# BIBLIOGRAPHY
# 1st issue 2024

## 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)**

### Adomnán's Lex Innocentium and the laws of war

**James W. Houlihan**. - Ireland : Four Courts Press, 2020. - 240 p.

### Afrique et droit international humanitaire : actes du colloque de Rennes 1er et 2 décembre 2022

**sous la direction de Guillaume Le Floch et Francesco Seatzu**. - Paris : A. Pedone, 2024. - 390 p.

### All's fair in love and war or the limits of the limitations : juridification of warfare and its revocation by military necessity

**Miloš Vec**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 34-60

### Animal warfare law and the need for an animal law of peace : a comparative reconstruction

**Saskia Stucki**. In: American journal of comparative law, vol. 71, issue 1, Spring 2023, p. 189-233
https://doi.org/10.1093/ajcl/avad018

### Another look at the gendered constitution of the laws of war : semantic fields, hegemonic masculinities and the reproduction of heteronormativity

**Frédéric Mégret**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 304-348
https://doi.org/10.1163/18781527-bja10077 *

### The authority of the International Committee of the Red Cross : determining what international humanitarian law is

**Linus Mühre**l. - Leiden ; Boston : Brill Nijhoff, 2024. - XXXII, 359 p.
https://doi.org/10.1163/9789004687820 *

### Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?

**edited by Matt Killingsworth and Tim McCormack**. - Cambridge : Cambridge University Press, 2024. - XII, 247 p.

### Compassion and international humanitarian law

**Thilo Marauhn**. - In: Der Schutz des Individuums durch das Recht : Festschrift für Rainer Hofmann zum 70. Geburtstag. - Heidelberg : Springer, 2023. - p. 371-379

### Cultivating humanitarianism : moral sentiment and international humanitarian law in the civilising process

**Richard Devetak**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 61-84

**The direct rights of individuals in the international law of armed conflict**

**Anne Peters**. - In: The individualization of war : rights, liability, and accountability in contemporary armed conflict. - Oxford : Oxford University Press, 2023. - p. 58-88
https://doi.org/10.1093/oso/9780192872203.003.0003 *

**Equal application of international humanitarian law in wars of aggression : impacts of the Russo–Ukrainian war**

**Kyo Arai**. - In: Global impact of the Ukraine conflict : perspectives from international law. - Singapore : Springer, 2023. - p. 253-271
https://link.springer.com/chapter/10.1007/978-981-99-4374-6_12 *

**Filling the gaps : the expansion of international humanitarian law and the juridification of the free-fighter**

**Amanda Alexander**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 274-303
https://doi.org/10.1163/18781527-bja10075 *

**Genderperspektiven im humanitären Völkerrecht**

**Gianna Ittermann**. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 6, H. 1-2, 2023, S. 7-21
https://doi.org/10.35998/huv-2023-0001 *

**Global impact of the Ukraine conflict : perspectives from international law**

**Shuichi Furuya, Hitomi Takemura, Kuniko Ozaki, editors**. - Singapore : Springer, 2023. - XV, 508 p.
https://doi.org/10.1007/978-981-99-4374-6 *

**How is the term "armed conflict" defined in international humanitarian law ? : International Committee of the Red Cross opinion paper 2024**

**ICRC**. - Geneva : ICRC, April 2024. - 26 p.
https://library.icrc.org/library/docs/DOC/icrc-4767-002.pdf

**How to develop international humanitarian law taking armed groups into account ?**

**Marco Sassòli**. In: The military law and the law of war review, vol. 60, no. 1, 2022, p. 71-88
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**The individualization of war : rights, liability, and accountability in contemporary armed conflict**

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**International humanitarian law : necessity, distinction and the 'standard of civilisation'**

**Matt Killinsworth**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 250-273
https://doi.org/10.1163/18781527-bja10062 *

**International humanitarian law : rules, controversies, and solutions to problems arising in warfare**

**Marco Sassòli ; with the assistance of Lizaveta Tarasevich**. - Cheltenham ; Northampton : E. Elgar, 2024. - LIII, 741 p.

**International humanitarian law and international investment law : mapping a developing relationship**

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https://doi.org/10.1007/978-94-6265-619-2_2 *

**The international laws of war : linguistic analysis from the perspectives of register, corpus and grammatical patterning**

**Annabelle Lukin and Alexandra García Marrugo**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 223-249
https://doi.org/10.1163/18781527-bja10065

**Limits to the scope of humanity as a constraint on the conduct of war**

**Tim McCormack, Siobhain Galea and Daniel Westbury**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 85-110

**Meta-law of armed conflict principles**

**Daniel D. Maurer**. In: Texas Tech law review, vol. 56, 2023, p. 113-140
http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.Maurer.PUBLISHED10.pdf

**Mozambique's Cabo Delgado conflict : international humanitarian law and regional security**

**edited by Marko Svicevic and Martha M. Bradley**. - Abingdon : Routledge, 2024. - XIV, 284 p.
https://doi.org/10.4324/9781003317647 *

**Ordering human-other relationships : international humanitarian law and ecologies of armed conflicts in the Anthropocene**

**Matilda Arvidsson and Britta Sjöstedt**. - In: The Routledge handbook of international law and anthropocentrism. - London : Routledge, 2023. - p. 122-141
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**Rethinking the scope of application of international humanitarian law and its place in the international legal system**

**TD Gill**. In: The military law and the law of war review, Vol. 60, no. 1, 2022, p. 58-70
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**Sieges and the laws of war in Europe's long eighteenth century**

**Gavin Daly**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 13-33

**The state, civility, and international humanitarian law**

**Matt Killingsworth**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 111-134

**The terminology of the law of warfare : a linguistic analysis of state practice**

**Emily Crawford, Annabelle Lukin, and Jacqueline Mowbray**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 197-222
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**Shelly Aviv Yeini**. In: University of Pennsylvania journal of international law, Vol. 44, issue 3, 2023, p. 701-730
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**Who is at war ? : on the question of co-belligerency**

**Marcela Prieto Rudolphy**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 141-156
https://doi.org/10.1007/978-94-6265-619-2_5 *

# II. Types of conflicts

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

**Consolidating international humanitarian law and international human rights law : protection from gender-based violence against women in non-international armed conflict**

**Ingeborg de Koningh**. In: Netherlands international law review, vol. 70, issue 1, 2023, p. 87-120
https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/59715.pdf *

**Constraints under international law on military operations in, or in relation to, outer space during armed conflicts : working paper**

**submitted by the International Committee of the Red Cross to the open-ended working group on reducing space threats through norms, rules and principles of responsible behaviours, as convened under United Nations General Assembly Resolution 76/231, and to the Secretary-General of the United Nations in reply to General Assembly Resolution 76/230 on "Further practical measures for the prevention of an arms race in outer space"**. - [Geneva] : ICRC, 3 May 2022. - 6 p.
https://library.icrc.org/library/docs/DOC/ICRC_WORKING_PAPER_2022_05_ENG.pdf

**Criminalizing acts of rebel governance as war crimes : an assessment focused on the war crime of sentencing or execution without due process**

**Diletta Marchesi**. In: Journal of international criminal justice, vol. 21, no. 2, May 2023, p. 353-382
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**Cyberangriffe gegen ukrainische Energieversorgung : Durchsetzung humanitäres Völkerrechts im Cyberspace**

**Maxima Hubbes**. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 6, H. 3-4, 2023, p. 135-150
https://doi.org/10.35998/huv-2023-0007 *

**Les doctrines nationales relatives aux cyberopérations**

**Aude Géry**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 143-164

**Le droit des conflits armés internationaux appliqué à l'espace extra-atmosphérique : les défis posés par les satellites artificiels**

**Jennifer Lachance**. - [Paris] : Institut de recherche stratégique de l'Ecole militaire (IRSEM), Novembre 2023. - 110 p.
https://www.irsem.fr/media/5-publications/etude-irsem-111-lachance.pdf

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**ICRC**. - Geneva : ICRC, April 2024. - 26 p.
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**Individualization and collectivization in contexts of organized criminal violence : the case of Mexico's war on organized crime**

**Pablo Kalmanovitz and Miriam Bradley**. - In: The individualization of war : rights, liability, and accountability in contemporary armed conflict. - Oxford : Oxford University Press, 2023. - p. 247-269
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**"Inside" and "outside" : assessing the Russian blockade against Ukraine**

**Alejandro Chehtman and Eduardo Rivera-López**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 157-173
https://doi.org/10.1007/978-94-6265-619-2_6 *

**L'intégration du droit international humanitaire au sein des normes internes de lutte contre le terrorisme : une instrumentalisation malvenue de l'applicabilité des normes**

**Claire Méric**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 121-140

**The language of the protection of civilians mandate and the primary responsibility of the State : a legal norm for peace and security**

**Tamer Morris**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 349-376
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**Military uses of the sea in peace and during armed conflict**

**Magne Frostad**. - In: The law of the sea : normative context and interactions with other legal regimes. - London : Routledge, 2022. - p. 243-259
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**Newport manual on the law of naval warfare**

**James Kraska, Raul "Pete" Pedrozo, David Letts, Wolff Heintschel von Heinegg, Rob McLaughlin, James Farrant, Yurika Ishii, Gurpreet S. Khurana, Koki Sato**. In: International law studies, vol. 101, 2023, 265 p.
https://digital-commons.usnwc.edu/ils/vol101/iss1/1/

**"Objects" ? : the legal status of computer data under international humanitarian law**

**Ori Pomson**. In: Journal of conflict and security law, Vol. 28, no. 2, Summer 2023, p. 349-387
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**Preliminary recommendations on possible norms, rules and principles of responsible behaviours relating to threats by States to space systems : working paper**

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**Shin Kawagishi**. - In: Global impact of the Ukraine conflict : perspectives from international law. - Singapore : Springer, 2023. - p. 273-294
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**Sexual and gender-based violence committed by non-state armed groups against women/girls and LGBTI+ persons in non-international armed conflicts : Peru's case**

**Juan-Pablo Pérez-León-Acevedo**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 377-416
https://doi.org/10.1163/18781527-bja10076 *

**Thinking with IHL in contexts of counterterrorism : the case of criminal justice systems in the Sahel**

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**Masahiro Kurosaki**. - In: Global impact of the Ukraine conflict : perspectives from international law. - Singapore : Springer, 2023. - p. 339-357
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# III. Armed forces / Non-state armed groups

**(Combatant status, compliance with IHL, etc.)**

**Armed groups and international legitimacy : child soldiers in intra-state conflict**

**William Plowright**. - London ; New York : Routledge, 2021. - XVI, 219 p.

**Le droit des conflits armés dans les manuels militaires**

**Philippe Lagrange**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 15-28

**International humanitarian law and a gender perspective in the planning and conduct of military operations**

**drafted by Vanessa Murphy, Paula Iwanowska and Kristina Lindvall**. - Geneva : ICRC, March 2024. - 64 p.
https://library.icrc.org/library/docs/DOC/icrc-4741-002.pdf

**Norm clusters of non-state armed groups : mapping and understanding the limits of warfare as understood by non-state armed groups**

**Will Jamison Wright**. - Cham : Springer, 2023. - XVII, 213 p.
https://doi.org/10.1007/978-3-031-45914-6 *

**Rebel groups' adoption of human rights and international humanitarian law norms : an analysis of discourse and behavior in Kosovo**

**Jennifer A. Mueller**. In: Human rights review, Vol. 24, no. 4, December 2023, p. 511-544
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**The role of military legal advisers in targeting : a perspective from the Netherlands**

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**Julien Ancelin**. In: Les Champs de Mars, no 37 (2021/2), 2023, p. 47-70
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**Rebecca Shaw**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 153-;

# VI. Protection of persons

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

### Accountability measures for the forcible transfer and deportation of Ukrainian children

**Yulia Ioffe**. - In: Forcible transfer and deportation of Ukrainian children : responses and accountability measures. - Brussels : European Parliament, January 2024. - p. 49-77

https://www.europarl.europa.eu/RegData/etudes/STUD/2024/754442/EXPO_STU(2024)754442_EN.pdf#page=48

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**James W. Houlihan**. - Ireland : Four Courts Press, 2020. - 240 p.

### Blurring the lines : how are female child soldiers protected by the laws of war?

**Rosemary Grey**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 200-217

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### Gender bias and international humanitarian law : is human rights law the answer ?

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### Genderperspektiven im humanitären Völkerrecht

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**Humanitäre Hilfe : ein Beitrag zum Recht der Solidarität**

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**ICRC expert meeting : preventing and mitigating the indirect effects on essential services from the use of explosive weapons in populated areas**

**drafted by Eirini Giorgou**. - Geneva : ICRC, April 2024. - 47 p.
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**International humanitarian law : protecting the rights of women in armed conflicts in Africa. Vol. 1. Nigeria, DR Congo and Sierra Leone**

**Emmanuel Chinweike Ibezim**. - Aurora : Agape Inc., 2021. - LX, 415 p.

**International humanitarian law and a gender perspective in the planning and conduct of military operations**

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

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**Maxima Hubbes**. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 6, H. 3-4, 2023, p. 135-150

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**Kyo Arai**. - In: Global impact of the Ukraine conflict : perspectives from international law. - Singapore : Springer, 2023. - p. 253-271

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**Shuichi Furuya, Hitomi Takemura, Kuniko Ozaki, editors**. - Singapore : Springer, 2023. - XV, 508 p.

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**Emanuela-Chiara Gillard**. In: Texas Tech law review, vol. 56, 2023, p. 81-90

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**Harriet Norcross Eppel**. In: Brigham Young University Law Review, Vol. 49, no. 3, p. 925-960

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## UNITED STATES

**'He offered a prayer for the flier he had just killed' : superior orders at the US Army Trials in Manilla, 1945-1947**

**Jamie Fellows and Mark David Chong**. In: Journal of international criminal justice, vol. 21, no. 2, May 2023, p. 331-352
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**Arthur van Coller**. In: Journal of international humanitarian action, vol. 9, 2024, 15 p.
https://doi.org/10.1186/s41018-023-00145-2

## WESTERN COUNTRIES

**Military assistance to Ukraine : enquiring the need for any legal justification under international law**

**Raphaël van Steenberghe**. In: Journal of conflict and security law, Vol. 28, no. 2, Summer 2003, p. 231-251
https://doi.org/10.1093/jcsl/krad007 *

# All with Abstracts

### Accountability measures for the forcible transfer and deportation of Ukrainian children

**Yulia Ioffe**. - In: Forcible transfer and deportation of Ukrainian children : responses and accountability measures. - Brussels : European Parliament, January 2024. - p. 49-77

This briefing provides a legal analysis of the forcible transfers and deportations of Ukrainian children by Russia, scrutinising these actions under international humanitarian law, international human rights law and international criminal law. It contends that these practices violate various provisions of Geneva Convention IV and Additional Protocol I to the Geneva Conventions, as well as the United Nations Convention on the Rights of the Child. Furthermore, it suggests that these actions may amount to war crimes, crimes against humanity and arguably the crime of genocide. The briefing presents an overview of accountability mechanisms, such as the International Court of Justice, the International Criminal Court as well as criminal prosecutions in Ukraine and third states. Concluding the analysis, the briefing highlights four primary challenges, namely, locating children and ensuring their return; the lack of access to Russian and occupied territories to locate children, gather evidence and arrest those suspected of international crimes; the coordination of activities among multiple stakeholders and securing their financing; and the potential role of displaced children as a bargaining tool in possible peace negotiations.

https://www.europarl.europa.eu/RegData/etudes/STUD/2024/754442/EXPO_STU(2024)754442_EN.pdf#page=48

### Adomnán's Lex Innocentium and the laws of war

**James W. Houlihan**. - Ireland : Four Courts Press, 2020. - 240 p.

This book studies the Irish law dating from AD 697, called Lex Innocentium or the Law of the Innocents. It is also known as Cáin Adomnáin, being named after Adomnán (d. 704), ninth abbot of Iona, who was responsible for its drafting and promulgation. The law was designed to offer legislative protection for women, children, clerics and other non-arms-bearing people, primarily though not exclusively, in times of conflict. It will be of interest to historians, both professional and lay, in many fields, with special relevance for historians of warfare, the laws of war, and of attitudes towards violence in general. The study seeks to identify the place of this law in the history of the laws of war and, in so doing examines many of the relevant sources in the Christian West, with conclusions that some will find surprising.

### Afrique et droit international humanitaire : actes du colloque de Rennes 1er et 2 décembre 2022

**sous la direction de Guillaume Le Floch et Francesco Seatzu**. - Paris : A. Pedone, 2024. - 390 p.

Le droit international humanitaire est, par essence, constitué de normes ayant vocation à s'appliquer de façon universelle, normes à l'élaboration desquelles les Etats africains et les organisations régionales africaines participent. A travers différentes contributions d'universitaires et de praticiens, le présent ouvrage tend non seulement à mesurer l'importance de cette participation, il soulève également la question de l'existence d'une « spécificité africaine » dans l'élaboration, l'interprétation et l'application des règles du droit international humanitaire ainsi que dans la sanction du non-respect de ces dernières. En d'autres termes, il s'agit non seulement de mesurer l'importance de la contribution de l'Afrique au développement de cette branche du droit international, mais aussi d'interroger l'existence d'une forme de régionalisation du droit international humanitaire.

### The alchemy of the right to life during the conduct of hostilities : a normative approach to operationalizing the 'supreme right'

**Gus Waschefort**. In: European journal of international law, vol. 34, issue 3, August 2023, p. 615-646

The prevailing approach to the application of the right to life during the conduct of hostilities holds that the arbitrariness of loss of life in terms of international human rights law (IHRL) is determined by compliance with international humanitarian law (IHL). Through application of the interpretive principle of systemic integration, an alternative 'normative approach' is advanced. The normative approach is premised on a contextual consideration of the normative content and underlying values of the right to life rather than on the more mechanical approaches to its interpretation. The outcome reached that is based on this approach has two profound distinctions to that of the prevailing approach: (i) not all loss of life where IHL was not strictly complied with is ipso jure arbitrary and, conversely, (ii) at times, compelling factors necessitate a recalibration of arbitrariness along a spectrum between IHRL and IHL, with the result that loss of life may amount to arbitrary deprivation of life even when IHL is fully complied with. In the context of quintessential military operations, a two-pronged normative test is advanced to determine the circumstances in which non-compliance with IHL will result in arbitrary deprivation of life.

https://doi.org/10.1093/ejil/chad045

### All's fair in love and war or the limits of the limitations : juridification of warfare and its revocation by military necessity

**Miloš Vec**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 34-60

Humanity and civility were established as new leading principles of international law during the last decades of the nineteenth century. But the restriction of war itself was a battlefield. Some authors conceptualised the restrictions on warfare explicitly as of a social custom quality or as 'chivalric practices' of 'moral value only'. Probably the most fundamental attack on international law's limits came from the idea of 'military necessity'. It was limiting law's limitations. And in its most radical variant, it was evoked not only in those cases which explicitly referred to it but in any regulation of warfare. This was a specific, particularly militaristic understanding of 'necessity', and its effect was unleashing: the laws of war would lose their binding force. Necessity could revocate any ties, be they moral or legal. Pre-1914 international law was in some areas pretty far away from humanisation, universalism, and also from positivism. It was relativising and legitimating excessive violence.

### Animal warfare law and the need for an animal law of peace : a comparative reconstruction

**Saskia Stucki**. In: American journal of comparative law, vol. 71, issue 1, Spring 2023, p. 189-233

This article puts forward a novel analogy between animal welfare law and international humanitarian law—two seemingly unrelated bodies of law that are both marked by the aporia of humanizing the inhumane. Through the comparative lens of the international laws of war and peace, this Article argues that existing animal welfare law is best understood as a kind of warfare law that regulates violent activities within an ongoing "war on animals." It further submits that this animal warfare law needs to be complemented and counterbalanced by an animal law of peace, consisting of a jus animalis contra bellum and peacetime animal rights.

https://doi.org/10.1093/ajcl/avad018

### Another look at the gendered constitution of the laws of war : semantic fields, hegemonic masculinities and the reproduction of heteronormativity

**Frédéric Mégret**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 304-348

This article argues that the gendered constitution of the regulation of war runs even deeper than typically understood. Instead of merely the laws of war's internal categories being gendered, it is the entire apparatus of war's regulation as expressed in various versions of its denomination that

manifests different shades of gender. Specifically, the article shows how the laws of war emerged as the hegemonic masculine synthesis between different conceptions of manhood, from the most unconstrained to the most chivalrous. As that compromise has been challenged by more 'feminine' approaches, this has triggered repeated reassertions of the regulation of war's inherently masculine character. The article speculates about the staying power of the masculine script of war through law at the intersection of misogyny, racism and the politics of legal expertise. It concludes by reflecting on what it might mean to transcend the implicit heteronormativity of the regulation of war by queering its categories.

https://doi.org/10.1163/18781527-bja10077 *

## The Arab world and the International Criminal Court

**Haykel Ben Mahfoudh**. In: Journal of international criminal justice, vol. 21, no. 4, September 2023, p. 735-753

This article discusses the main reasons behind the reluctance of most Arab countries to ratify the Rome Statute and to cooperate with the International Criminal Court (ICC). There are legal, political, and practical restraints, as well as cultural barriers, to incorporating principles of individual criminal responsibility for international crimes into the domestic laws of most Arab countries. Moreover, many Arab states adopt a security-based approach to war crimes and crimes against humanity, which are thus prosecuted mainly under anti-terrorist laws, rather than a rule of law-based approach to holding those most responsible for international crimes accountable. Further, when political considerations are at stake, states' commitment to address the most serious crimes appears eroded, thus becoming inconsistent with the objective of the Rome Statute of ending impunity for perpetrators of international crimes. It is becoming ever more necessary for the ICC to gain recognition and acceptance in the Arab world by garnering effective participation of those Arab states undergoing major transitions, where international justice, arguably, is most needed.

https://doi.org/10.1093/jicj/mqad052 *

## Armed groups and international legitimacy : child soldiers in intra-state conflict

**William Plowright**. - London ; New York : Routledge, 2021. - XVI, 219 p.

This book analyses the issue of child soldiers in order to understand how armed groups engage with international organizations to gain international legitimacy. The work examines why some armed groups 'follow the rules' of international humanitarian law and others do not. It argues that armed groups in conflicts around the world engage with international organizations in order to gain international legitimacy and to show they are following the laws of war. By examining the issue of child soldiers in contemporary armed conflict, the volume establishes a typology of which groups will engage with international actors and follow the laws of war – and which will not. The main aim of the book is to understand the rationality of even the most violent of actors, and to understand when and how armed groups can be encouraged to follow the laws of war. The work draws from extensive primary research conducted among armed groups in Syria and Myanmar, including al-Qaeda, the Islamic State, and the many small ethnic insurgent groups of Myanmar.

## Attack decisions : expanding the aperture of accountability

**Geoffrey S. Corn**. In: Texas Tech law review, vol. 56, 2023, p. 15-37

In this article, the author examines the legal and ethical dimensions of decision-making processes in the context of military and security operations. The article argues for a broader framework of accountability that addresses not only the immediate actions but also the strategic and policy decisions influencing attacks. By analyzing recent case law and operational examples, the author highlights gaps in current accountability mechanisms and proposes enhancements to ensure greater oversight and responsibility. The discussion emphasizes the need for transparency and ethical considerations in decision-making to align actions with international norms and standards. This article contributes to the ongoing debate about improving accountability in military and security contexts.

http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.Corn_.PUBLISHED32.pdf

## Australia's investigation of alleged ADF war crimes in Afghanistan

**Julia Flint**. In: Journal of international criminal justice, vol. 21, no. 3, July 2023, p. 633-658

This article examines Australia's obligation to investigate war crimes in the context of its obligations under the Rome Statute of the International Criminal Court (ICC). This obligation is contrasted with Australia's investigation of war crimes to date, with a particular focus on the current investigations into alleged war crimes by Australian Defence Forces in Afghanistan. The article then discusses the jurisdiction of the ICC, and the important effect of the principle of complementarity under Article 17 of the Rome Statute. The article concludes by assessing the future of war crimes investigations in Australia, drawing attention to the lessons which can be learned moving forward — both domestically and by other states facing allegations of war crimes committed by their own forces.

https://doi.org/10.1093/jicj/mqad032

## The authority of the International Committee of the Red Cross : determining what international humanitarian law is

**Linus Mührel**. - Leiden ; Boston : Brill Nijhoff, 2024. - XXXII, 359 p.

This book conducts the first ever comprehensive study of the ICRC's interpretations and law-ascertainments. It analyses in detail their impact on the development of international humanitarian law and international law in general as well as the reasons for their impact. This analysis involves the discussion of the ICRC's authority. Is it legal or just factual authority? The analysis also illuminates the direction that IHL – and international law in general – develops. This insight sheds light on the question of the current type of international law, i.e., what international law is and who makes it.

https://doi.org/10.1163/9789004687820 *

## Autonomous weapons systems controlled by artificial intelligence : a conceptual roadmap for international criminal responsibility

**Guido Acquaviva**. In: The military law and the law of war review, vol. 60, no. 1, 2022, p. 89-121

The article explores a conceptual roadmap for considering autonomous weapons systems (AWS) not just in the framework of international humanitarian law (IHL), but also in terms of individual responsibility under international criminal law (ICL). After setting the stage with some preliminary and terminological considerations, the author considers the different perspectives through which IHL and ICL look at Artificial Intelligence as applied to weapons systems. Within this framework, the article then hones in on certain essential aspects of the contemporary understanding of ICL – a system aimed at protecting certain interests (or goods) based on individual agency as demonstrated by its approach to modes of responsibility, and sentencing. On the basis of these reflections, three main theoretical possibilities are explored: that humans remain the only subject capable of being considered criminally responsible for harm to interests protected by ICL; that AWS come to be considered 'persons' subject to (a form of) individual criminal responsibility; or, a hybrid new system combining aspects of the two. The author considers that, while the second option appears implausible and unrealistic under the present circumstances, the challenges faced by the other two options remain daunting, posing potentially irresolvable issues within the current ICL framework.

https://doi.org/10.4337/mllwr.2022.01.06 *

## Blurring the lines : how are female child soldiers protected by the laws of war?

**Rosemary Grey**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 200-217

This chapter explores the protections afforded under the laws of war to young women and girls who, over the course of a single conflict, may occupy the roles of a child, a civilian, a combatant, a killer, a victim of sexual violence, and/or a mother. But rather than exploring this question into relation to women and girls as a homogenous group, it focuses on one young woman in one conflict, the so-called Second Congo War. Drawing on testimony provided by this witness during

the Ntaganda case at the International Criminal Court (ICC), the chapter presents a critical view on the role of law in war. It observes that even with advances in legal protections for women and girls, as demonstrated by this important ICC case, in practical terms these actors often have no one to protect them but themselves.

## Challenging the use of external sources by the Inter-American Court of Human Rights

**Tainá Garcia Maia**. In: International and comparative law quarterly, vol. 72, issue 4, October 2023, p. 977-1011

This article challenges the justification usually offered by the Inter-American Court of Human Rights for its broad use of external sources when engaging in evolutive interpretation of the American Convention on Human Rights (ACHR). It analyses the Court's jurisprudence concerning international humanitarian law, the rights of the child, and lesbian, gay, bisexual, transexual and intersex (LGBTI) rights, in addition to drawing on interviews conducted with lawyers of the Court. It argues that the discursive strategy used by the Court to justify its 'import' of external sources fails to provide a complete normative justification and remains open to the charge of 'cherry-picking'. The article recommends that the Court tailors its discursive strategy to the specific type of external sources used and suggests that more attention be paid to searching for internationalized consensus when determining the relevance of non-binding sources to evolutive interpretation of the ACHR.

https://doi.org/10.1017/S0020589323000313

## Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?

**edited by Matt Killingsworth and Tim McCormack**. - Cambridge : Cambridge University Press, 2024. - XII, 247 p.

Efforts to moderate conflict are as old as conflict itself. Throughout the ages, restraint in warfare has been informed by religious and ethical considerations, chivalry and class, and, increasingly since the mid-19th century, a body of customary and treaty law variously referred to as the laws of war, the law of armed conflict (LOAC) or international humanitarian law (IHL). As they evolved from the mid-19th century, these laws were increasingly underpinned by humanitarianism, then in the mid-20th century, were assumed to be universal. But violations of these restraints are also as old as conflict itself. The history of conflict is replete with examples of exclusions from protections designed to moderate warfare. This edited volume explores the degree to which protections in modern warfare might be informed by notions of 'civility' and 'barbarism', or, to put it another way, asks if only those deemed to be civilised are afforded protections prescribed by the laws of war.

## Common Article 1 of the Geneva Conventions and the method of treaty interpretation

**Lawrence Hill-Cawthorne**. In: International and comparative law quarterly, vol. 72, issue 4, October 2023, p. 869-908

In its updated Commentaries on the 1949 Geneva Conventions, the International Committee of the Red Cross (ICRC) embraces the 'external' interpretation of Article 1 common to the four Geneva Conventions, according to which States have certain negative (complicity-type) and positive (prevention/response) obligations to 'ensure respect' for the Conventions by other actors. This interpretation has been gaining support since the 1960s, though the ICRC's new Commentaries have served as a catalyst for some States recently to express contrary views. This article focuses on two major methodological shortcomings in the existing literature, offering a much firmer foundation for the external obligation under common Article 1. First, it demonstrates the overwhelming support in subsequent practice for external obligations. Previous studies have failed to explain the method by which this practice is taken into account, given the existence of some inconsistent practice. This article addresses this general question of treaty interpretation, critiquing the approach of the International Law Commission that relegates majority practice to supplementary means of interpretation and proposing instead a principled approach that better fits and justifies the judicial practice here. Secondly, the article challenges two common assumptions about the travaux: first, that an original, restrictive meaning was intended, and

secondly that the travaux of Additional Protocol I offer no support for external obligations. Given the ubiquity of military assistance and partnering, these findings have far-reaching consequences for the liability of States.

https://doi.org/10.1017/S0020589323000337

## The common core of the fundamental standards of international humanitarian law and international human rights law

**Krzysztof Orzeszyna**. In: International community law review, vol. 25, no. 6, November 2023, p. 561-572

The presented paper discusses the convergence of international humanitarian law and international human rights law in armed conflicts. International human rights law and the human rights law converge and interact with each other because natural law is at the core of both these disciplines of public international law. Although international humanitarian law is a lex specialis, the general rules regarding the interpretation of treaties clearly indicate that international human rights law must be interpreted in the context of other rules of international law, and its possible derogations must be compatible with other international obligations of the state, including humanitarian law. In the event of a conflict between international humanitarian law and international human rights law, the mechanism for resolving conflicts between the standards was supplemented by an interpretation based on the principle of 'system integration' of the International Court of Justice which results in the 'humanization' of international humanitarian law. The evolution of the case-law of the European Court of Human Rights, which takes into account the international humanitarian law as the reference norm that should be referred to, demonstrates the close relationship between these areas of law. In the case of the application of universal and regional instruments of international human rights law, we are dealing with the 'humanitarianization' of these rights.

https://doi.org/10.1163/18719732-bja10114 *

## Compassion and international humanitarian law

**Thilo Marauhn**. - In: Der Schutz des Individuums durch das Recht : Festschrift für Rainer Hofmann zum 70. Geburtstag. - Heidelberg : Springer, 2023. - p. 371-379

Prima facie, compassion and law seem to belong to two different worlds. However, they are interrelated. Focusing on international humanitarian law, this contribution illustrates the extent to which compassion can be a driver of international humanitarian law, it highlights integral and textual elements of compassion in international humanitarian law, and it discusses compassionate attitudes in the operation of the law. As important as the distinction between compassion and law is, this paper argues that a compassionate lawyer may enhance the effectiveness of international humanitarian law.

## Consolidating international humanitarian law and international human rights law : protection from gender-based violence against women in non-international armed conflict

**Ingeborg de Koningh**. In: Netherlands international law review, vol. 70, issue 1, 2023, p. 87-120

Academic discussion on the adequacy of international law, in particular international humanitarian law (IHL), to protect women from and to respond to gender-based violence against women (GBVAW) has so far omitted a detailed discussion on the law applicable in non-international armed conflict (NIAC). This article reviews the scope of international law, in particular IHL applicable to NIAC and international human rights law (IHRL), on the protection of women from GBVAW, firstly aiming to fill this lacuna in the literature on GBVAW and secondly in an examination as to whether the law on GBVAW in NIAC adequately protects women from GBVAW in NIAC. This analysis is performed distinctly for sexual violence, non-sexual violence, and women in detention. In applying the substance of the law regarding GBVAW under IHL and IHRL to the legal framework on the mutual application of IHL and IHRL in armed conflict, this article finds that IHL applicable to NIAC and IHRL generally may be interpreted harmoniously in substance regarding sexual violence and partially on non-sexual violence and detention. The consolidation of these regimes thus in theory results in a stronger and wider scope of protection from GBVAW. However, this protection may be limited in practice due to challenges in meeting

due diligence in conflict and limited human rights responsibility for non-State parties to the conflict.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/59715.pdf *

## Constraints under international law on military operations in, or in relation to, outer space during armed conflicts : working paper

**submitted by the International Committee of the Red Cross to the open-ended working group on reducing space threats through norms, rules and principles of responsible behaviours, as convened under United Nations General Assembly Resolution 76/231, and to the Secretary-General of the United Nations in reply to General Assembly Resolution 76/230 on "Further practical measures for the prevention of an arms race in outer space".** - [Geneva] : ICRC, 3 May 2022. - 6 p.

The ICRC welcomes the intergovernmental initiatives aiming to prevent an arms race in outer space and to free it from conflict, taking place at the open-ended working group on reducing space threats through norms, rules and principles of responsible behaviours, convened under United Nations (UN) General Assembly Resolution 76/231, and through submissions under General Assembly Resolution 76/230, which mandates the UN Secretary-General to "seek the views and proposals … on the provision of guarantees for the prevention of an arms race in outer space and preserving outer space for peaceful purposes". In line with its humanitarian mission and mandate, the ICRC submits this working paper on the constraints under international law on military operations in, or in relation to, outer space during armed conflicts to contribute to the discussions of both initiatives. The ICRC urges States to consider the risk of humanitarian consequences when taking any decision with regard to military operations in relation to outer space. In particular, in light of the risks of significant civilian harm, States may decide to set general prohibitions or specific limits with regard to weapons, hostilities or other military operations in relation to outer space for a range of reasons, including humanitarian ones. If new legally binding instruments or other norms, rules and principles are to be developed in this regard, they must be consistent with and should build on and strengthen the existing legal framework, including IHL.

https://library.icrc.org/library/docs/DOC/ICRC_WORKING_PAPER_2022_05_ENG.pdf

## Criminal justice responses to the Boko Haram crisis in Nigeria

**Victoria Ojo-Adewuyi**. - The Hague : Asser press ; Berlin ; Heidelberg : Springer, 2024. - 225 p.

This book concentrates on the crisis perpetrated by the Boko Haram group in Nigeria, which since 2009 has made a definitive impact on both the domestic and international criminal landscape. The volume centres on three core issues: first, an assessment of the criminal legal responses at the domestic level, where the legal characterization of the conducts in question, including an evaluation of the state of specific domestic prosecutions, are assessed. Secondly, the book gauges the potential for international criminal justice while evaluating the Boko Haram situation at the International Criminal Court. This includes an assessment of the jurisdictional aspects, the admissibility, and the interests of justice requirements in addition to the appraisal of conducts amounting to war crimes and crimes against humanity perpetrated. Finally, the book explores possible non-prosecutorial responses in the form of classic and non-classic transitional justice mechanisms that may be utilized as a response to the crisis in Nigeria. Furthermore, it draws instructive lessons from Nigeria's past misadventure with specific transitional justice mechanisms while exploring the realities of utilizing the restorative justice mechanisms available in Nigeria. The volume concludes by calling for a victim-centred approach in the discourse around the Boko Haram crisis.

https://doi.org/10.1007/978-94-6265-615-4 *

## Criminalizing acts of rebel governance as war crimes : an assessment focused on the war crime of sentencing or execution without due process

**Diletta Marchesi**. In: Journal of international criminal justice, vol. 21, no. 2, May 2023, p. 353-382

This article explores whether it is appropriate on legal and policy grounds to criminalize as war crimes the acts of governance performed by non-state armed groups controlling territory. Using

the administration of justice by armed groups and the Al Hassan case before the International Criminal Court as a reference point, it sheds light on the problems raised by the adoption of an overly broad definition of the war crimes' nexus to the armed conflict. When the definition of 'nexus' is stretched to cover also rebel governance activities, the outcome is at odds with international humanitarian law's provisions and nature. This approach also has detrimental consequences, including exposing non-state armed groups to unfair and asymmetric criminalization. This article submits that acts of rebel governance should not be criminalized as war crimes — other legal frameworks may be more suitable from a legal and policy standpoint to compel armed groups to comply with international standards and engage with them fruitfully.

https://doi.org/10.1093/jicj/mqad026 *

## Cultivating humanitarianism : moral sentiment and international humanitarian law in the civilising process

**Richard Devetak**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 61-84

Until quite recently, international relations theory neglected the role of emotions. This chapter surveys the rehabilitation of emotions and moral sentiment in political and international relations theory with a view to examining the cultivation of sympathy as a normative and historical condition of international humanitarian law as a 'civilising process'. The chapter argues that, as part of a broader 'civilising process' to alleviate unnecessary human suffering, moral sentiment has been an indispensable, if ambivalent, factor in the historical pursuit of humanitarian action. The chapter argues that the modern codification of international humanitarian law is predicated on the cultivation of moral sentiments such as sympathy and compassion being extended to those injured or killed on the battlefields.

## Cyberangriffe gegen ukrainische Energieversorgung : Durchsetzung humanitäres Völkerrechts im Cyberspace

**Maxima Hubbes**. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 6, H. 3-4, 2023, p. 135-150

[article in German] The armed conflict between Russian and Ukraine is considered the first conflict to be accompanied by cyber operations on a large scale - thus highlighting the digital era of armed conflict. Ever since the Russian hacker attacks directed to both the Estonian public and private sectors in 2007, the increased vulnerability of critical infrastructures in cyberspace has become evident. Critical facilities in Ukraine, in particular the power supply, continue to be targeted by Russian cyber operations which raises the question on their legal containment. Cyberspace is by no means a legal vacuum. However, if one takes a closer look at the normative framework of armed conflict, namely international humanitarian law (IHL), loopholes emerge that threaten to erode the already minimal standard of protection. Although states, as the authoritative actors, are called upon to specify the law, they resort to a „policy of silence and ambiguity" instead. Against this backdrop, the article aims to operationalise IHL's decisive parameters and, thus, open possibilities for prosecuting cyber operations under international criminal law.

https://doi.org/10.35998/huv-2023-0007 *

## Deepfake fight : AI-powered disinformation and perfidy under the Geneva Conventions

**D. Nicholas Allen**. In: Notre Dame journal on emerging technologies, vol. 3, issue 2, 2022, p. 1-70

Deception and disinformation are as much a part of the battlefield as bullets and bombs. However, just like with bullets and bombs, if the law does not properly regulate a capability's use the capability could degrade faith in the law. In this respect, this paper examines deepfake technology, a modern artificial intelligence-based capability that can generate superficially-perfect yet wholly invented media content. The paper looks ahead to its potential future applications in armed conflict, processes the ways in which current law contemplates such deception, and distills recommendations for improving governance where needed.

https://scholarship.law.nd.edu/ndlsjet/vol3/iss2/1/

## Defences to state responsibility in international humanitarian law

**Federica I. Paddeu and Kimberley N. Trapp**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 71-107

The ILC Articles on State Responsibility contain six general defences: consent, self-defence, countermeasures, force majeure, distress and state of necessity. These defences are, in principle, applicable to the whole range of obligations of States under international law—regardless of their source, character, or addressees—and are therefore at least potentially applicable in respect of obligations under international humanitarian law. In this chapter we argue that, other than force majeure, the defences in the law of responsibility are not applicable to the breach of IHL obligations. There are a variety of reasons for this, which reflect the material scope of the ARS defences and the particularities of the armed conflict context and IHL. Indeed in some cases, IHL may be seen as an actualisation of the concern that is addressed by the general defences, leaving them no further role to play within IHL. In respect of force majeure, which is available as a defence in respect of (certain) IHL breaches, we argue that States are obliged to ensure that their conduct in the circumstances respects the object and purpose of IHL as far as this is possible.

https://doi.org/10.1007/978-94-6265-619-2_3 *

## The direct rights of individuals in the international law of armed conflict

**Anne Peters**. - In: The individualization of war : rights, liability, and accountability in contemporary armed conflict. - Oxford : Oxford University Press, 2023. - p. 58-88

When ascribing individual rights, there is a difference between legal rules which embody 'objective' standards of protection that impose obligations or duties on obligors, and rules which additionally confer 'subjective' rights on those persons whom the rules seek to protect. In this chapter, Anne Peters examines whether, and under what conditions, international humanitarian law (IHL) generates such individual rights, and against whom. Since case law has yet to settle which rules in IHL actually generate individual rights, this must be determined in each case by interpreting the provisions or by clarifying the content of the underlying norm of customary law. Therefore, further study must identify how to recognize an individual IHL-based right and which types of rights exist. In doing so, Peters concludes that the acknowledgement of IHL-based rights endorses the individual human being as the normative reference point of IHL. Thus, Peters asserts that the individualization of IHL has not reached its limits. The principal modern purpose of IHL—to protect humans from the calamities of war—is best pursued by acknowledging direct IHL-based, special individual rights, rather than falling in the two extremes: either applying human rights across the board or denying individual rights altogether.

https://doi.org/10.1093/oso/9780192872203.003.0003 *

## Les doctrines nationales relatives à l'emploi de systèmes d'armes létales autonomes

**Louis Perez**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 165-185

La présente contribution s'attachera à interroger les différentes tendances issues des éléments de doctrines relatifs à la mise en œuvre du droit international humanitaire (DIH) dans le cadre du développement et de l'utilisation des systèmes d'armes létales autonomes (SALA). Sur le plan matériel, cet article limitera cependant son analyse aux doctrines des cinq membres permanents du Conseil de Sécurité de l'ONU (P5). A travers les différents documents publiés par le P5, deux approches du DIH émergent. Le DIH est tout d'abord perçu comme un moyen de légitimer les SALA grâce à une meilleure mise en œuvre de ses obligations via ces systèmes (I). Les limites techniques inhérentes à l'autonomie imposent cependant aux Etats de souligner la façon dont le DIH limitera l'utilisation des SALA (II).

### Les doctrines nationales relatives aux cyberopérations

**Aude Géry**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 143-164

> Dans le cadre de cette contribution, nous nous concentrerons sur les attaques visant les réseaux et systèmes d'information. Avant d'analyser la façon dont les doctrines nationales traitent du droit international humanitaire (DIH) appliqué aux cyberopération (II), il convient de s'intéresser à la place du DIH dans les discours sur le droit international et les cyberopérations (I). En effet, le développement de doctrines nationales relatives aux cyberopérations s'inscrit dans un cadre plus large de rivalités de pouvoir en matière de diplomatie du numérique et de cyberconflictualité.

### Le droit des conflits armés dans les manuels militaires

**Philippe Lagrange**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 15-28

> Il n'existe pas d'obligation conventionnelle de publier des manuels militaires. Ce qui explique que ces outils pratiques de droit international humanitaires ne concernent encore qu'un petit nombre d'Etats et que ceux qui en ont élaboré l'ont fait avec de très grandes disparités tant sur la forme que sur le fond. A l'examen des différents manuels ou instruments analogues, on constate certes nombre de constantes, mais aussi une grande diversité d'approches, qui interroge et qui impose de s'attacher à quatre aspects différents de ces outils de réception du droit des conflits armés, en tentant en conséquence de répondre à quatre grandes interrogations : qu'est-ce qu'un manuel militaire ? A qui est-il destiné ? Pour quelles finalités ? Dans quelle perspective juridique ?

### Le droit des conflits armés internationaux appliqué à l'espace extra-atmosphérique : les défis posés par les satellites artificiels

**Jennifer Lachance**. - [Paris] : Institut de recherche stratégique de l'Ecole militaire (IRSEM), Novembre 2023. - 110 p.

> La présente étude examine les défis posés par les satellites artificiels à l'application du droit des conflits armés internationaux dans l'espace extra-atmosphérique. Le premier défi repose sur l'idée que le droit des conflits armés internationaux n'avait pas pour vocation primaire de s'étendre à l'environnement spatial. Le deuxième défi se retrouve dans le caractère inadapté de la définition des attaques en droit des conflits armés internationaux aux attaques contre des satellites artificiels dans l'espace en raison notamment de la définition des attaques comme des opérations terrestres, aériennes ou navales – et non pas spatiales. Le troisième défi réside dans l'application de la règle de la distinction eu égard au double usage des satellites artificiels, car cette règle protège les biens à caractère civil uniquement lorsqu'ils ne sont pas employés à des fins militaires. Le quatrième défi est soulevé par les débats sur la nécessité de prendre en compte les effets indirects et à long terme de ces attaques en vertu de la règle de la proportionnalité. Le cinquième défi concerne la protection de l'environnement spatial, car les critères pour bénéficier d'une telle protection sous le Protocole additionnel I sont très difficiles à remplir. Considérant ces enjeux, cette étude conclut que de nouvelles règles devraient être adoptées par les États afin de conserver la pertinence du droit des conflits armés internationaux dans l'espace.
>
> https://www.irsem.fr/media/5-publications/etude-irsem-111-lachance.pdf

### ECtHR case-law concerning Russian aggression on Ukraine and the events taking place after 2014

**Jakub J. Czepek**. In: International community law review, vol. 25, no. 6, November 2023, p. 573-588

> Ukraine has faced ongoing armed conflict within the eastern parts of its territory since 2014. The state witnessed the annexation of Crimea, de facto occupation of Donetsk and Lugansk regions, the shooting down of Flight MH-17, and numerous human rights violations in the eastern parts of the country. Since the Russian aggression in 2022, Ukraine has faced armed conflict throughout the country. At the same time, Russia and Ukraine had been states parties to the European Convention on Human Rights (ECHR). Russia ceased to be a party to the ECHR on 16

September 2022, due to its expulsion from the Council of Europe (CoE) six months earlier. All the applications against the Russian Federation filed to the European Court on Human Rights (ECtHR) before this date should – and will – be examined by the Court. This research mainly aims to analyse the Court's existing case-law concerning the events in Ukraine after 2014, and the ECtHR jurisprudence concerning armed conflicts. The purpose of such analysis is to examine the possibilities and challenges the Court will face in its forthcoming judgments in inter-state applications filed by Ukraine against Russia. It should be stressed that the execution of these future judgments may also be an issue.

https://doi.org/10.1163/18719732-bja10115 *

## The enemy of my enemy : Dutch non-lethal assistance for 'moderate' Syrian rebels and the multilevel violation of international law

**Tom Ruys and Luca Ferro**. In: Netherlands yearbook of international law, vol. 50 (2019), p. 333-376

Between 2015 and 2018, the Dutch government has supported Syrian rebels fighting the regime of President Bashar al-Assad through a 'non-lethal assistance' (NLA) program. Pertinent questions have been raised regarding the program's compatibility with international law and a joint commission was tasked with developing criteria to evaluate the legality and political expediency of future programs. This commentary looks in retrospect at the legality of the NLA program. The substantive analysis is divided into three sections: First, it provides an overview of hard-and-fast facts about the program that have come to light following an admirable amount of journalistic scrutiny and parliamentary debate. Second, it takes a helicopter view of the legal landscape, touching upon the relevant primary norms of international law. Third, it applies that legal framework to the Dutch NLA program, tackling a threefold question: (1) Is the type of assistance legally relevant? (2) Is the type of beneficiary non-State armed group legally relevant? (3) Is the aim or purpose of the assistance programme legally relevant? While the authors recognize that the program was limited in scope and explicitly designed to stay within (or as close as possible to) the parameters of the international legal framework, they nevertheless conclude that it violated the principle of non-intervention, the prohibition on the use of force and the duty to ensure respect for international humanitarian law. Moreover, it may have led to secondary State responsibility for serious breaches of international law committed by the beneficiary armed groups. This conclusion puts in doubt the legality as a matter of lex lata of any such future program, be it lethal or not.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/59699.pdf *

## Equal application of international humanitarian law in wars of aggression : impacts of the Russo–Ukrainian war

**Kyo Arai**. - In: Global impact of the Ukraine conflict : perspectives from international law. - Singapore : Springer, 2023. - p. 253-271

It has often been argued that the premise of the law of armed conflict (today referred to as IHL), equality of belligerents, may have been lost with the outlawing of war and that, therefore, an aggressor state cannot be on an equal footing with a victim state in the application of IHL. However, on various grounds, it has been commonly accepted that the application of IHL should be decided separately from the (il)legality of the use of force (jus ad bellum, JAB) and that IHL should be applied equally even after the outlawry of war. This article examines whether this principle of separation of IHL and JAB and the principle of equal application of IHL can be maintained today in light of the Russian invasion against Ukraine started in 2022. One point worth mentioning in this context is that most states in the UN General Assembly recognised this Russia's invasion as an act of aggression. Given that one important basis for the principle of equal application of IHL has been the fact that in most armed conflicts, it is impracticable to identify which side is the aggressor, this manifestly sanctioned case of aggression by Russia against Ukraine may shake this assumption. Another point of special notice is that it is established today that rules of international law should be applied harmoniously with other wider rules of international law. With this development, it may not be a satisfactory conclusion as to the relationship between IHL and JAB to simply state that they should be separated, as has been the case in the past. As the interrelationship between IHL and many other rules, including international human rights law, international environmental law, or the law of the sea, etc., is discussed, it may be wondered if this is not extended to the relationship between IHL and JAB.

While developing the argument against such a backdrop of these premises, this Chapter will also focus on another important lesson of the Russo-Ukrainian war. Namely, the current situation in which Russia justifies its own use of force as 'special military operations' and criticises self-defence actions by Ukraine as 'acts of terrorism' shows that such self-characterisation of the use of force is easily apt to be misused as an excuse for a serious breach of IHL. Therefore, it should also be remembered that the principle of separation of IHL and JAB has practical significance in preventing humanitarian catastrophes in this imperfect international legal order.

https://link.springer.com/chapter/10.1007/978-981-99-4374-6_12 *

## De « faux-amis » ? : droit international humanitaire et droit de la protection internationale dans le droit et le contentieux français de l'asile

**Thibaut Fleury Graff**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 103-120

L'examen de la pratique de la Cour nationale du droit d'asile (CNDA), principale actrice du contentieux de la protection internationale en tant que juridiction spécialisée en la matière, et du Conseil d'Etat, de plus en plus fréquemment saisi de recours en cassation sur ces questions, permet d'identifier un terrain stabilisé, et un autre beaucoup plus mouvant. Le premier est celui du contentieux de l'exclusion de la protection internationale, qui mobilise explicitement le droit international humanitaire. Sur ce terrain, les règles qui constituent ce dernier sont appliquées en tant que règles de référence pour la qualification de certains agissements, dont les « raisons sérieuses de penser » qu'un demandeur d'asile les a commis conduit à son exclusion de la protection. Le second est celui des contentieux de la protection subsidiaire.

## Fighters, not victims : on victimhood recognition and gender representations in the enslavement charges in the Ongwen case

**Silvina Sánchez Mera**. In: International criminal law review, vol. 23, issue 5-6, December 2023, p. 782-803

In the Ongwen case, according to the Office of the Prosecutor women were abducted to be wives and men to be soldiers, women were forced to work and men forced to fight. The otp brought enslavement charges for some of these crimes. Absent from the charges was the forced fighting of men. This paper discusses the crime of enslavement in the Ongwen case. By combining a doctrinal analysis and a feminist approach, I seek to show how gender representations emerge in the application of the law in detriment of men's victimhood. I argue that the application of the law responds to gender representations in war. Men are not perceived to be victims once they become 'soldiers'. Likewise, for women, the effect is their continuous perception as non-fighters and victims of war. This leads to reinforcing those representations, to lack of acknowledgment of victimhood for men and to reducing the experiences of women.

https://doi.org/10.1163/15718123-bja10164 *

## Filling the gaps : the expansion of international humanitarian law and the juridification of the free-fighter

**Amanda Alexander**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 274-303

This article traces the expansion of international law from the Hague Conventions, where only a state's soldiers had legal status, to the contemporary understanding that international law governs all participants in conflict. This can be seen as a humanitarian shift that diminishes state power. This article, however, argues that the Hague Conventions only established a limited sphere of formal law because delegates deliberately left free-fighters outside the law, to be governed by their own will and moral code. In doing so, delegates echoed a philosophical tradition that situates true freedom outside the state. As this article shows, the expansion of law to include such fighters required the replacement of such alternative codes with a renewed and extended range of formal legal criteria. As such, the expansion of international law to the realm outside the state has led to a reaffirmation of that law which is synonymous with the state.

https://doi.org/10.1163/18781527-bja10075 *

### Gender bias and international humanitarian law : is human rights law the answer?

**Vanessa Murphy and Lindsey Cameron**. In: Japanese yearbook of international law, Vol. 66 (2023), p. 49-90

Is human rights law the "answer" to gender bias in international humanitarian law (hereinafter "IHL")? Meaning, can the substantive rights therein help eliminate gender-based discrimination in IHL and address related flaws in the protection of persons in armed conflict? This article argues that the complementary application of human rights law is indeed one part — of a three-part — answer to this kaleidoscopic question. The second part of the answer is the application of a gender perspective to better fulfil IHL's non-discrimination obligations, as well as its obligations to reduce civilian harm. The third, final part of the answer is the kind of social and cultural change at individual, community, national and international levels that relies on policies and practices — such as the United Nations Women, Peace and Security (hereinafter "WPS") agenda — that build from, but go beyond, legal frameworks.

### Genderperspektiven im humanitären Völkerrecht

**Gianna Ittermann**. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 6, H. 1-2, 2023, S. 7-21

[article in German] Despite the fact that more and more women are also participating in armed conflicts or are affected by their impact as civilians, war is traditionally perceived as a male domain. In order to determine whether there is a need for a gender perspective in international humanitarian law and whether it holds advantages for both men and women, this article analyses both the normative foundations and various aspects of the application of international humanitarian law in practice. In particular, the roles of women in armed conflict and the problem of sexual violence are considered. In the context of the principle of distinction, the longstanding issue of so-called over-targeting is addressed. The article also examines the extent to which gender-sensitive deliberation might influence the decision of proportionality of an attack.

https://doi.org/10.35998/huv-2023-0001 *

### Georgia v. Russia (II) : jurisdictional contradiction in light of the ECtHR's consistent case law on the extraterritorial application of the ECHR

**Tabriz Musayev**. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Vol. 6, issue 3-4, December 2023, p. 166-181

Georgia v. Russia (II) is characterised by its seemingly contradictory conclusion concerning the exclusion of jurisdiction for the substantive limb of the right to life during the active phase of international armed conflict. This paper views the reasoning of the European Court of Human Rights (ECtHR) against the background of the consistency of the relevant case law and the legal space of the European Convention on Human Rights (Convention). The consistency of the case law is analysed from the perspective of the grounds for the extraterritorial application of the Convention (effective control over the area and state agent authority and control). Moreover, in this context, this paper will analyse why the ECtHR did not develop its case law further and whether it was right to take this approach. The legal space of the Convention is also a controversial issue concerning the extraterritorial application of the substantive limb of the right to life during the active phase of an international armed conflict. The paper will analyse the nature of legal space in light of textual and historical interpretation of the Convention. Then, it will explore the negative and positive obligations of the right to life in light of the concepts of invasion, occupation and the active phase of war. Therefore, the article will answer the question of whether the ECtHR should establish jurisdiction concerning negative obligations of the right to life when state agents exercise some degree of control in the invaded territory, which is within the legal space of the Convention.

https://doi.org/10.35998/huv-2023-0009 *

## Global impact of the Ukraine conflict : perspectives from international law

**Shuichi Furuya, Hitomi Takemura, Kuniko Ozaki, editors**. - Singapore : Springer, 2023. - XV, 508 p.

The invasion of Ukraine by the Russian Federation and the subsequent military campaigns entail several classical aspects of armed conflict. First, it is a type of international armed conflict between two sovereign states that had been prevalent until the middle of the twentieth century but not in the last several decades. It is also a direct intervention by a superpower into a neighboring state with the former's aspiration of territorial expansion. This action evokes a scheme of war reminiscent of the nineteenth or early twentieth century. At the same time, however, the invasion is generating in the international community a sense of new phenomena, leading to a new era that may be different from the past three decades following the end of the Cold War. In fact, the hostilities between the Russian Federation and Ukraine, as well as reactions by other states and international organizations, have raised legal and political issues that require scholars to reexamine existing frameworks of the international community and individual rules of international law. The process of applying international law to states is a dynamic one. Rules of international law may and should regulate the behavior of states and provide standards to decide whether a particular act by a state is permissible. At the same time, however, states may change or replace existing rules, and a significant event or series of such events may be a strong motivator to create a new legal framework. In this regard, rules of international law and the conduct of states are in a dialectical relationship. International law can both shape a mode of conduct and be shaped by that conduct—being its creator as well as its creation. The Ukraine conflict is not an exception. We can discuss the conduct of the Russian Federation, Ukraine, other states and international organizations and evaluate their legality and legitimacy from the viewpoint of existing rules. However, we may also reevaluate the current rules of international law through the lens of the Ukraine conflict and discuss possible changes to those rules in the future. Inspired by the latter aspect of the international legal process, the present book aims to examine the impact of the Ukraine conflict, whether salient or potential, on various rules of international law. Most of the authors are from Japan and other Asian countries that are geographically remote from the site of the conflict. It is often true, however — and particularly in this case — that those keeping an appropriate distance can look at relevant issues in a broader view and from a more objective perspective. To what extent and in what manner may the Ukraine conflict have an impact on the legal framework of the international community and the rules of international law? This book is the first to answer those questions in a comprehensive manner.

https://doi.org/10.1007/978-981-99-4374-6 *

## 'He offered a prayer for the flier he had just killed' : superior orders at the US Army Trials in Manilla, 1945-1947

**Jamie Fellows and Mark David Chong**. In: Journal of international criminal justice, vol. 21, no. 2, May 2023, p. 331-352

The US Army war crimes trials held in Manila from 1945 to 1947 prosecuted around 200 Japanese military personnel for war crimes committed against US prisoners of war and Filipino non-combatants. Japanese defendants attempted to argue, with little success, that the defence of superior orders justified their actions. General Douglas MacArthur (Supreme Commander for the Allies in the Pacific or SCAP) was adamant that superior orders would not serve to excuse alleged Japanese war criminals from war crimes. What is clear from the trial documents and other archival material from Manila is that not all sections of the prosecution agreed with MacArthur's interpretation of the law. However, it seems as though MacArthur's pronouncement in relation to the application of superior orders may have had a profound impact on not only the Manila trials, but also with subsequent trials in World War II and beyond. This article explores the various arguments in relation to superior orders emanating from the US Army trials in Manila. The trials in Manila show that the rejection of superior orders as a defence in war crimes offered a reasonable foundation and precedent for how subsequent courts and tribunals evaluated the defence of superior orders within the context of war crimes jurisprudence.

https://doi.org/10.1093/jicj/mqad017

## Heads of state as war criminals : the prospects and challenges of tracing war crimes to senior political leaders in Russia

**Frédéric Mégret and Camille Marquis Bissonnette**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 175-199

War crimes are not typically leadership crimes, unlike aggression. In cases where they mobilize important state resources, are committed on a large or consistent scale or are ordered at the highest level, one question is how they can be attributed to heads of state. This chapter discusses some ways in which Vladimir Putin, the current President of Russia, could be brought to trial for alleged war crimes being committed by Russian armed forces in Ukraine. Specifically, it investigates some modes of liability under which could he be held criminally responsible that would particularly make sense of his special responsibilities as head of state. Two main possibilities are discussed: ordering and superior/command responsibility. We evaluate what specific challenges and opportunities each of these options involve. We contend that command or superior responsibility would probably come with the highest chance of success and express a strong sense that the head of state is ultimately responsible for how their troop behave in the field.

https://doi.org/10.1007/978-94-6265-619-2_7 *

## How is the term "armed conflict" defined in international humanitarian law ? : International Committee of the Red Cross opinion paper 2024

**ICRC**. - Geneva : ICRC, April 2024. - 26 p.

Since 2008, the ICRC has observed several transformations with regard to how armed actors participate in armed conflicts, either as parties to the conflict, or in support of parties. This includes when support is provided by coalitions of states to governments involved in NIACs; when a state uses non-consensual force in foreign territory; when coalitions of armed groups emerge with fluctuating levels of organization; and when such groups proliferate or agglomerate. These transformations, as well as how the law adapts to them, are outlined in the 2024 Opinion Paper (see also the new Commentaries to Geneva Conventions I, II and III and reports on “IHL and the challenges of contemporary armed conflicts”). The Opinion Paper shares the methodology involved in determining several legal issues related to classification, including when an international armed conflict (IAC) exists and when it can be considered to have come to an end; the impact of consent by a state of the intervention/ use of force by another state in its territory; the classification of an IAC by proxy; and how to identify parties in conflicts that involve multinational forces. Similarly, the opinion paper outlines when a non-international armed conflict (NIAC) exists and when it comes to an end; the classification of NIACs involving coalitions; the support-based approach; the incorporation of an armed group into a state Party; the aggregation of intensity between multiple organized armed actors (both state and non-state); and the geographical scope of IHL during NIACs.

https://library.icrc.org/library/docs/DOC/icrc-4767-002.pdf

## How to develop international humanitarian law taking armed groups into account ?

**Marco Sassòli**. In: The military law and the law of war review, vol. 60, no. 1, 2022, p. 71-88

This contribution aims to explore whether international humanitarian law (IHL) of non-international armed conflicts (NIACs), treating armed groups and states equally, is realistic for armed groups. It examines how we can ensure that it remains or becomes realistic for them and how it can be implemented against, with and by, armed groups realistically. IHL of NIAC is more rudimentary than IHL of international armed conflict. Although humanitarians, academics, international tribunals and, to a certain extent, even states want to close this gap – no one has asked armed groups whether and how they are able and willing to close this gap. It is argued that the substance of IHL rules and the difficulties of implementing and enforcing them are interrelated. A possible additional process of how IHL rules can be developed in the future taking armed groups equally into account will be suggested. Armed groups have no say in the development of IHL. Obstacles standing on the way of giving armed groups a say in the development of IHL and how they could be overcome will be explored. Such a role of armed groups could ensure that IHL is realistic for them and contribute to their willingness to respect it. The process suggested could also increase respect beyond armed groups.

https://doi.org/10.4337/mllwr.2022.01.05 *

### Humanitäre Hilfe : ein Beitrag zum Recht der Solidarität

**Michael Bothe und Jennifer Ernst**. - In: Der Schutz des Individuums durch das Recht : Festschrift für Rainer Hofmann zum 70. Geburtstag. - Heidelberg : Springer, 2023. - p. 381-398

Humanitäre Hilfe für Bevölkerungen in Not ist internationale Realität. Wo immer eine massive Notlage entsteht, ist sie zur Stelle – vielleicht nicht immer und überall ausreichend, aber sie geschieht. Je nach Grund der Notlage untersteht die humanitäre Hilfe unterschiedlichen Rechtsregimen, am weitesten entwickelt im humanitären Völkerrecht, einschließlich Notlagen nach Beendigung von bewaffneten Konflikten. Eine umfassende Grundlage findet die humanitäre Hilfe in den Menschenrechten, die alle Staaten binden. Deshalb sind Bestrebungen, humanitäre Hilfe in Verfolgung anderer Interessen, etwa der Terrorismusbekämpfung, einzuschränken, rechtlich unzulässig. Das ist in der internationalen Rechtspraxis vielfältig anerkannt.

### Hunger crimes and the conflict in Ukraine

**Emanuela-Chiara Gillard**. In: Texas Tech law review, vol. 56, 2023, p. 81-90

The Texas Tech Criminal Law Symposium focused on criminal accountability in war time. As a preliminary point, it is helpful to recall the relationship between war crimes and IHL—also known as the "law of armed conflict," or the "law of war." War crimes are serious violations of IHL. A war crime may be framed more narrowly than the underlying rule of IHL, but it cannot be broader in scope. Acts that do not constitute violations of IHL cannot be interpreted as amounting to war crimes. This relationship must be borne in mind when interpreting war crimes, including the war crime of starvation of the civilian population in the Rome Statute. The present article contributes to the Symposium's focus by taking a step back from criminal accountability and flagging a number of unsettled questions on the rule of IHL prohibiting starvation of the civilian population that have been raised by the war in Ukraine.

http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.Gillard.PUBLISHED42.pdf

### ICRC expert meeting : preventing and mitigating the indirect effects on essential services from the use of explosive weapons in populated areas

**drafted by Eirini Giorgou**. - Geneva : ICRC, April 2024. - 47 p.

For more than a decade, the ICRC has been calling on all states and all parties to armed conflict, including non-state armed groups, to avoid the use of explosive weapons with a wide impact in populated areas, owing to the significant likelihood of indiscriminate effects. The ICRC's call for an avoidance policy means that heavy explosive weapons should not be used in populated areas unless sufficient mitigation measures can be taken to reduce the weapons' wide-area effects and the consequent risk of civilian harm. The present report is the outcome of an expert meeting held online on 3, 5 and 9 October 2023 on preventing and mitigating the indirect effects on essential services of the use of explosive weapons in populated areas.

https://library.icrc.org/library/docs/DOC/icrc-4764-002.pdf

### In defense of (virtuous) autonomous weapons

**Don Howard**. In: Notre Dame journal of emerging technologies, vol. 3, issue 2, 2022, p. 229-260

The author argues that we can construct effective means for norming the use of autonomous weapons short of a total ban by building upon the foundation of existing requirements stipulated in Article 36 of Protocol I to the Geneva Conventions that all new weapons technologies be reviewed for compliance with the International Law of Armed Conflict (ILOAC) and International Humanitarian Law (IHL). The article begins with a critical review of several of the most commonly encountered arguments in favor of a ban. That is followed by a discussion of the moral opportunities afforded by enhanced autonomy. It concludes with a concrete policy proposal based upon the principle of Article 36 review.

https://scholarship.law.nd.edu/ndlsjet/vol3/iss2/3/

## Individualization and collectivization in contexts of organized criminal violence : the case of Mexico's war on organized crime

**Pablo Kalmanovitz and Miriam Bradley**. - In: The individualization of war : rights, liability, and accountability in contemporary armed conflict. - Oxford : Oxford University Press, 2023. - p. 247-269

Most lethal violence now occurs outside of war zones. In Latin America, countries like Brazil, Mexico, El Salvador, and Colombia have often had yearly homicide rates far exceeding those in Afghanistan or Syria. The use of military force or militarized police has become widespread in such contexts, although they do not meet the international humanitarian law (IHL) thresholds for non-international armed conflict (NIAC) and formally fall under a law enforcement paradigm, where international human rights law (IHRL) applies in full. Through a case of study of Mexico's 'war on organized crime', Pablo Kalmanovitz and Miriam Bradley show how the qualification of a situation of organized violence as NIAC or as below the NIAC threshold has major implications for how individualization processes operate. Starting from an IHRL baseline, processes of collectivization are identified and analysed in reverse analogy with processes of individualization in armed conflicts. The authors find that, while collectivization takes place in contexts of organized criminal violence, there is no international legal framework to underpin it, and consequently not the same level of protection as there is in war. Their analysis sheds light on the structure of processes of individualization in contexts of armed conflict, as it shows how much of the individualization process in armed conflicts is not a move towards peacetime regulation of violence under IHRL.

https://doi.org/10.1093/oso/9780192872203.003.0010 *

## The individualization of IHL rules through criminalization for war crimes : some (un)intended consequences

**Paola Gaeta and Abhimanyu George Jain**. - In: The individualization of war : rights, liability, and accountability in contemporary armed conflict. - Oxford : Oxford University Press, 2023. - p. 163-186

In this chapter, Paola Gaeta and Abhimanyu George Jain highlight a prioritization of individual criminal responsibility for war crimes over the enforcement of collective responsibility upon states and armed groups under IHL, and frame this prioritization as a form of individualization of IHL rules. They trace the origins and acceleration of this phenomenon and outline its processes, before turning to consider its possibly unintended and undesirable consequences for the underlying IHL norms. In the process of interpretation of IHL rules within the institutional frameworks and requirements of individual criminal responsibility, IHL norms are distorted, and IHL norms which are amenable to individualization are prioritized over those which are not. Ultimately Gaeta and George Jain argue that the prioritization of individual criminal over collective responsibility—individualization—while understandable, demands caution, in part because of the risk of abandoning the project of resuscitating and enhancing prospects for collective responsibility, and in part because of the challenges and limitations of individual criminal responsibility.

https://doi.org/10.1093/oso/9780192872203.003.0007 *

## The individualization of war : rights, liability, and accountability in contemporary armed conflict

**edited by Jennifer Welsh, Dapo Akande and David Rodin**. - Oxford : Oxford University Press, 2023. - XII, 276 p.

The rights and responsibilities of the individual are at the centre of today's armed conflicts in a way that they have never been before. This process of 'individualization', which challenges the primacy of the sovereign state, is driven by normative developments related to human rights that have elevated human-centric conceptions of security and created a new class of international crimes, as well as by technological and strategic developments that can both empower individuals as military actors and enable either the targeting or protection of particular individuals. The Individualization of War examines the status of individuals in contemporary armed conflict in three main capacities: as subject to violence but deserving of protection; as liable to harm because of their responsibility for attacks on others; and as agents who can be held accountable for the

perpetration of crimes. This book presents a novel conceptualization of the phenomenon of individualization, including how it is both practiced and contested. It then convenes a set of leading thinkers from the fields of moral philosophy, international law, and international relations to further our understanding of not only how individualization is manifest in armed conflict - in theory and in practice - but also how it generates tensions and challenges for today's scholars and practitioners. The collective research on which the book is based integrates the currently segregated scholarship on individualization in different academic disciplines, thereby illuminating the important links between law, morality, and politics that constitute the day-to-day reality for national militaries, international organizations, and humanitarian actors.

https://doi.org/10.1093/oso/9780192872203.001.0001 *

## "Inside" and "outside" : assessing the Russian blockade against Ukraine

**Alejandro Chehtman and Eduardo Rivera-López**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 157-173

In early May 2022, as part of its push to force Ukraine into submission, Russian ships established a blockade in the Black Sea. The main target of the blockade was Ukrainian exports, particularly those regarding foodstuffs. We examine the legality of the blockade under International Humanitarian Law. In particular, the question before us is whether the rules concerning naval blockades, which have been construed essentially to protect the populations "inside" an encirclement, should be considered to prohibit also actions which mainly harm individuals in third party states, "outside" of it. We suggest that whether the victims of the blockade are "inside" or "outside" the relevant encirclement is not decisive as to whether they are being wronged by the blockade. Nevertheless, we argue that it is not unlawful under IHL. The main reason for this is that it does not deprive individuals of access to indispensable foodstuffs but only increases their price (i.e. it does not violate the prohibition of starvation), nor ultimately causes them harms which are disproportionate vis-à-vis the direct and concrete military advantage anticipated. Indeed, the blockade affects affordability rather than availability of food and, in fact, high food prices are driven to a much larger extent by other factors, unrelated to the blockade. This conclusion, of course, does not mean that the blockade should not be deemed unlawful, in fact criminal, for being a constitutive element of conduct in violation of other rules of international law, notably the prohibition of aggression.

https://doi.org/10.1007/978-94-6265-619-2_6 *

## L'intégration du droit international humanitaire au sein des normes internes de lutte contre le terrorisme : une instrumentalisation malvenue de l'applicabilité des normes

**Claire Méric**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 121-140

Le but de la présente contribution est de comprendre pourquoi les normes du droit international humanitaire ne sont pas reprises au sein des législations internes de lutte contre le terrorisme. La présente contribution vise à analyser la question de l'intégration normative de manière globale, tout en s'appuyant sur des exemples majoritairement tirés de deux législations particulièrement pertinentes en l'espèce, à savoir les législations française et américaine. Il convient donc, après avoir fait le constat d'une intégration presque inexistante des normes du droit international humanitaire dans les normes internes de lutte contre le terrorisme, d'en comprendre les causes (I) et les conséquences (II).

## L'intégration du droit international humanitaire dans les doctrines étatiques d'emploi de l'arme nucléaire

**Joanne Kirkham**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 187-197

Si depuis l'avis de la Cour internationale de Justice sur la licéité de la menace ou de l'emploi de l'arme nucléaire, on considère que l'emploi de celle-ci doit être compatible avec les principes cardinaux du droit des conflits armés (proportionnalité, distinction et précaution), l'appréhension

du droit international humanitaire dans les doctrines étatiques se fait encore attendre. Ainsi, les règles du droit international humanitaire sont souvent perçues comme un élément perturbateur, venant fragiliser la crédibilité et l'efficacité de la dissuasion (I). De même, les Etats cultivent des positions ambigües sur la question des représailles nucléaires, posant la question de la comptabilité de celles-ci avec le droit des conflits armés (II).

## International humanitarian law : necessity, distinction and the 'standard of civilisation'

**Matt Killinsworth**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 250-273

The modern laws of war are an integral foundation of 19th century efforts to establish and maintain order within the then emerging international society of states. But membership was conditional; only 'civilised' states were permitted entry to international society. Engaging with the concept of 'the standard of civilisation', the aim of this paper is to demonstrate a continuity of double standards as they relate to protections afforded by the modern laws of war. It will argue that these double standards have been, and continue to be, underpinned by attempts to de-humanise belligerents via the language of the 'standard of civilisation'. In making this argument, the paper will draw attention to the historical centrality of the state and the role it has played in establishing conditionality with regards to protections afforded by the modern laws of war through the language of raison d'état and the standard of civilisation.

https://doi.org/10.1163/18781527-bja10062 *

## International humanitarian law : protecting the rights of women in armed conflicts in Africa. Vol. 1. Nigeria, DR Congo and Sierra Leone

**Emmanuel Chinweike Ibezim**. - Aurora : Agape Inc., 2021. - LX, 415 p.

Existing laws on armed conflicts, otherwise embodied as international humanitarian law, are mostly gender insensitive to women. This insensitivity is reflected in the language of the law. The linguistic disposition of the law, which goes to the root of legal craftsmanship, seems to operate to limit its substantive coverage, that is, its material content (especially those of the Geneva Conventions and their Additional Protocols), to men alone. This problem raises number of questions. Thus the aims and objectives of this research are to answer these questions and seek to foster a gender-sensitive interpretation and implementation of international humanitarian law as a vital mechanism for responding adequately to the needs of both men and women, and more especially women who are disproportionately affected in the event of armed conflicts. To achieve these, information and data have been processed with a keen sensitivity to the plight of women in the armed conflicts in selected African countries namely : Nigeria, DR Congo and Sierra Leone. Research findings reveal that the Geneva Conventions and their Additional Protocols are not gender-positive enough to protect women in armed conflicts. While subsequent legal instruments like the Rome Statute of international criminal court (1998), the Convention on the elimination of all forms of discrimination against women (1979), the Protocol to the African Charter on the right of women (2003), etcetera, are couched in gender-specific language in favour of women they are defeated in their effects by conflicting national laws that are discriminatory of women, and governments lack of political will to domesticate them. Moreover, patriarchal customs and traditions that discriminate against women still pervade in Africa and militate against the implementation and enforcement of international humanitarian law rules that are protective of women.

## International humanitarian law : rules, controversies, and solutions to problems arising in warfare

**Marco Sassòli ; with the assistance of Lizaveta Tarasevich**. - Cheltenham ; Northampton : E. Elgar, 2024. - LIII, 741 p.

In this thoroughly updated second edition of what has quickly become the definitive text in the field of international humanitarian law (IHL), leading expert Marco Sassòli evaluates the application of IHL, the way in which hostilities should be conducted against an adversary, and the pertinence of traditional distinctions, such as that between international and non-international armed conflicts or civilians and combatants. Drawing on the author's practical experience to provide unique and invaluable insights, the second edition discusses the rules protecting certain

categories of persons, including prisoners of war, as well as governing different types of conduct of hostilities and the difficulties in determining whether a destruction was unlawful. Significantly, the edition takes the armed conflict between Russia and Ukraine into account, discussing what remains of neutrality, defending the strict separation between the prohibition of aggression and the humanitarian rules to be respected by both sides, which must however be nuanced in the field of naval warfare. New sections explore IHL in relation to persons with disabilities, sieges and humanitarian corridors, the role of the media, IHL in outer space, and the concept of meaningful human control over lethal autonomous weapons systems. Structured in a clear and accessible manner, this new edition is essential reading for all students and scholars of international humanitarian law, as well as those in human rights, and public international law. For military practitioners and NGO lawyers, as well as those working in intergovernmental organizations, this is simply a must-have resource.

## International humanitarian law and a gender perspective in the planning and conduct of military operations

**drafted by Vanessa Murphy, Paula Iwanowska and Kristina Lindvall**. - Geneva : ICRC, March 2024. - 64 p.

Gender inequality persists in all countries worldwide and tends to be more severe in conflict-affected contexts. It can shape how different women, men, girls and boys experience the violence of war and its effects. This report provides guidance as to how gendered harm arising from military operations can be better understood and sets out good practices to avoid and reduce it. It draws in particular from applicable international law, including IHL and international human rights law (IHRL), as well as policies, directives, and practices both at national level and within the framework of the United Nations (UN) Women, Peace and Security (WPS) agenda. Its intended audience is practitioners engaged in national security or defence who are seeking to better protect civilians and improve compliance with non-discrimination obligations using a gender perspective.

https://library.icrc.org/library/docs/DOC/icrc-4741-002.pdf

## International humanitarian law and international investment law : mapping a developing relationship

**Tobias Ackermann and Sebastian Wuschka**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 41-69

In light of much greater issues at play, the legal protection of foreign investors and their assets might appear almost irrelevant in situations of armed conflict. From the viewpoint of international humanitarian law (IHL), private property is merely incidentally protected for the sake of humanitarian concerns rather than its economic value. Investment treaties, by contrast, specifically entail the promotion and protection of foreign investments for such economic reasons. These agreements continue to apply alongside rules of IHL during armed conflict and many of them specifically cater for situations of armed conflicts. In recent years, arbitral awards have been rendered in relation to armed conflicts and Russia's war of aggression against Ukraine is likely to lead to further investment claims. This chapter reviews the normative framework applicable in these situations and analyses the potential interaction between norms of IHL and investment treaties. It first shows how IHL protects private property in armed hostilities and belligerent occupation and, subsequently, analyses if and how investment treaties protect foreign investments in these scenarios. The chapter argues that IHL should have significant relevance for the interpretation of investment treaties to avoid normative incoherence as far as possible.

https://doi.org/10.1007/978-94-6265-619-2_2 *

## The international law of occupation

**Eyal Benvenisti**. - In: Leading works in international law. - London ; New York : Routledge, 2024. - p. 22-36

Eyal Benvenisti's foundational book, The international law of occupation, is an exploration of the nature, promise, and limits of the body of law devoted to settling the conflicts of interests that can arise between an occupying power exercising control over a foreign territory, the occupied population, and the ousted sovereign government. In this chapter he explains the motivation behind writing this book and reflects on its legacy. He point out that one of the major successes

of the book was that it helped to inform the extension of the law of occupation in practice - beyond international armed conflicts - to protecting the rights of sovereign peoples against the exercise of a foreign actor's authority in those areas under its effective control.

## International law of the military uses of outer space in light of the war in Ukraine as the first commercial space war

**Setsuko Aoki**. - In: Global impact of the Ukraine conflict : perspectives from international law. - Singapore : Springer, 2023. - p. 313-337

This chapter studies the War in Ukraine as the first commercial space war. Satellite communication services provided by, among others, the United States company SpaceX as well as all-weather synthetic aperture radar (SAR) imageries from the Canadian company MDA and the Finnish company ICEYE have largely offset the disparity of space technologies between Russia and Ukraine. Russia made a statement at the UN General Assembly that such "quasi-civilian infrastructure may become a legitimate target for retaliation" in October 2022. This chapter considers whether, to what extent and how the law of armed conflict (LOAC) is applicable to outer space. The result is that LOAC is also applicable to outer space, the 1977 Additional Protocol I would be the basis to determine the legality of an attack against a commercial satellite which has been transformed into a "military objective". And the law of neutrality is largely irrelevant to the War in Ukraine. The fundamental flaw to apply present LOAC to military space activities is that a consequence in outer space is not a criterion to assess the legality of an attack. This problem may be alleviated by finding detailed rules to avoid harmful interference with other States' activities in Article IX of the Outer Space Treaty, which is considered to continue to apply during armed conflict.

https://link.springer.com/chapter/10.1007/978-981-99-4374-6_15 *

## The international laws of war : linguistic analysis from the perspectives of register, corpus and grammatical patterning

**Annabelle Lukin and Alexandra García Marrugo**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 223-249

All texts, including all legal texts, are constructed in language. All legal constructs and discriminations are an effect of language. As such, linguistics and text analysis should be considered a necessary adjunct to legal studies and, in particular, to critical legal studies. While the disciplines of linguistics and law are increasingly interacting, there is a paucity of linguistic analysis in the field of the international laws of war. This paper seeks to open doors to collaboration, by viewing the texts of the international laws of war from three linguistic perspectives: as a 'register', as a 'corpus', and in terms of their lexicogrammatical patterning. In terms of register, the international laws of war herald a new form of textual practice, the function and effects of which are subject to debate. As a corpus, some dominant lexical habits of these texts are explored and interpreted for their ideological implications and reactances. Finally, an examination of covert lexicogrammatical meanings in this register, via a small extract from Article 8 of the Rome Statute, illuminates the contradictory meanings that these texts navigate. These three perspectives offer a preliminary glimpse into the value of linguistic analysis for critical perspectives on the international laws of war.

https://doi.org/10.1163/18781527-bja10065

## The language of the protection of civilians mandate and the primary responsibility of the State : a legal norm for peace and security

**Tamer Morris**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 349-376

When the Security Council mandates the protection of civilians mandate in UN peacekeeping missions, it inadvertently forms an obligation on States involved with UN peace missions. To affirm the concept of State sovereignty, the Security Council constantly references 'the primary responsibility of the State to protect' within their resolutions. This developing norm, beginning within the protection of civilians mandate, is an expansion of existing obligations under ihl and ihrl. Within the text of Security Council resolutions there is an obligation that States who are a party to a niac are responsible for peace and security. Therefore, force should be used for peace and security, rather than for "triumphing" in the conflict or entrenching power. As such, a State

can achieve its obligations under ihl when governments take all reasonable steps to conclude the conflict, for any hostilities within civilian areas by its very nature is a breach of a State's obligation and responsibility to protect their own civilians.

https://doi.org/10.1163/18781527-bja10074

## The last question : do the distinctive emblems of the Geneva Conventions 1949 really protect ?

**Anita Nwotite**. In: Nnamdi Azikiwe University journal of international law and jurisprudence, Vol. 13, no. 1, 2022, p. 1-12

This article examines the role of the distinctive emblems of the Geneva Conventions in the light of the reality of contemporary armed conflicts. It concedes that the distinctive emblems no doubt constitute part of the measures put in place by the Geneva Conventions' regime to ensure the protection of both persons and objects in situations of armed conflicts. It however contends that that the protection afforded by the said emblems operates more in principle than in practice as contemporary armed conflicts witness instances of disrespect for the said emblems resulting in direct attacks against both persons and objects wearing or displaying the distinctive emblems. To address this, the articles recommends among other things stringent punishment for the violation of the provisions relating to the said emblems; proper identification of protected persons and objects protected by the emblems; and dissemination of the knowledge of the said emblems among armed forces so as to facilitate respect for international humanitarian law.

https://www.ajol.info/index.php/naujilj/article/view/225866

## Legal advice and United States aerial targeting operations

**Craig Jones**. In: The military law and the law of war review, vol. 60, issue 1, 2022, p. 3-30

Drawing on original interviews and extensive discourse analysis of primary and secondary sources, this article advances two central claims about the involvement of U.S. legal advisers in lethal and non-lethal targeting operations. First, while the role of legal advisers has no doubt become much more extensive over the past two decades, the article argues that legal advice in targeting operations is not nearly as ubiquitous as some have suggested. Second, it unpacks the context-specific contingencies of legal advice, arguing that the nature and extent to which advisers are 'involved' can be and frequently is determined by a series of operationally specific variables. The article and the argument revolve around a basic but under-appreciated distinction between two broad types of targeting: deliberate targeting, which is pre-planned, and dynamic targeting, which although containing planned elements is much more responsive to emerging threats in real-time. The article discusses how legal advisers were first incorporated into targeting operations, before showing in new empirical detail the key contingencies that continue to animate different kinds of targeting operations. The article also discusses the critical component of time, including the perceived lack of time for deliberation, and explores some of the consequences on decision-makers, troops on the ground, and civilians. The article concludes with a reflection on the largely unexplored moral and psychological toll of providing legal advice in an apparatus that in design and effect, however 'humane' it purports to be, ultimately kills and destroys.

https://doi.org/10.4337/mllwr.2022.01.01 *

## The legality of conventional arms transfers during armed conflicts : assessing state responsibility for facilitating military actions of other states

**Emiliano J. Buis**. In: Texas Tech law review, vol. 56, 2023, p. 61-80

The Russian military attack in, and against, Ukraine has given rise to several critical reflections on the international law applicable to the use of force and international humanitarian law (IHL). The interest here is to analyze the legality of the actions of third states, which in one way or another, have offered and provided military assistance to Ukraine through the delivery of conventional arms in order to make Russian troops withdraw from the occupied territory. In the context of a growing flow of arms trade, the question I consider here is whether the transfer of conventional armaments—small, light, or heavy weaponry—constitutes a lawful act under contemporary international law, or whether we are facing situations that are contrary to the positive rules in force. This question is relevant because it allows us to rethink the intervention in hostilities by third states that, by compromising their neutrality, choose to collaborate openly with

one of the parties in the confrontation. At the same time, it contributes to a broader thinking about the legal and extra-legal limits that can be imposed on arms transfers when they are likely to affect international peace and security or jeopardize respect for human rights.

http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.Buis_.PUBLISHED44.pdf

## Limits to the scope of humanity as a constraint on the conduct of war

**Tim McCormack, Siobhain Galea and Daniel Westbury**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 85-110

Accounts of the historical origins of international humanitarian law (IHL) routinely assume that the emergence of humanity as a constraint on the waging of war, coinciding as it did with a general rise of humanitarianism in the nineteenth century, reflected a growing commitment to a universally shared notion of human dignity. That assumption is fallacious. Those who have been mythologised as champions of humanity as constraint, including Henri Dunant and Francis Lieber, were products of their era. IHL's 'original sin' was to only extend constraints of humanity to so-called civilised nations in their wars inter se. These same constraints were not intended to apply to indigenous and other colonised populations – those assumed to be 'uncivilised' – often referred to as such with the pejoratives 'savages' and/or 'barbarians'. The exclusion of emergent constraints on the grounds of racism and colonialism is evident in the language of the early IHL treaties. It has taken many decades for the international community to overcome the exclusions of the legal protection of emergent IHL and some would argue that the tendency for exclusion is still evident in the dehumanising of the other in the Global War on Terror.

## Massive violence against civilians in war : the ever-blurring line between a policy of war crimes and crimes against humanity

**Frédéric Mégret**. In: Journal of international criminal justice, vol. 21, no. 3, July 2023, p. 527-550

Armed conflicts have increasingly been characterized by a phenomenon of massive violence against civilians. Beyond a certain point, the question becomes whether such violence is properly characterized as incidental to the pursuit of hostilities or should be seen as conceptually detached from it. This article looks at the competing cases for dealing with this phenomenon of massive violence against civilians from the perspective of war crimes or crimes against humanity. The focus of war crimes particularly when committed as part of a policy at the International Criminal Court has further diminished the difference with crimes against humanity. This article finds that, given the dense overlap of both categories when it comes to massive violence against civilians in times of war, the expressivist finalities of international criminal justice are better served by emphasizing the fundamental nature of such violence as a crime against humanity. This better makes sense of the genealogy of international criminal law as emerging from a tradition of human rights and recuses any notion that systematic attacks against civilians have, in fact and in principle, anything to do with the pursuit of war.

https://doi.org/10.1093/jicj/mqad030 *

## Meta-law of armed conflict principles

**Daniel D. Maurer**. In: Texas Tech law review, vol. 56, 2023, p. 113-140

With the ongoing and tragically avoidable war in Ukraine as its reference point, this brief symposium contribution aims to accomplish two objectives. First, to justify the search for possible "meta" principles that explain, but transcend, traditional Law of Armed Conflict (LOAC) principles. Second, to propose such a set of tentative meta-principles as a starting point for deeper elaboration and critique, too nuanced for the limited scope of this rough preliminary sketch. These tentative meta-principles may, upon inspection, be overly broad or too specific; they may be redundant or incomplete. I do not suppose they are already exhaustive and comprehensive. But to strengthen their credibility, this essay will suggest that such meta-principles (whatever they may be or however they may be expressed) offer at least four critical benefits—genealogical, interpretive, gap-filling, and decisional. No such second-order legal principles related to warfare exist in law, scholarship, or practice—so why bother to identify or create any from, apparently, scratch? The conventional war in Ukraine, defending its sovereignty from the unlawful aggression of Russia, is a live case study on how the laws of war do—or do not—actually constrain the use of

armed force and how those laws might—or might not—be used to hold military troops and their commanders (or even political officials) accountable for criminal use of armed force. The same can be said of any armed conflict, of course, and the brutality and costs of the fighting in Ukraine are fundamentally no different than wars waged between nation states in Europe since the first world war. But the character of this war—some of the ways in which it is fought, and some of the tools Ukraine and Russia use to fight it—are thoroughly modern, savvy, and technologically sophisticated. Ironically, the same could be said during both world wars—for example, the deployment of chemical weapons, the advent of aerial and submarine warfare, the exploitation of radio communication, and the first use of atomic weapons altered the character of conflict. The technological advancements being exploited by the parties now—some enabled by artificial intelligence (AI) and involving autonomous or semi-autonomous combat systems—implicate the duties, obligations, and permissions of the LOAC, also known as the Law of War (LoW) or International Humanitarian Law (IHL), just as the technological marvels and terrors in the first half of the twentieth century did.

http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.Maurer.PUBLISHED10.pdf

## Military assistance to Ukraine : enquiring the need for any legal justification under international law

**Raphaël van Steenberghe**. In: Journal of conflict and security law, Vol. 28, no. 2, Summer 2003, p. 231-251

Since the invasion of Ukraine by Russia on 24 February 2022, Western states have provided significant military support to the Ukrainian armed forces, through the supply of arms or intelligence. This article enquires whether those states need any legal justification to make such support lawful under international law and, more particularly, under the law on the use of force, the law of neutrality and the regulation of arms transfers. It concludes that such justification might be required in certain circumstances and that the supporting states' narrative, namely helping Ukraine to exercise its right of self-defence in response to a blatant armed attack, might act as a valid justification, except with respect to certain regulations on arms transfer.

https://doi.org/10.1093/jcsl/krad007 *

## Military investigations in armed conflict : independence and impartiality under international law

**Claire Simmons**. - Abingdon : Routledge, 2024. - X, 172 p.

An allegation is made that a war crime was committed by a soldier during a conflict. Who should investigate the allegation? How should they investigate? This book explores a topic of critical importance in legal and policy discussions surrounding the accountability of military operations in armed conflict, and problematises some presumptions that are often made about the topic. The work provides the international legal framework necessary to address these questions and establishes the precise standards of independence and impartiality as applicable to investigations in armed conflict. It questions the assumption that the standards of independence and impartiality of investigations should be measured in the same way that we measure these standards for judges, courts, and tribunals. It also explores the ways in which military institutions and culture, as well as the context of armed conflict, may impact on the effectiveness of investigations or the perception of justice by those affected. By demonstrating the precise ways in which military investigations can contribute to or hinder the effectiveness of investigations, the book clarifies States' responsibilities with regard to their accountability efforts for serious violations of international law in armed conflict.

## Military justice for war crimes is not justice

**Rachel E. VanLandingham**. In: Texas Tech law review, vol. 56, 2023, p. 185-211

This articles establishes that given the increasing international appreciation of military courts' inherent deficiencies, the Geneva Conventions' outdated presumption of. and preference for, military courts for the disposition of war crimes should be jettisoned in favor of civilian criminal justice systems. Such recalibration is necessary because, as highlighted by human rights courts, governments, and human rights bodies, military justice is inferior justice, at least in nations with independent and fair civilian courts. Civilian criminal justice systems are normatively preferable to military courts for the prosecution of war crimes, given the criticality of such prosecutions to

international humanitarian law itself. The immediate context for this article's premise is the widespread recognition that military courts are inappropriate for trying serious human rights violations. Supplementing this realization is the growing acknowledgment that military courts are ill-suited for the fair disposition of all serious crimes, given such systems' inherent structural defects. Criminal justice systems operated within and by armed forces are best reserved, if maintained at all, exclusively for service members commission of minor, military-unique offenses that are directly linked to military discipline. It is time international humanitarian law is reconciled with human rights law to expressly exclude the use of military courts for the prosecution of grave breaches and other war crimes. They are deficient in peace time, and doubly so in war.

http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.VanLandingham.PUBLISHED9.pdf

## Military uses of the sea in peace and during armed conflict

**Magne Frostad**. - In: The law of the sea : normative context and interactions with other legal regimes. - London : Routledge, 2022. - p. 243-259

The seas have been used for trade and violence since the dawn of history, and the violence has ranged from illegalities like piracy to activities which have been accepted by international law as naval warfare. This chapter considers when an armed conflict actually comes into being and how the rights of other flag States and coastal States are affected during the conflict. Tension exists between States with stronger naval forces, inclined to show naval strength through innocent passage navigation, and some coastal States seeking to limit foreign military uses of their maritime zones. Some clarification may here flow from the case law of the International Court of Justice in relation to law of armed conflicts (LOAC) and lex specialis. Although LOAC for non-international armed conflicts have developed much over the last decades, this improvement has focused largely on land warfare.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/59693.pdf *

## La mise en œuvre nationale du droit international humanitaire : le rôle du Comité international de la Croix-Rouge

**Anne Quintin**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 35-46

Ce chapitre vise à présenter le rôle des Services consultatifs en droit international humanitaire (DIH) du Comité International de la Croix-Rouge (CICR), service créé il y a plus de 25 ans à la demande des Etats eux-mêmes, ainsi que les réalisations concrètes qui ont fait avancer la mise en œuvre du DIH ces dernières années. Ce faisant, il s'attardera sur quelques-unes des grandes thématiques prioritaires dans la mise en œuvre du DIH ainsi que sur certains moyens contemporains pour en assurer l'effectivité.

## Misuse of uniforms, emblems, flags, insignia, and the Ukraine conflict

**Kenneth Watkin**. In: Texas Tech law review, vol. 56, 2023, p. 213-247

A dominant theme in contemporary discussion concerning 21st century warfare is the conduct of "overt" conventional operations. Much of the Russia/Ukraine hostilities following the 2022 invasion have involved such operations. However, there has also been considerable irregular warfare, which has taken place in the "shadows" of that conflict. Such warfare has involved operations behind enemy lines, including Russian forces seeking to infiltrate Kyiv during the opening stages of the war, Ukrainian forces mobilizing their resistance forces operating in Russian-occupied Ukraine, and intelligence agents on both sides providing information that is ultimately used for targeting. There are reports that Russian military personnel have operated in Ukrainian uniforms and vehicles, used OSCE marked vehicles and are alleged to have misused a vehicle marked with a Red Cross. This article outlines what constitutes treachery and perfidy, and discusses the misuse of enemy and other uniforms, insignia, emblems; the Red Cross and Red Crescent; and other internationally recognized symbols during conflict. Finally, it addresses accountability for the misuse of enemy uniforms, emblems, and insignia and suggests that in some circumstances a successful prosecution for an opponent for war crimes may prove difficult when your own forces have also been doing so ("the tu quoque effect").

http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.Watkin.PUBLISHED77.pdf

## Mozambique's Cabo Delgado conflict : international humanitarian law and regional security

**edited by Marko Svicevic and Martha M. Bradley**. - Abingdon : Routledge, 2024. - XIV, 284 p.

This book uses a multidisciplinary approach to examine the ongoing conflict in Mozambique's Cabo Delgado province, which has killed thousands and displaced a million people since 2017. The book investigates how the conflict developed, the regional and international responses and its wider implications. From a broad range of African perspectives, the book addresses issues related to the conflict including international humanitarian law, regional security and terrorism. Part I assesses the regional security concerns of the conflict, the success of cross-border counter-terrorism operations and their implications for the southern African region. Part II focuses on the conflict in relation to international humanitarian law. It discusses the Islamic State's presence in the region, the trajectory and issues pertaining to sexual and gender-based violence and the relationship between the conflict and the environment. Finally, Part III examines regional and continental responses to the conflict, from the military intervention by the Southern African Development Community and Rwanda, to the perceived inaction of the African Union.

https://doi.org/10.4324/9781003317647 *

## "Neither criminal nor civil" : Russian state responsibility for conduct of hostilities violations in Ukraine

**Magdalena Pacholska**. In: Texas Tech law review, vol. 56, 2023, p. 151-170

Conduct of hostilities (CoH) war crimes, such as intentionally directing attacks against civilians and civilian infrastructure, are notoriously difficult to prosecute. Due to the complexity of establishing the requisite mens rea, exacerbated by the requirement to assess available information ex ante, many violations of the CoH rules remain outside of the prosecutable gambit. Broader accountability for violations of CoH rules, such as those pervasive in Russia's invasion of Ukraine, can be achieved either through modifying the fundamental tenets of international criminal law or by enforcing state responsibility. This article focuses on the latter and does so by building on growing scholarship criticizing the ongoing distortion of the content of underlying CoH rules by standards developed in the context of individual criminal responsibility for war crimes. Prompted by the 2022 U.N. General Assembly Resolution calling for the creation of a mechanism to determine internationally wrongful acts of Russia in Ukraine, this article examines afresh the scope of state responsibility for violations of CoH rules in an international armed conflict. The analysis starts from a seemingly obvious yet often overlooked premise that the scope of state responsibility (which extends to all IHL transgressions) is much broader than the individual criminal responsibility which remains expressly limited only to selected, intentionally committed violations. Reading Additional Protocol I through the lenses of the Vienna Convention on the Laws of the Treaties and the Articles on State Responsibility, this contribution explicates the practical reverberations of the fact that state responsibility, unlike individual criminal liability, does not hinge on intent. It is submitted that the Rendulic Rule remains limited to criminal proceedings against individuals, and in the realm of state responsibility, the legal starting point in the determination of an internationally wrongful act stemming from the CoH violations is the presumption of civilian status. It is further contended that attacks on civilians and infrastructure normally dedicated to civilian purposes, irrespective of the acting individuals' intent or knowledge, are not in conformity with the principle of distinction, but constitute internationally wrongful acts only if the state cannot substantiate that a reasonable commander, based on the information available to them at the time, would designate the target as a military objective.

http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.Pacholska.PUBLISHED28.pdf

## Newport manual on the law of naval warfare

**James Kraska, Raul "Pete" Pedrozo, David Letts, Wolff Heintschel von Heinegg, Rob McLaughlin, James Farrant, Yurika Ishii, Gurpreet S. Khurana, Koki Sato**. In: International law studies, vol. 101, 2023, 265 p.

The Newport Manual on the Law of Naval Warfare is the first effort to restate the law of naval warfare as a purely lex lata exercise since 1955. It is designed to provide a practical guide for commanders and seafarers, lawyers and officials, and educators and students. In doing so, the

Manual also factors in the developments in warfighting technologies in recent decades, which have significantly influenced the nature of war at sea.

https://digital-commons.usnwc.edu/ils/vol101/iss1/1/

## No-Fly Zones zum Schutz von Zivilpersonen in Kriegszeiten ?

**Torsten Stein**. - In: Der Schutz des Individuums durch das Recht : Festschrift für Rainer Hofmann zum 70. Geburtstag. - Heidelberg : Springer, 2023. - p. 435-445

Nach Art. 51 Abs. 2 des I. Zusatzprotokolls von 1977 zu den Genfer Konventionen von 1949 dürfen weder die Zivilbevölkerung noch einzelne Zivilpersonen in bewaffneten Konflikten das Ziel von Angriffen sein. Ebenso sind Angriffe als „unterschiedslos" verboten, bei denen damit zu rechnen ist, dass sie auch Verluste an Menschenleben unter der Zivilbevölkerung (...) verursachen („Kollateralschäden"), die in keinem Verhältnis zum erwarteten konkreten und unmittelbaren militärischen Vorteil stehen (Art. 51 Abs. 5 b I. Zusatzprotokoll). Diese Bestimmungen gelten mittlerweile auch gewohnheitsrechtlich.

## Norm clusters of non-state armed groups : mapping and understanding the limits of warfare as understood by non-state armed groups

**Will Jamison Wright**. - Cham : Springer, 2023. - XVII, 213 p.

The proliferation of non-state armed groups and non-international armed conflicts since the end of the Second World War has challenged the legal frameworks which govern conduct in armed conflict. While aspects of international humanitarian law apply to such conflicts, international law can only go part of the way to explaining behaviour by armed groups. This book seeks to refocus discussion on the limits to armed conflict in such settings by examining the norms that underpin international humanitarian law as espoused by these armed groups to give a clearer picture as to the collectively constructed appropriateness of certain behaviours in or limits to warfare. The specific research question is "What are the norms of armed conflict as identified by non-state armed groups?" Using Winston's norm cluster model, this study seeks to examine and map the ideations and behavioural prescriptions that constitute the armed conflict norm cluster as defined by non-state armed groups. To do this, it utilises a qualitative content analysis of documents from non-state armed groups coded to identify the different elements of this norm cluster as well as the frequency, pervasiveness, and connections between these elements. The findings showed that, while international humanitarian law is universal, these norms limiting armed conflict are not, with no norm being seen across all contexts examined. Core norms of international humanitarian law, especially those supported by norm entrepreneurs, were seen to be the focus of sub-clusters and the emergence of new parts of the norm cluster could be observed over time. The findings suggest that further work with the conceptualisation of limits to armed conflict as norms could be useful in improving the embeddedness of norms amongst non-state armed groups and could be useful in reconceptualising limits to armed conflict in cases where broadly accepted norms face growing contestation.

https://doi.org/10.1007/978-3-031-45914-6 *

## "Objects" ? : the legal status of computer data under international humanitarian law

**Ori Pomson**. In: Journal of conflict and security law, Vol. 28, no. 2, Summer 2023, p. 349-387

This article discusses whether computer data constitutes an 'object', in the meaning of this term under international humanitarian law (IHL). After providing background on what is meant by 'computer data', and on the significance of any determination whether computer data constitutes an 'object' for the purposes of IHL, the article proceeds to consider the meaning of the term 'object' as found in the First Additional Protocol to the Geneva Conventions (API). Recourse is made to the customary rules of treaty interpretation while focusing on both the English and French versions of API. The ordinary meaning of the term 'object' in its context in API solely connotes material things, thus excluding computer data. Moreover, recourse to the object and purpose of API, or to so-called 'evolutionary' interpretation, does not lead to a different conclusion. Considering the importance of customary international law for states non-parties to API, and for the purposes of non-international armed conflicts, the article proceeds to analyse whether computer data constitutes an 'object' for the purposes of custom. The article analyses the development of the term 'object' in legal discourse over the past century in determining what

states intended this term to mean, and finds that here, too, states considered 'objects' in the context of IHL to be material things. It also explains that there is no apparent trend among states as to whether data constitutes an 'object', whereas the paucity of official government statements is far from the necessary volume for it to carry particular legal significance.

https://doi.org/10.1093/jcsl/krad002

## Operationalising distinction in South Sudan : humanitarian decision-making about military asset use*

**Rebecca Sutton**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 135-155

The principle of distinction in International Humanitarian Law sets up two entities, the civilian and the combatant, and organises the relationship between them. This socio-legal chapter draws on original research from South Sudan to explore how this principle is operationalised in humanitarian–peacekeeper interactions. Humanitarian actors routinely invoke 'distinction' as they navigate operational dilemmas with respect to the use of military assets, and in their relationship with the UN Mission in South Sudan more generally. Two 'ideal types' of humanitarian actor emerge here. The first type takes a strict approach to distinction, thinking long term and eschewing military asset use that undermines distinction. The second type interprets distinction flexibly and balances it with other goals such as reaching people in need; this exposes a hidden conflict between the principles of distinction and humanity. Through these everyday interactions – which sometimes involve drawing lines within the civilian category – humanitarian actors produce distinction in law, in practice, and in perception.

## Ordering human-other relationships : international humanitarian law and ecologies of armed conflicts in the Anthropocene

**Matilda Arvidsson and Britta Sjöstedt**. - In: The Routledge handbook of international law and anthropocentrism. - London : Routledge, 2023. - p. 122-141

This chapter analyses the international humanitarian legal ordering of human and other relationships during armed conflict and disaster by looking at two examples, namely the 'natural' environment and human-scientific constructed AI-powered swarms of drones. Drawing on these examples, as well as post-anthropocentric and posthuman legal scholarship, the authors argue that International Humanitarian Law (IHL) has some potential in developing in a post-anthropocentric direction, specifically in reorienting its focus from armed conflicts to violent outbursts by making use of the Deleuze-Guattarian notion of 'war-machines'. The authors argue that this will enable IHL to offer a better protection on a less anthropocentric and more inclusive and equal basis in a shared posthuman ecology. The chapter offers an overview of current legal regulations as well as a theoretical and practice-oriented outline for the development of IHL.

https://doi.org/10.4324/9781003201120-8

## Preliminary recommendations on possible norms, rules and principles of responsible behaviours relating to threats by States to space systems : working paper

**submitted by the International Committee of the Red Cross to the open-ended working group on reducing space threats through norms, rules and principles of responsible behaviours**. - [Geneva] : ICRC, 27 January 2023. - 5 p.

In line with its humanitarian mission and mandate, the ICRC submits through this working paper preliminary recommendations on "possible norms, rules and principles of responsible behaviours relating to threats by States to space systems, including, as appropriate, how they would contribute to the negotiation of legally binding instruments, including on the prevention of an arms race in outer space". The ICRC hopes, in this way, to contribute to the discussions at the third and fourth sessions of the open-ended working group on reducing space threats through norms, rules and principles of responsible behaviours (OEWG), convened under United Nations General Assembly Resolution 76/231. The ICRC's recommendations are made in line with the aim of the international community, including this OEWG, to prevent an arms race in outer space and to keep it free from conflict.

https://library.icrc.org/library/docs/DOC/ICRC_WORKING_PAPER_2023_01_ENG.pdf

## Private military and security companies and international humanitarian law : the Montreux document

**Rebecca Shaw**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 153-;

Despite its often poor reputation and the scaremongering that accompanied its growth, the private military and security industry does not threaten the content or spirit of international humanitarian law (IHL). Nonetheless, concerns remain about both the behaviour of actors within the industry – private military and security companies (PMSCs), their employees, and employers – as well as the interest and capacity of states to hold these actors to account. There is a tension, therefore, between the clear applicability of IHL to PMSCs and doubts about its enforcement. The private military and security industry illustrates the gap between the ideals of IHL and its operational reality, and how this gap has then informed the creation of new soft law frameworks. In recent decades, international efforts have sought to further establish such guidance for the behaviour and use of PMSCs. One such effort, the Montreux Document, is an initiative of the International Committee of the Red Cross (ICRC) and Swiss Government, restating existing standards. While the Document has seen success in terms of state engagement and participation, PMSCs and their employers, as well as the broader regulatory climate around PMSCs, appear largely unaffected.

## Prospects for State and individual responsibility in cases of aggression in the context of Russia's armed aggression against Ukraine

**Volodymyr A. Shatilo, Sergiy O. Kharytonov, Volodymyr M. Kovbasa, Andrii V. Svintsytskyi, Andrii M. Lyseiuk**. In: International criminal law review, vol. 23, issue 4, November 2023, p. 626-641

Notwithstanding the war that raged through the former Yugoslavia in the 1990s, Russia's aggression against Ukraine is admittedly the first armed conflict of such a scale to take place almost in the heart of Europe. The Russian–Ukrainian war poses a threat to the international order, and risks escalating into a Third World War, especially if Belarus sides with Russia to participate in the armed conflict. While it could seem that in the 21st century all issues and conflicts arising between states should be resolved at the diplomatic level, in accordance with the requirements and norms of relevant international pacts and treaties, humanity still turns to such a destructive and cruel way of resolving them as war. This article explores the issue of accountability prospects for crimes perpetrated in the context of Russia's invasion of Ukraine, both from the viewpoint of State responsibility and from that of individual criminal responsibility.

https://doi.org/10.1163/15718123-bja10154 *

## Protecting warfighters from superfluous injury and unnecessary suffering

**Rain Liivoja**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 177-199

According to a well-established rule of the law of armed conflict, warring parties are prohibited from employing weapons, means, and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. Agreement about the foundational nature of this rule can, however, easily conceal the disagreement as to its precise meaning and efficacy. This paper considers the origins of the rule in question, and how key aspects of the rule are interpreted. It then examines one of the more contentious issues about the rule, namely whether it is only concerned with the inherent properties of particular weapons or whether it also deals with the use of weapons generally.

## La protection des civils en conflits armés : quel apport de la Cour européenne des droits de l'homme ?

**Jelena Aparac, Julien Antouly**. In: Revue trimestrielle des droits de l'homme, no 135, 2023, p. 645-674

Alors que le territoire européen connaît plusieurs situations de conflits, qu'ils soient de nature interétatique ou qu'ils impliquent des acteurs armés non étatiques, cette contribution interroge

l'apport de la Cour européenne des droits de l'homme pour une meilleure protection des civils en conflits armés. Elle analyse en détail les constructions jurisprudentielles récentes qui conduisent à la reconnaissance d'obligations positives pesant sur les États en situation d'urgence, ainsi que l'activité accrue de la Cour durant les phases d'hostilités, à travers l'adoption de mesures provisoires s'appuyant explicitement sur le droit international humanitaire. En revanche, il convient de constater que la Cour a une approche plus mesurée à l'égard des acteurs armés non étatiques, puisque la seule possibilité de contrôle de leurs actes repose sur l'attribution de ces derniers à un État, sur la base de critères encore confus.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/59695.pdf *

## La protection nationale des biens culturels en cas de conflits armés

**Sarah Jamal**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 83-101

Alors que la France a placé au cœur de sa diplomatie la protection des biens culturels en cas de conflits armés, il est intéressant d'observer comment elle met en œuvre ses obligations en droit interne, afin d'en assurer la protection à la fois lors de ses interventions à l'étranger mais également sur le territoire français qu'il s'agisse alors de biens culturels d'origine étrangère ou de biens culturels français. Bien que postulant l'importance de cette protection, elle a fait le choix de ne pas consacrer à cette question un régime particulier préférant assurer la protection des biens culturels de manière plus générale (I). Ce faisant, elle mobilise une pluralité d'acteurs y compris des personnes privées pour assurer cette protection (II).

## The qualification of the Ukraine conflict in international humanitarian law

**Shin Kawagishi**. - In: Global impact of the Ukraine conflict : perspectives from international law. - Singapore : Springer, 2023. - p. 273-294

The Ukraine conflict has a global impact on the status of participants in hostilities under international humanitarian law. In April 2022, three members of the Ukraine armed forces surrendered to Russia and were prosecuted for participating in hostilities by the self-proclaimed Donetsk People's Republic. It was alleged that the prosecution in this case was considered incompatible with international humanitarian law. Admittedly, should these members of the Ukraine armed forces have combatant status, they would enjoy combatant immunity, according to which they cannot be punished by the enemy for participating in hostilities as long as they comply with international humanitarian law. However, combatant status is recognized in an international armed conflict, not a non-international armed conflict. Hence, to examine whether the prosecution in this case is considered incompatible with international humanitarian law, it is necessary to investigate whether the Ukraine conflict qualifies as an international armed conflict or a non-international armed conflict. Against this background, this Chapter aims to analyze the qualification of the Ukraine conflict in international humanitarian law. This Chapter argues that there is a possibility that the Ukraine conflict qualifies as only an international armed conflict.

https://link.springer.com/chapter/10.1007/978-981-99-4374-6_13

## Rebel groups' adoption of human rights and international humanitarian law norms : an analysis of discourse and behavior in Kosovo

**Jennifer A. Mueller**. In: Human rights review, Vol. 24, no. 4, December 2023, p. 511-544

International human rights law and international humanitarian law (IHL) contain few obligations for rebel groups, yet those groups are nonetheless under pressure to comply with their foundational international norms. This case study of the Kosovo Liberation Army (KLA) analyzes the evolution of its discourse and behavior related to human rights and IHL. It then compares changes in the group's discourse to evidence of changes in behavior. The study finds that the KLA does significantly change its language, gradually incorporating such language over time, but it also demonstrates that this change is not accompanied by improvements in human rights and IHL adherence in its behavior. The study considers whether greater adoption of these norms is better explained by a constructivist or a rationalist approach and, in particular, looks at the role of legitimacy. In addition, it offers insight into how groups may respond to future pressure to follow these norms.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/59694.pdf *

## La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale

**sous la direction de Laurent Trigeaud ; Centre de recherche sur les droits de l'Homme et le droit humanitaire, Université Panthéon-Assas.** - Paris : A. Pedone, 2024. - 216 p.

Dès les premiers pas du mouvement international humanitaire qu'il venait d'initier, Henry Dunant s'attela à la création de comités nationaux - les futures Croix-Rouge nationales - afin de porter l'effort humanitaire au cœur même des systèmes nationaux : le fondateur du Comité international de la Croix-Rouge savait que le droit humanitaire ne pourrait porter ses fruits protecteurs sans de véritables politiques publiques nationales, mobilisant l'ensemble de l'appareil normatif ératique (traité, loi, règlementation administrative). Les obstacles à une pleine intégration du droit des conflits armés en droit interne sont encore nombreux et suscitent d'importantes questions : le droit humanitaire est-il systématiquement accueilli en droit interne ? La règlementation nationale fait-elle toujours référence au droit international humanitaire ? Y fait-elle référence sur des sujets classiques, tels que le traitement des prisonniers de guerre, ou également sur des sujets plus sensibles, le cyber, le nucléaire, la lutte contre le terrorisme par exemple ? Le silence de la règlementation nationale sur le droit humanitaire est-il la manifestation d'une ignorance ou au contraire, le signe que ce droit est si bien entré dans les mœurs juridiques nationaux qu'il n'a plus besoin d'être nommé ? Cet ouvrage cherche précisément à étudier cet aspect de la question, trop souvent négligé, et qui détermine pourtant l'issue de la mise en œuvre effective des exigences humanitaires lors des conflits armés.

## Redefining doubt in cases of uncertainty : an analysis of the 2023 US DoD Law of War Manual revision to the presumption of civilian status in armed conflict

**Arthur van Coller**. In: Journal of international humanitarian action, vol. 9, 2024, 15 p.

The third edition of the United States (US) Department of Defense Law of War Manual, updated in December 2016 (2015 DoD Manual) states that "[u]nder customary international law, no legal presumption of civilian status exists for persons or objects". The 2015 Manual received general support from military circles, but some experts believed that rejecting the customary international law (CIL) status of the presumption of civilian status in instances of doubt was an apparent mistake or important error. The 2023 US DoD Law of War Manual (2023 Manual) has now been promulgated with a revision to the doubt rule. Doubt regarding the character of persons or the nature of dedicated civilian objects results in a "presumption" of civilian status "unless the information available indicates that the persons or objects are military objectives". The 2023 Manual attracted criticism, with some experts, especially those with military experience, arguing that it is counterproductive to incorporate exponentially legalistic or complex, nuanced judgements about status determinations, presumptions and the sufficiency of rebuttal evidence in practical matters such as targeting decisions. The article evaluates the substance and implications of the revision to the doubt rule in the 2023 Manual. The article further considers whether the doubt rule regarding the civilian character of persons and the nature of certain objects has acquired customary international humanitarian law status. Ultimately, the article concludes that is not realistic to include a presumption for application in targeting decisions due to the complexities of applying legalistic concepts during armed conflict.

https://doi.org/10.1186/s41018-023-00145-2

## Le régime des prisonniers de guerre et le pacifisme constitutionnel dans le Japon contemporain

**Éric Seizelet**. In: Cipango : cahiers d'études japonaises, no 25, 2023, p. 233-265

La loi de juin 2004 sur le traitement des prisonniers de guerre couronne tout un train de mesures législatives mises au point par l'administration Koizumi sur les situations d'exception. Son propos est d'incorporer les dispositions de la Convention de Genève en droit interne que le Japon avait ratifié un demi-siècle auparavant. L'article expose les raisons de ce retard, les motivations du gouvernement japonais à adapter ces éléments du droit humanitaire international. Si cette loi n'a guère attiré l'attention de l'opinion et de la classe politique – sauf sur certains points précis – elle n'en est pas moins singulière dans un Japon qui a longtemps fait de son pacifisme constitutionnel l'axe central de sa politique de défense et qui, sous la figure du prisonnier de guerre, réintroduit la figure de l'ennemi et l'ombre de la guerre dans le Japon d'après-guerre.

https://doi.org/10.4000/cipango.5591

## Regulating a 'state of exception' in times of war : the legal regime applicable to derogation in situations of armed conflict

**Zelalem Mogessie Teferra**. In: Journal of conflict and security law, vol. 28, no. 2, Summer 2023, p. 253–284

An armed conflict is one of the severest forms of 'public emergency', the very condition to activate the derogation regime of international human rights law. There is indeed no greater threat to the very survival of a nation to warrant the suspension of human rights than an armed conflict. However, while adopting the relevant international humanitarian law (IHL) treaties, states have bound themselves 'to respect and ensure the respect for' the norms enshrined therein, regardless of the urgency and exceptional challenges that they may face as a result of an armed conflict. As such, derogation from the baseline rules in those treaties is, in principle, not permissible by making reference to the existence of military necessity or the general state of armed conflict. Notwithstanding this, some provisions in the various IHL treaties exceptionally envisage the possibility of derogation from the rights and privileges of a particular group of victims of armed conflict for security reasons. One of such provisions is Article 5 of the Fourth Geneva Conventions (GC IV), which explicitly allows derogation both within a state's own and occupied territories. Similar other provisions, albeit some without express mentioning of derogation, can also be found in the Four Geneva Conventions (1949) and their Additional Protocols of 1977. Nonetheless, there is a common thread that runs through these provisions, that is, a state's power of derogation is limited by strict legal constraints. This essay aims at illustrating these normative restrictions by fleshing out the limits placed upon states' ability to suspend the rights and freedoms of some individual victims of armed conflict, using Article 5 of GC IV as a reference point. It is argued that while derogation from some norms of IHL is exceptionally possible and lawful, any derogation measure should comply with some procedural and substantive requirements and remain justified throughout its duration. No exceptional circumstance, whether the exigencies of military necessity or the protection of national security, can be invoked to dispense with such requirements.

https://doi.org/10.1093/jcsl/krac032 *

## The relationship between the law of armed conflict and international criminal law : with a focus on the war in Ukraine

**Rogier Bartels**. In: Texas Tech law review, vol. 56, 2023, p. 39-59

Whereas the author welcomes the opportunity for the International Criminal Court (ICC) or other (international) criminal institutions to clarify and develop the law of armed conflict (LOAC) in their case law coming out of the war in Ukraine, this article calls for caution in the retrospective application of LOAC rules to the fighting, and highlights the risks for the development of the LOAC if these after-the-fact assessments are done solely through an ( international) criminal law lens. The present contribution therefore starts with an explanation of the clarification and development of the LOAC by international criminal courts and tribunals, including a discussion of criticisms thereof. Using some examples of issues that may come up during international criminal trials related to the war in Ukraine, the author highlights some of the challenges that international criminal justice, and mainly the ICC, may be faced with, before ending with a discussion of the relationship between the LOAC and ICL, as well as the risk and challenges of dealing with the LOAC in a courtroom setting.

http://texastechlawreview.org/wp-content/uploads/TTLR-Vol.-56-Book-1.Bartels.PUBLISHED78.pdf

## La responsabilidad del estado por el uso de armas autónomas letales

**Laura González Calvache**. In: Revista española de derecho militar, núm. 118, julio-diciembre 2022, p. 9-54

Las armas autónomas letales son un tipo de armas que, empleando la inteligencia artificial, son capaces de seleccionar objetivos y decidir si disparan o no. Este artículo examina la responsabilidad del Estado por su uso, pues deben estar sujetas a control humano para ser conformes a derecho. Así, Estados y organizaciones proponen dos posibles estándares de control: el control humano significativo y los niveles apropiados de control humano. También se examina la conformidad de las armas con el derecho internacional humanitario a través de los principios de distinción y proporcionalidad, concretamente si estas armas serían capaces de distinguir entre

objetos y si sus ataques serían proporcionales. Finalmente, se analizan y proponen distintas vías de ejercer la responsabilidad del Estado.

https://publicaciones.defensa.gob.es/media/downloadable/files/links/r/e/redem_118.pdf

## Rethinking the scope of application of international humanitarian law and its place in the international legal system

**TD Gill**. In: The military law and the law of war review, Vol. 60, no. 1, 2022, p. 58-70

This article explores some of the unsettled issues and certain issues which are arguably not settled satisfactorily relating to the material, personal, geographical and temporal scope of application of international humanitarian law and presents some arguments in favour of rethinking certain elements relating to that scope of application and the function and relationship of IHL to other regimes within international law and its place within the international legal system. These observations are meant as an attempt to stimulate discussion and where necessary some reassessment of the scope of application of international humanitarian law and not as a ready-made comprehensive approach or solution to all the controversies relating to its application.

https://doi.org/10.4337/mllwr.2022.01.04 *

## Le rôle de la commission nationale consultative des droits de l'homme : un exemple original de commission nationale de mise en œuvre du droit international humanitaire

**Anaïs Schill**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 55-77

La Commission nationale consultative des droits de l'homme (CNCDH) fait partie des 118 groupes d'experts ou instances spécialisées qui existent actuellement, créées par les Etats afin de coordonner les activités de sensibilisation au droit international humanitaire (DIH) et veiller à son incorporation dans la législation, les pratiques et les politiques nationales. Deux missions principales incombent à la CNCDH à ce titre : conseiller et aider le gouvernement dans la mise en œuvre et la diffusion du droit international humanitaire (I) et contrôler le respect par la France de ses engagements internationaux dans ce domaine (II). Il serait trop ambitieux de se livrer ici à l'exercice délicat de proposer un bilan de la CNCDH à la réception du droit international humanitaire en droit interne, objet du présent colloque. Il s'agira plutôt, à travers queslques exemples, d'illustrer ces missions de la CNCDH afin de mettre en exergue son rôle particulier en tant que commission nationale de mise en œuvre du droit international humanitaire.

## Le rôle de la Croix-Rouge française dans la diffusion du droit international humanitaire

**Caroline Brandao**. - In: La réception du droit international humanitaire en droit interne : un ancrage du droit des conflits armés dans la règlementation nationale. - Paris : A. Pedone, 2024. - p. 47-54

Ce chapitre présente le rôle de la Croix-Rouge française dans la diffusion du droit international humanitaire. Soulignant l'appartenance de la Croix-Rouge française à un Mouvement international, le chapitre analyse dans un premier temps le rôle de la conférence internationale de la Croix-Rouge et du Croissant-Rouge qui permet de réaffirmer le rôle propre des Sociétés nationales dans la mise en œuvre et la diffusion du DIH avec leurs autorités. Dans un second temps le chapitre détaille le rôle de la Croix-Rouge française et ses activités de diffusion auprès de différents publics.

## The role of legal advisors in targeting operations : a NATO perspective

**Nathalie Durhin**. In: The military law and the law of war review, Vol. 60, no. 1, 2022, p. 47-57

The NATO targeting doctrine, updated after the Alliance's 2011 operation in Libya, reflects an elaborate and mature process, which fully integrates legal constraints to reinforce NATO military capabilities and legitimacy. Since NATO Legal Advisors (LEGAD) intervene in all phases of the iterative Joint Targeting Cycle, they are primarily responsible for the internalization of International Humanitarian Law (IHL) norms and consequently participate in shaping

operational realities. LEGAD have to assess the relevant legal boundaries in a mainly intelligence-driven process and often under political pressure. In the near future, they will have to maintain these high requirements in an era of hybrid threats, where our adversaries keep on taking advantage of our law-abiding procedures. They will also have to extend their reach to integrate legal advice in the cyber and space domains, and to ensure that IHL implementation will not become too aspirational but will remain feasible and acceptable for military actors.

https://doi.org/10.4337/mllwr.2022.01.03 *

## The role of military legal advisers in targeting : a perspective from the Netherlands

**Marten Zwanenburg**. In: The military law and the law of war review, vol. 60, no. 1, 2022, p. 31-46

This article focuses on the role of legal advisers in targeting during military operations, from the perspective of the Netherlands. In doing so, it takes into account the experience of Dutch legal advisers who were involved in targeting in the last decade, as part of ISAF and OIR. The article concludes that the role of Dutch military legal advisers in targeting is not so different from the role of their colleagues in other armed forces. Like their colleagues, they give advice while the commander is the decision-maker. This has not changed, although developments in recent years, particularly the development of communication systems, have brought the legal adviser closer to the actual process of decision-making. In order to be effective in advising the commander in the context of targeting, the legal adviser needs to have specific knowledge and skills, including knowledge of the law of targeting, the mission, the means available to the commander, the workings of a headquarters and targeting process. The relationship they have with their commander is of vital importance. The fact that Dutch military legal advisers normally operate as part of a multinational operation entails two challenges. The first challenge is to navigate the different legal obligations that different states within the operation have, as well as the different interpretations they may have of shared obligations. The second challenge is that it may be necessary to rely on intelligence provided by other states in giving advice on targeting, raising the thorny question of how much trust may be placed in that intelligence.

https://doi.org/10.4337/mllwr.2022.01.02 *

## The sexual abuse of African boy soldiers by male and female offenders : the need for an international criminal law response

**Windell Nortje**. In: International criminal law review, vol. 23, issue 4, November 2023, p. 603-625

The sexual abuse of boy soldiers is a matter that has unfortunately not received the judicial and academic attention it deserves. Boy soldiers have been sexually abused not only by male commanders but also female commanders and other offenders. International Criminal Law has opted to focus on the prosecution of those most responsible for committing sexual violence against women and children. Boys are often mentioned in passing. This article challenges this view. It does so by looking at a special case in Northern Uganda where boy soldiers in the Lord's Resistance Army was sexually abused. The article then examines several cases where International Courts have dealt with the sexual abuse of males, since the abuse of boy soldiers have not been adjudicated internationally. The article then looks at the reasons why there is a silence among those boys who are sexually abused and recommendations are proffered.

https://doi.org/10.1163/15718123-bja10152 *

## Sexual and gender-based violence committed by non-state armed groups against women/girls and LGBTI+ persons in non-international armed conflicts : Peru's case

**Juan-Pablo Pérez-León-Acevedo**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 377-416

The Peruvian Communist Party/Shining Path or Sendero Luminoso (PCP-SL) and the Tupac Amaru Revolutionary Movement (MRTA) committed rape and other sexual violence atrocities against women/girls and executions of LGBTI+ persons during Peru's non-international armed conflict (NIAC) (1980–2000). This article analyses sexual and gender-based violence (SGBV)

perpetrated by these non-State armed groups (NSAGs) against women/girls and LGBTI+ persons under international humanitarian law (IHL) binding NSAGs, complemented with a rebel governance approach (including female membership in these groups). This case-study can illustrate whether NSAGs fulfil ihl obligations, also identifying inconsistencies between their doctrines and actions. After examining gender-related issues concerning the PCP-SL/MRTA and their SGBV crimes against women/girls and LGBTI+ persons, this article applies an analytical framework consisting of a gender-focused rebel governance approach and, mainly, IHL to SGBV perpetrated by the PCP-SL/MRTA. IHL analysis involves: IHL bindingness over NSAGs; prohibition of SGBV binding NSAGs; and the NSAGs' (emerging) obligation to redress.

https://doi.org/10.1163/18781527-bja10076 *

## Shortcomings of a showpiece : reflections on the need for reform of the German Code of Crimes Against International Law and challenges for its application

**Aziz Epik and Leonie Steinl**. In: Journal of international criminal justice, vol. 21, no. 4, September 2023, p. 815-837

The German Code of Crimes Against International Law can be considered a 'well-crafted' law. It has not only been put to test in practice in several high-profile cases before German Higher Regional Courts, but it also serves as a model for the implementation of international criminal law into domestic legislation. Nevertheless, 20 years after its entry into force and from a point of view of substantive law, it is possible to identify areas of the Code that are in need of legislative reform, such as sexual and reproductive crimes, crimes against the environment, the crime of aggression, war crimes against property and the applicable sentencing ranges. This article provides an overview of these areas and discusses possible ways forward.

https://doi.org/10.1093/jicj/mqad040 *

## Should we call for criminal accountability during ongoing conflicts ?

**Ghuna Bdiwi**. In: Journal of international criminal justice, vol. 21, no. 4, September 2023, p. 719-734

This article suggests an account in the language of criminal law that merits the language for criminal accountability over the language of human rights, as a form of accountability, when prosecution is not possible. Calling for the prosecution of those most responsible for international crimes seems to be feasible after the war has ended, or at least when there is a vision for a political transition, but the war in Syria is ongoing and a vision for political transition remains elusive. The Syrian conflict has produced almost all kinds of heinous crimes, yet there is no clear political will to hold the alleged perpetrators of atrocity crimes accountable. At the same time, calls for criminal accountability in Syria, and discourse to achieve international criminal justice are taking place before the civil war ends. This article relies on the expressive theory of punishment to assess the rationales of calls for criminal accountability during the ongoing conflict in Syria. Out of many rationales, the article notes that calls for criminal accountability open the possibility of punishment and send a message of condemnation to perpetrators as well as a message of acknowledgment to victims. Furthermore, using the language of criminal accountability as a basis for the calls is stronger than using the language of human rights. The article discusses the problem of standing to call those responsible for international crimes to account and proposes that our shared humanity provides the authority for such calls while also pointing out limitations of this approach.

https://doi.org/10.1093/jicj/mqac037 *

## Sieges and the laws of war in Europe's long eighteenth century

**Gavin Daly**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 13-33

Sieges were central to the evolution of customary laws of war in early modern Europe and represented the most regularised form of warfare. They were also where civilians were most at risk of exposure to the violence of conventional war, including the phenomenon of sack. A besieging force that stormed a town had the right to put the garrison to the sword and to sack the town. Yet the long tradition of sack has been neglected by historians, only now emerging as a subject of study in its own right. This chapter explores the history of sieges, sack, and the laws of

war in Western Europe over the course of the long eighteenth century (1660–1815). It highlights sieges as an important but relatively neglected place for examining changes and continuities in customary laws of war, ideals of barbarity and civility, and moral sentiment over the long eighteenth century.

## Le soldat augmenté : combattant ou moyen de combat ? : état des lieux des défis pour le droit international

**Julien Ancelin**. In: Les Champs de Mars, no 37 (2021/2), 2023, p. 47-70

La perspective de la mise au point et du déploiement de soldats augmentés sur les prochains théâtres de conflictualité soulève, pour le droit international, de nombreux questionnements. Sur le plan terminologique, le « soldat augmenté » ne connaît pas de définition unanimement acceptée par les États, ce qui nécessite d'interroger son périmètre et de confronter son existence aux catégories qui structurent l'analyse juridique. Sur le plan substantiel, l'augmentation des capacités des acteurs du conflit amène à questionner l'applicabilité et l'application des règles qui préservent les individus et les combattants contre certains excès. Il est donc nécessaire de confronter les projets d'augmentation du soldat aux garanties dont dispose l'ordre juridique international afin d'éclairer les risques que cette disruption technologique pourra entraîner. Le présent article dresse un état des lieux des défis et des réponses que le droit international des droits de l'homme et le droit international humanitaire offrent, et s'insère ainsi dans les questionnements envisagés par le dossier thématique que la revue Les Champs de Mars se propose d'éclairer.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/59632.pdf *

## The state, civility, and international humanitarian law

**Matt Killingsworth**. - In: Civility, barbarism, and the evolution of international humanitarian law : who do the laws of war protect ?. - Cambridge : Cambridge University Press, 2024. - p. 111-134

This chapter has three interrelated aims. First, to identify the relationship between the modern nation-state, international humanitarian law (IHL), and notions of civility; second, through a historical exploration of the relationship between military necessity, proportionality, and discrimination in IHL, to make the argument that the claimed shift from sovereignty to humanitarianism is not as complete as often argued, and that rather, raison d'état continues to be a motivating factor informing constraint during combat; and third, through an exploration of 'the standard of civilisation', to identify how this relationship informs discord between the universal underpinnings of contemporary IHL, and ongoing violations of the law. The chapter concludes by proposing that the oft-maligned concept of a 'standard of civilisation' remains valuable in exploring continuities of double standards as they relate to protections afforded by the modern laws of war.

## State commitments and inhumane conventional weapons : an explanatory analysis of treaty ratification

**Jan Karlas**. In: Cooperation and conflict, vol. 58, issue 3, September 2023, p. 335-355

In the last 40 years, the international community has made considerable progress towards the regulation of inhumane conventional weapons (ICWs) by adopting treaties that regulate or ban these weapons. However, many states have still not joined these treaties or have joined them with a considerable delay. These ratification decisions cannot be satisfactorily explained by the existing literature on the origin of ICW treaties, which stress the role of global socialization processes. This article offers a theoretical argument that explains state decisions on the ratification of ICW treaties. It argues that while democracies and countries located in regions with high ratification rates are prone to ratify ICW treaties, an insecure external environment impedes or delays ratification. The argument also claims that security costs resulting from the characteristics of the individual treaties can modify the effects of these explanatory factors. To provide an empirical test for the argument, the article conducts a survival analysis that covers the ratification processes of the three existing ICW treaties.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/59145.pdf *

## The status of Gaza as occupied territory under international law

**Safaa Sadi Jaber and Ilias Bantekas**. In: International and comparative law quarterly, vol. 72, issue 4, October 2023, p. 1069-1088

The traditional effective control test for determining the existence of a belligerent occupation requires boots on the ground. However, the evolution of the international law of occupation and the emergence of complex situations, particularly of a technological nature, necessitate a functional approach that protects the rights of occupied populations. The political, historical and geographical conditions of Gaza allow Israel to exert effective remote control. Despite the disengagement of Israel from Gaza in 2005 and the assumption of military and political authority by Hamas, this article argues that Israel nonetheless continues to be in effective occupation of the Gaza Strip on the basis of the following grounds: (1) the relatively small size of Gaza in connection with the technological superiority of the Israeli air force allows Israeli boots to be present in Gaza within a reasonable response time; (2) Hamas's authority and armed resistance do not impede the status of occupation; (3) the long pre-disengagement occupation and close proximity between Israel and Gaza (geography) allow for the remote exercise of effective control; and (4) all imports, exports in and out of Gaza, and any movement of persons are fully controlled and regulated by Israel.

https://doi.org/10.1017/S0020589323000349 *

## Submission on autonomous weapon systems to the United Nations Secretary-General

**ICRC**. - [Geneva] : ICRC, 19 March 2024. - 7 p.

The International Committee of the Red Cross (ICRC) welcomes the opportunity to submit its views for consideration by the United Nations Secretary-General, in accordance with resolution 78/241 "Lethal autonomous weapon systems", adopted by the General Assembly on 22 December 2023, which requested the Secretary-General to seek views on "ways to address the related challenges and concerns [that autonomous weapon systems] raise from humanitarian, legal, security, technological and ethical perspectives and on the role of humans in the use of force." By drawing the attention of States and the public to the unacceptable effects of certain weapons on combatants and civilians, the ICRC has helped to create the conditions for the development of the laws of war. Today it assesses that the unconstrained development and use of autonomous weapon systems raises serious legal and ethical problems, and that a new legally binding instrument is needed.

https://library.icrc.org/library/docs/DOC/ICRC_RECOMMENDATIONS_2024_03_ENG.pdf

## The targeting of undersea communications cables : armed conflict, developing states, and the need for a TWAIL approach

**Stephen Floyd**. In: Minnesota journal of international law, vol. 32, no. 2, 2023, p. 39-92

800,000 miles of undersea communications cables cross the ocean floor and bind the world together. Modern society increasingly depends on these fragile fiber optic tubes for economic growth, effective governance, and critical services. But while wealthy states in the "global north" enjoy redundant cable connections, much of the developing world lacks such robust infrastructure. Indeed, for many low-income states, a single fault can disrupt telecommunications and wreak havoc across an entire region. Yet despite their critical importance, undersea communications cables receive no special protection under international humanitarian law (IHL). Some states, like Russia, have reportedly developed dedicated capabilities to target cables in international waters during armed conflict, and non-state actors have demonstrated the capacity to do so in the littoral zone. In the developing world, such attacks could have devastating effects for civilians, non-combatants, and neutral states. Nevertheless, the targeting of undersea cables may be justified under existing IHL targeting principles that emphasize military necessity and fail to consider non-lethal, second-order effects. The developing world requires a new approach for the digital age. Employing a Third World Approach to International Law (TWAIL) framework, this paper argues that regional courts and local jurists are best positioned to interpret IHL in ways that reflect the developing world's unique circumstances. For what constitutes a lawful attack among advanced industrial economies may have very different consequences for the world's most vulnerable populations. After reviewing current IHL treatment of undersea cables and dual-use infrastructure, the paper considers the African Commission on Human and Peoples'

Rights as a case study. Although the Commission lacks binding authority, it possesses a broad mandate to consider IHL and international human rights law together and has found that the African Charter's economic and social rights cannot be derogated during armed conflict. For this reason, the Commission is well situated to consider attacks on dual-use telecommunications infrastructure, articulate an IHL approach that respects the 21st-century needs of developing states, and protect digital access for civilians and noncombatants. Though non-binding, such a statement might catalyze the emergence of new customary international law norms and an IHL regime founded in truly global values.

https://ssrn.com/abstract=4547426

## Tensions between the pursuit of criminal accountability and other international policy agendas in situations of armed conflict

**Sarah M.H. Nouwen**. - In: The individualization of war : rights, liability, and accountability in contemporary armed conflict. - Oxford : Oxford University Press, 2023. - p. 187-219

Focusing on one particular manifestation of the individualization of war, Sarah Nouwen illustrates how the pursuit of individual criminal accountability can create tensions with at least nine other policy agendas: the promotion of peace; humanitarian relief; humanitarian law promotion; military action to end atrocities; peacekeeping; economic cooperation; human rights promotion; rule-of-law promotion and democratization. In so doing, she also evaluates the strengths and limitations of the editors' theoretical framework for conceptualizing both the kinds of tensions that the individualization of war can create (normative; practical-inherent; practical-contingent) and the strategies of resolution that have been adopted by scholars and practitioners. Whereas most of the tensions arising from individualization do not exist at the normative level—the objectives are not conflicting—and the difference between inherent and contingent is hard to draw, one key source of tensions is the diverging logics of policy agendas: what is deemed necessary to pursue those objectives. With respect to the 'resolution' of the tensions, Nouwen argues that some tensions are inherent in the concept of individualization, while others are intentionally created and therefore not meant to be resolved. Finally, the chapter points out that some of the purported strategies for resolution in fact do not 'resolve' tensions but prioritize one policy agenda over another. Whether through legal or more ad hoc strategies, these prioritizations are ultimately determined by political choice.

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## The terminology of the law of warfare : a linguistic analysis of state practice

**Emily Crawford, Annabelle Lukin, and Jacqueline Mowbray**. In: Journal of international humanitarian legal studies, Vol. 14, issue 2, 2023, p. 197-222

The body of international law that regulates the conduct of armed conflicts has been known, at various points in time, as the law of war, the law of armed conflict, and international humanitarian law. While 'the law of war' was a term widely used in State practice throughout the 18th and 19th centuries, both 'the law of armed conflict' and 'international humanitarian law' were terms introduced in the 20th century by one organisation: the International Committee of the Red Cross. In this paper, we use international law and corpus linguistic tools in a pilot study, examining how the terms were first introduced into international law and how quickly they were incorporated (if at all) into the practice of States. Using the ongoing conflict involving Israel and its neighbours, this pilot study charts the appearance and recurrence of these terms in the practice of States in the United Nations to examine how the terms were received and used. We conclude by offering some initial assessments, noting that, while the terms were largely considered unproblematic at their introduction, practice in relation to their deployment suggests deep tensions regarding the nature and purpose of the law and how and when it applies.

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## Thinking with IHL in contexts of counterterrorism : the case of criminal justice systems in the Sahel

**Julien Antouly and Rebecca Mignot-Mahdavi**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 109-138

Building on the Sahel situation, the chapter argues that prosecutors and judges working on acts perpetrated in the framework of armed conflicts should be encouraged to use IHL-derived norms of their criminal code, and related IHL reasoning in addition to, or instead of the counter-terrorism arsenal of their criminal code. The first reason for this is that the evidentiary threshold is higher for IHL-derived crimes than for ordinary or counter-terrorism offences and appears to be essential to preserve domestic criminal law's cornerstone principles. The way ordinary criminal law offences or new counter-terrorism specific offenses are interpreted in terrorist cases leads to the dilution of the elements of the crime and thus to the violation of the principle of individualization of sentences. This, the chapter argues, would not happen should the IHL framework fully coexist with the counter-terrorism (CT) apparatus, in which case it would at the very least promote a less pre-emptive prosecution culture. The second reason to prosecute on the basis of IHL-derived norms is to protect humanitarian actors, who otherwise face growing risks of prosecution when they operate in areas where terrorist armed groups are active. Indeed, the turn to pre-emptive criminal justice, the related extension of terrorism-related offences and dilution of the elements of the crime tend to criminalize all kinds of links and interactions with terrorist groups, without requiring the actual participation in, or intention to participate in a terrorist act. IHL also contains provisions which explicitly protect humanitarian and medical personnel and forbid their harassment, arrest and prosecution. This analysis might even make a case for having IHL-based prosecution prevail, and not just to encourage the coexistence of the IHL lens with the CT lens. The chapter ends with some indications of how reinvigorating the IHL framework and mode of reasoning can look like in practice, in a context where actors of the criminal justice system need to gain habitus in thinking about IHL norms, and more importantly IHL doctrinal debates.

https://doi.org/10.1007/978-94-6265-619-2_4 *

## Ukraine, urban warfare, and obstacles to humanitarian access : a predicament of public international law

**Harriet Norcross Eppel**. In: Brigham Young University Law Review, Vol. 49, no. 3, p. 925-960

Humanitarian assistance is not carried out in a vacuum. As urban warfare historically complicates humanitarian aid's access to civilians in war zones, Ukraine, having suffered and still facing highly publicized violence in civilian-dense areas, has encountered dire obstacles in acquiring necessary resources for civilians' survival, including both direct and incidental attacks on humanitarian access. Thus, it is vital the international legal community take measures to mitigate current and future dangers of urban warfare, as well as design new solutions, such as strengthening current international law under which obstructing humanitarian access constitutes a violation of jus cogens principles, attempting to induce countries to move away from conflict in civilian-populated areas, supporting previously attempted alleviations such as "safe zones" and humanitarian corridors, and boosting the concrete legal status of NGOs' and other organizations' neutrality, to ensure easier access to humanitarian aid in present and future war zones. In Part II (Part I being an introduction), this paper will first lay a foundation of the history of humanitarian assistance in armed conflict and civilians' rights to humanitarian assistance in armed conflict. Part III will introduce the history of urban warfare, then discuss common obstacles to humanitarian assistance (whether intentionally or unintentionally caused by States), specifically in situations of urban warfare. Part IV will examine how Ukraine has experienced and is currently experiencing humanitarian access issues, and the applicable obligations which involved States have failed to uphold. Finally, Part V will discuss potential solutions to the difficulty facing aid workers in Ukraine and other urban armed conflict situations where civilians are impacted.

https://digitalcommons.law.byu.edu/lawreview/vol49/iss3/11

## The unprecedented Ramsar resolution : Ukrainian wetlands protection in armed conflict

**Meng Wang**. In: Netherlands international law review, vol. 70, issue 3, December 2023, p. 323-357

Armed conflict has devastating environmental consequences, adversely impacting critical ecosystems and natural resources. The conflict between Russia and Ukraine, which has been ongoing since February 2022, has significantly affected Ukrainian wetlands, jeopardising their vital ecosystem services. The Convention on Wetlands of International Importance Especially as

Waterfowl Habitat ('Ramsar Convention'), which focuses on conserving and sustainably using wetlands, thus stands as a valuable tool for addressing environmental emergencies during armed conflict. With both Russia and Ukraine as Contracting Parties to the Ramsar Convention and their armed conflict causing a negative environmental impact, the effectiveness of the Ramsar Convention during such a conflict is being tested. The centrepiece of this article is a Resolution entitled 'Environmental emergency in Ukraine relating to the damage of its wetlands of international importance (Ramsar Sites) stemming from the Russian Federation's aggression' recently adopted by the Conference of the Contracting Parties to the Ramsar Convention. This article assesses the effectiveness of the mechanisms within the Ramsar Convention and this Resolution in addressing the environmental challenges faced by Ukrainian Ramsar Sites during armed conflict. This case study provides broad insights into the overall challenges to implementing international environmental law treaties in times of armed conflict. Furthermore, it highlights the potential of leveraging the Ramsar Convention and similar environmental agreements to effectively safeguard the natural environment and ecosystems in times of armed conflict.

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## Unprivileged belligerency in a deterritorialized cyber battlefield? Some lessons learned from the Russia-Ukraine conflict

**Masahiro Kurosaki**. - In: Global impact of the Ukraine conflict : perspectives from international law. - Singapore : Springer, 2023. - p. 339-357

Despite the fact that heightened geopolitical tensions brought about by the Russia-Ukraine Conflict may spur a stalemate in the UN's consensus-based efforts to advance international law and norms in cyberspace, the conflict has given rise to a number of challenging questions of international law applicable to cyberspace in armed conflict, notably regarding the extent to which the existing relevant rules of international law are applicable and at what point we need the development of new rules tailored to the unique features of cyberspace. With that in mind, aiming to offer some key takeaways from the conflict, this chapter attempts to explore: (1) whether and when Ukraine's cyber volunteers could be deemed as engaging in unprivileged belligerency; (2) what the legal consequences would be in that case; and (3) what kind of responsibilities and obligations Ukraine and the third States would incur from those acts of unprivileged belligerency.

https://link.springer.com/chapter/10.1007/978-981-99-4374-6_16 *

## The utility of weapons reviews in addressing concerns raised by autonomous weapon systems

**Damian Copeland, Rain Liivoja and Lauren Sanders**. In: Journal of conflict and security law, Vol. 28, no. 2, Summer 2023, p. 285-316

The obligation to legally review weapons, means and methods of warfare has been identified by the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems as one of its Guiding Principles. Despite calls to share practical measures and processes to undertake this review, national practice remains opaque and fragmented. This article describes the traditional weapons review process and explains why this process may need to be modified to adequately evaluate autonomous weapon systems (AWS). It uses three case studies of fictional AWS in various stages of development and acquisition to demonstrate how existing review processes can be adapted for the review of AWS. This article shows the utility of these reviews for ensuring compliance of AWS with existing legal requirements, thereby also demonstrating the suitability of existing law to regulate the use of this novel technology in warfare.

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## Die völkerrechtliche Pflicht Syriens, humanitäre Hilfe zu gestatten

**Hans-Joachim Heintze**. - In: Der Schutz des Individuums durch das Recht : Festschrift für Rainer Hofmann zum 70. Geburtstag. - Heidelberg : Springer, 2023. - p. 399-410

Am 12.06.2022 nahm der UN-Sicherheitsrat die Resolution S/RES/2642 an, die sich mit der Zulassung von internationaler humanitärer Hilfe nach Syrien über den Grenzübergang Bab-al-Hawa befasst. Die Entscheidung wurde durch die Weltöffentlichkeit begrüßt, denn 14,6 Mio.

Syrier hängen von dieser internationalen Hilfe ab, weil ihre Lebensgrundlagen durch den seit 11 Jahren andauernden bewaffneten Konflikt in diesem Land zerstört wurden. Damit wurde eine Praxis fortgesetzt, die der Sicherheitsrat seit 2012 betreibt. Die Zulassung der Hilfe wurde seither immer jeweils auf ein Jahr zeitlich begrenzt. Daher wurde 2021 mit der Resolution S/RES/2585 (2021) wiederum die humanitäre Hilfe über den Grenzübergang Bab-al-Hawa für dieses Jahr genehmigt. Von dieser Praxis wich die diesjährige Entscheidung des Sicherheitsrates insofern ab, als die zeitliche Beschränkung der Genehmigung auf sechs Monate (zuvor ein Jahr) begrenzt wurde.

## Die völkerrechtliche Regelung des Zivilschutzes

**Heike Spieker**. - In: Der Schutz des Individuums durch das Recht : Festschrift für Rainer Hofmann zum 70. Geburtstag. - Heidelberg : Springer, 2023. - p. 411-434

Insbesondere die Flüchtlingsnothilfe in den Jahren 2015 und 2016, das Starkregenereignis im Juli 2021, das zu erheblichen Überflutungen speziell in Rheinland-Pfalz und Nordrhein-Westfalen führte, sowie nicht zuletzt der bewaffnete Konflikt zwischen Russland und der Ukraine seit dem 24.02.2022 revitalisierten die Diskussion um Struktur und Belastbarkeit des Bevölkerungsschutzes in Deutschland. Diese Diskussion greift immer wieder auch auf den Begriff des Zivilschutzes zurück. Über die verfassungsrechtliche Zuweisung der ausschließlichen Gesetzgebungskompetenz an den Bund nach Art. 70, 71 und 73 Abs. 1 Nr. 1 GG und die Anordnung der Bundesauftragsverwaltung nach Art. 83 und 85 GG hinaus enthält das deutsche Recht relativ wenige Regelungen spezifisch über die Ausgestaltung des Zivilschutzes in Deutschland. Grundlegende Regeln enthält das Zivilschutz- und Katastrophenhilfegesetz. Insbesondere die direkte Bezugnahme des § 3 ZSKG auf die völkerrechtlichen Regelungen zum Zivilschutz und die indirekte Referenz in § 1 ZSKG setzen eine Kenntnis der Vorschriften des humanitären Völkerrechts über den Zivilschutz im – internationalen – bewaffneten Konflikt voraus.

## War

**Shelly Aviv Yeini**. In: University of Pennsylvania journal of international law, Vol. 44, issue 3, 2023, p. 701-730

The legal term “war” is considered a term of the past that has no substance in modern international law. The desire to abandon the term has a clear rationale—historically, war was triggered by a formal declaration and fought between states, allowing parties with more power to manipulate the application of international humanitarian law, which would commence only upon a declaration of war. However, the post-Geneva Conventions understanding of hostilities has largely changed, most notably in the adoption of the notion of “armed conflict,” which is based on factual assessment rather than on a declaration in both international and non- international conflicts. However, this Article suggests that the term “war” is still in use by states, international courts, international institutions, and legal scholars. The term “war” has not ceased to exist in the context of international law; rather, it has evolved to indicate an escalation in the intensity of hostilities within the paradigm of “armed conflict.” This new use of “war” has significant explanatory value because the term “armed conflict,” especially in international armed conflicts, covers a wide spectrum of intensity. While humanitarian law applies as soon as an armed conflict has commenced, the indication of intensity escalation within the armed conflict paradigm is relevant in various aspects, including the provision of humanitarian aid, humanitarian intervention and the perception of urgency by international tribunals.

https://scholarship.law.upenn.edu/jil/vol44/iss3/3/

## Who is at war ? : on the question of co-belligerency

**Marcela Prieto Rudolphy**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 141-156

When does a state, by assisting one of the parties to an international armed conflict (IAC), become a party to it? Although the doctrinal answer to this question is somewhat unsettled, this chapter does not dispute or defend a specific doctrinal view. Instead, it explores the tension between philosophical accounts of the ethics of war and international humanitarian law (IHL), as it arises in the context of co-belligerency. After canvassing different doctrinal answers, the chapter discusses McMahan’s and similar revisionist views and to what extent they conflict with IHL’s positive answer to the question of co-belligerency. Then, the chapter argues that the

‘humanitarian view’ can partially solve this conflict, but it is still open to an important objection concerning IHL’s ability to reduce suffering, particularly in the long term. In order to dispel this objection in a morally attractive way, we have to concede that sometimes IHL reduces suffering at the expense of the rights of the innocent. This concession, the chapter argues, raises overarching concerns about IHL’s moral coherence and standing.

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## You say precautions, I say prevention : towards the systemic integration of international humanitarian law and international environmental law

**Yiokasti Mouratidi**. In: Yearbook of international humanitarian law, vol. 25 (2022), p. 3-40

Environmental harm during armed conflict is a cross-cutting issue that comes within the remit of both international humanitarian law (IHL) and international environmental law (IEL). Yet, until recently, the interrelationship between these two “neighbouring” frameworks has been underexplored, leading to a need for in-depth analysis of how norms from the two frameworks interact and consideration as to whether they can be harmonised. By identifying key gaps and uncertainties within the IHL targeting framework and corresponding precautionary duties as applied to the environment, this chapter examines the extent to which the IEL prevention principle can inform these. It does so through the lens of treaty interpretation, in particular the method of systemic integration reflected in Article 31(3)(c) of the Vienna Convention on the Law of Treaties. By examining the IEL prevention principle and IHL precautionary duties side by side and setting out where and how they intersect, this chapter demonstrates the need for and potential of such analyses to standardise processes and decision-making that entail collateral environmental harm during the conduct of hostilities, with a view to providing greater environmental protection.

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