACs), this chapter evaluates some of the legal concepts and principles currently used as theoretical tools to navigate the relationship (or interoperability) between international humanitarian law (IHL) and international human rights law (IHRL). First, it discusses some of the dominant metaphors in international law scholarship in characterising the relationship between the two bodies of law, and elaborates on the idea

of "interoperability". It then discusses some of the key legal principles and concepts, including the lex specialis principle ; the "complementary theory" ; rules regarding derogations from human rights treaties ; and general rules of treaty interpretation, focusing in particular on the principle of systemic interpretation in article 31(3)(c) of the Vienna Convention on the Law of Treaties, which, according to the author, is perhaps the best framework for merging the international legal systems in a coherent manner.

Management of detention of non-state actors engaged in hostilities : recommendations for future law

Gregory Rose. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 365-417. - Cote 400/164

This concluding chapter aims at providing indicative directions for clarification of the future law on detention by national military forces engaged in expeditionary operations. It argues that gaps remain in the substantial and procedural law governing non-international armed conflicts that engage military forces in operations in foreign lands and that a new diplomatic initiative is necessary to design humanitarian norms appropriate for detention in such conflicts. It also presents a series of recommendations to fill the gaps in law for detention in non-international armed conflicts.

Methods of land warfare

William J. Fenrick. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 251-263. - Cote 345.2/996

One might well regard the traditional methods of waging land warfare as battle, devastation and siege. This chapter begins by addressing quarter, the extent of the obligation to accept surrender. Devastation, starvation and siege are then addressed. The chapter concludes by addressing permissible and impermissible deception; and espionage and sabotage. The discussion is closely linked to the ICRC Customary International Humanitarian Law Study (CIHL) as Rules 46 to 69 of the Study constitute the most recent attempt at a relatively comprehensive overview of the topics addressed in the chapter.

Military objectives

David Turns. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 139-156. - Cote 345.2/996

The concept of military objective has acquired general applicability across the spectrum of armed conflict and in all the known domains of warfare. This chapter outlines the development of the concept and the formulation of the definition in law, along with its interpretation and selected problems that have arisen in practice in recent military operations and are likely to be relevant to future operations.

Nanotechnology and the future of the law of weaponry

Hitoshi Nasu. In: International law studies, Vol. 91, 2015, p. 486-516

Novel applications of nanotechnology for military purposes are expected to have a transformative impact on the way in which wars can be fought in the future battlespace, with the potential to drive changes to the law of weaponry. This article considers the potential of military applications of nanotechnology to bring changes to the existing principles and rules of weapons law. It specifically focuses on the likelihood that more sophisticated, miniaturized and tailored weapons and weapon systems will be produced that enable mechanical precision of targeting with no or few civilian casualties.

http://stockton.usnwc.edu/ils/vol91/iss1/15/

NATO responsibility for detention

Mark Dakers. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 296-309. - Cote 400/164

In the increasingly complex conflicts of the late 20th and early 21st centuries, detention has become one of the most difficult areas of operations. This chapter examines the particular difficulties faced by North Atlantic Treaty Organisation (NATO) in alliance or alliance-led operations. It first examines the contexts in which detention may occur, the authorisations both internal and external for NATO forces to conduct detention operations, and then addresses the issue of the legal responsibility of NATO and the position of NATO commanders in that context.

Necessity in international law

Jens David Ohlin and Larry May. - Oxford : Oxford University Press, 2016. - XI, 280 p. - Cote 345/715

Necessity is a notoriously dangerous and slippery concept-dangerous because it contemplates virtually unrestrained killing in warfare and slippery when used in conflicting ways in different areas of international law. Jens David Ohlin and Larry May untangle these confusing strands and perform a descriptive mapping of the ways that necessity operates in legal and philosophical arguments in jus ad bellum, jus in bello, human rights, and criminal law. Although the term "necessity" is ever-present in discussions regarding the law and ethics of killing, its meaning changes subtly depending on the context. It is sometimes an exception, at other times a constraint on government action, and most frequently a broad license in war that countenances the wholesale killing of enemy soldiers in battle. Is this legal status quo in war morally acceptable? Ohlin and May offer a normative and philosophical critique of international law's prevailing notion of jus in bello necessity and suggest ways that killing in warfare could be made more humane-not just against civilians but soldiers as well. Along the way, the authors apply their analysis to modern asymmetric conflicts with non-state actors and the military techniques most likely to be used against them. Presenting a rich tapestry of arguments from both contemporary and historical Just War theory, Necessity in International Law is the first full-length study of necessity as a legal and philosophical concept in international affairs.

Neutrality revisited

Elizabeth Chadwick. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 455-473. - Cote 345.2/996

With a view to assessing the current state of armed neutrality, this chapter first provides a brief overview of the 'classical' law of neutrality, after which the impact on neutrality of UN collective security is introduced. The extent to which specific aspects of neutrality have survived in the contemporary era is next examined, after which the potential relevance of neutrality to other uses or state force, including, controversially, during non-international armed conflicts, is then considered. It is concluded that laws of neutrality remain viable in helping to resolve a very wide variety indeed of violent situations.

Nuclear weapons in international law

Dieter Fleck. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 233-250. - Cote 345.2/996

This chapter discusses the role of nuclear weapons in the different phases since their existence and undertake a legal assessment of their use. Various achievements towards the legal regulation of nuclear armament is evaluated, and emerging open issues for research and government action in the coming years are addressed. The chapter is not limited to considerations under the law of armed conflict, it shows that conclusions to be drawn on the current role of nuclear weapons and their legal regulation in the contemporary world requires an assessment of a larger spectrum of issues.

Occupation and territorial administration

Eyal Benvenisti. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 435-454. - Cote 345.2/996

The law of occupation represents an effort to fill the legal and administrative void created when a foreign actor oust the national authorities and prevents them from exercising their authority in certain area. The effort, however well intended, is inherently flawed because the void is filled by an authority whose interests often clash with those of the local population and the ousted government. This inherent conflict of interests calls for special attention by third parties that monitor and review the occupant's measures. The detailed law and the rich jurisprudence that has developed over the years is not a reason for complacency. In fact, the practice demonstrates that the legal regime is far from providing a satisfactory answer to the control gap. Therefore, a healthy suspicion in the occupant's motives should always inform the reviewers. The likely partiality of the occupant requires, for example, that international tribunals refrains from granting the occupant the same margin of appreciation that sovereigns enjoy.

Operation Billy Goat : the targeting and killing of a United States citizen on United States soil

E. Patrick Gilman. In: Military law review, Vol. 223, issue 4, 2015, p. 843-896

This article provides the legal justification, under both international law and U.S. domestic law, for the targeted killing of Jeremy Jeffries, a.k.a. Abdul al Sad, a fictional United States citizen on United States soil. It also discusses the legal framework that supports the accomplishment of this task within the bounds of both domestic and international law as they exists today. This article further analyzes and explains various doctrines of international law, domestic law, and the rights of both citizens and noncitizens as they pertain to being targeted by the United States vis-a-vis military action. It then develops the legal analysis necessary to provide a comprehensive understanding of how the law should apply to the hypothetical Abdul al Sad.

Oxford guidance on the law relating to humanitarian relief operations in situations of armed conflict : commissioned by the United Nations Office for the Coordination of Humanitarian Affairs

[Dapo Akande, Emanuela-Chiara Gillard]. - [Genève] ; [New York] : OCHA United Nations Office for the Coordination of Humanitarian Affairs ; [Oxford] : University of Oxford, 2016. - 61 p. - Cote 361/681

This Guidance document sets out the basic rules of international law regulating humanitarian relief operations in situations of armed conflict. It focuses primarily on international humanitarian law, but also considers other areas of public international law that may be relevant to such operations, particularly international human rights law and the rules on state sovereignty, territorial integrity, and the responsibility of states and international organisations for internationally wrongful acts. Subjects covered include offers of services, consent to humanitarian relief operations and consequences of unlawful impeding of humanitarian relief operations. The Guidance is presented in the form of a narrative commentary on the law, and a set of 'Conclusions' laying out the key principles of law.

https://docs.unocha.org/sites/dms/Documents/Oxford%20Guidance%20pdf.pdf

Precautions when carrying out attacks in cities

Vaios Koutroulis, Clive Baldwin. In: Collegium, No 46, automne 2016, p. 43-60. - Cote 345.25/354

Contient : All feasible precautions in the choice of means and methods / V. Koutroulis. - Effective advance warning / C. Baldwin.

https://www.coleurope.eu/sites/default/files/uploads/page/collegium_46_0.pdf

Preventive force : drones, targeted killing, and the transformation of contemporary warfare

ed. by Kerstin Fisk and Jennifer M. Ramos. - New York : New York University Press, 2016. - IX, 372 p. - Cote 355/1102

More so than in the past, the United States is now embracing the logic of preventive force: using military force to counter potential threats around the globe before they have fully materialized. While popular with individuals who seek to avoid too many “boots on the ground,” preventive force is controversial because of its potential for unnecessary collateral damage. Who decides what threats are ‘imminent’? Is there an international legal basis to kill or harm individuals who have a connection to that threat? Do the benefits of preventive force justify the costs? And, perhaps most importantly, is the US setting a dangerous international precedent? In Preventive Force, editors Kerstin Fisk and Jennifer Ramos bring together legal scholars, political scientists, international relations scholars, and prominent defense specialists to examine these questions, whether in the context of full-scale preventive war or preventive drone strikes. In particular, the volume highlights preventive drones strikes, as they mark a complete transformation of how the US understands international norms regarding the use of force, and could potentially lead to a ‘slippery slope’ for the US and other nations in terms of engaging in preventive warfare as a matter of course.

Private military and security companies

Nelleke van Amstel and Rain Liivoja. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 623-639. - Cote 345.2/996

This chapter focuses on the continued relevance of LOAC in situation of armed conflict where PMSCs are used and the regulatory means by which the existing law is being adapted to accommodate the emergence of a new actor. It begins in section 1 with a brief overview of the recent regulatory initiatives that have been designed to address some of the legal problems associated with PMSCs. In section 2, it considers the application of existing LOAC to PMSCs, in particular the status, obligations and accountability of PMSC personnel under LOAC. Section 3 focuses on the obligations and accountability of states, as the primary actors of international law, with respect to the conduct of PMSCs. Finally, section 4 considers the obligations and accountability of the companies themselves.

Private military companies (PMCs) and international criminal law : are PMCs the new perpetrators of international crimes ?

Stella Ageli. In: Amsterdam law forum, Vol. 8, no. 1, Spring 2016, p. 28-47. - Cote 345.29/248 (Br.)

The extensive use of private military companies (PMCs) in conflict areas in the last 30 years has raised concern in the academic community regarding the participation of private companies in the conduct of war. For example, academics incite issues of legitimacy, the role of the state and the legal status of PMCs especially when they take a direct part in the hostilities. In this context, PMCs have been often accused of committing serious crimes during their involvement in the hostilities. The important question regarding their possible criminal activity is whether these serious crimes fall into the category of international law and more specifically international criminal law. This article examines firstly, whether PMCs actually commit serious crimes and secondly, if these crimes constitute violations of international law, namely, international crimes.

http://amsterdamlawforum.org/article/view/352

The prohibition on indiscriminate and disproportionate attacks

Guy Keinan, Laurent Gisel, Eric Jensen. In: Collegium, No 46, automne 2016, p. 109-141. - Cote 345.25/354

Contient : Defining and assessing the military advantage in urban warfare / Cpt. G. Keinan. - Relevant incidental harm for the proportionality principle / L. Gisel. - Shelling in urban areas, when does imprecision become indiscriminate? / E. Jensen.

https://www.coleurope.eu/sites/default/files/uploads/page/collegium_46_0.pdf

Protecting civilians living in cities against the effects of hostilities

Nathalie Durhin, Marco Sassòli. In: Collegium, No 46, automne 2016, p. 61-88. - Cote 345.25/354

Contient : Moving the cities' inhabitants away from the fighting, and moving the fighting away from the inhabitants / LtCol. N. Durhin. - The obligation to take feasible passive precautions and the prohibition of the use of human shields : can military considerations, including force protection, justify not to respect them? / M. Sassòli.

https://www.coleurope.eu/sites/default/files/uploads/page/collegium_46_0.pdf

Protection of civilians in the conduct of hostilities

Emanuela-Chiara Gillard. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 157-180. - Cote 345.2/996

International humanitarian law is based on the premise that war must be fought between combatants. Individual civilians and civilian populations enjoy general protection against dangers arising from military operations and in the conduct of military operations constant care must be taken to spare them. This chapter outlines a number of specific rules that give more detailed substance to this general principle, starting with the principle of distinction and including, inter alia, the prohibition of attacks against civilians, indiscriminate attacks and rules on precautions.

The protection of humanitarian relief : the legal framework

Alison Duxbury. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 403-419. - Cote 345.2/996

This chapter addresses the legal framework for the protection of humanitarian relief operations and their personnel, focusing in particular on the provisions of international humanitarian law. The analysis is designed to answer three interrelated questions. First, who is recognised as a humanitarian worker for the purpose of international law? Second, what are the legal obligations on states to protect humanitarian workers? Finally, are states legally obliged to facilitate humanitarian work and assistance?

The protection of the environment

Roberta Arnold. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 384-402. - Cote 345.2/996

This chapter focuses on the effects of war on the environment. It aims at providing an overview of warfare environmental law - a working definition used in this chapter to indicate the legal regime encompassing the provisions of the laws of armed conflict that address the protection of environment.

Recent trends in the application of human rights and humanitarian law : are states losing patience ?

Alon Margalit. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 156-182

State behaviour during armed conflict is increasingly exposed to judicial scrutiny. It may also be subjected to standards developed in human rights law which, at times, are inconsistent with the law of armed conflict. This article draws attention to States' worry over this process, and to their effort to limit the application of human rights law to military operations. The article discusses this effort, as well as the extent to which it was successful in court, focusing on three operational matters: the use of force, the detention of enemy nationals for security reasons, and the investigation of deaths caused by the armed forces. It concludes that courts tend to be more attentive to States' concerns than often perceived, and that the latter should remain patient during this ongoing process.

https://doi.org/10.1163/18781527-00701006

Reciprocity and reprisals

Shane Darcy. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 492-505. - Cote 345.2/996

Reciprocity plays a significant part in influencing the behaviour of parties to an armed conflict and has had a prominent role in the creation, enforcement and indeed breach of the law of armed conflict. However, international law regulating armed conflict has been moving away from the idea of reciprocal obligations to more universal or absolute obligations. The great exception to the decline of reciprocity has been provided by the doctrine of belligerent reprisals, whereby a party to an armed conflict might as a last resort deliberately breach the applicable law in response to breaches by the enemy and for the purpose of forcing a return to respect for the law. Recourse to reprisals has been increasingly restricted by the law of armed conflict, but not completely outlawed, and reprisals are one of the remaining vestiges of the legal concept of reciprocity within the law of armed conflict. Section 1 considers reciprocity in the law of armed conflict, with regard in particular to the application of the law to a situation of armed conflict and the observance of those laws in the event of a breach by an opponent. Section 2 sets out the customary law requirements governing resort to reprisals and the scope of the existing legal prohibitions, and Section 3 examines frequent challenges to the existing law, in particular the role of reciprocity and reprisals in non-international armed conflicts, the scope of permissible reprisals and the challenges presented by the "war on terror" and asymmetric warfare. The authors concludes that the near total outlawing of belligerent reprisals and elimination of reciprocity reinforce the absolute nature of obligations under the law of armed conflict.

Regulation-tolerant weapons, regulation-resistant weapons and the law of war

Sean Watts. In: International law studies, Vol. 91, 2015, p. 540-621

The historical record of international weapons law reveals both regulation-tolerant weapons and regulation-resistant weapons, identifiable by a number of criteria, including effectiveness, novelty, deployment, medical compatibility, disruptiveness and notoriety. This article identifies these criteria both to explain and inform existing weapons law, and also to facilitate efforts to identify weapons and emerging technology that may prove susceptible to future law of war regulation. By charting both the history and methodology of weapons law with a view toward identifying forces and influences that have made some weapons susceptible to international regulation and made others resistant, this article offers a starting point for identifying sound investments of the very precious diplomatic, political and financial capital required to produce meaningful law of war developments.

http://stockton.usnwc.edu/ils/vol91/iss1/18/

Reimagining the wheel : detention and release of non-state actors under the Geneva Conventions

Chris Jenks. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 93-116. - Cote 400/164

After more than a decade of sustained armed conflict, the international community continues to struggle with the issues posed by non-State actors participating in hostilities. This chapter focuses on detention of non-State actors during armed conflict. It argues that even though the 1949 Geneva Conventions and their 1977 Additional Protocols are outmoded and seemingly inapplicable in some respect, they nevertheless offer the most thorough, humane, realistic and readily available option for determining how to treat – and when to release – non-State actors detained during armed conflict. It first acknowledges some of the main challenges to the application of the law governing international armed conflict (IAC) to situations of non-international armed conflict (NIAC). Then, it argues that there are considerable advantages of tethering a detention regime to the world's most ratified treaties which form the basis of how militaries around the world

train to conduct detention operations. From there, the chapter briefly discusses salient aspects of the detention regimes both for prisoners of war and civilian security threats and concludes that applying IAC rules to NIAC, and conflating status-based detention from Geneva Convention III with conduct-based detention review from Geneva Convention IV would provide more clarity and transparency and possibly even ever-elusive legitimacy.

La réparation de victimes des violations du droit humanitaire et le droit individuel d'accès à la justice : état de lieu et perspectives d'avenir

Stelios Perrakis. - In: International law and the protection of humanity : essays in honor of Flavia Lattanzi. - Leiden ; Boston : Brill Nijhoff, 2017. - p. 279-293. - Cote 345/717

La question du droit à des réparations individuelles pour des violations commises lors d'un conflit armé reçoit une réponse quasi satisfaisante lorsqu'il s'agit de violations des droits de l'homme. En revanche, le droit à réparation des victimes de violations du droit international humanitaire (DIH), bien qu'universellement reconnu, se bute dans la pratique à des obstacles institutionnels et juridiques. Ce chapitre présente une synthèse des aspects législatifs et jurisprudentiels liés à la question des réparations individuelles pour violations du DIH. Il révèle que contrairement aux victimes de violations des droits de l'homme, qui peuvent compter sur un système de surveillance comprenant des organes de contrôle compétents pour décider des recours individuels en réparation de violations, les victimes de crimes de guerre ou de crimes contre l'humanité sont incapables de faire valoir leurs droits. Cette difficulté s'explique d'une part par l'absence de mécanismes nationaux ou internationaux appropriés, et d'autre part parce que l'existence d'un droit individuel à la réparation pour violations du DIH se pose en contradiction avec le principe de l'immunité des Etats. L'auteur souligne que l'application des droits de l'homme en temps de guerre offre aux victimes de violations du DIH la possibilité de soumettre des recours au travers des mécanismes de contrôle des violations des droits de l'homme. Les avis demeurent toutefois partagés quant à l'application du DIH par des organes opérant sur la base de traités des droits de l'homme.

Reparations for child victims of armed conflict : state of the field and current challenges

Francesca Capone. - Cambridge [etc.] : Intersentia, 2017. - XXXII, 275 p. - Cote 362.7/437

This book offers an analysis of the existing normative framework regulating the right to reparation for child victims of armed conflict. The study questions whether the current framework is sufficiently developed to provide child victims with adequate, effective and prompt reparations; furthermore it presents and critically assesses the judicial and non-judicial mechanisms in place as well as the reparations awarded and implemented so far at the international and regional level.

Reparations for violations in armed conflict and the emerging practice of making amends

Bruce Oswald and Bethany Wellington. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 520-537. - Cote 345.2/996

Against the background of recognising the growing importance of making reparations and amends for harm in armed conflicts, this chapter is divided into four sections. Section 1 explores the international law framework that governs reparations for violations in armed conflict. Section 2 considers the challenges confronting the development of this area of law. Section 3 discusses the practice of making amends for harm caused during lawful military actions. Section 4 concludes the chapter and reflects on issues regarding reparations and making amends that require further reflection and research. This chapter does not address the issue of jus ad bellum reparations.

The rights of victims of serious violations of international human rights law and international humanitarian law : a human rights perspective

Cécile Aptel. - In: The International Criminal Court and Africa : one decade on. - Cambridge [etc.] : Intersentia, 2016. - p. 401-417. - Cote 344/688

This chapter examines the emergence and consolidation of the rights of victims of gross violations of international human rights law and serious violations of international humanitarian law under international law and the role of national and international courts in realising them. First, it sets out the definition and sources of these rights. It then briefly surveys the obligations incumbent on states to uphold them, before exploring how the International Criminal Court also constitutes an avenue, albeit a limited one, through which the rights of victims of such violations can be given effect. It emphasises that states have the primary obligation to investigate and prosecute those responsible for international crimes, and that failure to do so does not relieve them of responsibility under international human rights law, even when other courts, such as the ICC, do step in and exercise their jurisdiction. It also argues that, due to its limited jurisdiction and

resources, the ICC can fill the impunity gap left by states with regards to only a small number of cases. Therefore, many victims are left without a forum where they can see and be granted a remedy.

Role of international courts and tribunals

Jackson Nyamuya Maogoto. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 572-586. - Cote 345.2/996

This chapter examines the role of international courts and tribunals in law of armed conflict (LOAC) compliance and enforcement. It focuses on modern times - loosely defined as practical efforts in the twentieth and twenty-first centuries, and eschews a mechanical evaluation of individual cases in favour of an endeavour that focuses on the general tenets distilled from landmark rulings relating to LOAC.

The role of the International Committee of the Red Cross

Kelisiana Thynne. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 477-491. - Cote 345.2/996

This chapter opens with a brief overview of the ICRC's humanitarian operations before turning to its direct IHL work. The remainder of the chapter frames the work of the ICRC on IHL by reference to its two major spheres of activity: (1) operational pragmatics including monitoring and persuasion in the field in relation to interpretation, implementation and enforcement of IHL, and (2) theoretical and thematic promotion of IHL including training in and implementation of existing IHL as well as progressive development and codification of the law.

The rule of law in crisis and conflict grey zones : regulating the use of force in a global information environment

Michael John-Hopkins. - London ; New York : Routledge, 2017. - XII, 333 p. - Cote 345.2/1021

This book responds to ongoing calls for clarification and consensus regarding the meaning, scope and interplay of humanitarian law and human rights law in the 'grey zones' of unconventional operational environments such as counterterrorism and counterinsurgency operations. It contributes to the debate in this area by developing objective criteria for determining where the shift from the legal framework of law enforcement to that of non-international armed conflict occurs in relation to targeting law and weaponry law; by developing improved objective criteria for determining what constitutes direct participation in hostilities and de facto membership in an organised armed group; by taking stock of how existing targeting and weaponry rules are being applied to unconventional conflicts within civilian populated areas by key state players as well as by international and regional human rights mechanisms; by arguing for the progressive realisation of targeting and weaponry law so that they are more fitting for operational environments that are increasingly urbanised and civilianised; by seeking to understand how global networked connectivity may affect our understanding of the operational theatre of war and the geographical reach of the legal framework of non-international armed conflict.

The rule of law in war : a liberal project

Louise Arimatsu. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 640-654. - Cote 345.2/996

In this chapter, the author suggests that the densely legislated landscape within which contemporary wars are fought is both a symptom and expression of liberalism's insistence on governance by law. To bridge the gap between the fact of war and liberal philosophy - which is inimical to war - liberal states have turned to law weaving their political priorities, in form and content, through the jus in bello. In the first section, the author reflects on the way in which some of liberalism's core principles, including the very notion of the rule of law, have been integrated into LOAC. The second section examines how LOAC is constructed on a series of artificial separations that are perpetually on the brink of collapse. In the final section, the author suggests that the anxiety generated by LOAC is as much about compliance as non-compliance and explores how this fact is mediated within liberal societies.

Sexual and gender-based violence in international criminal law : a feminist assessment of the Bemba case

Marie-Alice D'Aoust. In: International criminal law review, Vol. 17, issue 1, 2017, p. 208-221

In March 2016, the International Criminal Court (ICC) rendered a guilty verdict against Jean-Pierre Bemba, ex-president of the Democratic Republic of Congo, for his involvement in operations in the Central African Republic from 2002 to 2004. He was found guilty in his capacity as military commander of crimes against humanity and war crimes. The decision is the first by the ICC to address sexual violence as a weapon of war

and in the context of command responsibility. This article assesses the Bemba decision from a feminist perspective. Key normative developments have occurred in the substantive international criminal law surrounding sexual violence, and the guilty verdict against Jean-Pierre Bemba represents an effective implementation of international criminal law. However, in light of major feminist concerns that arise in international law on sexual violence, the encouraging developments in the judgement occur mostly at the implementation level, leaving much to be done in terms of gender conceptualization and norm-setting.

http://booksandjournals.brillonline.com/content/journals/10.1163/15718123-01701006

Sexual offences in international law

Dakshita Sangwan. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 253-283

The United Nations Security Council has recognized that rape and other forms of sexual violence constitute grave international crimes. This recognition is in line with the historical development of international criminal law, as well as with the international community's longstanding recognition of sexual violence as an international crime. This article identifies provisions related to sexual violence and rape under international law and analyses the adjudication and prosecution of sexual violence by international courts, tribunals, special mixed courts and panels.

Sources of the law of armed conflict

Jann Kleffner. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 71-88. - Cote 345.2/996

The law of armed conflict (LOAC) emanates from the same legal sources as general public international law. Accordingly, LOAC is found primarily in treaties and customary international law, in addition to general principles of law, legally binding unilateral acts and legally binding resolutions of intergovernmental organisations. Furthermore, judicial decisions and international legal scholarship constitute subsidiary sources. These sources and their idiosyncratic features in the context of LOAC are addressed in turn. The subsequent section addresses LOAC rules as norms of jus cogens and as erga omnes obligations. The chapter then turns to an examination of the Martens Clause and its legal significance, followed by a section that examines the situation in which several states with different legal obligations interact and operate jointly, before some concluding remarks are offered.

State responsibility

Charles Garraway. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 506-519. - Cote 345.2/996

This chapter presents state responsibility for violations of the law of armed conflict as being in a state of flux. The author argues that whilst such responsibility is acknowledged and has been for a long time, it is the means of enforcing that responsibility that is at issue. The traditional view that this is a matter of inter-state relations and that individuals have no rights of their own to pursue claims is under challenge. Whilst the International Court of Justice appears to have upheld that particular view of state sovereignty, that is being increasingly bypassed in recent times by the use of human rights mechanisms to obtain individual redress. However, human rights law and the law of armed conflict are not the same and the use of such fora is placing strains on the relationship between the two branches of public international law. The author concludes that until such time as there is a mechanism whereby individual claims arising from allegations of violations of the law of armed conflict can be litigated as such, human rights courts will continue to fill this function.

Superior orders as a defence before the International Criminal Court

Julian Seal. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 209-252 : diagr.

The issue of pleading obedience to superior orders as a defence has been a particularly thorny one and there has been a distinct lack of consistency regarding its application. This article addresses the progression of the prohibition of the defence of superior orders which began in Nuremberg in 1945, up until a sudden regression beginning in Rome in 1998. It examines the numerous legal debates over this defence as well as its relationship with other autonomous defences, and appraises the historic step taken by the international community by codifying the defence under Article 33 of the International Criminal Court Statute.

Targeting and civilian risk mitigation : the essential role of precautionary measures

Geoffrey Corn and James A. Schoettler. In: Military law review, Vol. 223, issue 4, 2015, p. 785-842

This article focuses on both the meaning and implementation of precautionary measures. It begins by discussing the treaty-based implementation of precautions, with a particular focus on the use of warnings as precautionary measure. It then briefly considers how expanding the conception of precautionary measures beyond the treaty-based obligations would enhance civilian risk mitigation and contribute to achieving the humanitarian objectives of the law of armed conflict (LOAC). Finally, this article explains why precautions are in fact such a vital risk-mitigating tool from a pragmatic operational perspective by focusing on how commanders committed to the LOAC balance of necessity versus humanity will instinctively gravitate to, and embrace, the logic of the precautions principle during the execution of combat operations.

Targeting child soldiers : striking a balance between humanity and military necessity

Sam Pack. In: Journal of international humanitarian legal studies Vol. 7, issue 1, 2016, p. 183-203

Children are often the victims of armed conflict. One way in which international law seeks to protect them is by prohibiting their recruitment as child soldiers. Once recruited, however, the question arises as to whether they may or should be targeted and killed in the same manner as an adult in the same position. In this respect, there is relatively little discussion as to what the law is, and – aside from a 2013 think-piece by Frédéric Mégret – even less about what the law should be. This article attempts to kick-start that debate. A survey of international law confirms that child combatants and participants in hostilities may be targeted in the same manner as adults. Mégret's proposed reform, whereby child soldiers would only be targetable while participating in hostilities, is problematic, but child soldiers should arguably be entitled to some form of additional protection. As such, this article proposes that child soldiers under the age of 12 only be targetable in self-defence, a reform which would better balance the competing considerations of humanity and military necessity.

https://doi.org/10.1163/18781527-00701009

The scope of application of international humanitarian law in non-international armed conflicts : analysing state practice from Colombia

Julia Liebermann. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict, Vol. 29, 4/2016, p. 146-158

International law does not explicitly define what a non-international armed conflict is nor is the set of rules applicable or their relationship clearly defined. In particular, there often is a mismatch between political conflict recognition, its factual existence and the application of international humanitarian law (IHL). In addition to vague treaty provisions, divergence in state practice makes the examination of customary law difficult. With the rise of international human rights law (IHRL) as the more protective framework in non-international armed conflict, one could rightly doubt the usefulness of conflict categorization altogether. Recently, the rise of hybrid frameworks fuelled the debate on the balance between the military objective in IHL and the legitimate purpose of IHRL. The interplay of political manoeuvring, sovereign law implementation and the theoretically envisaged restriction of power of states though international law is the subject of this paper.

Towards a single and comprehensive notion of "civilian population" in crimes against humanity

Rosa Ana Alija Fernández, Jaume Saura Estapà. In: International criminal law review, Vol. 17, issue 1, 2017, p. 47-77

Although an essential element of the definition of crimes against humanity is that a civilian population be targeted, there is no agreement on what 'civilian population' means in this context. The notion has been given different meanings depending on whether the crimes are committed in times of conflict or peacetime. In times of conflict, preference is given to a broad approach based on international humanitarian law. More problematic is the attribution of a specific content to the notion in peacetime, where even discrimination has been suggested as a defining criterion. In this article we contend that a single notion of civilian population in crimes against humanity applicable in every circumstance is needed. Hence, we suggest determining the civilian population on the basis of the rules on State responsibility in international human rights law and general international law in order to exclude those endowed with public authority from the civilian population.

http://booksandjournals.brillonline.com/content/journals/10.1163/15718123-01701001

Towards an EU position on armed drones and targeted killing ?

Christophe Paulussen and Jessica Dorsey. - In: Fundamental rights in international and european law : public and private law perspectives. - The Hague : Asser Press, 2016. - p. 9-44. - Cote 345.25/355 (Br.)

This chapter gauges the extent to which European Union (EU) governments share the United States' position on armed drones and targeted killing. In doing so, it aims to assist in distilling an EU Common Position on the use of armed drones and a legal framework for counterterrorism-related uses of force. The chapter includes the results of a questionnaire sent to the Ministries of Foreign Affairs, Defense, Justice and intelligence services of all 28 EU Member States. The authors also parsed other relevant sources that could evince governments' positions (e.g., public statements, policy documents, etc.). In addition to this, the chapter explores more normative pronouncements from entities other than states, including international organizations, advisory committees and commentators, who have articulated how the issue of armed drones and targeted killing should be approached within the European context. In the chapter's conclusion, the authors summarize the findings and provide concrete recommendations toward a cohesive European position on targeted killings and drone use in counterterrorism.

https://library.ext.icrc.org/library/docs/ArticlesPDF/43564.pdf

Transnational armed conflicts : an argument for a single classification of non-international armed conflicts

Djemila Carron. In: Journal of international humanitarian legal studies, Vol. 7, issue 1, 2016, p. 5-31

Situations of hostility between States and armed groups located on the territories of other States are difficult to classify because they call into question the categories of international and non-international armed conflicts. This contribution argues for the single classification of non-international armed conflicts of those transnational armed conflicts. The article starts with a clarification on the relevant circumstances for the contribution. The different classifications proposed by scholars, tribunals and States are then examined, leading us to our arguments for a single classification of non-international armed conflicts, and to the test adopted for a rapid categorization of those transnational hostilities. Finally, we mention some important observations and challenges on this topic, like the classification of situations involving at the same time hostilities between a State and an armed group located on the territory of another State and the occupation of the territory of this second State.

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Twenty seconds to comply : autonomous weapons systems and the recognition of surrender

Robert Sparrow. In: International law studies, Vol. 91, 2015, p. 699-728

Would it be ethical to deploy autonomous weapon systems (AWS) if they were unable to reliably recognize when enemy forces had surrendered? I suggest that an inability to reliably recognize surrender would not prohibit the ethical deployment of AWS where there was a limited window of opportunity for targets to surrender between the launch of the AWS and its impact. However, the operations of AWS with a high degree of autonomy and/or long periods of time between release and impact are likely to remain controversial until they have the capacity to reliably recognize surrender.

http://stockton.usnwc.edu/ils/vol91/iss1/20/

U.S. detention of terrorists in the 21st century

William K. Lietzau. - In: Detention of non-state actors engaged in hostilities : the future law. - Leiden ; Boston : Brill Nijhoff, 2016. - p. 268-295. - Cote 400/164

Of all the instruments of power that may be employed to further national interests, none yields collateral consequences that are more difficult to predict than the unleashing of military force. And with respect to the past decade's use of that instrument, no consequence has engendered more debate, confusion or passion than U.S. detention policy. This chapter attempts to clarify the reasons for the controversy surrounding the policy - explaining it primarily as a function of the nature of 21st century warfare as opposed to competing political or ideological perspectives as many claim. It then proffers a vision for moving past the controversy.

The United States, the Torture Convention, and lex specialis : the quest for a coherent approach to the CAT in armed conflict

Ashika Singh. In: Columbia human rights law review, Vol. 47, no.3, 2016, p. 134-203. - Cote 323.2/212 (Br.)

The application of the Convention against torture (CAT) in armed conflict presents two separate questions: (1) Are armed conflicts outside the scope of the treaty's application? (2) If not, how does the lex specialis principle operate to define the relationship between the CAT and the law of armed conflict (LOAC)? This article answers both questions through the lens of the U.S. government's positions on the application of the CAT in armed conflict. The first section examines and ultimately rejects the notion that the CAT is for peacetime, LOAC is for wartime, and never the twain shall meet. The article next assesses various models for understanding the relationship between international human rights law (IHRL) and international humanitarian law via the interpretive maxim of lex specialis. After evaluating the various approaches to lex specialis, the article concludes that it is best understood both as a tool to harmonize compatible rules of law from different international regimes as well as a conflict resolution technique to guide choice of law decisions when there is a genuine conflict between different rules from equally applicable regimes. Finally, the article applies this harmonization/conflict resolution framework to several CAT provisions and demonstrates how the harmonization/conflict resolution approach to lex specialis provides a coherent legal basis for the U.S. position on the application of the CAT in armed conflict and a sustainable rubric that the United States and other States can use going forward to navigate the relationship between IHRL and LOAC.

http://hrlr.law.columbia.edu/wp-content/uploads/sites/10/2016/03/03_Singh.pdf

Universal jurisdiction over war crimes

Luis Benavides. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 587-599. - Cote 345.2/996

Universal jurisdiction is a fairly old concept in international law. However, during the 1990s some European states revived the principle in their legislations along with a judicial practice in a way that has, at times, been very controversial. Thus, universal jurisdiction became part of a heated debate between those who love it and those who hate it. Time had to pass to cool things off along with some setbacks in legislation and states' jurisdictional exercise of that principle. One reason of the controversy surrounding the principle of universality is, in the author's opinion, that the principle had a qualitative leap of rationale when applied in the late twentieth century. Thus, the first section of this chapter deals with the analysis of the concept of universal jurisdiction in criminal law; with particular emphasis on the evolution of its rationale. The second section deals with a modern conception of war crimes, regardless of the type of conflict in which they might occur.

Urban warfare : proceedings of the 16th Bruges Colloquium, 15-16 October 2015 = La guerre en milieu urbain : actes du 16e Colloque de Bruges,15-16 octobre 2015

CICR, Collège d'Europe. In: Collegium, No 46, automne 2016, 189 p. - Cote 345.25/354

Session 1 : Identifying military objectives in cities. - Session 2 : Precautions when carrying out attacks in cities. - Session 3 : Protecting civilians living in cities against the effects of hostilities. - Session 4 : The prohibition on indiscriminate and disproportionate attacks

https://www.coleurope.eu/fr/recherches/publications/collegium

Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette

[Frédéric Joli... [et al.]]. - [Paris] : LGDJ, 2016. - 468 p. - Cote 345.2/1019

Après une thèse sur « la participation du Tiers-Monde à l'élaboration du droit international - Essai de qualification », contribution importante à la théorie du droit international actuel, Patricia Buirette a consacré principalement, mais non exclusivement, sa recherche et son enseignement au droit international humanitaire dont elle est devenue l'une des principales spécialistes en même temps qu'une propagatrice infatigable des principes de cette discipline. Elle travaille notamment avec le monde médical et les ONG en charge de défendre les victimes des conflits armés. Elle a également voulu mettre son énergie au service des universités où elle a enseigné (Angers, Rouen, Poitiers, Évry), s'investissant totalement au service des étudiants et de ses collègues. Elle a ainsi assumé les fonctions de Doyen de la Faculté de Droit de l'Université d'Évry-Val d'Essonne, créant aussi un master droits de l'homme et droit humanitaire. C'est pourquoi ses collègues et amis ont voulu lui offrir des Mélanges consacrés au droit humanitaire, au droit international et aux droits fondamentaux, avec des contributions plus personnelles et très originales.

Victims of drone warfare : stretching the boundaries of conflict; ethics and remote control warfare

Wim Zwijnenburg and Zorah Blok. - In: The future of drone use : opportunities and threats from ethical and legal perspectives. - The Hague : Asser Press, 2016. - p. 209-228. - Cote 341.67/810

The growing use of (un)armed drones in warfare raises a number of concerns about the protection of civilians in armed conflict, international human rights law and the lowering of the threshold for using armed violence as a means of solving conflict. This chapter highlights the practical and ethical challenges of drone use in conflict. This is done by focusing on the proliferation of dual-use drone technology to state and non-state actors and implications for new ways of war. Furthermore, it elaborates on how the changing nature of conflicts (e.g. intra-state, hybrid conflicts) and growing use of proxy wars through armed non-state actors, vis-a-vis lowered political support in the West, could see an increase in the risk-free use of armed drones and robots. The chapter also highlights the need for transparency and accountability when using armed drones. In particular, it discusses the issue of civilian casualties in the context of the War on Terror by providing testimony from those affected by drone strikes in Pakistan and Yemen.

Violations of international humanitarian law by non-state actors during cyberwarfare : challenges for investigations and prosecutions

Dan Saxon. In: Journal of conflict and security law, Vol. 21, no. 3, Winter 2016, p. 555-574

This article argues that it is possible—given the right resources and expertise—to hold individual non-state actors responsible for violations of international humanitarian law (also known as 'the laws and customs of war') perpetrated with cyberweapons. It describes jurisdictional elements of violations of the laws and customs of war as well as points that prosecutors and investigators must consider when planning investigations of serious violations of international humanitarian law perpetrated in cyberspace. It addresses how certain theories of individual criminal responsibility for war crimes apply to offences committed by non-state actors during cyberwarfare and identifies particular evidentiary challenges arising from the particular qualities of cyberspace and cyberweapons. Individual accountability for war crimes perpetrated during cyber operations requires new thinking about the application of legal principles and theories during cyber conflict.

https://doi.org/10.1093/jcsl/krw018

War and armed conflict : the parameters of enquiry

Dino Kritsiotis. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 5-32. - Cote 345.2/996

This chapter engages several preliminary, overarching or recurring themes that are related to the law of armed conflict. First, it investigates the relationship between the jus ad bellum and the jus in bello, providing a brief synopsis of the content of the jus ad bellum and what this means for the application of the jus in bello. It then considers the genealogy and structure of this law – of why, where and how it evolved in the first place – before outlining the developments that occurred after the Second World War which set down the foundations of the law of armed conflict as we know it today. The next section engages the provenances of the laws of armed conflict, and presents a particular appreciation of the projected relevance of the Geneva Conventions (and their Additional Protocols) from a reading of the treaties themselves: the dual infrastructure of international and non-international armed conflicts is explained, as is the possibility of belligerent occupation occurring within the context of international armed conflicts. Some consideration is also given to the diverse character of the law of armed conflict, that is, the nature of the propositions that are set forth and, in turn, the question of to whom such propositions are addressed.

Wars of national liberation and non-international armed conflicts

Matthias Vanhullebusch. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 1-43

This article focuses on the laws of war regulating wars of national liberation in a post-decolonization context. It looks at the legal regime governing armed conflicts where the right of self-determination of peoples who have been dominated, occupied and racially discriminated against by their own governments through so-called "internal colonization" is disputed. Acknowledging that the international community often treats fights for self-determination as mere "situations of internal disturbances and tensions" or non-international conflicts in order to prevent the political or territorial fragmentation of States, the author presents a series of arguments supporting the application of Article 1(4) of Additional Protocol I to fights for self-determination in a decolonized world.

Water during and after armed conflicts : what protection in international law ?

by Mara Tignino. - Leiden ; Boston : Brill, 2016. - VI, 111 p. - Cote 363.7/178

Mara Tignino offers an analysis of the principles and rules protecting water in situations of armed conflicts. The monograph also gives insights on the legal mechanisms open to individuals and communities after a conflict. Practice of international organizations and judicial decisions are examined in order to define the contours of the norms dealing with armed conflicts and post-conflict situations. Beyond international humanitarian law, the author suggests that other areas of international law should be taken into account such as human rights law and international water law. This comprehensive view aims at preventing damage

to water resources and ensuring access to safe drinking water. Given the fragmentation of instruments and norms dealing with water in times of armed conflicts, it requires an in-depth examination of what means of international law may be developed to ensure a better protection to water.

Why drones are different

Stephan Sonnenberg. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 115-141. - Cote 355/1002

In this chapter, Stephan Sonnenberg argues that the regulation of drones as a distinct category of weaponry is urgently needed. He provides a brief history of legal efforts to humanize warfare, and discusses how modern international humanitarian law applies to the United States drone program in Pakistan. Next, he explains why drones should be considered a structurally disruptive technology that tends to seduce military planners into thinking they can deploy armed force without bearing the domestic political costs for doing so, thus making armed conflicts globally more likely. He then discusses how the narrative of drones as low-cost precision weaponry is deceiving and ultimately devastating for civilian populations living in potential conflict zones, and concludes with a call for a regulatory framework that would either ban or seriously curtail the use of armed drones as weapons of war.

Women and war

Helen Durham and Eve Massingham. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 335-350. - Cote 345.2/996

This chapter commences with an analysis of the ways women experience armed conflict. It then moves to examine the legal framework of IHL as it pertains to women, in particular the articles that provide specific protections. The range of other provisions, found in human rights law as well as resolutions from the Security Council and jurisprudence from international criminal enforcement mechanisms is then explored. Finally, the broader issue of gender and the laws of war is raised, leading to a conclusion that more work needs to be done to ensure protection of women continues to be a priority during times of armed conflict.

"Worse" than child soldiers ? : a critical analysis of foreign children in the ranks of ISIL

Francesca Capone. In: International criminal law review, Vol. 17, issue 1, 2017, p. 161-185

Even though many problems connected to child soldiering have been eventually explored and unpacked, it is undeniable that new issues keep surfacing in each context affected by this phenomenon. The current armed conflicts in Syria and Iraq appear to be shocking for several reasons, including the unprecedented presence of foreigners and the widespread recruitment and use of children by terrorist groups, in particular the Islamic State of Iraq and the Levant (ISIL). This article argues that whereas child soldiers affiliated with armed forces or groups are 'traditionally' seen as victims rather than perpetrators, foreign children in the ranks of terrorist groups like ISIL are first and foremost regarded as a threat to national and international security. This article will provide a critical overview of the most relevant aspects encompassing the existing legal framework, ISIL's recruitment and use of foreign child soldiers, and the challenges connected to the design and implementation of meaningful reintegration processes.

http://booksandjournals.brillonline.com/content/journals/10.1163/15718123-01701003

Wounded and sick, and medical services

James P. Benoit. - In: Routledge handbook of the law of armed conflict. - London ; New York : Routledge, 2016. - p. 317-334 . - Cote 345.2/996

The origins of the law of armed conflict are perhaps not surprisingly found in the area of caring for the wounded and sick, as the most obvious persons who require protection from war. This chapter endeavours to describe the framework in this fundamental area, as well as to highlight contentious and emerging areas of thought. It analyses each of the various protected groups (that is, wounded and sick, medical and religious personnel, medical units and establishments, and medical transports) individually, providing the definition, legal status and the specific obligations to 'respect and protect' each group.

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