BIBLIOGRAPHY
1st Issue 2023

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.

Access to document

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

Chronology

This bibliography is based on the acquisitions made by the ICRC Library over the past four months. The Library strives to acquire relevant articles and books as soon as they become available.

Contents

The bibliography lists writings on IHL subjects (e.g. articles, monographs, chapters, reports and working papers) in English and French, with the addition of writings in German and Spanish since 2022.

Sources

The ICRC Library monitors a wide range of sources, including all 80 journals to which the Library subscribes, bibliographical databases, legal databases, legal publishers' catalogues, legal research centres and non-governmental organizations. It also receives suggestions from the ICRC legal advisers.

Disclaimer

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

Subscription and feedback

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

I. General issues

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

Advanced introduction to international conflict and security law

Nigel D. White. - Cheltenham : E. Elgar, 2023. - X, 174 p.

After the conflict before the peace : legal, military and humanitarian issues during the transition

International Institute of Humanitarian Law ; ed. Gabriella Venturini ; associated ed. Edoardo Gimigliano. - Milano : Franco Angeli, 2023. - 239 p.

https://iihl.org/after-the-conflict-before-the-peace-legal-military-and-humanitarian-issues-during-the-transition/

An analysis of stagnation in multilateral law-making - and why the law of the sea has transcended the stagnation trend

Andreas Motzfeldt Kravik. In: Leiden journal of international law, vol. 34, no. 4, December 2021, p. 935-956

https://doi.org/10.1017/S092215652100039X *

Civilising violence : international law and colonial war in the British Empire, 1850-1900

Christopher Szabla. In: Journal of the history of international law = Revue d'histoire du droit international, vol. 25, issue 1, April 2023, p. 70-104

https://doi.org/10.1163/15718050-bja10081

The conduct of lawfare : the cas of the Houthi insurgency in the Yemeni civil war

Sandra de Jongh and Martijn Kitzen. - In: The conduct of war in the 21st century : kinetic, connected and synthetic. - Abingdon : Routledge ; New York, 2021. - p. 249-264

El derecho operacional en relación con los derechos humanos y el derecho internacional humanitario

Jonnathan Jiménez Reina y Juan Fernando Gil Osorio, Roger Jiménez Reina. In: Revista científica general José María Córdova, vol. 19, no. 33, 2021, p. 115-131

https://doi.org/10.21830/19006586.655

Des-encanto : Latin America and international humanitarian law

Alonso Gurmendi Dunkelberg. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 3-31

https://link.springer.com/chapter/10.1007/978-94-6265-559-1_1 *

Finding peace in the law of war

Bailey Brown. - In: Between crime and war : hybrid legal frameworks for asymetric conflict. - New York : Oxford University Press, 2023. - p. 407-435

https://doi.org/10.1093/oso/9780197638798.003.0014 *

The "general close of military operations" as the benchmark for the declassification of armed conflicts and the end of the applicability of international humanitarian law

Julia Grignon. In: The Canadian yearbook of international law = Annuaire canadien de droit international, vol. 59 (2021), p. 80-103

https://doi.org/10.1017/cyl.2022.11

Greening the law of environmental protection in armed conflicts

Stavros-Evdokimos Pantazopoulos. In: Netherlands yearbook of international law, vol. 52 (2021), 2023, p. 75-99
https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS//57967.pdf *

How does buddhism compare with international humanitarian law, and can it contribute to humanising war ?

Andrew Bartles-Smith. In: Contemporary Buddhism, Vol. 22, no. 1-2, 2021, p. 8-51
https://doi.org/10.1080/14639947.2021.2149052

The Howard S. Levie distinguished essay : Some reflections on the threshold for international armed conflict and on the application of the law of armed conflict in any armed conflict

T.D. Gill. In: International law studies, vol. 99, 2022, p. 698-730
https://digital-commons.usnwc.edu/ils/vol99/iss1/29/

International conflict and security law

Laurie R. Blank. - Cheltenham ; Northampton : E. Elgar, 2023. - VIII, 304 p.
https://doi.org/10.4337/9781800377240 *

Die Kommentare des Internationalen Komitees vom Roten Kreuz, ihre Autorität und ihr Einfluss auf die Entwicklung des Humanitären Völkerrechts im Wandel der Zeit

Linus Mührel. - In: Zeit und internationales Recht : Fortschritt - Wandel - Kontinuität. - Tübingen : Mohr Siebeck, 2019. - p. 139-172

The law in war : a concise overview

Geoffrey S. Corn Ken Watkin Jamie Williamson. - London : Routledge, 2023. - XVII, 436 p.

The morality of the laws of war : war, law, and murder

Marcela Prieto Rudolphy. - Oxford : Oxford University Press, 2023. - XI, 297 p.

The peace movement and grassroots international law

Doreen Lustig. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 165-180
https://link.springer.com/chapter/10.1007/978-94-6265-559-1_6 *

The protection of animals in wartime : rationale and challenges

Heike Krieger and José Martínez Soria. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 54-69
https://doi.org/10.1017/9781009057301.005 *

Rites of affirmation : the past, present, and future of international humanitarian law

Rotem Giladi. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 33-70
https://link.springer.com/chapter/10.1007/978-94-6265-559-1_2 *

The silence of Africa in the international humanitarian law debate

Kenneth Wyne Mutuma. In: African yearbook on international humanitarian law, 2021, p. 134-149

Wars with and for humanity

Craig Jones and Nisha Shah. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 143-164
https://link.springer.com/chapter/10.1007/978-94-6265-559-1_5 *

II. Types of conflicts

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

Al borde del abismo : guerra, tecnología y derecho

Roger Campione, Filippo Ruschi, Ana Aldave, coordinadores. - Valencia : tirant lo blanch, 2022. - 350 p.

Animals as endangered species

Ayşe-Martina Böhringer and Thilo Marauhn. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 129-149

https://doi.org/10.1017/9781009057301.009 *

Animals as part of the environment

Jérôme de Hemptinne. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 109-128

https://doi.org/10.1017/9781009057301.008 *

Animals as war weapons

Chris Jenks. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 150-170

https://doi.org/10.1017/9781009057301.010 *

Animals in sea warfare

Etienne Henry. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 264-277

https://doi.org/10.1017/9781009057301.016 *

The application of the Third Geneva Convention in fluid conflicts

Laurie R. Blank. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 26-50

Armed unmanned aerial vehicles in new armed conflicts

Pilar Pozo-Serrano. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 124-145

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https://doi.org/10.1093/oso/9780197638798.001.0001 *

Can criminal organizations be non-State parties to armed conflict ?

Pablo Kalmanovitz. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 618-636

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Le conflit armé en Ukraine et l'effectivité du droit international humanitaire

Philippe Lagrange. In: Revue générale de droit international public, T. 127, no. 1, 2023, p. 121-140

Counting apples as oranges : problems under international humanitarian law with designating the Allied Democratic Forces and Ansar al-Sunna foreign terrorist organisations

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Crime wars : operational perspectives on criminal armed groups in Mexico and Brazil

John P. Sullivan. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 849-875
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Cyber-enabled international state-sponsored disinformation operations and the role of international law

Yannick Zerbe. In: Swiss review of international and European law = Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen, Vol. 33, no. 1, 2023, p. 49-75

Cyber operations and targeting rules

Raïssa van den Essen. - In: The conduct of war in the 21st century : kinetic, connected and synthetic. - Abingdon ; New York : Routledge, 2021. - p. 223-235

Detention of suspected terrorists in connection with armed conflict : a focus on release and repatriation

Pavle Kilibarda and Gloria Gaggioli. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 253-304

Fault lines in the application of international humanitarian law to cyberwarfare

Humna Sohail. In: The journal of digital forensics, security and law, vol. 17, 2022, p. 1-13
https://www.proquest.com/scholarly-journals/fault-lines-application-international/docview/2661588237/se-2

Fighting a war without violence : the rules of international humanitarian law for military cyber-operations below the threshold of "attack"

Bart Van den Bosch. - In: The conduct of war in the 21st century : kinetic, connected and synthetic. - Abingdon ; New York : Routledge, 2021. - p. 211-222

Fighting state actors with the tools of hybridized warfare : can the law of armed conflict be saved?

Claire Finkelstein. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 153-182
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Fighting terrorism under all applicable law

Joshua Andresen. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 91-124
https://doi.org/10.1093/oso/9780197638798.003.0005 *

Hacken zur Verteidigung : eine völkerrechtliche Analyse der im Ukraine-Krieg beteiligten IT-Armee(n)

Janine Schmoldt. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 5, H. 3-4, 2022, p. 149-163
https://doi.org/10.35998/huv-2022-0010 *

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https://digital-commons.usnwc.edu/ils/vol99/iss1/29/

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https://doi.org/10.1093/oso/9780197638798.003.0011 *

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Carrie McDougall. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 992-1016
https://library.icrc.org/library/docs/DOC/irrc-923-mcdougall.pdf

International humanitarian law and the conduct of cyber hostilities : quo vadis ?

Michael N. Schmitt. In: Journal of international humanitarian legal studies, Vol. 13, no. 2, 2022, p. 189-221
https://doi.org/10.1163/18781527-bja10059 *

The intersection of international environmental law and international humanitarian law at sea

Andrew Norris. In: Journal of international criminal justice, Vol. 20, no. 5, November 2022, p. 1229-1252
https://doi.org/10.1093/jicj/mqad001 *

Is Rio de Janeiro preparing for war ? Combating organized crime versus non-international armed conflict

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The legal limits to the destruction of natural resources in non-international armed conflicts : applying international humanitarian law

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Rain Liivoja, Eve Massingham, and Simon McKenzie. In: International law studies, vol. 99, 2022, p. 638-675
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Levée en masse in twenty-first century armed conflict

Winston S. Williams and Robert Lawless. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 97-117

Maritime operations law in practice : key cases and incidents

edited by David Letts and Rob McLaughlin. - Abingdon : Routledge, 2023. - XXIV, 225 p.

Might as right ? The nature of laws of war applicable to targeting and detention in international armed conflicts

Festus M. Kinoti. In: Journal of international humanitarian legal studies, Vol. 13, no. 2, 2022, p. 297-352
https://doi.org/10.1163/18781527-bja10056 *

Militarization and privatization of security : from the war on drugs to the fight against organized crime in Latin America

Antoine Perret. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 828-848
https://library.icrc.org/library/docs/DOC/irrc-923-perret.pdf

National security policymaking in the shadow of international law

Laura A. Dickinson. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 347-368
https://doi.org/10.1093/oso/9780197638798.003.0012 *

Naval blockade and the Russia-Ukraine conflict

Martin Fink. In: Netherlands international law review, vol. 69, issue 3, December 2022, p. 411-437
https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57981.pdf *

The new weapons in naval warfare : unmanned maritime systems

Noelia Arjona Hernández. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 146-169

Opening Pandora's box : the case of Mexico and the threshold of non-international armed conflicts

Juan Francisco Padin. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 772-794
https://library.icrc.org/library/docs/DOC/irrc-923-padin.pdf

The paradox of discrimination

Jens David Ohlin. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 63-89
https://doi.org/10.1093/oso/9780197638798.003.0004 *

Principios clave para el uso de la fuerza en escenarios urbanos en Colombia

Jaime Cubides-Cárdenas. In: Revista científica general José María Córdova, vol. 20, no. 27, 2022, p. 89-107
https://doi.org/10.21830/19006586.808

Prisoner of war status in the context of naval warfare : on the status of masters and crews of neutral merchant vessels

Wolff Heintschel von Heinegg. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 119-140

Prisoners of war in space ?

Rob McLaughlin. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 141-156

Prisoners of war (POWs) in proxy warfare : the application of Geneva Convention III to organized armed groups detaining POWs of territorial states or detained as POWs by territorial states

Marco Sassòli and Eugénie Duss. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 3-25

The question of definition : armed banditry in Nigeria's North-West in the context of international humanitarian law

Tosin Osasona. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 735-749
https://library.icrc.org/library/docs/DOC/irrc-923-osasona.pdf

Ratchet down or ramp up ? : contemporary threats, armed conflict, and tailored authority

Geoffrey S. Corn. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 223-264
https://doi.org/10.1093/oso/9780197638798.003.0009 *

Reducing civilian harm in urban warfare : a handbook for armed groups

ICRC. - Geneva : ICRC, February 2023. - 50 p.
https://library.icrc.org/library/docs/DOC/icrc-4682-002.pdf

The regulation of crimes against water in armed conflicts and other situations of violence

Mara Tignino. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 706-734
https://library.icrc.org/library/docs/DOC/irrc-923-tignino.pdf

Rethinking direct participation in hostilities and continuous combat function in light of targeting members of terrorist non-State armed groups

Rebecca Mignot-Mahdavi. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 1028-1046
https://library.icrc.org/library/docs/DOC/irrc-923-mignot-mahdavi.pdf

The role of judge advocates in prisoner of war and detention operations in the U.S. army : a short history

Frederic L. Borch III. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 323-342

Submarine communication cables and the law of armed conflict : some enduring uncertainties, and some proposals, as to characterization

Rob MacLaughlin, Tamsin Phillipa Paige and Douglas Guilfoyle. In: Journal of conflict and security law, Vol. 27, no 3, Winter 2022, p. 297-338
https://doi.org/10.1093/jcsl/krac014 *

Targeting drug lords : challenges to IHL between lege lata and lege ferenda

Chiara Redaelli and Carlos Arévalo. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 652-673
https://library.icrc.org/library/docs/DOC/irrc-923-redaelli.pdf

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Kenneth Watkin. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford Univesity Press, 2023. - p. 183-221
https://doi.org/10.1093/oso/9780197638798.003.0008 *

US military prosecutions during non-international armed conflict

Chris Jenks. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 519-548
https://doi.org/10.1093/oso/9780197638798.003.0018 *

The use of force against neutral ships outside territorial waters

Sondre Torp Helmersen. In: Leiden journal of international law, vol. 35, no. 2, June 2022, p. 315-355
https://doi.org/10.1017/S092215652200005X *

Das Verbot der Aushungerung im bewaffneten Konflikt : gestärkt oder geschwächt durch die Einfügung des Artikel 8 (2) (e) (xix) IStGH-Statut

Viktoria Wollenberg. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 5, H. 1/2, 2022, p. 94-111
https://doi.org/10.35998/huv-2022-0007 *

Veterinary personnel

Katharine Fortin. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 200-213
https://doi.org/10.1017/9781009057301.013 *

When conflict recurs : classification of conflict when hostilities break out anew

Laurie R. Blank. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 125-149
https://doi.org/10.1093/oso/9780197638798.003.0006 *

Will the centre hold ? Countering the erosion of the principle of distinction on the digital battlefield

Kubo Macák. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 965-991
https://library.icrc.org/library/docs/DOC/irrc-923-macak.pdf

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Abuse by authority : the hidden harm of illegal orders

Saira Mohamed. In: Iowa law review, vol. 107, issue 5, 2022, p. 2183-2245

https://ilr.law.uiowa.edu/print/volume-107-issue-5/abuse-by-authority-the-hidden-harm-of-illegal-orders

Animals as combatants and as prisoners of war ?

Jérôme de Hemptinne, Tadesse Kebebew and Joshua Joseph Niyo. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 171-183

https://doi.org/10.1017/9781009057301.011 *

Can criminal organizations be non-State parties to armed conflict ?

Pablo Kalmanovitz. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 618-636

https://library.icrc.org/library/docs/DOC/irrc-923-kalmanovitz.pdf

Counting apples as oranges : problems under international humanitarian law with designating the Allied Democratic Forces and Ansar al-Sunna foreign terrorist organisations

Rebecca Rattner. In: African yearbook on international humanitarian law, 2021, p. 174-190

Fighting state actors with the tools of hybridized warfare : can the law of armed conflict be saved?

Claire Finkelstein. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 153-182

https://doi.org/10.1093/oso/9780197638798.003.0007 *

From words to deeds : a study of armed non-state actors' practice and interpretation of international humanitarian and human rights norms : Moro Islamic Liberation Front/Bangsamoro islamic armed forces

Chris Rush. - [Geneva] : [Geneva Academy of International Humanitarian Law and Human Rights], August 2022. - 63 p.

https://words2deeds.org/wp-content/uploads/2022/09/MILF_Case-Study.pdf

From words to deeds : a study of armed non-state actors' practice and interpretation of international humanitarian and human rights norms : The Hezbollah - Lebanon

Hiba Mikhail and Hassan Baalbaky. - [Geneva] : [Geneva Academy of international humanitarian law and human rights], September 2022. - 81 p.

https://words2deeds.org/wp-content/uploads/2022/09/Hezbollah_Case-Study.pdf

Hacken zur Verteidigung : eine völkerrechtliche Analyse der im Ukraine-Krieg beteiligten IT-Armee(n)

Janine Schmoldt. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 5, H. 3-4, 2022, p. 149-163

https://doi.org/10.35998/huv-2022-0010 *

Is Rio de Janeiro preparing for war ? Combating organized crime versus non-international armed conflict

Najla Nassif Palma. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 795-827
https://library.icrc.org/library/docs/DOC/irrc-923-palma.pdf

The limitations of the law of armed conflicts : new means and methods of warfare : essays in memory of Rosario Domínguez Matés

ed. by Pablo Antonio Fernández Sánchez. - Leiden ; Boston : Brill Nijhoff, 2022. - XIX, 417 p.

Militarization and privatization of security : from the war on drugs to the fight against organized crime in Latin America

Antoine Perret. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 828-848
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Negotiating with organized crime groups : questions of law, policy and imagination

Mark Freeman and Mariana Casij Peña. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 638-651
https://library.icrc.org/library/docs/DOC/irrc-923-freeman.pdf

Opening Pandora's box : the case of Mexico and the threshold of non-international armed conflicts

Juan Francisco Padin. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 772-794
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Prisoners of war, taking of hostages and the Colombian armed conflict : challenges arising out of conflictive understandings of IHL by different actors in particular contexts

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The regular armed forces, uniforms, and prisoner of war status

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The Howard S. Levie distinguished essay : Some reflections on the threshold for international armed conflict and on the application of the law of armed conflict in any armed conflict

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Javier Tous. - In: Droit[s] de l'homme et droit international humanitaire : quelles conséquences sur les transferts d'armements conventionnels de guerre ?. - Paris : A. Pedone, 2022. - p. 91-116

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VI. Protection of persons

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

After the conflict before the peace : legal, military and humanitarian issues during the transition

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Animals in protected zones

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Atrocity crimes, children and international criminal courts : killing childhood

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Internal displacement and the law

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VII. Protection of objects

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

Animals as endangered species

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https://doi.org/10.1017/9781009057301.012 *

Animals as part of the environment

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Raphaël van Steenberghe. In: Journal of international criminal justice, Vol. 20, no. 5, November 2022, p. 1123-1154
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The intersection of international environmental law and international humanitarian law at sea

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Reducing civilian harm in urban warfare : a handbook for armed groups

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VIII. Detention, internment, treatment and judicial guarantees

"Accompanying the Force" in modern armed conflict

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Animals as combatants and as prisoners of war ?

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ICRC perspectives on the interpretation of the Third Geneva Convention more than seventy years after its adoption

Jean-Marie Henckaerts, Kubo Macák, Mickail Orkin and Ellen Policinski. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 375-407

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The Lieber Code and prisoners of war : a legacy of practical humanitarianism

David Wallace and Shane Reeves. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 307-322

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The role of judge advocates in prisoner of war and detention operations in the U.S. army : a short history

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The transfer of conflict-related detainees : provisions on the transfer of detainees in international humanitarian law

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The use of force against prisoners of war : operationalizing article 42

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IX. Law of occupation

Animals in occupied territory

Marco Longobardo. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 217-233
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The application of UN Charter Chapter XI to military occupations

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Romina Edith Pezzot. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 1071-1091
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Prolonged occupation and international law : Israel and Palestine

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https://doi.org/10.1163/9789004503939 *

Unveiling claims of discrimination based on nationality in the context of occupation under international humanitarian and human rights law

George Dvaladze. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 947-964
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X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

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Cyber-enabled international state-sponsored disinformation operations and the role of international law

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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,...)

Armed unmanned aerial vehicles in new armed conflicts

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XIV. International criminal law

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EL SALVADOR

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The obligation to release and repatriate prisoners of war : revisiting the arbitral award of Eritrea-Ethiopia claims commission

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EUROPEAN UNION

Droit[s] de l'homme et droit international humanitaire : quelles conséquences sur les transferts d'armements conventionnels de guerre ?

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FRANCE

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All with Abstracts

Abuse by authority : the hidden harm of illegal orders

Saira Mohamed. In: Iowa law review, vol. 107, issue 5, 2022, p. 2183-2245

When a leader orders a subordinate to commit a crime—to kill anything that moves, as at My Lai; to extract information no matter what it takes, as at Abu Ghraib; to execute prisoners of war, as at Biscari—how should the law and a society respond? Often we ignore the leader and blame the "bad apple" subordinate who failed to do the right thing. Or, when a leader is punished, domestic and international criminal law regard them in relation to their subordinate's offense, either as an accomplice or perhaps a perpetrator; the order simply offers the pathway to rendering the superior a party to the crime. The law says nothing, however, about an entire dimension of wrongdoing that this Article highlights: The illegal order is an abuse of the authority the leader holds over their subordinates, a misuse of control over another, a betrayal of what was supposed to be a relationship of protection, an infliction of suffering on those who—even if they themselves become perpetrators legitimately subject to punishment—are also victims of their leaders' violation of the duty to ask of them only what is right. This Article urges a new framing of the illegal order as a wrong by the superior against the subordinate. Focusing on the military, and drawing on fields of knowledge within the law and beyond it, the Article argues that international and domestic law should acknowledge the superior's order not only as a link to the crimes of the subordinate, but also as an abuse of the superior's relationship of authority over the subordinate. Explaining that the military obligation of the superior toward the subordinate is both legally founded and legally protected, the Article exposes the legal and cultural obsession with the subordinate's ostensible autonomy as but a convenient distraction, one that relies on traditional (and contested) criminal-law assumptions of individual choice and insistence that no person has obligations to another. Further, scholars' and practitioners' accounts of the law of war increasingly acknowledge that soldiers are not mere instruments, but individuals, separate from the state and the superiors they serve. This shift opens the door to this Article's proposed recognition of the harms subordinates experience when they are ordered to commit a crime.

https://ilr.law.uiowa.edu/print/volume-107-issue-5/abuse-by-authority-the-hidden-harm-of-illegal-orders

"Accompanying the Force" in modern armed conflict

Eric Talbot Jensen. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 81-96

Throughout history, non-military personnel have routinely accompanied fighting forces on the battlefield for purposes of providing their goods or services to the forces. Because of their proximity to the fight, it was inevitable that some of these civilians would be captured by the enemy. Given their importance to the armed forces, these civilians were given protected status upon capture. In other words, while these civilians were not considered combatants, they were given the status and protections of prisoners of war. These protections were authorized by the armed forces under the assumption that the services were provided "in the vicinity of armies." With the evolution of modern technology and its impact on the conduct of warfare, many civilians who provide goods and services no longer need to be on the battlefield or "in the vicinity" of the armed forces they support. For example, logisticians, weapons maintainers, communications supporters, and cyber technicians can accomplish analogous tasks performed by civilians accompanying the armed forces, but can now do so from a distance. This chapter argues that while a "proximity" test continues to be applicable, there are cases where functionality, or a civilian's importance to the armed forces, might also need to be considered. In other words, there are and will continue to be some civilians who "accompany" the armed forces based on their function only, rather than their proximity, and these civilians should also be afforded the treatment of civilians accompanying the armed forces upon capture.

Advanced introduction to international conflict and security law

Nigel D. White. - Cheltenham : E. Elgar, 2023. - X, 174 p.

This updated and revised second edition of Advanced introduction to international conflict and security law provides a concise and insightful guide to the key principles of international law governing peacetime security, arms control, the use of force, armed conflict and post-conflict situations. Nigel D. White explores the complex legal regimes that have been created to control levels of armaments, to limit the occasions when governments can use military force, to mitigate the conduct of warfare and to build peace.

Africa and the domestic implementation of the Geneva Conventions and Additional Protocols : problems and solutions

Kasim Balarabe. In: Journal of African law, vol. 66, issue 2, June 2022, p. 175-199

The Geneva Conventions have achieved universal ratification, and Additional Protocols I and II are binding on all African states except Eritrea and Somalia; however, their observance in African conflicts is flawed and inconsistent. From deliberate attacks on civilian populations to abduction and hostage-taking, humanitarian rules are openly flouted. Through an extensive assessment of the domestic measures required to implement the Geneva Conventions and Protocols in Africa, this article identifies the current level of implementation, existing gaps and possible non-legal factors that impact respect for the instruments in African conflicts. Violations are often associated with historical, political, religious and social factors that tainted the instruments' lofty provisions and bequeathed a legacy that challenges the obligation to respect. Additionally, continuous political and religious struggles and the search for identity and relevance have displaced the ideals of the instruments' humanitarian provisions. Reversing this trend requires an approach that appeals to and engages the continent beyond the traditional argument of obligation to respect.

https://doi.org/10.1017/S0021855322000109

After the conflict before the peace : legal, military and humanitarian issues during the transition

International Institute of Humanitarian Law ; ed. Gabriella Venturini ; associated ed. Edoardo Gimigliano. - Milano : Franco Angeli, 2023. - 239 p.

The 45th edition of the annual Sanremo Round Table on current issues of IHL was held in Sanremo and online from 7th to 9th September 2022. The Round Table, with the participation of high-level international experts and practitioners, investigated some of the crucial issues regarding the application of IHL in post-conflict situations, by examining the lessons learned from recent operations, as well as the legal, military and humanitarian issues experienced during post-conflict transitions. This included, among other key aspects, the legal responsibility of military and humanitarian practitioners towards the civilian population; the challenges related to the evacuation of non-combatants from conflict areas and the legal status of evacuated civilians; the issue of the responsibility of governments and individuals towards refugees and internally displaced persons; the disarmament and infrastructure reconstruction processes.

https://iihl.org/after-the-conflict-before-the-peace-legal-military-and-humanitarian-issues-during-the-transition/

Al borde del abismo : guerra, tecnología y derecho

Roger Campione, Filippo Ruschi, Ana Aldave, coordinadores. - Valencia : tirant lo blanch, 2022. - 350 p.

Este libro nace de una preocupación, una convicción y un objetivo. Lo que nos preocupa es que las normas del derecho internacional parecen haber perdido no solo eficacia frente a los conflictos armados sino incluso su credibilidad básica. La convicción consiste en que es necesario, ahora más que nunca, reflexionar crítica y racionalmente sobre las categorías normativas que durante siglos han intentado limitar la fuerza destructiva de la guerra. Más allá de la importancia adquirida por las nuevas formas de la guerra híbrida (tecnológica, virtual, cibernética), hemos mantenido desde un principio nuestra atención hacia las guerras 'convencionales', 'clásicas'. Lamentablemente, lo que está ocurriendo en Ucrania, meses después de que finalizara la escritura del libro, ratifica nuestra preocupación, aunque solo fuera porque ha habido y hay también otros focos de conflicto armado en distintos lugares. Ucrania no representa, desafortunadamente, una

novedad absoluta. El objetivo de la obra, a la luz de los retos globales y los acontecimientos internacionales, consiste en buscar respuestas a preguntas esenciales para la agenda pública en materia de seguridad: ¿cómo modifican nuestra definición de la guerra los avances tecnológicos? ¿Qué repercusión tiene este desarrollo en la interpretación de las categorías normativas existentes?

An analysis of stagnation in multilateral law-making - and why the law of the sea has transcended the stagnation trend

Andreas Motzfeldt Kravik. In: Leiden journal of international law, vol. 34, no. 4, December 2021, p. 935-956

The article explores the current stagnation in multilateral law-making based on an analysis of recent treaty attempts across various subfields of international law. It further examines why the law of the sea has continued to evolve despite this trend. The article demonstrates that states still regularly seek multilateral treaties to address new challenges. While there is some evidence of general treaty saturation, it is the current inability of traditional great powers to negotiate new binding norms which is the most constraining factor on multilateral law-making. This in turn is related to deeper geopolitical shifts by which traditional great powers, notably the United States and its allies, have seen their relative influence decline. Until the current great power competition ends or settles into a new mode of international co-operation, new multilateral treaties with actual regulatory effect will rarely emerge. The law of the sea has avoided the current trend of stagnation for primarily three reasons (i) a global commitment to the basic tenets of the law of the sea; (ii) a legal framework that affords rights and obligations somewhat evenly disbursed, allowing less powerful states to use their collective leverage to advance multilateral negotiations, despite intermittent great power opposition; and (iii) the avoidance of entrenched multilateral forums where decisions are reached by consensus only.

https://doi.org/10.1017/S092215652100039X *

Animals as combatants and as prisoners of war ?

Jérôme de Hemptinne, Tadesse Kebebew and Joshua Joseph Niyo. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 171-183

This chapter examines to what extent 'animal soldiers' could obtain two related legal status in light of their contribution to the war effort. They could be combatants when involved in hostilities and prisoners of war after falling into enemy hands. In consequence, they would be protected by Geneva Convention III and Additional Protocol I. While these status have not been envisaged to apply to animals, elements of the protection provided by the said instruments could inspire the analogous design of a protective regime for 'animal soldiers'. This regime would be based on the following principles: no military involvement in hostilities, subsidiarity, humane treatment and animal dignity.

https://doi.org/10.1017/9781009057301.011 *

Animals as endangered species

Ayşe-Martina Böhringer and Thilo Marauhn. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 129-149

This chapter addresses the relevance of the peacetime qualification of some groups of animals as 'endangered species' in situations of armed conflict, both international and non-international. The chapter first gives an overview of the lex lata on endangered animal species in international environmental law. It discusses a number of options to enhance the protection of 'endangered species' in situations of armed conflict. By way of interpretation and by way of analogy, the rationale of peacetime protection of 'endangered species' can be integrated into international humanitarian law. The chapter finally argues that the protection of 'endangered species' in situations of armed conflict can be improved by a protection similar to specially protected objects such as cultural objects and livestock.

https://doi.org/10.1017/9781009057301.009 *

Animals as means of medical transportation, search and rescue

Jérôme de Hemptinne. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 184-199

Some principles enshrined in particular in Geneva Conventions I and IV and in Additional Protocol I regarding the protection of medical transports, equipment and personnel could potentially provide minimum safeguards for animals when these are used as a means of medical transportation or in search and rescue operations. However, this regime is in many respects inappropriate for the protection of animals. It does not take into account the fact that animals are sentient beings experiencing emotion, pain and distress. Therefore, the application of sui generis principles, tailored to the specific needs of living creatures – such as the principles of animal dignity, no military involvement and return to homeland – should be conceived in light of recent legal trends on the welfare and rights of animals in peacetime.

https://doi.org/10.1017/9781009057301.012 *

Animals as part of the environment

Jérôme de Hemptinne. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 109-128

This chapter argues that animals, as part of the environment, benefit from the protection afforded by the direct and indirect environmental safeguards offered by principles and rules of international humanitarian law. However, it also reveals that the pertinent norms are weak and largely unclear, especially in the context of non-international armed conflicts. For this reason, the chapter contends that the said rules need to be read in conjunction with the growing body of international norms, standards and mechanisms that seek to prevent and redress environmental harm during peacetime. Indeed, international environmental law has the potential to protect animals from suffering from the general deterioration of natural habitats and ecosystems caused by humans. However, the protection offered by the relevant instruments and unwritten principles is severely constrained by their narrow substantive, personal and territorial scope of application.

https://doi.org/10.1017/9781009057301.008 *

Animals as property and as objects

Marco Roscini. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 73-91

This chapter explores whether animals can be considered as 'property' and 'objects' under the law of armed conflict, in particular under Article 23(g) of the 1899/1907 Hague Regulations on the Laws and Customs of War on Land and under the law of targeting codified in Additional Protocol I. The chapter concludes that Article 23(g) of the Hague Regulations and the law of targeting apply to animals which are considered as 'property' and as 'objects'. Upon such classification, animals fall in the scope of the relevant rules. The legal consequence is that animals may only be lawfully attacked when they qualify as military objectives or when the harm done to them is proportionate incidental damage resulting from an attack on a military objective. In military operations short of attack, animals may only be destroyed or seized if military necessity 'imperatively' dictates it. The violation of these rules triggers not only state responsibility but also the criminal liability of the responsible individual(s).

https://doi.org/10.1017/9781009057301.006 *

Animals as specially protected objects

Sandra Krähenmann. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 92-108

International humanitarian law provides special protection in armed conflict to particular categories of objects, granting them additional layers of protection and providing for some restriction on their use for military purposes. This chapter explores how animals could benefit from such special protection under two headings. First, it analyses whether and with which consequences animals could be safeguarded as cultural property. Second, the chapter addresses the protection of animals as objects indispensable to the survival of the civilian population. It

concludes with some recommendations on how the category of specially protected objects could be dynamically used to enhance the protection of animals against the effects of warfare.

https://doi.org/10.1017/9781009057301.007 *

Animals as war weapons

Chris Jenks. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 150-170

This chapter suggests three legal strategies to leverage international humanitarian law for the protection of weaponised animals in armed conflict in the absence of a direct prohibition of animal weapons. Firstly, one could rely on international, regional organisation and domestic law during non-international armed conflict. Secondly, states can be confronted with their obligation to conduct weapons reviews (relating to international armed conflict). Thirdly, states proposing a ban or regulation on lethal autonomous weapons could be encouraged to promote or support comparable action towards weaponised animals. Even all three strategies in combination would not result in a universal prohibition against weaponising animals. The admittedly patchwork outcome(s) would only offer some measure of protection of animals where little currently exists. Additionally, each line of argument has the potential of gaining additional traction, whether as a matter of law, custom or policy, thus increasing the protection of animals.

https://doi.org/10.1017/9781009057301.010 *

Animals in occupied territory

Marco Longobardo. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 217-233

This chapter explores the international legal protection offered to animals in occupied territory. Some rules of international humanitarian law protecting private and public property apply to animals as well. The legal framework is complemented by the domestic law in force prior to the occupation, and by international conventions on animal conservation that remain applicable during armed conflict. Nonetheless, animals in occupied territory are insufficiently protected. In order to strengthen legal protection, occupying powers should properly fulfil their duty to observe and apply local legislation such as animal welfare statutes. A non-anthropocentric approach based on animals' needs, rather than on animals as property or as parts of the environment, would help to enhance the protection of animals in occupied territory.

https://doi.org/10.1017/9781009057301.014 *

Animals in protected zones

Matthew Gillett. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 234-263

Under international humanitarian law, areas can be designated as protected zones. These include demilitarised zones, safety zones, neutralised zones, non-defended localities and hospital zones. The chapter closely assesses the conditions in which these zones could serve to help the plight of animals during war. Although these area-based protections were conceived with anthropocentric interests in mind, they may also provide a measure of protection to animals. However, the requirements imposed by international humanitarian law on the creation of these zones – including the need for consent from the parties to a conflict, and the obligation to refrain from using such zones for any military purposes – are stringent. Moreover, bringing animals into protective areas that may be inhabited by internally displaced persons may incidentally result in detrimental outcomes for animals. In light of these difficulties, the chapter proposes pragmatic solutions to enhance the protection of animals located in these areas. Examples are preparatory measures in peacetime aiming at safeguarding particularly vulnerable animals and the creation of designated eco-centric protected zones.

https://doi.org/10.1017/9781009057301.015 *

Animals in sea warfare

Etienne Henry. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 264-277

This chapter analyses the treatment of animals in sea warfare under extant international law and it assesses the adequacy of these norms for the protection of animal welfare. The welfare of marine animals is threatened by warfare in various ways. Individual marine mammals, such as dolphins or sea lions, are trained to take part in hostilities. Other sea life suffers, whether directly or indirectly, the repercussions of hostilities. In the context of prize law, animals could in some cases qualify as contraband goods, susceptible to seizure when on board neutral vessels heading toward enemy ports. It is concluded that the law as it stands today provides neither optimal protection for animals considered as a constitutive part of the marine environment nor for animals in themselves considered as sentient beings. The chapter formulates recommendations for the progressive development of the law, including the creation of a sui generis status for sentient animals, the regulation of military sonars and the establishment of protected marine zones where no combat activities whatsoever should take place.

https://doi.org/10.1017/9781009057301.016 *

The application of the Third Geneva Convention in fluid conflicts

Laurie R. Blank. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 26-50

Armed conflicts that fluctuate between international (IAC) and non-international (NIAC), based on the changing character of the parties involved or the involvement of additional parties, present significant complexities regarding the status and protection of persons. The usually straightforward determination during IAC that a captured enemy soldier is a prisoner of war (POW) becomes the much more difficult question of what authority the detaining party has and what treatment and disposition that soldier is owed when the conflict becomes a NIAC. The internationalization of a NIAC raises the challenging question of whether detainees meeting the criteria for prisoners of war but captured during the NIAC, when such status did not exist, should now be characterized as prisoners of war. Understanding how these transitions in a fluid conflict can and should affect the status and treatment of persons is essential for effective operational planning and preparation. After examining the application of specific key terms in the Third Geneva Convention in such fluid conflicts, specifically regarding the status of detainees and the obligation to release and repatriate, this chapter highlights the underlying questions at the heart of the application of the Geneva Conventions in search of a coherent theme or principle to drive such analyses. A deeper examination of the Convention, including the basis for the key applicable provisions, suggests that although the Third Geneva Convention's meaning and intent are readily decipherable, if not explicit, the debate rests on the underlying "storyline" or theme that could or should drive interpretation in such situations.

The application of UN Charter Chapter XI to military occupations

Jonas Attenhofer. - Baden-Baden : Nomos, 2022. - 198 p.

This book argues that Chapter XI of the UN Charter should be applied to military occupations. The book operates in two parts. First, it describes the status quo of the law of military occupation and the economic incentive that this status quo holds for the occupant. Second, it shows by way of a contemporary interpretation, how Chapter XI should be applied and what it would mean for the economic rights of the inhabitants. It will be argued that the application of Chapter XI would make it economically unattractive for an occupant to stay in the foreign territory, while leaving his right to self-defense intact.

Armed unmanned aerial vehicles in new armed conflicts

Pilar Pozo-Serrano. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 124-145

Armed drones have become a crucial tool in the fight against international terrorism and in counter-insurgency operations in an increasing number of countries. The United States began using drones in the war in Afghanistan after the attacks of 11 September 2001. The novelty of drone technology and its use for targeted lethal strikes outside conflict zones has created

widespread controversy. Reports of civilian casualties, programme secrecy, and the lack of oversight, have sparked debate about its legality both inside and outside the United States. The current proliferation of unmanned aerial vehicles (UAVs) for military purposes, the increasing number of countries conducting targeted killings with drones, and the silence or ambiguity of states regarding policies and regulatory frameworks applicable to armed drones, have led to an intensification of the debate and increased the need for answers. There are two key issues in the debate regarding the use of armed drones. Firstly, whether the peculiar characteristics of drone technology make them an inherently unlawful type of weaponry. Secondly, the controversial legality of targeted killings of members of non-state armed groups outside areas of armed conflict, or in situations in which qualification as armed conflict is questionable. This paper provides an up-to-date overview of the issues surrounding the use of armed drones. It firstly analyses the relevant legal standards to determine whether armed drone technology is unlawful. To this end, it briefly outlines the development of drones for military purposes considering the changes experienced in armed conflicts. Secondly, it focuses on the policies regarding the use of armed drones and on targeted killings as formulated by those states that have made most use of this tactic. Finally, the paper addresses the rules of international law applicable to the conduct of targeted killings with drones depending on the context and circumstances in which an operation takes place. The paper closes with conclusions on the issues discussed throughout the paper and their implications for current armed conflicts.

Atrocity crimes, children and international criminal courts : killing childhood

Cécile Aptel. - London ; New York : Routledge, 2023. - XII, 275 p.

This book shows how international criminal courts have paid only limited and inconsistent attention to atrocity crimes affecting children. It elucidates the many structural, legal, financial and even attitudinal obstacles, often overlapping, that have contributed to the international courts' focus on the experience of adults, rendering children almost invisible. It reviews whether and how different international and hybrid criminal jurisdictions have considered international crimes committed against or by children. The book also considers how international criminal justice can help contribute to the recognition of the specific impact that international crimes have on children, whether as victims or as participants, and strengthen their protection. Finally, it proposes an agenda to improve this situation, making specific recommendations encompassing the urgent need to further elaborate child-friendly procedures. It also calls for international investigative and prosecutorial strategies to be less adult-centric and broaden the scope of crimes against children beyond the focus on child-soldiers. This book is an invaluable resource for academics, researchers and fieldworkers in the areas of international criminal law, international human rights law/child rights, international humanitarian law, child protection and transitional justice.

Autonomous weapons and international responsibility

Borja Montes Toscano. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 91-123

This chapter will explore the concerns that autonomous weapons pose in the medium term, such as determining a common definition of "Autonomy" and explaining the relationship between human and AI capabilities. Implementing new means and methods of warfare will unavoidably pose ethical questions about how much autonomy can we afford and whether current international law is resilient enough to face the various challenges and uncertainties that will arise as a result of the introduction of new technologies. Different proposals and solutions will be drawn with regards to individual/state responsibility and the conventional (and customary) principles that must be observed when actors utilize AWS.

Between crime and war : hybrid legal frameworks for asymmetric conflict

edited by Claire Finkelstein, Christopher Fuller, Jens David Ohlin, Mitt Regan. - New York : Oxford University Press, 2023. - XIII, 573 p.

The most prevalent hostilities in the last several decades have not been between states, but between states and organized armed non-state groups. These asymmetrical hostilities often do not resemble conventional armed conflicts, but may consist of hostile engagements of varying intensity, duration, and frequency. Forcible state responses to them need to be flexible and calibrated, but states traditionally are left with only two choices: use force under criminal law

standards governed by human rights law, or under International Humanitarian Law applicable during wartime. Neither choice, however, may be satisfactory. On the one hand, criminal law may be inadequate to deal with hostilities of a scale and intensity that exceed those with which law enforcement typically contends. On the other hand, treating hostilities as warfare may provide overly expansive permission to use force and restrict liberty. The chapters in this volume explore whether there is room for hybrid approaches that draw from the most applicable elements of each paradigm in order to construct rules of engagement for operations that straddle the line between crime and war, civilian policing and military combat, and collective and individualized forms of violence.

https://doi.org/10.1093/oso/9780197638798.001.0001 *

Biological weapons and their incompatibility with IHL

Ana Cristina Gallego-Hernández. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 60-90

The author first examines the concept of biological weapons, and their incompatibility with the principles of international humanitarian law. She then examines whether the prohibition of use is absolute according to conventional obligations. Finally, she considers the reaction of the United Nations to possible non-compliance, and how individual responsibility can be imputed by international courts.

Can criminal organizations be non-State parties to armed conflict ?

Pablo Kalmanovitz. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 618-636

The motivations of armed groups are widely considered to be irrelevant for the applicability of international humanitarian law (IHL). As long as organized violence is of sufficient intensity, and armed groups have sufficient capacity to coordinate and carry out military operations, there is an armed conflict for purposes of international law. It follows that large-scale criminal organizations can, in principle, be treated legally on a par with political insurgent groups. Drug cartels in particular, if sufficiently armed and well organized, can constitute armed opposition groups in the legal sense when their confrontation with State forces is sufficiently intense. This article problematizes this interpretation. It corroborates standing legal doctrine in finding that subjective motives are not a sound basis to exclude the application of IHL, but it argues that a workable distinction can be made between the strategic logic and the organizational goals of criminal groups and those of political insurgents. Drawing on a growing body of empirical studies on the political economy of criminal violence, a strong presumption is defended against qualifying as armed conflict organized violence involving criminal organizations.

https://library.icrc.org/library/docs/DOC/irrc-923-kalmanovitz.pdf

Casting a legal safety net : a human security approach to assisting families following armed conflict

Emily Camins. In: Israel law review : a journal of human rights, public and international law, Vol. 55, no. 3, 2022, p. 215-247

Families often have particular vulnerabilities following armed conflict. As international humanitarian law focuses primarily on regulating the conduct of hostilities, its scope for addressing the vulnerability of families and other victims of armed conflict is, at present, conceptually and practically limited. A human security approach invites consideration of the shortcomings of existing legal frameworks in addressing vulnerability, and the development of such frameworks, in a manner that helps to build resilience and address threats. For families harmed during armed conflict, this means identifying features of the existing legal regime that operate in a manner that entrenches or fails to address their vulnerabilities, as well as structural challenges that hinder access to legal opportunities such as reparations. The article identifies several structural issues and features of the legal framework that overlook or entrench the vulnerability of families. Drawing on a human security approach, it suggests that supplementing the existing legal regime with a victim assistance framework could help to address the vulnerability of families and others harmed by armed conflict.

https://library.icrc.org/library/docs/DOC/irrc-923-osasona.pdf

Childhood in rubble : the humanitarian consequences of urban warfare for children

ICRC. - Geneva : ICRC, May 2023. - 66 p.

Urban warfare causes death and injury among civilians on a staggering scale. It destroys homes, communities and the social fabric. It cuts off access to health care, education, electricity, and clean water. Even so, accounts of the consequences of urban warfare for children, as a distinct segment of the civilian population, are – when composed – often incomplete. This may come as a surprise: after all, one in six children lives in a conflict zone. Urban warfare mostly – though not always – takes place in settings with high birth rates and young populations. Children usually make up a large proportion of the people displaced (either internally or across international borders) by armed conflict. This report aims to address this gap and sets out how international law protects children in urban warfare, and makes legal, policy and operational recommendations for the actors in a position to protect children's lives. It draws from interviews with key stakeholders, and from a desk review, to provide an assessment of the consequences of urban warfare for children. Children must not be regarded simply as miniature adults. The risks they face in urban warfare settings are distinct, and must be understood within the context of their social, physical, psychosocial and cognitive development.

https://library.icrc.org/library/docs/DOC/icrc-4703-002.pdf

Children, gender, and international criminal justice

Gloria Atiba-Davies and Leo C Nwoye. - In: Gender and international criminal law. - Oxford : Oxford University Press, 2022. - p. 127-156

Insufficient attention has been paid within international criminal law (ICL) to the distinctive features of gender-based crimes against children, although the Office of the Prosecutor (OTP) of the International Criminal Court's (ICC) 2016 Policy Paper on Children makes significant strides in this direction. This chapter examines international jurisprudence on crimes against children and considers strategies to better uncover and recognize the role of gender in those crimes.

https://doi.org/10.1093/oso/9780198871583.003.0006 *

Civilising violence : international law and colonial war in the British Empire, 1850-1900

Christopher Szabla. In: Journal of the history of international law = Revue d'histoire du droit international, vol. 25, issue 1, April 2023, p. 70-104

What was the relationship between international law and colonial warfare in the period of both increasingly formal imperialism and international law's professionalisation and codification in the nineteenth-century's second half? Existing work may lead to assumptions that international law would not be seen to apply to colonial wars, or served to justify them alone. This article turns away from previous focuses on the intellectual history of international law, prescriptive sources such as military manuals, and approaches extending from criminal law and colonial policing to demonstrate how and why imperial officials, politicians, and activists believed international law applied to colonial wars. Examining the British Empire, it shows how arguments about the use of international law in this period initially varied in the service of imperial interests, how and why public activism increasingly encouraged a more consistent approach – and discusses implications for the history and present of the law of armed conflict.

https://doi.org/10.1163/15718050-bja10081

Command responsibility in the Brereton report : fissures in the understanding and interpretation of the "knowledge" element in Australian law

Emily Crawford and Aaron Fellmeth. In: Melbourne journal of international law, vol. 23, issue 1, July 2022, 25 p.

In May 2016, the Inspector-General of the Australian Defence Force ('ADF'), Major General Paul Brereton, began an investigation into allegations of war crimes by ADF special forces in Afghanistan, leading to the release in November 2020 of the Afghanistan Inquiry Report, also known as the Brereton Report. The report found credible evidence to support claims that some members of the Australian Special Air Service ('SAS') had committed war crimes during

deployment in Afghanistan between 2005 and 2013. The report notes that Command were aware of certain problematic practices in the SAS, practices that were, at the very least, suggestive of illegal conduct. The report, however, recommends against prosecuting SAS commanders on the theory that, while the commanders' actions were 'dishonest and discreditable', they could not reasonably have 'known' that their subordinates were concealing war crimes. In doing so, the Brereton Report misinterprets and misapplies the law of command responsibility. In this article, the authors examine the law of command responsibility at international law and as enacted in Australian domestic law, to attempt to account for how Brereton ultimately came to his conclusions.

https://law.unimelb.edu.au/__data/assets/pdf_file/0007/4360075/Crawford-and-Fellmeth-unpaginated.pdf

Le commerce des armes et l'obligation de respecter et faire respecter le droit international humanitaire

Cordula Droege. - In: Droit[s] de l'homme et droit international humanitaire : quelles conséquences sur les transferts d'armements conventionnels de guerre ?. - Paris : A. Pedone, 2022. - p. 119-129

Les transfert d'armes soulèvent de graves préoccupations humanitaires. Dans de nombreuses situations à travers le monde, les délégués du Comité international de la Croix-Rouge (CICR) sont des témoins directs du lourd tribut humain que l'insuffisance des contrôles sur la disponibilité des armes et des munitions inflige aux personnes et aux communautés. Dans un premier temps, cette contribution a pour vocation d'explorer le cadre normatif régulant les transferts d'armes, dans le but de mettre en lumière les obligations étatiques dans ce domaine. Dans un second temps, il sera expliqué comment répondre aux défis majeurs de mise en œuvre du Traité sur le commerce des armes afin qu'il atteigne son objectif humanitaire conformément à l'obligation de faire respecter le DIH.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/58083.pdf *

Compliance challenges of lethal autonomous weapon systems with international humanitarian law : recent developments

Katharina Parameswaran-Seiffert. In: Archiv des Völkerrechts, vol. 59, issue 4, 2021, p. 383-410

The rapid technological advancement of (lethal) autonomous weapon systems in the past few years has highlighted critical compliance challenges of such systems with international humanitarian law and has accelerated the debate on their potential regulation. This article tries to delineate the main challenges regarding the reconcilability of autonomous weapons systems with international humanitarian law and gives an overview of the current status on regulation, in particular after the GGE LAWS meeting in August 2021. Although a consensus for the need of some regulation on (lethal) autonomous weapon systems is emerging, the specific form and content of such regulation remain unclear or controversial. This article argues that even though international humanitarian law provides a framework for such weapons systems, further regulation is needed in light of ethical considerations and to ensure that the fundamental principles of distinction, proportionality and precaution are adhered to under all circumstances.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/58059.pdf *

The conduct of hostilities under the law of international armed conflict

Yoram Dinstein. - Cambridge : Cambridge University Press, 2022. - XXXVI, 420 p.

The book serves as a companion to three other volumes published by Cambridge University Press, dealing respectively with the jus ad bellum, the law of belligerent occupation, and non-international armed conflicts. It is devoted to the core of the jus in bello - that is, the conduct of hostilities on land, at sea and in the air in inter-State armed conflicts - analyzed against the background of customary international law and treaties in force. The book deals with both means and methods of modern warfare. It addresses issues of general non-combatant protection, the principle of proportionality in collateral damage to civilians, and special protection, especially of the environment and cultural property. It also considers the relevant dimensions of international criminal law and deals with controversial matters such as unlawful combatancy, direct

participation of civilians in hostilities and the use of 'human shields'. Case law and legal literature are cited throughout.

https://doi.org/10.1017/9781009106191 *

The conduct of lawfare : the cas of the Houthi insurgency in the Yemeni civil war

Sandra de Jongh and Martijn Kitzen. - In: The conduct of war in the 21st century : kinetic, connected and synthetic. - Abingdon : Routledge ; New York, 2021. - p. 249-264

This chapter applies the concept of lawfare to the Yemeni civil war. It explores whether the group's success can be explained by the concept of lawfare. Specifically, it seeks to answer the question as to whether the Houthis have deliberately employed a strategy of lawfare in their insurgent campaign and, if so, to what extent this strategy has contributed to its strategic success. To this purpose, this chapter first explores the theorical foundations of the lawfare concept. It subsequently provides an analysis of the origins and the goals of the Houthi insurgency followed by an assessment of how the Houthi's use of lawfare has contributed to the group's cause thus far. The conclusion reflects on the wider relevance of this case study's findings and offers insights for the conduct of war in today's world.

Le conflit armé en Ukraine et l'effectivité du droit international humanitaire

Philippe Lagrange. In: Revue générale de droit international public, T. 127, no. 1, 2023, p. 121-140

Si l'effectivité du droit international humanitaire ne saurait se résumer au nombre de violations de ses dispositions qui peuvent être constatées dans le cadre d'un conflit armé donné, tant ce corpus juridique a toujours fait l'objet de manquements, quelles que soient les parties ou la nature du conflit, la guerre entre la Russie et l'Ukraine interroge néanmoins par sa violence et par l'ampleur des exactions commises, avérées ou supposées. Parties à un conflit armé international, la Fédération de Russie et l'Ukraine auraient normalement du respecter la totalité des dispositions du droit international humanitaire, pensé et défini pour ce genre de situation et par des Etats s'étant engagés en ce sens. Tel n'aura pas été le cas. En même temps et paradoxalement, ce conflit aura permis de réaffirmer l'importance qu'un tel corpus juridique existe, son applicabilité à la plupart des situations conflictuelles, mais aussi son adaptabilité et sa capacité à appréhender quelque événement que ce soit. La violation d'un trop grand nombre de ses dispositions, y compris les plus essentielles, ne devrait dès lors pas se réduire à un constat d'ineffectivité ou d'échec, mais plus sûrement confirmer le principe même de sa pertinence ou de la nécessité d'encore et toujours le développer.

Consuming international law : towards an experimental research agenda for understanding the effects of corporate international humanitarian law violations on consumer buying behavior

Jonathan Kolieb. In: German law journal, Vol. 23, issue 3, April 2022, p. 333-349

The focus of international humanitarian law scholarship, and that of international law more broadly, has traditionally taken a state-centric focus, for good reason. Moreover, the age-old question of “does international law work” is explored thorough the rubric of state and, more recently, corporate-level compliance. Such endeavors, however, overlook a set of participants in international law: The individual. Diffusion of international law norms through the general populace is a valuable goal in itself, but by leveraging their decision-making as consumers, it may also play an important role in inducing greater compliance by companies and states. This is acknowledged by the proliferation of consumer boycott campaigns, country-of-origin labelling requirements, and increased demands for corporate transparency. However, little is known about whether international law influences consumer choices. Using international humanitarian law as an illustrative example, this article contends that international legal scholarship should be expanded to include the consumer within its ambit, and that one promising pathway to do so is through greater uptake of the methodological approaches and insights offered by behavioral economics.

https://doi.org/10.1017/glj.2022.25

Contemporary armed conflict and gender

Helen Durham and Laura Green. - In: Gender and international criminal law. - Oxford : Oxford University Press, 2022. - p. 371-386

This chapter addresses the gendered effects of armed conflict and certain types of violence. The authors examine recent changes in warfare, in particular the increasingly protracted nature of war, the role of women in the military, the role of new technologies, and the impact of counterterrorism. This examination includes how these changes have affected society and women more specifically.

https://doi.org/10.1093/oso/9780198871583.003.0015 *

Contemporary urban warfare : does international humanitarian law offer solutions?

Jeroen van den Boogaard. - In: The conduct of war in the 21st century : kinetic, connected and synthetic. - New York ; Abingdon : Routledge, 2021. - p. 236-248

This chapter aims to explain which solutions IHL offers to enhance the protection of the civilian population in contemporary urban warfare. In this context, the legal framework applicable to urban warfare is fist set out. Subsequently, the framework's rules concerning precautions in attack are explained. Also, the delicate balance between the feasibility of the precautions in attack in the context of urban warfare is addressed, as well as the dangers of instrumentalisation of IHL obligations as "lawfare", since these two issues impact on how precautions may be successful in reducing the impact of the conduct of war at present and in the near future of the civilian population. The example of the phone calls allegedly made by the Palestinian Authority to civilians in Gaza is revisited in this light in the conclusion.

Counting apples as oranges : problems under international humanitarian law with designating the Allied Democratic Forces and Ansar al-Sunna foreign terrorist organisations

Rebecca Rattner. In: African yearbook on international humanitarian law, 2021, p. 174-190

Under President Biden, the US has shifted its approach to ISIS to address fears about the group's expansion globally. The spread of ISIS in Africa has become an area of notable concern as an increasing number of armed groups across the continent have announced affiliations with ISIS. In response to this perceived threat, the Biden Administration announced the designation of two armed groups with ties to ISIS operating in the Democratic Republic of Congo (DRC) and Mozambique as foreign terrorist organisations (FTOs) in March 2021. There are, however, reasons to question the applicability of the designations in these two cases and consider the broader context and consequences. This article argues that the designations have been inappropriately assigned to these two groups in the DRC and Mozambique based on inaccurate factual assessments and explores the implications of this problematic approach under international humanitarian law.

Crime wars : operational perspectives on criminal armed groups in Mexico and Brazil

John P. Sullivan. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 849-875

Violent conflicts involving non-State armed groups challenge conventional perceptions of war and armed conflict. Criminal enterprises (transnational organized criminal groups including gangs and cartels) are involved in violent competition for both profit and territorial control in many parts of the world. This paper examines the situation in Mexico and Brazil as case studies to assess the legal challenges to criminal armed violence when criminal groups battle among themselves and the State. The paper focuses on the operational challenges and considerations facing police, military, and security forces and justice institutions to illuminate the legal challenges.

https://library.icrc.org/library/docs/DOC/irrc-923-sullivan.pdf

Cyber-enabled international state-sponsored disinformation operations and the role of international law

Yannick Zerbe. In: Swiss review of international and European law = Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen, Vol. 33, no. 1, 2023, p. 49-75

Although the intentional spread of falsehoods in international relations is nothing new, the invention of the internet and social media ushered in the era of cyber-enabled international State-sponsored disinformation operations (CISDOs) which enabled disinformation to become vastly more effective by targeting large audiences at a fraction of the cost. Curiously, despite the transnational harm of disinformation, international law has not been considered by many as a useful instrument to regulate CISDOs. This article aims to complement existing disinformation research by studying CISDOs through the lenses of different branches and general principles of international law. The author finds that CISDOs potentially violate various international norms, notably the principle of non-intervention as well as provisions of international human rights, humanitarian and communications law. This article also presents the different obstacles that complicate the regulation of CISDOs via international law and proposes ways to codify the prohibition of international State-sponsored disinformation through an international treaty.

Cyber operations and targeting rules

Raïssa van den Essen. - In: The conduct of war in the 21st century : kinetic, connected and synthetic. - Abingdon ; New York : Routledge, 2021. - p. 223-235

This chapter first outlines the discussions regarding the interpretation of IHL's "attack" and "object" in the context of cyber operations. Subsequently it considers "damage", which forms an important element of targeting decisions, in the context of the drafting process of the API. It is concluded by an appraisal of how different approaches towards the interpretation of attack, objects and damage will influence the understanding of the manner in which targeting rules govern cyber operations.

El derecho internacional : retos y dilemas para los sistemas de armas autónomas

Irene Vázquez Serrano. - Cizur Menor : Thomson Reuters Aranzadi, 2021. - 121 p.

Los métodos y medios para hacer la guerra no han sido ajenos al uso de las nuevas tecnologías en el ámbito de la inteligencia artificial, sobre todo si tenemos en cuenta el tradicional interés de los Estados en el incremento de su poder militar. Buena prueba de ello ha sido la creación de los Sistemas de Armas Autónomas: armas con capacidad para matar sin intervención humana. Sin embargo, no existe aún un concepto oficial ni tampoco criterios claros que puedan definirlas, haciéndose necesario, por lo tanto, un análisis de las mismas a la luz del Derecho Internacional, especialmente del Derecho Internacional Humanitario. Convencidos de la necesidad de adaptación de los Sistemas de Armas Autónomas al Derecho Internacional (y no al contrario), analizaremos de forma sucinta los principales retos y dilemas a los que se enfrentan en el marco del Derecho Internacional de los Derechos Humanos, en especial: la necesidad de una regulación específica o el establecimiento de un concreto régimen de responsabilidad, entre otros.

El derecho operacional en relación con los derechos humanos y el derecho internacional humanitario

Jonnathan Jiménez Reina y Juan Fernando Gil Osorio, Roger Jiménez Reina. In: Revista científica general José María Córdova, vol. 19, no. 33, 2021, p. 115-131

El derecho operacional, surgido para regular las operaciones de la fuerza pública, es una rama reciente del derecho sobre cuya definición y delimitación no hay suficientes aportes. Este artículo se propone determinar qué es el derecho operacional a la luz de su relación con los derechos humanos y el derecho internacional humanitario. Primero, se describe el concepto desde la perspectiva legal, jurisprudencial y doctrinal, con el fin de comprender sus características y diversas concepciones. Luego se caracterizan los conceptos de derechos humanos y derecho internacional humanitario, para resaltar su naturaleza, su contenido y su ámbito de aplicación. Finalmente, se analiza cómo el derecho operacional se relaciona con ambos conceptos, al tiempo que se identifican sus diferencias con ellos, para brindar una definición delimitada.

https://doi.org/10.21830/19006586.655

Des-encanto : Latin America and international humanitarian law

Alonso Gurmendi Dunkelberg. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 3-31

Latin America has traditionally been absent from larger narratives about the history of international humanitarian law and its role in the formation of key instruments such as the Geneva Conventions has been limited. This contrasts with the region's more successful attempts at influencing the regulation of war from the point of view of the jus ad bellum. In order to explain this dichotomy, this chapter foregrounds Latin America's experience with the laws of war in the late 19th and early 20th century, focusing on the work of scholars, jurists and diplomats who contested the dominant von Clausewitz-inspired Western-centred paradigms of the time. It explains Latin America's absence through a process of progressive disenchantment with the laws of war, coupled to its well-known strong defence of absolute non-intervention in international law. The chapter concludes that Latin America's relative absence from the history of modern international humanitarian law should be properly contextualised, not as a story of disinterest, but as an effort to protect itself from war altogether rather than humanising it.

https://link.springer.com/chapter/10.1007/978-94-6265-559-1_1 *

Detention by non-state armed groups : obligations under international humanitarian law and examples of how to implement them

Tilman Rodenhäuser. - Geneva : ICRC, March 2023. - 77 p.

Detention – by states and non-state armed groups (NSAGs) – is a reality in armed conflict. In 2021, the ICRC estimated that over 145 armed groups were holding detainees. Detention puts people in a vulnerable situation: their lives and dignity depend on the detaining authority. This vulnerability can be aggravated by various factors, such as the resources available to the detaining authority, the context in which a person is held and the reasons for the detention. Experience shows that detention by NSAGs often presents legal and practical challenges, ranging from a lack of knowledge of international rules and standards on detainee protection, in particular those found in international humanitarian law, to practical challenges such as how to ensure humane conditions of detention in the dire realities of armed conflict, or how to provide essential judicial guarantees for persons facing criminal charges. This study presents research conducted by the ICRC on the law and practice relating to detention by NSAGs. It restates the legal framework for the protection of detainees in non-international armed conflict and presents examples of how NSAGs have implemented their obligations. It also presents a limited number of ICRC recommendations on the protection of detainees.

https://library.icrc.org/library/docs/DOC/icrc-4687-002.pdf

Detention of suspected terrorists in connection with armed conflict : a focus on release and repatriation

Pavle Kilibarda and Gloria Gaggioli. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 253-304

Detention of suspected terrorists in times of armed conflict poses a unique challenge because of the difficulties in discerning the end of armed conflicts involving designated terrorist groups. Doctrinal works have largely focused on the applicable framework, legal basis, and grounds for detention and internment in such situations, but the question of release and repatriation of detainees has been largely neglected. These issues are crucial to avoid potentially indefinite deprivation of liberty. The chapter looks into the different stages of security detention and the relevant procedural safeguards from the perspective of different legal frameworks, namely the international humanitarian law of international and non-international armed conflicts, human rights law, and counterterrorism law, and offers practical guidance for a law-compliant internment regime that also allows States to protect their legitimate security concerns.

Detonating the air: the legality of the use of thermobaric weapons under international humanitarian law

Arthur van Coller. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 1125-1151

Thermobaric weapons cause damage and harm through overpressure and thermal effects, but secondary harm may also occur due to fragmentation, the consumption and depletion of ambient oxygen, and the release of toxic gases and smoke. Several international instruments prohibit or regulate weapons that generate asphyxiating or toxic gases, poison or poisoned weapons, chemical weapons, and weapons primarily designed to be incendiary. Thermobaric weapons are, however, primarily designed for blast and are not specifically covered by, or excluded from, the application of these instruments. The general customary law principles of international humanitarian law that determine the legality of the use of all weapons, including thermobaric weapons, prohibit causing superfluous injury and unnecessary suffering, and the use of indiscriminate weapons. Thermobaric weapons cause severe suffering but will not be rendered unlawful merely because of this effect. These weapons are also not automatically and inherently indiscriminate when used in their normal or designed circumstances. The use of thermobaric weapons, when directed at a military objective, while considering all feasible precautions to protect civilians and civilian objects and the principle of proportionality, will, as a result, be lawful in most circumstances. However, the use of thermobaric weapons should, in a similar manner to heavy explosive weapons, be avoided in urban or populated areas.

https://library.icrc.org/library/docs/DOC/irrc-923-vancoller.pdf

Domestic accountability efforts in response to the Russia-Ukraine war : an appraisal of the first war crimes trials in Ukraine

Iryna Marchuk. In: Journal of international criminal justice, Vol. 20, no. 4, September 2022, p. 787-803

Since the beginning of Russia's invasion of Ukraine on 24 February 2022, the Ukrainian authorities have faced an unprecedented surge in the numbers of alleged mass atrocity crimes committed in the areas of hostilities and parts of Ukraine's (de)occupied territories. Eight months into the war, the Office of the Prosecutor General of Ukraine has already registered over 47,000 instances of alleged crimes, including war crimes and the crime of aggression. Ukrainian courts have swiftly delivered first verdicts in the war crimes trials signalling their willingness to deliver justice even in the midst of the raging war. This article provides a brief recap of the domestic prosecution of atrocity crimes prior to Russia's invasion of Ukraine on 24 February 2022. It then evaluates the progress that has been achieved by the Ukrainian authorities and judiciary in relation to the prosecution and adjudication of war crimes since the beginning of Russia's invasion of Ukraine. It analyses key findings of the first war crimes verdicts rendered by the Solomyanskyy District City Court in Kyiv (later modified by the Kyiv Court of Appeals with respect to the sentence) and the Kotelevskyy District Court in the Poltava region, and appraises the application of international humanitarian law by Ukrainian judges. The article concludes by situating Ukrainian domestic efforts within the larger context in closing the impunity gap for atrocity crimes against the backdrop of a broader discussion of transitional justice in Ukraine.

https://doi.org/10.1093/jicj/mqac051 *

The draft Italian code of international crimes

Emanuela Fronza and Chantal Meloni. In: Journal of international criminal justice, vol. 20, no. 4, September 2022, p. 1027-1048

In a major effort of coordination, on 31 May 2022, the Committee of Experts appointed by the Italian Minister of Justice delivered the draft Italian 'Code of International Crimes' (CIC), whose purpose is to fully implement the Rome Statute into the domestic legal system by adopting substantive legislation on international crimes. The aim of this article is to give an account of the work of the Committee, outlining the prospective legislation and presenting the choices made within the process of implementation. The draft Italian law analysed here represents one example of the different implementation processes which followed the adoption of the ICC Statute, both with respect to the chosen method of implementation — the adoption of an ad hoc code of international crimes — and with respect to some substantive choices, such as the introduction of

the crime of cultural genocide and the responsibility of legal persons for international crimes. Ensuring coherence with the fundamental principles of the domestic legal system was of course of utmost importance and guided the entire Committee's work, in light of the state's margin of appreciation within the implementation process. In this sense, the implementation process underlying the draft CIC entailed both a transposition of concepts and elements of the ICC Statute into the domestic legal order (internationalization of national laws) and their adaptation to the specific features of the domestic system (nationalization of international criminal law).

https://doi.org/10.1093/jicj/mqac053 *

Le droit international à la lumière et à l'épreuve du conflit armé en Ukraine

Yves Sandoz. In: Revue générale de droit international public, T. 127, no. 1, 2023, p. 11-49

Cet article propose d'abord un bref survol des normes concernant l'utilisation de la force armée dans les relations internationales avant d'examiner l'applicabilité et l'application de ces règles dans le conflit ukrainien. Sa seconde partie est consacrée à l'applicabilité et l'application du droit de la neutralité par rapport à ce conflit. Sa troisième et dernière partie s'arrête finalement sur l'applicabilité et l'application du droit international humanitaire.

Droit[s] de l'homme et droit international humanitaire : quelles conséquences sur les transferts d'armements conventionnels de guerre ?

sous la direction de Laurent Trigeaud ; Centre de recherche sur les droits de l'homme et le droit humanitaire. - Paris : A. Pedone, 2022. - 262 p.

En France, au Royaume-Uni et en Belgique – trois Etats parmi les premiers exportateurs européens d'armements conventionnels de guerre –, les contentieux relatifs aux autorisations administratives de transfert ne cessent de se multiplier, dénonçant les exportations vers des Etats violant le droit international des droits de l'homme et le droit international humanitaire. Sont invoqués les engagements internationaux liant les pays exportateurs, en particulier le Traité sur le commerce des armes de 2013, qui prohibent tout transfert dès lors que l'État partie a connaissance, lors de l'autorisation, que ces armes pourraient servir à commettre de telles infractions. Au-delà de ces procédures contentieuses nationales, la question s'installe jusqu'au cœur des relations diplomatiques internationales, au point de constituer des tensions souvent fortement médiatisées. Le XVe colloque international du Centre de recherche sur les droits de l'homme et le droit humanitaire (université Paris Panthéon-Assas) vise à analyser cette tendance et se propose de dresser un état des lieux de la règlementation nationale (française en particulier), régionale et internationale du transfert d'armements de guerre.

Fault lines in the application of international humanitarian law to cyberwarfare

Humna Sohail. In: The journal of digital forensics, security and law, vol. 17, 2022, p. 1-13

The dynamics of warfare have changed from the conventional wars fought on the battlefield to virtual warfare as states have been involved in the cyber arms race. From simple distributed denial-of-service (DDoS) attacks to the potent Stuxnet and Flame the cyberweapons vary in their potential human cost. The Law of Armed Conflict (LOAC) is drafted flexibly to adapt to changing circumstances. This paper is primarily based upon the assumption that existing treaty law is sufficient in many aspects yet in some areas treaty-making is also needed. What is the foreseeable solution is the comprehensive state practice for interpreting the existing rules (lex lata) regulating the armed conflict in the cyber context. This is because armed conflicts in cyberspace differ from kinetic warfare in multiple dimensions. The world community is yet to reach a consensus on how LOAC protects at times of cyberwarfare. From defining the basic terms like attack and object to the attribution needs resolution. Given such ambiguity, international humanitarian law (IHL, interchangeably used with LOAC) will more frequently be violated in conflicts occurring in cyberspace than in physical space. Efforts by states in sincere exploitation of existing laws are the sine qua non for the evolution of IHL in the cyber context.

https://www.proquest.com/scholarly-journals/fault-lines-application-international/docview/2661588237/se-2

Fighting a war without violence : the rules of international humanitarian law for military cyber-operations below the threshold of "attack"

Bart Van den Bosch. - In: The conduct of war in the 21st century : kinetic, connected and synthetic. - Abingdon ; New York : Routledge, 2021. - p. 211-222

The rapid development of the cyber domain has rendered both the military and society as a whole increasingly dependent on non-physical elements such as data and computer programs. For armed conflicts this opens up a whole range of possibilities for 'non-violent' operations, or operations below the threshold of 'attack' as understood by IHL. This urges for a better understanding of what exactly encompasses a cyberattack, and when an operation is staying below this threshold. Furthermore, clarification is needed about the extent and way in which the rules IHL apply to these cyberoperations not reaching the level of 'attack'. Although it is generally accepted that IHL is applicable in the cyber domain, the exact implementation of existing rules has been subject of a fierce debate. In the case of cyberattacks this has resulted in two main points of view, the so-called permissive and the restrictive school, respectively. This chapter introduces a theory that combines both schools by preserving their strong and overcoming their weak points which allows for formulating practical guidelines for implementing IHL in military cyberoperations below the threshold of attack. In addition, this novel theoretic approach towards IHL also offers a new starting point for the discussion on what legal regime or regimes best fit grey zone warfare.

Fighting state actors with the tools of hybridized warfare : can the law of armed conflict be saved?

Claire Finkelstein. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 153-182

With the killing by the United States of Iranian general Qassim Soleimani, the war on terror crossed a new frontier in the use of extra-judicial lethal operations outside of armed conflict. As a state actor, Soleimani would once have been entirely off-limits as a target outside the context of a formal armed conflict between the U.S. and Iran, despite his leadership of the Quds force, an organization that lends support to violent nonstate actor groups across the Middle East. Nevertheless, the fact that the Trump Administration felt entitled to conduct a one-off strike on a state military leader using drone technology underscores the degree to which conflicts among state adversaries are increasingly fought using the hybridized tools of the war on terror. This chapter will argue that the rise in the use of such techniques, and the perceived relaxation of the constraints of international law in conflicts among states, is a regrettable, but foreseeable, result of a certain way of conceiving of violent nonstate actors that started immediately after the attacks on 9/11. Greater clarity about the legal boundaries governing the use of Bush-era interrogation methods as well as Obama's dramatic increase in the use of extrajudicial killing against nonstate actors might have forestalled this development and ensured that the techniques of the war on terror were constrained to their original context. This chapter first addresses the legal ambiguity of targeted killing as it devolved from the Bush and Obama Administrations in the aftermath of 9/11 with respect to nonstate actors, particularly the decision to predicate the legality of targeted killings on the status of terror groups as "unlawful combatants." This framework meant that the detainees captured in the war on terror lacked the traditional protections of the Law of Armed Conflict (LOAC), at the same time that they were deprived of the protections ordinarily extended to criminal defendants. Leaving detainees between two legal regimes provided license for their abuse as well as an uncertain legal basis for those who were targeted rather than captured in the next phase of the war. This chapter will argue that greater clarity would have resulted from considering violent non-state actors as civilians rather than combatants, an approach that is wholly inappropriate for state actors like Soleimani, whose status as a state actor should leave little doubt as to his legal status outside the context of armed conflict.

https://doi.org/10.1093/oso/9780197638798.003.0007 *

Fighting terrorism under all applicable law

Joshua Andresen. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 91-124

This chapter shows that attempts to liberalize restrictions on the use of force in counterterrorism operations should be rejected not only on legal grounds but also as contrary to our national security interest. An increasing number of empirical studies show that more force, particularly in the form of airstrikes, increases terrorist violence and recruitment while increasing popular support for terrorist groups. A restrictive approach to the law governing the use of force against terrorist threats is thus the most effective way to address the reality of those threats. Contrary to the view that international humanitarian law (IHL) is the only source of restrictions on the use of force in counterterrorism operations, this chapter argues that international human rights law (IHRL) can impose additional restrictions on the use of force, particularly when force is used in civilian populated areas away from active combat. Following the jurisprudence of international courts on the application of IHL and IHRL to armed conflict, this chapter puts forward seven factors that should be analyzed to determine the relative application of IHL and IHRL to the use of force in counterterrorism operations. A determination of whether an armed conflict exists is just the first step in determining what kind of force may be used. It is also necessary to consider the circumstances in which force will be used and the reliability of the information on which a strike is predicated to determine the law properly governing the operation.

https://doi.org/10.1093/oso/9780197638798.003.0005 *

Finding peace in the law of war

Bailey Brown. - In: Between crime and war : hybrid legal frameworks for asymetric conflict. - New York : Oxford University Press, 2023. - p. 407-435

As the United States navigates what appear to be the closing stages of operations in Iraq and Afghanistan and continues to support domestic counterinsurgency forces in conflict zones, it becomes increasingly important to consider when the lex specialis recedes and domestic civil law, the lex generalis, becomes the governing jurisprudence. This chapter examines whether these standards that define the start of armed conflict, such as in Article 2 of the 1949 Geneva Conventions and the standard expressed in the case of Prosecutor v. Tadic, from the International Criminal Tribunal for the Former Yugoslavia, simply can be reversed to define the end of the law of armed conflict (LOAC) and a return to civil law. The chapter concludes that they do not, in the inverse, define the conditions for transition from the law of war to the law of peace. Next, the chapter examines experiences from two recent armed conflicts to derive from them insights into the transition to civil law. Afghanistan's and Columbia's ongoing difficulties with the transition to peacetime law provide informative case studies and offer potential policy factors that may contribute to the success, or failure, of policy framework supportive of successful transition to civil law. Examination of these two countries will show that LOAC and civil law can apply simultaneously, with separate legal regimes supporting efforts gradually to reduce armed conflict and to encourage civil order. These examples show that a return to peacetime law depends on multiple legal, practical, and political factors.

https://doi.org/10.1093/oso/9780197638798.003.0014 *

From words to deeds : a study of armed non-state actors' practice and interpretation of international humanitarian and human rights norms : Moro Islamic Liberation Front/Bangsamoro islamic armed forces

Chris Rush. - [Geneva] : [Geneva Academy of International Humanitarian Law and Human Rights], August 2022. - 63 p.

This case study has been conducted as part of the research project as part of the research project 'From Words to Deeds: A research Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms', which aims at providing tools for an effective engagement of armed non-State actors to improve humanitarian protection. From a legal perspective, while armed non-state actors (ANSAs) are bound by international humanitarian law (IHL), how they perceive, understand and act upon their obligations has remained insufficiently explored. Through a comparative analysis of selected norms, the research project aims to advance understanding of ANSAs' perspectives and behaviour, enhance strategies to promote their

compliance with IHL as well as inform future international law-making processes. By assessing the Moro Islamic Liberation Front's (MILF's) practice and interpretation in relation to a selection of IHL rules, this case study aims to fill this gap. Compiling and analysing the MILF's views enables an understanding of how this ANSA perceived international law, the norms that enjoyed greater acceptance and those that were disputed. This case study responds to several inquiries, notably why the MILF chose to express its views through specific commitments and the references contained therein, and how its internal dynamics and policies evolved throughout the conflict.

https://words2deeds.org/wp-content/uploads/2022/09/MILF_Case-Study.pdf

From words to deeds : a study of armed non-state actors' practice and interpretation of international humanitarian and human rights norms : The Hezbollah - Lebanon

Hiba Mikhail and Hassan Baalbaky. - [Geneva] : [Geneva Academy of international humanitarian law and human rights], September 2022. - 81 p.

This case study has been conducted as part of the research project as part of the research project 'From Words to Deeds: A research Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms', which aims at providing tools for an effective engagement of armed non-State actors to improve humanitarian protection. While making reference to other Shiite armed actors active in the Middle East, the present study focuses on Hezbollah, an armed resistance movement founded in 1982 in response to the invasion of Lebanon by Israel. Hezbollah has been engaged in armed conflicts with Israel and has been fighting in Syria alongside the Syrian Government. Reports by the United Nations, the International Commission of Inquiry for the Syrian Arab Republic as well as human rights organizations have documented IHL violations allegedly committed by Hezbollah. These reports were considered in the development of this study, which is based on desk research, including a thorough analysis of public addresses by Hezbollah's secretary-general and leadership, as well as semi-structured interviews with members of Hezbollah conducted face to face. Selected experts and aligned academics were also interviewed to contextualize the findings.

https://words2deeds.org/wp-content/uploads/2022/09/Hezbollah_Case-Study.pdf

Gender and international criminal law

ed. by Indira Rosenthal, Valerie Oosterveld, Susana Sàcouto. - Oxford : Oxford University Press, 2022. - XLIII, 442 p.

This book brings together leading feminist international criminal and humanitarian law academics and practitioners to examine the place of gender in international criminal law (ICL). It identifies and analyses prevailing misconceptions and narrow understandings of gender, before turning to a consideration of the impact a limited conceptualization has on accountability efforts and the protection of rights. It includes specific examples from national and international jurisprudence from which it is clear that the term 'gender' has not been well understood and that gender 'blind spots' prevail. These manifest starkly, for example, with respect to sexual violence against men and boys, gender-based crimes affecting children, and the gendered dimensions of slavery, forced marriage, and reproductive crimes. The authors consider how best to implement a deeper and more accurate understanding of gender in the practice of international criminal law by identifying possible responses, including embedding a sophisticated gender strategy into the practice of ICL, the gender-sensitive application of international human rights and international humanitarian law, and feminist reconstruction of judging in ICL. Other authors examine efforts to ensure that gender is expansively interpreted in ICL, for example in a new treaty on crimes against humanity, and that victims' reparation awards are gender-inclusive. The objective of this book is to promote a more nuanced and expanded understanding of the concept of 'gender' in the field ICL in order to strengthen efforts for accountability for war crimes, crimes against humanity, genocide, and aggression.

https://doi.org/10.1093/oso/9780198871583.001.0001 *

The gendered framework of international humanitarian law and the development of international criminal law

Michelle Jarvis and Judith Gardam. - In: Gender and international criminal law. - Oxford : Oxford University Press, 2022. - p. 47-73

Women (and girls) are disproportionately adversely affected by armed conflict. Attempts to address these effects have been hindered by gender stereotypes and assumptions. This chapter analyses the role of gender in international humanitarian law (IHL) and international criminal law (ICL). The aim of the chapter is to show the connection between gender in IHL and ICL and to expose the challenges this creates in successfully responding to the effects of armed conflict on women. The chapter provides an overview of gender in the context of IHL prior to the development of ICL, including the failures of IHL to fully address the experiences of women in armed conflict. It then examines how gendered concepts in IHL have influenced and been incorporated into ICL. It addresses how IHL has hindered ICL with outdated gender concepts, as well as ways in which ICL has evolved these concepts.

https://doi.org/10.1093/oso/9780198871583.003.0003 *

The "general close of military operations" as the benchmark for the declassification of armed conflicts and the end of the applicability of international humanitarian law

Julia Grignon. In: The Canadian yearbook of international law = Annuaire canadien de droit international, vol. 59 (2021), p. 80-103

When does an armed conflict end? When does the specific body of law applicable to such a situation — namely, international humanitarian law (IHL) — cease to apply? There is, to date, no clear-cut answer to these questions in treaty law but, rather, a functional approach to the matter. Anchored in wider research related to the temporal scope of applicability of IHL, this contribution demonstrates how the notion of the “general close of military operations,” which appears in Article 6, paragraph 2, of Geneva Convention IV and in Article 3(b) of Additional Protocol I, fulfills the function of determining that any armed conflict has ended.

https://doi.org/10.1017/cyl.2022.11

Greening the law of environmental protection in armed conflicts

Stavros-Evdokimos Pantazopoulos. In: Netherlands yearbook of international law, vol. 52 (2021), 2023, p. 75-99

The issue of the protection of the environment in relation to armed conflicts (‘PERAC’) has gained momentum in recent times, especially in the post-2000s period. This development follows the more general trend of ‘greening’ international law, which is now a cross-cutting theme permeating the entire international legal order. Against this background, I periodize the different phases of international PERAC-related processes by reference to specific historical events with symbolic value. My objective is twofold: at first, I endeavour to demonstrate that the process of greening both the practice and the law of PERAC is being increasingly driven by actors other than States. At a second step, I explore the extent to which greening within PERAC has taken place. To do that, I offer certain concrete examples drawn from two recent legal initiatives, undertaken by the International Law Commission and the International Committee of the Red Cross, respectively.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS//57967.pdf *

Hacken zur Verteidigung : eine völkerrechtliche Analyse der im Ukraine-Krieg beteiligten IT-Armee(n)

Janine Schmoldt. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 5, H. 3-4, 2022, p. 149-163

Der gegenwärtige Krieg in der Ukraine wird auch im digitalen Raum ausgetragen. So nutzen Russland wie auch die Ukraine den Cyberraum, um wechselseitig Ziele der anderen Seite anzugreifen. Kurz nach der russischen Invasion im Februar 2022 rief die ukrainische Regierung dazu auf, sich an dem bewaffneten Konflikt zu beteiligen, sich einer ‘IT-Armee’ auszuschließen und/oder Cyberangriffe gegen russische Ziele auszuführen. Seither sind viele verschiedene nichtstaatliche Hackergruppen, Kollektive und Freiwillige digital in den bewaffneten Konflikt in

der Ukraine involviert und versuchen, Russland zu bekämpfen. Solch eine Beteiligung nichtstaatlicher Hacker:innen hat jedoch völkerrechtliche Konsequenzen: Dieser Beitrag untersucht den völkerrechtlichen Status der am Ukraine-Krieg beteiligten, freiwilligen Hacker:innen und argumentiert, dass aufgrund der Heterogenität der Akteure verschiedene völkerrechtliche Schutzrechte und Pflichten greifen könnten.

https://doi.org/10.35998/huv-2022-0010 *

Harvesting vulnerability : the challenges of organ trafficking in armed conflict

Thomas Martial. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 674-705

Armed conflicts leave populations vulnerable to organ trafficking, a criminal enterprise with little international regulation when viewed separately from human trafficking. The Council of Europe's Convention against Trafficking in Human Organs is the only instrument to contemplate the responsibility of actors involved in organ trafficking, but traffickers may go unpunished due to its limited scope. Yet in armed conflict, international humanitarian law offers additional protection. The rules protecting the living and the dead against ill-treatment provide the basic level of protection necessary to consider the international responsibility of organ trafficking networks and the individual criminal responsibility of their members.

https://library.icrc.org/library/docs/DOC/irrc-923-martial.pdf

"How did they die ?" : bridging humanitarian and criminal-justice objectives in forensic science to advance the rights of families of the missing under international humanitarian law

Anjli Parrin. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 1047-1070

There are thousands of families of missing persons around the world who search for answers as to the fate and whereabouts of their loved ones, hoping to be reunited with them, or in the event that they are deceased, to be able to mourn and grieve their death with dignity. The article argues that under certain circumstances, it is a requirement of international humanitarian law to provide some information about the cause, manner and circumstances of death to families. It also argues that the International Red Cross and Red Crescent Movement can strengthen the rights of families of the missing by engaging confidentially (directly or indirectly) with judicial bodies that are charged with both identification of the missing and accountability for violations of international humanitarian law. While this is challenging, it is argued that it is often possible to do so while respecting and adhering to the fundamental principles of the Movement, and, in turn, advancing the fundamental principle of humanity.

https://library.icrc.org/library/docs/DOC/irrc-923-parrin.pdf

How does buddhism compare with international humanitarian law, and can it contribute to humanising war ?

Andrew Bartles-Smith. In: Contemporary Buddhism, Vol. 22, no. 1-2, 2021, p. 8-51

This article examines Buddhist teachings relevant to the regulation of war and compares them with international humanitarian law (IHL) and the just war tradition by which it has been informed. It argues that Buddhist ethics broadly align with IHL rules to minimise harm inflicted during war, and that Buddhism's psychological resources can help support IHL to improve compliance with common humanitarian norms. Indeed, Buddhist mindfulness techniques can support even non-Buddhist combatants by enhancing their psychological resilience and capacity to fight with skill and restraint. While IHL is a legal regime that legitimises violence under certain conditions, and lays down clear universally ratified rules, Buddhism is primarily an ethical and psychological system that addresses the motivations and inner roots of behaviour and can be understood and interpreted in different ways. In this respect, Buddhism overlaps with the field of military ethics, and can contribute much to enhance military training. However, while the centrality of non-harming (ahiṃsā) to Buddhism dictates that extraordinary efforts should be made to prevent war or otherwise minimise the harm inflicted – thereby checking interpretations of IHL that are overly permissive – Buddhism's consequent reluctance to legitimise and thereby institutionalise war, and the ambiguity of its teachings in this regard, have generally precluded it

from developing clear just war guidelines for belligerents to follow, and Buddhist resources to improve the conduct of hostilities have remained largely untapped. Mainstream traditions of Buddhist ethics must also be distinguished from more esoteric and localised beliefs and practices, and from the lived Buddhisms with which most lay Buddhists are more familiar, which do not necessarily embody the same degree of restraint. Belligerents might therefore have different conceptions or expectations of Buddhism depending on their culture and particular circumstances, or be unclear about what it says on the conduct of war.

https://doi.org/10.1080/14639947.2021.2149052

The Howard S. Levie distinguished essay : Some reflections on the threshold for international armed conflict and on the application of the law of armed conflict in any armed conflict

T.D. Gill. In: International law studies, vol. 99, 2022, p. 698-730

This essay discusses the threshold of application of international humanitarian law (IHL) in both international (IAC) and non-international armed conflicts (NIAC). In relation to IAC it questions whether the International Committee of the Red Cross (ICRC) "first shot" approach is the most appropriate, since it opens the way for the intensification of conflicts beyond what is necessary in relation to relatively minor armed incidents and argues that the humanitarian protection clauses of IHL should be separated from the rules governing hostilities and makes a case for the application of ad bellum considerations of necessity and proportionality to act as a parallel set of constraints on the targeting of persons and objects alongside IHL rules on targeting. The essay then goes on to discuss the consequences of lowering the threshold of armed conflict in NIAC while exponentially increasing the number of applicable rules to armed groups, regardless of their degree of ability to comply with many of those rules. It advocates a basic set of rules relating to both the conduct of hostilities and treatment of persons to all NIACs and a progressive increase in the number of rules as the conflict intensifies and the armed group takes on more of the characteristics of a State. Finally, the essay discusses the ICRC's "support based approach" (SBA) for determining when a multinational force or other entity becomes party to an ongoing armed conflict and advances arguments against the acceptance of the SBA as law or policy.

https://digital-commons.usnwc.edu/ils/vol99/iss1/29/

Human rights law as an alternative to jus in bello

Christopher J. Fuller. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 315-343

This chapter addresses the United Kingdom's adoption of targeted killing by drone strike as a counterterrorism policy. It compares the domestic costs of America's application of a war paradigm in its counterterrorism efforts over the past two decades to the United Kingdom's less disruptive retention of a crime paradigm, before demonstrating the ways in which the British government has gradually adopting aspects of America's approach, including a reliance upon the laws of war to justify lethal action against terrorist targets abroad. The chapter then challenges this shift toward a war paradigm to defend the UK homeland by urging that Britain retain its recognition of terrorists as criminals not combatants, instead utilizing human rights law, in particular Article 6 of the International Covenant on Civil and Political Rights and Article 2 of the European Convention on Human Rights, to provide an adequate and less domestically fractious model for the application of lethal force when absolutely necessary against terrorists plotting imminent attacks from foreign safe havens.

https://doi.org/10.1093/oso/9780197638798.003.0011 *

Humanitarianism and affect-based education : emotional experiences at the Jean-Pictet competition

Rebecca Sutton and Emiliano J. Buis. In: International review of the Red Cross, Vol. 923, no. 105, August 2023, p. 1092-1124

For international lawyers seeking to promote compliance with international humanitarian law (IHL), some level of affective awareness is essential – but just where one might cultivate an understanding of emotions, and at which juncture of one's career, remains a mystery. This article proposes that what the IHL lawyers and advocates of the future need is an affect-based education.

More than a simple mastery of a technical set of emotional intelligence skills, what we are interested in here is the refinement of a disposition or sensibility – a way of engaging with the world, with IHL, and with humanitarianism. In this article, we consider the potential for the Jean-Pictet Competition to provide this education. Drawing on our observations of the competition and a survey with 231 former participants, the discussion examines the legal and affective dimensions of the competition, identifies the precise moments of the competition in which emotional processes take place, and probes the role of emotions in role-plays and simulations. Presenting the Jean-Pictet Competition as a form of interaction ritual, we propose that high "emotional energy" promotes a humanitarian sensibility; indeed, participant interactions have the potential to re-constitute the very concept of humanitarianism. We ultimately argue that a more conscious engagement with emotions at competitions like Pictet has the potential to strengthen IHL training, to further IHL compliance and the development of IHL rules, and to enhance legal education more generally.

https://library.icrc.org/library/docs/DOC/irrc-923-sutton.pdf

ICRC perspectives on the interpretation of the Third Geneva Convention more than seventy years after its adoption

Jean-Marie Henckaerts, Kubo Macák, Mickail Orkin and Ellen Policinski. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 375-407

This chapter aims to share the ICRC's experience and insights in applying the treaty interpretation methodology set out in the Vienna Convention on the Law of Treaties to the interpretation of the Geneva Conventions. It draws on the work accomplished in updating the first three Commentaries on the Geneva Conventions, focusing on the Third Geneva Convention. It explains how the rules for treaty interpretation have been applied in this process. It looks in particular at the requirement that an interpretation be carried out in good faith, the concepts of the "ordinary meaning of terms" and the "object and purpose" of a Convention. It further examines the impact of subsequent developments in practice and law on the interpretation of the Conventions and surveys the supplementary means of interpretation set out in the Vienna Convention. Finally, it examines how the Commentaries have drawn a distinction between the law as it stands today (lex lata) and the law as it should be (de lege ferenda).

"If the only tool you have is a hammer, everything looks like a nail" : about autonomous weapons, individual responsibility, and legal positivism

Vanessa Vohs. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 5, H. 1/2, 2022, p. 78-93

Autonomous Weapon Systems (AWS) are commonly criticised as creating an 'accountability gap' because the necessary condition of a mens rea to be responsible under international criminal law (ICL) would not be fulfilled. This "gap" is often used as an argument, to call for a regulation of AWS. This article aims at broadening this orthodox positivistic perspective in seeing ICL as the main reason to call for a regulation of AWS. For this purpose, it will first draw on the conceptual importance of accountability; second, it will discuss positivistic endeavours to close the gap; and third, a jurisprudential perspective will be applied. It is argued that while it is necessary for foreseeability and transparency purposes to hold on to the positivistic paradigm of separating law from non-law (internal point of view), an instrumentalist and multidisciplinary position of lawyers and other players is required to reflect holistically about dealing with AWS (external point of view). Hence, ICL is one lens to look at AWS, while it can never be an exclusive perspective, requiring a broader view on the interaction of law and politics.

https://doi.org/10.35998/huv-2022-0006 *

IHL in the era of climate change : the application of the UN climate change regime to belligerent occupations

Romina Edith Pezzot. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 1071-1091

This article invites the reader on a journey through the legal arguments that would confirm the application of the United Nations (UN) climate change regime to belligerent occupations. Although the regime is silent on this issue, its application should not be limited to peacetime due to the seriousness of global climate change and its adverse effects on the environment and living

entities. A harmonious interpretation and application of the UN climate change regime and the law of occupation would allow Occupying Powers to ensure the safety and well-being of the civilian population and contribute to the protection of the Earth's climate system.

https://library.icrc.org/library/docs/DOC/irrc-923-pezzot.pdf

Individual criminal responsibility for autonomous weapons systems in international criminal law

by Barry De Vries. - Leiden ; Boston : Brill Nijhoff, 2023. - VIII, 293 p.

In this book Barry de Vries addresses the issue of autonomous weapons in international criminal law. The development of autonomous weapon systems is progressing. While the technology advances, attempts to regulate these weapons are not keeping pace. It is therefore likely that these weapons will be developed before a new legal framework is established. Many legal questions still remain and one of the most important ones among them is how individual responsibility will be approached. Barry de Vries therefore considers this issue from a doctrinal international criminal law perspective to determine how the current international criminal law framework will address this topic.

The Inspector-General of the Australian Defence Force Afghanistan inquiry report and the applicability of Additional Protocol II to intervening foreign forces

Carrie McDougall. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 992-1016

This article critiques the articulation of the legal framework applicable to Australian Defence Force operations in Afghanistan found in the Inspector-General of the Australian Defence Force Afghanistan Inquiry Report (Brereton Report). In particular, using the Australian experience in Afghanistan as a case study, the article argues, on the basis of the rules of treaty interpretation, that where a foreign State party to Additional Protocol II (AP II) intervenes in a non-international armed conflict (NIAC) to which AP II applies, that foreign State is bound by AP II, in addition to the host State and non-State armed actors that are parties to the NIAC. The article concludes by outlining the reasons why the Brereton Report's silence in relation to AP II matters.

https://library.icrc.org/library/docs/DOC/irrc-923-mcdougall.pdf

Internal displacement and the law

Walter Kälin. - Oxford : Oxford University Press, 2023. - XXXIII, 348 p.

The world faces more than 60 million people displaced by armed conflict and disasters as of 2022. Climate change is set to trigger large-scale displacement in the future. Internal Displacement and the Law discusses to what extent the present law can contribute to preventing, responding to, and resolving internal displacement and protecting the rights of these internally displaced persons (IDPs). It also identifies its weaknesses and examines ways to improve action. The book's analysis reflects the realities of internal displacement and the challenges faced by displaced individuals and communities, their hosts, governments, and international actors. Assessing the UN Guiding Principles on Internal Displacement and the Kampala Convention on the Protection and Assistance of Internally Displaced Persons in Africa, this enlightening volume investigates the relevance of international human rights and humanitarian law to the problem of displacement with an eye toward durable solutions. In line with its human rights approach, this work promotes a narrative that, based on the concept of sovereignty as responsibility, emphasizes the primary responsibility of states to address the needs of IDPs and views them as citizens with rights and agency rather than as vulnerable beneficiaries of humanitarian action. The author concludes that the body of relevant law amounts to an emerging legal regime on internal displacement whose substantive norms are largely adequate, but which faces specific institutional challenges at domestic and international levels that weaken efforts to address the plight of IDPs.

https://doi.org/10.1093/oso/9780192899316.001.0001 *

International child law and the settlement of Ukraine-Russia and other conflicts

Diane Marie Amann. In: International law studies, Vol. 99, 2022, p. 559-601

The Ukraine-Russia conflict has wreaked disproportionate harms upon children. Hundreds reportedly were killed or wounded within the opening months of the conflict, thousands lost loved ones, and millions left their homes, their schools, and their communities. Yet public discussions of how to settle the conflict contain very little at all about children. This article seeks to change that dynamic. It builds on a relatively recent trend, one that situates human rights within the structure of peace negotiations, to push for particularized treatment of children's experiences, needs, rights, and capacities in eventual negotiations. The article draws upon twenty-first century projects that examine the lives of children in armed conflict by synthesizing international child law. The projects' syntheses have influenced the work of certain international organizations bodies but not, to date, the work of peace settlements. To demonstrate their relevance to conflict resolution, the article first outlines two syntheses by the United Nations and by the International Criminal Court Office of the Prosecutor. After mapping child rights and conflict harms, it examines the treatment of children in Colombia's 2016 peace agreement and a 1999 agreement related to Sierra Leone. The article concludes by proposing child-inclusive options for peace processes and eventual peace agreements.

https://digital-commons.usnwc.edu/ils/vol99/iss1/25/

International conflict and security law

Laurie R. Blank. - Cheltenham ; Northampton : E. Elgar, 2023. - VIII, 304 p.

This incisive book provides an extensive analysis of the robust array of international law applicable across the spectrum of international conflict and security. With a particular focus on new and emerging technologies and domains such as cyber and outer space, Laurie Blank illustrates how international conflict and security law applies to 21st century challenges

https://doi.org/10.4337/9781800377240 *

International humanitarian law and the conduct of cyber hostilities : quo vadis ?

Michael N. Schmitt. In: Journal of international humanitarian legal studies, Vol. 13, no. 2, 2022, p. 189-221

War and international humanitarian law (IHL) exist and evolve in a synergistic relationship. On the one hand, treaty and customary law norms can proactively shape warfare. But on the other, changes in the nature of warfare often determine IHL's path forward, for if IHL is to remain effective, it must remain responsive to the context in which it is to be applied. This article offers tentative reflections on how future conflict may affect the evolution of IHL's conduct of hostilities rules as applied to 'cyber capabilities'. It concludes that current and future cyber capabilities and vulnerabilities are driving the positions of States and the wider international community regarding cyber operations during armed conflict. In particular, it predicts movement in the direction of interpreting IHL rules restrictively, that is, in a manner that provides enhanced protection for the civilian population, sometimes at the expense of military advantage.

https://doi.org/10.1163/18781527-bja10059 *

International humanitarian law in the African Commission's general comment no 3 on the right to life : a critical and comparative analysis

Brian Sang YK. In: African yearbook on international humanitarian law, 2021, p. 93-133

The African Commission on Human and Peoples' Rights, which is the treaty body established to monitor the States Parties' compliance with the African Charter on Human and Peoples' Rights, adopted General Comment No 3 on the Right to Life in 2015. The African Commission's General Comment No 3 provides authoritative normative guidance for interpreting and implementing the right to life under Article 4 of the African Charter in armed conflict situations. Specifically, it outlines the African Commission's perspective on the right to life by elaborating on its scope and content, and also by clarifying the protections for individuals and the concomitant obligations of states. This article systematically discusses how and to what extent international humanitarian law (IHL) norms are integrated into the African Commission's General Comment No 3, and what the likely effects of such integration are. Using a critical and comparative approach, this article

analyses General Comment No 3's interpretive approach to arbitrary deprivation of life in armed conflict; the constraints on lethal force during the conduct of hostilities; and states' extraterritorial legal obligations. The article demonstrates that, although it is a creditable advance in elaborating the right to life during armed conflict and other situations of violence, General Comment No 3 leaves key aspects of the IHL–human rights law interface either laconically addressed or ineffectually articulated. Those aspects will have to be clarified in the African Commission's future jurisprudence.

The international humanitarian law principle of distinction and UN peace support operations' deployment objectives : conflicting approaches and undesirable outcomes ?

Charuka Ekanayake. In: Annuaire de La Haye de droit international = Hague Yearbook of international law, Vol. 33, 2020, p. 191-223

The contexts into which United Nations Missions are deployed today are characterized by extensive levels of violence. The objectives pursued by these missions through use of force have also widened, with extreme elements such as MONUSCO's Force Intervention Brigade even authorized to conduct offensive operations against identified armed groups. But these expansions do not justify a distancing from (or dilution of) the unique ethos to which UN troops belong. It is in this backdrop that this piece posits its principal research question: whether the international humanitarian law provisions relevant to the operationalization of the principle of distinction can ensure the realization of United Nations' use of force objectives. To answer this question, the article first delves into the ad bellum and in bello moral calculations relevant to the UN and analyzes their salient characteristics. This exercise identifies crucial connections that exist between the two calculations and thus distills the specific courses of action UN troops are required to pursue (and desist from pursuing) on the battlefield. The moral signposts so deduced are thereafter compared against the content of the IHL rules that operationalize the principle of distinction. This analysis ultimately ascertains whether the legal rules under reference can secure or accommodate the outcomes pursued by UN uses of force; outcomes that are in turn dictated by the organization's deployment objectives.

International law and the regulation of autonomous military capabilities

Abhimanyu George Jain. In: European journal of international law, vol. 33, no. 4, November 2022, p. 1093-1124

There is a dissonance between principled consensus and operational dissensus in the emerging regulatory framework for autonomous military capabilities (AMCs). This framework is based on the application of international humanitarian law (IHL) and the maintenance of human control and responsibility, but it remains unclear whether and how IHL might apply to AMCs and how human control and responsibility can be maintained. The emergence of a regulatory framework in the face of this dissonance raises questions about how alternative regulatory possibilities have been excluded and how the possibility of regulation has been assumed. This article explores the mechanics of this exclusion and assumption. It sheds light on the conditions of possibilities and trajectories of development of the regulatory regime for AMCs, and also provides insights into international regulatory frameworks more broadly, especially in relation to new technologies. Using the example of the everywhere-forever war on terror, this article points to the role of a failure of politics and a consequently amorphous and expanding ideal of security in excluding the possibility of prohibition or restrictive regulation of the military promise of AMCs. The article then turns to four discursive strategies that sustain the assumption that AMCs are amenable to regulation. Through conflation, different types of AMCs are subsumed within an imaginary that is more easily accommodated within the regulatory consensus. Deferral creates a façade of consensus while shifting contentious issues to the national sphere. Normalization operates to de-emphasize the novelty of AMCs, while valorization pulls in the opposite direction by exaggerating the virtues of AMCs.

https://doi.org/10.1093/ejil/chac064 *

International legal issues arising from repatriation of the children of Islamic State

Saeed Bagheri and Alison Bisset. In: Journal of conflict and security law, Vol. 27, no. 3, Winter 2022, p. 363-385

The detention of children of Islamic State within Kurdish-controlled camps in Syria presents a complex dilemma for national authorities and the international community. Although a small number of states have repatriated their nationals, overall, little progress has been made and thousands of children continue to languish in deplorable conditions. Resolution has been urged from both humanitarian and international security perspectives, but Western states, in particular, have sought to avoid responsibility, often using legal mechanisms to impede repatriation efforts. This article asks whether international legal frameworks can provide a route to resolution. It argues that by centralizing the international law and policy on children's rights, repatriation becomes the priority rather than domestic political and security objectives. Conceptual light is shed on the ways in which international human rights law standards can be mobilized for the protection of conflict-affected children as individual rights holders.

https://doi.org/10.1093/jcsl/krac013 *

The international responsibility of war profiteers for trafficking in persons

Michael Ramsden. - In: The international criminal responsibility of war's funders and profiteers. - Cambridge : Cambridge University Press, 2020. - p. 232-252

The human trafficking of civilian populations often arises as a consequence of armed conflict. It is during conflict when vulnerable populations are at risk of exploitation by traffickers, no more so than women and girls sold into sexual servitude. Trafficking not only occurs as a means for perpetrators to profit from war, but as an instrument to wage war. This chapter first provides a survey of existing sources of international humanitarian law (IHL) and international criminal law (ICL) to identify correlates between these norms and the internationally accepted definition of trafficking in persons. It then considers the scope to prosecute trafficking in persons as a crime against humanity under Article 7 of the Rome Statute establishing the International Criminal Court (ICC). A focus on this provision is warranted given that it is the first in the history of ICL/IHL to explicitly acknowledge that 'trafficking in persons' can give rise to international responsibility. Finally, the chapter considers some of the common obstacles to securing prosecutions that arise both domestically and internationally, with particular reference to the ICC.

The interplay between international humanitarian law and international environmental law : towards a comprehensive framework for a better protection of the environment in armed conflict

Raphaël van Steenberghe. In: Journal of international criminal justice, Vol. 20, no. 5, November 2022, p. 1123-1154

It is well known that armed conflicts may cause extensive damage to the environment and that International Humanitarian Law (IHL) is lacking any adequate protection against such damage. International Environmental Law (IEL) could therefore be used to fill the gaps. This nonetheless raises the complex issue of the interplay between that body of law and IHL. This article intends to provide a comprehensive framework on such interplay, the originality of which is to draw inspiration from the relationship between IHL and International Human Rights Law (IHRL). It examines two processes through which IEL may impact the regulation of armed conflict: the 'interpretation process', whereby IHL is interpreted in light of IEL, and the 'application process', whereby IEL applies alongside IHL to activities related to armed conflicts. While both processes involve the operation of formal mechanisms, including the lex specialis principle and the principle of systemic integration, they must be guided by substantial considerations, which seek coherence between the two bodies of law.

https://doi.org/10.1093/jicj/mqac062 *

The intersection of international environmental law and international humanitarian law at sea

Andrew Norris. In: Journal of international criminal justice, Vol. 20, no. 5, November 2022, p. 1229-1252

The maritime domain, largely comprised of international 'commons' covering more than 70% of the Earth's surface, presents some unique challenges in identifying, much less reconciling, applicable International Environmental Law (IEL) and International Humanitarian Law (IHL) principles. This article posits that the 1982 United Nations Convention on the Law of the Sea, particularly its prescriptive and enforcement jurisdictional apportionments to nations relating to the prevention and control of pollution, establishes the peacetime IEL normative framework at sea. After exploring this normative framework, this article furthers the symposium's overall theme by examining the interplay between this IEL framework and the relatively sparse and sporadic IHL regime at sea. As will be seen, this interplay is largely a question of the extent to which, if at all, these jurisdictional apportionments survive during periods of armed conflict. As such, it aligns more closely with the 'application process' for impacting the regulation of armed conflict, in which IEL applies alongside IHL to activities related to armed conflict, than with the 'interpretation process', whereby IHL is interpreted in light of IEL.

https://doi.org/10.1093/jicj/mqad001 *

Investigative and charging considerations for international crimes targeting individuals on the basis of sexual orientation and gender identity

Nicholas Leddy. In: Journal of international criminal justice, Vol. 20, no. 4, September 2022, p. 911-942

International crimes targeting persons based on their sexual orientation and gender identity have been documented since at least the Nazi persecution and murder of LGBTIQ+ persons in World War II, and continue in modern campaigns by ISIS in Iraq, among other places. Yet few, if any, perpetrators have ever been held accountable for such crimes, and there remains a dearth of specialized practical guidance for investigators or prosecutors. Attempting to fill this gap in scholarship and practice, this article outlines the legal basis for possible crimes under the Rome Statute of the International Criminal Court (ICC) as well as investigative and prosecutorial guidelines for them. It offers concrete recommendations for investigators and prosecutors examining these international crimes, using an intersectional, gender-competent and trauma-informed lens to better understand and address victims' trauma, to present their evidence effectively in court, and to obtain the most complete, truthful and coherent account of events possible. It concludes that there are multiple avenues through which such evidence can be investigated and elicited in court, and encourages practitioners to do so when possible to document and honour the particularized harm this group experiences.

https://doi.org/10.1093/jicj/mqac039 *

Is Rio de Janeiro preparing for war ? Combating organized crime versus non-international armed conflict

Najla Nassif Palma. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 795-827

The idea that Rio de Janeiro has been plunged into an actual "war" against organized crime is widely discussed and is supported by an ever-increasing number of people in Brazil. Not surprisingly, such discourse has led to less protection for the civilian population, particularly in the so-called favelas, while allowing security forces to carry out operations with even greater relative impunity. This article argues that although urban violence in Rio de Janeiro is indeed a serious problem, it does not reach the threshold required to be considered a non-international armed conflict.

https://library.icrc.org/library/docs/DOC/irrc-923-palma.pdf

A jurisprudential history of the displacement crimes applicable to corporate landgrabbing

James G. Stewart. - In: The international criminal responsibility of war's funders and profiteers. - Cambridge : Cambridge University Press, 2020. - p. 201-231

This chapter discusses the crime of deportation, casting it as a legal history that will inform upcoming land grabbing cases against businesses, for example before the International Criminal Court. The term 'land grabbing' denotes the illegal forcible eviction of local populations in order to make way for mining, logging, agricultural plantations, infrastructure projects, and other commercial ventures. The phenomenon is a widespread and rapidly growing problem globally, often involving the collusion of political leaders, local businesspeople, representatives of multinational enterprises and financial institutions. There is a growing interest in employing international criminal justice as a response to these practices, but land grabbing itself is not an international crime, meaning that prosecutors would likely seek to charge displacement-type offenses for corporate implication in these practices. Therefore, a jurisprudential history of displacement crimes in international criminal law is an important point of departure in assessing the potential and pitfalls of the new weight to be placed on these crimes, either as a basis for expanding international courts' jurisdiction over atrocities or for addressing some of the underling commercial interests that provide both the means and motivation for them.

Jus in bello necessity, the requirement of minimal force, and autonomous weapons systems

Alexander Blanchard and Mariarosaria Taddeo. In: Journal of military ethics, Vol. 21, no. 3-4, 2022, p. 286-303

In this article we focus on the jus in bello principle of necessity for guiding the use of autonomous weapons systems (AWS). We begin our analysis with an account of the principle of necessity as entailing the requirement of minimal force found in Just War Theory, before highlighting the absence of this principle in existing work on AWS. Overlooking this principle means discounting the obligations that combatants have towards one another in times of war. We argue that the requirement of minimal force is an important requirement for considering ethical uses of force. In particular, we distinguish between lethal and non-lethal purposes of use of force and introduce the prospect of non-lethal AWS before reviewing a number of challenges which AWS pose with respect to their non-lethal use. The challenges arise where AWS generate unpredictable outcomes impinging upon the situational awareness required of combatants to ensure that their actions meet the requirement of minimal force. We conclude with a call for further research on the ethical implications of non-lethal uses of AWS as a necessary contribution for assessing the moral permissibility of AWS.

https://doi.org/10.1080/15027570.2022.2157952

Justice militaire et violences sexuelles constitutives de crimes internationaux en RDC

Danouchka Assoumou ; préf. de Jean-François Akandji-Kombé. - Paris : L'Harmattan, 2022. - 192 p.

La République démocratique du Congo (RDC) a été et est le théâtre de crimes, notamment des violences sexuelles constitutives de crimes internationaux. Parmi les responsables de ces crimes, deux acteurs sont explicitement identifiés, à savoir : les groupes armés et les Forces armées de la RDC, qui vont bénéficier de l'amnistie du gouvernement ou être intégrés au sein de l'armée nationale congolaise. Cet ouvrage a pour objectif de révéler la pratique des juridictions militaires congolaises dans leurs traitements des plaintes pour violences sexuelles constitutives de crimes internationaux. Il souligne les initiatives du juge militaire congolais qui essaie de s'aligner sur les standards du droit international pénal, n'ayant de cesse de faire évoluer sa pratique. Ce livre mentionne les lacunes auxquelles le juge militaire est confronté, tant sur la forme que sur le fond, et dans des décisions prises parfois au détriment de l'établissement de la justice et de la réparation des survivant·es.

Die Kommentare des Internationalen Komitees vom Roten Kreuz, ihre Autorität und ihr Einfluss auf die Entwicklung des Humanitären Völkerrechts im Wandel der Zeit

Linus Mührel. - In: Zeit und internationales Recht : Fortschritt - Wandel - Kontinuität. - Tübingen : Mohr Siebeck, 2019. - p. 139-172

Das Internationale Komitee vom Roten Kreuz (IKRK) veröffentlichte 2016 die zweite Auflage seines Kommentares zur 1. Genfer Konvention von 1949. Bis 2021 folgen im Jahresschritt die zweiten Auflagen der Kommentare zu der 2. bis 4. Genfer Konvention von 1949 und den Zusatzprotokollen von 1977. Mit dieser umfangreichen Aktualisierung der Kommentierungen zum Genfer Recht möchte das IKRK der Fragmentierung und Komplexität des heutigen Humanitären Völkerrechts (HVR) begegnen, um die moralischen Prinzipien, die im Genfer Recht ihren Ausdruck finden, für den Umgang mit aktuellen Herausforderungen angemessen zu artikulieren. Zudem soll zu einem weltweit einheitlichen Verständnis des HVR beigetragen werden. Der Beitrag untersucht die Kommentierungen in der ersten und zweiten Auflage und arbeitet die wesentlichen Gemeinsamkeiten und Unterschiede inhaltlicher wie methodischer Art heraus. Im Gegensatz zu den ersten Auflagen der Kommentare, welche die Verträge insbesondere anhand der travaux préparatoires erläutern, zieht das IKRK für die Interpretation im Rahmen der neuen Kommentierungen vor allem die Staatenpraxis heran.

The law in war : a concise overview

Geoffrey S. Corn Ken Watkin Jamie Williamson. - London : Routledge, 2023. - XVII, 436 p.

The law in war offers an insightful roadmap to understanding a broad range of operational, humanitarian, and accountability issues that arise during armed conflict. Each chapter provides a clear and comprehensive explanation of the impact that international law has on military operations. The second edition has been fully revised to reflect recent advances in international humanitarian law and expands the analysis to include as a brand-new chapter on international human rights law, which addresses issues such as the conduct of law enforcement during hostilities. The revisions are particularly focused on updates concerning the status of combatants and unprivileged belligerents, the protection of civilians, targeting, the treatment of POWs and detainees, weapons law, air and missile warfare, naval warfare and neutrality, command responsibility, and accountability. New material has also been added to address the increasing involvement of private security contractors in warfare. This book is an ideal text for students in a variety of domains, to include international humanitarian law, international human rights law, international relations, and military science. It is also a valuable resource for those involved in the planning, execution, and critique of military operations across the spectrum of conflict.

The legal limits to the destruction of natural resources in non-international armed conflicts : applying international humanitarian law

Saeed Bagheri. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 882-913

This article analyzes whether and to what extent energy resources fulfil the definition of military objective within the meaning of international humanitarian law (IHL) and customary IHL. In order to bring conceptual clarity to the duty to protect the natural environment in armed conflict, the article explores the legal limits to the destruction of energy resources (that are part of the natural environment) controlled by armed non-State actors during non-international armed conflicts (NIACs). It examines the practice of the United States, which characterizes the destruction of the natural environment during hostilities as being related to targets that contribute to the “war-sustaining capability” of enemies. Conceptual light is shed on the legality of attacks on oil refineries and installations during NIACs as a matter for IHL.

https://library.icrc.org/library/docs/DOC/irrc-923-bagheri.pdf

The legal protection of freshwater resources and related installations during warfare

Mara Tignino and Tadesse Kebebew. In: Journal of international criminal justice, Vol. 20, no. 5, November 2022, p. 1191-1228

Armed conflicts have an impact on freshwater resources and often damage water installations, which could be targeted or incidentally damaged, affecting water quality and quantity and limiting access for the civilian population. Thus, in situations of armed conflict, protecting freshwater resources and related installations becomes essential. International humanitarian law (IHL) and international environmental law (IEL) provide for relevant rules that limit the impact of armed conflicts on freshwater and water infrastructure. IHL protects civilian objects, objects indispensable to the survival of the civilian population, works and installations containing dangerous forces and the natural environment. It also prohibits employing poison or poisonous weapons and environmental modification techniques. IEL regulates the sustainable and environmentally sound use, development and management of water resources. Progress in the realm of the human right to water and the rise of environmental consciousness further necessitate an eco-friendly approach that recognizes comprehensive protection. Therefore, this article examines the interplay between IEL and IHL, explaining how IEL can contribute to the interpretation of IHL rules and exploring areas where IEL could complement IHL rules relevant to the protection of freshwater resources and related installations during warfare.

https://doi.org/10.1093/jicj/mqac061 *

The legal requirement for command and the future of autonomous military platforms

Rain Liivoja, Eve Massingham, and Simon McKenzie. In: International law studies, vol. 99, 2022, p. 638-675

Technologically advanced armed forces extensively use platforms that can be controlled remotely and do not require an on-board crew. Increasingly, these systems have the capacity to function with some degree of autonomy. The use of autonomous functionality is not specifically prohibited or regulated by the law of armed conflict but the use of autonomous functions in military systems remains governed by the general principles and rules of international law. One existing international law concept may constrain the use of autonomous capabilities in military vessels and aircraft. This is the notion that military units must be "under the command" of an appropriate person. In this article, we set out to investigate whether the command requirement places limitations on autonomous devices. We use the methodology on treaty interpretation set out in the Vienna Convention on the Law of Treaties. Our analysis shows that the ordinary meaning of the expression in question has been understood by militaries in a variety of ways and that the context in which the expression originally appears, and the object and purpose of the relevant instruments, do not provide conclusive answers. Accordingly, we also turn to the drafting history of the relevant provisions and examine subsequent State practice. This investigation supports the view that the command requirement does not necessitate direct oversight by a commander for every decision made, but rather requires asking whether the system is fulfilling the intent of the commander.

https://digital-commons.usnwc.edu/ils/vol99/iss1/27/

The legality of weapons transfers to Ukraine under international law

Kevin Jon Heller and Lena Trabucco. In: Journal of international humanitarian legal studies, Vol. 13, no. 2, 2022, p. 251-274

This article analyses the legality of Western states providing weapons to Ukraine. It focuses on five areas of international law: (1) the jus ad bellum; (2) the law of neutrality; (3) international humanitarian law; (4) state responsibility for complicity in internationally wrongful acts; and (5) international criminal law. It concludes that weapons transfers likely violate the law of neutrality, entitling Russia to respond with countermeasures; that Russia can lawfully target transferred weapons under ihl; and that weapons transfers could lead to state and individual responsibility if evidence comes to light that the Ukrainian military is using weapons previously supplied by the West to commit war crimes. By contrast, providing weapons to Ukraine does not violate the jus ad bellum because they are in service of Ukraine's right of self-defence against Russia and does

not make the supplying states co-belligerents in Russia's international armed conflict with Ukraine.

https://doi.org/10.1163/18781527-bja10053

Levée en masse in twenty-first century armed conflict

Winston S. Williams and Robert Lawless. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 97-117

Under the law of armed conflict, members of a levée en masse are entitled to prisoner of war status upon capture by the enemy. The notion of levée en masse reflects the historical practice of the spontaneous formation of civilian armed resistance to an enemy's territorial invasion. This chapter examines how levée en masse may apply to future armed conflict in the cyber domain. After highlighting the anticipated role of cyber operations in future armed conflict, the chapter establishes the four elements of levée en masse and analyzes how each element may apply to acts of cyber resistance by civilians in future warfare. The chapter identifies several challenges to the continued suitability of levée en masse in future warfare and discusses potential solutions to these challenges. The chapter concludes with a call for States to address these challenges if they wish to preserve the international legal notion of levée en masse.

The Lieber Code and prisoners of war : a legacy of practical humanitarianism

David Wallace and Shane Reeves. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 307-322

The Lieber Code succinctly and comprehensively clarified and summarized the customary laws of armed conflict through a practical humanitarian lens. Of particular contemporary relevance is how the Lieber Code addresses prisoners of war (POWs). Though some of the thirty-eight articles in the Code on POWs are undoubtedly anachronistic, the provisions on categorization and treatment continue to inform the law of armed conflict. His contribution to the development of the law of armed conflict was particularly significant in this regard, as it was the first instrument to contain a clear articulation of which persons were entitled to protection as POWs and which were not. Additionally, he addressed not only the treatment of POWs, but also confronted the horrendous discrimination and maltreatment of Black soldiers by confirming the law of nations knows of no distinction of color. Finally, the Lieber Code confronted the thorny issues of paroles, prisoner exchanges, and reprisals under the law of armed conflict. Of course, some provisions of the Code did not survive the test of time. But, for those that did, commanders, legal advisers, policymakers, and scholars will continue to look to them as they shape the law of armed conflict into the twenty-first century.

The limitations of the law of armed conflicts : new means and methods of warfare : essays in memory of Rosario Domínguez Matés

ed. by Pablo Antonio Fernández Sánchez. - Leiden ; Boston : Brill Nijhoff, 2022. - XIX, 417 p.

In the law of armed conflicts, one of the elements that has changed the most has been the means and methods of warfare. Yet there are few legal answers for the many questions these changes pose. This volume, therefore, seeks to identify the limitations of current international law on this double plane, the means and methods of combat, and to offer insights about how to address them. Topics include the use of nuclear energy, which without being a weapon, can have the same effect as one, chemical and biological weapons, autonomous artificial intelligence weapons, and biobots. Similarly, fake news, the hostile use of cyberspace, lawfare, the use of big data, terrorism as a combat method, premeditated poisoning, sexual humiliation, the impact of such news on the armed forces and the reorganization needed to face the new scenarios are all situations not contemplated in classical law and which require new legal and operational responses.

Maritime operations law in practice : key cases and incidents

edited by David Letts and Rob McLaughlin. - Abingdon : Routledge, 2023. - XXIV, 225 p.

The law that applies to maritime operations at sea is complex and comprises two distinct elements: treaty law (1982 United Nations Convention on the Law of the Sea), and the cases and incidents that occur at sea in both peacetime and during armed conflict which result in the

creation of customary international law applicable to maritime operations at sea. Covering sovereignty and vessel status, jurisdiction and interdiction, freedom of navigation, maritime law enforcement and security, and the law of naval warfare, this edited collection brings together the most famous and influential cases and incidents at sea. Exploring the entire spectrum of maritime operations from 'high end' war-fighting to constabulary operations that are conducted by naval forces and maritime law enforcement agencies at sea to provide the factual circumstances of each case or incident; offering sophisticated analysis and insights into the case or incidents enduring importance, and their significance for the development of the law applicable to maritime operations; and offering a detailed account and evaluation of the most critical but rarely understood cases in maritime operations law, which encourages comparison between key cases, this book will be an essential reference for practitioners, scholars, teachers, and students of maritime operations law.

Mass grave protection and missing persons

Melanie Klinkner. - In: Anthropology of violent death. Theoretical foundations for forensic humanitarian action. - Chichester : J. Wiley, 2023. - p. 197-217

Missing persons cases are a global phenomenon that exists on a shocking scale. People go missing during armed conflict, migration, as a result of systematic human rights abuses, disasters, or organized crime. This chapter explains the importance of mass grave protection in the quest to address and, where possible, solve missing persons cases. It clarifies the legal framework in relation to who suffered harm and, therefore, has legitimate interests, before examining how those interests are protected by international law. The chapter examines practical elements for protection to ensure an effective investigation can safely follow. It sets an agenda for strengthening mass grave protection through considering the potential of mapping efforts and for "closing" existing blind spots in law and practice. The chapter examines the legal protection of mass graves and the missing persons contained therein. It is important to stress that the consequences of not protecting and investigating mass graves are significant.

Might as right ? The nature of laws of war applicable to targeting and detention in international armed conflicts

Festus M. Kinoti. In: Journal of international humanitarian legal studies, Vol. 13, no. 2, 2022, p. 297-352

Do laws of war applicable to international armed conflicts (IACs) authorize targeting and detention or do they simply regulate targeting and detention as an exercise of power in war by belligerents without providing authorization? This question has been the subject of debate in the recent past. The traditional understanding of laws of war, simply as a protective regime has come under increasing challenge from claims laws of war authorize targeting and detention in international armed conflicts. While these claims have mainly been made to establish in laws of war satisfaction for the requirement of human rights law for a legal basis for targeting and detention, the transmutation of what in the perspective of laws of war is simply an exercise of power into legal permission has consequences beyond that relationship. It also impacts the relationship between laws of war and jus ad bellum, and more gravely it cloaks what is an otherwise exercise of brute power in war with the garb of legal competence. It transmutes what is simply might into right. The transmutation, re characterizes an IAC from the perspective of laws of war as simply a fact, into its legal construct. Therefore, this paper interrogates the nature of the laws of war, to show they simply regulate targeting and detention in IACs without providing legal permission.

https://doi.org/10.1163/18781527-bja10056 *

Militarization and privatization of security : from the war on drugs to the fight against organized crime in Latin America

Antoine Perret. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 828-848

Fifty-two years ago, in 1971, President Nixon declared the "War on Drugs", identifying drug abuse as a public enemy in the United States. Since then, US drug policy has been militarized and, more recently, privatized. In Latin America, this militarization and privatization has increased the intensity of violence and has complexified domestic situations, to the extent that the existing

international legal regimes now seem inappropriate to respond to the challenges posed by the War on Drugs. On the one hand, human rights law does not adequately address situations where the State faces organized crime groups that are able to control territory. On the other hand, international humanitarian law (IHL) was not created to address law enforcement situations, which the War on Drugs and the fight against organized crime ostensibly are. This article examines the situation in Latin America, looking at examples of different types of situations through the lens of intensity and organization of the group involved and, in some cases, the group's control over territory. It discusses the application of IHL and human rights law (focusing on the inter-American system of human rights) in these situations and their complementarity, and debates how these bodies of law are adapting or may need to be adapted.

https://library.icrc.org/library/docs/DOC/irrc-923-perret.pdf

Military artificial intelligence and the principle of distinction : a state responsibility perspective

Magdalena Pacholska. In: Israel law review : a journal of human rights, public and international law, Vol. 56, no. 1, 2023, p. 3-23

Military artificial intelligence (AI)-enabled technology might still be in the relatively fledgling stages but the debate on how to regulate its use is already in full swing. Much of the discussion revolves around autonomous weapons systems (AWS) and the 'responsibility gap' they would ostensibly produce. This contribution argues that while some military AI technologies may indeed cause a range of conceptual hurdles in the realm of individual responsibility, they do not raise any unique issues under the law of state responsibility. The following analysis considers the latter regime and maps out crucial junctions in applying it to potential violations of the cornerstone of international humanitarian law (IHL) – the principle of distinction – resulting from the use of AI-enabled military technologies. It reveals that any challenges in ascribing responsibility in cases involving AWS would not be caused by the incorporation of AI, but stem from pre-existing systemic shortcomings of IHL and the unclear reverberations of mistakes thereunder. The article reiterates that state responsibility for the effects of AWS deployment is always retained through the commander's ultimate responsibility to authorise weapon deployment in accordance with IHL. It is proposed, however, that should the so-called fully autonomous weapon systems – that is, machine learning-based lethal systems that are capable of changing their own rules of operation beyond a predetermined framework – ever be fielded, it might be fairer to attribute their conduct to the fielding state, by conceptualising them as state agents, and treat them akin to state organs.

https://doi.org/10.1017/S0021223722000188

Military assimilation and the 1949 Third Geneva Convention on Prisoners of War

Sean Watts. - In: Prisoners of war in contempoary conflict. - Oxford : Oxford University Press, 2023. - p. 181-210

The notion that prisoners of war are effectively integrated into the armed forces of their captor is a prominent mischaracterization of the Third Geneva Convention of 1949. Respected sources bill this military assimilation as a central or general principle of prisoner of war treatment and have leveraged that claim to support overreaching assertions of treatment obligations owed to prisoners of war. In fact, military assimilation features neither universally nor uniformly in the Convention. Instead, the Convention resorts to military assimilation only selectively and in many cases, for compelling reasons of humanity, abandons previous treaties' provisions of the concept. A correct understanding of how military assimilation features in the Convention is not only important to rigorous and faithful application of the law of war. It is an essential bulwark against unfounded and unsanctioned restraints on States' internment of enemy forces in armed conflict.

Minimum levels of human intervention in autonomous attacks

Tim MacFarland. In: Journal of conflict and security law, Vol. 27, no. 3, Winter 2022, p. 387-409

This article discusses an important limitation on the degree of autonomy that may permissibly be afforded to autonomous weapon systems (AWS) in the context of an armed conflict: the extent to which international humanitarian law (IHL) requires that human beings be able to intervene directly in the operation of weapon systems in the course of an attack. As there is currently no

conventional or customary law directed specifically at AWS, limits on use of autonomous capabilities in weapons, if any exist, must be inferred from the principles, rules and goals of general IHL. The process adopted herein is to look for two broad types of limitations: those which take the form of maximum permissible degrees of machine involvement in regulated activities, and those which take the form of minimum permissible degrees of human involvement. The article's main finding is that while existing law does not impose limits of the first type, it does impose some of the second type. Specifically, legal obligations borne by individuals (commanders in charge of AWS operations, weapon system operators and others) determine the required minimum capacity for direct human intervention. The article further suggests means by which the required degree of human intervention may be determined in specific circumstances.

https://doi.org/10.1093/jcsl/krac021 *

The morality of the laws of war : war, law, and murder

Marcela Prieto Rudolphy. - Oxford : Oxford University Press, 2023. - XI, 297 p.

Combatants are equal under the laws of armed conflict, regardless of whether the wars they fight are just or unjust, legal or illegal. They are permissible targets and can kill each other in battle. This basic feature of international law has been recently put into question by a group of moral philosophers known as revisionists, who argue that just combatants in an unjust war should be considered innocents, and their deaths considered murder. Dr. Prieto Rudolphy explains and assesses the conflict between the revisionist argument and the existing legal norms in The Morality of the Laws of War: War, Law, and Murder. The book provides an in-depth assessment of modern ethical thought on killing in wartime, deconstructing the revisionist view of war and offering a new perspective on the legal equality of combatants. Prieto Rudolphy not only examines the tension between the revisionist morality and the traditional thesis of symmetry between combatants but proposes a contingent justification of the latter and an alternative morality of war. Underlying both is the inescapable fact that regulating war is always a moral compromise. At the same time, she argues that there is urgent moral pressure to improve our laws - to bring them closer to an ideal whereby war does not exist. The Morality of the Laws of War is a must-read for scholars of moral philosophy and international law, from students to experts, providing a thorough account of contemporary debates on the ethics of warfare and using nuanced arguments to illuminate a fresh perspective.

National security policymaking in the shadow of international law

Laura A. Dickinson. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 347-368

This chapter describes how the norms and values embedded in international human rights law (IHRL) are sometimes adopted, not as a matter of formal law at the international level but rather as a matter of governmental policy and practice. The chapter analyzes two Obama administration counterterrorism policies and describes both their legalistic character and the advantages and disadvantages of the policy approach. Such policies can preserve flexibility while moving in the direction of IHRL as a matter of practice, providing interoperability benefits with more human rights–oriented allies. In addition, such policies implement human rights–oriented norms in practice even as they impede acceptance of these norms as a matter of legal obligation. The chapter concludes that the emergence of such legalistic policies is evidence of international law's constraining impact and that national security policymaking can be a pragmatic and effective alternative to formal international lawmaking, even though it also may sidestep the process of creating robust new international law rules. In addition, the persistence of such policymaking across administrations illustrates the power of institutional path dependence, the role of lawyers, the constraint of interoperability with allies in multilateral military actions, and the way norms get embedded in government organizations.

https://doi.org/10.1093/oso/9780197638798.003.0012 *

Naval blockade and the Russia-Ukraine conflict

Martin Fink. In: Netherlands international law review, vol. 69, issue 3, December 2022, p. 411-437

The Russia–Ukraine confict is also being fought in the maritime dimension. Regarding methods of warfare, of particular note has been the possible existence of a Russian naval blockade in the

Sea of Azov and of the coast of Odessa in the Black Sea. The blockade played a signifcant role in the emergence of the grain crisis, and has been opined to be the main reason why vessels were not able to safely sail out of the Black Sea and deliver grain to areas in other parts of the world that were in much need thereof. This paper explores whether Russia imposed a blockade in a legal sense based on the law of naval warfare—allowing belligerent rights to be exercised—or whether the Russian activities should in fact be regarded as another form of maritime control or dominance over certain maritime areas during an international armed confict.

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Negotiating with organized crime groups : questions of law, policy and imagination

Mark Freeman and Mariana Casij Peña. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 638-651

Negotiations with organized crime groups occur more often than realized, and raise complex questions of ethics, practice and policy. Currently, law provides few incentives for States to choose the path of negotiation, and thus the political costs and moral hazards remain very high and a mano dura ("firm hand") approach prevails. This paper examines some of the challenges faced by those who in good faith might initiate or participate in negotiations with such groups, offering an assessment of how those challenges can be mitigated and an inquiry, in particular, into how law and policy might be improved or reimagined to make such negotiation more feasible and effective in contexts of armed conflict or other situations of violence.

https://library.icrc.org/library/docs/DOC/irrc-923-freeman.pdf

New court, same division : the Bemba case as an illustration of the continued confusion regarding the command responsibility doctrine

Carmel O'Sullivan. In: Leiden journal of international law, Vol. 35, no. 3, September 2022, p. 661-678

Prosecutor v. Jean-Pierre Bemba Gombo was the International Criminal Court's first case directly addressing the command responsibility doctrine. As the first permanent international criminal court who can exercise jurisdiction over a majority of the world's nation states, its interpretation of the doctrine was potentially an important development in international criminal law and an opportunity to affirm the legal responsibility of commanders for their subordinates' crimes. However, rather than providing a clear articulation of the doctrine and its scope, the Appeals Chamber was split. By a 3–2 majority, it reversed the Trial Chamber's decision and the Appeals Chamber's judges were sufficiently divided in their reasoning that they felt compelled to deliver separate opinions. A key disagreement within the doctrine is whether command responsibility is a mode of liability or a separate offence of dereliction of duty. This disagreement feeds into further contestation about the doctrine's core elements, including the standard of fault necessary under its actus reus or mens rea elements. This article examines the judges' reasoning in Bemba to illustrate that, despite decades of jurisprudence and academic debate, there is still confusion on these foundational elements. Instead of being 'settled law', the debate on command responsibility is still live. The article maintains that the current law supports a mode of liability interpretation but proposes that reclassifying the doctrine as a separate offence could resolve many of its tensions while observing the culpability principle, satisfying its justifications, and facilitating an adequately wide scope of accountability.

https://doi.org/10.1017/S0922156522000309 *

The new weapons in naval warfare : unmanned maritime systems

Noelia Arjona Hernández. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 146-169

Twenty-five years have elapsed since the end of the work on the project that gave rise to the publication of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea. During said period, an important issue has emerged, affecting the law of naval warfare. Among these issues, we can mention the impact of new technologies on weapons and communications. In this respect, a project has been initiated to review the San Remo Manual with the aim of solving said recent situation. The group of participating experts has indicated that they will examine the

intersectoral issues of ums (Unmanned Maritime Systems), as well as legislation on naval warfare. Notable among said issues is whether we are to distinguish, as well as how we are to do it, between UMS as systems/weapons, and as ships. In the light of the above, this chapter will address some of the challenges that the use of UMS poses within the law of armed conflict.

Nuclear weapons and nuclear energy in new armed conflicts : unfinished regulation

Pablo Antonio Fernández-Sánchez. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden Boston : Brill Nijhoff, 2022. - p. 11-39

Since the nuclear weapon was tested in an armed conflict in 1945 and its consequences became known, attempts have been made to regulate its use. It took 72 years before concluding a treaty with which to prohibit said weapons, namely the Treaty on the Prohibition of Nuclear Weapons, of September 20, 2017 (in force since January 22, 2021). But do we really know what we are to understand by nuclear weapon and what its technical-military characteristics should be? Are the effects of releasing nuclear energy or its military use what the IHL ought to prohibit, instead of the nuclear weapon itself? Once these questions have been answered, the legality of the threat or use of nuclear weapons should be minimally analysed, as stated in the ICJ's Advisory Opinion of July 8, 1996, a view that we share. Herewith, it will be possible to define the general legal framework, both for the threat and the use of nuclear weapons, beyond the conventional framework initiated by the afore mentioned Treaty on the Prohibition of Nuclear Weapons. The prohibition of nuclear weapons or the use of nuclear energy that also constitutes a violation of environmental protection obligations should in turn be identified.

Nuremberg's enduring legacy to international justice

I. M. Lobo de Souza. In: Journal of international humanitarian legal studies, Vol. 13, no. 2, 2022, p. 222-250

The historic Nuremberg trial represented a first step toward an adequate response by the international society to grave crimes under international law committed by individuals in position of governmental authority. This article discusses three particular ways in which the Nuremberg trial has advanced international justice. From a normative perspective, it has helped crystallise the principle of individual criminal responsibility for crimes under international law. Furthermore, the Nuremberg tribunal's extraordinary jurisdiction paved the way for domestic and international courts' jurisdiction over crimes under international law, while instigating the evolution of relevant law concerning immunity from jurisdiction. Finally, in associating international crimes with the maintenance of international peace and security, it allowed the UN system of collective security to consider situations involving the commission of those crimes as a threat to international peace and security, preventing impunity and promoting the efficacy of international humanitarian law.

https://doi.org/10.1163/18781527-bja10054 *

The obligation to assist victims and remediate the environment within a framework of shared responsibility under the Treaty on the Prohibition of Nuclear Weapons

ICRC. - Geneva : ICRC, April 2023. - 20 p.

The Treaty on the Prohibition of Nuclear Weapons (TPNW) is the first international legally binding instrument aimed at prohibiting nuclear weapons and mitigating their catastrophic humanitarian consequences. The treaty requires states parties to take positive action in order to assist victims and remediate the natural environment affected by the use or testing of nuclear weapons. The TPNW establishes a framework of shared responsibility between states parties for the effective implementation of its victim assistance and environmental remediation obligations. This briefing note outlines the views of the International Committee of the Red Cross (ICRC) on the scope and interpretation of the relevant TPNW provisions, as well as some of their implications for states parties. The first Meeting of States Parties adopted an ambitious Action Plan with concrete measures to begin implementing the TPNW's victim assistance and environmental remediation obligations. It is hoped that this briefing note will inform and facilitate states' efforts in this respect.

https://library.icrc.org/library/docs/DOC/icrc-4702-002.pdf

The obligation to release and repatriate prisoners of war : revisiting the arbitral award of Eritrea-Ethiopia claims commission

Wubeshet Tiruneh. In: Journal of conflict and security law, Vol. 27, no. 3, Winter 2022, p. 471-484

The Eritrea–Ethiopia Claims Commission hugely contributed to the development of IHL jurisprudence by interpreting, clarifying and applying IHL rules. However, the Commission's decision regarding the suspension and delay of repatriation of Eritrean POWs by Ethiopia, which was handed down nearly two decades ago, still draws much criticism. On the one hand, the date marking cessation of hostilities, which according to Article 118 of the Geneva Convention Relative to the Treatment of Prisoners of War (GC III) triggers the obligation of Ethiopia to repatriate Eritrean POWs, had not been properly determined. On the other hand, the decision suggested that the obligation of states to repatriate POWs is dependent on the behavior of the other party or subjected to reciprocity. According to the Commission, the repatriation of POWs can be delayed after cessation of hostilities unless the detaining powers get an assurance that their troops would similarly be released and repatriated. However, as I will argue in this article, the suspension and delaying of the repatriation of POWs on the ground of reciprocity runs counter to the unilateral and unconditional nature of the obligation to repatriate POWs under Article 118 of GC III. Nor can it be justified as a legitimate reprisal under IHL and countermeasure under the general rules of state responsibility.

https://doi.org/10.1093/jcsl/krac020 *

Occupation in international law

Eliav Lieblich and Eyal Benvenisti. - Oxford [etc.] : Oxford University Press, 2022. - XXIII, 245 p.

The international law of occupation is the body of law, under international humanitarian law, that regulates the actions of states and possibly other actors such as international organizations that gain effective control over territory during armed conflict. This book seeks to provide an entry point for those seeking to familiarize themselves with the topic, by elaborating on general principles and key rules. It explores the tensions and dilemmas which characterize the modern law of occupation, while highlighting, when needed, interpretations which best conform with the law's object and purpose. All in all, this book aims to guide relevant actors - wheter states, academics, NGOs, or individuals under occupation - when seeking to assess or to challenge state actions in occupied territories.

https://doi.org/10.1093/law/9780198861034.001.0001 *

On the origins of human rights in war

Robert Kolb. In: The global community yearbook of international law and jurisprudence, 2020, p. 157-164

This chapter discusses the thesis found in some newer publications according to which the two branches of international humanitarian law and international human rights law were not as neatly separated between 1949 and 1968 as is often claimed. Its point is that while in effect no complete separation prevailed, the pendulum should not swing too much in the other direction. It would be an anachronistic ideological statement, projected back to the past, to say that both branches were in close relations since the times after World War II. Separation prevailed, but bridges were progressively built, blossoming since the end of the 1960s, especially in the wake of Israeli occupation of Palestinian territories.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57980.pdf *

Opening Pandora's box : the case of Mexico and the threshold of non-international armed conflicts

Juan Francisco Padin. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 772-794

This article addresses the situation of Mexican cartels in relation to the applicability of international humanitarian law (IHL). The analysis starts with a theoretical examination of the International Criminal Tribunal for the former Yugoslavia criteria on intensity of violence and

level of organization established for assessing the existence of an organized armed group in the context of a non-international armed conflict. The article further examines legal and non-legal literature with the purpose of providing elements to consider the rightness of applying IHL to criminal organizations, also considering similar scenarios in Latin America. The aim of this assessment is to provide additional elements for the consideration of whether IHL is suitable when addressing confrontations between certain criminal gangs and States. Additionally, the article assesses how the commercial purposes of these groups affect their organization and the nature of the violence in which they engage.

https://library.icrc.org/library/docs/DOC/irrc-923-padin.pdf

The paradox of discrimination

Jens David Ohlin. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 63-89

This chapter argues that the ethical requirement to reduce harm in warfare creates a paradoxical situation. On the one hand, targeted killings are heralded for their surgical precision and their reduction in the amount of killing—a requirement imposed by both international law and morality. On the other hand, targeted killings are deplored because they look too much like executions, which are barbaric. The more a nation works to comply with international law and reduce the number of people killed in military strikes, the more the killings start to look like criminal law enforcement. War usually involves killing many people, often based on their status as members of an enemy army. In contrast, the criminal law involves imprisoning (or executing) a specific individual who has been prosecuted in a court of law for their conduct. As American military force becomes more humane, it looks less warlike, and therefore triggers the operation of a nonwar paradigm, the framework of criminal law. When viewed through that alternate lens, the force suddenly becomes the opposite: it becomes inhumane. There seems to be no way out of this paradox.

https://doi.org/10.1093/oso/9780197638798.003.0004 *

Parole of prisoners of war under Article 21 of the Third Geneva Convention : the past, present, and future

Emily Crawford. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 235-262

Article 21 of the Third Geneva Convention contains something of a historical anomaly—the possibility of granting parole to prisoners of war (POWs). An Article 21 parole is an agreement on the part of the captive soldier to refrain from participating in hostilities in return for limited or unrestricted release from POW captivity. Parole—from the French “word” or “promise,” as in “to give one’s word”—is a concept grounded in medieval notions of chivalry and honor, underpinned by both pragmatic and humanitarian objectives, traceable as far back as ancient Roman times. By the eighteenth century, it was a given that POWs could be paroled during their captivity, with parole agreements established during conflicts such as the Franco-Prussian War, the Boer War, and the American Civil War. However, by the time of the adoption of Article 21, the practice of parole was far less common, with exceptionally limited employment of parole during the First and Second World Wars. With this historical background in mind, this chapter will examine the history of parole of POWs—why it was adopted, and why it has fallen into desuetude. The chapter will also examine whether the tradition of parole remains a viable or useful option for States, in light of new technologies and new practices in the conduct of armed conflicts.

La participation des entreprises aux conflits armés à travers leur activité de transfert d'armes : quelle responsabilité en cas d'infractions au droit international humanitaire et d'atteinte aux droits de l'homme ?

Javier Tous. - In: Droit[s] de l'homme et droit international humanitaire : quelles conséquences sur les transferts d'armements conventionnels de guerre ?. - Paris : A. Pedone, 2022. - p. 91-116

Deux principales problématiques peuvent être mises en évidence que la présente contribution tendra à éclairer. En premier lieu, se pose une question factuelle centrée sur la manière dont, dans la pratique, une entreprise peut mettre en danger ou menacer les droits de l'homme et le droit

international humanitaire (DIH) à travers le transfert d'armes. En second lieu, sera abordée la question juridique de leur responsabilité en se focalisant sur la manière dont les entreprises participent au transfert d'armes peuvent être tenues comme responsable lorsque les armes exportées sont utilisées pour commettre ou faciliter des violations des droits de l'homme et du DIH.

The peace movement and grassroots international law

Doreen Lustig. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 165-180

Humane is a history of humanitarian law, primarily focused on the American role in this history. It chronicles the lost cause of the abolition of war in favour of a body of law that facilitated the entrenchment of war. This chapter joins Humane in drawing further attention to another facet of the American influence on international legal thought of the nineteenth century: the Anglo-American peace societies' vision for an international legal order. However, while Humane is particularly focused on the American hegemonic role in the history of IHL, this chapter considers the history of the peace movement as a counter-hegemonic tale in light of the threat it posed to the legal and political order of the day. The peace societies were, at least symbolically, more inclusive. Their transnational organization and emphasis on arbitration conveyed their avid preference for the judiciary and the legislature over the executive branch. They challenged the unyielding control of national governments—Cabinets and Foreign Ministries—on international affairs, seeing them as carrying the brunt of the blame for war in general. Eventually, the Institut paradigm, which dismissed their model, and made national governments the sole subject of international legal normativity, won and became the conventional model of international law. This retelling of the peace society history from a jurisprudential vantage point joins Humane's critique on how the campaign to end all wars went astray and brings to the fore another lost facet of the peace societies' cause: that of an alternative model of international law.

https://link.springer.com/chapter/10.1007/978-94-6265-559-1_6 *

A perspective on the updated Third Geneva Convention commentary from a United States practitioner

Michael W. Meier. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 408-436

In June 2020, the International Committee of the Red Cross (ICRC) launched its updated Commentary to the Third Geneva Convention. The updated Commentary complements the 1960 Commentary to reflect changes in law and practice over the past seventy years. This chapter examines several aspects of the 2020 Commentary to the Third Convention from the perspective of a U.S. practitioner. The chapter examines the "authoritative" status of the Commentary and the ICRC's methodology. The chapter also includes a comparison between the ICRC's interpretation of certain articles with United States state practice, and the implications of the revised Commentary for U.S. military and government practitioners who must interpret the Third Geneva Convention.

The place of cities in the evolution of international humanitarian law

Mirko Sossai. In: Italian yearbook of international law, vol. 31 (2021), p. 227-252

The increasing interest in the global dimension of cities and their engagement with international law has coincided with the emergence of a new wave of scholarship covering the main legal challenges related to urban warfare. In recent years, the devastating humanitarian consequences of war in cities have raised new questions regarding how relevant rules of international humanitarian law are interpreted and applied: cities are portrayed not only as the seat of political leadership or as cultural property but increasingly also as "populated areas" and an "interconnected infrastructure of essential services". Urban fighting is uniquely characterized by the proximity of military objectives with civilians and civilian objects: the question of the use of explosive weapons against military objectives in populated areas reflects the need for further clarification with respect to the application of the relevant rules of international humanitarian law (IHL). Much debate has been devoted to the legal implications of the contemporary resurgence of sieges of cities. Given that sieges are not per se an explicitly prohibited method of warfare under IHL, a key topic has been the precise scope of the "starvation of civilians" as a method of combat, for the purposes of the prohibition under Article 54(1) of Additional Protocol I and customary law.

It is worth considering to what extent the specific representation of what amounts to a city has been considered as a factor in the current debate.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57987.pdf *

Poisoning of food as a method of warfare

Adriana Fillol Mazo. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 323-355

Contrary to popular belief, in situations of armed conflicts more people die directly from lack of food and disease than from bullets and bombs. Armed conflicts lead to the development of the most serious forms of famine, whilst placing families and communities in a situation of extreme food vulnerability, insofar as they disrupt the cycle of food production and distribution. The International Committee of the Red Cross (ICRC) argues that armed conflicts are one of the key reasons for lack of food and violations of the right to food. In this sense, the ICRC considers that humanitarian law contains many provisions related to the protection of access to food in situations of armed conflicts and should hence be considered as an essential component of the legal framework that protects both the right to food and food security. When food is poisoned or the sources from which food is derived are intentionally contaminated, the result in fragile contexts may be the hunger of the population. In this respect, given that armed conflicts may cause the most severe forms of famine in the civilian population and that an explicit prohibition of poisoning of food as a method of combat has not been found in the law of armed conflicts, we have considered of possible interest to research such a topic, as well as some of its inherent implications.

Principios clave para el uso de la fuerza en escenarios urbanos en Colombia

Jaime Cubides-Cárdenas. In: Revista científica general José María Córdova, vol. 20, no. 27, 2022, p. 89-107

Este artículo analiza los parámetros y principios para el uso de la fuerza legítima del Estado en escenarios urbanos en Colombia, ante la amenaza híbrida actual. Con base en una inves-tigación cualitativa con enfoque empírico, primero se ilustra la naturaleza de la amenaza híbrida en Colombia. Luego se examina el fundamento doctrinal para emplear la fuerza de los cuerpos de segu-ridad en el conflicto colombiano. Posteriormente se analizan los principios del derecho internacional humanitario para conducir hostilidades en escenarios urbanos, con observancia a los ecosistemas criminales. Finalmente se desarrollan los principios de necesidad y proporcionalidad, entre otros, en otras situaciones de violencia. Se concluye que hay principios clave, pero aún no suficientes, para orientar el uso de la fuerza en escenarios urbanos de Colombia.

https://doi.org/10.21830/19006586.808

Prisoner of war status in the context of naval warfare : on the status of masters and crews of neutral merchant vessels

Wolff Heintschel von Heinegg. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 119-140

The chapter deals with the legal status of the masters and crews of neutral merchant vessels in naval warfare, an issue that is not regulated in the 1949 Geneva Conventions II and III. The Geneva Conventions only apply to the masters and crews of enemy merchant vessels. Therefore, it is important first to identify the criteria determining the enemy or neutral character of merchant vessels. The fact that a vessel is flying a neutral flag does not provide sufficient evidence as to its true nature. The chapter identifies five criteria according to which neutral merchant vessels can be distinguished from enemy merchant vessels. Next, the circumstances rendering neutral merchant vessels liable to be attacked as lawful military objectives and the circumstances rendering them liable to be captured under prize law are summarized. In its final section, the chapter addresses the conditions under which the personnel of neutral merchant vessels are entitled to prisoner of war status or whether they may be held criminally liable for having directly participated in hostilities.

Prisoners of war in contemporary conflict

volume editors: Michael N. Schmitt, Christopher J. Koschnitzky. - Oxford : Oxford University Press, 2023. - XXXI, 448 p.

> In 2021, the International Committee of the Red Cross released its Commentary on the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (POWs). The new document updated the 1960 "Pictet Commentary." As a result, the attention of the law-of-armed-conflict community was refocused on the designation and treatment of POWs. The Lieber Institute for Law and Warfare at West Point launched a project to further examine the subject. The result is this book. Sadly, world events have made that examination especially timely. Unlike the ICRC's updated Commentary, this book is not meant to be a comprehensive treatment of the international law relating to POWs. Rather, it is a collection of capita selecta identified by the contributors as meriting further examination - either because they are unsettled, inadequately addressed in the literature, or operationally problematic. The work is in three parts. Part I examines qualification for POW status. Discussion then moves in Part II to the treatment to which POWs are entitled. Part III concludes with a consideration of the historical relevance of, and perspectives on, the international law governing POWs. As the drafters of the Third Geneva Convention emphasized over seventy years ago, the aim of the law is "to mitigate as far as possible, the inevitable rigours [of a war] and to alleviate the condition of prisoners of war." It is through that lens that scholars and practitioners should consider the rules governing POWs, and with which they should approach this book.

Prisoners of war in space ?

Rob McLaughlin. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 141-156

> There is no state practice around the application of the international armed conflict prisoner of war (POW) regime in space. However, there is little reason to doubt that the applicable law—primarily from 1949 Geneva Convention III and 1977 Additional Protocol I—applies to the space domain. This chapter consequently deals with the following issues: whether a habitable space object, or an installation on a celestial body, could be a place of internment; the limitations of the space environment in terms of meeting necessary conditions of detention; and the challenges of applying the POW regime and certain specific space law regimes in relation to the situation of military astronauts and personnel of spacecraft.

Prisoners of war (POWs) in proxy warfare : the application of Geneva Convention III to organized armed groups detaining POWs of territorial states or detained as POWs by territorial states

Marco Sassòli and Eugénie Duss. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 3-25

> An armed group that is under overall control of a foreign state fighting against the territorial state is required to comply with international humanitarian law of international armed conflicts. This chapter raises the question whether this is realistic concerning the treatment of prisoners of war (POWs), both by the proxy-armed group and by the territorial state. This implies an inquiry whether soldiers of the territorial State who have fallen into the power of the proxy are POWs; and how the Third Geneva Convention has to be interpreted to allow the proxy to respect it. Next, there is an analysis whether members of the proxy-armed group who have fallen into the power of the territorial States are POWs; and, if so, how they can be treated in conformity with the Third Geneva Convention. In both situations, particular attention is paid to the question when and how such POWs are to be released and repatriated.

Prisoners of war, taking of hostages and the Colombian armed conflict : challenges arising out of conflictive understandings of IHL by different actors in particular contexts

Juana Inés Acosta-López and Ana Idárraga. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 71-101

> The deprivation of physical liberty in the context of NIACs has stimulated research and publication in the field of IHL for several years. Within the Colombian transitional justice process,

where conduct related to a NIAC spanning for more than half a century are currently being prosecuted, the legality of several instances of deprivation of physical liberty by FARC-EP, a non-state armed group, against State armed forces, is a relevant object of study. An important point of departure for the authors is their understanding of the catalyst role played by the Special Jurisdiction for Peace, given the active participation of those allegedly responsible, the victims and the communities in the legal qualification of the conducts under examination. With this case in mind, the authors analyse the IHL regulation over deprivation of physical liberty in relation to three different moments: (i) retention; (ii) captivity; (iii) and release. Considering the developments and gaps remaining in the international regulation, the purpose of this work is to advance an interpretation proposal of this phenomenon based on the complementary interaction of the relevant norms in the Colombian transitional justice model and the complex realities of armed conflicts.

https://link.springer.com/chapter/10.1007/978-94-6265-559-1_3 *

The prohibition of pillage in international humanitarian law

Eve La Haye. - In: The international criminal responsibility of war's funders and profiteers. - Cambridge : Cambridge University Press, 2020. - p. 189-200

This chapter provides a brief historical overview of the concept of pillage and shows how the prohibition of pillaging developed into an absolute prohibition in international humanitarian law, both in international and non-international armed conflict. The chapter discusses a possible definition of pillage and its material elements, which have developed through decisions of international tribunals since the Second World War.

Prolonged occupation and international law : Israel and Palestine

ed. by Nada Kiswanson and Susan Power. - Leiden ; Boston : Brill Nijhoff, 2022. - XX, 408 p.

This volume arose from a desire to advance academic discourse and reflection on the broader subject of prolonged occupation, in light of the permanent character, and resulting implications of, the 55 year Israeli administration of the Palestinian Territories. The roots of the volume lie in a 2018 academic conference on “The Threshold from Occupation to Annexation”. The present volume moves that discussion forward, updating and widening the range of topics addressed. The result is a collection of thought-provoking contributions by a wide range of scholars on the challenging and critical issue of prolonged occupation and international law, ranging from colonialism, apartheid, the illegality of occupation and potential international criminal liability.

https://doi.org/10.1163/9789004503939 *

Prosecuting corporate executives for war crimes in Sudan

Mark Klamberg. In: New York University journal of international law and politics, vol. 54, no. 3, Spring 2022, p. 887-939

Around the world, corporate behavior can have harmful impacts, transcending territorial boundaries and traditional commercial settings. Apparent corporate involvement in atrocities and human rights violations raises questions about liability. During the second Sudanese civil war (1983- 2005), corporations from North America and Europe sought to exploit gas and oil resources in the conflict areas of southern Sudan. There have been various attempts to hold those corporations and their executives liable for alleged involvement in atrocities committed during that conflict. Among them is the recent indictment lodged in the district court of Stockholm against leading executives of Lundin Energy, a Swedish oil and gas company, for complicity in alleged war crimes in southern Sudan from 1999 to 2003. The case has prompted further litigation and scholarly discussion on a variety of related issues in Sweden and elsewhere, including the capacity to prosecute persons residing in other countries under universal jurisdiction, the role of government in authorizing prosecutions, complicity in international crimes, applicability of international humanitarian law, and the Swedish penal provision on war crimes. In exploring the Lundin case and relevant precedent regarding domestic criminalization of violations of international humanitarian law in a non-international armed conflict, this article argues that the district court does have jurisdiction in the Lundin case and that questions relating to complicity should be adjudicated pursuant to general principles of domestic criminal law.

https://www.nyujilp.org/wp-content/uploads/2022/10/Klamberg.pdf

Protecting prisoners of war in contemporary conflicts

Derek Jinks. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 159-180

What protection must be accorded prisoners of war (POWs) in international humanitarian law (IHL)? How might this protection scheme shed light on the role of personal status categories in IHL? IHL accords substantial legal protection to POWs. Many of these protections closely track the increasingly robust fundamental guarantees accorded all conflict-related detainees. Some POW protections, though, reflect a different protective logic. Indeed, POWs are overprotected with respect to the humanitarian baseline because of special considerations of fairness, honor, and respect tightly linked to the specific requirements for POW status. The analysis in this chapter provides (1) a detailed catalog and assessment of the protections accorded POWs; (2) an account of the role of personal status categories in contemporary IHL; and (3) a qualified normative defense of special protections accorded POWs.

The protection of animals in wartime : rationale and challenges

Heike Krieger and José Martínez Soria. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 54-69

An inquiry into the rationale for the protection of animals in wartime confronts a key challenge: the progressive philosophical reflection on the improvement of the position of animals in (human) societies is at odds with the human-centred nature of international humanitarian law. Against this background, the chapter critically engages with possible reasons for animal protection in wartime: anthropocentric approaches, speciesism, anthropomorphism and a rights-based approach. It analyses to what extent these paradigms are reflected both in lex lata and in claims de lege ferenda. The chapter also examines to what extent these approaches can be brought in line with the overall objectives of international humanitarian law and reflects upon the challenges that arise from such an alignment. It favours a straightforward reform approach which aims at a specific convention for the protection of animal rights in wartimes.

https://doi.org/10.1017/9781009057301.005 *

The question of definition : armed banditry in Nigeria's North-West in the context of international humanitarian law

Tosin Osasona. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 735-749

In terms of its disruptive impact and intensity of violence, banditry is the gravest security threat that Nigeria currently faces, and it is driving her worst national humanitarian crisis in decades. There are contests about the origin, nature and the drivers of banditry and how well bandits by their modus operandi fit into the various definitional frameworks of an organized criminal group. The article examines what is known about bandits and banditry in light of existing definitional and conceptual paradigms of organized crime and criminal groups, and interrogates the applicability of international humanitarian law to this security crisis that characterizes the current face of conflict in the West African Sahel.

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Ratchet down or ramp up ? : contemporary threats, armed conflict, and tailored authority

Geoffrey S. Corn. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 223-264

An especially perplexing issues in international legal regulation of non-international armed conflict is the relationship between international humanitarian law (IHL) and international human rights law (IHRL). While most experts and states now recognize the complementary applicability of these two branches of law, translating this complementarity to operational practice remains difficult. This is exacerbated by characterization of military operations against transnational non-state organized armed groups transnationally. The challenge is most significant regarding authority to employ force. Neither body of law provides an ideal solution to this question in operations against non-state groups. On one hand, IHL provides expansive

authority under status-based targeting, but in many situations this is too permissive. On the other hand, IHRL relies on more restrictive conduct-based targeting, but this can be ineffective in some cases in meeting a threat. This chapter asks whether operational practice has provided a practical response to this challenge. It suggests that the common practice of restricting IHL with rules of engagement that reflect IHRL principles indicates that outside the context of inter-state hostilities, IHRL provides the operational default use of force setting. This "setting" is subject to mission-specific expansion pursuant to international humanitarian law principles, but should be understood as more of a legal obligation than a purely policy-based constraint on conduct of hostilities authority.

https://doi.org/10.1093/oso/9780197638798.003.0009 *

Read the room : legal and emotional literacy in frontline humanitarian negotiations

Rebecca Sutton. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 103-139

This chapter engages with law and emotions in frontline humanitarian negotiations with armed groups, illustrating how international humanitarian law (IHL) functions in the hands of different actors. Drawing on fieldwork from the Central African Republic and Southeast Asia, as well as practitioner-oriented negotiations literature, the chapter explores the legal and emotional literacy of humanitarian negotiators. Showcasing (and critiquing) the objective/subjective divide that pervades the literature, the discussion takes law and emotions in turn. The first part establishes that law is treated mainly as a tool, yet few clues are given as to how and why law might be deployed. A tension also materialises around whether IHL is itself 'negotiable', leaving humanitarian negotiators to navigate this conundrum—and law's indeterminacy more generally—with little guidance. The second part demonstrates that emotions are overlooked and misunderstood in the literature. Emotions are presented as reason's opposite, making it easy to side-line them and to call for their suppression. The thin and largely ambivalent treatment of emotions is of little help to humanitarian negotiators who, in practice, must contend with emotions at every turn. The central claim advanced is that, even as the legal and affective dimensions of humanitarian negotiations remain undertheorised, a heavy burden is imposed on humanitarians to discern what each negotiation encounter demands of law and of human feelings. This matters for IHL and it also has material consequences: those humanitarian negotiators who are unable to 'read the room' may find their attempts to persuade armed groups thwarted.

https://link.springer.com/chapter/10.1007/978-94-6265-559-1_4 *

Reducing civilian harm in urban warfare : a handbook for armed groups

ICRC. - Geneva : ICRC, February 2023. - 50 p.

Fighting in urban areas takes place where there are many civilians and civilian objects, causing significant suffering to civilians. This handbook explains methods of reducing harm to civilians during non-international armed conflicts. This handbook spells out the responsibilities of commanders, fighters, planners and supporting groups under customary international humanitarian law (CIHL), and makes a number of recommendations. Most of these recommendations are based on good practices that the ICRC has identified by analysing urban fighting, and on extensive consultations with the commanders and fighters of non-state armed groups. These good practices are not exhaustive and may not suit every situation, but all commanders should consider and apply these measures, together with any others that could prevent or minimize harm to civilians.

https://library.icrc.org/library/docs/DOC/icrc-4682-002.pdf

La référence aux droits de l'homme, au droit international humanitaire et aux crimes internationaux dans le Traité sur le commerce des armes

Abdel Wahab Biad. - In: Droit[s] de l'homme et droit international humanitaire : quelles conséquences sur les transferts d'armements conventionnels de guerre ?. - Paris : A. Pedone, 2022. - p. 187-203

La question de l'opportunité d'une "clause humanitaire" fut très discutée lors des négociations du Traité sur le commerce des armes. Mais cette clause humanitaire des articles 6, § 3 et 7 n'a rien d'exceptionnel puisqu'elle rappelle des obligations du droit international dont celle inscrite dans

les Conventions de Genève de 1949 prescrivant aux Etats de "respecter et faire respecter" le droit international humanitaire, "en toutes circonstances". C'est à la fois une obligation négative de s'abstenir de tout acte susceptible d'encourager ou d'assister d'aucune manière à commetre une violation grave du droit international applicable, et une obligation positive d'agir pour prévenir et empêcher la commission d'une telle violation. Concrètement, l'obligation positive implique ici de s'assurer que les armes transférées ou exportées ne servent pas à commettre des crimes internationaux et qu'à cet effet, l'Etat partie évalue préalablement ce risque avant toute autorisation d'exportation d'armes qu'il est amené à prendre.

Règlementation française et droit comparé en matière de transferts d'armement de guerre

Thibaud Mulier. - In: Droit[s] de l'homme et droit international humanitaire : quelles conséquences sur les transferts d'armements conventionnels de guerre ?. - Paris : A. Pedone, 2022. - p. 145-168

L'analyse comparée des règlementations nationales dans la prise en compte du droit international des droits de l'Homme et du droit international humanitaire renvoie à deux versants intrinsèquement liés des règlementations nationales en matière de transit d'armement. D'abord, le versant normatif, où il est question de la prise en compte, par les droits nationaux, de la réglementation internationale à ce sujet, et ensuite, le versant institutionnel, où les organes habilités se doivent de prendre en considération cette réglementation internationale. Ainsi, une discrétion nuancée des réglementations nationales se fait jour en la matière (I). Cette discrétion n'est pas contrebalancée, sur le plan institutionnel, en raison d'une relative opacité du processus de décision qui rend difficile l'évaluation du niveau de prise en compte des droits de l'Homme et du droit international humanitaire (II).

The regular armed forces, uniforms, and prisoner of war status

Michael N. Schmitt and Christopher J. Koschnitzky. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford Univesity Press, 2023. - p. 51-80

This chapter examines whether a member of the armed forces captured out of uniform or wearing a nontraditional uniform benefits from the extensive protections that POWs enjoy under the Third Geneva Convention, most of which is considered to reflect customary international law. The key provision in this regard is Article 4A, which lays out who is entitled to POW status. Under Article 4A(2), irregular groups that are not part of the armed forces seeking to benefit from POW status must have a fixed distinctive sign, usually satisfied by wearing a uniform. The question addressed in the chapter is whether this requirement is implicit for members of the regular armed forces or groups incorporated into the armed forces, such that their failure to distinguish themselves results in forfeiture of POW status. There are two views. By the first, the wearing of the uniform or other distinguishing attire at the time of capture has no bearing upon status as a POW; it is the captured soldier's inclusion in the enemy armed forces that accords that status. By the contrary view, and the better one as argued in this chapter, those captured out of uniform are unprivileged combatants. As such, they forfeit POW status and its attendant protections, as well as combatant immunity.

The regulation of crimes against water in armed conflicts and other situations of violence

Mara Tignino. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 706-734

Water is the lifeblood of human beings and society, but threats to water, such as the pollution of rivers, cyber crimes, and attacks against water infrastructure, are increasing. In green criminology, scholars have relied on domestic criminal law to develop the concept of crimes against water. This paper argues that international law could provide several frameworks for addressing these crimes. A number of international treaties and customary rules deal directly or indirectly with crimes against water, and the United Nations Security Council has also dealt with crimes against water committed by terrorist groups and parties to armed conflict. Crimes against water may represent violations not only of domestic criminal laws but also of international humanitarian law and human rights law.

https://library.icrc.org/library/docs/DOC/irrc-923-tignino.pdf

The regulation of hazardous substances and activities during warfare

Jérôme de Hemptinne. In: Journal of international criminal justice, Vol. 20, no. 5, November 2022, p. 1253-1285

Although hazardous activities and substances create significant environmental risks and damage during warfare, international humanitarian law contains very few provisions that specifically address this question. To reinforce the protection of the environment, these provisions should be interpreted in light of — and complemented by — international environmental instruments adopted during the last decades. Indeed, these instruments envisage important rules, mechanisms, and institutions which aim at preventing and redressing environmental threats and damage resulting from the production and use of hazardous substances and the dumping of wastes during peacetime. This article seeks precisely to examine how these rules, mechanisms and institutions could apply in the context of war-related incidents, not only during an armed conflict, but also before and after its occurrence. The article will show that sophisticated safety measures that help in preventing such incidents, which often create irreversible consequences, must be designed, tested, and implemented well before hostilities are taking place. Furthermore, environmental remediation of contaminated areas should also be considered after the end of the conflict.

https://doi.org/10.1093/jicj/mqac057 *

Repression of international crimes

Manuel J. Ventura. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 313-333

This chapter explores the scope of application of international criminal law with respect to the repression of international crimes affecting animals during war. It considers how war crimes, crimes against humanity and genocide could apply. It then reviews all judgments – up to July 2020 – from the ad hoc/hybrid international criminal tribunals and the International Criminal Court where war crime allegations were adjudged and animals featured therein. It thus gives the first ever detailed account of how international criminal law has been used to address and repress international crimes that affect animals during war. The chapter then explores international criminal law's limits and gaps in this area. It submits that animal cruelty during war should be recognised under international law in the same way that it is during peacetime under domestic law. It proposes that 'other inhumane acts' under the heading of crimes against humanity could be a means to potentially achieve this aim.

https://doi.org/10.1017/9781009057301.019 *

Reproductive crimes in international criminal law

Rosemary Grey. - In: Gender and international criminal law. - Oxford : Oxford University Press, 2022. - p. 231-264

Although some states have taken concrete steps to protect reproductive autonomy within their borders, there is no international consensus on the issue and as a result, no international instrument that criminalizes reproductive crimes. This chapter seeks to incentivize greater attention to reproductive violence in international law going forward. This chapter starts by explaining the concept of reproductive violence and its links to gender, race, and other identities. It then traces the process of 'surfacing' reproductive violence in international criminal law (ICL), taking into account broader debates about global 'over-population', women's empowerment, and human rights. This historic overview gives a sense of the political challenges to protecting and promoting the value of reproductive autonomy in international law. Finally, the chapter explores strategies for prosecuting violations of reproductive autonomy in the International Criminal Court (ICC) and other international courts. This includes a discussion of genocide, forced pregnancy, enslavement, sexual violence, persecution, outrages on personal dignity, torture, and inhumane acts.

https://doi.org/10.1093/oso/9780198871583.003.0010 *

Respect for the dead under international law and Islamic law in armed conflicts

Ahmed Al-Dawoody and Alexandra Ortiz Signoret. - In: Anthropology of violent death : theoretical foundations for forensic humanitarian action. - Chichester : J. Wiley, 2023. - p. 219-249

Bearing in mind that almost two-thirds of armed conflicts are taking place now in Muslim contexts, this chapter discusses the respect for the dead under both international law, in particular international humanitarian law (IHL), and Islamic law. It focuses on the context of armed conflicts in general and, in some cases, in the Muslim contexts in particular. The chapter analyzes the main obligations under IHL and Islamic law of parties to armed conflicts regarding the protection of the dead such as the obligation to search for, collect, and evacuate the dead without adverse distinction and the identification and recording of the information regarding the dead. It then analyzes the respect for the dead and treating them with dignity; the disposal of the dead with respect; the respect for gravesites; and obligations related to the return of human remains and personal effects.

Rethinking direct participation in hostilities and continuous combat function in light of targeting members of terrorist non-State armed groups

Rebecca Mignot-Mahdavi. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 1028-1046

Endless armed conflicts against terrorist groups put civilian populations at risk. Since France has been involved in the Sahel from 2013 onwards, transnational non-international armed conflicts (NIACs) of extended geographical and temporal scope against groups designated as terrorists are not a US exception anymore. NIACs against terrorist groups, conducted not only by the United States but also by France, persist and have been reconfigured around threat anticipation. How can anticipatory warfare be best constrained? This article argues that it can be best done through more constraining rules regulating target selection in NIACs and, in particular, by redefining the notion of continuous combat function (CCF). Many elements explored in this article indicate that the United States and France select targets that they pre-designate as terrorists, before these targets are engaged in hostilities. Instead of responding to the observed participation of these individuals in hostilities, strikes are based on contextual and behavioural elements ahead or outside of such moments. This paper argues that when war consists of threat anticipation, it becomes very extensive and particularly risky for civilians. Furthermore, recent State practice in the counterterrorism context reveals the pitfalls of the notions of direct participation in hostilities and CCF as defined in the 2009 International Committee of the Red Cross Interpretive Guidance. Outside this context, the interpretations proposed in the Interpretive Guidance might seem sufficient to constrain target selection processes and to protect civilian populations. However, when applied to armed conflicts that are driven by threat anticipation, the pitfalls of these interpretations emerge. I formulate a critique of these interpretations as being partly responsible for anticipatory warfare and propose an alternative theory for the CCF test.

https://library.icrc.org/library/docs/DOC/irrc-923-mignot-mahdavi.pdf

Rites of affirmation : the past, present, and future of international humanitarian law

Rotem Giladi. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 33-70

In this chapter I identify, demonstrate, explain, and critique two narratives used, traditionally, in the writing of the past of international humanitarian law (IHL). One tells of IHL's ineluctable progress, the other of its timeless, culture-less, universal immanence. These appear at odds: one narrates the dynamic process of restraining—and humanising—war through law; the other emphasises a constant and immutable idea of humanitarian restraint that inheres in any human civilisation. Culturally, nonetheless, these two narratives share the same function: both are used to affirm, to exogenous and endogenous audiences, faith in the project to humanise war. Deconstructing these narratives as forms of social memory suggests, however, that both types express and deal with epistemic anxieties about the present achievements of that project; both, in fact, allow IHL practitioners to come to terms with the present state of the project to humanise war by deferring the fulfilment of its promise to the indefinite future.

https://link.springer.com/chapter/10.1007/978-94-6265-559-1_2 *

The role of judge advocates in prisoner of war and detention operations in the U.S. army : a short history

Frederic L. Borch III. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 323-342

Uniformed lawyers have played important roles in prisoner of war and detainee operations in the U.S. Army. During international armed conflicts like World War II, Vietnam, and the Persian Gulf War, military lawyers advised on the status and treatment of enemy fighters captured on the battlefield—in accordance with the Geneva Conventions and customary international law. In the last decades of the twentieth century and early years of the twenty-first century, however, U.S. Army involvement in international armed conflicts—and corresponding POW operations—diminished significantly, and was replaced by military operations in non-international conflicts. Since persons captured or detained in non-international operations like Somalia, Haiti, and Afghanistan could not be prisoners of war as a matter of law, Army lawyers had to create procedures governing the status and treatment of detainees. History demonstrates that prisoner of war and detention operations have been a story of hastily planned and quickly implemented procedures. This ad hoc approach is to be expected, however, since the Army itself puts a priority on winning on the battlefield and a lower priority on prisoner and detainee operations.

Same same but different ? Why war-sustaining objects can be destroyed but not targeted

Niklas S. Reetz. In: Journal of conflict and security law, Vol. 27, no. 3, Winter 2022, p. 439-469

Fighting wars is expensive. Parties to an armed conflict therefore face incentives to take military action against an enemy's ability to finance warfare. Disputes about the lawfulness of targeting economic objects that contribute to an adversary's war-sustaining capability reach back as far as the American Civil War. The debate has recently regained attention with conflicts such as the fight against ISIS, where the international coalition carried out attacks against oil fields and money depots. In contrast to the argument of military necessity that states and scholars raise in favour of a broad interpretation of the definition of military objectives, this article finds that the purpose and extraordinary structure of Article 52(2) of Additional Protocol I to the Geneva Conventions preclude the targeting of war-sustaining economic objects. The article then explores a different, less-discussed mode of action against war-sustaining objects, namely their destruction. The so-called 'cotton claims' of the American Civil War are often invoked as a historical example of the lawful targeting of economic objects. A close analysis, however, shows that the facts underlying the cotton claims differ categorically from modern targeting practice. At the same time, the analysis reveals destruction as a potentially lawful alternative mode of action against economic objects. The cotton claims ultimately demonstrate that the destruction of economic objects outside the context of an attack can reconcile the argument of military necessity with the protection of civilian life, which is an insight equally relevant for modern warfare.

https://doi.org/10.1093/jcsl/krac023 *

Sexual violence against men as a method of warfare in contemporary conflicts : some lessons learned

Magdalena M. Martín Martínez. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 356-377

Taking as a basis the author's previous works on sexual violence in conflicts, this contribution looks into the similarities, differences and peculiarities that this type of violence presents when the victims are men and boys. This comparative review allows us to determine to what extent sexual violence has become a specific method of warfare, and a deliberate tactic of war, carried out in a systematic and generalised way during both the conflict and in the post-conflict periods, this causing serious consequences for the victims and societies, as well as for international peace and security itself.

Sexualisierte Gewalt im bewaffneten Konflikt : wie das Völkerrecht der Genderdimension begegnet

Sina Fontana. In: Archiv des Völkerrechts, Bd. 59, H. 4, 2021, S. 411-438

[Article in German] The individualisation of the international legal regime for protection against sexualised violence in armed conflict is accompanied by a demarcation from purely interstate law, which takes place in the turning away from group-related notions of honour towards individual dignity and means a consideration of the offensiveness of the crime. In this way, a gender-sensitive protection concept can emerge within the international legal order that has an appropriate protective effect for both genders across all cultures. However, this development has not yet found sufficient normative expression, especially in international humanitarian law, so that the individual regulatory regimes must be increasingly understood in their interrelationship with each other and with gender sensitivity. Particular attention should be paid to the human rights perspective. This not only harmonises the concept of protection under international law, but also contributes to ensuring that the humanity intended by international humanitarian law can actually unfold universally and adequately for both genders.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57984.pdf *

A short commentary concerning Russia's invasion of Ukraine and the jus in bello

Sergey Sayapin. In: Journal of international peacekeeping, vol. 25, issue 2, August 2022, p. 128-140

Since 24 February 2022, Russia's full-scale invasion of Ukraine has entailed large-scale violations of international humanitarian law (IHL), which are being investigated by Ukraine, some of its European allies, and the International Criminal Court (ICC) as war crimes. This short commentary provides an overview of selected jus in bello issues raised by the invasion, and highlights implications for the dissemination and implementation of IHL in Russia, Ukraine and beyond in a mid-term perspective.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57983.pdf *

The silence of Africa in the international humanitarian law debate

Kenneth Wyne Mutuma. In: African yearbook on international humanitarian law, 2021, p. 134-149

International humanitarian law (IHL), as a component of international law, specifically seeks to limit the effects of warfare. The law of wars aims to limit suffering by regulating how war is fought. Despite the universal nature of most rules of IHL, Africa has been largely left behind, especially in the development of these laws and also in understanding and applying such laws on the continent. Notably, Africa has had its fair share of armed conflicts over the years, the effects of which have been devastating. However, there has been a disconnect between the development and the application of the rules of IHL in Africa. The history of Africa has led to the continent being disconnected from the development of IHL over the years. This article, therefore, aims to illustrate the gaps that exist in regard to Africa in the development of IHL as well as the exclusion of Africa's concerns from the global IHL debate. The article considers why there is regional disengagement when it comes to IHL debates on the continent. This is done by first examining the reality of wars in Africa, which are similar to those that have occurred in other parts of the world. The article then considers the development of IHL as a body of international law that regulates armed conflicts and the gaps that exist in its application to and development in Africa. Finally, this article reflects on some of the ways of ensuring that Africa does not remain passive when engaging in the global IHL debate.

The soldier's share : considering narrow responsibility for lethal autonomous weapons

Kevin Schieman. In: Journal of military ethics, Vol. 21, no 3-4, 2022, p. 228-245

Robert Sparrow (among others) claims that if an autonomous weapon were to commit a war crime, it would cause harm for which no one could reasonably be blamed. Since no one would bear responsibility for the soldier's share of killing in such cases, he argues that they would necessarily violate the requirements of jus in bello, and should be prohibited by international law.

I argue this view is mistaken and that our moral understanding of war is sufficient to determine blame for any wrongful killing done by autonomous weapons. Analyzing moral responsibility for autonomous weapons starts by recognizing that although they are capable of causing moral consequences, they are neither praiseworthy nor blameworthy in the moral sense. As such, their military role is that of a tool, albeit a rather sophisticated one, and responsibility for their use is roughly analogous to that of existing "smart" weapons. There will likely be some difficulty in managing these systems as they become more intelligent and more prone to unpredicted behavior, but the moral notion of shared responsibility and the legal notion of command responsibility are sufficient to locate responsibility for their use.

https://doi.org/10.1080/15027570.2023.2166448 *

Some considerations on the obligation to honour the dead on the occasion of the Russo-Ukrainian armed conflict

Kelly Pisimisi. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 5, H. 3-4, 2022, p. 136-148

The current Russo-Ukrainian conflict has brought back dark memories and traumas in the wider European continent and the shocking images of dead bodies in various Ukrainian cities, most prominently in Bucha, rapidly mobilized the international community. Most international institutions and mandate-holders incessantly highlight the serious violations of international law. Already since 1949, the Geneva Conventions contained a set of rules on the protection and dignified handling of dead bodies in warfare, which by now have acquired an uncontested customary status. The same protection has been integrated in the Rome Statute, following the precedent of the ad hoc International Criminal Tribunals. Yet, even though the Russian invasion as such and the conduct of hostilities are undoubtedly flagrant violations of international law, one should bear in mind that the Ukrainian part also assumes international (criminal) responsibilities that shall be duly respected and investigated.

https://doi.org/10.35998/huv-2022-0009 *

State responsibility in relation to military applications of artificial intelligence

Bérénice Boutin. In: Leiden journal of international law, Vol. 36, no. 1, March 2023, p. 133-150

This article explores the conditions and modalities under which a state can incur responsibility in relation to violations of international law involving military applications of artificial intelligence (AI) technologies. While the question of how to attribute and allocate responsibility for wrongful conduct is one of the central contemporary challenges of AI, the perspective of state responsibility under international law remains relatively underexplored. Moreover, most scholarly and policy debates have focused on questions raised by autonomous weapons systems (AWS), without paying significant attention to issues raised by other potential applications of AI in the military domain. This article provides a comprehensive analysis of state responsibility in relation to military AI. It discusses state responsibility for the wrongful use of AI-enabled military technologies and the question of attribution of conduct, as well as state responsibility prior to deployment, for failure to ensure compliance of AI systems with international law at the stages of development or acquisition. Further, it analyses derived state responsibility, which may arise in relation to the conduct of other states or private actors.

https://doi.org/10.1017/S0922156522000607 *

Submarine communication cables and the law of armed conflict : some enduring uncertainties, and some proposals, as to characterization

Rob MacLaughlin, Tamsin Phillipa Paige and Douglas Guilfoyle. In: Journal of conflict and security law, Vol. 27, no 3, Winter 2022, p. 297-338

Submarine data cables are of fundamental strategic consequence. However, two intensely context-sensitive and contemporary sets of questions about how these cables are to be dealt with by the law of armed conflict remain—questions which state practice during the two World Wars either did not resolve or did not need to address. Through an examination of the relevant legal history and current law, this article seeks to explore potential answers to these question sets. The first question set relates to the general approach to be adopted when dealing with submarine data

cables within LOAC: a sui generis regime; discrete analogy; or general principles? The second question set addresses three lingering queries regarding legal characterization of submarine data cables for LOAC purposes, namely: (i) Are they ordinary military objectives? (ii) Can they be considered neutral objects? (iii) How do we assess proportionality in relation to attack on submarine data cables? The analysis concludes that a modified application of the ordinary rule of proportionality in LOAC targeting, noting some of the difficulties surrounding the concepts of incidental damage in this context, offers the most useful way forward.

https://doi.org/10.1093/jcsl/kraco14 *

Symbiosis in violence : a case study from Sierra Leone of the international humanitarian law implications of parties to the conflict engaging in organized crime

Sally Longworth. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 750-771

This article aims to demonstrate that respect for international humanitarian law (IHL) may help reduce the impact of organized crime in areas affected by armed conflict through a case study of the conflict in Sierra Leone (1991–2002). In this conflict, a symbiosis in violence was created, with diamond smuggling being essential to achieve the parties' military objectives, and those objectives being increasingly shaped by involvement in diamond smuggling. This led to further violence connected with the conflict and breaches of IHL. Ensuring compliance with IHL may therefore reduce the impact of these activities in armed conflicts. An important tool in securing this compliance is the influence of other States not party to the conflict, further to their obligation to ensure respect for IHL.

https://library.icrc.org/library/docs/DOC/irrc-923-longworth.pdf

Syria conflict and its impact : a legal and environmental perspective

Mais Qandeel and Jamie Sommer. In: Journal of international humanitarian legal studies, Vol. 13, no. 2, 2022, p. 275-296

The Syrian war has caused catastrophic damage to the lives and livelihoods of millions of people. Chemical attacks in particular have been tremendously devastating to both humans and wildlife ecosystems. Building on previous research in international humanitarian law (IHL) and the protection of the environment, this article identifies the immediate and long-term impact that the use and storage of chemical weapons has on the environment as against the shortcomings in legal coverage for the same. This article further argues that existing IHL provisions addressing the consequences of environmental warfare are fragmented at best, even when applied to a current case that most would consider to be highly applicable to IHL.

https://doi.org/10.1163/18781527-bja10057

Syrian war crimes trials in the Netherlands : claiming universal jurisdiction over terrorist offences and the war crime of outrages upon personal dignity of the dead

Lachezar Yanev. In: Netherlands yearbook of international law, vol. 52 (2021), 2023, p. 301-326

This chapter examines two cases against Syrian asylum seekers—the Ahmad al.-Y Judgment of 21 April 2021 and the Ahmad al-Khedr Judgment of 16 July 2021—in which the District Court of the Hague asserted universal jurisdiction to convict the accused of terrorist offences and war crimes committed in the Syrian conflict. The Court made remarkable findings on questions that concern the fields of international jurisdictional and humanitarian law. Specifically, it relied on the aut dedere aut judicare obligation under the UN Terrorist Bombings Convention, to which Syria is notably not a State Party, to claim universal jurisdiction over the crime defined in it. It thus produced very rare judicial practice on a matter of international jurisdictional law that is subject to much controversy and scholarly disagreement. In addition, the judges entered certain findings on the war crime of outrages upon personal dignity, as defined under Common Article 3 of the Geneva Conventions, which addressed two questions that have not been litigated at the international criminal tribunals: (i) can outrages upon personal dignity be committed against a dead person; and (ii) does exposing a captured fighter to public curiosity (by distributing online

videos in which he is recognizably portrayed) amount to a war crime in non-international armed conflicts?

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57988.pdf *

Targeting drug lords : challenges to IHL between lege lata and lege ferenda

Chiara Redaelli and Carlos Arévalo. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 652-673

This article aims to clarify how international humanitarian law (IHL) rules on targeting apply when drug cartels are party to a non-international armed conflict. The question of distinguishing between a cartel's armed forces and the rest of the cartel members is a pertinent matter. It is crucial to avoid considering every drug dealer a legitimate target, just as we do not consider that everyone working for the government is a legitimate target. Nevertheless, it is unclear at what point a member of a cartel would change from being a criminal to being a member of the armed wing of the cartel, hence becoming a legitimate target. The present article will suggest a teleological approach to solving this conundrum.

https://library.icrc.org/library/docs/DOC/irrc-923-redaelli.pdf

The transfer of conflict-related detainees : provisions on the transfer of detainees in international humanitarian law

Maral Kashgar. - Baden-Baden : Nomos, 2022. - 449 p.

As part of their participation in multinational military operations, troop-contributing states are required to take detainees. But what if the State does not want to keep the detainee in its own custody? Under what conditions is it possible to transfer detainees to another State? Despite their primary applicability in armed conflicts, the international humanitarian law rules on detainee transfers have so far received little attention in comparison to the human rights law prohibition of refoulement. By commenting on the transfer rules of the Geneva Conventions of 1949, this work fills a gap in legal literature.

The United Nations and international humanitarian law : the past 75 years

Gerd Oberleitner. In: Max Planck yearbook of United Nations law, vol. 25, 2022, p. 381-415

The creation of the United Nations (UN) in 1945 and the adoption of the Geneva Conventions of 1949 coincide but the relationship between the UN and international humanitarian law (IHL) remains uneasy. While the UN initially refrained from engaging with international humanitarian law, it contributed to making international humanitarian law more humanitarian through the development of human rights standards and their influence on international humanitarian law. The UN's peacekeeping operations continue to face challenges in applying IHL while preserving the impartial nature of peacekeeping, while the Security Council (primarily through its Protection of Civilians agenda) as well as UN human rights bodies have over the past decades become tools for monitoring and ensuring respect for international humanitarian law and investigating violations of it. The article examines how the UN has over the past 75 years developed, affirmed, investigated, respected, monitored, enforced, and adjudicated international humanitarian law, and analyses the challenges the UN has encountered in doing so.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/57982.pdf *

Unveiling claims of discrimination based on nationality in the context of occupation under international humanitarian and human rights law

George Dvaladze. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 947-964

This article examines international humanitarian law (IHL) and human rights guarantees of equality and non-discrimination applicable to cases of belligerent occupation. Capitalizing on the responsibilities of the Occupying Power with respect to different categories of persons living in the occupied territory distinguished by their nationality, it looks at the contents of obligations stemming from relevant norms of the two regimes and their interplay. It also addresses questions of the adequacy, utility and limits of IHL and human rights in according protection from discrimination and inequality to the inhabitants of the occupied territory.

https://library.icrc.org/library/docs/DOC/irrc-923-dvaladze.pdf

Urban warfare : policing conflict

Kenneth Watkin. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford Univesity Press, 2023. - p. 183-221

The twenty-first century presents significant challenges for those who view armed conflict as being exclusively a matter for military forces. Operations among urbanized populations, the proliferation of security threats involving criminal activity, the reliance on a "police primacy" approach for defeating insurgencies, as well as the need to resolve the interface between human rights–based policing and the law governing armed conflict places significant pressures on police forces tasked with maintaining order. There is a wide array of police and paramilitary forces that operate in the context of armed conflict. Reliance on policing in urban areas does not stop when armed conflict begins and cannot wait for such hostilities to end before police forces are employed to address contemporary security challenges. Ultimately, the application of human rights law–based policing is the approach that is most likely to result in a return to normalcy.

https://doi.org/10.1093/oso/9780197638798.003.0008 *

US military prosecutions during non-international armed conflict

Chris Jenks. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 519-548

Through the enactment of the Uniform Code of Military Justice (UCMJ) following World War II, the US codified a requirement that the military was required to prosecute captured enemy belligerents through a process identical in all but name to that used to prosecute its own service members. This equivalency requirement was conditioned on a presidential determination of practicability. Following the September 11 terrorist attacks, President George W. Bush determined the equivalency requirement was not practicable, thus diverging internal and external prosecutions. Internal prosecution refers to the United States prosecuting its own service members at a court-martial for wartime misconduct, which violates the UCMJ. External prosecution refers to the United States prosecuting enemy belligerents at a military commission for wartime misconduct, which violates the Military Commissions Act of 2009. This chapter compares how the US military has conducted internal versus external military prosecutions over the last twenty years. Ultimately, this chapter concludes that while removing the equivalency requirement has not yet yielded maximum disparities between external and internal prosecutions, relying solely on individual discretion for punishment is ill-advised.

https://doi.org/10.1093/oso/9780197638798.003.0018 *

The use of biobots as a means of warfare in the new armed conflicts

Miguel Ángel Martín López. - In: The limitations of the law of armed conflicts : new means and methods of warfare. - Leiden ; Boston : Brill Nijhoff, 2022. - p. 217-227

Since the beginning of the last decade, a new form of robot has been discussed, which is primarily known as biobot, although other expressions are also used, such as xenobots, living robots, living machines or animal-like robots. It is a technology that is still at an incipient phase. In essence, these biobots are animal-inspired mechanisms. This can be considered an essential element of this concept. Nature serves as a source of inspiration for the design of these machines, since it is the one that provides the best response for a given function (greater strength, speed, access to remote places, flexibility, etc.). No other artificial mechanics is capable of achieving results as precise as those endowed by nature. We understand that these biobots cannot belong to the traditional category of robots, as had been considered until now. These constitute a third class, situated between animals and robotics. Some analysts have already noted this correctly, and of course this reality must involve legal implications. For this reason, it is necessary to advocate differentiated specificities for said biobots. The purpose of this study will be precisely to address this issue in the framework of International Humanitarian Law, since, as we will see below, in addition to promising social benefits, these may also have a very profitable military use, with unique destructive effects.

The use of force against neutral ships outside territorial waters

Sondre Torp Helmersen. In: Leiden journal of international law, vol. 35, no. 2, June 2022, p. 315-355

This article examines when states are allowed to use force against neutral merchant ships outside territorial waters. This is regulated by both international humanitarian law and the prohibition of the use of force, which apply concurrently to naval warfare. The prohibition of the use of force imposes narrower limits than international humanitarian law, in the sense that certain actions that have traditionally been permitted under international humanitarian law are contrary to the prohibition of the use of force. The prohibition of the use of force exempts uses of force based on UN Security Council resolutions, consent and self-defence. Where there is no UN Security Council resolution or consent, self-defence remains the only option, and self-defence does not give a right to direct the use of force towards third states or their ships. Therefore, the right to self-defence does not permit blockades outside territorial waters or visit and search operations that are not founded on specific suspicions against individual ships, even though such operations may be permitted under international humanitarian law. These conclusions are supported by an examination of state practice and opinio juris, where the few relevant instances that do exist have met with widespread protests from other states.

https://doi.org/10.1017/S092215652200005X

The use of force against prisoners of war : operationalizing article 42

Chris Hanna and Bruce "Ossie" Oswald. - In: Prisoners of war in contemporary conflict. - Oxford : Oxford University Press, 2023. - p. 211-233

This chapter examines the application of force against prisoners of war (POWs) by deconstructing Article 42 of the Third Geneva Convention. It does this by focusing on key words in Article 42, particularly (1) “use of weapons,” (2) “escaping or attempting to escape,” (3) “extreme measures” and “warnings.” It also discusses whether a law enforcement paradigm is useful when considering the use of lethal force against POWs and urges care in associating or promoting such a paradigm in relation to the management of POWs. The chapter is set in the specific historical context of a mass escape of Japanese POWs from an Australian POW camp during the Second World War. This incident, and the analysis of the law concerning the incident, are offered as a prompt to treat the prospect of the use of force against POWs as requiring prior consideration and planning. Accordingly, the chapter concludes with several suggestions of how States may wish to interpret and apply Article 42 in doctrine and orders. These suggestions are made to ensure that military planners and commanders can maintain the required levels of security in POW camps while making certain that the protective status to which POWs are entitled are safeguarded.

The use of universal jurisdiction to ensure accountability for international crimes committed in Liberia in the periods 1989 to 1997 and 1999 to 2003

Shannon Bosch. In: African yearbook on international humanitarian law, 2021, p. 67-92

This article investigates the potential for using the principle of universal jurisdiction to prescribe and then prosecute international crimes committed in Liberia during the two civil conflict periods: 1989 to 1997 and 1999 to 2003. More particularly, the article unpacks the concept of universal jurisdiction and explores the benefits that it offers in ending impunity for heinous international crimes. The article explores some of the controversies that have prevented the effective use of the principle of universal jurisdiction and highlights why it remains relevant, given the current response by the African Union to international prosecutions. The article highlights the reason why cases such as Kosiah and Massaquoi are especially significant in ending impunity in the case of Liberia, and how the success or failure of such cases can have a ripple effect, creating the necessary pressure for the establishment of an Extraordinary Criminal Court for Liberia on Liberian soil.

Using international environmental law to enhance biodiversity and nature conservation during armed conflict

Karen Hulme. In: Journal of international criminal justice, Vol. 20, no. 5, November 2022, p. 1155-1190

Biodiversity and nature are severely impacted by armed conflict, particularly those fought in biodiversity-rich environments. Whether harm is caused directly by bullets and bombs, through the seepage of toxic chemicals into rivers and soils, the ground-churning tracks of tanks, or the 'conservation vacuum' the result is often the same — severe, possibly permanent, ecological change. International humanitarian law (IHL) has consistently come up short in delivering environmental protection on the battlefield. Can international environmental law (IEL) fare any better? The International Law Commission (ILC) and the International Committee of the Red Cross (ICRC) have both submitted major new guidelines in the last two years, following more than a decade of in-depth analysis of the IHL rules governing protection of the environment in relation to armed conflict. However, neither body was able to analyse the applicability of IEL obligations during armed conflict. Several authors have more recently entered this space, but none have so far undertaken a rule-by-rule analysis and spanning such a range of treaties. This article assesses the potential of the main biodiversity and nature conservation treaties to offer further environmental protection during armed conflict. Identifying complementary IEL obligations, particularly in relation to the conduct of hostilities, could be valuable to both mirror and reinforce IHL protections, and would ensure that IEL treaty bodies and third states have a basis upon which to promote conservation work with the parties to the conflict.

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Das Verbot der Aushungerung im bewaffneten Konflikt : gestärkt oder geschwächt durch die Einfügung des Artikel 8 (2) (e) (xix) IStGH-Statut

Viktoria Wollenberg. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 5, H. 1/2, 2022, p. 94-111

Auf der 18. Sitzung der Versammlung der Vertragsstaaten des Römischen Statuts im Jahr 2019 wurde einstimmig eine Änderung des Römischen Statuts durch die Einfügung des Artikel 8 (2) (e) (xix) IStGH-Statut angenommen. Zukünftig soll auch im nicht-internationalen bewaffneten Konflikt das Aushungern der Zivilbevölkerung kriminalisiert werden. Jedoch ist fraglich, welche Auswirkungen der neu eingefügte Artikel 8 (2) (e) (xix) IStGH-Statut haben kann, da er gem. Artikel 121 (5) IStGH-Statut nur für solche Staaten in Kraft tritt, die diese Änderungsresolution auch ratifizieren. Dieser Beitrag setzt sich mit der Frage auseinander, ob das Verbot der Aushungerung im bewaffneten Konflikt durch die Einfügung des Artikel 8 (2) (e) (xix) IStGH-Statut gestärkt oder sogar geschwächt wurde.

https://doi.org/10.35998/huv-2022-0007 *

Veterinary personnel

Katharine Fortin. - In: Animals in the international law of armed conflict. - Cambridge : Cambridge University Press, 2022. - p. 200-213

This chapter analyses the international humanitarian rules on veterinary personnel. It distinguishes between international armed conflicts and non-international armed conflicts and examines the legal consequences of violations. The chapter also reflects on the anthropocentric nature of international humanitarian law and discusses how this body of law might take better account of the interdependency of the fate of the human race with the fate of the other animal and plant species with which it shares the planet. It finally recommends lines of investigations on the legal protection of veterinary personnel.

https://doi.org/10.1017/9781009057301.013 *

War and justice in the 21st century : a case study on the International Criminal Court and its interaction with the war on terror

Luis Moreno Ocampo. - Oxford : Oxford University Press, 2022. - XXVI, 622 p.

This is the inside story of the International Criminal Court from the unique experience of its first Chief Prosecutor. Luis Moreno Ocampo describes his practice and alerts: there is no chaos, just

complexity. Until 1998 states and the United Nations Security Council (UNSC) had exclusive authority to launch international justice. The Rome Statute transformed the model and created an international criminal justice system combining them with a permanent ICC. The Statute established a new field of practice respecting political actors' roles but also conferring unprecedented power to the ICC prosecutor and judges. Judicial actors could trigger international justice in sovereign countries. The War on Terror, launched in 2001, contradicts the justice efforts proposing to kill those considered enemy combatants without trial. It redefined jus ad Bellum, does not respect sovereign borders, and is still ongoing. Criminals or enemies? Legal designs are literally a matter of life or death. Moreno Ocampo took office in 2003 while the US invaded Iraq and attacked the ICC, creating serious doubts about the court's viability. He summarizes his nine years of practice examining seventeen conflicts to decide on the ICC intervention. By 2012, the ICC was part of the global landscape, its existence no longer at risk. What was and is still up for debate is the relevance of the law in international affairs and the acceptance of the war paradigm. The book aims to help new generations develop modern technologies to improve global governance.

War in cities : preventing and addressing the humanitarian consequences for civilians

drafted by Marnie Lloydd, Caroline Baudot, Natalie Deffenbaugh, Abby Zeith and Pilar Gimeno Sarciada. - Geneva : ICRC, May 2023. - 92 p.

In this report, the ICRC analyses the humanitarian consequences of hostilities in the urban environment and seeks to raise awareness among parties to conflict, especially civilian authorities, of the resulting harm to civilians – its causes, its extent, and its interrelated and sometimes hidden nature. A better understanding should also prompt members of the international community to fulfil their obligations to prevent, reduce and respond to the impact of urban warfare. To this end, the ICRC provides 50 recommendations in this report.

https://library.icrc.org/library/docs/DOC/icrc-4701-002.pdf

War torts

Rebecca Crootof. In: New York University law review, vol. 97, no. 4, October 2022, p. 1063-1142

The law of armed conflict has a built-in accountability gap. Under international law, there is no individualized remedy for civilians whose property, bodies, or lives are destroyed in war. Accountability mechanisms for civilian harms are limited to unlawful acts: Individuals who willfully target civilians or otherwise commit serious violations of international humanitarian law may be prosecuted for war crimes, and states that commit internationally wrongful acts must make reparations under the law of state responsibility. But no entity is liable for lawful but unintended harmful acts—regardless of how many or how horrifically civilians are hurt. This Article proposes developing an international "war torts" regime, which would require states to pay for both lawful and unlawful acts in armed conflict that cause civilian harm. Just as tort and criminal law coexist and complement each other in domestic legal regimes, war torts and war crimes would overlap but serve different aims. Establishing war torts and creating a route to a remedy would not only increase the likelihood that victims would receive compensation, it would also create much-needed incentives for states to mitigate or reduce civilian harms. Ultimately, a war torts regime would further the law of armed conflict's foundational purpose of minimizing needless civilian suffering.

https://www.nyulawreview.org/wp-content/uploads/2022/10/NYULawReview-Volume-97-Issue-4-Crootof.pdf

Wars with and for humanity

Craig Jones and Nisha Shah. In: Yearbook of international humanitarian law, Vol. 24, 2021, p. 143-164

The U.S. takes great pride in conducting war 'humanely', but is humane warfare an achievement to celebrate or a cynical contortion of incommensurable principals? This chapter reviews Samuel Moyn's Humane: How the United States Abandoned Peace and Reinvented War and advances its own arguments in relation to the concept of humanity. Moyn presents a compelling account of the costs associated with humanising warfare, not least by connecting it with the demise of peace

and anti-war politics. But we suggest that the scope of humanity in war is broader and more complicated than Moyn suggests. Our argument rests on two developments in humane war that Moyn dismisses or overlooks. First is the development of rules on the regulation of hostilities in the nineteenth and twentieth centuries, which we argue constitute and calibrate military force in broadly legitimate and ethical terms that prefigure the post-Vietnam War era of humanisation that animates Moyn's analysis. Second is the turn toward humanitarian wars that emerged in the late twentieth century, and which we argue is an important transformation where 'humanity' becomes not only the means but also the justificatory ends of war. The chapter begins with an overview and contextualisation of Moyn's argument before discussing these respective developments and their implications for Moyn's analysis. Where Moyn retains an optimism that more humanity could do some good to recover peace, we conclude that once brought into the realm of war, it is humanity that needs to be questioned, perhaps even abandoned.

https://link.springer.com/chapter/10.1007/978-94-6265-559-1_5 *

When conflict recurs : classification of conflict when hostilities break out anew

Laurie R. Blank. - In: Between crime and war : hybrid legal frameworks for asymmetric conflict. - New York : Oxford University Press, 2023. - p. 125-149

Conflict classification is essential for determining when the law of armed conflict applies and the concomitant protections, rights, and obligations. What happens, however, when a conflict ends or appears to end but violence and hostilities bubble up again? The complexity of conflict identification and classification and the challenges of analyzing the facts and actors in such new violence raise difficult questions regarding how to assess whether and when such new violence constitutes an armed conflict. This chapter analyzes the appropriate analytical tools and thresholds for identifying and characterizing conflict when violence recurs. Given the low threshold for international armed conflicts, a quicker identification of armed conflict when violence recurs after an inter-state conflict is unlikely. However, such scenarios pose challenging questions whether actions by a proxy group or other entity could constitute an international armed conflict and whether the threshold for such determination might be easier to satisfy after a recent conflict between the two states. In non-international armed conflicts, one overarching question is whether the Tadić factors of intensity and organization are the correct approach when violence recurs after conflict, or whether a lower threshold or "accelerated analysis" is more appropriate. Similarly, the nature of the armed group engaged in the resurgence of hostilities, or the location and nature of the hostilities, could all be consequential, such that the thresholds or framework for hostilities recurring with the same group or in the same location may not be the same as that for new or reconstituted groups or different locations.

https://doi.org/10.1093/oso/9780197638798.003.0006 *

Will the centre hold ? Countering the erosion of the principle of distinction on the digital battlefield

Kubo Macák. In: International review of the Red Cross, Vol. 105, no. 923, August 2023, p. 965-991

This article argues that the growing involvement of civilians in activities on the digital battlefield during armed conflicts puts individuals at risk of harm and contributes to the erosion of the principle of distinction, a cornerstone of international humanitarian law (IHL). The article begins by outlining the ongoing trend of civilianization of the digital battlefield and puts forward brief scenarios to illustrate it. It then examines the narrow circumstances under which such forms of civilian involvement may qualify as direct participation in hostilities under IHL, and discusses what this means for the individuals concerned, particularly from the perspective of their loss of protection under the law. The analysis shows that certain types of State conduct which put civilians in harm's way by inducing them to directly participate in hostilities may constitute standalone violations of IHL and human rights law obligations. Beyond these specific prescriptions, the encouragement of civilian involvement undermines the principle of distinction, with dangerous ripple effects on the interpretation of those rules of IHL that flow from it. Accordingly, the article concludes that States should act to reverse the trend of civilianization of the digital battlefield and refrain as much as possible from involving civilians in the conduct of cyber hostilities.

https://library.icrc.org/library/docs/DOC/irrc-923-macak.pdf

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