

BIBLIOGRAPHY

2nd Issue 2019

International Humanitarian Law

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



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ALL WITH ABSTRACTS.....37

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. In case your local library cannot provide you with some of the documents, requests for copies or scans (in a reasonable amount) can be sent to library@icrc.org

Chronology

This bibliography is based on the acquisitions made by the ICRC Library over the past four months. The Library 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)

Accounting for the complexity of the law applicable to modern armed conflicts

Marko Milanovic. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Cambridge University Press, 2019. - p. 33-59

Aux origines du droit international humanitaire : la Grèce ancienne

Emmanuelle Stavraki. - Athènes : Ant. N. Sakkoulas, 2019. - 167 p.

Back to the basics : core law of war principles through the lens of the DoD Manual

Ray Murphy. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 115-140

<https://doi.org/10.1017/9781108659727.007>

Forgotten, but nevertheless relevant ! : Gustave Moynier's attempts to punish violations of the laws of war 1870-1916

Daniel Marc Segesser. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 197-211

From St Petersburg to Rome : understanding the evolution of the modern laws of war

Matt Killingsworth. In: Australian journal of politics and history, Vol. 62, no. 1, 2016, p. 100-115

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

Marco Sassòli. - Cheltenham ; Northampton : E. Elgar, 2019. - LXI, 656 p.

Islamic law and international humanitarian law : an introduction to the main principles

Ahmed Al-Dawoody. In: International review of the Red Cross, Vol. 99, no. 906, 2017, p. 995-1018

<https://library.icrc.org/library/docs/DOC/irrc-906-al-dawoody.pdf>

Restraint in bello : some thoughts on reciprocity and humanity

Anna Evangelidi. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 100-113

Treatment of foreign investments during armed conflicts : the regimes

Viacheslav Liubashenko. In: Journal of conflict and security law, Vol. 24, no.1, Spring 2019, p. 145-169

<https://doi.org/10.1093/jcsl/kry031>

II. Types of conflicts

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

Accounting for the complexity of the law applicable to modern armed conflicts

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Armed groups and the DoD manual : shining a light on overlooked issues

Katharine Fortin. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 383-402

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Authority, legitimacy and military violence : de facto combatant privilege of non-state armed groups through amnesty

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Le Comité international de la Croix-Rouge (CICR) et la qualification des conflits armés

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Commentary on the law of cyber operations and the DoD Law of War Manual

Gary D. Brown. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 337-359

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Conflict management and the political economy of recognition

Christopher Borgen. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University Press, 2019. - p. 127-160

Counterterrorism law and practice in the East African Community

by Christopher E. Bailey. - Boston ; Leiden : Brill Nijhoff, 2019. - XXIV, 319 p.

Fragmented wars : multi-territorial operations against armed groups

Noam Lubell. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University Press, 2019. - p. 3-32

Hybrid conflict and prisoners of war : the case of Ukraine

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ICRC, NATO and the U.S. : direct participation in hacktivities : targeting private contractors and civilians in cyberspace under international humanitarian law

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Is there really a need for a new 'digital Geneva Convention' ?

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Judging the past : international humanitarian law and the Luftwaffe aerial operations during the invasion of Poland in 1939

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Personal self-defense and the standing rules of engagement

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The principle of proportionality in an era of high technology

Jack Beard. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University Press, 2019. - p. 261-287

Revisiting the notion of 'organised armed group' in accordance with Common Article 3 : exploring the inherent minimum threshold requirements

Martha M. Bradley. In: African yearbook on international humanitarian law, 2018, p. 50 - 79

"Rien que la lex lata" ? : étude critique du manuel de Tallinn 2.0 sur le droit international applicable aux cyber-opérations

Karine Bannelier. In: Annuaire français de droit international, 63, 2017, p. 121-160

Space through the lens of neutrality

by Peter Hulsroj and Anja Nakarada Pecujlic. - In: Conflicts in space and the rule of law. - Montreal : Centre for research in Air and Space Law, McGill University, 2017. - p. 437-452

Specifically vague : the defensive purpose of the DoD Law of War Manual

Chris Jenks. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 47-61

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The use of force in armed conflicts : conduct of hostilities, law enforcement, and self-defense

Gloria Gaggioli. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University Press, 2019. - p. 61-107

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Armed groups and the DoD manual : shining a light on overlooked issues

Katharine Fortin. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 383-402

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Charles J. Dunlap. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 65-78

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Hyeran Jo and John Niehaus. In: Law and contemporary problems, Vol. 81, no. 4, 2018, p. 101-120
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IV. Multinational forces

The DoD Law of War Manual as applied to coalition command and control

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<https://doi.org/10.1017/9781108659727.016>

A hidden fault line : how international actors engage with IHL's principle of distinction

Rebecca Sutton. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 85-99

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Looking for the 'missing piece of the puzzle' : corporate accountability in transitional justice

Laura García Martín. In: Human rights and international legal discourse, Vol. 13, no. 1, 2019, p. 21-38

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Regulating private military companies : conflicts of law, history and governance

Katerina Galai. - New York : Routledge, 2019. - VII, 210 p.

VI. Protection of persons

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

L'action humanitaire internationale

Léopold Nyabeyu Tchoukeu. - In: Crises humanitaires et responsabilités. - Paris : L'Harmattan, 2018. - p. 559-592

Aspects of the distinction principle under the US DoD Law of War Manual

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Children and armed conflict : pitfalls of a "one size fits all" approach

Solange Mouthaan. - In: Gender and war : international and transitional justice perspectives. - Cambridge [etc.] : Intersentia, 2019. - p. 119-143

Close cousins in protection : the evolution of two norms

Emily Paddon Rhoads and Jennifer Welsh. In: International affairs, Vol. 95, no. 3, May 2019, p. 597-617

<https://doi.org/10.1093/ia/iiz054>

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Expanding IHL through ICL : how prosecutorial opportunism and judicial activism redefined intra-party SGBV crimes at the ICC

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Gender, enslavement and war economies in Sierra Leone : a case studies from the Special Court for Sierra Leone

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A hidden fault line : how international actors engage with IHL's principle of distinction

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International gender equality norms and their fragmented protection in conflict

Catherine O'Rourke. In: feminists@law, Vol. 9, no 1, 2019, 46 p.

<https://journals.kent.ac.uk/index.php/feministsatlaw/article/view/750/1464>

The law and policy of human shielding

Beth Van Schaack. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University press, 2019. - p. 463-513

Male victims and female perpetrators of sexual violence in conflict

Anne-Marie De Brouwer and Laetitia Ruiz. - In: Gender and war : international and transitional justice perspectives. - Cambridge [etc.] : Intersentia, 2019. - p. 169-208

Muddying the waters : the need for precision-guided terminology in the DoD Law of War Manual

Laurie R. Blank. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 261-281

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Prosecuting sexual and gender-based crimes in the International Criminal Court : inching towards gender justice

Rosemary Grey and Louise Chappell. - In: Gender and war : international and transitional justice perspectives. - Cambridge [etc.] : Intersentia, 2019. - p. 209-234

La protection des droits de l'enfant dans le contexte des conflits armés

Augustin Berceau Omgba Mbarga. - In: Crises humanitaires et responsabilités. - Paris : L'Harmattan, 2018. - p. 151-176

The right to truth : when does it begin ?

William A. Schabas. - In: Doing peace the rights way : essays in international law and relations in honour of Louise Arbour. - Cambridge [etc.] : Intersentia, 2019. - p. 37-52

"Safe areas" : the international legal framework

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Staying the course : a call for sustained support of accountability for conflict-related sexual violence in Bosnia and Herzegovina

Susana SáCouto and Chanté Lasco. - In: Gender and war : international and transitional justice perspectives. - Cambridge [etc.] : Intersentia, 2019*. - p. 311-352

A universal treaty for disasters ? : remarks on the International Law Commission's draft articles on the protection of persons in the event of disasters

Giulio Bartolini. In: International review of the Red Cross, Vol. 99, no. 906, 2017, p. 1103-1137

<https://library.icrc.org/library/docs/DOC/irrc-906-bartolini.pdf>

The war against civilians : victims of the "war on terror" in Afghanistan and Pakistan

Vasja Badalič. - [S.I.] : Palgrave macmillan, 2019. - XII, 280 p.

When the conflict ends, while uncertainty continues : accounting for missing persons between war and peace in international law

Alessandra La Vaccara ; foreword Vincent Chetail. - Paris : A. Pedone ; Oxford : Hart, 2019. - 465 p.

Women's human rights and the law of armed conflict

Judith Gardam. - In: International human rights of women. - Singapore : Springer. - 18 p.

https://doi.org/10.1007/978-981-10-4550-9_29-1

VII. Protection of objects

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

From Timbuktu to The Hague and beyond : the war crime of intentionally attacking cultural property

Mark A. Drumbl. In: Journal of international criminal justice, Vol. 17, no. 1, March 2019, p. 77-99

<https://doi.org/10.1093/jicj/mqy068>

'Hospital shields' and the limits of international law

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Lemkin on vandalism and the protection of cultural works and historical monuments during armed conflict

Mark Klamberg. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 183-196

Protecting cultural property in Syria : new opportunities for States to enhance compliance with international law ?

Polina Levina Mahnad. In: International review of the Red Cross, Vol. 99, no. 906, 2017, p. 1037-1074

<https://library.icrc.org/library/docs/DOC/irrc-906-mahnad.pdf>

Save the injured - don't kill IHL : rejecting absolute immunity for 'shielding hospitals'

Yishai Beer. In: European journal of international law, Vol. 30, no. 2, 2019, p. 465-480

<https://doi.org/10.1093/ejil/chz037>

VIII. Detention, internment, treatment and judicial guarantees

Detention and prosecution as described in the DoD Manual

Andrew Clapham. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 282-297 <https://doi.org/10.1017/9781108659727.013>

Hybrid conflict and prisoners of war : the case of Ukraine

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Torture 'lite' in the war against Boko Haram : taming the wild zone of power in Cameroon

Shannon Bosch. In: African yearbook on international humanitarian law, 2018, p. 80-97

The war against civilians : victims of the "war on terror" in Afghanistan and Pakistan

Vasja Badalič. - [S.I.] : Palgrave macmillan, 2019. - XII, 280 p.

IX. Law of occupation

The DoD conception of the law of occupation

Yaël Ronen. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 298-333

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The international law of belligerent occupation

Yoram Dinstein. - Cambridge : Cambridge University Press, 2019. - XXXIX, 327 p.
<https://doi.org/10.1017/9781108671477>

Israeli settlements : land politics beyond the Geneva Convention

Martin Blecher. - London [etc.] : Hamilton Books, 2018. - XXIV, 195 p.

Israeli settlements and unlawful population transfer into occupied territory : with special focus on 'indirect transfers' according to article 8 (2) (b) (viii) of the ICC statute

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Palestine and the International Criminal Court

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War of Wor(I)ds : clashing narratives and interpretations of I(H)L in the intractable Israeli-Palestinian conflict

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X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

Aspects of the distinction principle under the US DoD Law of War Manual

Bill Boothby. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 161-200

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Lethal autonomous weapons systems : is it the end of the world as we know it ... Or will we be just fine ?

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Putting lethal force on the table : how drones change the alternative space of war and counterterrorism

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Restraint in bello : some thoughts on reciprocity and humanity

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XI. Weapons

Armed drone

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Autonomous weapon systems and the limits of analogy

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Drones militaires en opération et responsabilité internationale

Philippe Lagrange. - In: Le droit à l'épreuve des drones militaires. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 301-318

Drones militaires en opérations et responsabilité pénale

Pierre-Jérôme Delage. - In: Le droit à l'épreuve des drones militaires. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 291-300

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The principle of proportionality in an era of high technology

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Revisiting challenges to international humanitarian law

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XII. Implementation

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

Amnesty, serious crimes and international law : global perspectives in theory and practice

Josepha Close. - New York : Routledge, 2019. - XIX, 296 p.

Aspects of the distinction principle under the US DoD Law of War Manual

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Peace and justice : human rights fact-finding in raging conflicts

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Tim MacCormack. - In: Doing peace the rights way : essays in international law and relations in honour of Louise Arbour. - Cambridge [etc.] : Intersentia, 2019. - p. 317-351

The right to truth : when does it begin ?

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Susana SáCouto and Chanté Lasco. - In: Gender and war : international and transitional justice perspectives. - Cambridge [etc.] : Intersentia, 2019*. - p. 311-352

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Ka Lok Yip. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 146-159

Transitional justice and a State's response to mass atrocity : reassessing the obligations to investigate and prosecute

Jacopo Roberti di Sarsina ; [forewords by William Schabas and Augusto Antonio Barbera]. - The Hague : T.M.C Asser Press, 2019. - XLII, 248 p.

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What's in a name, and what's not : the DoD law of war manual and the question of operational utility

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When the end lacks the means : national prosecutions of international crimes and Canada's paper tiger approach

Fannie Lafontaine. - In: Doing peace the rights way : essays in international law and relations in honour of Louise Arbour. - Cambridge [etc.] : Intersentia, 2019. - p. 221-251

Yemen : is the US breaking the law ?

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XIII. International human rights law

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

Accounting for the complexity of the law applicable to modern armed conflicts

Marko Milanovic. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Cambridge University Press, 2019. - p. 33-59

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The use of force in armed conflicts : conduct of hostilities, law enforcement, and self-defense

Gloria Gaggioli. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University Press, 2019. - p. 61-107

When the conflict ends, while uncertainty continues : accounting for missing persons between war and peace in international law

Alessandra La Vaccara ; foreword Vincent Chetail. - Paris : A. Pedone ; Oxford : Hart, 2019. - 465 p.

XIV. International criminal law

Amnesty, serious crimes and international law : global perspectives in theory and practice

Joseph Close. - New York : Routledge, 2019. - XIX, 296 p.

Crossing the red line : the use of chemical weapons in Syria and what should happen now

Yasmin Naqvi. In: International review of the Red Cross, Vol. 99, no. 906, 2017, p. 959-993

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Valerie Oosterveld. - In: The legacy of ad hoc tribunals in international criminal law : assessing the ICTY's and the ICTR's most significant legal accomplishments. - Cambridge : Cambridge University Press, 2019. - p. 197-220

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Mark Klamberg. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 183-196

Male victims and female perpetrators of sexual violence in conflict

Anne-Marie De Brouwer and Laetitia Ruiz. - In: Gender and war : international and transitional justice perspectives. - Cambridge [etc.] : Intersentia, 2019. - p. 169-208

National trials of international crimes in Bangladesh : transitional justice as reflected in judgments

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Palestine and the International Criminal Court

Seada Hussein Adem. - The Hague : T.M.C. Asser Press, 2019. - XII, 228 p.

Prosecuting sexual and gender-based crimes in the International Criminal Court : inching towards gender justice

Rosemary Grey and Louise Chappell. - In: Gender and war : international and transitional justice perspectives. - Cambridge [etc.] : Intersentia, 2019. - p. 209-234

Staying the course : a call for sustained support of accountability for conflict-related sexual violence in Bosnia and Herzegovina

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Fannie Lafontaine. - In: Doing peace the rights way : essays in international law and relations in honour of Louise Arbour. - Cambridge [etc.] : Intersentia, 2019. - p. 221-251

XV. Contemporary challenges

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

Accounting for the complexity of the law applicable to modern armed conflicts

Marko Milanovic. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Cambridge University Press, 2019. - p. 33-59

Autonomous weapon systems and the limits of analogy

Rebecca Crootof. In: Harvard national security journal, Vol. 9, issue 2, 2018, p. 51-83
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Gary D. Brown. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 337-359

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Pierre-Jérôme Delage. - In: Le droit à l'épreuve des drones militaires. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 291-300

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Hybrid warfare, law, and the fulda gap

Aurel Sari. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University Press, 2019. - p. 160-190

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The principle of proportionality in an era of high technology

Jack Beard. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University Press, 2019. - p. 261-287

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Anna Evangelidi. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 100-113

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Armed groups and the DoD manual : shining a light on overlooked issues

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At war with itself : the DoD law of war manual's tension between doctrine and practice on target verification and precautions in attack

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Lethal autonomous weapons systems : is it the end of the world as we know it ... Or will we be just fine ?

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The Manual's redefined concept of non-international armed conflict : applying faux LOAC to a fictional NIAC

David E. Graham. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 141-160
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Adil Ahmad Haque. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 225-260
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Laurie R. Blank. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 261-281
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What's in a name, and what's not : the DoD law of war manual and the question of operational utility

Geoffrey S. Corn. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 94-112
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YUGOSLAVIA

How the Tadic appeals chamber decision fundamentally altered customary international law

Michael P. Scharf. - In: The legacy of ad hoc tribunals in international criminal law : assessing the ICTY's and the ICTR's most significant legal accomplishments. - Cambridge : Cambridge University Press, 2019. - p. 59-72

The legacy of the ICTY and ICTR on sexual and gender-based violence

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Susana SáCouto and Chanté Lasco. - In: Gender and war : international and transitional justice perspectives. - Cambridge [etc.] : Intersentia, 2019*. - p. 311-352

All with Abstracts

Accounting for the complexity of the law applicable to modern armed conflicts

Marko Milanovic. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Cambridge University Press, 2019. - p. 33-59

It is almost trivial to observe that the law applying to modern armed conflicts is full of complexities. Such complexities are, after all, the bread and butter of legal academics, who have produced mountains of books and articles on the various relevant topics, but the extent of these complexities can be overstated. While legal academics debate the finer points of the interaction between international humanitarian law (IHL) and international human rights law (IHRL), in the majority of today's armed conflicts the law is reasonably practical and clear. It might not be complied with, but that is not because of its supposed complexity or lack of clarity. If, for example, the parties to armed conflicts with the highest cost in human lives and property (e.g., in Syria or Yemen) observed only the bare fundamentals of the principle of distinction, the world would be spared much suffering. Noncompliance has little to do with the law's complexity. But complexity is nonetheless a major feature of a subset of modern armed conflicts, especially those involving foreign intervention by Western powers. The purpose of this chapter is to clarify our understanding of how complexity works, where it comes from, and how it is managed. To do so, this chapter first develops two themes: the multiple causes of complexity and the decentralized system for managing this complexity. These themes are then explored in more detail in the context of the law on the use of force, or *ius ad bellum*, IHL, and IHRL.

L'action humanitaire internationale

Léopold Nyabeyu Tchoukeu. - In: *Crises humanitaires et responsabilités.* - Paris : L'Harmattan, 2018. - p. 559-592

Ce chapitre s'interroge sur l'action humanitaire internationale dans sa globalité et notamment sur la manière dont celle-ci est encadrée par le droit international. Il présente les différents types d'organisations et institutions actives dans ce domaine et leurs responsabilités respectives. Il présente également les notions de zones de sécurité humanitaire et de couloir humanitaire et le droit qui leur est applicable.

Amnesty, serious crimes and international law : global perspectives in theory and practice

Josepha Close. - New York : Routledge, 2019. - XIX, 296 p.

This book examines the permissibility of amnesties for serious crimes in the contemporary international order. In the last few decades, there has been a growing tendency to consider that amnesties are prohibited in respect of certain grave crimes. However, the question remains controversial as there is no explicit treaty ban and general amnesties continue to be frequently issued in post-conflict and transitional contexts. The first part of the book explores the use of amnesties from antiquity to the present day. It reviews amnesty traditions in ancient societies and provides a global picture of modern amnesties. In parallel, it traces the development of the accountability paradigm underpinning the current prohibitive stance on amnesties. The second part assesses the position of modern international law on amnesties. It comprehensively analyses the main arguments supporting the existence of a general amnesty ban, including the duty to prosecute international crimes, the right to redress of victims of human rights violations, international standards and trends in state practice, and the mandate of international criminal courts. The book argues that, while international legal or policy requirements restrict the freedom of states to extend amnesty in respect of serious crimes, or the effectiveness of amnesty measures in preventing the prosecution of such crimes, these restrictions do not add up to an absolute and universal prohibition.

The application of the European Convention on Human Rights to military operations

Stuart, Wallace. - Cambridge, United Kingdom : Cambridge University Press, 2019. - XXIII, 250 p.

The European Convention on Human Rights is being applied to military operations of every kind from internal operations in Russia and Turkey, to international armed conflicts in Iraq, Ukraine and elsewhere. This book exposes the challenge that this development presents to the integrity and universality of

Convention rights. Can states realistically investigate all instances where life is lost during military operations? Can the Convention offer the same level of protection to soldiers in combat as it does to its citizens at home? How can we reconcile the application of the Convention with other international law applicable to military operations? This book offers detailed analysis of how the Convention applies to military operations of all kinds. It highlights the creeping relativism of the standards applied by the European Court of Human Rights to military operations and offers guidance on how to interpret and apply the Convention to military operations.

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Armed drone

Ioannis Kalpouzos. - In: *International law's objects.* - Oxford : Oxford University Press, 2018. - p. 118-129

The most widely reproduced image of an armed drone is a Photoshop construct combining the object, the missile, and the Afghan landscape. This chapter enquires into the symbolic and material functions of the object in relation to international humanitarian law through three perspectives/images: that of the object itself as proliferated in the media; the image(s) the object generates for targeted killing; and that of the object for the targeted. The qualities of the object and those images speak to the promise and threat that international law(yers) see in the armed drone. The chapter assesses and critiques the drone's promise of precision, in targeting and governing armed conflict, as well as the promises of asymmetry and invulnerability. It argues that the object of the armed drone plays a mythical function, in establishing a 'new paradigm' of war and law through new weapons technology in the context of the 'war on terror'.

Armed groups and the DoD manual : shining a light on overlooked issues

Katharine Fortin. - In: *The United States Department of Defense Law of War Manual : commentary and critique.* - Cambridge : Cambridge University Press, 2018. - p. 383-402

This chapters examines how the Department of Defense Law of War Manual addresses certain issues specific to armed groups operating in non-international armed conflicts. The chapter first examines how the manual understands armed groups to be addressees of international humanitarian law, it analyses how the manual understands armed groups to be bound by different sources of law, and considers how the manual explains these sources to be binding upon them. The chapter then examines how the manual addresses the principles of international humanitarian law, looking in particular at the manual's reliance on the concept of honor in NIAC. It then assesses the approach that the manual takes to the targetability of members of armed groups. Finally, the chapters examines the assertion that members of insurgent groups can be compelled to fight on behalf of a State.

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Aspects of the distinction principle under the US DoD Law of War Manual

Bill Boothby. - In: *The United States Department of Defense Law of War Manual : commentary and critique.* - Cambridge : Cambridge University Press, 2018. - p. 161-200

In this chapter an attempt has been made to comment on apparently noteworthy aspects of the first sections of Chapter V of the United States Department of Defense Manual, entitled "Conduct of hostilities." That is a substantial component in the manual, and the present text limits itself to considering those sections and paragraphs of the chapter that deals with the principles of distinction and discrimination, with attacks and with the precautions and proportionality rules.

<https://doi.org/10.1017/9781108659727.009>

At war with itself : the DoD law of war manual's tension between doctrine and practice on target verification and precautions in attack

Peter Margulies. - In: *The United States Department of Defense Law of War Manual : commentary and critique.* - Cambridge : Cambridge University Press, 2018. - p. 201-224

The present chapter first discusses dynamic diligence and the right relationship under international humanitarian law (IHL) between the principles of distinction, proportionality, and precautions in attack. Then, it discusses the acute tension between the United States Department of Defense Manual's doctrinal

statements and its examples from practice. Finally, this chapter discusses the methodological flaws with the manual's effort to support its doctrinal assertions.

<https://doi.org/10.1017/9781108659727.010>

Authority, legitimacy and military violence : de facto combatant privilege of non-state armed groups through amnesty

Pal Wrangle. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 60-75

This chapter traces the prehistory, genesis and application of Article 6(5) of the Second Additional Protocol to the 1949 Geneva Conventions (1977) and its implications for the question of right authority. Under international law, a sovereign government has sovereign rights (and obligations) towards her subjects while the relation between belligerents is different: It is one of enmity and equality, regulated by the law of war (or international humanitarian law [IHL] or *jus in bello*). Rebels can be punished for using force against the sovereign, but soldiers of a belligerent not; they have the "combatant privilege" to kill other soldiers. In present international law, this right of the sovereign (a right authority) is undermined by certain tendencies in the *jus in bello*. To the extent that non-state armed groups (NSAGs) can start a war without negative legal consequences and thus acquire belligerent rights, they actually have a de facto authority, or at least they are undermining the state's exclusive authority. Article 6(5) states that "[a]t the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict..." The many amnesty agreements concluded since, demonstrates an emerging trend towards "retroactive combatant immunity." Thus, rebel fighters have a reasonable chance of being provided with the "combatant privilege," albeit post factum.

Autonomous weapon systems and the limits of analogy

Rebecca Crootof. In: Harvard national security journal, Vol. 9, issue 2, 2018, p. 51-83

Autonomous weapon systems are often described either as more independent versions of weapons already in use or as humanoid robotic soldiers. In many ways, these analogies are useful. But all potential analogies—weapon, combatant, child soldier, animal combatant—fail to address the legal issues raised by autonomous weapon systems, largely because they all misrepresent legally salient traits. Conceiving of autonomous weapon systems as weapons minimizes their capacity for independent and self-determined action, while the combatant, child soldier, and animal combatant comparisons overemphasize it. Furthermore, these discrete and embodied analogies limit our ability to think imaginatively about this new technology and anticipate how it might develop, thereby impeding our ability to properly regulate it. We cannot simply graft legal regimes crafted to regulate other entities onto autonomous weapon systems. Instead, as is often the case when analogical reasoning cannot justifiably stretch extant law to answer novel legal questions, new supplemental law is needed. The sooner we escape the confines of these insufficient analogies, the sooner we can create appropriate and effective regulations for autonomous weapon systems.

https://harvardnsj.org/wp-content/uploads/sites/13/2018/06/2_Crootof_LimitsOfAnalogy_06.08.18.pdf

Aux origines du droit international humanitaire : la Grèce ancienne

Emmanuelle Stavradi. - Athènes : Ant. N. Sakkoulas, 2019. - 167 p.

En Grèce ancienne, berceau de l'humanisme et du rationalisme, la guerre est régie selon un code de conduite. Les Grecs considèrent les règles de ce code comme une "loi commune de l'humanité". Ce sont eux qui utilisent pour la première fois la notion des "lois des nations" et qui signalent que leur violation doit être justifiée et sanctionnée. Ces lois visent à la limitation des maux de guerre et sont applicables en temps de paix et de conflit armé. Elles sont surtout coutumières mais aussi écrites concernant les violations graves de la guerre (actes qui constituent le déshonneur).

Back to the basics : core law of war principles through the lens of the DoD Manual

Ray Murphy. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 115-140

This chapter reviews chapter II of the United States Department of Defense law of war manual which is entitled "Principles". The law of war principles of military necessity and humanity are not specific but must underpin all military action taken during all aspects of armed conflict. They provide the foundation for other law of war principles, namely proportionality and distinction and most of the treaty and customary rules of

international humanitarian law. The wording of the manual is analyzed and compared with the interpretation made by international courts and tribunals. The author concludes that the principles are presented in a style that is practical and comprehensible for all members of the armed services to follow.

<https://doi.org/10.1017/9781108659727.007>

Be careful what you ask for : the unintended consequences of new restrictions on fires in urban areas

Geoffrey S. Corn. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p.431-461

Aleppo, Syria—a city that will join the infamous likes of Nanking, Stalingrad, Manila, Berlin, Hue, Panama City, Mogadishu, Grozny, and Donetsk as one of modern history’s worst urban war zones. Much of the destruction in this city is the result of indirect fires and air-delivered munitions. Indeed, this is the case in Aleppo; the now-infamous “barrel bomb” has become synonymous with indiscriminate Syrian government attacks against rebel-held areas of the city. In response to the humanitarian dangers associated with the use of such weapons in urban and built-up areas, there is a growing trend among international humanitarian law advocates to severely restrict—or even ban outright—the use of fires, high-explosive munitions, and associated weapons systems in built-up civilian population centers. These humanitarian initiatives reveal that for proponents of such restraint, the “problem” of high explosives in populated areas, whether delivered by indirect fire systems or air assets, is critical. The core premise of this chapter is that new restrictions on urban fires may actually exacerbate civilian risk and that fires in support of urban operations are not only operationally essential, but may, when properly employed, actually reduce risk to civilians and civilian property. Accordingly, civilian risk mitigation efforts should continue to focus on enhancing commitment to and compliance with already existing attack precautions and law of armed conflict (LOAC) targeting obligations.

Blockade ? A legal assessment of the maritime interdiction of Yemen's ports

Phillip J. Drew. In: *Journal of conflict and security law*, Vol. 24, no.1, Spring 2019, p. 35-52

In January 2015, the Yemeni government of Abdrabbuh Mansour Hadi was ousted from power by Houthi rebels based in the country’s northern highlands. Initially forced to flee the country, Hadi soon returned, establishing a new government in the southern city of Aden. His return marked the commencement of the latest phase of Yemen’s perpetual civil war. In what has often been referred to as the ‘Saudi-led blockade’, a coalition naval force, made up primarily of vessels from Gulf Cooperation Council states, has been enforcing a closure of Yemen’s waters and most of its ports. Yemen requires food imports to feed its population and fuel imports to generate the electricity that it needs to keep its water plants operating. As a result of the naval interdiction operations, the civilian population of Yemen is in crisis. Approximately 20 million people require humanitarian assistance, and the country continues to struggle under the largest cholera epidemic in history. This article examines the legal bases for the current interdiction operations, both from the perspective of the law of naval warfare and the law of the sea. Finally it assesses the role that Security Council resolutions have played in the continuation of the ongoing humanitarian crisis and the role that the Security Council can play in supporting the delivery of humanitarian assistance to those in need.

<https://doi.org/10.1093/jcsl/krz001>

Children and armed conflict : pitfalls of a "one size fits all" approach

Solange Mouthaan. - In: *Gender and war : international and transitional justice perspectives.* - Cambridge [etc.] : Intersentia, 2019. - p. 119-143

This chapters highlights the importance of recognising difference while also advocating a more child-centered approach in its legal protections of children affected by armed conflict : one that acknowledges the intersections between childhood and other characteristics such as age and gender, while also providing agency to children in determining how their needs are addressed.

Les clauses échappatoires en droit international humanitaire et le problème de la responsabilité

Christian Joël Akono. - In: Crises humanitaires et responsabilités. - Paris : L'Harmattan, 2018. - p. 593-612

Cette contribution étudie l'impact des clauses échappatoires sur la responsabilité en droit international humanitaire (DIH). Existe-t-il un fondement d'une approche de la responsabilité en DIH prenant en compte les clauses échappatoires? Plus fondamentalement, peut-on envisager la responsabilité en DIH malgré leur existence ? L'auteur considère les clauses échappatoires à la fois comme moyen incitatif à l'adhésion des Etats et comme obstacle à l'engagement de la responsabilité des auteurs en DIH.

Close cousins in protection : the evolution of two norms

Emily Paddon Rhoads and Jennifer Welsh. In: International affairs, Vol. 95, no. 3, May 2019, p. 597-617

The Protection of Civilians (PoC) in peacekeeping and the Responsibility to Protect (R2P) populations from atrocity crimes are two norms that emerged at the turn of the new millennium with the aim of protecting vulnerable peoples from mass violence and/or systematic and widespread violations of human rights. To date, most scholars have analysed the discourses over the status, strength and robustness of both norms separately. And yet, the distinction between the two has at times been exceptionally fine. In this article, we analyse the constitutive relationship between PoC and R2P, and the impact of discursive and behavioural contestation on their joint evolution within the UN system and state practice over three phases (1999–2005; 2006–10; 2011–18). In so doing, we contribute to the International Relations literature on norms by illuminating ideational interplay in the dynamics of norm evolution and contestation.

<https://doi.org/10.1093/ia/iiz054>

Le Comité international de la Croix-Rouge (CICR) et la qualification des conflits armés

Mamoud Zani. In: Cahiers de la recherche sur les droits fondamentaux, no 16, 2018, p. 141-155

L'objectif de l'article est de savoir quelle est la nature de la qualification juridique menée par le CICR et les conséquences qui en découlent aux fins de l'applicabilité du droit international humanitaire. Pour ce faire, il convient de préciser la particularité du CICR, ensuite de cerner les contours de la notion de qualification juridique, et enfin le cadre juridique applicable aux conflits armés.

Commentary on the law of cyber operations and the DoD Law of War Manual

Gary D. Brown. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 337-359

This chapter attempts to show that the United States Department of Defense Manual provides little in the way of useful guidance for cyber operations lawyers. It notes that there is a certain lack of lessons learned from operations in the Manual's treatment of cyberwarfare : there are no definitive sources and few references with sufficient depth to guide cyber operations lawyers endeavors.

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Les commissions et autres instances nationales de droit international humanitaire : lignes directrices pour une mission réussie : vers le respect et la mise en œuvre du droit international humanitaire

CICR. - Genève : CICR, juillet 2019. - 87 p.

Pour que les règles et les principes du DIH puissent réellement conférer une protection dans les conflits armés, ils doivent être reconnus, connus, mis en œuvre et respectés dans toutes les situations où ils s'appliquent. Les États doivent, par conséquent, prendre des mesures au niveau national pour incorporer le DIH dans leur législation, leur réglementation et leurs doctrines, faire en sorte que les forces armées et autres parties prenantes nationales en connaissent et respectent les règles, et établir des mécanismes pour assurer le respect du droit et le traitement approprié des violations commises le cas échéant. Pour faciliter ce

processus, il peut être utile de créer spécialement un groupe de travail ou d'experts ou autre instance de ce type, souvent dénommé « commission nationale de DIH » ou « commission ». Le présent document a pour but de donner à ces commissions des orientations pour qu'elles puissent fonctionner efficacement et renforcer l'impact des actions qu'elles mènent pour faire appliquer et respecter le DIH dans leurs pays respectifs et au-delà de leurs frontières. Il a aussi pour but de favoriser la création, s'il y a lieu, de nouvelles entités de ce type et d'aider les autorités nationales dans cette tâche.

<https://library.icrc.org/library/docs/DOC/icrc-4367-001.pdf>

Condemning or condoning the perpetrators ? : International humanitarian law and attitudes toward wartime violence

Geoffrey P. R. Wallace. In: *Law & social inquiry*, Vol. 44, issue 1, February 2019, p. 192-226

What are the implications of international law for attitudes toward wartime violence? Existing research offers contrasting views on the ability of international legal principles to shape individual preferences, especially in difficult situations involving armed conflict. Employing cross-national survey evidence from several conflict and post-conflict countries, this article contributes to this debate by evaluating the relationship between individuals' knowledge of the laws of war and attitudes toward wartime conduct. Findings show that exposure to international law is associated with a significant reduction in support for wartime abuses, though the results are stronger for prisoner treatment than for targeting civilians. Analysis further reveals that legal principles generate different expectations of conduct than alternative value systems that are rooted in strong moral foundations regarding the impermissibility of wartime abuses. The findings are relevant for understanding the relationship between international law and domestic actors, and how legal principles relate to the resort to violence.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/46793.pdf>

Conflict management and the political economy of recognition

Christopher Borgen. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p. 127-160

States increasingly find themselves in competition and conflict with non-State actors, including terrorist networks, insurgencies, separatist regimes, criminal cartels, and other groups. The effects of the law and practice of recognition—including the recognition of States, of governments, and of belligerencies—on conflicts with such illicit non-State actors has been underappreciated. The rules of recognition are not external to these conflicts; they interact with the strategy and the tactics of the parties to the conflict and of third-party States. While States have access to global markets, judicial protections, and the privileges and immunities of sovereignty, unrecognized entities use illegal strategies to find necessary resources to continue their fight. This chapter describes the range of actors that are both involved in violent conflict and also operate on the fringes of recognition. It will review the various aspects of law of recognition and consider practices old and new in order to understand the effects of recognition decisions, including how recognition interacts with the laws of armed conflict. It will also discuss how nonrecognition affects access to resources, such as financing and skilled labor, and the variety of responses by unrecognized entities. To understand the strategy of the illicit non-State actors in conflict with States, one must not only appreciate their motivations and goals, but perceive their constraints. The political economy of conflict is not separate and apart from the public international law of recognition; they are intertwined.

Counterterrorism law and practice in the East African Community

by Christopher E. Bailey. - Boston ; Leiden : Brill Nijhoff, 2019. - XXIV, 319 p.

This book examines the existing counter-terrorism laws and practices in the six-member East African Community (EAC) as it applies to a range of law enforcement and military activities under various international legal obligations. Dr. Christopher E. Bailey provides a comparative examination of existing national law for EAC countries, including compliance with obligations under international human rights and international humanitarian law, and offers a range of legal reform recommendations. This book addresses two primary, related research questions : To what extent do the current national counter-terrorism laws and practices of the EAC Partner States comply with existing international human rights safeguards? What laws or practices can the EAC adopt to achieve better compliance with human rights safeguards in both civilian and military counter-terrorism operations?

Crossing the red line : the use of chemical weapons in Syria and what should happen now

Yasmin Naqvi. In: International review of the Red Cross, Vol. 99, no. 906, 2017, p. 959-993

The use of chemical weapons in the armed conflict in Syria has attracted universal and widespread condemnation and has led to unified responses by various international bodies. This article examines the international community's responses to chemical weapons use in Syria from the perspective of international law. It also analyzes the potential options for accountability that are available for chemical weapons-related crimes.

<https://library.icrc.org/library/docs/DOC/irrc-906-naqvi.pdf>

Detention and prosecution as described in the DoD Manual

Andrew Clapham. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 282-297

This chapters considers not only whether the United States Department of Defense Law of war manual conforms to international law on detention, but also whether it meets the expectations of a wider community which extends beyond the official understandings of the US government as to what is binding on the United States as a matter of law. In contemporary conflicts, it is more likely than not that the United States will be operating on the ground in coalition with other States. While it might be impracticable to build a highest common denominator, understanding how others see the international law on detention is vital to any sort of functioning interoperability.

<https://doi.org/10.1017/9781108659727.013>

Displacement in times of armed conflict : how international humanitarian law protects in war, and why it matters

Cédric Cotter. - Geneva : ICRC, April 2019. - 68 p.

Displacement is part and parcel of war and one of the greatest humanitarian challenges of our time. This study shows that international humanitarian law (IHL) needs to be an integral part of reflection on how to reduce and solve displacement in armed conflict. The main purpose of the study is to draw attention to the key role that IHL plays in preventing and addressing displacement and to influence law and policymaking among States and international and multilateral organizations. This is the first instalment of IHL Impact, a series of academically rigorous, evidence-based studies by the ICRC's Law and Policy Forum that draw on the organization's unparalleled knowledge and resources to examine how IHL actually makes a difference on the ground.

<https://library.icrc.org/library/docs/DOC/icrc-002-4349.pdf>

The DoD conception of the law of occupation

Yaël Ronen. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 298-333

This chapter examines the stance of the US Department of Defense 2016 Law of War Manual on two questions : the applicability of the legal regime as *lex specialis*, and the limitations that it imposes on the authority of the occupying power to introduce long-term changes in the territory under control. It first examines what the manual says explicitly of transformative occupation. It then proceeds to examine the manual's interpretation of the Occupying Power's authority as a general matter and the extent to which this interpretation leaves room for engagement in transformative enterprises. Finally, the chapter considers the manual's approach to the applicability of the law of occupation, by analyzing the circumstances in which the manual purports to exclude that law.

<https://doi.org/10.1017/9781108659727.014>

The DoD Law of War Manual as applied to coalition command and control

Michael A. Newton. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 360-382

This chapter considers the provisions of the Department of Defense Law of War Manual in light of its larger implications for effective operational command and control relationships within military coalitions. It considers the Manual's formulations as they relate to commanders' responsibilities during operations alongside other national forces. The following section summarizes the Manual's interrelationship to the emerging practice of the International Criminal Court. It then focuses on the modern parameters of the duty to investigate allegations of war crimes.

<https://doi.org/10.1017/9781108659727.016>

The DoD Law of War Manual : why, what and how

Karl S. Chang. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 24-46

This chapter first discusses why States issue law of war manuals by explaining some of the practical functions that manuals perform, Second, it explains what makes the DoD Law of War Manual distinctive as a State's perspective on the law of war. Lastly, this chapter shares lessons learned from how the manual was produced.

<https://doi.org/10.1017/9781108659727.002>

Droit international et recours aux drones lors d'un conflit armé

Niki Aloupi. - In: Le droit à l'épreuve des drones militaires. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 183-197

Un cadre juridique spécifique vient régir toute utilisation des drones dans le cadre d'un conflit armé. Celui-ci vise à assurer la licéité de cette utilisation pour ce qui concerne d'une part les relations interétatiques et d'autre part les cibles attaquées par les drones.

Drones militaires en opération et responsabilité internationale

Philippe Lagrange. - In: Le droit à l'épreuve des drones militaires. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 301-318

L'objet de ce chapitre est de déterminer dans quelle mesure le développement et l'utilisation des drones militaires peut déclencher la mise en jeu de mécanismes de responsabilité internationale. Une telle perspective implique de se poser deux séries de questions. La première vise à déterminer si le fait pour un État d'employer des drones dans le cadre d'un conflit armé peut constituer un acte à même d'engager sa responsabilité internationale. La seconde porte sur les utilisations réalisées en dehors de situations de conflits armés, notamment lorsqu'un État va employer un drone armé pour pratiquer des frappes ciblées sur le territoire d'un autre État, sans son autorisation.

Drones militaires en opérations et responsabilité pénale

Pierre-Jérôme Delage. - In: Le droit à l'épreuve des drones militaires. - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 291-300

Le présent chapitre pose la question suivante : responsabilité pénale de qui ? Responsabilité pénale de l'être humain pour les dommages illégaux causés par les drones militaires ? Ou bien-hypothèse de science juridique fiction- responsabilité pénale du drone militaire autonome du fait de ses propres agissements reprochables ? Encore que certains envisagent une troisième possibilité redoutant qu'il n'y ait bientôt purement et simplement plus de responsabilité : pas de responsabilité pénale du drone militaire, et plus de responsabilité pénale humaine. Cette dernière prospection semble erronée. Demain comme aujourd'hui, c'est l'être humain qui sera pénalement responsable: responsable, il l'est en effet en droit positif, et responsable il pourra le demeurer en droit prospectif (et cela, nonobstant l'autonomie à venir des drones militaires).

The duty to disobey illegal nuclear strike orders

Anthony J. Colangelo. In: Harvard national security journal, Vol. 9, issue 2, 2018, p. 84-120

This article argues there is a legal duty to disobey illegal nuclear strike orders. Failure to carry out this duty may result in criminal and civil liability. Because nuclear weapons are quantitatively and qualitatively different from conventional weapons, typical legal calculations regulating their use under the laws of war or humanitarian law, as well as human rights law, change along with the change in weaponry. At least five “unique characteristics” of nuclear weapons ominously distinguish them from conventional weapons in ways that promise only to increase civilian death and suffering. This Article’s thesis largely boils down to: If conventional weapons can be used to achieve the same or similar military objectives as nuclear weapons in proximity to civilians, and nuclear weapons are ordered to be used instead, that order may be manifestly illegal, leading to war crimes for which actors can be liable if they obey the illegal order. This universal customary international law applies both to state and non-state actors alike.

https://harvardnsj.org/wp-content/uploads/sites/13/2018/06/3_Colangelo_DutyToDisobey_06.08.18.pdf

"Enemy-controlled battlespace" : the contemporary meaning and purpose of Additional Protocol I's article 44(3) exception

Kubo Macák and Michael N. Schmitt. In: Vanderbilt journal of transnational law, Vol. 51, 2018, p. 1353-1380

The contemporary propensity for, and risk of, armed conflict taking place among the civilian population has cast a new light on several long-standing challenges to the application of international humanitarian law (IHL). One is the determination of combatant status and, more specifically, the question of when the requirement for the combatants to distinguish themselves from the civilian population may exceptionally be relaxed. In addressing this question, the Article re-examines Additional Protocol I’s Article 44(3) and adopts an interpretation thereof that better comports with its object and purpose than those previously prevalent. After exposing the limitations of relying solely on drafting history to understand the provision’s exception, the object and purpose of Article 44(3) are assessed. On that basis, the authors proffer “enemy control of battlespace” as the appropriate standard for determining situations to which the exception applies. Finally, they highlight a number of legal safeguards that promote the protection of the civilian population whenever the exception is applicable.

<https://www.transnat.org/post/enemy-controlled-battlespace-the-contemporary-meaning-and-purpose-of-additional-protocol-i-s-arti>

Expanding IHL through ICL : how prosecutorial opportunism and judicial activism redefined intra-party SGBV crimes at the ICC

Joanna Frivet. In: Humanitäres Völkerrecht, Bd. 2, H.1-2, 2019, p. 53-66

Despite the reluctance in expanding international humanitarian law (IHL) through international criminal law (ICL), in particular in areas that are deliberately unregulated by the Geneva Conventions, such as intra-party Sexual and Gender Based Violence (SGBV) crimes, the recent decision of the ICC judges in the case against Bosco Ntaganda has created a necessary bridge to mitigate the accountability gap for victims of intra-party SGBV crimes in both international and non-international armed conflicts. This article explores how this decision that affects 64 million individuals who are actively participating in conflicts as part of state military capacity, reserve, and paramilitary groups, was the result of the unexpected convergence of prosecutorial opportunities and judicial activism at the ICC. It also explores, in a question-driven inquiry, the practical implications of expanding the framework of the Geneva Conventions through judicial activism.

Forgotten, but nevertheless relevant ! : Gustave Moynier's attempts to punish violations of the laws of war 1870-1916

Daniel Marc Segesser. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 197-211

Legal historians at law faculties or law schools and historians of law at arts faculties often take different approaches when looking at the past development of law in general and international law in particular. Starting from this assumption, this contribution analyses the almost forgotten proposals made by leading jurist and long-term ICRC-president Gustave Moynier in regard to the punishment of violations of the laws of war in the period between the Franco-Prussian War and the first two years of the First World War. The interplay between the principle of state sovereignty and that of bringing about justice in international relations is at the centre of this contribution. It looks at the importance of an individual in the development

of international legal doctrine and brings a historical analysis of legal developments into dialogue with a legal perspective that wonders about the relevance of history for present-day law.

Fragmented wars : multi-territorial operations against armed groups

Noam Lubell. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p. 3-32

The use of force against armed groups located in other States is not new, but began receiving heightened attention as a result of U.S. operations in Afghanistan following the attacks of September 11, 2001. The high-profile nature of these events, the resoluteness with which the United States asserted its right to self-defense against an armed group, and the international support that it received all led to increased attention to the surrounding legal matters. Much of the debate centered upon the basic question of whether a State has a right to self-defense in response to attacks perpetrated by a non-State actor located in the territory of another State, absent attribution of the attack to the other State. Other important issues included the classification of hostilities between the State and such a group, and rules governing the conduct of the parties. This chapter sets out to draw together the threads of these debates from the last fifteen years, to analyze new questions that have emerged, examine how they impact upon each other, and suggest a way forward for overcoming legal challenges.

Framing thoughts on the DoD Law of War Manual

Michael A. Newton. - In: *The United States Department of Defense Law of War Manual : commentary and critique.* - Cambridge [etc.] : Cambridge University Press, 2018. - p. 3-23

The US Department of Defense (DoD) law of war manual (the manual) is a watershed document that took form over nearly three decades culminating with the first edition in June 2015. In the introductory chapter to this commentary and critique Michael A. Newton examines the historical background and the need for a new American manual. He provides an overview of the contents of the Manual as well as of its contributions and controversies.

<https://doi.org/10.1017/9781108659727.001>

From St Petersburg to Rome : understanding the evolution of the modern laws of war

Matt Killingsworth. In: *Australian journal of politics and history*, Vol. 62, no. 1, 2016, p. 100-115

Despite arguments to the contrary, the state continues to defiantly resist efforts to “extend the reach of legality”, especially as it pertains to attempts to bound the use of organised violence within international legal mechanisms. Yet this defiance is something of a paradox, where the evolution of the modern laws of war are characterised by a contradictory pattern. By focusing on important junctures in the short evolution of the codification of the laws of war it will be argued here that the writings of Swiss jurist Emer de Vattel provide the best insights into this contradictory development.

From Timbuktu to The Hague and beyond : the war crime of intentionally attacking cultural property

Mark A. Drumbl. In: *Journal of international criminal justice*, Vol. 17, no. 1, March 2019, p. 77-99

This essay refracts the criminal conviction and reparations order of the International Criminal Court (ICC) in the Al Mahdi case into the much broader frame of increasingly heated public debates over the protection, removal, defacement, relocation, display and destruction of cultural heritage in all forms: monuments, artefacts, language instruction, art and literature. What might the work product of the ICC in the Al Mahdi proceedings — and international criminal law more generally — add, contribute or excise from these debates? This essay speculatively explores connections between the turn to penal law to protect cultural property and the transformative impulses that undergird transitional justice which, in turn, often insist upon cultural change, including to cultures of oppression and impunity. Along the way, this essay also unpacks thorny questions as to how to value cultural property; how to determine what, exactly, constitutes the kind of property whose destruction should be criminalized; and which ‘cultures’ should be protected by ‘whom’ and in ‘whose’ interests.

<https://doi.org/10.1093/jicj/mqy068>

Gender, enslavement and war economies in Sierra Leone : a case studies from the Special Court for Sierra Leone

Valerie Oosterveld. - In: *Gender and war : international and transitional justice perspectives.* - Cambridge [etc.] : Intersentia, 2019. - p. 147-168

The Special Court for Sierra Leone was created to prosecute those bearing the greatest responsibility for crimes committed during the 1996-2002 period of the decade-long civil war. Given the prevalence of enslavement during the war, it is not surprising that the Special Court examined various forms of forced labour in some depth. It did so in cases involving former RUF and AFRC leaders, as well as the former President of Liberia, Charles Taylor. But did the Court's analysis recognise the gendered nature of the enslavement and thus the gendered nature of the war economy? This chapter analyses this question through an examination of the Special Court's Trial Chamber judgements in the RUF, AFRC, and Taylor cases. It also considers why the linkage between gender, enslavement and the war economy is an important consideration in international criminal law.

A guide to international disarmament law

Stuart Casey-Maslen and Tobias Vestner. - New York : Routledge, 2019. - XXIV, 252 p.

Disarmament is integral to the safeguarding and promotion of security, development, and human rights. Hundreds of millions of dollars are spent each year on disarmament operations, yet no comprehensive guide exists to explain clearly the international rules governing disarmament. This book seeks to fill that gap. It describes the international legal rules that govern disarmament and the operational, political, and technical considerations that govern their implementation. This book aims to support compliance, implementation, and further development of international disarmament law. Traditionally, disarmament focused on weapons of mass destruction. This remains a critically important area of work. In recent decades, the scope of disarmament has broadened to encompass also conventional weapons, including through the adoption of rules and regulations to govern arms transfers and measures to eliminate specific munitions from stockpiles and to destroy explosive remnants of war.

A hidden fault line : how international actors engage with IHL's principle of distinction

Rebecca Sutton. - In: *International humanitarian law and justice : historical and sociological perspectives.* - London ; New York : Routledge, 2019. - p. 85-99

International peacekeeping missions, in particular those espousing a comprehensive or integrated approach, are sites where international humanitarian, political, peacekeeping and military actors struggle to delineate their relationships with each other. This chapter scrutinizes the interactions of international actors who work in and around UN, NATO and EU comprehensive and integrated missions, exploring how issues of "distinction" arise in their encounters with each other. While the principle of distinction in IHL is organized around a civilian-combatant binary, this chapter attends to an important fault line that is obscured by that binary arrangement. This hidden fault line exists within the civilian category. Drawing on original empirical findings from field research conducted at civil-military trainings in Sweden, Germany and Italy, this chapter illuminates the civilian-civilian tensions that unfold in the interactions of international actors.

'Hospital shields' and the limits of international law

Neve Gordon and Nicola Perugini. In: *European journal of international law*, Vol. 30, no. 2, 2019, p. 439-463

Assaults on hospitals have become part of a widespread warfare strategy, propelling numerous actors to claim that belligerents are not being held accountable for attacking medical units. Acknowledging that international humanitarian law (IHL) offers medical units protections, belligerents often claim that the hospitals were being used to shield military targets and therefore the bombing was legitimate. Tracing the history of hospital bombings alongside the development of legal articles dealing with the protection of medical units, we show how, from the early 20th century, international law has introduced a series of exceptions that legitimize attacks on hospitals that were framed as shields. Next, we demonstrate that the shielding argument justifies bombing hospitals because they have ostensibly assumed a threshold position in-between the two axiomatic poles informing the laws of war – combatants and civilians. We argue, however, that medical units tend to occupy a legal and spatial threshold during war and, since IHL does not have the vocabulary to acknowledge the liminal nature of medical units and identifies between liminality and criminality, it introduces several exceptions that help belligerents legitimize their attacks. By way of

conclusion, we maintain that the only way to address the deliberate and widespread destruction of medical units is by reforming the law through the introduction of an absolute ban.

<https://doi.org/10.1093/ejil/chzo29>

How the Tadic appeals chamber decision fundamentally altered customary international law

Michael P. Scharf. - In: The legacy of ad hoc tribunals in international criminal law : assessing the ICTY's and the ICTR's most significant legal accomplishments. - Cambridge : Cambridge University Press, 2019. - p. 59-72

In its first decision, on October 2, 1995, the Appeals Chambers of the Yugoslavia Tribunal held that the same principles of liability that apply to international armed conflict apply to internal armed conflict. Despite dubious provenance, this sweeping decision has been affirmed by the Rwanda Tribunal and the Special Court for Sierra Leone; it has been codified in the military manuals of several governments; it has been enshrined in the 1998 Statute of the International Criminal Court; and is now recognized as customary international law despite the dearth of state practice or prolonged period of development. This chapters examines how the return of genocide to Europe for the first time since World War II and the creation of the first international criminal tribunal since Nuremberg sowed the seeds for rapid recognition of this expanded area of international criminal liability.

Human rights obligations for non-state actors : Where are we now ?

Andrew Clapham. - In: Doing peace the rights way : essays in international law and relations in honour of Louise Arbour. - Cambridge [etc.] : Intersentia, 2019. - p. 11-35

The issue of the human rights obligations of non-state actors is more complex than the question of how far we have come along the road toward an ultimate consensus as to the existence of international responsibilities. Non-state actors do already have international human rights obligations and there are several routes by which they can already be held accountable. The extent of their obligations depends on what kind of non-state actor they are, the context in which they are operating, and any relevant promises made by them. In other words, the scope of their obligations depends on their capacity, contexts, and commitments.

Human rights treaty mechanisms and reparation for international humanitarian law violations : fragmentation, partiality, selective justice ?

Deborah Casalin. In: Human rights and international legal discourse, Vol.13, no. 1, 2019, p. 2-20

International and regional human rights treaty mechanisms have acted as de facto avenues for implementing international humanitarian law (IHL), including through decisions on reparation. In light of the scarcity of other options for victims, human rights bodies will remain relevant actors in this domain, despite criticisms related to their alleged fragmentation of IHL's universality; perceived partiality owing to inability to address non-State actor accountability; and potentially selective, individualised approaches to reparation for mass violations which may clash with collective processes. This article examines the case law and practice of the main human rights treaty mechanisms in light of these criticisms to determine how far they may still be warranted, particularly in the field of reparation. It further aims to identify precedents indicating potential ways to address remaining issues. It finds that practices have been developed which show the possibility of mitigating concerns in all three areas. Regarding fragmentation of IHL, the risk in any event appears low; on the other hand, the mechanisms' capacity to address the non-State actor issue are structurally limited, requiring action on other levels. Finally, regarding the interplay of individualised international claims and collective domestic processes, there is room for further empirical observation regarding effective strategies for international or regional mechanisms to address both individual and societal interests in reparation.

<https://www.jurisquare.be/en/journal/hrild/13-1/human-rights-treaty-mechanisms-and-reparation-for-international-humanitarian-law-violations-fragment/index.html#page/2/search/>

Hybrid conflict and prisoners of war : the case of Ukraine

Jeffrey Kahn. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p. 191-221

The conflicts in eastern Ukraine and Crimea are not the first time sovereign States have clashed under murky and confused circumstances. The law governing international armed conflict, i.e. the law regulating war between States, has long recognized this fact; the threshold to trigger it is a very low one, and it applies “even if the state of war is not recognized by one of them.” Nevertheless, some perceive Ukraine as a case of “hybrid war” for which the old rules are ill-fitting at best, and no longer capable of regulation or restraint. What happens to international humanitarian law (IHL) when, according to Russian General Valériy Gerasimov, the hybrid nature of recent conflicts produces a “tendency to erase differences between the states of war and peace?” This chapter argues that there are in fact two distinct armed conflicts ongoing in eastern Ukraine. First, there is an ongoing but unacknowledged international armed conflict (IAC) in eastern Ukraine between Ukraine and Russia. Second, there is also fighting sufficiently intense and involving sufficiently organized non-State actors to be considered a non-international armed conflict (NIAC) between the Ukrainian State and rebel forces in Donetsk and Luhansk. Adding another layer of complexity, at certain times and places, it may be that this NIAC might have transformed into an IAC because of Russia’s overall control of these non-State actors.

Hybrid law, complex battlespaces : what's the use of a law of war manual ?

Aurel Sari. - In: *The United States Department of Defense Law of War Manual : commentary and critique.* - Cambridge : Cambridge University Press, 2018. - p. 403-430

The purpose of this chapter is to assess how the United States Department of Defense Manual approaches the relationship between the law of war and international human rights law, as seen against the broader context of the changing legal framework of warfare and military operations. The first section of the chapter traces the evolving character of the legal framework of warfare, including the impact of international human rights law. The second section explores the Manual's response to these developments. The third section assesses the Manual's approach against the two traditional functions of military manuals, the law disseminating and the law-shaping function.

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Hybrid warfare, law, and the fulda gap

Aurel Sari. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p. 160-190

The law constitutes an integral and critical element of hybrid warfare. Law conditions how we conceive of and conduct war. By drawing a line between war and peace and between permissible and impermissible uses of force, the international legal framework governing warfare stabilizes mutual expectations among the warring parties as to their future behavior on the battlefield. Hybrid adversaries exploit this stabilizing function of the law in order to gain a military advantage over their opponents. They do so by failing to meet the relevant normative expectations, by using a range of means, including noncompliance with the applicable rules, by instrumentalizing legal thresholds, and by taking advantage of the structural weaknesses of the international legal order, while counting upon the continued adherence of their opponents to these expectations. The overall aim of hybrid adversaries is to create and maintain an asymmetrical legal environment that favors their own operations and disadvantages those of their opponents. This poses two principal challenges, one specific and one systemic in nature. Law is a domain of warfare. Nations facing hybrid threats should therefore prepare to contest this domain and strengthen their national and collective means to do so. At the same time, the instrumentalization of law poses profound challenges to the post-Second World War international legal order. Nations committed to that order cannot afford to respond to hybrid threats by adopting the same means and methods as their hybrid adversaries without contributing to its decay.

ICRC, NATO and the U.S. : direct participation in hacktivities : targeting private contractors and civilians in cyberspace under international humanitarian law

Ido Kilovaty. In: *Duke law and technology review*, Vol. 15, no. 1, 2016, 38 p.

Cyber-attacks have become increasingly common and are an integral part of contemporary armed conflicts. With that premise in mind, the question arises of whether or not a civilian carrying out cyber-attacks during an armed conflict becomes a legitimate target under international humanitarian law. This paper aims to explore this question using three different analytical and conceptual frameworks while looking at a variety

of cyber-attacks along with their subsequent effects. One of the core principles of the law of armed conflict is distinction, which states that civilians in an armed conflict are granted a set of protections, mainly the protection from direct attacks by the adversary, whereas combatants (or members of armed groups) and military objectives may become legitimate targets of direct attacks. Although civilians are generally protected from direct attacks, they can still become victims of an attack because they lose this protection “for such time as they take direct part in hostilities.” In other words, under certain circumstances, if a civilian decides to engage in hostile cyber activities (or “hacktivities”), they may well become a target of a direct lethal attack. The author argues that although the answer is highly nuanced and context dependent, the most salutary doctrinal revision that can be made in this area is that the threshold of harm must adapt to the particular intricacies of cyberspace.

<https://scholarship.law.duke.edu/dltr/vol15/iss1/1>

International gender equality norms and their fragmented protection in conflict

Catherine O'Rourke. In: *feminists@law*, Vol. 9, no 1, 2019, 46 p.

Normative and legal developments in the protection of gender equality in conflict have proliferated in recent decades across diverse regimes of public international law. Nevertheless, the ultimate impact of such international norms on domestic conflict-affected settings is unclear. This article sets out to elucidate how international gender equality norms, underpinned by proliferating soft and hard legal sources, and implemented by separate institutions with widely varying powers of monitoring and enforcement, bring traction to women's and girls' rights in conflict-affected settings. While much discussion of fragmentation focuses on conflict between norms – and how to resolve such conflict within the non-hierarchical structure of international law – this article examines gender equality norms as they are operationalized by the institutions of international law charged with their monitoring and enforcement. International Relations literature suggests that, while international institutions are formally empowered through the consent and consensus of participating states, they in fact operate with considerable autonomy, due to their 'expertise' and consequent pedagogic function as 'teachers' of norms to states. The article investigates this thesis through the case study of the prohibition of sexual violence against girl soldiers in the Democratic Republic of the Congo, focusing on institutional activities under international humanitarian law, international criminal law and the United Nations Security Council.

<https://journals.kent.ac.uk/index.php/feministsatlaw/article/view/750/1464>

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

Marco Sassòli. - Cheltenham ; Northampton : E. Elgar, 2019. - LXI, 656 p.

International humanitarian law (IHL) protects persons and property affected by armed conflicts. Focusing on the controversies that impact IHL in practice, this much-anticipated book from leading expert Marco Sassòli discusses when IHL applies, its substantive rules, how to ensure its respect and whether the traditional distinction between international and non-international armed conflicts remains relevant.

The international law of belligerent occupation

Yoram Dinstein. - Cambridge : Cambridge University Press, 2019. - XXXIX, 327 p.

Belligerent occupations existed in both World Wars and have occurred more recently in all parts of the world (including Iraq, Afghanistan, the former Yugoslavia, Congo, Northern Cyprus, Nagorno-Karabakh, Georgia, Eritrea and Ethiopia). Owing to its special length – exceeding half a century and still in progress – and the unprecedented flow of judicial decisions, a special focus is called for as regards to the occupation of Palestinian territories by Israel. International law addresses the subject of belligerent occupation in some detail. This second, revised edition updates the text (originally published in 2009) in terms of both State practice and doctrinal discourse. The emphasis is put on decisions of the Security Council; legislation adopted by the Coalition Provisional Authority in Iraq; and predominantly case law: international (Judgments of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the European Court of Human Rights; Advisory Opinions and Arbitral Awards) as well as domestic courts.

<https://doi.org/10.1017/9781108671477>

Inventing the war crime : an internal theory

Jessica Laird and John Fabian Witt. In: Virginia journal of international law, Vol. 60, no. 1, 2019, p. 52-99

Ever since the war crime became a central concept in public international law during the war crimes trials at Nuremberg, international lawyers have sought to establish deep historical roots for the practice of prosecuting war crimes. But on close examination, the supposed historical precedents from long ago collapse – and for an important reason. The war crime is a distinctively modern and contingent mechanism for enforcing the laws of armed conflict. This article offers an account of how and why the war crime arose in the nineteenth and twentieth centuries, one that locates the advent of the modern concept in a set of procedural and jurisdictional developments distinctive to the modern era. A nineteenth-century configuration of legal concepts and state institutions pressed a new idea for international law out of the fissures of the international state system. For reasons rooted in the history of warfare and in the distinctive structure of the United States Constitution, that configuration arose most starkly in the United States, where Civil War jurists coined the phrase “war crime” and cemented the modern concept to which it is attached.

<https://vjilorg.files.wordpress.com/2020/02/laird-witt-war-crime-final-127.pdf>

Is there really a need for a new 'digital Geneva Convention' ?

Stefan Kolossa. In: Humanitäres Völkerrecht, Bd. 2, H.1-2, 2019, p. 37-52

The digital age challenges international law. The Internet is not a mere tool for information exchange anymore but plays an increasingly decisive role in modern international warfare and attacks. The encompassing interconnectivity is on the rise and, thereby, the number of possible vulnerabilities is growing. Therefore, the question arises how to address these situations legally. Attacks such as against Estonia, Georgia, and Sony Pictures demonstrate clearly the existing threat. According to Microsoft, the time is ripe for a new Digital Geneva Convention. The article scrutinises the necessity for a new international treaty and evaluates other proposals for the development of international law.

Islamic law and international humanitarian law : an introduction to the main principles

Ahmed Al-Dawoody. In: International review of the Red Cross, Vol. 99, no. 906, 2017, p. 995-1018

This article gives an overview of the principles regulating the use of force under the Islamic law of war in the four Sunni schools of Islamic law. By way of introducing the topic, it briefly discusses the origins, sources and characteristics of the Islamic law of war. The discussion reveals the degree of compatibility between these Islamic principles and the modern principles of international humanitarian law, and offers insights into how these Islamic principles can help in limiting the devastation and suffering caused by contemporary armed conflicts in Muslim contexts, particularly those conflicts in which Islamic law is invoked as the source of reference.

<https://library.icrc.org/library/docs/DOC/irrc-906-al-dawoody.pdf>

Israeli settlements : land politics beyond the Geneva Convention

Martin Blecher. - London [etc.] : Hamilton Books, 2018. - XXIV, 195 p.

Most research and analyses of Israel's settlement enterprise has focused on the use of particular paragraphs in the Geneva Convention. For over fifty years Israel has refuted the use of the Geneva Convention with regards to its settlements. Doing so, a more relevant question arises: what laws, governance, and regulations are of importance in understanding Israelis' behavior? If one accepts the premise that Israel is occupying some areas, and as an occupying force is forbidden to change laws from a previous sovereign, it becomes relevant as to what the laws are and how they are being followed. The aim of this book is to delve deeper in understanding the rationale behind Israeli land policies.

Israeli settlements and unlawful population transfer into occupied territory : with special focus on 'indirect transfers' according to article 8 (2) (b) (viii) of the ICC statute

Corinna Dau. In: *Humanitäres Völkerrecht*, Bd. 2, H.1-2, 2019, p. 67-87

International law prohibits the transfer of population into occupied territory. As there is no provision defining the term nor jurisprudence interpreting it, the precise and correct meaning of the prohibition has been highly debated. The prohibition was first stipulated in Article 49 (6) GC IV and is echoed in Article 8 (2) (b) (viii) ICC Statute by mainly using the same wording. However, in contrast to the convention-based norm, Article 8 (2) (b) (viii) ICC Statute additionally specifies that any transfer 'directly or indirectly', constitutes a violation of international law. The inclusion of these words gives further rise to the challenge of interpreting this provision. By scrutinising the Israeli settlement project, the article therefore aims at identifying which state conduct amount to a 'population transfer' with an emphasis on the specific forms of 'indirect population transfers'.

Judging the past : international humanitarian law and the Luftwaffe aerial operations during the invasion of Poland in 1939

Mateusz Piątkowski. - In: *International humanitarian law and justice : historical and sociological perspectives.* - London ; New York : Routledge, 2019. - p. 114-126

For the IHL framework, the arrival of the plane in the beginning the 20th century raised a significant challenge, involving the technical and operational independence of this new device of warfare. Despite the experiences of the First World War, the states were unable between 1918 and 1939 to implement an acceptable agreement on aerial warfare limitations. In result, the use of aircraft in time of war was an unsettled matter, causing finally havoc and destruction. The question concerning the legitimacy of the aerial bombings during the Second World War is still a subject of a long-lasting controversy, including both legal and historical aspects. In this respect, the presented background of the bombing of the town Wieluń in September 1939 is particularly significant, as it was among the first acts of this war, awakening the need of detailed examination from the perspectives of history and law. The discussion about the legality of air bombardments during the Second World War did not mention the tragedy of this city, or the serious IHL issues of the first organized air operation in the Second World War. The point of this article is to consider the existence and the role of the rules covering aerial warfare at the time and to find the answer to the question about how international law protected or could have protected the inhabitants of Wieluń at the dawn of 1st September 1939.

The law and policy of human shielding

Beth Van Schaack. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University press, 2019. - p. 463-513

The phenomenon of human shields challenges many of the core tenets of international humanitarian law (IHL), including its careful dialectic between the imperatives of humanity and military necessity. Although the concepts of distinction, precaution, and proportionality are well established in the abstract, any consensus on how these rules apply to situations involving human shields is showing signs of fraying. The IHL literature offers competing approaches for evaluating the legal consequences surrounding the use of human shields for the party that stands to benefit from the presence of shields and for the party seeking to engage the shielded military objective. In particular, the application of the rules of distinction and proportionality has become the subject of intense debate about whether human shields are entitled to full civilian protections when it comes to targeting. This legal indeterminacy is being strategically generated and increasingly deployed by a range of implicated actors and norm entrepreneurs in an effort to loosen the restrictions on targeting, to excuse civilian deaths, and to shield armed actors from legal responsibility—all to the detriment of civilian protection. This chapter distinguishes forms of human shielding and sets out the legal framework in treaty and customary international law. It then evaluates the various arguments that address the phenomenon of human shielding. This chapter concludes that the safest course for parties committed to the values underlying IHL is to adopt a policy that treats all human shields as civilians, unless there is irrefutable proof of willing participation in hostilities.

Law for LAWS ? Les discussion relatives à l'encadrement juridique des systèmes d'armes létales autonomes

Anne-Sophie Millet-Devalle. - In: *Le droit à l'épreuve des drones militaires.* - Paris : Librairie générale de droit et de jurisprudence, 2018. - p. 19-46

Les discussions sur les Systèmes d'Armes Létales Autonomes (SALA) portent sur la définition des SALA, leur soumission à un contrôle humain, l'examen des armes imposé par le DIH et la possibilité d'un mécanisme de responsabilité, indispensable au respect des exigences de ce droit. Ces thématiques soulèvent de fait des enjeux de deux natures différentes : les débats relatifs à la notion d'armes létales autonomes relèvent classiquement du droit du désarmement, tandis que ceux portant sur l'emploi de ces armes impliquent une analyse à l'aune de leur compatibilité avec les exigences du droit international humanitaire.

The legacy of the ICTY and ICTR on sexual and gender-based violence

Valerie Oosterveld. - In: *The legacy of ad hoc tribunals in international criminal law : assessing the ICTY's and the ICTR's most significant legal accomplishments.* - Cambridge : Cambridge University Press, 2019. - p. 197-220

This chapter examines the legacy of the ICTY and the ICTR in addressing sexual and gender-based violence. It explores how the ICTY and the ICTR's Trial and Appeals Chambers have influenced definition of sexual and gender-based violations within the categories of genocide, crimes against humanity and war crimes. It first considers the far-reaching impact of the Tribunals on the definition of rape, as well as the legal dissonance they created. The chapter then explores how the Tribunals' legacy on sexual and gender-based violence expand beyond crime definitions. Finally, the chapter offers an analysis of the collective legacy of the ICTY and ICTR on the investigation and prosecution of sexual and gender-based violence.

Legitimacy : the lynchpin of military success in complex battlespaces

Jeffrey S. Thurnher and Thomas E. Ayres. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p.223-258

Legitimacy is a critical factor in operations. States strive to maintain legitimacy of their operations for a variety of reasons. The essence of legitimacy on the battlefield is conducting operations in a manner that enables the fighting force to gain and maintain moral and legal authority. Whenever fighting takes place on a cluttered or complex battlespace, legitimacy is brought to the forefront as the potential for civilian harm is often increased. The desire for legitimacy is perhaps the main reason States voluntarily cede sovereignty to comply with international law. Adherence to the law of armed conflict is a necessary and key component of legitimacy. States, as the primary developers and adherents of international law, created the current law of armed conflict construct and are responsible for ensuring its continued viability. States understand that legitimacy and compliance with the law help shape ultimate victory in complex battlespaces. States further recognize that the law of armed conflict only functions properly when there is a delicate balance between the fundamental principles of humanity and military necessity. In recent years, however, States have been subject to attempts from external entities to tilt this balance in favor of humanitarian considerations and to reshape what are considered legitimate actions on complex battlefields. Simultaneously, States have confronted non-State actors that intentionally seek to flout international law and use it to undermine States' abilities to respond. This chapter examines the importance of legitimacy to States and the reasons States seek to garner it through their military operations.

Lemkin on vandalism and the protection of cultural works and historical monuments during armed conflict

Mark Klamburg. - In: *International humanitarian law and justice : historical and sociological perspectives.* - London ; New York : Routledge, 2019. - p. 183-196

The destruction of cultural property has been subject to different attempts of criminalization at the criminal level and international prosecution is only a recent phenomenon. There may be several reasons for such destruction: symbolic, part of erasing an ethnicity or part of breaking the moral resistance of an enemy. The destruction of cultural property may be part of an armed conflict as well as in the absence or an armed conflict. Cultural property is not only vulnerable in terms of destruction; it may also be subject to other crimes such as theft and illicit transport, during armed conflict as well as during peace. This study focuses on the destruction of cultural property with a starting point with the concept used by Raphaël Lemkin: vandalism and his attempt to include it into genocide convention. Lemkin's efforts turned out to be a

sidetrack to present status of the protection of cultural works and historical monuments under international law. However, this omission should not be exaggerated since acts which would amount to cultural genocide according to Lemkin's original idea could also constitute war crimes and occur in a context of crimes against humanity or genocide.

Lethal autonomous weapons systems : is it the end of the world as we know it ... Or will we be just fine ?

Michael W. Meier. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p. 289-316

Over the past decade, there has been a proliferation of remotely piloted aircraft or “drones” being used on the battlefield. Advances in technology are going to continue to drive changes in how future conflicts will be waged. Technological innovation, however, is not without its detractors as there are various groups calling for a moratorium or ban on the development and use of autonomous weapons systems. Some groups have called for a prohibition on the development, production, and use of fully autonomous weapons through an international legally binding instrument, while others view advances in the use of technology on the battlefield as a natural progression that will continue to make weapons systems more discriminate. The unanswered question is, which point of view will be the right one? This chapter approaches this question by addressing the meaning of “autonomy” and “autonomous weapons systems.” In addition, this chapter looks at the U.S. Department of Defense's vision for the potential employment of autonomous systems, the legal principle applicable to these systems, and the weapons review process.

Looking for the 'missing piece of the puzzle' : corporate accountability in transitional justice

Laura García Martín. In: *Human rights and international legal discourse*, Vol. 13, no. 1, 2019, p. 21-38

This paper examines theoretical and practical considerations on holding corporations accountable for past human rights abuses, focusing on the three legal regimes that have been used to this end so far, namely, domestic criminal law, the civil law of remedies and international human rights law. It then examines the challenges that addressing corporate accountability in transitional justice presents to the emerging framework of business and human rights and, having set the international framework, it explores how corporate accountability can be addressed within the existing transitional justice mechanisms.

<https://www.hrild.org/en/journal/hrild/13-1/looking-for-the-missing-piece-of-the-puzzle-corporate-accountability-in-transitional-justice/index.html#page/21/search/>

Male victims and female perpetrators of sexual violence in conflict

Anne-Marie De Brouwer and Laetitia Ruiz. - In: *Gender and war : international and transitional justice perspectives.* - Cambridge [etc.] : Intersentia, 2019. - p. 169-208

This chapters deals with the too often marginalised categories of conflicts situations with regards to sexual violence, namely male victims and female perpetrators. It first explores the lack of awareness and knowledge surrounding both male victims and female perpetrators of sexual violence and the underlying reasons for such violence. It then discusses how gender norms regarding sexual violence impact on all aspects of the international justice process. In the case of male victims of sexual violence, attention is drawn to the tendency to erase the sexual nature of the crime by using a more general label, such as torture. It is argued that this state of affairs derives from gender norms, which make male victimisation, and especially male sexual victimisation, inconsistent with ideals of masculinity. In the case of female perpetrators of conflict-related sexual violence, it is argued that the existence of female perpetrators of sexual violence in conflict is at odds with ideals of femininity. The chapter ends with some concluding remarks on the ways forward in understanding and prosecuting male sexual victimisation and sexual violence perpetrated by women.

The Manual's redefined concept of non-international armed conflict : applying faux LOAC to a fictional NIAC

David E. Graham. - In: *The United States Department of Defense Law of War Manual : commentary and critique.* - Cambridge : Cambridge University Press, 2018. - p. 141-160

The promulgation of an entire chapter of the United States Department of Defense Manual dedicated to law of armed conflict issues arising in the context of non-international conflicts is a positive development. The

publication of the Manual afforded the United States the opportunity to effectively capture and summarize the contemporary view of the international community concerning the LOAC applicable to NIAC. The Department of Defense chose to use the Manual's treatment of NIAC as a means by which to justify many of the questionable legal positions taken by the United States post-9/11, with respect to al-Qaeda, its members and its associated forces. This chapter concludes with the recommendation that the current US view of NIAC be reconsidered and the manual accordingly revised.

<https://doi.org/10.1017/9781108659727.008>

Misdirected : targeting and attack under the DoD Manual

Adil Ahmad Haque. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 225-260

When do civilians lose their protection in attack ? What steps must combatants take to confirm that particular civilians are liable to attack ? When must combatants refrain from attack in case of doubt ? In this chapter the author attempts to explain that the United States Department of Defense Manual's substantive standard for the loss of civilian protection is broad and vague ; furthermore its evidentiary standard for determining that specific civilians have lost their protection seems weak and subjective ; and its license to attack civilians in case of doubt seems unreasonable and dangerous.

<https://doi.org/10.1017/9781108659727.011>

Muddying the waters : the need for precision-guided terminology in the DoD Law of War Manual

Laurie R. Blank. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 261-281

This chapter highlights the problematic use of terminology for persons throughout the United States Department of Defense Manual, which diminishes protections for civilians, endangering the animating force and core purpose of the law of armed conflict. The first section of this chapter provides the necessary foundation for understanding the inaccuracies and counterproductive terminology in the Manual with a discussion of LOAC's core principles and their reliance on the key categories of individuals in times of conflict. The chapter then examines three critical methodological problems the Manual evinces in its presentation of the categories of civilian and combatant, and the rules that rest on those definitions and categories : the creation of a third class of individuals, and the determination of status by the privileges an individual enjoys or does not enjoy-the reverse of the appropriate methodology. Finally the chapter analyzes the dangers these uncertainties and interpretative problems create for the protection of persons during armed conflict and the effective and consistent application of the law, most importantly the way in which the Manual's presentation of the legal definitions, categories and rules will undermine the protection of civilians during armed conflict.

<https://doi.org/10.1017/9781108659727.012>

National trials of international crimes in Bangladesh : transitional justice as reflected in judgments

by **M. Rafiqul Islam.** - Leiden : Brill Nijhoff, 2019. - XXIX, 506 p.

In National Trials of International Crimes in Bangladesh, Professor Islam examines the judgments of the trials held under a domestic legislation, which is uniquely distinct from international or hybrid trials of international crimes. The book, falling under international criminal law area, is a ground-breaking original work on the first ever such trials in the ICC era. The author shows how the national law and judgments can act as a conduit to import international law to enrich and harmonise the domestic law of Bangladesh; and whether the Bangladesh experience creates any precedential effect for such trials in the future; offers any lessons for the ICC complementarity; and contributes to the progressive development of Asian and international criminal jurisprudence.

A NATO perspective on the Manual

Steven Hill. - In: *The United States department of defense law of war manual : commentary and critique.* - Cambridge : Cambridge University Press, 2018. - p. 79-93

This chapter aims to present one view of the potential impact of the United States Department of Defense Manual on NATO's work in the legal field. The chapter begins by highlighting the importance of legal interoperability among NATO Allies with often diverging legal frameworks and explaining how national law of war manuals can contribute to the mission accomplishment in a multinational setting. It then examines the references to NATO in the manual and offers views on how these references might contribute to our collective understanding of certain perennial legal issues that arise in NATO operations. Finally, the chapter examines the manual's usefulness in promoting further dialogue among Allies and with NATO's partners on key legal issues as well as its potential role in NATO's training activities.

<https://doi.org/10.1017/9781108659727.005>

Naval robots and rescue

Robert Sparrow, Rob McLaughlin and Mark Howard. In: *International review of the Red Cross*, Vol. 99, no. 906, 2017, p. 1139-1159

The development of unmanned systems (UMS) for naval combat poses a profound challenge to existing conventions regarding the treatment of the shipwrecked and wounded in war at sea. Article 18 of the 1949 Geneva Convention II states that warring parties are required to take "all possible measures" to search for and collect seamen left in the water after each engagement. The authors of the present paper analyze the ethical basis of this convention and argue that the international community should demand that UMS intended for roles in war at sea be provided with the capacity to make some contribution to search and rescue operations.

<https://library.icrc.org/library/docs/DOC/irrc-906-sparrow.pdf>

New technologies and the interplay between certainty and reasonableness

Laurie Blank. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p. 317-343

Underlying ongoing and intensive efforts to understand how the law of armed conflict (LOAC) does, could, and should apply to the use of new technologies is an equally comprehensive effort to understand precisely what these new weapons are and how they work. Many new technologies introduce unique questions for human understanding, often driven and exacerbated by the fact that the technology is out of sight or out of reach of human senses, making actual concrete understanding of how it works challenging and elusive. Effective legal analysis and guidance for the use of any weapon rests on an accurate understanding of how that weapon works. This uncertainty and quest for more determinative information about the nature of certain new technologies has the potential for unintended and possibly untoward effects on the very implementation and application of the law itself—in effect, it has the potential to change the law. As in many other legal regimes, critical components of legal analysis and interpretation in LOAC involve reasonableness: that is, whether the actions of a commander were reasonable in the circumstances prevailing at the time. In contrast, the need to understand how a new technology works and what it might do in a given situation, particularly with regard to autonomy, is not an inquiry resting on reasonableness, but rather on the desire for as much certainty as possible. This chapter examines how the development and use of new technologies in weapons may impact the balance between reasonableness and certainty in LOAC, in particular whether a quest for certainty will bleed over into the application and interpretation of the law and, over time, affect the development and understanding of the law itself.

Noncombatant immunity and the ethics of blockade

Robert Mayer. In: *Journal of military ethics*, Vol. 18, issue 1, April-May 2019, p. 2-19

This article counters Michael Walzer's argument against tight blockades. It shows that the interdiction of food shipments need not violate the principle of noncombatant immunity. Whether it is morally permissible to impose a strict blockade depends on the circumstances of the target state. The more self-sufficient a country is, the more acceptable it should be for a belligerent to cut the enemy's external lines of supply. The Allied blockade of Germany during the First World War illustrates the argument. Fault in this case should be assigned to the German government for the loss of civilian lives.

<https://doi.org/10.1080/15027570.2019.1622257>

Palestine and the International Criminal Court

Seada Hussein Adem. - The Hague : T.M.C. Asser Press, 2019. - XII, 228 p.

This book deals with the possible investigation and prosecution by the International Criminal Court (ICC) of crimes allegedly committed in the Israeli-Palestinian conflict. In light of the Rome Statute and the Practice of the Office of the Prosecutor of the Court, among others, it examines the route, possible outcomes, and challenges that may arise were the Palestine situation to be brought before the ICC. The subject matter is approached using the route the Prosecutor of the Court would generally employ to deal with situations. The publication offers a step-by-step procedure by which to conduct the preliminary examination and investigation of the situation in Palestine and deals with matters of jurisdiction, followed by a discussion of the fundamental concepts of complementarity and gravity to determine the admissibility before the ICC. Alleged crimes particularly unique to the Israeli-Palestinian conflict, such as the construction of settlements, forced displacement, house demolitions, the expropriation of land, the crime of apartheid and the blockade of Gaza, are dealt with in light of the Rome Statute and international law.

Peace and justice : human rights fact-finding in raging conflicts

Mona Rishmawi. - In: Doing peace the rights way : essays in international law and relations in honour of Louise Arbour. - Cambridge [etc.] : Intersentia, 2019. - p. 171-197

This chapter narrates the story of fact-finding, largely within the UN human rights context. After discussing the approaches and types of fact-finding, it examines some challenges that face fact-finding in the human rights field. The specific role of Louise Arbour is situated in this story, particularly the strategies she developed to address some of the dilemmas that were faced. Issues pertaining to legal regimes and the differences between human rights investigations and criminal investigations, such as standards of proof, witness protection and follow up, are highlighted.

Personal self-defense and the standing rules of engagement

Christopher M. Ford. - In: Complex battlespaces : the law of armed conflict and the dynamics of modern warfare. - New York : Oxford University Press, 2019. - p. 109-124

The U.S. military Standing Rules of Engagement (SROE) restrict the use of force in armed conflict to either self-defense or “mission-specific” rules of engagement, which refer to the use of force against members of enemy armed forces or organized armed groups that have been “declared hostile.” This bifurcation of authority works well in an international armed conflict, where the enemy force is uniformed and easily distinguished. In these circumstances, the overwhelming number of engagements are against identified hostile forces. In many non-international armed conflicts, however, combatants actively attempt to camouflage their status, and U.S. forces find themselves engaging enemy forces under a self-defense framework. This creates problems. Consider, for example, a situation where three individuals of unknown affiliation launch an attack against a U.S. military convoy in Afghanistan. After a short engagement, the attackers get in a van and speed away from the attack site. The U.S. convoy is disabled, but an unmanned aerial vehicle tracks the van as it retreats into the desert. Thirty minutes later an AH-64 Apache attack helicopter arrives on scene above the still-retreating van. Can the Apache attack the vehicle? The van is retreating and poses no threat, thus self-defense principles would not allow for the use of force, despite the fact that the occupants are clearly directly participating in hostilities. This chapter addresses three questions: Why are the SROE drafted in this manner? What is the basis in the law for the SROE’s approach to self-defense? What are the problems presented by this approach?

Petulant and contrary : approaches by the permanent five members of the UN Security Council to the concept of "threat to the peace" under article 39 of the UN charter

by Tamsin Phillipa Paige. - Leiden : Brill Nijhoff, 2019. - IX, 330 p.

Aside from self-defence, a UN Security Council authorisation under Chapter VII is the only exception to the prohibition on the use of force. Authorisation of the use of force requires the Security Council to first determine whether that situation constitutes a ‘threat to the peace’ under Article 39. The Charter has long been interpreted as placing few bounds around how the Security Council arrives at such determinations. As such commentators have argued that the phrase ‘threat to the peace’ is undefinable in nature and lacking in consistency. Through a critical discourse analysis of the justificatory discourse of the P5 surrounding individual decisions relating to ‘threat to the peace’ (found in the meeting transcripts), this book demonstrates that each P5 member has a consistent definition and understanding of what constitutes a ‘threat to the peace’.

Practitioners and the Law of War Manual

Charles J. Dunlap. - In: *The United States Department of Defense Law of War Manual : commentary and critique.* - Cambridge : Cambridge University Press, 2018. - p. 65-78

This chapter briefly discusses the United States Department of Defense Manual's utility not just as a compendium of legal requirements to which a law-abiding military must adhere, but also comments on its potential as a practical tool to help shape military operations in an era of lawfare. It also examines the Manual's promise as a "norm-setter" in the coming years as new weapons and warfighting methodologies emerge.

<https://doi.org/10.1017/9781108659727.004>

The principle of proportionality in an era of high technology

Jack Beard. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p. 261-287

This chapter explores the application of a key principle of the law of armed conflict—proportionality—in the context of new and emerging weapons systems and methods of warfare. The relentless pursuit of new military technologies by States continues to yield expanding lists of technology-related issues for lawyers to consider in applying the law of armed conflict in complex battlespaces on land, on sea, in air, in space, and in cyberspace. Foremost among these issues is the challenge presented by the principle of proportionality, requiring military forces to refrain from causing excessive damage to civilians and civilian objects when attacking military objectives. New weapons systems in complex battlespaces continue to increasingly force lawyers and decision makers to revisit, re-evaluate, and struggle in new contexts with the “equitable balance between humanitarian requirements and the sad necessities of war.” Some technological developments may, however, also present opportunities for the principle of proportionality to achieve greater relevance to the conduct of armed conflicts and even contribute to improved compliance by States. To illustrate these challenges and opportunities, this chapter examines the application of the principle of proportionality in modern armed conflicts with respect to several critical yet still evolving military technologies: unmanned aerial vehicles, autonomous weapons systems, cyber capabilities, and outer space technologies.

Prosecuting sexual and gender-based crimes in the International Criminal Court : inching towards gender justice

Rosemary Grey and Louise Chappell. - In: *Gender and war : international and transitional justice perspectives.* - Cambridge [etc.] : Intersentia, 2019. - p. 209-234

The chapters begins with a brief background on the prosecution of sexual and gender-based crimes under international law, including in the Rome Statute. It then considers how those provisions of the Rome Statute have been applied in the International Criminal Court to date, taking into account both quantitative and qualitative factors.

Protecting cultural property in Syria : new opportunities for States to enhance compliance with international law ?

Polina Levina Mahnad. In: *International review of the Red Cross*, Vol. 99, no. 906, 2017, p. 1037-1074

The war in Syria has lasted for six years and has led to massive destruction and loss of life. Stymieing international peace efforts from the outset, there is increasing doubt that the conflict will reach a resolution or political settlement in the near future. This frustration has triggered an appetite among States, civil society and the international community for finite and concrete measures that can contribute to greater protection and compliance with international law. A recent constellation of events around the protection of cultural property appears to herald a shift in the response of the international community toward prescribing practical and actionable measures for third-party States. Drawing on the responsibility of third States “to respect and ensure respect for” international humanitarian law, this article examines the legal framework protecting cultural property and recent innovative protection responses that contribute to ensuring compliance with international law in Syria, short of military assistance and intervention.

<https://library.icrc.org/library/docs/DOC/irrc-906-mahnad.pdf>

La protection des droits de l'enfant dans le contexte des conflits armés

Augustin Berceau Omgba Mbarga. - In: Crises humanitaires et responsabilités. - Paris : L'Harmattan, 2018. - p. 151-176

Ce chapitre présente les sources du droit international et interne (Cameroun) relatives à la protection des droits de l'enfant dans le contexte des conflits armés. Jugeant cette protection inefficace, l'auteur émet quelques propositions pour renforcer à la fois le cadre juridique existant et l'action de la communauté internationale.

Putting lethal force on the table : how drones change the alternative space of war and counterterrorism

Joshua Andresen. In: Harvard national security journal, Vol. 8, issue 2, 2017, p. 426-472

Contrary to the prevailing view that drones spare more civilian lives, this article argues that drones place more civilians at risk for the simple reason that drones are used outside areas of active hostilities in civilian populated areas where no other weapon could be used. Many commentators assume that if we were not using drones, we would use some less precise and more destructive alternative, but this assumption is wrong. Drones put lethal force on the table where it would otherwise be absent and highlight the lack of law designed to regulate their use. Because the law of armed conflict was developed for active war zones, it is inadequate to govern drone strikes in areas away from active hostilities. As a result, this article argues that the laws of distinction and proportionality must be reformulated for drone strikes. Rather than focusing solely on the commander's intent to target enemy combatants, distinction should require a functional analysis of the geographic area to be destroyed by a strike—the death zone. Where the death zone by its nature, location, purpose or use is substantially a civilian object, such as an outdoor market or a civilian apartment building, the death zone as a whole should be deemed a civilian object, regardless of the presence of an otherwise valid military objective, such as an enemy militant.

<https://harvardnsj.org/wp-content/uploads/sites/13/2017/02/Andresen-NSJ-Vol-8.pdf>

Regulating private military companies : conflicts of law, history and governance

Katerina Galai. - New York : Routledge, 2019. - VII, 210 p.

This work examines the ability of existing and evolving PMC regulation to adequately control private force, and it challenges the capacity of international law to deliver accountability in the event of private military company (PMC) misconduct. From medieval to early modern history, private soldiers dominated the military realm and were fundamental to the waging of wars until the rise of a national citizen army. Today, PMCs are again a significant force, performing various security, logistics, and strategy functions across the world. Unlike mercenaries or any other form of irregular force, PMCs acquired a corporate legal personality, a legitimising status that alters the governance model of today. Drawing on historical examples of different forms of governance, the relationship between neoliberal states and private military companies is conceptualised here as a form of a 'shared governance'. It reflects states' reliance on PMCs relinquishing a degree of their power and transferring certain functions to the private sector. As non-state actors grow in authority, wielding power, and making claims to legitimacy through self-regulation, other sources of law also become imaginable and relevant to enact regulation and invoke responsibility.

Restraint in bello : some thoughts on reciprocity and humanity

Anna Evangelidi. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 100-113

Conceptualizing war as a reciprocal armed interaction where warring sides are exposed to mutual danger is important for our understanding of restraint in bello. As restraint has long been a matter of mutually beneficial reciprocity, the essay looks at how, and the extent to which, reciprocity creates common ground between the adversaries for mutually restrained violence. The essay goes on to suggest that restraint should not lose sight of humanity – understood here as the need for respect for the enemy as human – which can (and should) serve as the motivating force for restraint even when the expectation of reciprocal commitment to restraint is frustrated. Against this background, the chapter questions the possibility of restraint in the model of armed violence introduced by unmanned aerial vehicles (UAVs) or drones, which moves away from the paradigm of warfare as a reciprocal armed interaction.

Rethinking targeted killing policy : reducing uncertainty, protecting civilians from the ravages of both terrorism and counterterrorism

Shiri Krebs. In: Florida State University law review, Vol. 44, issue 3, Spring 2017, p. 943-993

Targeted killing is a lethal and irreversible counterterrorism measure. Its use is governed by ambiguous legal norms and controlled by security-oriented decision making processes. Oversight is inherently limited, as most of the relevant information is top secret. Under these circumstances, attempts to assess the legality of targeted killing operations raise challenging, yet often undecided, questions, including: How should the relevant legal norms be interpreted? How unequivocal and updated must the evidence be? And, given the inherent limitations of intelligence information, how should doubt and uncertainty be treated? Based on risk analysis, organizational culture and biased cognition theories, as well as on recently released primary documents (including the U.S. Department of Justice Drone Memo and the Report of the Israeli Special Investigatory Commission on the targeted killing of Salah Shehadeh) and a comprehensive analysis of hundreds of conflicting legal sources (including judicial decisions, law review articles, and books), this article offers new answers to some of these old and taunting questions. It clearly defines legal terms such as “military necessity” and “feasible precaution;” it develops a clear-cut, activity-based test for determinations on direct participation in hostilities; it designs an independent ex-post review mechanism for targeting decisions; and it calls for governmental transparency concerning kill-lists and targeting decision making processes. Most importantly, it identifies uncertainty, in law and in practice, as an important challenge to any targeted killing regime. Based on analysis of interdisciplinary studies and lessons from the experience of both the United States and Israel, it advocates a transparent, straightforward, and unambiguous interpretation of targeted killing law—an interpretation that can reduce uncertainty and, if adopted, protect civilians from the ravages of both terrorism and counterterrorism.

<https://ir.law.fsu.edu/lr/vol44/iss3/2/>

Revisiting challenges to international humanitarian law

Tim MacCormack. - In: Doing peace the rights way : essays in international law and relations in honour of Louise Arbour. - Cambridge [etc.] : Intersentia, 2019. - p. 317-351

The article takes both a retrospective and a prospective approach : it reflects upon the challenges to international humanitarian law which loomed large in 1996 and discusses the extent to which those same challenges (or evolved manifestations of them) are still relevant or have been displaced by developments over the past two decades ; and it identifies key twenty-first-century challenges to international humanitarian law which have emerged or are likely to do so.

Revisiting the notion of 'organised armed group' in accordance with Common Article 3 : exploring the inherent minimum threshold requirements

Martha M. Bradley. In: African yearbook on international humanitarian law, 2018, p. 50 - 79

The concepts of ‘organised armed groups’ and ‘intensity’ serve as fundamental benchmark tests for assessing whether a situation is a non-international armed conflict. If both these notions are satisfied, the law of non-international armed conflict applies. In the circumstances a precise understanding of the notion ‘organised armed group’ is imperative. This article sets out to interpret the content and minimum threshold requirements inherent in the notion of ‘organised armed group’ under Common Article 3. Although international tribunals and scholars have offered an invaluable clarification of this construct, and the law of treaty interpretation as set out in Articles 31 to 33 of the Vienna Convention is frequently employed to facilitate the interpretation of the scope of the application of Common Article 3, continued scholarly research on the law of non-international armed conflict means that there is room for further research.

"Rien que la lex lata" ? : étude critique du manuel de Tallinn 2.0 sur le droit international applicable aux cyber-opérations

Karine Bannelier. In: Annuaire français de droit international, 63, 2017, p. 121-160

Codifier 154 'règles' du droit international coutumier applicables aux cyber-opérations, telle est l'ambition du Manuel de Tallinn 2.0. Depuis sa publication, nombre de chancelleries se sont plongées dans son étude afin de mieux le comprendre et d'évaluer dans quelle mesure ses 'règles' pourraient constituer une référence incontournable en matière de droit du cyberspace. L'objet de cet article est de contribuer à la réflexion en proposant une lecture critique de cet ouvrage et en essayant d'identifier si celui-ci souffre de certaines faiblesses. La première partie de cet article montre ainsi que la méthodologie du Manuel est peut-être moins impeccable que ce que suggèrent ses auteurs et que l'identification de la lex lata et sa codification de 154 'règles' coutumières soulèvent de nombreuses interrogations malgré les efforts du directeur du Manuel de

convaincre du caractère idéologiquement neutre de sa démarche. La deuxième partie analyse le contenu du Manuel mettant l'accent non pas tellement sur 'ce qui va bien' mais plutôt sur ce qui 'va moins bien' en soulignant certaines négligences, faiblesses ou parti-pris du Manuel de Tallinn 2.0.

The right to truth : when does it begin ?

William A. Schabas. - In: *Doing peace the rights way : essays in international law and relations in honour of Louise Arbour.* - Cambridge [etc.] : Intersentia, 2019. - p. 37-52

There is a close relation between the "right to truth" and issues of justice, impunity and international criminal justice. The "right to truth" is often presented as being an entitlement of victims and their families. Nevertheless, early formulations of a right to truth also focused on the broader collective dimension of the right.

Routledge handbook of war, law and technology

ed. by James Gow, Ernst Dijkhoorn, Rachel Kerr and Guglielmo Verdirame. - New York : Routledge, 2019. - XVII, 429 p.

This volume provides an authoritative, cutting-edge resource on the characteristics of both technological and social change in warfare in the twenty-first century, and the challenges such change presents to international law. The character of contemporary warfare has recently undergone significant transformation in several important respects: the nature of the actors, the changing technological capabilities available to them, and the sites and spaces in which war is fought. These changes have augmented the phenomenon of non-obvious warfare, making understanding warfare one of the key challenges. Such developments have been accompanied by significant flux and uncertainty in the international legal sphere. This handbook brings together a unique blend of expertise, combining scholars and practitioners in science and technology, international law, strategy and policy, in order properly to understand and identify the chief characteristics and features of a range of innovative developments, means and processes in the context of obvious and non-obvious warfare. The handbook has six thematic sections: law, war and technology ; cyber warfare ; autonomy, robotics and drones ; synthetic biology ; new frontiers ; international perspectives.

"Safe areas" : the international legal framework

Emanuela-Chiara Gillard. In: *International review of the Red Cross*, Vol. 99, no. 906, 2017, p. 1075-1101

In recent years there have been repeated calls for the establishment of so-called "safe areas" to protect civilians from the effects of hostilities in a number of contexts. The present article presents the international law framework relevant to the establishment and operation of such areas: the provisions of international humanitarian law on protected zones; the rules regulating resort to armed force, Security Council authorization and mandates for the establishment of such areas by multinational forces in the absence of agreement between belligerents; and the refugee and international human rights issues raised by such zones. Using the example of the "protection of civilians sites" in South Sudan, the article then highlights some of the operational challenges raised by safe areas. It concludes with some reflections on how to enhance the likelihood that belligerents will establish such protected zones in the future.

<https://library.icrc.org/library/docs/DOC/irrc-906-gillard.pdf>

Save the injured - don't kill IHL : rejecting absolute immunity for 'shielding hospitals'

Yishai Beer. In: *European journal of international law*, Vol. 30, no. 2, 2019, p. 465-480

This article is a response to Neve Gordon and Nicola Perugini's thought-provoking article, "Hospital Shields" and the Limits of International Law', published in this issue. The authors advocate reforming the law to allow hospitals absolute protection, even in cases where they are also used by combatants for military purposes that are harmful to their adversary ('shielding hospitals'). Defining the contour of the desired protection for hospitals should start with both the institutional and personal attributes justifying their special protection as well as with the empirical data relating to the prevalence of attacks on hospitals – who and what triggers them. Against this background, this reply presents the prevailing law that grants strong protection to hospitals, albeit a contingent one that may be removed in exceptional cases of their abuse. It advocates retaining the contingent protection, though with some adjustments, and argues that the suggested absolute protection – in fact, immunity – for shielding hospitals is neither feasible nor normatively desirable.

It would damage the current balance and rationale of the entire body of international humanitarian law in general and have a counter-effect upon the treatment of the sick and wounded in particular. Contrary to its apparent humanitarian rationale, absolute immunity for shielding hospitals would damage their ability to function as medical institutions and allow an adversary who controls a hospital full discretion in selecting its priorities regarding the use of its space and resources and might turn the sick and wounded into a means of warfare.

<https://doi.org/10.1093/ejil/chz037>

Space through the lens of neutrality

by **Peter Hulsroj and Anja Nakarada Pecujlic**. - In: *Conflicts in space and the rule of law*. - Montreal : Centre for research in Air and Space Law, McGill University, 2017. - p. 437-452

There is, as mentioned, a feeling that it is difficult to make space activities fit IHL. This is not only a feeling, but a reality. The very detailed laws of war do not address space activities directly neither for combatants nor for neutral States. There are rules on land warfare, but in what manner do they apply, and the more general rules, in what manner do they apply to a domain like space? Given the fine-toothed comb constituted by the Hague and Geneva Conventions, any attempt to reconcile space activities and IHL must be very careful to distinguish properly. That is the endeavour of the next part, which is followed by another segment where these distinctions are tested against the current laws of war, and more specifically—the principles of neutrality. At the end, the article looks at what general international law and space law have to say on neutrality, including the interesting question of whether space is a sui generis neutral domain.

Specifically vague : the defensive purpose of the DoD Law of War Manual

Chris Jenks. - In: *The United States Department of Defense Law of War Manual : commentary and critique*. - Cambridge : Cambridge University Press, 2018. - p. 47-61

This chapter suggests that what US military commanders and their legal advisors needed (and wanted) was for the manual to provide specific guidance as to the law of armed conflict (LOAC) applicable to US armed forces during non-international armed conflict (NIAC). This chapter assesses how effectively the Manual met its stated purpose to "provide information on the law of war to DoD personnel responsible for implementing the law of war and executing military operations" as applied to two important issues in NIAC : customary international law (CIL) and detention. Section 2 of this chapter highlights the gap the Manual needed to fill as the result of the limited LOAC that applies to NIAC. Section 3 and 4 explain why the Manual's guidance on CIL and detention respectively is too general to meaningfully inform those executing military operations. Section 5 details internal and external factors that limited, or perhaps prevented, the Manual's ability to better meet its purpose.

<https://doi.org/10.1017/9781108659727.003>

Staying the course : a call for sustained support of accountability for conflict-related sexual violence in Bosnia and Herzegovina

Susana SáCouto and Chanté Lasco. - In: *Gender and war : international and transitional justice perspectives*. - Cambridge [etc.] : Intersentia, 2019*. - p. 311-352

This chapter begins with a background section describing : the incidence of sexual violence committed during the conflict in the former Yugoslavia ; the prosecution of serious international crimes at the ICTY as well as in Bosnian courts ; the prosecution of sexual and gender-based violence (SGV) offences in particular at these tribunals. Next, the chapter explores the difficulties facing the War Crimes Section of the State Court of Bosnia and Herzegovina (WCS-BiH) and the district and cantonal courts throughout Bosnia in the prosecution of these crimes, including issues concerning victims and witnesses, other legal challenges and political pressure on the courts. The authors then describe the limited ways in which the international community is currently supporting the continued prosecution of conflict-related SGV in Bosnia and Herzegovina, stressing the risk of backlash in the absence of such support and, thus, the critical need for continued international engagement to ensure effective access to justice for victims of these grave offences.

Through rebel eyes : rebel groups, human rights, and humanitarian law

Hyeran Jo and John Niehaus. In: Law and contemporary problems, Vol. 81, no. 4, 2018, p. 101-120

This article seeks to examine how rebel groups express their understanding of international humanitarian law (IHL) and human rights. Specifically, this article provides a typology of rebel understanding of IHL. The article starts with the assumption that rebels' legal understanding will be influenced by rebels' political incentives, social interactions, historical circumstances, as well as the legal origins of applicable law. From these considerations, this article identifies four types of rebel understanding of human rights and humanitarian law: shared understanding, local understanding, social understanding, and strategic understanding.

<https://scholarship.law.duke.edu/lcp/vol81/iss4/5>

To kill or not to kill as a social question

Ka Lok Yip. - In: International humanitarian law and justice : historical and sociological perspectives. - London ; New York : Routledge, 2019. - p. 146-159

This chapter engages in the dialectic among human agency, structure and culture to examine the recent debate concerning the strategies for compliance with international humanitarian law ('IHL') triggered by the ICRC-commissioned Study on the Roots of Behaviour in War (the 'RBW Study'). By uncovering the different sociological presuppositions held by the RBW Study and its leading critic, Dale Stephens, it illustrates how the RBW Study's vision of limited human agency in warfare compelled a structurally oriented approach to inducing IHL compliance while Stephens' opposite vision of self-reflexive individuals acting in their authentic, moral self-identity catalysed an agentially oriented approach to ensuring restraint in war. It then draws on literature on the psychology of social norms and empirical cases to assess the practical feasibility and principled merits of emphasising human agency at the expense of structural constraints as a strategy to modify behaviour in warfare. Lastly, it explores how de-emphasising the normativity of IHL because of its association with legal positivism and political liberalism, itself underpinned by political individualism, ends up converting to a sociological form of super-individualism that inflates the power of the individuals and deflates the social process that puts some individuals but not others into positions of power.

Torture 'lite' in the war against Boko Haram : taming the wild zone of power in Cameroon

Shannon Bosch. In: African yearbook on international humanitarian law, 2018, p. 80-97

The 2017 Amnesty International Report on Cameroon raises concerns about a myriad of interrogation techniques, akin to the 'enhanced interrogation techniques' used at Guantanamo Bay, that are being employed in the fight against Boko Haram. The justifications offered by the Cameroonian government suggest that, despite the jus cogens status of the non-derogable prohibition against torture, the 'war on terror' permits the use of more drastic interventions. These justifications are offered to appease the taboo around the use of torture under international law. The interrogation techniques being employed violate both international and domestic law obligations, and this wild zone in which power is being wielded through acts of torture must be tamed.

Transitional justice and a State's response to mass atrocity : reassessing the obligations to investigate and prosecute

Jacopo Roberti di Sarsina ; [forewords by William Schabas and Augusto Antonio Barbera]. - The Hague : T.M.C Asser Press, 2019. - XLII, 248 p.

This book brings a new focus to the ongoing debate on holding perpetrators of massive humanitarian and human rights violations accountable in countries in transition. It provides a clear-cut and comprehensive legal analysis of the content and nature of a state's obligations to investigate and prosecute as enshrined in the most important humanitarian and human rights treaties; it disentangles the common fallacy that these procedural obligations are naturally rooted and clearly spelled out in the general human rights treaties; and it explains the flaws in an absolutist interpretation. This analysis serves to understand whether such procedural obligations, if narrowly construed, act as impediments to countries emerging from periods of conflict or systematic repression in the face of contingent circumstances and the formidable dilemmas raised by a univocal understanding of justice as retribution. Exploring the latest instances of interpretation and application via an analysis of state practice, the jurisprudence of treaty bodies, international courts and tribunals, soft law instruments, and doctrinal contributions, the book also addresses the complex issue of

amnesty, and other transitional justice mechanisms designed to restore peace and facilitate transition traditionally included in national reconciliation programs, and criticizes the contention that amnesty is always prohibited by international law.

Treatment of foreign investments during armed conflicts : the regimes

Viacheslav Liubashenko. In: *Journal of conflict and security law*, Vol. 24, no.1, Spring 2019, p. 145-169

Despite a wide range of progressive developments in modern international law over last decades problems relative to investments circulation in time of an armed conflict are of urgent interest to the lawyers. Besides the fact that practice of treatment of investments by States in times of armed conflicts are still diversified, the existing legal framework do provide the terms for protection of foreign investments. While the provisions of international humanitarian law, obviously, are central in factual assessment, modern international investment treaties also contribute to the issue by encompassing special clauses—overall framework consists from provisions from different branches of international law. The article offers a comprehensive analysis of existing international law of treaties, international humanitarian law and international law on foreign investment in relation to treatment of foreign investments during armed conflicts. It explores correlation and collision of norms within mentioned areas of international law and applicability of legal principles (distinction between property of the belligerent and the nonbelligerent party is the primary one) to concrete situations of international and non-international armed conflicts; through identification and interpretation of provisions relative to confiscation (expropriation) and compensation it goes to construction of the regimes of treatment of foreign investments during armed conflicts. The article concludes with separation of the regimes and the provisions including them.

<https://doi.org/10.1093/jcsl/kry031>

Treaty on the prohibition of nuclear weapons

foreword by Peter Maurer. - Geneva : ICRC, June 2019. - 19 p.

The Treaty on the Prohibition of Nuclear Weapons (TPNW) is the first globally applicable multilateral agreement to comprehensively prohibit nuclear weapons on the basis of international humanitarian law. It prohibits their use, threat of use, development, production, testing and stockpiling. It also commits States to clearing contaminated areas and helping victims. By providing pathways for the elimination of nuclear weapons, the TPNW is an indispensable building block towards a world free of nuclear weapons. This publication contains the text of the TPNW adopted on 7 July 2017 at the United Nations in New York. It is intended to promote understanding of the TPNW's rules and to facilitate its ratification and implementation by governments.

<https://library.icrc.org/library/docs/DOC/icrc-002-4398.pdf>

The United States Department of Defense Law of War Manual : commentary and critique

Michael A. Newton. - Cambridge [etc.] : Cambridge University Press, 2018. - XVIII, 472 p.

This book provides precise analysis of the US approach to the most pressing problems in modern wars, including controversies surrounding use of human shields, fighting in urban areas, the use of cyberwar and modern weaponry, expanding understanding of human rights, and the rise of ISIS. This group of authors, including academics and military practitioners, provides a wealth of expertise that demystifies overlapping threads of law and policy amidst the world's seemingly intractable conflicts.

<https://doi.org/10.1017/9781108659727>

A universal treaty for disasters ? : remarks on the International Law Commission's draft articles on the protection of persons in the event of disasters

Giulio Bartolini. In: *International review of the Red Cross*, Vol. 99, no. 906, 2017, p. 1103-1137

This article analyzes the Draft Articles on the Protection of Persons in the Event of Disasters adopted by the International Law Commission in 2016 in light of the recommendation made by the Commission to elaborate a convention on the basis of this project. While the latter proposal is still under evaluation by the United Nations General Assembly, which has recently decided to postpone its decision until 2020, such a potential

outcome would represent a significant novelty in the area of disaster law, currently characterized by a fragmented legal framework and the lack of a universal flagship treaty. The Draft Articles thus aim to provide a systematization of the main legal issues relevant in the so-called disaster cycle, with solutions that accommodate the different interests of actors involved in a disaster scenario – namely, the affected State, external assisting actors and disaster victims – using a complex “checks and balances” approach.

<https://library.icrc.org/library/docs/DOC/irrc-906-bartolini.pdf>

The use of force in armed conflicts : conduct of hostilities, law enforcement, and self-defense

Gloria Gaggioli. - In: *Complex battlespaces : the law of armed conflict and the dynamics of modern warfare.* - New York : Oxford University Press, 2019. - p. 61-107

In modern warfare, military forces are expected to use lethal or potentially lethal force in a variety of contexts ranging from combat operations against the adversary to maintaining law and order or responding to imminent threats to life or limb. In practice, it may not be easy to distinguish between these various situations, which may overlap, as for instance when fighters hide among rioting civilians or demonstrators. Situations of violence may also be volatile and quickly evolve from mere civilian unrest to armed clashes. This factual or operational complexity is accompanied by a legal complexity. Different legal regimes and “paradigms” govern the use of force. From an international law perspective, the use of force by armed forces and law enforcement officials is governed by two different paradigms: the conduct of hostilities paradigm, derived from international humanitarian law (IHL), and the law enforcement paradigm, mainly derived from international human rights law (IHRL). Additionally, armed forces frequently refer to the concept of self-defense at various levels (State, unit, personal) as encompassed in numerous rules of engagement. The legal sources of these concepts and interplay with IHL and HRL remain often unsettled and deserve being clarified. This chapter aims at addressing the legal complexities in identifying governing use of force rules through the analysis of various situations/scenarios that are typical of contemporary military operations.

The war against civilians : victims of the "war on terror" in Afghanistan and Pakistan

Vasja Badalič. - [S.I.] : Palgrave macmillan, 2019. - XII, 280 p.

This book provides a critical analysis of how the “war on terror” affected the civilian population in Afghanistan and Pakistan. This “forgotten war,” which started in 2001 with the US-led invasion of Afghanistan, has seen more than 212,000 people killed in war-related incidents. Whilst most of the news media shifted their attention to other conflict zones, this war rages on. The author has amassed a vast amount of data on the civilian victims of war from both sides of the Durand line, the border between Afghanistan and Pakistan. He conducted interviews in Peshawar, Quetta, Islamabad, Kabul, Jalalabad, and many other cities and villages from 2008 to 2017. His data is mostly drawn from those extensive conversations held with civilian victims of war, Afghan and Pakistani officials, human-rights activists and members of the insurgency. The book is divided into three parts. The first examines the impact the US-led coalition, Afghan security forces and paramilitary groups had on civilians, with methods of combat such as drone strikes and kill-or-capture missions. The second part focuses on civilian victims of abuses of power by Pakistani security forces, including arbitrary detentions and forced disappearances. In the final part, the author explores the impact of unlawful practices used by the armed insurgency – the Afghan Taliban. Overall, the book seeks to tell the story of the civilian victims of the “War on Terror”.

War of Wor(l)ds : clashing narratives and interpretations of I(H)L in the intractable Israeli-Palestinian conflict

Alexandra Hofer. - In: *International humanitarian law and justice : historical and sociological perspectives.* - London ; New York : Routledge, 2019. - p. 160-172

By applying the social concepts of collective memory and social identity, this chapter explores how parties in an intractable conflict appropriate and interpret international law where existential issues are at stake. It does so by using the dispute on the legal nature of the occupied Palestinian territories as a case study and by analysing the arguments put forth by Israel and Palestine during the proceedings before the United Nations General Assembly and the International Court of Justice in the context of the advisory opinion on the “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”. The paper concludes that in intractable conflicts where existential issues are at stake for both parties, law is appropriated and integrated into group narratives, enabling them to extend their conflict-based policies by other means. If law can help channel and frame the dispute, it cannot impose peace upon either party.

What's in a name, and what's not : the DoD law of war manual and the question of operational utility

Geoffrey S. Corn. - In: The United States Department of Defense Law of War Manual : commentary and critique. - Cambridge : Cambridge University Press, 2018. - p. 94-112

This chapters asks whether the United States Department of Defense Law of War Manual is actually a "practical guide to instruct the user how to perform a given task, set of tasks, or function". This requires first asking what "task" or "function" the Manual is intended to facilitate. This chapter argues that the effort to be "all things for all consumers" compromised the effort to produce a genuine manual, resulting in a product that, albeit valuable for some purposes, failed to hit the most important target.

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When the conflict ends, while uncertainty continues : accounting for missing persons between war and peace in international law

Alessandra La Vaccara ; foreword Vincent Chetail. - Paris : A. Pedone ; Oxford : Hart, 2019. - 465 p.

During an armed conflict and in its aftermath, measures must be undertaken in order to ascertain the fate of the missing and to address the emotional distress of families from the lack of news on their relatives. In the same contextual settings, cases of missing persons may involve criminal accountability, thereby triggering actions directed to answer questions like 'who is responsible?' and 'what are the circumstances of the crime?'. These courses of action respond to two different needs, i.e., the need of families to know the fate and whereabouts of their missing relatives, and the societal and individual need for accountability.

When the end lacks the means : national prosecutions of international crimes and Canada's paper tiger approach

Fannie Lafontaine. - In: Doing peace the rights way : essays in international law and relations in honour of Louise Arbour. - Cambridge [etc.] : Intersentia, 2019. - p. 221-251

This chapters critically assesses the Canadian approach to war criminals present on its territory in the light of the international law framework related to the responsibility of states in the fight against impunity. Canada's policy explicitly combines criminal and administrative remedies. Between the duty to punish the perpetrators of international crimes and the responsibility to exclude them from the protection of international refugee law, international law penetrates Canadian law through two distinct legal branches with objectives that are sometimes contradictory and sometimes complementary.

Women's human rights and the law of armed conflict

Judith Gardam. - In: International human rights of women. - Singapore : Springer. - 18 p.

This chapter examines the extent to which the Law of Armed Conflict (LOAC) has developed in its approach to the protection of women in the post-1993 Vienna Conference era. At that time although the topic of women and human rights law was assuming prominence, there was a vast 'silence' on the adequacy of LOAC to address women's distinctive experiences of armed conflict. This chapter identifies and analyzes the significant areas of change, namely, the recognition of the gendered impact of armed conflict on women; the development in the criminalization of sexual violence in armed conflict through international criminal law; the work of the United Nations, in particular Security Council Resolution 1325 on Women, Peace and Security; and the changing approach of the military establishment of states and the International Committee of the Red Cross to women and LOAC. Finally, the discussion identifies the ongoing challenges for further progress.

https://doi.org/10.1007/978-981-10-4550-9_29-1

Yemen : is the US breaking the law ?

Oona A. Hathaway... [et al.]. In: Harvard national security journal, Vol. 10, issue 1, 2018, p. 1-64

The almost four-year long brutal civil war in Yemen between the central government of President Abdu Rabbu Mansour Hadi and a Shi'a Islamic movement called the Houthis shows no signs of slowing. A coalition

of countries led by Saudi Arabia has provided extensive support to President Hadi, including by conducting an ongoing military campaign against the Houthis. In the course of this military campaign, the Saudi-led coalition has been accused of violating international humanitarian law by killing hundreds of civilians through airstrikes, as well as contributing to a humanitarian disaster by imposing a blockade. Though not a member of the Saudi-led coalition, the United States has provided invaluable support to the coalition's campaign through weapons sales, mid-air refueling of coalition aircraft, targeting assistance, and other training and logistical support. This Article surveys and analyzes a variety of domestic and international law that may apply to the U.S. role in Yemen and finds that continued U.S. support for the Saudi-led coalition in Yemen may violate several domestic and international laws. The article concludes by considering whether and how the laws might be enforced and U.S. legal violations brought to an end.

<https://harvardnsj.org/wp-content/uploads/sites/13/2019/02/Yemen-Is-the-U.S.-Breaking-the-Law.pdf>

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