

BIBLIOGRAPHY

2nd Quarter 2017

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



ICRC



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Introduction

The International Committee of the Red Cross Library

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

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

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

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

Origin and purpose of the IHL bibliography

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

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

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

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

How to use the IHL Bibliography

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

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

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

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

Access to document

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

Chronology

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

Contents

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

Sources

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

Disclaimer

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

Subscription and feedback

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

I. General issues

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

La définition des maux superflus en droit des conflits armés

Samuel Longuet. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra, 54/2, 2015-2016, p. 245-265

Le droit humanitaire : maturation et mutation dans la gestion des conflits contemporains

Françoise Bouchet-Saulnier. - In: Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette. - [Paris] : LGDJ, 2016. - p. 63-77

Drones and dirty hands

Ben Jones and John M. Parrish. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 283-312

The ethics of war : essays

ed. by **Saba Bazargan-Forward and Samuel C. Rickless.** - New York : Oxford University Press, 2017. - XXIII, 278 p.

The ICRC and the clarification of customary international humanitarian law

Jean-Marie Henckaerts and Els Debuf. - In: Reexamining customary international law. - New York : Cambridge University Press, 2017. - p. 161-188

Indefinite war : unsettled international law on the end of armed conflict

Dustin A. Lewis, Gabriella Blum, and Naz K. Modirzadeh. - [Harvard] : Harvard Law School Program on International Law and Armed Conflict, February 2017. - V, 105 p.
<https://pilac.law.harvard.edu/indefinite-war/>

International law and new wars

Christine Chinkin and Mary Kaldor. - Cambridge [etc.] : Cambridge University Press, 2017. - XVIII, 592 p.

The law of armed conflict : an introduction

U C Jha, K Ratnabali. - New Delhi : Vij Books India, 2017. - XVI, 602 p.

Muddied waters : the influence of the first Hague conference on the evolution of the Geneva Conventions of 1864 and 1906

Neville Wylie. - In: War, peace and international order ? : the legacies of the Hague Conferences of 1899 and 1907. - London ; New York : Routledge, 2017. - p. 52-68

Peine de mort et droit humanitaire

Dominique Breillat. - In: Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette. - [Paris] : LGDJ, 2016. - p. 79-92

Le principe de nécessité militaire : histoire et actualité d'une norme fondamentale du droit international humanitaire

Etienne Henry. - Paris : A. Pedone, 2016. - 827 p.

Restricting the preventive use of force : drones , the struggle against non-state actors, and jus ad vim

John Emery and Daniel R. Brunstetter. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 257-282

Thinking about what international humanitarian lawyers "do" : an examination of the laws of war as a field of professional practice

Frédéric Mégret. - In: The law of international lawyers : reading Martti Koskenniemi. - Cambridge [etc.] : Cambridge University Press, 2017. - p. 265-296
<https://ssrn.com/abstract=2670673>

War, peace and international order ? : the legacies of the Hague Conferences of 1899 and 1907

ed. by Maartje Abbenhuis, Christopher Ernest Barber and Annalise R. Higgins. - London ; New York : Routledge, 2017. - IX, 229 p.

II. Types of conflicts

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

Classification of conflicts in international humanitarian law : the legal impact of foreign intervention in civil wars

Noam Zamir. - Cheltenham ; Northampton : E. Elgar, 2017. - XX, 260 p.

Classifying the conflict in Syria

Terry D. Gill. In: International law studies, Vol. 92, 2016, p. 353-380
<http://stockton.usnwc.edu/ils/vol92/iss1/11/>

Cyber warfare and the status of Anonymous under international humanitarian law

Russell Buchan. In: Chinese journal of international law, Vol. 15, issue 4, December 2016, p. 741-772

Enemies known and unknown : targeted killings in America's transnational war

Jack McDonald. - London : Hurst, 2017. - IX, 318 p.

Exclusion zones in the law of armed conflict at sea : evolution in law and practice

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<http://stockton.usnwc.edu/ils/vol92/iss1/5/>

Guerre "par" et "contre" le terrorisme : le rôle possible ou impossible du droit international humanitaire : retour sur quelques années de réflexions

Ghislaine Doucet. - In: Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette. - [Paris] : LGDJ, 2016. - p. 137-148

Many small wars : the classification of armed conflicts in the non-self-governing territory of Western Sahara (Spanish Sahara) in 1974-1976

Ben Saul. In: African yearbook on international humanitarian law, 2016, p. 85-107

Non-state armed groups, detention authority in non-international armed conflict, and the coherence of international law : searching for a way forward

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Politics by other means : the battle over the classification of asymmetrical conflicts

Yahli Shereshevsky. In: Vanderbilt journal of transnational law, Vol. 49, no. 2, 2016, p. 455-498

<https://www.vanderbilt.edu/jotl/2016/08/politics-by-other-means-the-battle-over-the-classification-of-asymmetrical-conflicts/>

Tallinn Manual 2.0 on the international law applicable to cyber operations : prepared by the International Group of Experts at the invitation of the NATO Cooperative Cyber Defence Centre of Excellence

General ed.: Michael N. Schmitt ; managing ed.: Liis Vihul. - Cambridge [etc.] : Cambridge University Press, 2017. - XLI, 598 p.

The war report : armed conflicts in 2016

Annyssa Bellal. - Geneva : The Geneva Academy of International Humanitarian Law and Human Rights, March 2017. - 109 p.

<https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202016.pdf>

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Cyber warfare and the status of Anonymous under international humanitarian law

Russell Buchan. In: Chinese journal of international law, Vol. 15, issue 4, December 2016, p. 741-772

Enhancing civilian protection by engaging non-state armed groups under international humanitarian law

Ben Saul. In: Journal of conflict and security law, Vol. 22, no. 1, Spring 2017, p. 39-66

<https://doi.org/10.1093/jcsl/krw007>

Feigning fighters or unlawful civilians ? : an overview of foreign fighters in Spanish law

Rodrigo Lorenzo Ponce de León. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra, 54/1, 2015-2016, p. 57-115

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<http://stockton.usnwc.edu/ils/vol92/iss1/6/>

The normative status of unilateral ad hoc commitments by non-state armed actors in internal armed conflicts : international legal personality and lawmaking capacity distinguished

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Protecting civilians in urban areas : a military perspective on the application of international humanitarian law

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<https://library.icrc.org/library/docs/DOC/irrc-901-durhin.pdf>

IV. Multinational forces

Minimizing civilian harm in populated areas : lessons from examining ISAF and AMISOM policies

Sahr Muhammedally. In: International review of the Red Cross, Vol. 98, no. 901, April 2016, p. 225-248
<https://library.icrc.org/library/docs/DOC/irrc-901-muhammedally.pdf>

V. Private entities

The problem of civilian contractors that directly participate in hostilities

Wyne Ken Mutuma. In: African yearbook on international humanitarian law, 2016, p. 8-45

VI. Protection of persons

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

Arbitrary withholding of consent to humanitarian relief operations in armed conflict

Dapo Akande and Emanuela-Chiara Gillard. In: *International law studies*, Vol. 92, 2016, p. 483-511
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Civilian protection in the battle for Mosul : critical priorities

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Sub silentio : the sexual assault of women in international law

Sarah Gendron. - In: *War, peace and international order ? : the legacies of the Hague Conferences of 1899 and 1907*. - London ; New York : Routledge, 2017. - p. 103-120

Voluntary human shields in international humanitarian law : a proposal for suitable future regulation

Marco Nel and Shannon Bosch. In: *African yearbook on international humanitarian law*, 2016, p. 46-64

VII. Protection of objects

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

Protection of the environment during armed conflicts : an appraisal of the ILC's work

Stavros-Evdokimos Pantazopoulos. In: *Questions of international law, zoom-in*, December 2016, p. 7-26
<http://www.qil-qdi.org/protection-environment-armed-conflicts-appraisal-ilcs-work/>

VIII. Detention, internment, treatment and judicial guarantees

International laws of war and civilian internees of the Japanese in British Asia

Felicia Yap. In: War in history, Vol. 23, issue 4, 2016, p. 416-438

The Korean War and the post-war prisoner of war regime, 1945-1956

Neville Wylie, James Crossland. In: War in history, Vol. 23, issue 4, 2016, p. 439-456

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Daragh Murray. In: Leiden journal of international law, Vol. 30, no. 2, June 2017, p. 435-456

<https://doi.org/10.1017/S0922156517000061>

IX. Law of occupation

The writing on the wall : rethinking the international law of occupation

Aeyal Gross. - Cambridge [etc.] : Cambridge University Press, 2017. - XI, 447 p.

X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

The ad bellum challenge of drones : recalibrating permissible use of force

Alejandro Chehtman. In: European journal of international law = Journal européen de droit international, Vol. 28, no. 1, February 2017, p. 173-197

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Is the Yugoslav tribunal guilty of hyper-humanising international humanitarian law ?

Nobuo Hayashi. - In: The legitimacy of international criminal tribunals. - Cambridge : Cambridge University Press, 2017. - p. 179-205

Mapping war crimes in Syria

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Minimizing civilian harm in populated areas : lessons from examining ISAF and AMISOM policies

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The Obama Administration and targeting "war-sustaining" objects in noninternational armed conflict

by Ryan Goodman. In: American journal of international law, Vol. 110, no. 4, October 2016, p. 663-679
<https://doi.org/10.1017/S0002930000763160>

Precautions against the effects of attacks in urban areas

Eric Talbot Jensen. In: International review of the Red Cross, Vol. 98, no. 901, April 2016, p. 147-175
<https://library.icrc.org/library/docs/DOC/irrc-901-talbot-jensen.pdf>

Le principe de nécessité militaire : histoire et actualité d'une norme fondamentale du droit international humanitaire

Etienne Henry. - Paris : A. Pedone, 2016. - 827 p.

Proportionality and precautions in attack : the reverberating effects of using explosive weapons in populated areas

Isabel Robinson and Ellen Nohle. In: International review of the Red Cross, Vol. 98, no. 901, April 2016, p. 107-145
<https://library.icrc.org/library/docs/DOC/irrc-901-robinson-nohle.pdf>

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XI. Weapons

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Alejandro Chehtman. In: European journal of international law = Journal européen de droit international, Vol. 28, no. 1, February 2017, p. 173-197
<https://doi.org/10.1093/ejil/chx001>

Chemical weapons and other atrocities : contrasting responses to the Syrian crisis

Tim McCormack. In: International law studies, Vol. 92, 2016, p. 512-544
<http://stockton.usnwc.edu/ils/vol92/iss1/16/>

The combatant's stance : autonomous weapons on the battlefield

Jens David Ohlin. In: International law studies, Vol. 92, 2016, p. 1-30
<http://stockton.usnwc.edu/ils/vol92/iss1/1/>

La définition des maux superflus en droit des conflits armés

Samuel Longuet. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra, 54/2, 2015-2016, p. 245-265

ICRC Q&A on the issue of explosive weapons in populated areas

ICRC In: International review of the Red Cross, Vol. 98, no. 901, April 2016, p. 97-105
<https://library.icrc.org/library/docs/DOC/irrc-901-ewpa.pdf>

Killer robots : lethal autonomous weapon systems : legal, ethical and moral challenges

by U C Jha. - New Delhi : Vij books India, 2016. - XI, 247 p.

Litigating drone strikes : challenging the global network of remote killing

European Center for Constitutional and Human Rights ; Fiona Nelson ... [et al.]. - Berlin : European Center for Constitutional and Human Rights, 2017. - 136 p.
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<http://stockton.usnwc.edu/ils/vol92/iss1/14/>

Towards fulfillment of fundamental rules of humanitarian law in the context of the nuclear Non-Proliferation Treaty

Saeed Bagheri. In: BRICS law journal, Vol. 3, no. 1, 2016, p. 66-89

<http://dx.doi.org/10.21684/2412-2343-2016-3-1-66-89>

Weapons of mass destruction and the principle of unnecessary suffering : the use of nuclear weapons in an armed conflict

Jaroslav Krasny, Noriyuki Kawano. In: Hiroshima peace science, Vol. 36, 2014, p. 101-117

<http://ir.lib.hiroshima-u.ac.jp/00038055>

XII. Implementation

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

Ambivalent enforcement : international humanitarian law at human rights tribunals

Shana Tabak. In: Michigan journal of international law, Vol. 37, issue 4, 2016, p. 661-715

<http://repository.law.umich.edu/mjil/vol37/iss4/3>

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Marten Zwanenburg. In: International law studies, Vol. 92, 2016, p. 204-234

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XIII. International human rights law

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

Ambivalent enforcement : international humanitarian law at human rights tribunals

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XIV. International criminal law

The Bemba trial before the International Criminal Court : defining an armed conflict through the scope of a commander's responsibility

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XV. Contemporary challenges

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

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XVI. Countries/Regions

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The Obama Administration and targeting "war-sustaining" objects in noninternational armed conflict

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All with Abstracts

The ad bellum challenge of drones : recalibrating permissible use of force

Alejandro Chehtman. In: European journal of international law = Journal européen de droit international, Vol. 28, no. 1, February 2017, p. 173-197

Drones constitute an incremental advance in weapons systems. They are able to significantly reduce overall, as well as collateral, damage. These features seem to have important implications for the ad bellum permissibility of resorting to military force. In short, drones would seem to expand the right to resort to military force compared to alternative weapons systems by making resorting to force proportionate in a wider set of circumstances. This line of reasoning has significant relevance in many contemporary conflicts. This article challenges this conclusion. It argues that resorting to military force through drones in contemporary asymmetrical conflicts would usually be disproportionate. The reason for this is twofold. First, under conditions of radical asymmetry, drones may not be discriminatory enough, and, thereby, collateral damage would still be disproportionate. Second, their perceived advantages in terms of greater discrimination are counteracted by the lesser chance of success in achieving the just cause for war. As a result, resorting to military force through drones in contemporary asymmetrical conflicts would generally be disproportionate not because of the harm they would expectedly cause but, rather, because of the limited harm they are ultimately able to prevent. On the basis of normative argument and empirical data, this article ultimately shows that we need to revise our understanding of ad bellum proportionality not only at the level of moral argument but also in international law.

<https://doi.org/10.1093/ejil/chx001>

Ambivalent enforcement : international humanitarian law at human rights tribunals

Shana Tabak. In: Michigan journal of international law, Vol. 37, issue 4, 2016, p. 661-715. - Cote 345.1/657 (Br.)

In addition to exploring the limitations of the Inter-American System's jurisdictional capacity to adjudicate issues of IHL, this article examines Inter-American jurisprudence in light of recent scholarly conversations regarding the relevance of the principle of *lex specialis*, which seeks to guide tribunals when two bodies of law may apply simultaneously, by providing for the prioritization of a specialized body of law over a general one. This concept, first articulated by the International Court of Justice (ICJ) in the Nuclear Weapons case, has proven to be the source of much scholarly consternation. As a means of addressing problems arising from the fragmentation of international law, the concept has a nice ring to it, but in practical terms, it has proven to be a terribly messy concept subject to multiple interpretations. The Inter-American system has adopted an approach to fragmentation, described here as the Interpretive Reference Resolution, which relies on reference to IHL, but does not permit the direct application of that law. This method allows tribunals to walk a delicate balance: they avoid directly finding states in violation of norms of IHL while simultaneously incorporating IHL into their analysis of HRL norms. This balancing act provides a novel solution to the problem of fragmentation between IHL and HRL. Furthermore, it has allowed human rights tribunals within the Inter-American System to tether their findings of human rights violations to IHL. This approach, this article argues, is a soft law strategy with the same potential enforcement impact as the direct finding of violations of IHL. Therefore, this article offers two contributions: first, it offers a normative framing for utilizing the abstract legal standard of *lex specialis* when IHL and HRL may simultaneously apply, second, the article provides an analysis of whether the use of IHL at human rights tribunals contributes to the enforcement of IHL, even when it is not binding on states.

<http://repository.law.umich.edu/mjil/vol37/iss4/3>

Arbitrary withholding of consent to humanitarian relief operations in armed conflict

Dapo Akande and Emanuela-Chiara Gillard. In: International law studies, Vol. 92, 2016, p. 483-511

This article examines the requirement under international humanitarian law (IHL) that consent to humanitarian relief operations must not be arbitrarily withheld. It begins with a brief outline of the rules of IHL regulating humanitarian assistance in armed conflict. The article then considers the origin of the rule prohibiting arbitrary withholding of consent to humanitarian relief operations before proceeding to set out the circumstances when consent will be considered to have been withheld arbitrarily under international

law. It proposes three tests for arbitrariness in this context, and also examines how international human rights regulates humanitarian assistance in armed conflict.

<http://stockton.usnwc.edu/ils/vol92/iss1/15/>

L'articulation entre droit international humanitaire et droits de l'homme dans la jurisprudence de la Cour européenne des droits de l'homme

Linós-Alexandre Sicilianos. In: Swiss review of international and European law = Schweizerische Zeitschrift für internationale und europäisches Recht = Revue suisse de droit international et de droit européen, Vol. 27 (2017), no. 1, p. 3-17

Cette article retrace les développements de l'approche par la Cour européenne des droits de l'homme de l'articulation entre droit international humanitaire (DIH) et droits de l'homme. La Cour, au départ réticente à appliquer le DIH, opère désormais une ouverture timide à l'égard de cette branche juridique afin de corroborer l'interprétation des provisions de la Convention européenne des droits de l'homme dans le contexte des conflits armés internationaux. Elle examine incidemment l'évolution du droit des conflits armés dans le contexte de l'application du principe *nullum crimen sine lege*. Elle prend en compte le DIH, sans pour autant fonder la solution du litige sur cette branche du droit. L'article explore cette évolution jusqu'à son développement le plus récent: la Cour n'hésite plus désormais à faire appel directement au droit humanitaire pour fonder (ou corroborer) un aspect crucial de son raisonnement ou encore à appliquer parallèlement DIH et droits de l'homme dans une situation de conflit armé international (et d'occupation), notamment dans les arrêts *Marguš c. Croatie* et *Hassan c. Royaume-Uni*.

The Bemba trial before the International Criminal Court : defining an armed conflict through the scope of a commander's responsibility

Martyna M. Falkowska. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra, 54/2, 2015-2016, p. 267-296

The judgment in which Trial Chamber III of the International Criminal Court declared Jean-Pierre Bemba Gombo guilty of several counts of crimes against humanity and war crimes is interesting for some of its novelty aspects. One of them pertains to the fact that for the first time the Court issue a conviction based on the principle of command responsibility. This contribution aims to show that the specificity of this mode of responsibility, combined with the legal constraints pertaining to the wording of the Statute, influence the narration of facts and the presentation of legal arguments. This, in turn, echoes the fact that Court seeks to attribute responsibility to a single individual and this virtually isolates his actions from the larger scope of the conflict and the actions of other actors. The way in which the Court presents and interprets certain contextual elements of the situation shows that this virtual isolation proves somewhat curious within a well-articulated and complex legal reasoning.

Chemical weapons and other atrocities : contrasting responses to the Syrian crisis

Tim McCormack. In: International law studies, Vol. 92, 2016, p. 512-544

Why has the use of chemical weapons in Syria engendered such a substantive multilateral response in stark contrast to almost every other egregious international law violation perpetrated against the civilian population? Various theories have been offered but the explanation has little to do with humanitarian concerns for Syrian victims and is more readily explicable by unusual (in the Syrian context) alignment of U.S. and Russian national interests. Bashar al-Assad was convinced to accede to the Chemical Weapons Convention, to surrender his stockpiles of chemical weapons and to co-operate with international investigators deployed under UN Security Council auspices amid a cacophony of demands for accountability. In contrast, virtually all other egregious war crimes have been met with nothing more than verbal indignation. As with chemical weapons, there have been repeated demands for accountability but successive attempts to secure UN Security Council referral of the Syrian situation to the Prosecutor of the International Criminal Court have been vetoed by Russia and China. First appearances may prove misleading. For all the efforts to respond to alleged use of chemical weapons in Syria, the international community is no closer to holding any responsible individuals accountable than is the case for any other of the lamentable myriad of war crimes. In the face of appalling carnage unfolding before our very eyes, the complexities of the crisis expose the impotence of the international community to protect the benighted population of Syria.

<http://stockton.usnwc.edu/ils/vol92/iss1/16/>

Civilian protection in the battle for Mosul : critical priorities

Ceasefire Centre for Civilian Rights, Minority Rights Group. - London : Ceasefire Centre for Civilian Rights : Minority Rights Group International, October 2016. - 19 p. - Cote 345.26/294 (Br.)

Recent precedents from military operations to retake Iraqi cities from ISIS control, including Tikrit, Ramadi, Fallujah and Sinjar, demonstrate a pattern of repeated failures to implement sufficient measures for civilian protection, both in the conduct of hostilities and in planning for the humanitarian consequences. Given this weight of recent practice, it is feared that thousands of civilian lives in Mosul and surrounding areas are now at critical risk. This briefing draws on such recent precedents to identify the critical risks to civilians in Mosul and surrounding areas of Ninewa and the corresponding priorities for civilian protection. It calls for an effective system of responsibility and accountability across parties to the conflict to ensure adherence with international humanitarian law (IHL) and international human rights standards.

<http://minorityrights.org/publications/civilian-protection-battle-mosul-critical-priorities/>

Classification of conflicts in international humanitarian law : the legal impact of foreign intervention in civil wars

Noam Zamir. - Cheltenham ; Northampton : E. Elgar, 2017. - XX, 260 p. - Cote 345.27/153

Civil wars have formed the vast majority of all armed conflicts since the Second World War. These civil wars have often been accompanied by the intervention of foreign states in favour of one or more of the parties. Such interventions raise various general questions regarding conflict classification in international humanitarian law (IHL), which are important because the relevant law that applies is shaped by whether a conflict is classified as international or non-international. This book provides a thorough examination of the theoretical basis of classification of conflicts in IHL, with special focus on the legal impact of armed foreign intervention in civil wars. Noam Zamir enriches the discourse on IHL by providing an in-depth doctrinal examination of issues concerning conflict classification and examining recent civil wars with foreign interventions, such as the Libyan civil war (2011), Mali civil war (2012-2015) and the ongoing civil war in Yemen, and identifying potential solutions to different lacunae in this field. The issue of conflict classification has significant practical ramifications and this book will have a wide and varied readership, including legal scholars, law students and governmental and military lawyers.

Classifying the conflict in Syria

Terry D. Gill. In: International law studies, Vol. 92, 2016, p. 353-380

This article examines the classification of the current armed conflict in Syria under international humanitarian law. The article first sets out the factual background identifying the principal parties and their alignments and motivations. It then proceeds to examine the question of classification of conflict under international humanitarian law and discusses the contentious issue of the effect of lack of consent by the government of a State in relation to foreign intervention in an ongoing non-international armed conflict when such intervention is directed against one or more armed groups operating from within that State's territory. It then proceeds to apply these factual and legal considerations to the complicated situation in Syria and identifies the parallel armed conflicts underway in Syria and their classification and sets out arguments as to why classification matters.

<http://stockton.usnwc.edu/ils/vol92/iss1/11/>

The combatant's stance : autonomous weapons on the battlefield

Jens David Ohlin. In: International law studies, Vol. 92, 2016, p. 1-30

This paper argues that combatants on the battlefield are required to approach a sophisticated autonomous weapon system (AWS) with the "Combatant's Stance"—the ascription of mental states required to understand the system's strategic behavior on the battlefield. However, the fact that an AWS must be engaged with the combatant's stance does not entail that other persons are relieved of criminal or moral responsibility for war crimes committed by autonomous weapons. Military commanders can and should be held responsible for perpetrating war crimes through an AWS regardless of the moral status of the AWS as a culpable or non-culpable agent. Nonetheless, this article concludes that there is one area where international criminal law is ill suited to dealing with a military commander's responsibility for unleashing an AWS that commits a war crime. Many of these cases will be based on the commander's recklessness and unfortunately international criminal law has struggled to develop a coherent theoretical and practical program for prosecuting crimes of recklessness.

<http://stockton.usnwc.edu/ils/vol92/iss1/1/>

La Cour européenne des droits de l'homme et le droit international humanitaire : impressions de lecture

Vincent Coussirat-Coustère. - In: *Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette.* - [Paris] : LGDJ, 2016. - p. 93-129. - Cote 345.2/1019

La Cour européenne des droits de l'homme se penche aujourd'hui plus souvent que par le passé sur le droit international humanitaire (DIH) et elle a intégré cette dimension dans ses arrêts plus récents. Ce chapitre présente une analyse de la jurisprudence de la Cour qui met en évidence les différents moyens utilisés par cette dernière pour faire appel au DIH. La place occupée par le DIH dans les arrêts de la Cour est également analysée. L'auteur constate que c'est principalement pour interpréter des dispositions de la Convention européenne des droits de l'homme que la Cour a recours au DIH.

Cyber warfare and the status of Anonymous under international humanitarian law

Russell Buchan. In: *Chinese journal of international law*, Vol. 15, issue 4, December 2016, p. 741-772. - Cote 345.244/125 (Br.)

Since its emergence in 2003 Anonymous has become an increasingly prominent actor on the international stage. Anonymous is an online collective comprising like-minded individuals that commit cyber-attacks against state and non-state actors that are allegedly involved in the abuse of fundamental human rights. In recent years Anonymous has demonstrated a preparedness to commit cyber-attacks against parties to an armed conflict and the cyber-attacks launched against Israel during its 2014 armed conflict with Hamas are such an example. Using Anonymous's cyber-attacks against Israel as a lens, this article evaluates the status of online groups under international humanitarian law when they become embroiled in armed conflict and in particular under what circumstances members of these groups can be made the object of attack under the laws of targeting.

La définition des maux superflus en droit des conflits armés

Samuel Longuet. In: *Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra*, 54/2, 2015-2016, p. 245-265

Aujourd'hui encore, deux conceptions du principe de droit des conflits armés interdisant les maux superflus continuent de s'opposer. Pour l'une, des maux sont définis comme superflus en fonction de ce qui est nécessaire pour mettre un adversaire hors de combat. Pour l'autre, des maux sont définis comme superflus par rapport à l'avantage militaire espéré. La seconde conception est parfois considérée comme plus proche des positions exprimées par les Etats et donc plus valable dans une approche volontariste du droit international. L'objet de cet article est de démontrer que l'approche volontariste permet aussi de défendre une définition des maux superflus en fonction du seuil de ce qui est nécessaire pour mettre un adversaire hors de combat. L'auteur démontre cela en étudiant les prises de position des Etats pour voir quelle conception des maux superflus ils défendent et en soulignant qu'il y a une contradiction entre une définition des maux superflus par rapport à un avantage militaire et les interdictions conventionnelles de certaines armes que les Etats ont accepté au nom du principe d'interdiction des maux superflus.

Difficulties in prosecuting drone strikes as a war crime under international criminal law : an international humanitarian law perspective

Robert Heinsch and Sofia Pouloupoulou. - In: *Litigating drone strikes : challenging the global network of remote killing.* - Berlin : European Center for Constitutional and Human Rights, 2017. - p. 58-84. - Cote 345.22/294

Because of the growing importance of the use of drones in today's combat operations, including the phenomenon of "targeted killings", more and more commentators as well as civil society have raised the question as to which possibilities they are to prosecute certain attacks as war crimes, e.g. as "unlawful attacks" under international criminal law before national or international courts and tribunals. Connected to the different modalities of "unlawful attacks" as a war crime, is the question of whether and how international humanitarian law (IHL) is applicable to drone attacks. This contribution first presents the scope of application of IHL with a particular focus on trans-border operations and will subsequently continue with highlighting the most important IHL principles applicable to armed conflicts. It then proceeds with providing a short overview of some selected challenges encountered in attempts to ensure accountability for drone strikes under the war crimes regime and it concludes with some reflections and recommendations for future steps to be taken in this direction.

<https://www.echr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>

The DoD law of war manual and its critics : some observations

Charles J. Dunlap. In: *International law studies*, Vol. 92, 2016, p. 85-118

The U.S. Department of Defense's (DoD) new Law of War Manual has generated serious debate about its treatment of a variety of issues including human shields, the status of journalists, cyber operations, the precautions to be taken prior to attacks and even the role of honor in war. Although this article does not purport to be a comprehensive response to every critique of the Manual and, indeed, cites opportunities for its improvement, it nevertheless concludes that on balance the Manual provides an excellent, comprehensive and much-needed statement of DoD's view of the *lex lata* of the law of war.

<http://stockton.usnwc.edu/ils/vol92/iss1/2/>

Le droit humanitaire : maturation et mutation dans la gestion des conflits contemporains

Françoise Bouchet-Saulnier. - In: *Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette.* - [Paris] : LGDJ, 2016. - p. 63-77. - Cote 345.2/1019

Ce chapitre s'intéresse au développement du droit international humanitaire (DIH) et aux défis que posent les conflits armés contemporains à ce corpus juridique. Au cours des vingt dernières années, le DIH et l'action humanitaire se sont imposés comme référence dans presque tous les débats relatifs à la gestion de la paix et de la sécurité internationale. Le développement spectaculaire du DIH a suscité un grand enthousiasme dans les milieux juridiques ainsi que parmi les militants des droits de l'homme et de la lutte contre l'impunité. Mais parallèlement à cette évolution, le droit humanitaire est devenu la cible d'une véritable guérilla juridique lancée par certains États pour contester son application et s'affranchir de leurs obligations dans les « nouvelles » situations de conflit. L'auteure revient sur les fondements du DIH, notamment sur l'évolution de la protection accordées par ce dernier aux civils, mais aborde aussi l'action humanitaire et l'émergence du droit international pénal de même que la relation entre le DIH et les droits de l'homme.

Drones and dirty hands

Ben Jones and John M. Parrish. - In: *Preventive force : drones, targeted killing, and the transformation of contemporary warfare.* - New York : New York University Press, 2016. - p. 283-312. - Cote 355/1102

"War on Terror" has prompted a revival of interest in the idea of moral dilemmas and the problem of "dirty hands" in public life. Some contend that a policy of targeted killings of terrorist actors is (under specified but not uncommon circumstances) an instance of a dirty-handed moral dilemma: morally required yet morally forbidden. This chapter argues that while dirty hands situations do exist as a persistent problem of political life, it is generally a mistake to classify policies of targeted killing (such as the current US policy) as examples of dirty hands. Instead, such policies must be justified under the more exacting standards of just war theory and its provisions for justified killing – in particular the requirement that (with limited and defined exceptions) non-combatants be immune from intentional violence. Understanding this distinction both clarifies the significance of dirty hands as a moral phenomenon and also forestalls a set of predictable and all-too-easy appropriations of the concept to domains it was never intended to address.

Enemies known and unknown : targeted killings in America's transnational war

Jack McDonald. - London : Hurst, 2017. - IX, 318 p. - Cote 345.26/295

President Obama was elected on an anti-war platform, yet targeted killings have increased under his command of the 'War on Terror'. The US thinks of itself as upholding the rule of international law and spreading democracy, yet such targeted killings have been widely decried as extra-judicial violations of human rights. This book examines these paradoxes, arguing that they are partially explained by the application of existing legal standards to transnational wars. Critics argue that the kind of war the US claims to be waging — transnational armed conflict — doesn't actually exist. McDonald analyses the concept of transnational war and the legal interpretations that underpin it, and argues that the Obama administration's adherence to the rule of law produces a status quo of violence that is in some ways more disturbing than the excesses of the Bush administration. America's interpretations of sovereignty and international law shape and constitute war itself, with lethal consequences for the named and anonymous persons that it unilaterally defines as participants. McDonald's analysis helps us understand the social and legal construction of legitimate violence in warfare, and the relationship between legal opinions formed in US government departments and acts of violence half a world away.

Enhancing civilian protection by engaging non-state armed groups under international humanitarian law

Ben Saul. In: *Journal of conflict and security law*, Vol. 22, no. 1, Spring 2017, p. 39-66

While most contemporary armed conflicts are non-international, the application of international humanitarian law (IHL) to non-state armed groups (NSAGs), the mechanisms for holding them accountable for violations, and international engagement with them to promote humanitarian protection of civilians remain underdeveloped. A crucial question is how states and international actors can enhance engagement with NSAGs to improve respect for IHL, including through legal or quasi-'legal' tools and the socialization processes of norm diffusion, persuasion and social pressure. Section 2 of this article briefly charts the formal international laws and mechanisms that apply to NSAGs, noting the jurisprudential controversies over how and why IHL and human rights law does or should bind NSAGs. Sections 3 and 4 summarize the key reasons why NSAGs violate or respect humanitarian norms, based on existing research. Section 5 reviews the suite of legal tools and practical mechanisms available to encourage NSAGs to respect IHL. Section 6 then focuses on international efforts to engage NSAGs and the gaps in engagement. It concludes by offering tentative suggestions as to how the international community might deepen and widen its engagement with NSAGs to improve their respect for humanitarian norms.

<https://doi.org/10.1093/jcsl/krw007>

The ethics of war : essays

Ed. by Saba Bazargan-Forward and Samuel C. Rickless. - Oxford : Oxford University Press, 2017. - XXIII, 278 p. - Cote 345.2/1035

Some of the most basic assumptions of Just War theory have been dismantled in a barrage of criticism and analysis in the first dozen years of the twenty-first century. This book continues and pushes past this trend. This anthology is an authoritative treatment of the ethics and law of war by eminent scholars who first challenged the orthodoxy of Just War theory, as well as by "second-wave" revisionists. The twelve original essays span both foundational and topical issues in the ethics of war, including an investigation of: whether there is a "greater-good" obligation that parallels the canonical lesser-evil justification in war; the conditions under which citizens can wage war against their own government; whether there is a limit to the number of combatants on the unjust side who can be permissibly killed; whether the justice of the cause for which combatants fight affects the moral permissibility of fighting; whether duress ever justifies killing in war; the role that collective liability plays in the ethics of war; whether targeted killing is morally and legally permissible; the morality of legal prohibitions on the use of indiscriminate weapons; the justification for the legal distinction between directly and indirectly harming civilians; whether human rights of unjust combatants are more prohibitive than have been thought; the moral repair of combatants suffering from PTSD; and the moral categories and criteria needed to understand the proper justification for ending war.

Exclusion zones in the law of armed conflict at sea : evolution in law and practice

Sandesh Sivakumaran. In: *International law studies*, Vol. 92, 2016, p. 153-203

This article analyses the changes in the law and practice of exclusion zones in the law of armed conflict at sea. It identifies three principal phases. First, it explores the exclusion zones of the Russo-Japanese War of 1904–1905, which were modest in size and defensive in character. Second, it turns to the exclusion zones of the First World War and several subsequent conflicts. The exclusion zones of this period were fundamentally different to those of the Russo-Japanese war: if a vessel was within an exclusion zone, it was deemed susceptible to attack. The article then turns to the third phase of exclusion zone, which can be traced back to the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994). The San Remo Manual separated out the establishment of the zone from its enforcement and specified that the same law applies within the zone as outside it. It also set out regulations for the zones should they be created. The practice of States is considered throughout.

<http://stockton.usnwc.edu/ils/vol92/iss1/5/>

Feigning fighters or unlawful civilians ? : an overview of foreign fighters in Spanish law

Rodrigo Lorenzo Ponce de León. In: *Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra*, 54/1, 2015-2016, p. 57-115

This article explores the phenomenon of foreign fighters from multiple perspectives of Spanish Law, including military law, and the implications it might have in the field of international humanitarian law (IHL). The Spanish government's approach to this phenomenon is also examined, with attention focused on

the national strategic plan against radicalization. In sum, with domestic law as it is, while slight amendments to domestic civil and administrative law could be advisable in matters of citizenship revocation for those Spaniards by derivative rights and non-judicial passport withholding; recent criminal law amendments, however, might not only pose constitutional challenges but may, in the long run, be overlapping the traditional domain of IHL, as terrorism, after all, is phenomenon of delinquency, not soldiering.

Foreign terrorist fighters in Syria : challenges of the "sending" state

Marten Zwanenburg. In: *International law studies*, Vol. 92, 2016, p. 204-234

This article discusses domestic measures taken by the Netherlands to combat the phenomenon of foreign terrorist fighters, predominantly in the context of the Syrian conflict. It discusses criminal prosecution, asset freezes, deprivation of nationality and revocation of travel documents. The author concludes that in each of these fields, there is a close relationship between international law and national law.

<http://stockton.usnwc.edu/ils/vol92/iss1/6/>

Guerre "par" et "contre" le terrorisme : le rôle possible ou impossible du droit international humanitaire : retour sur quelques années de réflexions

Ghislaine Doucet. - In: *Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette.* - [Paris] : LGDJ, 2016. - p. 137-148. - Cote 345.2/1019

Ce chapitre s'intéresse au phénomène du terrorisme et aux conséquences de ce dernier pour le droit international humanitaire (DIH). L'auteure identifie les questions qui se posent quant au droit applicable à la guerre « contre » le terrorisme et au droit applicable à la guerre « par » le terrorisme. Elle examine d'une part si la lutte contre le terrorisme remplit les critères exigés par le DIH pour son applicabilité et d'autre part si et dans quelle mesure un acte terroriste peut être qualifié de conflit armé et ainsi se voir appliquer les règles du DIH.

Human rights and personal self-defense in international law

Jan Arno Hessbruegge. - New York : Oxford University Press, 2017. - XII, 388 p. - Cote 345.1/655

While an abundance of literature covers the right of states to defend themselves against external aggression, this is the first book dedicated to the right to personal self-defense in international law. Drawing on his extensive experience as a human rights practitioner and scholar, Dr. Hessbruegge sets out in careful detail the strict requirements that human rights impose on defensive force by law enforcement authorities, especially police killings in self-defense. The book also discusses the exceptional application of the right to personal self-defense in military-led operations, notably to contain violent civilians who do not directly participate in hostilities.

Human rights and war through civilian eyes

Thomas W. Smith. - Philadelphia : University of Pennsylvania Press, 2017. - X, 256 p. - Cote 345.1/653

International lawyers and ethicists have long judged wars from the perspective of the state and its actions, developing international humanitarian law by asking such questions as "Are the belligerents justified in entering the conflict?" and "How should they conduct themselves during the war's execution?" and "When civilian noncombatants are harmed, who is responsible for their suffering?" This book reimagines the ethics of war from the standpoint of its collateral victims, focusing on the effects of war on individuals—on those who are terrorized, or killed, or whose lives are violently disrupted. Through case studies of the Iraq War and the recent Gaza conflicts, Smith shows how even combatants who profess to follow the laws of war often engage in appalling violence and brutality, cutting short civilian lives, ruining economies, rending social fabrics, and collapsing public infrastructure. A focus on the human dimension of warfare makes clear the limits of international humanitarian law, and underscores how human rights perspectives increase its efficacy.

The ICRC and the clarification of customary international humanitarian law

Jean-Marie Henckaerts and Els Debuf. - In: *Reexamining customary international law.* - New York : Cambridge University Press, 2017. - p. 161-188. - Cote 345/723

A major contribution to the systematic identification of rules of customary humanitarian law was made by the International Committee of the Red Cross (ICRC) in a groundbreaking and far-ranging study published in 2005 and supplemented by an online database that has been updated continually since then. One of the principal authors of this study, Jean-Marie Henckaerts, and his former colleague Els Debuf, who headed the ICRC's continuing project on customary international humanitarian law from 2011 to 2014, examine the

relevance of this body of law today. They evaluate the impact of the ICRC's study on the actual recognition and application of customary humanitarian law by courts and other relevant decision makers, explore various problematic issues of methodology that the ICRC had to confront, and use these issues as a springboard for undertaking a broader assessment of the theory and practice of customary international humanitarian law.

ICRC Q&A on the issue of explosive weapons in populated areas.

ICRC In: International review of the Red Cross, Vol. 98, no. 901, April 2016, p. 97-105

This Q&A is based on the report submitted to the 32nd International Conference of the Red Cross and Red Crescent in which the ICRC developed its analysis on the issue of explosive weapons in populated areas. The report built upon evidence gathered by the ICRC of the immediate and long-term effects of the use of explosive weapons in populated areas and on existing military policies and practices pertaining to warfare in populated areas.

<https://library.icrc.org/library/docs/DOC/irrc-901-ewpa.pdf>

Indefinite war : unsettled international law on the end of armed conflict

Dustin A. Lewis, Gabriella Blum, and Naz K. Modirzadeh. - [Harvard] : Harvard Law School Program on International Law and Armed Conflict, February 2017. - V, 105 p. - Cote 345.2/1036

Can we say, definitively, when an armed conflict no longer exists under international law? The short, unsatisfying answer is sometimes: it is clear when some conflicts terminate as a matter of international law, but a decisive determination eludes many others. The lack of fully-settled guidance often matters significantly. That is because international law tolerates, for the most part, far less violent harm, devastation, and suppression in situations other than armed conflicts. Thus, certain measures governed by the laws and customs of war—including killing and capturing the enemy, destroying and seizing enemy property, and occupying foreign territory, all on a possibly large scale—would usually constitute grave violations of peacetime law. This Legal Briefing details the legal considerations and analyzes the implications of that lack of settled guidance. It delves into the myriad (and often-inconsistent) provisions in treaty law, customary law, and relevant jurisprudence that purport to govern the end of war. Alongside the doctrinal analysis, this Briefing considers the changing concept of war and of what constitutes its end; evaluates diverse interests at stake in the continuation or close of conflict; and contextualizes the essentially political work of those who design the law. In all, this Legal Briefing reveals that international law, as it now stands, provides insufficient guidance to precisely discern the end of many armed conflicts as a factual matter (when has the war ended?), as a normative matter (when should the war end?), and as a legal matter (when does the international-legal framework of armed conflict cease to apply in relation to the war?).

<https://pilac.law.harvard.edu/indefinite-war/>

The innocent civilian, the mandated soldier and the unlawful fighter : a re-evaluation of the "direct participation in hostilities" dilemma

Arthur van Collier. In: African yearbook on international humanitarian law, 2016, p. 65-84

The law of armed conflict ("the LOAC") incorporates terms and concepts that, on initial scrutiny, appear uncomplicated. However, the meaning and practical application of several concepts within the LOAC have often proven to be highly ambiguous and contested. The notion of "civilian direct participation in hostilities" ("C-DPH"), found, arguably, in Common Article 3 of the Geneva Conventions of 1949 and explicitly in Additional Protocol I of 1977, Article 51(3), and Additional Protocol II of 1977, Article 13 (3), represents one such contested concept. C-DPH is a cornerstone concept in the LOAC and has attained the status of customary international law. On a conceptual level, civilians should be protected from intentional attack unless, and "for such time", as they directly participate in hostilities". However, no definition of C-DPH or an indication of the actions that amount to C-DPH exist in the Geneva Conventions or in the Additional Protocols, despite the serious practical and legal consequences that may result from such participation. It is therefore imperative to establish a universal, comprehensive and practical definition of C-DPH.

International law and new wars

Christine Chinkin and Mary Kaldor. - Cambridge [etc.] : Cambridge University Press, 2017. - XVIII, 592 p. - Cote 345/720

This book examines how international law fails to address the contemporary experience of what are known as 'new wars' - instances of armed conflict and violence in places such as Syria, Ukraine, Libya, Mali, the Democratic Republic of Congo and South Sudan. International law, largely constructed in the nineteenth and twentieth centuries, rests to a great extent on the outmoded concept of war drawn from European experience - inter-state clashes involving battles between regular and identifiable armed forces. It shows

how different approaches are associated with different interpretations of international law, and, in some cases, this has dangerously weakened the legal restraints on war established after 1945. It puts forward a practical case for what it defines as second generation human security and the implications this carries for international law.

International laws of war and civilian internees of the Japanese in British Asia

Felicia Yap. In: War in history, Vol. 23, issue 4, 2016, p. 416-438. - Cote 400.2/375 (Br.)

This article examines the Japanese response to international legal codes in their treatment of interned enemy civilians in British Asia during the Second World War. It argues that the Japanese were initially restrained by a limited sense of international obligation and even indicated a conditional willingness to honour certain elements of international law in their treatment of captive civilians. This resulted in some comparatively favourable early internment conditions across British Asia, especially in contrast to those experienced by rank-and-file prisoners of war. However, grave breaches of international legal principles became increasingly commonplace by mid-1943, as the Japanese attempted to deter the spread of potentially subversive activities within their occupied territories.

The international legal protection of persons in humanitarian crises : exploring the *acquis humanitaire*

Dug Cubie. - Oxford ; Portland : Hart, 2017. - XLI, 348 p. - Cote 345/719

This book argues that an *acquis humanitaire* is identifiable through the interconnected web of existing and emerging international, regional and national laws, policies and practices for the protection of persons caught up in humanitarian crises. Indeed, the humanitarian imperative to alleviate suffering wherever it may be found permeates various branches of international law, and is reflected in the extensive humanitarian activities undertaken by States and other actors in times of armed conflict, population displacement and disaster. Dug Cubie argues that by clarifying the conceptual framework and normative content of the *acquis humanitaire*, gaps and lacunae can be identified and the overall protection of persons strengthened.

Is the Yugoslav tribunal guilty of hyper-humanising international humanitarian law ?

Nobuo Hayashi. - In: The legitimacy of international criminal tribunals. - Cambridge : Cambridge University Press, 2017. - p. 179-205. - Cote 344/697

The International Criminal Tribunal for the Former Yugoslavia (ICTY) has found itself under criticism for upsetting the balance between military necessity and humanitarian considerations, and for rendering key IHL rules ambiguous. The Gotovina Trial and Appeal Judgements brought these accusations to a climax. ICTY jurisprudence can influence the process of IHL debate, interpretation, and formation. Is the tribunal guilty of steering IHL away from the legitimate considerations of belligerent conduct? This chapter asserts that the evidence is inconsistent with such a claim.

Japan's 2015 security legislation : challenges to its implementation under international law

Hitoshi Nasu. In: International law studies, Vol. 92, 2016, p. 249-280

Japan's new security legislation, enacted on September 30, 2015 amid fierce debate over its constitutionality, is designed to enable a "seamless response" to any security situation that may arise. While public debate has been fixated on the re-interpretation of Article 9 of the Japanese Constitution, which underpins the theoretical foundation of this new legislation, there are also important international law issues that need to be addressed. After briefly reviewing the historical background leading to the adoption of the new security legislation and its contents, this article examines how the Self-Defense Force (SDF) can respond with the use of force to contemporary security issues within the new legislative framework, while also complying with the relevant rules of international law. It examines three different situations in which the SDF may find itself operating: "gray zone" situations; peacekeeping operations with a mandate to protect civilians; and collective self-defense. It concludes that while the new security legislation goes some way to mend the unraveled seams left by the previous legislative regime, disjuncture between the new legislative regime and relevant rules of international law remains, leaving gaps and uncertainties that can be exploited by hostile actors.

<http://stockton.usnwc.edu/ils/vol92/iss1/8/>

Killer robots : lethal autonomous weapon systems : legal, ethical and moral challenges

by U C Jha. - New Delhi : Vij books India, 2016. - XI, 247 p. - Cote 341.67/815

Nearly 45 countries are at different stages of developing robotic weapons or lethal autonomous weapon systems (LAWS). However, though the militaries of the developed countries are in a race to develop LAWS to perform varied functions on the battlefield, a large section of robotic engineers, ethical analysts, and legal experts are of the firm belief that robotic weapons will never meet the standards of distinction and proportionality required by the laws of war, and therefore will be illegal. This book provides an insight into lethal autonomous weapon systems and debates whether it would be morally correct to give machines the power to decide who lives and who dies on the battlefield.

The Korean War and the post-war prisoner of war regime, 1945-1956

Neville Wylie, James Crossland. In: War in history, Vol. 23, issue 4, 2016, p. 439-456. - Cote 400.2/374 (Br.)

This paper examines the framework for the treatment of prisoners of war that emerged after 1945. It focuses on one of the key elements of the post-war prisoner of war (POW) regime, the role of neutral bodies – state authorities acting as ‘protecting powers’ or humanitarian agencies such as the International Committee of the Red Cross – in supervising the implementation of the 1949 POW convention. It examines the importance of neutral supervision for the POW regime, and shows how the events of the Korean War affected the willingness of states to comply with their obligations under the new convention.

The law of armed conflict : an introduction

U C Jha, K Ratnabali. - New Delhi : Vij Books India, 2017. - XVI, 602 p. - Cote 345.2/1025

This textbook gives an up-to-date and comprehensive analysis of the law of armed conflict or international humanitarian law. The author has traced the history of the laws of war and examined their relations with human rights and refugee laws. The topics covered include protection to the victims of war: prisoners, civilians, women, children, journalists, the natural environment and cultural property. The book contains an updated account of the functioning of the International Criminal Court, and explores the concept of command responsibility, as well as the area of private military and security companies. Besides discussing the law during air and naval warfare, the author has critically examined certain challenges which humanitarian law is facing today from cyber warfare; drones, autonomous lethal weapons and nuclear weapons.

Legal accountability and Britain's wars 2000-2015

Peter Rowe. - London ; New York : Routledge, 2016. - XXXV, 274 p. - Cote 345.22/293

This book discusses the manner in which Britain’s wars, which took place between 2000 and 2015, have interacted with the relevant principles of international law and English law for the purpose, primarily, of considering legal accountability. During a debate in the House of Lords in 2005 a former Chief of the Defence Staff commented that ‘the Armed Forces are under legal siege.’ The book will discuss the major legal issues which have arisen, ranging from the various votes in Parliament to go to war, the constitutional relationship between ministers and senior commanders, the right under international law to use force, the influence of human rights law, the role of the courts in England (including the coroners’ courts), to the legal regime applying to the conduct of UK military operations. It will assess critically whether the armed forces will now have to accept that operations conducted outside the UK are subject to greater legal scrutiny than previously and whether, if this is the case, it is likely to hinder their future military activities.

Litigating drone strikes : challenging the global network of remote killing

European Center for Constitutional and Human Rights ; Fiona Nelson ... [et al.]. - Berlin : European Center for Constitutional and Human Rights, 2017. - 136 p. - Cote 345.22/294

Includes : Difficulties in prosecuting drone strikes as a war crime under international criminal law : an international humanitarian law perspective / R. Heinsch and S. Pouloupoulou. - The US's covert drone war and the search for answers : turning to European courts for accountability / J. Gibson. - United States targeted killing litigation report / B. M. Kaufman and A. Diakun.

<https://www.echr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>

Many small wars : the classification of armed conflicts in the non-self-governing territory of Western Sahara (Spanish Sahara) in 1974-1976

Ben Saul. In: African yearbook on international humanitarian law, 2016, p. 85-107

Much has been written about the various international legal aspects of the Western Sahara dispute, yet there has been little attention to the legal classification of the violence which engulfed the then Spanish Sahara in 1974-1976. This article closely examines the historical record in order to identify how international humanitarian law applied leading up to and during the Spanish withdrawal and the attainment of control by

Morocco and Mauritania. In particular, it finds that there existed a series of five consecutive and/or parallel conflicts of different legal characters, including three non-international armed conflicts (involving Polisario against Spain, Morocco and Mauritania respectively) and two international armed conflicts (between Spain and Morocco, and Morocco and Algeria). (The non-international conflict between Morocco and Polisario was also transformed into an international (self-determination) conflict as a result of the application of Additional Protocol I of 1977 in 2011.) The legal classification of the hostilities is not merely of historical interest, but has continuing consequences for the legal responsibility of states, and the criminal liability of individuals, for violations of international humanitarian law in each of the conflicts. Accountability is likely to be an important aspect of a comprehensive peace settlement and post-conflict justice.

Mapping war crimes in Syria

Beth Van Schaack. In: *International law studies*, Vol. 92, 2016, p. 282-339

This article maps the range of war crimes being committed in Syria with reference to the applicable treaty and customary international law and prospects for prosecution. It begins by presenting the international legal framework employed to determine when an armed conflict began in Syria, how this conflict is classified under international law and which multilateral treaties and customary rules are operative. This framework underlies the determination of which war crimes can be prosecuted, which tribunals might have jurisdiction and which perpetrators may be made subject to indictment. The article next focuses on some open legal and factual issues around certain war crimes that are particularly salient in the Syrian conflict but that have been under-theorized and rarely prosecuted. Along the way, it demonstrates that many of these war crimes could not be easily prosecuted before the ICC or under any domestic war crimes statutes that hew closely to the law of war treaties given the stark divergence between treaty law and customary international law when it comes to non-international armed conflicts in general and to the prosecutability of war crimes in such conflicts in particular. These observations offer support for proposals to develop an ad hoc tribunal dedicated to the Syrian conflict, as sketched out in the final section. All told, the article demonstrates the continued utility of customary international law to ensure that courts can enforce evolutions in the law notwithstanding the tendency of treaties toward normative ossification.

<http://stockton.usnwc.edu/ils/vol92/iss1/9/>

Minimizing civilian harm in populated areas : lessons from examining ISAF and AMISOM policies

Sahr Muhammedally. In: *International review of the Red Cross*, Vol. 98, no. 901, April 2016, p. 225-248

Both the African Union Mission in Somalia (AMISOM) and the International Security Assistance Force (ISAF) – the North Atlantic Treaty Organization's security assistance mission to Afghanistan – have recognized the importance of reducing civilian harm, and adopted policies and practices that restrict the use of certain weapons in populated areas. ISAF commanders issued a number of tactical directives that restricted the use of certain air-delivered weapons, and AMISOM developed an indirect fire policy limiting the use of artillery and other indirect fire munitions in populated areas. This article examines both ISAF and AMISOM policies and practices to reduce civilian harm in populated areas and explores how these policies strengthened adherence to international humanitarian law and illustrated new ways in which armed actors can take feasible precautions and prioritize civilian protection.

<https://library.icrc.org/library/docs/DOC/irrc-901-muhammedally.pdf>

Muddied waters : the influence of the first Hague conference on the evolution of the Geneva Conventions of 1864 and 1906

Neville Wylie. - In: *War, peace and international order ? : the legacies of the Hague Conferences of 1899 and 1907.* - London ; New York : Routledge, 2017. - p. 52-68. - Cote 345.2/1023

In this chapter Neville Wylie analyses the impact of the 1899 Hague Convention (III), which extended the Geneva rules for the alleviation of the care of the sick and wounded in time of war to warfare at sea. When historians write about the first Hague conference, they tend to offer only a sentence or two to the third Hague convention and imply that its creation was as good as guaranteed. Wylie revises our understanding of these negotiations. He also emphasises how diplomatically contested the idea of expanding the Geneva Conventions was at the time and, in so doing, makes a convincing case for the first Hague conference's importance in legitimating the Geneva Convention's content and spurring their revision (which occurred in 1906). He argues, above all, for the normative power of the Hague law in promoting Geneva law as a set of principles applicable to the conduct of all armed forces. As such, Wylie connects the Hague and Geneva traditions and suggests that to see them as separate developments muddies our interpretation of their origins and their on-going relevance.

Non-state armed groups, detention authority in non-international armed conflict, and the coherence of international law : searching for a way forward

Daragh Murray. In: *Leiden journal of international law*, Vol. 30, no. 2, June 2017, p. 435-456

International humanitarian law establishes explicit safeguards applicable to detention occurring in non-international armed conflict. However, debate exists as to whether these treaty provisions establish an implicit legal basis for detention. This article approaches this debate in light of the application of international humanitarian law to non-state armed groups. It examines the principal arguments against implicit detention authority and then applies the law of treaty interpretation to international humanitarian law's detention-related provisions. On the basis of current understandings of international law – and the prohibition of arbitrary detention in particular – it is concluded that international humanitarian law must be interpreted as establishing implicit detention authority, in order to ensure the continued regulation of armed groups. Although, perhaps, problematic from certain states' perspective, this conclusion is reflective of the current state of international law. However, this is not necessarily the end of the story. A number of potential 'ways forward' are identified: implicit detention authority may be (i) rejected; (ii) accepted; or (iii) re-examined in light of the non-state status of armed groups, and what this means for the content of the prohibition of arbitrary detention. These scenarios are examined in light of the desire to ensure: the coherency of international law including recognition of the role of armed groups, the continued effectiveness of international humanitarian law, and state sovereignty. An emphasis is placed on understanding the non-state status of armed groups and what this means for international regulation and the content of imposed obligations.

<https://doi.org/10.1017/S0922156517000061>

The normative status of unilateral ad hoc commitments by non-state armed actors in internal armed conflicts : international legal personality and lawmaking capacity distinguished

Eva Kassoti. In: *Journal of conflict and security law*, Vol. 22, no. 1, Spring 2017, p. 67-96

This article examines the normative status of unilateral ad hoc commitments issued by non-State armed groups during internal armed conflicts. The article sketches out the two main approaches to the question of the juridical nature of these instruments to be found in the literature, namely the consent thesis and the customary law thesis. The article notes that both theses rest on certain assumptions regarding the concepts of 'international legal personality' and 'law-making capacity' and argues that these concepts, although interrelated, are distinct. International legal personality signifies that international law cognises certain entities as its subjects by bestowing upon them a wide array of rights, obligations and capacities. Lawmaking capacity is best understood as a subspecies of international legal personality that may only be conferred upon a subject on the basis of State consent. The article discusses and rejects the consent thesis since it conflates the distinction between international legal personality and lawmaking capacity; it undermines the existing legal bases underpinning the application of international humanitarian law to non-State armed groups; and rests on shaky evidentiary grounds. The article turns to the customary law thesis and argues that, despite its powerful explanatory force, at this point in time at least, there is very little evidence to support it. The article concludes by stressing the wider implications of the findings reached herein. The distinction between legal personality and lawmaking capacity propounded here may serve as a broader basis for assessing commitments entered into by other non-State actors in different fields of law.

<https://doi.org/10.1093/jcsl/krw005>

The Obama Administration and targeting "war-sustaining" objects in noninternational armed conflict

by Ryan Goodman. In: *American journal of international law*, Vol. 110, no. 4, October 2016, p. 663-679

President Obama has embraced what many in the international law community long-regarded as off limits: targeting war-sustaining capabilities, such as the economic infrastructure used to generate revenue for an enemy's armed forces. Although the weight of scholarly opinion has for years maintained that such objects are not legitimate military targets, the existing literature on this topic is highly deficient. Academic discussion has yet to grapple with some of the strongest and clearest evidence in support of the U.S. view on the legality of such targeting decisions. Indeed, intellectual resources may be better spent not on the question whether such objects are legitimate military targets under the law of armed conflict, but on second-order questions such as how to apply proportionality analysis and how to identify limiting principles to guard against unintentional slippery slopes. In this article, the author discusses the legal pedigree for the Obama Administration's war-sustaining targeting. The article then turns to identifying some of the most significant second-order questions and how the United States and the international community might begin to address them in ongoing and future armed conflicts.

<https://doi.org/10.1017/S0002930000763160>

The Obama administration, international law, and executive minimalism

by **Ashley S. Deeks**. In: *American journal of international law*, Vol. 110, no. 4, October 2016, p. 646-662

The Bush Administration took a maximalist approach to the jus ad bellum and jus in bello, staking out broad claims about what international law permitted in resorting to force and detaining and interrogating Al Qaeda members. In contrast, the Obama administration established more minimalist policies that authorized a narrower scope of action than what international law permits and often avoided bold rhetorical claims about what international law allows. The Obama approach improved relations with allies and deferred difficult inter-agency debates. But it also incurred costs by slowing the development of international law and making it more difficult for other states to interpret the precedential value of U.S. actions. As a result, this paper argues that the administration's international war powers legacy will be a modest one.

<https://doi.org/10.1017/S0002930000763159>

Partners and legal pitfalls

Brian Finucane. In: *International law studies*, Vol. 92, 2016, p. 407-431

Partnered military operations are an increasingly prominent feature of armed conflict and one which presents a distinct set of legal challenges to States assisting partners. This is particularly true of the war in Syria which is characterized both by States working with and through other States and non-State actors and by the widespread violation of the law of armed conflict (LOAC) by many of the parties. This article considers the legal implications of LOAC violations by a party to the conflict for the State or States providing it assistance and identifies risk mitigation measures that assisting States can adopt.

<http://stockton.usnwc.edu/ils/vol92/iss1/13/>

Peine de mort et droit humanitaire

Dominique Breillat. - In: *Vers un nouvel ordre juridique : l'humanitaire ? : mélanges en l'honneur de Patricia Buirette*. - [Paris] : LGDJ, 2016. - p. 79-92. - Cote 345.2/1019

Ce chapitre aborde l'encadrement de la peine de mort par le droit international humanitaire (DIH). L'auteur constate que contrairement aux conventions relatives aux droits de l'homme, qui interdisent la peine capitale, et aux tribunaux pénaux internationaux, devant lesquels la peine de mort a disparu des sanctions pouvant être imposées aux coupables, le DIH ne contient pas d'interdiction absolue de la peine de mort. L'auteur affirme que pour être de son temps, le DIH devrait s'inspirer de l'évolution des 40 dernières années en matières de droits de l'homme et de droit international pénal et interdire lui aussi le recours à la peine capitale.

Permitted for law enforcement purposes but prohibited in the conduct of hostilities : the case of riot control agents and expanding bullets

Samuel Longuet. In: *International review of the Red Cross*, Vol. 98, no. 901, April 2016, p. 249-274

Riot control agents and expanding bullets are the only two kinds of weapon and ammunition that are used for law enforcement purposes but are explicitly prohibited in the conduct of hostilities. This article justifies this difference in treatment with two arguments. First, riot control agents and expanding bullets have different effects on the human body depending on their specific types and the circumstances in which they are deployed. Second, the issues raised by their use differ according to whether they are employed for law enforcement purposes or in the conduct of hostilities.

<https://library.icrc.org/library/docs/DOC/irrc-901-longuet.pdf>

Persons with disabilities in international humanitarian law : paternalism, protectionism or rights ?

Janet E. Lord. - In: *Disability, human rights and the limits of humanitarianism*. - London ; New York : Routledge, 2016. - p. 155-177. - Cote 345.1/656

This chapter employs a disability rights perspective as its analytical framework to examine the implications of international humanitarian law (IHL) for persons with disabilities. Its focus is on the protection accorded to persons with disabilities in their various roles in armed conflict as well as the disabling impact of armed conflict that has given rise to a number of IHL rules. The first section examines the conceptualization of disability within the general and specific protection framework of IHL. The second section analyzes disability in relation to prohibitions and restrictions on the means and methods of warfare. And the third section addresses the tension inherent in protective models of IHL and international disability rights and considers

whether and how the Convention on the Rights of Persons with Disabilities offers a palliative response. It concludes by considering whether and how the further development and understanding of an IHL disability perspective will contribute to the resilience and overall effectiveness of IHL and strengthen the protection of persons with disabilities through addressing their specific needs in - and in the aftermath of - armed conflict.

Persuasive prevention : ending mass atrocities in Africa

Dan Kuwali. In: African yearbook on international humanitarian law, 2016, p. 108-136

Africa is a continent which has experienced some of the world's worst mass atrocities. Notwithstanding the provision of the right to intervene in a member state in the face of war crimes, genocide and crimes against humanity under Article 4(h) of the Constitutive Act of the African Union and construction of an ambitious continental human rights protection architecture, Africa is still a continent riddled with conflicts where mass atrocities have flourished. This paper advances a concept of "persuasive prevention" - a graduated approach to secure respect for human rights and humanitarian norms as well as conflict prevention strategies through constructive engagement by civil society and the international community with potential perpetrators, backed by credible multilateral enforcement mechanisms. The aim of the Article 4(h) intervention should, first and foremost, be to prevent mass atrocities from occurring and, where mass atrocities are occurring; intervention should be aimed at protecting the populations at risk and the pursuit of perpetrators.

Politics by other means : the battle over the classification of asymmetrical conflicts

Yahli Shereshevsky. In: Vanderbilt journal of transnational law, Vol. 49, no. 2, 2016, p. 455-498. - Cote 345.26/297 (Br.)

Transnational armed conflicts between states and non-state armed groups have emerged as a defining characteristic of twenty-first century warfare. Humanitarian actors tend to classify such conflicts (e.g., between the United States and ISIL) as non-international armed conflicts rather than international armed conflict. This classification is subject to considerable debate; yet both sides present their views as the inevitable result of the interpretation of the relevant international humanitarian law (IHL) treaty articles. This article demonstrates that the classification of transnational armed conflicts as non-international armed conflicts does not merely concern the application of the relevant laws, but represents a fundamental shift in the attitude of humanitarian actors: while IHL has traditionally been considered the most effective legal constraint on the brutality of warfare, the current trend perceives international human rights law as the desirable legal regime for regulating asymmetrical conflicts. Humanitarian actors prefer to classify these conflicts as non-international armed conflicts because the relative lack of IHL norms applicable to that class of conflict enables extensive application of the more protective international human rights law as a complementary mechanism. Nonetheless, the adoption of this classification by the U.S. Supreme Court in *Hamdan v. Rumsfeld* may have been a Pyrrhic victory for this novel approach due to the United States' reluctance to apply international human rights law norms to extraterritorial conflicts. Thus, instead of the full application of IHL norms, only the vague norms relevant to non-international armed conflicts apply, without the benefit of applying international human rights law as a complementary legal regime.

<https://www.vanderbilt.edu/jotl/2016/08/politics-by-other-means-the-battle-over-the-classification-of-asymmetrical-conflicts/>

Precautions against the effects of attacks in urban areas

Eric Talbot Jensen. In: International review of the Red Cross, Vol. 98, no. 901, April 2016, p. 147-175

The conduct of hostilities in urban areas is inherently difficult, particularly with respect to the protection of civilians. International humanitarian law places restraints on both attackers and defenders. While much is written about the obligations of attackers with respect to protecting civilians, much less attention has been paid to the defender's obligations. These obligations are routinely referred to as "passive precautions" or "precautions against the effects of attacks" and are codified in Article 58 of Additional Protocol I to the 1949 Geneva Conventions. Article 58 requires parties, "to the maximum extent feasible", to remove civilians and civilian objects from the vicinity of military objectives, to avoid locating military objectives within or near densely populated areas, and to take other necessary precautions to protect civilians and civilian objects from the dangers resulting from military operations. Even though they are limited by only requiring those actions which are feasible, the obligations placed on the defender are far from trivial and, if applied in good faith, would certainly provide much needed protections to civilians in armed conflict, particularly in times of urban conflict. However, this ever-increasing urbanization is creating significant pressure on the doctrine of precautions in defence, stretching the "feasibility" standard beyond its capacity to adequately protect civilians. On the other hand, the emergence of advanced technology provides a mechanism for defenders to more easily and more fully comply with their obligations to segregate or protect the civilian population.

<https://library.icrc.org/library/docs/DOC/irrc-901-talbot-jensen.pdf>

Le principe de nécessité militaire : histoire et actualité d'une norme fondamentale du droit international humanitaire

Etienne Henry. - Paris : A. Pedone, 2016. – 827 p. - Cote 345.2/1024

Cet ouvrage s'attache à analyser la portée du principe de nécessité militaire principalement à travers l'analyse des sources conventionnelles et de la pratique internationale. La richesse du matériau examiné permet d'attester du caractère de droit positif du principe, dont la portée est d'interdire tous les actes de belligérance qui ne sont pas strictement nécessaires pour atteindre un avantage militaire légitime.

The problem of civilian contractors that directly participate in hostilities

Wyne Ken Mutuma. In: African yearbook on international humanitarian law, 2016, p. 8-45

The past two decades have witnessed the emergence and rapid growth of private military and security contractors (PMSCs). Today these corporate entities make up a global security industry whose value is over US\$100 billion. Their rapid rise has sparked enormous interest regarding the nature of the services they carry out on the battlefield - including services that constitute direct participation in hostilities - and whether the present legal regime governing armed conflict foresees, and adequately caters for, this peculiarity. International humanitarian law classifies all actors operating in armed conflicts as either combatants or civilians, conferring rights and obligations upon them on the basis of where it is that they fall in this divide. This article is of the view that the majority of PMSC personnel will be considered as civilians, a contradiction in view of the reality of their activities, and proceeds to highlight the potential consequences and challenges that arise from their present classification.

Prohibiting participation in armed conflict

Helene Hojfeldt. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra, 54/1, 2015-2016, p. 13-31

Since the outbreak of the Syrian armed conflict in 2012 many Western States have become concerned by the perceived rising threat of returning foreign fighters. In an effort to address this national security concern, in 2014 the Norwegian Ministry of Justice proposed an amendment to the Norwegian Penal Code. This bill, meanwhile adopted, criminalizes foreign fighters' participation in armed conflict. The article explores the challenges and controversies raised by this piece of legislation. In particular the article uses the example of counterterrorism laws and conventions to demonstrate the potential unintended effect legal instruments can have on the robustness of the IHL regime. The article concludes by suggesting that foreign fighter laws should define and criminalize participation in armed conflict based on the act itself and the means and methods used (rather than the legal status of the person in question or on the political cause in the name of which the attack was launched).

Proportionality and precautions in attack : the reverberating effects of using explosive weapons in populated areas

Isabel Robinson and Ellen Nohle. In: International review of the Red Cross, Vol. 98, no. 901, April 2016, p. 107-145

During an armed conflict, the use of explosive weapons with wide area effects in populated areas has a devastating impact on civilians. Less visible than the direct effects of explosive weapons, but equally devastating, are the reverberating effects of the use of explosive weapons in populated areas. While there is growing consensus that parties to an armed conflict are legally obliged to take into account the reasonably foreseeable reverberating effects of an attack, particularly for the purposes of the rules on proportionality and precautions in attack, the precise scope of this obligation remains unclear. After setting out the legal arguments in support of the position that reasonably foreseeable reverberating effects must be taken into account, this article goes on to examine how such effects should be evaluated and how they must be avoided or minimized.

<https://library.icrc.org/library/docs/DOC/irrc-901-robinson-nohle.pdf>

Proportionality decision making in targeting : heuristics, cognitive biases, and the law

Luke A. Whittemore. In: Harvard national security journal, Vol. 7, issue 2, 2016, p. 577-636. - Cote 345.25/358 (Br.)

Proportionality is a core principle of international humanitarian law (IHL), but remains plagued with questions surrounding its application. The principle is susceptible to broad ranges of judgment, and

commanders who make proportionality decisions do so under significant uncertainty, subject to a variety of pressures, as well as their own cognitive biases. Such a decision-making environment may result in decisions that deviate from what is expected by rational choice theory. Yet few writers have examined how commanders engage in proportionality analysis as human beings limited by their cognitive capacities, in suboptimal decision-making environments; there are almost no public studies of heuristics, cognitive biases, and IHL principles in targeting decisions. This article explores how heuristics and cognitive biases might affect proportionality analysis, provides an interdisciplinary approach to IHL targeting principles and heuristics programs, and discusses how future research in this area might develop.

<http://harvardnsj.org/wp-content/uploads/2016/06/Whittemore.pdf>

Protecting civilians in urban areas : a military perspective on the application of international humanitarian law

Nathalie Durhin. In: International review of the Red Cross, Vol. 98, no. 901, April 2016, p. 177-199

Implementing the principles of international humanitarian law (IHL) represents a real challenge if the protection of civilians in today's urban armed conflicts remains a priority for armed forces. The application of the principle of distinction comes up against the difficulties of obtaining intelligence, in particular in the absence of troops on the ground. The minimalization of collateral damage requires putting in place very precise targeting procedures, and even the adoption of tactics designed to draw out traditional combat from cities. In terms of precautionary measures in attack or against the effects of an attack, these must be adapted to the context of urban combat. Nevertheless, IHL remains an essential instrument that must be analyzed and translated into action in a practical manner in order to conduct military operations that are at the same time effective and legally permissible.

<https://library.icrc.org/library/docs/DOC/irrc-901-durhin.pdf>

Protection of the environment during armed conflicts : an appraisal of the ILC's work

Stavros-Evdokimos Pantazopoulos. In: Questions of international law, zoom-in, December 2016, p. 7-26. - Cote 363.7/179 (Br.)

Being responsive to the devastating effects that armed conflicts cause on the environment, the International Law Commission (ILC) has recently taken on board the issue of the protection of the environment in relation to armed conflicts. Special Rapporteur Marie Jacobsson has already submitted three reports addressing the protection of the environment by reference to each relevant stage. Against this background, the author first provides certain remarks regarding two general themes permeating the whole topic, namely the temporal approach chosen by the Special Rapporteur and the distinction between different types of armed conflict. Then, he examines the draft principles that have been provisionally adopted by the ILC regarding the in bello phase, with particular emphasis placed to their relationship with existing international law. Subsequently, he addresses the issue of the final form of the text and then offers certain concluding thoughts.

<http://www.qil-qdi.org/protection-environment-armed-conflicts-appraisal-ilcs-work/>

A reflection on the legal obligation for third states to ensure respect for IHL

Andrea Breslin. In: Journal of conflict and security law, Vol. 22, no. 1, Spring 2017, p. 5-37

The proliferation of armed conflict involving widespread violations of international humanitarian law (IHL) has created a virtually unprecedented humanitarian crisis, including levels of exodus not witnessed since the end of the Second World War. This article focuses on the promotion of compliance with and the enforcement of IHL. The capacity and influence of both international and regional actors in the promotion and enforcement of international law has evolved considerably in the half century since the adoption of the Geneva Conventions. International organisations have been recognised as important actors with a significant role to play in the preservation of international peace and order, but individual states also have a role to play and a duty to wield their influence to the degree possible to avoid violations of the fundamental principles of the laws of armed conflict. This research article examines the legal obligation of third states under the Geneva Conventions to promote compliance with IHL to ensure the protection of civilians in armed conflict.

<https://doi.org/10.1093/jcsl/krv027>

Restricting the preventive use of force : drones , the struggle against non-state actors, and jus ad vim

John Emery and Daniel R. Brunstetter. - In: Preventive force : drones, targeted killing, and the transformation of contemporary warfare. - New York : New York University Press, 2016. - p. 257-282. - Cote 355/1102

The most controversial drone strikes take place in “in-between spaces”, which are not zones of war where armies fight, nor zones of peace where police action can be undertaken. Therefore, current paradigms for preventive force against non-state actors – law enforcement and international humanitarian law – do not adequately deal with those situations. In order to address the moral obscurity that permeates the in-between spaces where drone strikes take place, this chapter proposes a hybrid law enforcement/war ethic paradigm, termed “jus ad vim” (the just use of force short of war), where elements of law enforcement ethic are blended with the jus ad bellum principle of last resort to form an ethical framework that morally circumscribes the use of preventive force in “in-between spaces”.

Servir et protéger : droit des droits de l'homme et droit humanitaire pour les forces de police et de sécurité

CICR ; rév. et mis à jour par Anja Bienert ; [préface de Peter Maurer]. - Genève : CICR, mars 2017. - 483 p. - Cote 345.2/689 (2017 FRE)

Les forces de l'ordre jouent un rôle clé dans la société. Elles servent et protègent la population et font respecter la loi. Ce rôle est valable en tout temps, y compris pendant les conflits armés et autres situations de violence. En dialoguant avec la police et les forces de sécurité au sujet du droit international, de son application et de leurs opérations, le CICR soutient leurs efforts pour intégrer les règles et les normes de ce droit dans leurs procédures. Depuis plus de 20 ans, le manuel Servir et protéger guide ce dialogue. Sa nouvelle édition traduite en français s'appuie sur l'expérience acquise ces dernières années. Elle permettra au public concerné d'approfondir sa connaissance des règles et normes internationales applicables par tous les représentants de la loi et de ce qu'elles impliquent concrètement pour les activités et opérations de police.

<https://library.icrc.org/library/docs/DOC/icrc-001-0698-2017.pdf>

Siege warfare in Syria : prosecuting the starvation of civilians

Susan Power. In: Amsterdam law forum, Vol. 8, no. 2, Summer 2016, p. 1-22. - Cote 345.26/296 (Br.)

This article examines the law governing siege warfare and its application to sieges enforced by parties to the Syrian conflict. In doing so, the article considers the classification of the conflict and questions whether the conflict has crystallized into an international armed conflict. It critically applies the laws of armed conflict to the ongoing sieges and examines the obligations of parties to the conflict in relation to humanitarian assistance and evacuation of civilians in sieged areas. Where humanitarian assistance is denied it explores the criminalization of the resulting starvation of civilians as war crimes, crimes against humanity and genocide.

<http://amsterdamlawforum.org/article/view/368>

Soldier 2.0 : military human enhancement and international law

Heather A. Harrison Dinniss and Jann K. Kleffner. In: International law studies, Vol. 92, 2016, p. 432-482

Advances in technologies that could endow humans with physical or mental abilities that go beyond the statistically normal level of functioning are occurring at an incredible pace. The use of these human enhancement technologies by the military, for instance in the spheres of biotechnology, cybernetics and prosthetics, raise a number of questions under the international legal frameworks governing military technology, namely the law of armed conflict and human rights law. The article examines these frameworks with a focus on weapons law, the law pertaining to the detention of and by “enhanced individuals,” the human rights of those individuals and their responsibility for the actions they take while under the influence of enhancements.

<http://stockton.usnwc.edu/ils/vol92/iss1/14/>

Strengthening compliance with IHL : the ICRC-Swiss initiative

Jelena Pejic. In: *International review of the Red Cross*, Vol. 98, no. 901, April 2016, p. 315-330

Lack of compliance with international humanitarian law (IHL), or insufficient observance of its rules, is probably the greatest current challenge to the continued credibility of this body of international law. The need to strengthen respect for IHL led the ICRC and Switzerland to facilitate unprecedented consultations among States between 2012 and 2015 focused, specifically, on improving the efficiency of mechanisms of compliance with IHL. This note outlines the background of the initiative and summarizes its course and outcome. Ongoing work in the current phase of the process, agreed to at the 32nd International Conference of the Red Cross and Red Crescent held in late 2015, is also very briefly indicated.

<https://library.icrc.org/library/docs/DOC/irrc-901-pejic.pdf>

Sub silentio : the sexual assault of women in international law

Sarah Gendron. - In: *War, peace and international order ? : the legacies of the Hague Conferences of 1899 and 1907.* - London ; New York : Routledge, 2017. - p. 103-120. - Cote 345.2/1023

In this chapter Sarah Gendron focuses on the silencing of women as subjects of The Hague's war rules, and argues that sexual violence against women in time of war has existed as a sub-stratum of the law, largely silenced (*sub silentio*) for too long. The lack of clarity presented by Article 46 of the Hague conventions influenced not only the conduct of warfare after 1899 but also allowed for the transgression of the prohibition of rape in both war and in war crime tribunals. Gendron highlights how it took more than a century of sexual assaults for international law to catch up and lift the veil of silence. Yet Gendron also acknowledges the importance of the Hague rules in marking a shift to the recognition of women as legitimate subjects of international humanitarian law.

Symposium on the Colombian peace talks and international law

Alexandra Huneeus... [et al.]. In: *AJIL Unbound*, Vol. 110, 2016, p. 161-204. - Cote 345.22/275 (Br.)

Includes: *Lex pacificatoria colombiana : Colombia's Peace Accord in comparative perspective* / C. Bell. - *Could the Colombian Peace Accord trigger an ICC investigation on Colombia ?* / N. C. Sanchez Leon. - *The Inter-American human rights system and the Colombian peace : redefining the fight against impunity* / J. I. Acosta-López. - *The legal status of the Colombian Peace Agreement* / L. Betancur Restrepo. - *Ius post bellum and the imperative to supersede IHL* / P. Kalmanovitz

<https://doi.org/10.1017/S2398772300003007>

Tallinn Manual 2.0 on the international law applicable to cyber operations : prepared by the International Group of Experts at the invitation of the NATO Cooperative Cyber Defence Centre of Excellence

General ed.: Michael N. Schmitt ; managing ed.: Liis Vihul. - Cambridge [etc.] : Cambridge University Press, 2017. - XLI, 598 p. - Cote 345.244/82 (2017)

Tallinn Manual 2.0 expands on the first edition by extending its coverage of the international law governing cyber operations to peacetime legal regimes. The product of a three-year follow-on project by a new group of twenty renowned international law experts, it addresses such topics as sovereignty, state responsibility, human rights, and the law of air, space, and the sea. Tallinn Manual 2.0 identifies 154 'black letter' rules governing cyber operations and provides extensive commentary on each rule. Although Tallinn Manual 2.0 represents the views of the experts in their personal capacity, the project benefitted from the unofficial input of many states and over fifty peer reviewers.

Thinking about what international humanitarian lawyers "do" : an examination of the laws of war as a field of professional practice

Frédéric Mégret. - In: *The law of international lawyers : reading Martti Koskenniemi.* - Cambridge [etc.] : Cambridge University Press, 2017. - p. 265-296. - Cote 345/722

This chapter seeks to "sociologize" Martti Koskenniemi's "From Apology to Utopia" to understand it less as a theoretical critique of law's indeterminacy and more as a description of the "common sense" of international lawyers, constantly called upon to navigate apology and utopia. It does so by invoking Bourdieusian "field analysis" and looking in particular at the laws of war as a semi-autonomous field of socio-legal practice within international law. It looks at the emergence of that field at the intersection of law,

humanitarianism and military necessity, and explores how the field both constrains and makes possible various argumentative strategies within it that make the most of the tension between apology and utopia. It seeks to examine the "navigation" of the field from the point of view of individual participants within it seeking to maximize their relative position as part of ongoing struggles for domination but who can ultimately never do so in a way that would undermine the field's claim to relevance. In the conclusion some of the implications are drawn both for our understanding of the "social determinacy" of international law underscored by the resilience of the field, and the inevitable normative circularity and conservatism of the project of the laws of war.

<https://ssrn.com/abstract=2670673>

Towards fulfillment of fundamental rules of humanitarian law in the context of the nuclear Non-Proliferation Treaty

Saeed Bagheri. In: BRICS law journal, Vol. 3, no. 1, 2016, p. 66-89. - Cote 341.67/820 (Br.)

This article discusses the Non-Proliferation Treaty (NPT) regime and its relationship with international humanitarian law. It first analyzes the NPT background, formation, main objectives and principles. It then studies humanitarian obligations in general, humanitarian obligations in the context of the NPT and fulfillment of these obligations under the NPT. One of the main parts of the study is the nuclear disarmament obligation included in the NPT. In this section, nuclear disarmament obligation in the context of the NPT and the legal framework of possible, general and comprehensive disarmament are examined.

<http://dx.doi.org/10.21684/2412-2343-2016-3-1-66-89>

Voluntary human shields in international humanitarian law : a proposal for suitable future regulation

Marco Nel and Shannon Bosch. In: African yearbook on international humanitarian law, 2016, p. 46-64

The growing prevalence of voluntary human shields in recent asymmetric armed conflicts has exposed a significant lacuna in the existing international humanitarian law regime which requires urgent regulation. This article explores some of the challenges that any attempt at regulation must address, including assessing voluntariness and issues of capacity, limitations against direct participation in hostilities, the prohibition against shielding legitimate military targets, state responsibility, uniformity and concordance with existing international humanitarian law, and limiting targeting decisions motivated by reciprocity. The article concludes with a proposal for the form and content of future regulation.

War, peace and international order ? : the legacies of the Hague Conferences of 1899 and 1907

ed. by Maartje Abbenhuis, Christopher Ernest Barber and Annalise R. Higgins. - London ; New York : Routledge, 2017. - IX, 229 p. - Cote 345.2/1023

Includes : Muddled waters : the influence of the first Hague Conference on the evolution of the Geneva Conventions of 1864 and 1906 / N. Wylie. - Reconsidering disarmament at the Hague Peace Conference of 1899, and after / A. Webster. - More than just a taboo : the legacy of the chemical warfare prohibitions of the 1899 and 1907 Hague Conferences / M. Girard Dorsey. - Sub silentio : the sexual assault of women in international law / S. Gendron. - The Hague as framework for British and American newspapers' public presentations of the First World War / T. Munro. - Against the Hague Conventions : promoting new rules for neutrality in the Cold War / W. Mueller.

The war report : armed conflicts in 2016

Annyssa Bellal. - Geneva : The Geneva Academy of International Humanitarian Law and Human Rights, March 2017. - 109 p. - Cote 355/1018 (2016)

The War Report provides detailed information on armed conflict which took place during 2016. In Part I the Report describes its criteria for the identification and classification of armed conflicts under international law, and the legal consequences that flow from this classification. It sets out a list of armed conflicts which occurred in 2016, categorizing each as international or non-international. In Part II, each of these conflicts are examined in more detail, with an overview of the classification of the conflict, its history, the parties involved, key developments in 2016 and war crimes allegations, investigations and prosecutions.

<https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202016.pdf>

Weapons of mass destruction and the principle of unnecessary suffering : the use of nuclear weapons in an armed conflict

Jaroslav Krasny, Noriyuki Kawano. In: Hiroshima peace science, Vol. 36, 2014, p. 101-117. - Cote 341.67/821 (Br.)

This research is concerned with the use of nuclear weapons against combatants in an armed conflict and whether such a use violates or would violate the principle of unnecessary suffering as codified in St. Petersburg Declaration of 1868 and the Hague Conventions. In order to analyze what constitutes unnecessary suffering the method chosen for this research is comparison of the effects of nuclear, chemical and biological weapons on the human body. The paper deals with the physical and legal consequences of using nuclear weapons in an armed conflict. The main argument is that late effects even as a byproduct of nuclear explosion may cause “unnecessary” suffering of combatants. Even after a conflict ends these late effects continue to damage their organisms and thus prolong the suffering. On the other hand, not all nuclear weapons are the same. While a strategic use of a high-yield weapon would definitely be illegal, a tactical use of a low-yield nuclear weapon in remote areas, as anti-materiel or on high seas could limit the number of casualties and thus possibly be in compliance with the rules of international humanitarian law.

<http://ir.lib.hiroshima-u.ac.jp/00038055>

The writing on the wall : rethinking the international law of occupation

Aeyal Gross. - Cambridge [etc.] : Cambridge University Press, 2017. - XI, 447 p. - Cote 345.28/127

As Israel's control of the Occupied Palestinian Territory nears its fiftieth anniversary, *The Writing on the Wall* offers a critical perspective on the international law of occupation. Advocating a normative and functional approach to occupation and to the question of when it exists, it analyzes the application of humanitarian and human rights law, pointing to the risk of using the law of occupation in its current version to legitimize new variations of conquest and colonialism. The book points to the need for reconsidering the law of occupation in light of changing forms of control, such as those evident in Gaza. Although the Israeli occupation is a main focal point, the book broadens its compass to look at other cases, such as Iraq, Northern Cyprus, and Western Sahara, highlighting the role that international law plays in all of these cases.

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