BIBLIOGRAPHY
1st Issue 2021

International Humanitarian Law

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

ICRC

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Introduction

The International Committee of the Red Cross Library

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

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

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

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

Origin and purpose of the IHL bibliography

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

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

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

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

How to use the IHL Bibliography

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

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

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

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

Access to document

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

Chronology

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

ABC du droit international humanitaire

Département fédéral des affaires étrangères. - Berne : Département fédéral des affaires étrangères, 2018. - 54 p.

https://www.eda.admin.ch/dam/eda/fr/documents/publications/GlossarezurAussenpolitik/ABC-Humanitaeren-Voelkerrechts_fr.pdf

ABC of international humanitarian law

Swiss federal department of foreign affairs. - Bern : Swiss federal department of foreign affairs, 2018. - 50 p.

https://www.eda.admin.ch/dam/eda/en/documents/publications/GlossarezurAussenpolitik/ABC-Humanitaeren-Voelkerrechts_en.pdf

All is fair in law and war ? : legal cynicism in the Israeli-Palestinian conflict

Shiri Krebs. - In: Cynical international law ? : abuse and circumvention in public international and European law. - Berlin : Springer, 2021. - p. 235-259

Classifying non-international armed conflicts : the 'territorial control' requirement under Additional Protocol II in an era of complex conflicts

Martha M. Bradley. In: Journal of international humanitarian legal studies, Vol. 11, no. 2, 2020, p. 349-384

https://doi.org/10.1163/18781527-bja10011 *

Commentaire de la Première Convention de Genève : Convention (I) pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne

Comité éditorial : Knut Dörmann... [et al.] ; équipe en charge du projet : Jean-Marie Henckaerts... [et al.]. - Paris : CICR ; Geneva : ICRC, 2020. - XX, 1163 p.

https://library.icrc.org/library/docs/DOC/icrc-4268-001.pdf

Contingency in international law : on the possibility of different legal histories

ed. by Ingo Venzke and Kevin Jon Heller. - Oxford : Oxford University Press, 2021. - XVI, 550 p.

Decolonizing the Geneva Conventions : national liberation and the development of humanitarian law

Eleanor Davey. - In: Decolonization, self-determination, and the rise of global human rights politics. - Cambridge : Cambridge University Press, 2020. - p. 375-396

The development of humanity as a constraint on the conduct of war

Tim McCormack, Siobhain Galea and Daniel Westbury. In: The Australian yearbook of international law, Vol. 37 (2019), 2020, p. 22-49

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/53588.pdf *

Exploiting natural resources in occupied territories : the conjunction between jus in bello, jus ad bellum and international human rights law

Ka Lok Yip. - In: The legality of economic activities in occupied territories : international law, EU law and business and human rights perspectives. - Abingdon : Routledge, 2020. - p. 25-46

https://doi.org/10.4324/9780429288081 *

The handbook of international humanitarian law

ed. by Dieter Fleck ; in collab. with Knut Dörmann... [et al.]. - Oxford : Oxford University Press, 2021. - XLIV, 764 p.
https://opil.ouplaw.com/view/10.1093/law/9780198847960.001.0001/law-9780198847960 *

The International Committee of the Red Cross and custom

Iris Müller. - In: International organisations, non-state actors, and the formation of customary international law. - Manchester : Manchester University Press, 2020. - p. 306-320

Irreconcilable differences : the threshold for armed attack and international armed conflict

Laurie R. Blank. In: Notre Dame law review, Vol. 96, 2020, p. 249-290
https://heinonline.org/HOL/P?h=hein.journals/tndl96&i=249 *

Jus post bellum and proportionality

Michael A. Newton. - In: Just peace after conflict : jus post bellum and the justice of peace. - Oxford : Oxford University Press, 2020. - p. 79- 96
https://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780198823285.pdf

Lawmaking under pressure : international humanitarian law and internal armed conflict

Giovanni Mantilla. - Ithaca ; London : Cornell University Press, 2020. - X, 247 p.

Legal challenges in extraterritorial military operations

Dieter Fleck. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 47-58

Legal restraints on the use of military force : collected essays by Michael Bothe

ed. by Thilo Marauhn and Barry de Vries. - Leiden : Brill Nijhoff, 2021. - XI, 687 p.

Military operations and the notion of control under international law : Liber Amicorum Terry D. Gill

ed. by Rogier Bartels, Jeroen C. van den Boogaard, Paul A. L. Ducheine, Eric Pouw, Joop Voetelink. - The Hague : Asser Press, 2021. - XIII, 459 p.
https://doi.org/10.1007/978-94-6265-395-5 *

Separation between jus ad bellum and jus in bello as insulation of results, not scopes, of application

Ka Lok Yip. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 1, 2020, p. 31-62
https://doi.org/10.4337/mllwr.2020.01.02 *

Special rules of attribution of conduct in international law

Marko Milanovic. In: International law studies, Vol. 96, issue 1, 2020, p. 295-393
https://digital-commons.usnwc.edu/ils/vol96/iss1/12/

II. Types of conflicts

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

The application of the principle of distinction in the cyber context : a Chinese perspective

Zhixiong Huang and Yaohui Ying. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 335-365
https://library.icrc.org/library/docs/DOC/irrc-913-huang.pdf

Classifying non-international armed conflicts : the 'territorial control' requirement under Additional Protocol II in an era of complex conflicts

Martha M. Bradley. In: Journal of international humanitarian legal studies, Vol. 11, no. 2, 2020, p. 349-384
https://doi.org/10.1163/18781527-bja10011 *

Cyber pillage

Christopher Greulich and Eric Talbot Jensen. In: Southwestern journal of international law, Vol. 26, no. 2, 2020, p. 264-288
https://heinonline.org/HOL/P?h=hein.journals/sjlta26&i=278 *

The impact of control over armed forces on conflict classification in war crimes cases

Rogier Bartels. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 235-261

In control : harnessing aerial destructive force

Frans P. B. Osinga and Mark P. Roorda. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 161-193

International humanitarian law and cyber operations during armed conflicts

ICRC. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 481-492
https://library.icrc.org/library/docs/DOC/irrc-913-positionpapercyber.pdf

La jurisprudence relative à la clause d'exclusion prévue à l'article 141bis du Code pénal : la difficile application du droit international humanitaire par les cours et tribunaux belges

Marine Wéry. In: The military law and the law of war review, Vol. 57, no. 1, 2018-2019, p. 103-139
http://www.ismllw.org/REVIEW/2018-2019%20ART%20Wery.php

Lawmaking under pressure : international humanitarian law and internal armed conflict

Giovanni Mantilla. - Ithaca ; London : Cornell University Press, 2020. - X, 247 p.

Non-international armed conflicts in international law

Yoram Dinstein. - Cambridge : Cambridge University Press, 2021. - XXXVII, 342 p.
https://doi.org/10.1017/9781108864091 *

Protracted armed violence as a criterion for the existence of non-international armed conflict : international humanitarian law, international criminal law and beyond

Miloš Hrnjaz and Janja Simentić Popović. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 473-500
https://doi.org/10.1093/jcsl/kraa009 *

Reconsidering the classification of extraterritorial conflict with armed groups in international humanitarian law

Shin Kawagishi. - In: Changing actors in international law. - Leiden ; Boston : Brill Nijhoff, 2021. - p. 329-355

La rupture de l'équilibre juridique de l'article 141bis du code pénal belge par la jurisprudence sur les "combattants étrangers" : la remise en cause de la répartition des compétences entre le droit international humanitaire et le droit antiterroriste

Julien Tropini. In: The military law and the law of war review, Vol. 57, no. 1, 2018-2019, p. 145-188
http://www.ismllw.org/REVIEW/2018-2019%20ART%20Tropini.php

Russian mercenaries, state responsibility, and conflict in Syria : examining the Wagner group under international law

Michael A. Rizzotti. In: Wisconsin international law journal, Vol. 37, no. 3, p. 569-614
https://repository.law.wisc.edu/s/uwlaw/media/304633

Some thoughts on the role of the notion of "control" in "choosing" the paradigm of hostilities or law enforcement as the governing framework for the use of force in military operations : is there any?

Eric Pouw. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 195-217

The status of rebels in non-international armed conflicts : do they have the right to life ?

Kentaro Wani. - In: Changing actors in international law. - Leiden ; Boston : Brill Nijhoff, 2021. - p. 356-379

To be or not to be ? : legal identity in crisis in non-international armed conflicts

Katharine M. A. Fortin. In: Human rights quarterly, Vol. 43, no. 1, February 2021, p. 29-69
https://doi.org/10.1353/hrq.2021.0001 *

Twenty years on : international humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts

Laurent Gisel, Tilman Rodenhäuser and Knut Dörmann. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 287-334
https://library.icrc.org/library/docs/DOC/irrc-913-gisel.pdf

War crimes in cyberspace : prosecuting disruptive cyber operations under Article 8 of the Rome Statute

Georgia Beatty. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 2, 2020, p. 209-239
https://doi.org/10.4337/mllwr.2020.02.17 *

III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Allies, partners and proxies : managing support relationships in armed conflict to reduce the human cost of war

[ICRC's Support Relationship in Armed Conflicts Initiative ; lead author : Clementine Rendle]. - Geneva : ICRC, March 2021. - 171 p.
https://library.icrc.org/library/docs/DOC/icrc-4498-002.pdf

The 'capture or kill' debate revisited : putting the 'human' back in 'human enhancement of soldiers'

Francisco J Lobo. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 1, 2020, p. 85-120
https://doi.org/10.4337/mllwr.2020.01.04 *

Comparing interpretations of States' and non-state actors' obligations toward cultural heritage in armed conflict and occupation : military manuals and the law of war

Patty Gerstenblith. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 56-81

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Ethics of medical innovation, experimentation, and enhancement in military and humanitarian contexts

ed. by Daniel Messelken, David Winkler. - Cham : Springer Nature Switzerland, 2020. - 268 p.

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Responsibility of organized armed groups controlling territory : attributing conduct to ISIS

Katharine Fortin and Jann Kleffner. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 307-328

La rupture de l'équilibre juridique de l'article 141bis du code pénal belge par la jurisprudence sur les "combattants étrangers" : la remise en cause de la répartition des compétences entre le droit international humanitaire et le droit antiterroriste

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https://doi.org/10.1353/hrq.2021.0001 *

The war lawyers : the United States, Israel, and juridical warfare

Craig Jones. - Oxford : Oxford University Press, 2020. - XXXII, 360 p.

https://doi.org/10.1093/oso/9780198842927.001.0001 *

IV. Multinational forces

The humanitarian civilian : how the idea of distinction circulates within and beyond international humanitarian law

Rebecca Sutton. - Oxford : Oxford University Press, 2021. - XVI, 240 p.

Peacekeepers : internationalist protectors or national perpetrators, protected either way ?

Robert Cryer and Natalia Perova. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 501-536

https://doi.org/10.1093/jcsl/kraa020 *

The use of force for mission accomplishment : a pitfall in contemporary operations ?

Hanna Bourgeois, **Jean-Emmanuel Perrin**. In: The military law and the law of war review, Vol. 57, no. 1, 2018-2019, p. 59-102

http://www.ismllw.org/REVIEW/2018-2019%20ART%20Bourgeois%20Perrin.php

V. Private actors

Russian mercenaries, state responsibility, and conflict in Syria : examining the Wagner group under international law

Michael A. Rizzotti. In: Wisconsin international law journal, Vol. 37, no. 3, p. 569-614

https://repository.law.wisc.edu/s/uwlaw/media/304633

Targeting private military and security companies

Tobias Vestner. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 57, no. 2, 2019, p. 251-278

http://www.ismllw.org/REVIEW/2018-2019%20ART%20Vestner.php

VI. Protection of persons

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

Accounting for those in the hands of the belligerent : security detainees, the missing and the dead in the Israeli-Hamas conflict

Alon Margalit. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 565-598
https://doi.org/10.1093/jcsl/kraa019 *

Conference : war in cities : searching for practical solutions to the contemporary challenges.

In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 2, 2020, p. 130-208
https://www.elgaronline.com/view/journals/mllwr/58-2/mllwr.2020.58.issue-2.xml *

Controlling migrants at sea during armed conflict

Martin D. Fink and Wolff Heintschel von Heinegg. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 219-233

A forgotten history : forcible transfers and deportations in international criminal law

Victoria Colvin and Phil Orchard. In: Criminal law forum, Vol. 32, no. 1, March 2021, p. 51-95
https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/53647.pdf *

Human shielding, subjective intent and harm to the enemy

Bence Kis Kelemen. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 537-564
https://doi.org/10.1093/jcsl/kraa015 *

The humanitarian civilian : how the idea of distinction circulates within and beyond international humanitarian law

Rebecca Sutton. - Oxford : Oxford University Press, 2021. - XVI, 240 p.

The humanitarian fix : navigating civilian protection in contemporary wars

Joe Cropp. - Abingdon : Routledge, 2021. - VIII, 165 p.
https://doi.org/10.4324/9781003007500 *

The internally displaced person in international law

Romola Adeola. - Cheltenham ; Northampton : E. Elgar, 2020. - VIII, 198 p.

International law and the protection of children associated with armed forces and armed groups : reconciling normative standards on recruitment and participation

Owiso Owiso. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 3, H. 3/4, 2020, p. 248-260
https://doi.org/10.35998/huv-2020-0014 *

Protection des soins de santé : guide à l'intention des forces armées

CICR. - Genève : CICR, mars 2021. - 92 p.
https://library.icrc.org/library/docs/DOC/icrc-4504-001.pdf

Protection of detainees from sexual violence under international humanitarian law

Samantha Frances Bradley. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 381-422
https://doi.org/10.1093/jcsl/kraa010 *

The 'revolving door' of direct participation in hostilities : a way forward ?

Alessandro Silvestri. In: Journal of international humanitarian legal studies Vol. 11, no. 2, 2020, p. 410-446
https://doi.org/10.1163/18781527-bja10022 *

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Katharine M. A. Fortin. In: Human rights quarterly, Vol. 43, no. 1, February 2021, p. 29-69
https://doi.org/10.1353/hrq.2021.0001 *

War crimes of conscription, enlistment and use of child soldiers : expendable human rights rhetoric of the International Criminal Court

Sergii Masol. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 3, H. 3/4, 2020, p. 193-208
https://doi.org/10.35998/huv-2020-0010 *

You cannot target child soldiers as if they were adults, can you ? : Solutions to close the gap between law and morals concerning child soldiers currently under discussion

Julia Jungfleisch. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 3, H. 3/4, 2020, p. 261-277
https://doi.org/10.35998/huv-2020-0015 *

VII. Protection of objects

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

The Al Mahdi case : from punishing perpetrators to repairing cultural heritage harm

Karolina Wierczyńska and Andrzej Jakubowski. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 133-156

Asymmetrical legal conflicts

Shiri Krebs. - In: Changing actors in international law. - Leiden ; Boston : Brill Nijhoff, 2021. - p. 304-328

Comparing interpretations of States' and non-state actors' obligations toward cultural heritage in armed conflict and occupation : military manuals and the law of war

Patty Gerstenblith. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 56-81

The disposition of movable cultural heritage

Patty Gerstenblith. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 17-55

EU trade relations with occupied territories : third party obligations flowing from the application of occupation law in relation to natural resources exploitation

Rutger Fransen and Cedric Ryngaert. - In: The legality of economic activities in occupied territories : international law, EU law and business and human rights perspectives. - Abingdon : Routledge, 2020. - p. 47-64
https://doi.org/10.4324/9780429288081 *

Exploiting natural resources in occupied territories : the conjunction between jus in bello, jus ad bellum and international human rights law

Ka Lok Yip. - In: The legality of economic activities in occupied territories : international law, EU law and business and human rights perspectives. - Abingdon : Routledge, 2020. - p. 25-46
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The Geneva list of principles on the protection of water infrastructure : an assessment and the way forward

Mara Tignino and Öykü Irmakkesen. - Leiden ; Boston : Brill Nijhoff, 2020. - VI, 104 p.

Legal protection of the environment : the double challenge of non-international armed conflict and post-conflict peacebuilding

Dieter Fleck. - In: Just peace after conflict : jus post bellum and the justice of peace. - Oxford : Oxford University Press, 2020. - p. 149-164
https://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780198823285.pdf

Protection des soins de santé : guide à l'intention des forces armées

CICR. - Genève : CICR, mars 2021. - 92 p.
https://library.icrc.org/library/docs/DOC/icrc-4504-001.pdf

The swinging pendulum of cultural heritage crimes in international criminal law

Anne-Marie Carstens. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 109-132

VIII. Detention, internment, treatment and judicial guarantees

Accounting for those in the hands of the belligerent : security detainees, the missing and the dead in the Israeli-Hamas conflict

Alon Margalit. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 565-598
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Denying due process while promoting democracy : the Iraqi detention story

Amber Brugnoli. In: Israel law review : a journal of human rights, public and international law, Vol. 54, no.1, 2021, p. 84-119
https://doi.org/10.1017/S0021223720000229 *

Droit de la guerre et droits des prisonniers de guerre au XVIème siècle : le cas de la Ligue en Bretagne (1589-1598)

Hervé Le Goff. In: Annales de Bretagne et des pays de l'Ouest, Vol. 124, no. 2, 2017, p. 7-28
http://journals.openedition.org/abpo/3662

International law, crime and torture

Robert Cryer. - In: Research handbook on torture: legal and medical perspectives on prohibition and prevention. - Cheltenham ; Northampton : E. Elgar, 2020. - p. 288-313

Protection of detainees from sexual violence under international humanitarian law

Samantha Frances Bradley. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 381-422
https://doi.org/10.1093/jcsl/kraa010 *

Research handbook on torture : Legal and medical perspectives on prohibition and prevention

ed. by Malcolm D. Evans, Jens Modvig. - Northampton ; Cheltenham : E. Elgar, 2020. - VIII, 598 p.

The right to a fair trial in international law

Amal Clooney and Philippa Webb ; editorial assistants : Vera Padberg, Katharina Lewis, Samarth Patel, and Giulia Bernabei. - Oxford : Oxford University Press, 2020. - CXX, 931 p.
https://opil.ouplaw.com/view/10.1093/law/9780198808398.001.0001/law-9780198808398 *

The updated ICRC Commentary on the Third Geneva Convention : a new tool to protect prisoners of war in the twenty-first century

Jemma Arman, Jean-Marie Henckaerts, Heleen Hiemstra and Kvitoslava Krotiuk. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 389-416
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IX. Law of occupation

Denying due process while promoting democracy : the Iraqi detention story

Amber Brugnoli. In: Israel law review : a journal of human rights, public and international law, Vol. 54, no.1, 2021, p. 84-119
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EU trade relations with occupied territories : third party obligations flowing from the application of occupation law in relation to natural resources exploitation

Rutger Fransen and Cedric Ryngaert. - In: The legality of economic activities in occupied territories : international law, EU law and business and human rights perspectives. - Abingdon : Routledge, 2020. - p. 47-64
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Exploiting natural resources in occupied territories : the conjunction between jus in bello, jus ad bellum and international human rights law

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X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

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XI. Weapons

Arms supply to Saudi Arabia : a possible implementation of Belgium's state responsibility ?

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

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The shaping of the notion of "control" in the law on international responsibility by certain international and regional courts

Gentian Zyberi. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 281-305

The 'soul of an army' : a defence of military court trials for violations of the law of armed conflict

Conor Donohue. In: Israel law review : a journal of human rights, public and international law, Vol. 54, no. 1, 2021, p. 24-56
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The war lawyers : the United States, Israel, and juridical warfare

Craig Jones. - Oxford : Oxford University Press, 2020. - XXXII, 360 p.
https://doi.org/10.1093/oso/9780198842927.001.0001 *

XIII. International human rights law

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

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

Julia Grignon et Thomas Roos. In: Revue québécoise de droit international, Hors-série, Décembre 2020, p. 663-680
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Drones : aspects légaux

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War crimes of conscription, enlistment and use of child soldiers : expendable human rights rhetoric of the International Criminal Court

Sergii Masol. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 3, H. 3/4, 2020, p. 193-208
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XIV. International criminal law

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The swinging pendulum of cultural heritage crimes in international criminal law

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War crimes in cyberspace : prosecuting disruptive cyber operations under Article 8 of the Rome Statute

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XV. Contemporary challenges

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

Artificial intelligence and machine learning in armed conflict : a human-centered approach

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Denying due process while promoting democracy : the Iraqi detention story

Amber Brugnoli. In: Israel law review : a journal of human rights, public and international law, Vol. 54, no.1, 2021, p. 84-119
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SAUDI ARABIA

Arms supply to Saudi Arabia : a possible implementation of Belgium's state responsibility ?

Odile Dua. In: Revue belge de droit international, Vol. 52, 2019-1/2, p. 531-549
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SOUTH SUDAN

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UNITED STATES

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Denying due process while promoting democracy : the Iraqi detention story

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Drones, discretion, and the duty to protect the right to life : Germany and its role in the United States' drone programme before the higher administrative court of Münster

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VIET NAM

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WEST BANK

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WESTERN SAHARA

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YEMEN

Arms supply to Saudi Arabia : a possible implementation of Belgium's state responsibility ?

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All with Abstracts

ABC du droit international humanitaire

Département fédéral des affaires étrangères. - Berne : Département fédéral des affaires étrangères, 2018. - 54 p.

Organisé par mots-clés, l'ABC explique des notions importantes du droit international humanitaire (aussi appelé droit des conflits armés ou droit de la guerre). Brochure enrichie d'un glossaire, elle offre une brève introduction au développement et au champ d'application de cette branche particulière du droit international.

https://www.eda.admin.ch/dam/eda/fr/documents/publications/GlossarezurAussenpolitik/ABC-Humanitaeren-Voelkerrechts_fr.pdf

ABC of international humanitarian law

Swiss federal department of foreign affairs. - Bern : Swiss federal department of foreign affairs, 2018. - 50 p.

Organized by keywords, this ABC explains important concepts in international humanitarian law (also known as the law of armed conflict or the law of war). The brochure is enriched with a glossary and offers a brief introduction to the development and scope of this particular branch of international law.

https://www.eda.admin.ch/dam/eda/en/documents/publications/GlossarezurAussenpolitik/ABC-Humanitaeren-Voelkerrechts_en.pdf

Accounting for those in the hands of the belligerent : security detainees, the missing and the dead in the Israeli-Hamas conflict

Alon Margalit. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 565-598

Five Israeli nationals, two soldiers and three civilians, have gone missing since the 2014 Israeli–Hamas violent escalation, and they are currently held incommunicado by Palestinian armed groups in the Gaza Strip. In response, the Israeli Government revoked some entitlements from Hamas security detainees held in Israel. It also withholds bodies of Palestinian militants, killed while carrying out attacks against Israelis, refusing to hand them over to the families. The bodies are to be buried in Israel until Israeli nationals, or their remains, are repatriated by Hamas. In several instances where the authorities returned the remains to the next of kin, they imposed various restrictions on the funeral arrangements. The Israeli Supreme Court recently examined the Government's practices, with some judges finding them unlawful. These developments call for the analysis of the matter under the law of armed conflict (LOAC), taking into account that other States involved in armed conflict encounter similar challenges. This article accordingly discusses some of the legal obligations arising when persons, or their remains, are believed to be in the hands of the belligerent party. It also considers the legality of certain measures taken to promote their repatriation.

https://doi.org/10.1093/jcsl/kraa019 *

The Al Mahdi case : from punishing perpetrators to repairing cultural heritage harm

Karolina Wierczyńska and Andrzej Jakubowski. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 133-156

This chapter examines the ongoing process of consolidating international criminal law regimes for counteracting cultural heritage crimes, with particular focus on reparations for cultural harm. It begins with a wider panorama of international criminal law and jurisprudence in relation to cultural heritage crimes. This background outlines the limited provisions of the Rome Statute and offers some critical observations in relation to the evolving system of individual criminal

responsibility for cultural heritage crimes. Second, it scrutinizes the approach taken by the International Criminal Court (ICC) in convicting Al Mahdi for the crime of intentionally directing attacks against buildings dedicated to religion and/or historical monuments. Third, this chapter considers the issue of remedies and reparations for cultural harm suffered in light of the relevant provisions of the Rome State and the practice of international human rights bodies. Next, it analyzes the approach taken by the ICC in Al Mahdi regarding the methodology of determining reparations for the international destruction of cultural heritage. This chapter also analyzes the possible reconsideration of the crime of deliberate attacks against protected cultural sites going beyond the notion and scope of war crime.

All is fair in law and war ? : legal cynicism in the Israeli-Palestinian conflict

Shiri Krebs. - In: Cynical international law ? : abuse and circumvention in public international and European law. - Berlin : Springer, 2021. - p. 235-259

This chapter focuses on the role played by international law generally, and international criminal investigations particularly, in a growing new battlefield: the war on public perception of contested wartime events. Building on the theory of legal cynicism, the chapter argues that perceptions of the illegitimacy of international humanitarian law weaken the legal authority of international law and its potential to guide behaviour during armed conflicts. This chapter focuses on the Israeli-Palestinian conflict, arguing that the prevalence of legally cynical framing of international law, institutions and war crimes investigations intensifies pre-existing processes of social backlash and denial among Jewish-Israelis. The findings suggest that applying international humanitarian law to disseminate information about wartime events may backfire, contributing to production of disinformation and of cynical perception of international humanitarian law.

Allies, partners and proxies : managing support relationships in armed conflict to reduce the human cost of war

[ICRC's Support Relationship in Armed Conflicts Initiative ; lead author : Clementine Rendle]. - Geneva : ICRC, March 2021. - 171 p.

The ICRC defines a support relationship in armed conflict as one in which an actor provides support to a party to armed conflict that increases the latter's capacity to conduct armed conflict. The ICRC believes that support relationships have the potential, exercised or not, to positively influence the protection afforded to those not fighting. The ICRC encourages actors in support relationships to take a broad view of their influence over how conflicts are fought and how their aftermath is managed. Through continued engagement and sharing of experiences with actors in support relationships, the ICRC aims to facilitate an understanding of good practices to reduce the human cost of war. To that end, this document asks decision makers to consider pragmatic ways to mitigate the risk of negative humanitarian consequences and enhance the protection of those not fighting, including through better respect for international humanitarian law. With this document, the ICRC seeks to continue its engagement with actors involved in support relationships with a focus on how to further improve practice so as to reduce the impact of war on people.

https://library.icrc.org/library/docs/DOC/icrc-4498-002.pdf

The application of the principle of distinction in the cyber context : a Chinese perspective

Zhixiong Huang and Yaohui Ying. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 335-365

As the first paper written by Chinese scholars specifically devoted to the application of the principle of distinction in IHL to cyberspace operations, this piece provides a different perspective by injecting the positions of Chinese officials and the views of Chinese scholars. The authors aim to clarify whether the existing rules are still completely applicable in the cyber context, and if needed, to find out what kind of improvements and clarifications can be made. They argue that, despite the potential technical challenges and uncertainties, the principle of distinction should be applied to cyberspace. In applying such principle, they argue that it makes more sense to focus on

substantive elements over formal elements such as carrying arms openly or having a fixed distinctive sign recognizable at a distance. Finally, they look at the application in cyberspace of the different criteria triggering the application of IHL in cyberspace.

https://library.icrc.org/library/docs/DOC/irrc-913-huang.pdf

Arms supply to Saudi Arabia : a possible implementation of Belgium's state responsibility ?

Odile Dua. In: Revue belge de droit international, Vol. 52, 2019-1/2, p. 531-549

This paper aims to examine the possible implementation of Belgian responsibility, under Article 1 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts ('ARSIWA'), for the arms transfers to Saudi Arabia authorised by the Walloon Region since the first intervention by the Saudi Arabian-led Coalition in 2015, in light of the IHL and IHRL violations that characterize the conflict in Yemen. The transfers are analysed in respect of three relevant sets of rules of international law. The author argues that the authorised exports are in breach of: first, the Arms Trade Treaty; second, the obligation to ensure respect of IHL, enshrined in Common Article 1 to the Geneva Conventions of 1949; and, third, the prohibition to aid and assist another State in the commission of an internationally wrongful act in the sense of Article 16 ARSIWA.

http://rbdi.bruylant.be/public/modele/rbdi/content/R.B.D.I.%202019-1-2%20pp.%20531-549.pdf

Artificial intelligence and machine learning in armed conflict : a human-centered approach

[ICRC]. In: International review of the Red Cross, Vol. 102, no. 913, 2021, p. 463-479

There are two broad – and distinct – areas of application of AI and machine learning in which the ICRC has a particular interest: first, its use in the conduct of warfare or in other situations of violence; and second, its use in humanitarian action to assist and protect the victims of armed conflict. This paper sets out the ICRC's perspective on the use of AI and machine learning in armed conflict, the potential humanitarian consequences, and the associated legal obligations and ethical considerations that should govern its development and use. It also makes reference to the use of AI tools for humanitarian action, including by the ICRC.

https://library.icrc.org/library/docs/DOC/irrc-913-policyAI.pdf

Asymmetrical legal conflicts

Shiri Krebs. - In: Changing actors in international law. - Leiden ; Boston : Brill Nijhoff, 2021. - p. 304-328

In what forum can non-fighting entities operating in conflict zones (such as medical or humanitarian aid organizations) settle disputes with sovereign countries about wartime attacks that harmed their teams or facilities? The state-centric structure of international law in general, and of existing dispute resolution mechanisms in particular, creates a gap between the available dispute resolution schemes and the growing need of non-fighting entities operating in conflict zones for an adequate forum to settle their disputes with both state and non-state parties to the armed conflict. The chapter demonstrates this gap through an analysis of the legal dispute between Doctors Without Borders and the United States, resulting from the latter's attack on Doctors Without Borders' hospital in Kunduz, Afghanistan in October 2015. The analysis of conflict resolution efforts following the attack on the hospital illustrates the limitations of the existing regime and its inadequacy to current day battlefield disputes. Based on this analysis, the Chapter suggests moving away from criminal investigations, in favour of a preventive fact-finding approach that focuses on future prevention and on organizational reforms.

Autonomous cyber capabilities below and above the use of force threshold: balancing proportionality and the need for speed

Peter Margulies. In: International law studies, Vol. 96, issue 1, 2020, p. 394-441

Protecting the cyber domain requires speedy responses. Mustering that speed will be a task reserved for autonomous cyber agents—software that chooses particular actions without prior human approval. Unfortunately, autonomous agents also suffer from marked deficits, including bias, unintelligibility, and a lack of contextual judgment. Those deficits pose serious challenges for compliance with international law principles such as proportionality. In the jus ad bellum, jus in bello, and the law of countermeasures, compliance with proportionality reduces harm and the risk of escalation. Autonomous agent flaws will impair their ability to make the fine-grained decisions that proportionality entails. However, a broad prohibition on deployment of autonomous agents is not an adequate answer to autonomy's deficits. Unduly burdening victim states' responses to the use of force, the conduct of armed conflict, and breaches of the non-intervention principle will cede the initiative to first movers that violate international law. Stability requires a balance that acknowledges the need for speed in victim state responses while ensuring that those responses remain within reasonable bounds. The approach taken in this Article seeks to accomplish that goal by requiring victim states to observe feasible precautions in the use of force and countermeasures, as well as the conduct of armed conflict. Those precautions are reconnaissance, coordination, repair, and review. Reconnaissance entails efforts to map an adversary's network in advance of any incursion by that adversary. Coordination requires the interaction of multiple systems, including one or more that will keep watch on the primary agent. A victim state must also assist through provision of patches and other repairs of third-party states' networks. Finally, planners must regularly review autonomous agents' performance and make modifications where appropriate. These precautions will not ensure compliance with the principle of proportionality for all autonomous cyber agents. But they will both promote compliance and provide victim states with a limited safe harbor: a reasonable margin of appreciation for effects that would otherwise violate the duty of proportionality. That balance will preserve stability in the cyber domain and international law.

https://digital-commons.usnwc.edu/ils/vol96/iss1/13/

Autonomous cyber weapons and command responsibility

Russel Buchan and Nicholas Tsagourias. In: International law studies, Vol. 96, issue 1, 2020, p. 645-673

Autonomous cyber weapons have made their way onto the battlefield, raising the question of whether commanders can be held criminally responsible under command responsibility when war crimes are committed. The doctrine of command responsibility has a long history in international criminal law and comprises three core elements: the existence of a superior-subordinate relationship, the commander's knowledge of the crime, and the commander's failure to prevent or repress the subordinate's criminal actions. This article unpacks the content of these elements and applies them to autonomous cyber weapons by treating them as being analogous to soldiers since they operate within an organized system of command and control. The article goes on to address the important question of whether autonomous cyber weapons as subordinates can commit crimes and then examines the element of causality for the purposes of command responsibility. This article also explains the nature of command responsibility and offers conclusions as to its utility in establishing accountability when war crimes are committed by autonomous cyber weapons.

https://digital-commons.usnwc.edu/ils/vol96/iss1/21/

"Autonomous" weapons and human control

Jeroen C. van den Boogaard and Mark P. Roorda. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 421-437

There is an ongoing debate on whether and how the use of certain emerging weapon technologies perceived as decreasingly allowing human control over the use of force should be regulated or banned. The focus of the debate on such so-called autonomous weapon systems has from the

outset been too narrow and misguided. The frame of 'autonomy' and the resulting weapon-centric focus on control, neglects that the effects of the military use of weapons may be controlled in many more ways than by restricting certain weapons or technologies. This chapter argues that the legal requirement to exercise control over the effects of the use of force, may be complied with by virtue of a range of (human) decisions preceding, during and even after employment of a particular weapon.

Autonomy and precautions in the law of armed conflict

Eric Talbot Jensen. In: International law studies, Vol. 96, issue 1, 2020, p. 577-602

Already a controversial topic, legal debate and broader discussions concerning the amount of human control required in the employment of autonomous weapons—including autonomous cyber capabilities—continues. These discussions, particularly those taking place among States that are Parties to the 1980 Certain Conventional Weapons Convention, reveal a complete lack of consensus on the requirement of human control and serve to distract from the more important question with respect to autonomy in armed conflict: under what conditions could autonomous weapons "select" and "attack" targets in a manner that complies with the law of armed conflict (LOAC). This article analyzes the specific LOAC rules on precautions in attack, as codified in Article 57 of Additional Protocol I, and asserts that these rules do not require human judgment in targeting decisions. Rather, these rules prescribe a particular analysis that must be completed by those who plan or decide upon an attack prior to exercising force, including decisions made by autonomous systems without meaningful human control. To the extent that autonomous weapons and weapons systems using autonomous functions can be designed and employed in such a way to comply with all required precautions, they would not violate the LOAC. A key feature of determining the ability of autonomous weapons and weapons systems using autonomous functions to meet these requirements must be a rigorous weapons review process.

https://digital-commons.usnwc.edu/ils/vol96/iss1/19/

Beyond human shielding : civilian risk exploitation and indirect civilian targeting

Geoffrey S. Corn. In: International law studies, Vol. 96, issue 1, 2020, p. 118-158

Few violations of the law of armed conflict (LOAC) are as pernicious as using civilians to shield military objectives from attack. This unlawful tactic unfortunately seems to be an all too common practice of organized armed groups, especially in conflicts against tactically superior conventional state armed forces. The very term "human shielding" presupposes, however, the ultimate objective is to prevent an opponent from attacking the shielded military objective or, in the alternative, substantially complicate that attack decision. But is a shielding effect always the ultimate objective of such civilian exploitation? This article argues that the answer is no; that there is a more aggravated form of "human shielding" that occurs when the party exploits civilians in an effort to "bait" the opponent into launching an attack in the hope that it will actually produce civilian casualties, casualties that can be exploited in the broader "legitimacy battle." Thus, unlike the conduct-based violation of human shielding condemned by the LOAC, this tactic seeks to produce the far more egregious result of civilian casualties by exploiting the attacking force as an "innocent agent" to launch an attack. In this situation, the defending force effectively uses the attacking force to "indirectly" attack civilians by executing an attack on the shielded military objective even though the attack is assessed as lawful. This aggravated form of civilian exploitation is not fully captured by the concept of human shielding. Accordingly, this article argues that more effort needs to be devoted to identifying when and how such "indirect attacks" on civilians can be identified and condemned.

https://digital-commons.usnwc.edu/ils/vol96/iss1/7/

Biases in machine learning models and big data analytics : the international criminal and humanitarian law implications

Nema Milaninia. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 199-234

Advances in mobile phone technology and social media have created a world where the volume of information generated and shared is outpacing the ability of humans to review and use that data. Machine learning (ML) models and "big data" analytical tools have the power to ease that burden by making sense of this information and providing insights that might not otherwise exist. ML is being used for a variety of purposes in the context of international criminal and human rights law. ML models are also increasingly being incorporated by States into weapon systems in order to better enable targeting systems to distinguish between civilians, allied soldiers and enemy combatants or even inform decision-making for military attacks. As a result of common human biases to which they are highly susceptible, ML models have the potential to reinforce and even accelerate existing racial, political or gender inequalities, and can also paint a misleading and distorted picture of the facts on the ground. This article discusses how common human biases can impact ML models and big data analytics, and examines what legal implications these biases can have under international criminal law and international humanitarian law.

https://library.icrc.org/library/docs/DOC/irrc-913-milaninia.pdf

The 'capture or kill' debate revisited : putting the 'human' back in 'human enhancement of soldiers'

Francisco J Lobo. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 1, 2020, p. 85-120

This article revisits the cutting-edge 'capture or kill' debate in the field of IHL, offering a fresh outlook that reconstrues the notion of 'human enhancement of soldiers' from a normative standpoint. After sketching the debate and inquiring into its root causes, the article analyses the interplay between military necessity and humanity, in order to endow the latter with its own content drawing on the notions of military honour and human dignity. Finally, it presents a proposal for the moral education of soldiers during military training.

https://doi.org/10.4337/mllwr.2020.01.04 *

The changing role of multilateral forums in regulating armed conflict in the digital age

Amandeep S. Gill. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 261-285

This article examines a subset of multilateral forums dealing with security problems posed by digital technologies, such as cyber warfare, cyber crime and lethal autonomous weapons systems (LAWS). It identifies structural issues that make it difficult for multilateral forums to discuss fast-moving digital issues and respond in time with the required norms and policy measures. Based on this problem analysis, and the recent experience of regulating cyber conflict and LAWS through Groups of Governmental Experts, the article proposes a schema for multilateral governance of digital technologies in armed conflict. The schema includes a heuristic for understanding human-machine interaction in order to operationalize accountability with international humanitarian law principles and international law applicable to armed conflict in the digital age. The article concludes with specific suggestions for advancing work in multilateral forums dealing with cyber weapons and lethal autonomy.

https://library.icrc.org/library/docs/DOC/irrc-913-gill.pdf

Classifying non-international armed conflicts : the 'territorial control' requirement under Additional Protocol II in an era of complex conflicts

Martha M. Bradley. In: Journal of international humanitarian legal studies, Vol. 11, no. 2, 2020, p. 349-384

In terms of Additional Protocol II to the Geneva Conventions 'territorial control' is a requirement in order to determine whether, as contemplated by the provisions of the Protocol, a non-international armed conflict exists. Complex situations in which conflict is not confined to the territorial borders of the State where the non-international armed conflict originated increasingly present a challenge to those responsible for conflict classification under the conventional law of non-international armed conflict. In situations such as these, a non-international armed conflict is no longer restricted to the territory of a single State. Multiple non-international conflicts involving numerous actors can co-exist in a single territory at the same time or lead to fighting across borders. The complex conflict situations in the Central African Republic, Mali, South Sudan and the Democratic Republic of the Congo serve as examples. Attaining legal certainty is pivotal with respect to conflict classification because the category of conflict determines the applicable rules of the conventional law of armed conflict. Even though Additional Protocol II remains the only comprehensive treaty dedicated to the regulation of non-international armed conflict, there is a paucity of literature which analyses its scope of application, and specifically the territorial control requirement. This article offers an in-depth examination of the territorial control requirement.

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Commentaire de la Première Convention de Genève : Convention (I) pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne

Comité éditorial : Knut Dörmann... [et al.] ; équipe en charge du projet : Jean-Marie Henckaerts... [et al.]. - Paris : CICR ; Geneva : ICRC, 2020. - XX, 1163 p.

L'application et l'interprétation des quatre Conventions de Genève de 1949 et de leurs deux Protocoles additionnels de 1977 ont considérablement évolué ces soixante dernières années, depuis que le Comité international de la Croix-Rouge (CICR) a publié pour la première fois ses Commentaires de ces importants traités humanitaires. Afin de permettre une meilleure compréhension de ce corpus juridique et donc son meilleur respect, le CICR a entrepris la mise à jour intégrale de ses premiers commentaires, dont c'est ici le premier volume. La Première Convention est un texte fondamental du droit international humanitaire. Elle renferme les règles essentielles relatives à la protection des blessés et des malades, de ceux qui sont chargés de les secourir, ainsi que des emblèmes de la croix rouge et du croissant rouge. Ce commentaire article par article tient compte des développements du droit et de la pratique pour offrir une interprétation actualisée de la Convention. Ce nouveau Commentaire a été révisé par des universitaires et des praticiens du droit humanitaire du monde entier. Il constitue un outil indispensable pour quiconque travaille dans ce domaine ou étudie cette discipline.

https://library.icrc.org/library/docs/DOC/icrc-4268-001.pdf

Common article 1 and the duty to "ensure respect"

Michael N. Schmitt and Sean Watts. In: International law studies, Vol. 96, issue 1, 2020, p. 674-706

Common Article 1 to the four 1949 Geneva Conventions requires Parties to those instruments to "respect and to ensure respect for the present Convention in all circumstances." The provision is a corollary to the general international legal obligation of States to honor their treaty commitments, expressed classically in the maxim pacta sunt servanda. Yet, academics and private organizations now use Common Article 1 as a vehicle to reimagine States' enforcement obligations under the Geneva Conventions. Reinterpreting the article beyond its original meaning, they claim the article includes an "external" obligation—a duty on the part of all States to use all available means to ensure respect for all provisions of the Conventions by all other States during all armed conflicts, even those to which the State in question is not a party. The ICRC has adopted this

position in its influential updated commentaries on the Geneva Conventions. We reject assertions that the term "ensure respect" ever encompassed an external obligation or that its meaning has evolved to do so. The requisite State practice engaged in out of a sense of legal obligation is simply lacking. In our view, "ensure respect" refers to the duty of parties to an international armed conflict to take measures to ensure their nationals and others under their control comply with the Conventions. The term imposes no obligations on States that are not party to an armed conflict, apart from those few obligations that expressly bind them during peacetime.

https://digital-commons.usnwc.edu/ils/vol96/iss1/22/

Comparing interpretations of States' and non-state actors' obligations toward cultural heritage in armed conflict and occupation : military manuals and the law of war

Patty Gerstenblith. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 56-81

The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) remains the leading treaty on the treatment of cultural heritage during armed conflict and occupation. After several decades of relative dormancy, eleven States have joined the 1954 Hague Convention in the last decade, including two major military powers: the United States and the United Kingdom. In addition to the 1954 Hague Convention, a host of laws touch on the protection of cultural property in armed conflict, as well as those under customary international law. Nonetheless, there are disagreements in interpretations of States' obligations toward cultural property during armed conflict stemming from a variety of factors. These factors can include: whether States are Parties to the instrument that conveys the obligation or if the obligation is one of customary international law, which itself is often contested; the individual State's interpretation; interpretation by tribunals; and a plethora of other factors. Given these discrepancies in interpretation, a review of States' military manuals is useful to see if they shed any light on the State's interpretation of their obligations toward cultural property under the law of armed conflict (LOAC) and international obligations in LOAC more generally. This chapter will analyze and compare the military manuals of the United States and the United Kingdom to determine how they elucidate several key issues in the protection of cultural property during armed conflict, such as the definition of 'cultural property', requirements for 'respect', the doctrine of military necessity, and laws applicable in non-international armed conflicts.

The compatibility of the use of autonomous weapons with the principle of precaution in the law of armed conflict

Elliot Winter. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 2, 2020, p. 240-273

The notion of 'precautions in attack' is an important concept in the law of armed conflict. It requires attackers to verify their targets, to ensure that only proportionate strikes are launched, to mitigate the potential for collateral damage in the selection of means and methods of warfare and, where possible, to issue warnings in advance of attacks. The emergence of 'autonomous weapons' requires us to review how these precautions might apply in a new era of delegated warfare in which the fulcrum around which the regime revolves – the human combatant – would be replaced by artificial intelligence-powered machines. This paper contends that technology is fast approaching the point at which the use of autonomous weapons will be compatible with the requirements of precaution. The author pushes further than most commentators in demonstrating just how capable the technology is becoming; in explaining how close it is to supplanting humans on the battlefield and in showing the potential for machines to discharge precautionary obligations better than humans in at least some areas. However, the article recognizes that technological innovations are still required before this transition comes to pass and so it also illuminates the way forward by identifying where remaining deficiencies linger.

https://doi.org/10.4337/mllwr.2020.02.18 *

Conference : war in cities : searching for practical solutions to the contemporary challenges.

In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 2, 2020, p. 130-208

Includes: The conduct of military operations in the urban environment / Darren Stewart. - Urban warfare and the humanitarian concerns of the International Committee of the Red Cross / Dominique Loye. - Discussion on war in cities: setting the scene / Darren Stewart, Dominique Loye, Stéphane Kolanowski and Ben Klappe. - Preparing for the inevitability of urban warfare / Randall Bagwell. - Implementation of practical measures during combat in urban areas: the case of Ukraine / Valerii Koval. - NATO's perspective on urban conflicts: recent developments / Andrés Muñoz Mosquera. - Discussion on practical implementation of the principle of precaution in urban conflicts / Randall Bagwell and Vaios Koutroulis. - Legal and operational challenges related to methods and means of warfare in urban conflicts / Pieter van Malderen and Simon Gerard. - The need for better data in the explosive weapons in populated areas (EWIPA) debate / Roland Evans. - Explosive weapons in populated areas / Stéphane Kolanowski. - Discussion on legal and operational challenges related to methods and means of warfare in urban conflicts / Paul Berman, Stéphane Kolanoswki, Simon Gerard and Pieter van Malderen. - Challenges raised by contemporary urban conflicts in humanitarian action: the ICRC perspective / Patrick Hamilton. – Displacement of civilians during non-international armed conflict / Ben Klappe. – Generating compliance in conflict settings: how to engage armed non-state actors on international law and live to tell the tale / Ezequiel Heffes. – Discussion on challenges raised by contemporary urban conflicts in humanitarian action / Patrick Hamilton, Ben Klappe, Ezequiel Heffes and Emanuela-Chiara Gillard.

https://www.elgaronline.com/view/journals/mllwr/58-2/mllwr.2020.58.issue-2.xml *

Considerations of necessity under article 57(2)(a)(ii), (c), and (3) and proportionality under article 51(5)(b) and article 57(2)(b) of Additional Protocol I : is there room for an integrated approach?

Wolff Heintschel von Heinegg. - In: Necessity and proportionality in international peace and security law. - Oxford : Oxford University Press, 2021. - p. 325-341

While military necessity as such does not absolve the parties to the conflict from their obligations of avoiding or minimizing collateral damage, of giving an advance warning, or of choosing an alternative target, considerations of military necessity have an impact on the scope of those obligations. The same holds true for the prohibition of collateral damage that is expected to be excessive in relation to the military advantage anticipated and for the obligation to cancel or suspend an attack, if circumstances have changed. Targeting decisions must be based on a complex assessment of a variety of factors that must be taken account of in their entirety. Accordingly, the law of armed conflict obliges those who plan or decide on an attack to adopt an integrated approach.

Contingency in international law : on the possibility of different legal histories

ed. by Ingo Venzke and Kevin Jon Heller. - Oxford : Oxford University Press, 2021. - XVI, 550 p.

This book poses a question that is deceptive in its simplicity: could international law have been otherwise? Today, there is hardly a serious account left that would consider the path of international law to be necessary, and that would refute the possibility of a different law altogether. But behind every possibility of the past stands a reason why the law developed as it did. Only with a keen sense of why things turned out the way they did is it possible to argue about how the law could plausibly have turned out differently. The search for contingency in international law is often motivated, as it is in this volume, by a refusal to resign to the present state of affairs. By recovering past possibilities, this volume aims to inform projects of transformative legal change for the future. The book situates that search for contingency theoretically and carries it into practice across many fields, with chapters discussing human rights and armed conflict, migrants and refugees, the sea and natural resources, foreign investments

and trade. In doing so, it shows how politically charged questions about contingency have always been.

Control in weapons law

William Boothby. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 369-392

This chapter analyses the role that notions of control play in the field of weapons law. For this purpose, the chapter first explores what arms control treaties actually are and where this idea of control features in the treaties. Next, the focus is on the consequences arising from the loss of control of a weapon to determine where responsibility lies for actions that take place after the operator of a weapon has lost control of it. Lastly, the chapter explores the notion of 'meaningful human control' as a possible requirement that weapon systems must be subject to. In this context, the author addresses the question of whether control in this context has the same meaning as control in the context of arms control treaties.

The control requirement of command responsibility : new insights and lingering questions offered by the Bemba appeals chamber case

Harmen van der Wilt and Maria Nybondas. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 329-347

Taking the (controversial) acquittal of Mr. Bemba by the Appeals Chamber of the International Criminal Court as the point of departure, this contribution aims to shed some light on the relationship between two elements of the doctrine of command responsibility, to wit effective control and the material ability to punish or repress crimes by subordinates. We come to the conclusion that distinct perceptions of the nature of command responsibility inevitably produce different interpretations of the elements of the doctrine. If one starts from the premise that command responsibility is predicated on endangerment liability, it is fair to argue that the mere fact that subordinates have engaged in war crimes serves as a rebuttable presumption that the commander has failed to exercise the necessary control. The presumption can indeed be rebutted, first by the finding that the commander has taken adequate measures to repress or punish the perpetrators. Second, because we are dealing with criminal punishment, it must be proven that the commander can be blamed for his dereliction of duty. The commander would not be 'guilty' for absence or loss of control, if it either turns out that another person wielded effective control over the perpetrators, or if the commander had been entrusted with 'command and control', but had lost it along the way, due to, for instance, a mutiny by his subordinates.

Controlling migrants at sea during armed conflict

Martin D. Fink and Wolff Heintschel von Heinegg. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 219-233

Overseas migrant flows during armed conflict can present challenges for naval forces in terms of controlling the maritime operational area. Although armed conflict, refugees, migrants and displaced persons appear inherently interconnected subjects, they are separate issues when viewed from a legal perspective. Controlling the maritime areas, for instance by means of blockade operations, poses questions on how to deal with the duty to rescue migrants at sea. The laws of armed conflict at sea do not provide for rules that collides both issues. This chapter explores some of the questions that arise from the situation of migrant flows within maritime operational areas.

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

Julia Grignon et Thomas Roos. In: Revue québécoise de droit international, Hors-série, Décembre 2020, p. 663-680

75 ans après la fin de l'une des guerres les plus meurtrières et les plus atroces que le continent européen ait connues, 70 ans après la mise en place d'une Convention européenne des droits de l'homme censée symboliser le socle d'une paix durable pour les États européens, de nombreux

conflits impliquant ces États, sur et en dehors du territoire de l'Europe, ont ressurgit. À défaut d'une juridiction propre au droit international humanitaire, le corpus juridique conçu spécifiquement pour régir les conflits armés, c'est la Cour européenne des droits de l'homme qui s'est pour partie appropriée la mission de veiller au respect des droits des personnes relevant de sa juridiction affectées par les conflits armés. La présente contribution analyse la façon dont la juridiction strasbourgeoise s'est saisie – ou non – du droit des conflits armés, et tente d'en dégager une logique. Cet article qui s'inscrit dans le cadre d'une subvention accordée par le Conseil de recherche en sciences humaines du Canada relative à l'application extraterritoriale du droit international des droits humains en contexte d'opérations militaires extérieures sera complété par un autre qui portera sur l'application extraterritoriale de la Convention européenne des droits de l'homme dans le cadre de conflits se déroulant hors du continent européen, mais impliquant des États membres du Conseil de l'Europe.

https://heinonline.org/HOL/P?h=hein.journals/revue2020&i=662 *

Currency warfare and just war : the ethics of targeting currencies in war

Ricardo Crespo. In: Journal of military ethics, Vol. 19, no. 1, April-May 2020, p. 2-19

Is Currency Warfare defined as, the use of monetary or military force directed against an enemy's monetary power as part of a military campaign, a just way to fight a war? This article explores the ethics of waging currency warfare against the Just War Tradition's principles of jus in bello (just conduct in war) and its criteria of discrimination and proportionality. The central argument is that currency warfare is inherently indiscriminate but may be proportionate when policy makers consider the nature of the threat confronted and the targeted currency's level of internationalization, that is, to what degree it is used in foreign transactions or used as a foreign currency reserve. The author evaluates this argument against historical cases during the Second World War (1939–1945), the Gulf War (1990–1991), subsequent operations against Saddam Hussein in the early 1990s, and the ongoing campaign against ISIS.

https://doi.org/10.1080/15027570.2020.1779432 *

Cyber pillage

Christopher Greulich and Eric Talbot Jensen. In: Southwestern journal of international law, Vol. 26, no. 2, 2020, p. 264-288

Despite its historically narrow application under International law, in today's digital age, usage of the term "pillage" has expanded to include the theft of intellectual property carried out by cyber means. The modern usage notwithstanding, it appears the law of armed conflict still limits liability for pillage to the non-consensual takings of public or private property by members of armed forces and affiliated non-state actors during armed conflict for private or personal use. This article applies the historical perspective to modern cyber activities, including those on and off the battlefield, and clarifies that while many activities do not rise to the level of the war crime of "pillage," certain activities can meet the definition of cyber pillage and lead to individual criminal liability under the law of armed conflict. As States contemplate cyber operations during armed conflict, they will need to ensure protections are in place to prevent and punish potential acts of cyber pillage.

https://heinonline.org/HOL/P?h=hein.journals/sjlta26&i=278 *

The dawn of discipline : international criminal justice and its early exponents

Frédéric Mégret, Immi Tallgren. - Cambridge ; New York : Cambridge University Press, 2020. - XXI, 419 p.

The history of international criminal justice is often recounted as a series of institutional innovations. But international criminal justice is also the product of intellectual developments made in its infancy. This book examines the contributions of a dozen key figures in the early phase of international criminal justice, focusing principally on the inter-war years up to Nuremberg. Where did these figures come from, what did they have in common, and what is left of their legacy? What did they leave out? How was international criminal justice framed by the concerns

of their epoch and what intuitions have passed the test of time? What does it mean to reimagine international criminal justice as emanating from individual intellectual narratives? In interrogating this past in all its complexity one does not only do justice to it; one can recover a sense of the manifold trajectories that international criminal justice could have taken.

Decolonizing the Geneva Conventions : national liberation and the development of humanitarian law

Eleanor Davey. - In: Decolonization, self-determination, and the rise of global human rights politics. - Cambridge : Cambridge University Press, 2020. - p. 375-396

This chapter investigates the shifting politics of humanitarianism, and the way that decolonization processes and related ideologies influenced the evolution of human rights and humanitarian norms. It explores these issues by returning to the debates of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which took place in Geneva in four sessions from 1974 to 1977, resulting in Additional Protocols I and II to the Geneva Conventions and the elevation of wars of national liberation to the status of international conflicts. The Conference was remarkable for the participation of thirteen national liberation movements. Their participation attests to the importance of decolonization ideologies and the influence of supporters of decolonization – both those seeking independence and, crucially, newly independent states themselves – in international forums. The chapter assesses how concepts of national liberation were deployed and understood during the Conference, in order to elucidate how humanitarian and human rights ideas and practices interacted with the politics of decolonization.

Denying due process while promoting democracy : the Iraqi detention story

Amber Brugnoli. In: Israel law review : a journal of human rights, public and international law, Vol. 54, no.1, 2021, p. 84-119

During times of military occupation following an armed conflict it is not uncommon for the victors to implement mass detention programmes aimed both at providing security and bringing criminals to justice. International human rights regimes serve as overarching guidance for these programmes but are subject to broad interpretations, so it is often unclear what regulations or laws should inform day-to-day operations. Military and civilian lawyers may find themselves practising in a foreign jurisdiction for which they have no training or experience, let alone licensure. Law enforcement officers and military police are forced to adapt long-held practices to a new environment. Questions arise as to the rights that detained individuals possess, as these programmes frequently combine rules from different legal systems with no clear authoritative hierarchy. Attention is focused on the treatment of detained individuals with far less emphasis placed on their due process rights or other fundamental legal freedoms. This article examines one such instance, the US detention programme in Iraq, and highlights the numerous ethical and professional conflicts presented when members of one justice system are transplanted into another without proper preparation and background.

https://doi.org/10.1017/S0021223720000229 *

The development of humanity as a constraint on the conduct of war

Tim McCormack, Siobhain Galea and Daniel Westbury. In: The Australian yearbook of international law, Vol. 37 (2019), 2020, p. 22-49

International humanitarian lawyers often claim that the rules of international humanitarian law, whether the body of rules regulating the conduct of hostilities or the body of rules establishing minimum standards of protection for different categories of victims of armed conflict, are a balancing act between two key overarching principles: humanity and military necessity. This article, drawing on a publication by Sir Elihu Lauterpacht, discusses the development of humanity as a constraint on the conduct of war by looking successively at the emergence of humanity as a constraint on the conduct of war, humanity as a manifestation of "progressive civilization", the prohibition of exploding and expanding bullets, the representations at and outcomes of the International Peace Conferences in the Hague, and the two World Wars and the evolution of

attitudes towards the notion of humanity as a constraint. It concludes with an overview of the challenges to the efficacy of the constraining effect of humanity.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/53588.pdf *

Disarmament law : reviving the field

ed. by Treasa Dunworth and Anna Hood. - London ; New York : Routledge, 2021. - XII, 202 p.

This volume seeks to start a revival of the field of disarmament law scholarship. Law is a fundamental component of disarmament, yet today, most perspectives on the wide range of disarmament issues that exist come primarily from political, diplomatic and public advocacy angles. The aim of this book is to revive the field of disarmament law building on earlier, important and still relevant contributions by international lawyers to the subject. The collection brings together international scholars on various aspects of disarmament. The contributions range across a variety of weapons types, adopt different approaches - doctrinal, historical and critical - to the issues being discussed and taken together, constitute a snapshot of the ideas, concerns and issues that currently occupy disarmament law scholars. The book will be essential reading for academics, researchers and policymakers working in the area of disarmament.

The disposition of movable cultural heritage

Patty Gerstenblith. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 17-55

Recent conflicts throughout the Middle East and North Africa illustrate that the bifurcation in the international legal regime between those instruments that apply to armed conflict and those that apply to the movement of cultural objects, primarily during peacetime, has severely hampered our ability to protect archaeological sites from looting and has necessitated several sui generis legal instruments, including three UN Security Council resolutions. In addition, questions sometimes arise as to whom and to where cultural objects should be returned following situations of armed conflict and occupation, highlighting a tension between territorial principles that determine a sovereign State's authority over cultural objects found within its territory and the strong cultural connection that links minority or excluded groups with disputed heritage objects. This chapter thereby points out two areas in which intersections are lacking—the intersection between instruments that regulate armed conflict and those that regulate international movement of cultural objects, and the intersection between cultural heritage law and human rights law. The chapter proposes that if these disparate sources of law could be integrated, more effective protection could be given to cultural heritage during armed conflict and there would be movement toward harmonization of rights of minority groups to cultural heritage and of States within the framework of international law.

Droit de la guerre et droits des prisonniers de guerre au XVIème siècle : le cas de la Ligue en Bretagne (1589-1598)

Hervé Le Goff. In: Annales de Bretagne et des pays de l'Ouest, Vol. 124, no. 2, 2017, p. 7-28

Excepté celui de quelques personnes d'importance, le sort des combattants faits prisonniers après les batailles et les redditions de places au cours des guerres du XVIe siècle a peu retenu l'attention des historiens. Ils sont aussi les oubliés des chroniques et des Mémoires du temps. La collecte d'informations éparses permet cependant de s'interroger plus particulièrement sur le sort des soldats du commun tombés aux mains de l'ennemi durant la Ligue en Bretagne. Plus coûteux à entretenir que leur rançon ne pouvait rapporter, étaient-ils relâchés ou exterminés ? Selon quels critères ? Durant ce conflit, aucun codex réglant le droit général des combattants ou définissant la « bonne prise » ne semble régir le sort de ces prisonniers. Malgré tout, ils n'étaient pas toujours soumis à l'arbitraire. À partir de plusieurs cas particuliers, on peut discerner quelques principes comportementaux tenant lieu d'un droit de la guerre qui tarde encore à être formalisé.

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Drones : aspects légaux

Pauline Warnotte. - In: Robotisation des armées : enjeux militaires, éthiques et légaux. - Paris : Economica, 2020. - p. 71-82

Ce chapitre se concentre sur les aspects légaux liés à l'usage de la force létale contre des personnes au moyen de drones armés. A cette fin, les drones peuvent remplir diverses fonctions, notamment en appui aérien des opérations terrestres mais également en moyen stand alone dans le cadre d'opérations de "neutralisation" de personnes. Alors que les drones évoluent aussi bien dans les environnements terrestres que maritimes, leur utilisation dans le cadre de la guerre aérienne est celle qui a provoqué le plus de débats et généré le plus de littérature. Après avoir décrit les problématiques principales posées par ces engins télé-opérés, il sera question des règles de droit applicables à ceux-ci dans le cadre de l'usage de la force, en particulier en lien avec le jus ad bellum, le droit des conflits armés ou jus in bello et les droits de l'homme.

Drones, discretion, and the duty to protect the right to life : Germany and its role in the United States' drone programme before the higher administrative court of Münster

Leander Beinlich. In: German yearbook of international law, Vol. 62 (2019), no. 1, 2021, p. 557-579

In 2014, three Yemeni claimants filed an administrative complaint against the German government addressing Germany's role in the US drone programme. Relying on the right to life under the German Basic Law, the claimants argued that German authorities must prevent the US from using its air base in Ramstein, Germany, for purposes of conducting drone strikes that might unlawfully harm the claimants. On 19th March 2019, the Higher Administrative Court of Münster overruled the court of first instance and partly decided in favour of the claimants. In what is a highly interesting and thought-provoking judgment, the Court not only finds strong reasons to suspect that US drone strikes in Yemen, at least partially, violate international law. Even more, it orders the German government to 'ascertain' that the US drone strikes conducted via Ramstein Air Base are compatible with international law and, 'if necessary', to 'work towards' compliance with international law. Remarkable enough, this outcome is not the only reason why the judgment is worth being discussed: It furthermore raises interesting and difficult questions as to the material and territorial reach of fundamental rights under the German Basic Law, their inter-relation with international law, as well as the scope – and limits – of judicial review in matters of international law and foreign affairs.

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The duty to take precautions in hostilities and the disobeying of orders : should robots refuse?

Francis Grimal and Michael J. Pollard. In: Fordham international law journal, Vol. 44, no. 3, 2021, p. 671-734

This Article not only questions whether an embodied artificial intelligence ("EAI") could give an order to a human combatant, but controversially, examines whether it should also refuse one. A future EAI may be capable of refusing to follow an order, for example, where an order appeared to be manifestly unlawful, was otherwise in breach of International Humanitarian Law ("IHL"), national Rules of Engagement ("ROE") or, even, where they appeared to be immoral or unethical. Such an argument has traction in the strategic realm in terms of "system of systems"—the premise that more advanced technology can potentially help overcome Clausewitzian "friction" or "fog of war." An aircraft's anti-stall mechanism, which takes over, and corrects human error, is seen as nothing less than "positive." As part of opening this much-needed discussion, the Authors examine the legal parameters, and by way of a solution provide a framework for overriding and disobeying. Central to this discussion, are state specific ROEs within the concept of "duty to take precautions." At present, the guidelines relating to a human combatant's right to disobey orders are contained within such doctrine, but vary widely. By way of a solution, the Authors propose the crafting of a test referred to as "robot rules of engagement" ("RROE") with specific regard to the disobeying of orders. These RROE ensure (via a multi-stage verification process) that an EAI can discount human "traits" and minimize errors that lead to breaches of IHL. In the broader sense,

the Authors question whether warfare should remain an utterly human preserve—where human error is an unintended but unfortunate consequence—or, whether the duty to take all feasible precautions in attack in fact require a human commander to utilize available AI systems to routinely question human decision-making, and where applicable, prevent mistakes. In short, the Article examines whether human error can be corrected and overridden, but for the better, rather than for the worse.

https://ir.lawnet.fordham.edu/ilj/vol44/iss3/3/

The enduring legacy of the St Petersburg Declaration : distinction, military necessity, and the prohibition of causing unnecessary suffering and superfluous injury in IHL

Emily Crawford. In: Journal of the history of international law, Vol. 20, no. 4, 2018, p. 544-566

The signal importance of the St. Petersburg Declaration in enunciating the foundational principles of IHL cannot be overstated. While the St Petersburg Declaration was the first instrument to expressly state that there should be limits in warfare, it did so in such a way that its principles would inform IHL treaty-making for a century and a half and beyond. This article will examine the St Petersburg Declaration, and explore how and why it came to include these principles, and how they have been reaffirmed in IHL treaty law in the 150 years since the Declaration's adoption. This article will critically assess the legacy of the Declaration, and, in doing so, explore whether this legacy was an intended outcome for the drafters of the Declaration.

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The (erroneous) requirement for human judgment (and error) in the law of armed conflict

Eric Talbot Jensen. In: International law studies, Vol. 96, issue 1, 2020, p. 26-57

One of the most intriguing and important discussions in international law is the potential impact of emerging technologies on the law of armed conflict (LOAC), including weapons that incorporate machine learning and/or artificial intelligence. Because one of the likely characteristics of these advanced weapons would be the ability to make decisions implicating life and death on the battlefield, these discussions have highlighted a fundamental question concerning the LOAC: Does the law regulating armed conflict require human input in selecting and engaging targets or can that decision be made without human input? This article analyzes views expressed by scholars and NGOs, but focuses on views expressed by States, many of which have been publicized as part of the discussions of States Parties to the Convention on Certain Conventional Weapons. These differing State views make clear that States have not yet come to a consensus on the legal requirement of human decision making for LOAC compliance. Given that lack of consensus, one can only conclude that the law does not currently require a human decision for selecting and engaging targets. Indeed, though the international community may come to such a decision, it has not yet done so. Accordingly, States should continue to research and develop weapons that incorporate machine learning and artificial intelligence because such weapons offer the promise of not only greater LOAC compliance, but also increased opportunities to provide new and creative protections.

https://digital-commons.usnwc.edu/ils/vol96/iss1/2/

Ethics of medical innovation, experimentation, and enhancement in military and humanitarian contexts

ed. by Daniel Messelken, David Winkler. - Cham : Springer Nature Switzerland, 2020. - 268 p.

This book discusses ethical questions surrounding research and innovation in military and humanitarian contexts. It focuses on human enhancement in the military. Recently, the availability of medical enhancement designed to make soldiers more capable of surviving during conflict, as well as enabling them to defeat their enemies, has emerged. Innovation and medical

research in military and humanitarian contexts may thus yield positive effects, but simultaneously leads to a number of highly problematic ethical issues. The work contains contributions on medical ethics that take into account the specific roles and obligations of military and humanitarian health care providers and the ethical problems they encounter. They cover different aspects of research and innovation such as vaccine development, medical enhancement, compassionate and experimental drug use, research and application of new technologies such as wearables, "Humanitarian innovation" to cope with scarce resources, Biometrics, big data, etc. The book is of interest and importance to researchers and policy makers involved with human enhancement, medical research, and innovation in military and humanitarian missions.

EU trade relations with occupied territories : third party obligations flowing from the application of occupation law in relation to natural resources exploitation

Rutger Fransen and Cedric Ryngaert. - In: The legality of economic activities in occupied territories : international law, EU law and business and human rights perspectives. - Abingdon : Routledge, 2020. - p. 47-64

The international trade in products tainted by violations of occupation law elicits the question whether third parties, such as states and regional organizations, which import such products, violate secondary international obligations flowing from the application of occupation law. The focus lies on the European Union (EU) for three reasons: 28 EU Member States have conferred on it the exclusive competence to regulate external commercial policy, the EU has the second-largest share of imports in the world, and EU courts have recently subjected EU trade agreements to legal review, in relation to imports from occupied territories. The contribution examines the compatibility of third parties' trade relations concerning products from occupied territories with international occupation law.

https://doi.org/10.4324/9780429288081 *

Exploiting natural resources in occupied territories : the conjunction between jus in bello, jus ad bellum and international human rights law

Ka Lok Yip. - In: The legality of economic activities in occupied territories : international law, EU law and business and human rights perspectives. - Abingdon : Routledge, 2020. - p. 25-46

This chapter examines the relationship among jus in bello, jus ad bellum and international human rights law in the context of the exploitation of natural resources in territories under belligerent occupation. The most explicit legal regulations of the exploitation of natural resources in occupied territories are contained in the body of international law commonly known as jus in bello, more specifically, the regulations annexed to the Convention respecting the Laws and Customs of War on Land. The exploitation of public land itself, as a type of natural resources whose nature differs from that of underground minerals in that it cannot be 'exhausted' in the same sense, poses a different set of questions. The exploitation of natural resources in occupied territories is an activity regulated by, apart from international human rights law, other prominent bodies of international law, namely jus in bello and jus ad bellum.

https://doi.org/10.4324/9780429288081 *

A forgotten history : forcible transfers and deportations in international criminal law

Victoria Colvin and Phil Orchard. In: Criminal law forum, Vol. 32, no. 1, March 2021, p. 51-95

Forced transfers and deportations of civilian populations are a persistent theme in atrocity crimes. Criminalizing forced displacement not only responds to a major human rights and atrocities problem which is not directly covered by either refugee or international human rights law; it can also serve an important deterrent effect. And yet a critical and enduring question has been around the nature of the relationship between the two offenses of deportation, in which a border is crossed, and forcible transfers, in which a border is not. While both are recognized today as crimes

against humanity, the conventional story is that deportations have a much longer and more enduring history than forcible transfers. We argue that this is wrong, and that practice from the Nineteenth century through Nuremberg viewed "deportation" as encompassing both forms of crimes. The loss of this history, however, has meant that in recent times the ICTY, ECCC, and the ICC have had to in effect reinvent the wheel of how forcible transfers are understood and how they are differentiated from deportations as a distinct crime. While a clear conception of forcible transfers as a crime against humanity is now developing in international criminal law, this has limited the number of prosecutions in spite of the fact that this provides a critical accountability mechanism.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/53647.pdf *

The Geneva list of principles on the protection of water infrastructure : an assessment and the way forward

Mara Tignino and Öykü Irmakkesen. - Leiden ; Boston : Brill Nijhoff, 2020. - VI, 104 p.

Attacks against water infrastructure and their weaponization have hit the headlines several times in recent armed conflicts. As opposed to the protection of water per se as a natural resource and as a vital human need which is dealt with rather extensively in doctrine, the protection of water infrastructure requires greater scrutiny. This monograph includes the Geneva List of Principles on the Protection of Water Infrastructure, drafted in 2019 under the auspices of the Geneva Water Hub, bringing together rules regulating the protection of water infrastructure under international humanitarian law, international human rights law, international environment law and international water law. It aims at providing a holistic approach to the issue by clarifying international obligations and developing recommendations in the form of principles.

The handbook of international humanitarian law

ed. by Dieter Fleck ; in collab. with Knut Dörmann... [et al.]. - Oxford : Oxford University Press, 2021. - XLIV, 764 p.

This updated and revised fourth edition sets out a Black Letter text of international humanitarian law accompanied by case analysis and extensive explanatory commentary. The book takes account of recent legal developments, such as the 2017 Nuclear Weapons Prohibition Treaty, as well as the ongoing debate on many old and new issues including the notion of direct participation in hostilities; air and missile warfare; military operations in outer space; military cyber operations; belligerent occupation; operational detention; and the protection of the environment in relation to armed conflict. The continuing need to consider borderline issues of the law of armed conflict as well as the interplay of international humanitarian law, human rights law, and other branches of international law is highlighted. Certain topics, such as the law of occupation, protection of the environment in relation to armed conflicts, humanitarian assistance, and human rights in armed conflict have been made more visible in separate chapters.

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Human shielding, subjective intent and harm to the enemy

Bence Kis Kelemen. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 537-564

The weaker party in asymmetrical conflicts often attempts to protect itself from attack in a fashion prohibited by international law, particularly by using human shields. This article examines whether the traditional characterization of shielding based on subjective intent (the voluntary or involuntary nature of shielding) has any legal consequence and if so, how subjective intent can result in a change of status under international humanitarian law. This article argues that protective status cannot be altered solely through the intent of protected persons. In light of a careful analysis of treaty law, the author proposes a new understanding of the threshold of harm requirement of direct participation in hostilities and suggests that all human shields should be considered persons directly participating in hostilities, even when they do not possess a legally

relevant will. Consequently, this article calls for an equal treatment of human shields due to their status as direct participants in hostilities. The article also calls for clarification of law by states on this issue, for there are inherent tensions within the law of armed conflict between the applicable law and state policies, in light of the relevant legal norms regulating the consequences of human shielding.

https://doi.org/10.1093/jcsl/kraa015 *

The humanitarian civilian : how the idea of distinction circulates within and beyond international humanitarian law

Rebecca Sutton. - Oxford : Oxford University Press, 2021. - XVI, 240 p.

In international humanitarian law (IHL), the principle of distinction delineates the difference between the civilian and the combatant, and it safeguards the former from being intentionally targeted in armed conflicts. This monograph explores the way in which the idea of distinction circulates within, and beyond, IHL. Taking a bottom-up approach, the multi-sited study follows distinction across three realms: the kinetic realm, where distinction is in motion in South Sudan; the pedagogical realm, where distinction is taught in civil-military training spaces in Europe; and the intellectual realm, where distinction is formulated and adjudicated in Geneva and the Hague. Directing attention to international humanitarian actors, the book shows that these actors seize upon signifiers of 'civilianness' in everyday practice. To safeguard their civilian status, and to deflect any qualities of 'combatantness' that might affix to them, humanitarian actors strive to distinguish themselves from other international actors in their midst. The latter include peacekeepers working for the UN Mission in South Sudan (UNMISS), and soldiers who deploy with NATO missions. Crucially, some of the distinctions enacted cut along civilian-civilian lines, suggesting that humanitarian actors are longing for something more than civilian status - the 'civilian plus'. This special status presents a paradox: the appeal to the 'civilian plus' undermines general civilian protection, yet as the civilian ideal becomes increasingly beleaguered, a special civilian status appears ever more desirable. However disruptive these practices may be to the principle of distinction in IHL, the monograph emphasizes that even at the most normative level there is no bright line distinction to be found.

The humanitarian fix : navigating civilian protection in contemporary wars

Joe Cropp. - Abingdon : Routledge, 2021. - VIII, 165 p.

This book investigates how humanitarians balance the laws and principles of civilian protection with the realities of contemporary warzones, where non-state armed actors assert cultural, political and religious traditions that are often at odds with official frameworks. This book argues that humanitarian protection on the ground is driven not by official frameworks in the traditional sense, but by the relationships between the complex mix of actors involved in contemporary wars. The frameworks, in turn, act as a unifying narrative that preserves these relationships. As humanitarian practitioners navigate this complex space, they act as unofficial brokers, translating the official frameworks to align with the often divergent agendas of non-state armed actors. In doing so, they provide an unofficial humanitarian fix for the challenges inherent in applying the official frameworks in contemporary wars.

https://doi.org/10.4324/9781003007500 *

Humanitarianism and human rights in morality and practice

Charles R. Beitz. - In: Humanitarianism and human rights : a world of differences?. - Cambridge : Cambridge University Press, 2020. - p. 71-88

This chapter examines whether there are meaningful differences between human rights and humanitarianism in terms of perfect and imperfect duties, and concludes that this is a false parallel and that increasingly humanitarianism and human rights are blurring the distinction between the two in terms of their practices.

Imagining justice for Syria

Beth Van Schaack. - Oxford : Oxford University Press, 2020. - XV, 476 p.

This book situates the war in Syria within the actual and imagined system of international criminal justice. It explores the legal impediments and diplomatic challenges that have led to the fatal trinity affecting Syria: the massive commission of international crimes that are subject to detailed investigations and documentation but whose perpetrators have enjoyed virtually complete impunity. Given this tragic state of affairs, the book tracks a number of accountability solutions being explored within multilateral initiatives and by civil society actors, including innovations of institutional design; the renewed utility of a range of domestic jurisdictional principles (including the revival of universal jurisdiction in Europe); the emergence of creative investigative and documentation techniques, technologies, and organizations; and the rejection of state consent as a precondition for the exercise of jurisdiction. Engaging both law and policy around international justice, the text offers a set of justice blueprints, within and without the International Criminal Court. It also considers the utility, propriety, and practicality of pursuing a transitional justice program without a genuine political transition. All told, the book attempts to capture results of the creative energy radiating from members of the international community intent on advancing the accountability norm in Syria even in the face of geopolitical blockages within the U.N. Security Council. In so doing, it presents the range of juridical measures-both criminal and civil - that would be available to the international community to respond to the crisis, if only the political will existed.

https://doi.org/10.1093/oso/9780190055967.001.0001 *

The impact of control over armed forces on conflict classification in war crimes cases

Rogier Bartels. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 235-261

This contribution analyses how the two different notions of control over armed forces that have been developed in the international case law (namely, “effective control”, as set out by the International Court of Justice, and the “overall control” standard, as set out by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY)) impact on the classification of a conflict by international criminal courts and tribunals as either an international or a non-international armed conflict; and concomitantly on the fair trial rights of the accused. The Taylor case at the Special Court for Sierra Leone is discussed as an example where application of the overall control standard—if correctly applied—would have impacted on the classification of the conflict, and thereby on the Special Court’s jurisdiction over the crimes committed by the accused. Subsequently, the practice of the International Criminal Court (ICC), where the overall control standard was adopted without any explicit consideration, is analysed, as well as the consequential impact of adopting this lower standard on rights of the accused. In the last section, the author discusses two recent developments in the international case law, namely, the ICTY’s ruling that effective control over (part of) a territory by an armed group under overall control amounts to occupation-by-proxy, and the ICC’s finding that control over territory by an organised armed group may fulfil the intensity requirement for the existence of a non-international armed conflict, even in the absence of any clashes or fighting between the parties.

In control : harnessing aerial destructive force

Frans P. B. Osinga and Mark P. Roorda. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 161-193

The targeting process involves a complex series of decisions concerning the use of destructive force against specific objects or people. This process underlies the offensive employment of airpower and the unprecedented ability to control military force. The current state of art of targeting derives from a long evolutionary process that is intertwined with the history of air warfare. Awareness of this evolution will indicate challenges and trends that will aid understanding current targeting practices, as well as its complexity and dilemmas. Through the prism of the experiences of air warfare key factors are identified that have shaped the thoughts

on, and organization of targeting and have—therefore—shaped the manner in which control over the use of force is exerted.

The internally displaced person in international law

Romola Adeola. - Cheltenham ; Northampton : E. Elgar, 2020. - VIII, 198 p.

While the plight of persons displaced within the borders of states has emerged as a global concern, not much attention has been given to this specific category of persons in international legal scholarship. Unlike refugees, internally displaced persons remain within the states in which they are displaced. Current statistics indicate that there are more people displaced within state borders than persons displaced outside states. Romola Adeola examines the protection of the internally displaced person under international law, considering existing legal regimes at various levels of governance and institutional mechanisms for internally displaced persons.

The International Committee of the Red Cross and custom

Iris Müller. - In: International organisations, non-state actors, and the formation of customary international law. - Manchester : Manchester University Press, 2020. - p. 306-320

Because of the non-universal adherence to the Additional Protocols of the Geneva Conventions, customary international humanitarian law (IHL) is often still of decisive importance in the regulation of today's armed conflicts, complementing treaty law as an equally relevant source of international law. Questions related to customary international law - and especially customary IHL - have therefore long been of importance to the International Committee of the Red Cross (ICRC). The publication of its study on 'Customary International Humanitarian Law' in 2005 is a testament to that. This chapter is intended to address two main points: first, it gives an overview of the ICRC's experience in the identification of customary IHL, related to its work on the study. Second, it addresses specific questions concerning the role of non-state actors in the formation of customary IHL.

International Conference '150th anniversary of the Saint Petersburg Declaration renouncing the use, in times of war, of certain explosive projectiles: new context, undiminished relevance' : [Proceedings of the Conference, 30 November 2018]

The Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States, ICRC. - [S.I.] : Interparliamentary Assembly of the CIS Member Nations ; ICRC regional delegation in the Russian Federation, Belarus and Moldova, 2020. - 215 p.

On 30 November 2018, the Interparliamentary Assembly of the Commonwealth of Independent States and the International Committee of the Red Cross jointly organized the International Conference on International Humanitarian Law. The Conference was dedicated to the 150th Anniversary of the Saint Petersburg Declaration of 1868. The participants of the conference - around one thousand people from 20 States, including members of governments, parliamentarians, representatives of scientific community and public associations - have confirmed the relevance of fundamental ideas and principles of the Saint Petersburg Declaration of 1868 in contexts of development and use of new technologies and means of warfare. Several issues were discussed on plenary sessions and during panel discussions such as legal regulations of certain type of weapons, including biological, toxin and nuclear weapons, autonomous weapon systems, unmanned aerial vehicles, issues of necessity of providing humanitarian access in the situations of armed conflicts and urban warfare. The present collection of conference materials includes reports presented at the plenary and panel sessions, Declaration of the conference, as well as historical documents related to the Saint Petersburg Declaration of 1868.

International humanitarian law and cyber operations during armed conflicts

ICRC. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 481-492

ICRC position paper submitted to the Open-Ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security and the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security, November 2019.

https://library.icrc.org/library/docs/DOC/irrc-913-positionpapercyber.pdf

International humanitarian law and the fight against epidemics : an analysis of the international normative system in light of the Covid-19 public health emergency

Gianluigi Mastandrea Bonaviri. In: Rivista ordine internazionale e diritti umani, No. 3/2020, 8 July 2020, p. 674-695

The protection of the right to health during armed conflicts is governed by an international regulatory framework which results in a complex reading and understanding picture for the fight against epidemics and pandemics, including COVID-19. The Geneva normative system, created and developed since 1949 to meet different objectives and varying needs, could hardly be expected to be ready or immediately proactive when faced with an unprecedented historical challenge such as the coronavirus. Nevertheless, this analysis shows that, if analyzed and interpreted in an evolutionary, systematic and coherent manner, international humanitarian law seems capable of providing a response to COVID-19 and, more broadly, to controlling epidemics in times of war. What is certainly needed is to revise the relevant legal arrangements through an evolutionary re-interpretation and, above all, to guarantee a joint response and coordinated intervention capacity between all systems and at all levels. While examining the normative point of view of the issue and the practice of the International Movement of the Red Cross and Red Crescent, this paper also aims to open a debate, that can be further developed, on other relevant aspects, such as the World Health Organization's activities and the accountability perspective, including the international criminal justice system.

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International law and the protection of children associated with armed forces and armed groups : reconciling normative standards on recruitment and participation

Owiso Owiso. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 3, H. 3/4, 2020, p. 248-260

This article explores the position of international law on the recruitment of and participation in hostilities by children associated with armed forces and armed groups (CAAFAG) with the aim of assessing the level of protection afforded to CAAFAG under different international law regimes, specifically international humanitarian law, international human rights law and international criminal law. In so doing, the article engages with global and regional normative standards on the relevant age of the prohibition against recruitment and participation of children in hostilities and the activities envisioned by the prohibition. It assesses how the different regimes diverge from, relate to, interact with and complement one another. Ultimately, the paper reveals strengths and weaknesses unique to each and general to all the regimes and explores ways of harnessing international law's strengths to mitigate its weaknesses and afford the maximum possible protection to CAAFAG.

https://doi.org/10.35998/huv-2020-0014 *

International law, crime and torture

Robert Cryer. - In: Research handbook on torture: legal and medical perspectives on prohibition and prevention. - Cheltenham ; Northampton : E. Elgar, 2020. - p. 288-313

Torture raises many issues for international law, some of which are related to international crimes in the core sense, to transnational law, as well as human rights law and domestic law. Here the criminal law aspects, especially the definitional aspects of the crime(s) will be covered. The chapter will begin by distinguishing two ways in which international law relates to criminalisation in general before discussing the definitions of torture found in the 1948 UN Convention against torture (UNCAT) and in the law of genocide, crimes against humanity and war crimes.

The interplay of international obligations connected to the conduct of others: toward a framework of mutual compliance among States engaged in partnered warfare

Berenice Boutin. In: International law studies, Vol. 96, issue 1, 2020, p. 529-548

This article examines international obligations that arise in relation to the conduct of other States, and analyzes how they apply and interact in the context of partnered warfare. It investigates rules of State responsibility relevant to the context of partnered warfare, as well as primary norms that impose obligations connected to the conduct of others. In essence, they consist of obligations not to actively help to or to blindly let others do what a State would not do itself. It is argued that, taken together, these rules form the contour of an overarching framework of mutual compliance among States cooperating in military operations, whereby each State has a duty to ensure, and interest in ensuring, that partners respectively abide by their international obligations.

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Irreconcilable differences : the threshold for armed attack and international armed conflict

Laurie R. Blank. In: Notre Dame law review, Vol. 96, 2020, p. 249-290

This article explores the gap between the definition of armed attack and the threshold for international armed conflict to identify possible consequences of the different definitions for the application of either or both bodies of law and to consider whether efforts to reconcile the different meanings are feasible and, more importantly, desirable or problematic. Although the dangers of conflating jus ad bellum and LOAC are well-known and thoroughly examined in jurisprudence and academic literature, the interplay between these two foundational concepts in the two bodies of law remains unexplored. These two definitions or concepts are the building blocks on which much of the international law authority regarding the use of force resides. The interplay and different thresholds for armed attack and for international armed conflict raise challenging questions about the co-existence of the two bodies of law, namely the consequences of an international armed conflict triggered by acts or force that lie below the threshold for armed attack or other triggering of jus ad bellum. Can force be used and how should it be judged in such circumstances?

https://heinonline.org/HOL/P?h=hein.journals/tndl96&i=249 *

Israeli settlements in the West Bank, a war crime ?

Ghislain Poissonnier and Eric David. In: La revue des droits de l'homme, No 17, 2020, 33 p.

Is the Israeli settlement policy in the West Bank the crime of transfer, direct or indirect, by an Occupying Power of parts of its own civilian population into the territory it occupies ? Following the request of the State of Palestine, the matter is currently under consideration by the Prosecutor of the International Criminal Court. Israel's establishment of settlements in the Occupied Palestinian Territory includes the elements of the war crime of Article 8 (2) (b) (viii) of the Rome Statute, namely its legal element, its material element and its mental element. It will therefore be

easy for the Prosecutor of the International Criminal Court to establish the criminal responsibility of the Israeli leaders, who organize the settlement policy.

https://doi.org/10.4000/revdh.7613

La jurisprudence relative à la clause d'exclusion prévue à l'article 141bis du Code pénal : la difficile application du droit international humanitaire par les cours et tribunaux belges

Marine Wéry. In: The military law and the law of war review, Vol. 57, no. 1, 2018-2019, p. 103-139

Inséré au sein du titre du Code pénal consacré aux infractions terroristes, l'article 141bis prévoit que les activités effectuées par des forces armées en période de conflit armé ne tombent pas sous l'empire de la législation antiterroriste mais bien du droit international humanitaire. De plus en plus fréquemment amenées à se prononcer sur la mise en œuvre de cette clause d'exclusion, il apparait cependant que les juridictions belges ont, dans la grande majorité des cas, rejeté son application. La présente contribution propose de dresser un bilan de cette jurisprudence en mettant en lumière la façon dont les concepts fondamentaux de « conflit armé » et de « forces armées », dont l'article 141bis requiert qu'ils soient appréhendés tels que définis et régis par le droit humanitaire, y sont envisagés. La notion de « conflit armé » semble ainsi avoir – trop – peu retenu l'attention des cours et tribunaux, tandis que celle de « forces armées » a fait l'objet d'une interprétation excessivement stricte, voire incorrecte. Certains éléments non pertinents au regard du droit international humanitaire – l'objectif poursuivi par un groupe armé, son manque de respect du droit des conflits armés, son mode opératoire clandestin ou encore son inscription sur une liste de groupes terroristes – étant par ailleurs régulièrement pris en considération.

http://www.ismllw.org/REVIEW/2018-2019%20ART%20Wery.php

Jus post bellum and proportionality

Michael A. Newton. - In: Just peace after conflict : jus post bellum and the justice of peace. - Oxford : Oxford University Press, 2020. - p. 79- 96

The chapter analyses proportionality aspects of jus ad bellum and jus in bello and their connection to jus post bellum. It argues that proportionality functions are interconnected, although they operate as independent normative frameworks. Nevertheless, each operates beneath the larger shadow cast by jus post bellum considerations. The contribution engages with misapplication of Cicero's precept of the nexus of war and peace. While jus ad bellum concepts provide a vital safeguard against reckless usages of armed force, jus in bello proportionality delineates the outer boundaries of the commander's appropriate discretion during hostilities. The author shows that jus post bellum provides an important bridging function that arises from the deep synergies shared by the proportionality principle embodies across respective usages.

https://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780198823285.pdf

The jus post bellum of illegally transferred settler populations

Eugene Kontorovich. - In: Just peace after conflict : jus post bellum and the justice of peace. - Oxford : Oxford University Press, 2020. - p. 235- 251

This chapter studies the jus post bellum regime for dealing with settlers in occupied territories. This chapter proceeds by examining several major conflicts that involve the migration of civilians from the territory of an occupying power into an occupied territory, since the adoption of the Fourth Geneva Convention. After describing the nature of possible violations in each case, the chapter examines the post bellum treatment of the settlers. Several of these conflicts (Indonesia/East Timor; Vietnam/Cambodia; Russia/the Baltics) have actually gone through the post bellum phase. These provide the most robust evidence for how workable conflict resolution deals with settlers. Regarding the ongoing conflicts, this chapter examines the proposed international models for the post bellum situation, none of which contemplates a removal of settlers.

https://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780198823285.pdf

Lawmaking under pressure : international humanitarian law and internal armed conflict

Giovanni Mantilla. - Ithaca ; London : Cornell University Press, 2020. - X, 247 p.

In Lawmaking under Pressure, Giovanni Mantilla analyzes the origins and development of the international humanitarian treaty rules that now exist to regulate internal armed conflict. Until well into the twentieth century, states allowed atrocious violence as an acceptable product of internal conflict. Why have states created international laws to control internal armed conflict? Why did states compromise their national security by accepting these international humanitarian constraints? Why did they create these rules at improbable moments, as European empires cracked, freedom fighters emerged, and fears of communist rebellion spread? Mantilla explores the global politics and diplomatic dynamics that led to the creation of such laws in 1949 and in the 1970s. By the 1949 Diplomatic Conference that revised the Geneva Conventions, most countries supported legislation committing states and rebels to humane principles of wartime behavior and to the avoidance of abhorrent atrocities, including torture and the murder of non-combatants. However, for decades, states had long refused to codify similar regulations concerning violence within their own borders. Diplomatic conferences in Geneva twice channeled humanitarian attitudes alongside Cold War and decolonization politics, even compelling reluctant European empires Britain and France to accept them. Lawmaking under Pressure documents the tense politics behind the making of humanitarian laws that have become touchstones of the contemporary international normative order.

Legal challenges in extraterritorial military operations

Dieter Fleck. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 47-58

This chapter evaluates the International Law of Military Operations (ILMO) as a new branch of international law that has various different sources, many of them being derived from 'non-military' areas of international law and cooperation, but requiring the commander's attention no less than genuine military rules and regulations in the traditional sense. The author takes a look at the roots of ILMO and its influence on today's developments in military and legal practice. He considers some typical principles and rules that have become part of ILMO, and highlights the requirement for tailor-made military solutions which often have to be pursued without possibilities for taking more systematic approaches. He emphasises the need to overcome fragmentation of international law also in this respect and draws some conclusions.

The legal characterization of lethal autonomous maritime systems: warship, torpedo, or naval mine?

Hitoshi Nasu and David Letts. In: International law studies, Vol. 96, issue 1, 2020, p. 79-97

With the rapid advances in autonomous navigation and artificial intelligence technology, naval industries are edging closer to the development of unmanned maritime platforms with lethal autonomous capability—lethal autonomous maritime systems (LAMS). The emergence of LAMS as a sui generis hybrid weapon system will almost certainly generate disagreement on their legal status. Currently, there is no agreement among States as to whether LAMS should legally be characterized as warships or other means of warfare, such as torpedoes and naval mines. This lack of certainty represents a significant deficiency with potential strategic and operational implications if left unresolved. To assist States in assessing the strategic and national interests served by characterizing LAMS within the existing legal framework, this article examines the legal implications of designating LAMS as a warship, torpedo, or naval mine under the applicable rules of international law for each. These legal implications are discussed with specific consideration of navigational rights in peacetime and belligerent rights in the conduct of hostilities during armed conflict.

https://digital-commons.usnwc.edu/ils/vol96/iss1/4/

Legal protection of the environment : the double challenge of non-international armed conflict and post-conflict peacebuilding

Dieter Fleck. - In: Just peace after conflict : jus post bellum and the justice of peace. - Oxford : Oxford University Press, 2020. - p. 149-164

This chapter examines principles and rules on environmental protection in two critical situations: non-international armed conflicts and post-conflict peacebuilding. What kind of environmental obligations apply in bello between a government and rebels? In what sense are parties to the conflict accountable for environmental devastation? May states be liable also for injurious consequences of acts not explicitly prohibited under international law? How can their obligations be enforced? Furthermore, issues of post-conflict peacebuilding are discussed to explore whether specific principles and rules of jus post bellum are relevant for the protection of the natural environment. While certain aspects of the protection of the environment in relation to armed conflicts appear to be still unclear, some recommendations are developed in support of efforts currently undertaken by the International Law Commission.

https://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780198823285.pdf

Legal restraints on the use of military force : collected essays by Michael Bothe

ed. by Thilo Marauhn and Barry de Vries. - Leiden : Brill Nijhoff, 2021. - XI, 687 p.

Professor Michael Bothe is one of the most prominent and influential scholars of international humanitarian law. His publications on legal restraints on the use of military force were not only important at the time of their publication. They continue to be relevant for the interpretation and further development of this highly important area of international law. This volume uniquely collects a wealth of writings that demonstrate that political ideals coupled with a sense of human responsibility can benefit from solid doctrinal underpinnings in international law. Michael Bothe's work brings together idealism, pragmatism and the law in a unique fashion that not only provides insights into important matters of every day politics but also serves as a stimulus for future contributions to the field. The volume thus provides guidance, food for thought and incentives for debate in the international legal community, among practitioners and academics alike. Michael's doctrinal skills, combined with his contextualized assessment of the law, and his deep empathy for the needs of human beings in difficult situations, with a particular view to the victims of armed conflict, will provide a stimulus to scholars to address these issues in the future.

Lethal autonomous weapon systems: translating geek speak for lawyers

Linell A. Letendre. In: International law studies, Vol. 96, issue 1, 2020, p. 274-294

This article provides an overview of robotics and autonomous systems so that attorneys can better understand the systems and design principles of lethal autonomous weapon systems (LAWS) that may be used in an armed conflict. Using the lens of establishing a common language between engineers and attorneys, the article introduces the basics of robotics terminology, explores how autonomous systems work by explaining control systems and control architecture, and examines how autonomous systems learn and reason. It also suggests a number of questions attorneys should ask engineers during the design process in order to ensure autonomous systems are designed in a way that comply with the laws of armed conflict.

https://digital-commons.usnwc.edu/ils/vol96/iss1/11/

Lex generalis derogat legi speciali : IHL in human rights regulation of military courts operating in situations of armed conflict

Anne Herzberg. In: Israel law review : a journal of human rights, public and international law, Vol. 54, no. 1, 2021, p. 84-119

The operation of military courts is clearly allowed for and, in some cases, mandated by international humanitarian law (IHL). Nevertheless, the use of military courts has been one of the most controversial and hotly debated areas of human rights. Despite the ostensibly exclusive military domain, many human rights bodies have registered significant scepticism towards this

type of justice. Consequently, they have sought actively to regulate this 'IHL space' with scant attention to the requirements of IHL itself. The article examines comments, case law, draft rules and other measures taken by two human rights frameworks: the United Nations Human Rights Council and the African Commission on Human and People's Rights. It will analyse how, since 2000, these bodies have approached the issue of IHL when assessing the legitimacy and operation of military courts. For instance, do they consider IHL as a source of law guiding their efforts and rely on IHL instruments? How do they resolve conflicts between IHL and international human rights law? Additionally, the article will consider the validity, legality and effectiveness of these efforts. It concludes that, in reviewing military courts, there exists significant neglect of IHL in human rights frameworks. Through overlooking IHL or relegating it to a sub-specialty of international human rights law, these bodies not only ignore applicable law, they deprive themselves of the wealth of expertise found in commentary, debate, jurisprudence and practice in the IHL sphere. Instead, integrating IHL analysis and theory and affording it its appropriate respect within relevant human rights discussions will allow for greater legal and policy coherence, and human rights bodies will be better placed to fulfil their mandates.

https://doi.org/10.1017/S0021223720000230 *

Lignes directrices pour les enquêtes sur les violations du droit international humanitaire : droit, politiques et bonnes pratiques

Noam Lubell, Jelena Pejic et Claire Simmons. - Genève : Académie de droit international humanitaire et de droits humains ; CICR, Septembre 2019. - 68 p.

Les enquêtes sur les violations présumées du droit international humanitaire (DIH) par les parties à un conflit armé sont non seulement essentielles pour garantir le respect du DIH, mais aussi pour prévenir de futures violations et permettre une réparation aux victimes des violations passées. Malgré l'importance incontestable des enquêtes, les dispositions du droit international, les principes et les normes applicables aux enquêtes dans les conflits armés demeurent peu détaillées. Cela se reflète également dans la pratique disparate entre les États dans la manière dont les enquêtes sont menées. Ces directives visent à apporter la clarté et le soutien indispensables à la conduite d'enquêtes efficaces sur les violations du DIH. Elles sont le fruit d'un projet de cinq ans, initié en 2014 par l'Académie de droit international humanitaire et des droits de l'homme de Genève, rejointe en 2017 par le Comité international de la Croix-Rouge. La publication qui en résulte est basée sur des recherches approfondies et les conclusions d'une série d'ateliers d'experts et de consultation des acteurs concernés. Les 16 directives sont chacune accompagnées d'un commentaire détaillé et fournissent des orientations sur les différents aspects des enquêtes sur les violations du DIH, depuis les premiers stades de l'enregistrement des informations et de l'identification des incidents qui nécessitent une enquête, jusqu'aux aspects structurels et procéduraux des organes d'enquête. Le texte présente une base pour la conduite d'enquêtes efficaces, tout en tenant compte des divers systèmes juridiques et militaires existants, ainsi que des défis juridiques et pratiques qui peuvent survenir. Ils constituent un outil essentiel non seulement pour les États qui souhaitent mener des enquêtes sur des violations du DIH dans le respect du droit international, mais également pour d'autres organes et individus qui souhaitent une compréhension plus détaillée des enquêtes dans les conflits armés.

https://www.geneva-academy.ch/research/publications/detail/496-guidelines-on-investigating-violations-of-ihl-law-policy-and-good-practice

Living emergency : Israel's permit regime in the occupied West Bank.

Yael Berda. - Stanford : Stanford University Press, 2018. - 144 p.

In 1991, the Israeli government introduced emergency legislation canceling the general exit permit that allowed Palestinians to enter Israel. The directive, effective for one year, has been reissued annually ever since, turning the Occupied Territories into a closed military zone. Today, Israel's permit regime for Palestinians is one of the world's most extreme and complex apparatuses for population management. Yael Berda worked as a human rights lawyer in Jerusalem and represented more than two hundred Palestinian clients trying to obtain labor permits to enter Israel from the West Bank. With Living Emergency, she brings readers inside the permit regime, offering a first-hand account of how the Israeli secret service, government, and military civil administration control the Palestinian population.

The markings of military aircraft under the law of aerial warfare

Mateusz Piątkowski. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 1, 2020, p. 63-84

The breakthrough innovation of the Wright brothers in 1903 and subsequent developments of aerial technology created significant opportunities for the military, as a new dimension of warfare became an operational space of combat. Many legal questions arise, including the status of air machines deployed by the freshly formed independent air detachments before the outbreak of World War I. From the operational and legal viewpoint, both state practice and international law experts agreed that in order to receive a status similar to warships under the law of naval warfare, military aircraft should bear distinctive insignia, indicating their military character and nationality. This article's aim is to present the origins and evolution of the military markings and their legal significance, as a core element of the military aircraft definition. It needs to be emphasized that only aircraft considered as military can perform acts of hostility and exercise the specific rights granted by the law of air warfare. The analysis will refer to practical challenges for maintaining the classical rule of air warfare, such as the exact location of the markings on the aircraft surfaces, low-visibility insignia (as a way to reconcile legal and operational demands) and the question of relevance of the duty to mark military aircraft in the context of unmanned air platforms.

https://doi.org/10.4337/mllwr.2020.01.03 *

Military operations and the notion of control under international law : Liber Amicorum Terry D. Gill

ed. by Rogier Bartels, Jeroen C. van den Boogaard, Paul A. L. Ducheine, Eric Pouw, Joop Voetelink. - The Hague : Asser Press, 2020. - XIII, 459 p.

This book, a tribute to the work and research of Professor Terry D. Gill, offers an insightful view into the field of the International Law of Military Operations (ILMO). The legal notion of control is considered in several contributions dealing, inter alia, with control in relation to restraints in the decision to deploy and the legal basis for doing so; the legal requirement to be in effective control should a situation of belligerent occupation arise; and the relevance of control – or the lack thereof – when attributing responsibility and accountability. Additionally, various forms of factual control are considered: control over the type and/or scale of force used in operations; control as a mechanism to constrain or escalate force; control in operational procedures such as targeting, where these procedures merge with the law; and the ability to exercise control via soft law or rules of engagement, not only to restrain force, but also to ensure the effectiveness of the force used. Moreover, having control over the armed forces themselves, or over detainees or migrants (at sea), over terrain, airspace or sea, has legal implications, for instance the application of international human rights to extraterritorial operations, or the application of the law of occupation to the acts of the armed forces. Furthermore, the book contains several discussions on arms control law, and aspects of control relevant to the deployment or development of weapons and weapon systems.

https://doi.org/10.1007/978-94-6265-395-5 *

Necessity and proportionality in international peace and security law

Claus Kress, Robert Lawless. - Oxford : Oxford University Press, 2021. - VIII, 500 p.

Necessity and proportionality hold a firm place in the international law governing the use of force by states, as well as in the law of armed conflict. However, the precise contours of these two requirements are uncertain and controversial. The aim of this volume is to explore how necessity and proportionality manifest themselves in the modern world under the law governing the use of force and the law of armed conflict, and how they relate to each other. The book explores the ways in which necessity and proportionality are applied in practice and addresses pressing legal issues in the law on the use of force, including the controversial "unwilling and unable" test for the use of force in self-defense, drones and targeted killing, the application of this legal regime during civil war, and the need for further transparency in states' justification for the use of force in self-defense. The analysis of the role of military necessity within the law of armed conflict on the modern battlefield focuses on the history and nature of the principle of military necessity, the

proper application of the principle of proportionality, and the role artificial intelligence and autonomous weapons systems may play in proportionality analysis. The book concludes with a discussion of the potential role of proportionality in the law governing post-conflict contexts.

Necessity and proportionality in morality and law

Jeff McMahan. - In: Necessity and proportionality in international peace and security law. - Oxford : Oxford University Press, 2021. - p. 3-38

This chapter offers a systematic analysis of the notion of proportionality in both moral philosophy and law, particularly the law of armed conflict. Proportionality is a constraint on different forms of justification for harming people. There are thus different forms of proportionality corresponding to different types of justification. The proportionality constraint should not be conflated with a different constraint—the necessity constraint—which in turn must be carefully distinguished from necessity as a form of justification. The chapter explains how the proportionality constraint and the necessity constraint are distinguished by the different comparisons they require. It further explains the relations between the requirement of proportionality in jus ad bellum and the requirement of proportionality in jus in bello and argues that the criterion of proportionality in the law of jus in bello is actually incoherent. The final section elucidates the various matters of moral theory that are relevant to understanding how the requirement of proportionality applies in practice to the action of combatants who fight in just wars.

Non-international armed conflicts in international law

Yoram Dinstein. - Cambridge : Cambridge University Press, 2021. - XXXVII, 342 p.

This dispassionate analysis of the legal implications of non-international armed conflicts explores the rules regulating the conduct of internal hostilities, as well as the consequences of intervention by foreign States, the role of the Security Council, the effects of recognition, State responsibility for wrongdoing by both Governments and insurgents, the interface with the law of human rights and the notion of war crimes. The author addresses both conceptual and specific issues, such as the complexities of 'failing States' or the recruitment and use of child-soldiers. He makes use of the extensive case law of international courts and tribunals, in order to identify and set out customary international law. Much attention is also given to the contents of available treaty texts (primarily, the Geneva Conventions, Additional Protocol II and the Rome Statute of the International Criminal Court): what they contain and what they omit.

https://doi.org/10.1017/9781108864091 *

The occupation of justice : the Supreme Court of Israel and the Occupied Territories

David Kretzmer and Yaël Ronen. - Oxford : Oxford University Press, 2021. - IX, 543 p.

Judicial review by Israel's Supreme Court over actions of Israeli authorities in the territories occupied by Israel in 1967 is an important element in Israel's legal and political control of these territories. The Occupation of Justice presents a comprehensive discussion of the Court's decisions in exercising this review. This revised and expanded edition includes updated material and analysis, as well as new chapters. Inter alia, it addresses the Court's approach to its jurisdiction to consider petitions from residents of the Occupied Territories; justiciability of sensitive political issues; application and interpretation of the international law of belligerent occupation in general, and the Fourth Geneva Convention in particular; the relevance of international human rights law and Israeli constitutional law; the rights of Gaza residents after the withdrawal of Israeli forces and settlements from the area; Israeli settlements and settlers; construction of the separation barrier in the West Bank; security measures, including internment, interrogation practices, and punitive house demolitions; and judicial review of hostilities. The study examines the inherent tension involved in judicial review over the actions of authorities in a territory in which the inhabitants are not part of the political community the Court belongs to. It argues that this tension is aggravated in the context of the West Bank by the glaring disparity between the norms of belligerent occupation and the Israeli government's policies. The study

shows that while the Court's review has enabled many individuals to receive a remedy, it has largely served to legitimise government policies and practices in the Occupied Territories.

https://doi.org/10.1093/oso/9780190696023.001.0001 *

On the continuous and concurrent application of ad bellum and in bello proportionality

Eliav Lieblich. - In: Necessity and proportionality in international peace and security law. - Oxford : Oxford University Press, 2021. - p. 41-75

The principle of proportionality in international law operates both in the law on the resort to force—or jus ad bellum—and the law that governs how wars are fought, or jus in bello. On both levels, it seeks to constrain force in relation to a certain lawful objective. Yet, beyond this understanding, few other aspects concerning the interaction between ad bellum and in bello proportionality are clear. This chapter addresses two distinct yet interrelated aspects of this interaction. The first concerns the question whether ad bellum proportionality applies throughout an armed conflict, alongside proportionality under jus in bello. The second addresses the manner in which both levels of proportionality interact, assuming that they indeed apply concurrently. Concerning the first question, this chapter revisits the debate between the "static approach," which argues that at least in some cases, ad bellum proportionality ceases to apply after the initial judgment on the resort to force, and the "continuous approach," which holds that ad bellum proportionality applies continuously throughout the conflict. By uncovering and contesting the normative and theoretical assumptions that underlie the static approach, this chapter offers a defense of the continuous approach. Regarding the second question, this chapter explores the specific difficulties of concurrent application, as these arise under different conceptions of ad bellum proportionality. It concludes that although both levels of proportionality apply concurrently, and albeit they share some moral and conceptual similarities, we should not conflate between them. Rather, owing to the difficulties this chapter discusses, a functional separation between the spheres of proportionality should be maintained.

Peacekeepers : internationalist protectors or national perpetrators, protected either way ?

Robert Cryer and Natalia Perova. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 501-536

Peacekeepers occupy a liminal legal position, having never been provided for in the UN Charter. That said, a detailed legal regime has grown up around peacekeepers, both in terms of how they are protected by the criminal law and the jurisdictional regime that surrounds them. The piece argues that this relates to two sides of protection, which reflects dual image that has arisen around them. The first is that of international 'saviours' acting on behalf of a purported international community who have little more power than their moral authority, and therefore are worthy of additional protection from criminal law. This is shown through an analysis of the 1994 Convention on the Safety of United Nations and Associated Personnel and the relevant provisions of the Rome Statute of the International Criminal Court. However, peacekeepers have also been accused, of, and committed various crimes against the populations they are sent to protect. When this occurs, international law enters at a different level, casting peacekeepers as nationals of their sending State and placed in a jurisdictional regime that functionally, if not by design, protects 'our boys' from facing criminal liability for their conduct. This is investigated through analysis of peacekeepers' Status of Forces Agreements and the Rome Statute regime applicable to them. These deeply inconsistent narratives, of peacekeepers as representatives of international good intentions, and national actors, operate in tandem to shield them from the consequences of their conduct. We recommend a holistic approach that is understanding, but less forgiving.

https://doi.org/10.1093/jcsl/kraa020 *

Practical and conceptual challenges to doctrinal military necessity

Major Robert Lawless. - In: Necessity and proportionality in international peace and security law. - Oxford : Oxford University Press, 2021. - p. 285-324

States routinely define the principle of military necessity in doctrinal publications such as law of armed conflict (LOAC) military manuals. These definitions are based on a model of military necessity famously articulated by Francis Lieber and built upon by the American military tribunal at Nuremberg. Generations of armed forces members have been trained on this doctrinal definition of military necessity. But does it serve them well? This chapter closely examines doctrinal military necessity by breaking it down into its constituent elements, specifically as a principle that confers a right, permission, or justification to use any military measures or force required to defeat the enemy as quickly and efficiently as possible so long as such measures or force are not otherwise prohibited elsewhere in the LOAC. The chapter then explores these elements and reveals the deep practical and conceptual problems posed by each. The chapter concludes that doctrinal military necessity, as based on the Lieber/Nuremberg model, fails to serve the principal goal of military doctrine: to provide combatants with clear and direct guidance—in this case legal guidance—on warfighting. Consequently, the chapter recommends that states abandon the Lieber/Nuremberg model of military necessity and reformulate their doctrinal definitions to better attend to the needs of combatants.

The problem with killer robots

Nathan Gabriel Wood. In: Journal of military ethics, Vol. 19, no. 3, p. 220-240

Warfare is becoming increasingly automated, from automatic missile defense systems to micro-UAVs (WASPs) that can maneuver through urban environments with ease, and each advance brings with it ethical questions in need of resolving. Proponents of lethal autonomous weapons systems (LAWS) provide varied arguments in their favor, ranging from claims that LAWS will be more effective to arguments that they will be more moral warfighters than flesh-and-blood soldiers. However, the arguments only point in favor of autonomous weapons systems, failing to demonstrate why such systems should be lethal. In this paper the author argues that if one grants the proponents' points in favor of LAWS, then, contrary to what might be expected, this leads to the conclusion that it would be both immoral and illegal to deploy lethal autonomous weapons, because the features that speak in favor of LAWS also undermine the need for them to be programmed to take lives. In particular, Wood argues that such systems, if lethal, would violate the moral and legal principle of necessity, which forbids the use of weapons that impose superfluous injury or unnecessary harm. The author concludes by highlighting that the argument is not against autonomous weapons per se, but only against lethal autonomous weapons.

https://doi.org/10.1080/15027570.2020.1849966 *

The problems of genocide : permanent security and the language of transgression

A. Dirk Moses. - Cambridge : Cambridge University Press, 2021. - XI, 598 p.

Genocide is not only a problem of mass death, but also of how, as a relatively new idea and law, it organizes and distorts thinking about civilian destruction. Taking the normative perspective of civilian immunity from military attack, A. Dirk Moses argues that the implicit hierarchy of international criminal law, atop which sits genocide as the 'crime of crimes', blinds us to other types of humanly caused civilian death, like bombing cities, and the 'collateral damage' of missile and drone strikes. Talk of genocide, then, can function ideologically to detract from systematic violence against civilians perpetrated by governments of all types. The Problems of Genocide contends that this violence is the consequence of 'permanent security' imperatives: the striving of states, and armed groups seeking to found states, to make themselves invulnerable to threats.

The proportionality rule and mental harm in war

Sarah Knuckey, Alex Moorehead, Audrey McCalley, and Adam Brown. - In: Necessity and proportionality in international peace and security law. - Oxford : Oxford University Press, 2021. - p. 367-408

The foundational international humanitarian law rule of proportionality—that parties to an armed conflict may not attack where civilian harm would be excessive in relation to the anticipated military advantage—is normally interpreted to encompass civilian physical injuries only. Attacks may cause significant mental harms also, yet current interpretations of the law lag behind science in understanding and recognizing these kinds of harms. This article analyzes legal, public health, psychology, and neuroscience research to assess the extent to which mental health harms should and could be taken into account in proportionality assessments.

Protection des soins de santé : guide à l'intention des forces armées

CICR. - Genève : CICR, mars 2021. - 92 p.

Le présent guide fournit des orientations pratiques sur les mesures que les forces armées peuvent adopter pour protéger les professionnels de la santé et limiter l'impact des conflits armés sur l'accès aux soins de santé, ainsi que sur leur fourniture. Il aborde des questions ayant trait à la formation, à la planification, à la préparation opérationnelle et à la conduite des opérations militaires menées sur le territoire national ainsi qu'à l'extérieur de celui-ci.

https://library.icrc.org/library/docs/DOC/icrc-4504-001.pdf

Protection of detainees from sexual violence under international humanitarian law

Samantha Frances Bradley. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 381-422

This article addresses the question of whether current frameworks under international humanitarian law offer adequate protection to persons detained for reasons relating to armed conflict from crimes of sexual violence. Sexual violence against detainees is a persistent issue in both international and non-international armed conflicts. Sexual violence against male detainees is also a widespread issue, with men and boys constituting the bulk of persons detained in conflict, and also facing unique barriers in reporting abuses. An evaluation of current legal frameworks under the Geneva Conventions of 1949 and the Additional Protocols of 1977 identifies key fault-lines in the law, including a widespread statutory characterisation of sexual violence as a crime principally committed against women. Case law demonstrates a resultant tendency to conceptualise sexual abuse of male detainees as torture, rather than sexual violence. Additionally, state interpretations of the law reflect this absence of gender neutrality. Compliance mechanisms are furthermore held back by the lack of clarity and specificity of prohibitions on sexual violence against detainees in international and non-international armed conflicts. Ultimately, options for strengthening the law in this area are subject to the political will of states and carry the risk of winding back existing standards of protection. The development of a non-binding but standard-setting instrument devised with the support of states and specifically prohibiting the issue of sexual violence against detainees in gender- neutral and comprehensive terms may ultimately be the most effective means of strengthening existing legal frameworks.

https://doi.org/10.1093/jcsl/kraa010 *

Protracted armed violence as a criterion for the existence of non-international armed conflict : international humanitarian law, international criminal law and beyond

Miloš Hrnjaz and Janja Simentić Popović. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 473-500

The present article provides legal analysis of the concept of 'protracted armed violence' which is part of the commonly accepted definition of non-international armed conflict (NIAC). The

International Criminal Tribunal for former Yugoslavia interpreted this notion as the intensity requirement. However, the practice of other international legal institutions that use this concept (such as International Criminal Court and some other judicial institutions) is not always coherent with this finding. This fact raised several theoretical and practical issues in the process of interpretation and implementation of international legal norms. Therefore, the aim of the article is to critically reassess the 'protracted armed violence' concept in various branches of international law and to contribute to the better understanding of the NIAC phenomenon.

https://doi.org/10.1093/jcsl/kraa009 *

Reconsidering the classification of extraterritorial conflict with armed groups in international humanitarian law

Shin Kawagishi. - In: Changing actors in international law. - Leiden ; Boston : Brill Nijhoff, 2021. - p. 329-355

While many armed groups have traditionally fought against government within the confines of the territory of one state, some of them now operate across multiple states. In response to this changing character of armed groups, there are currently an increasing number of occasions that one state resorts to force against armed groups located in the territory of another state, without the consent of that state. This chapter aims to address whether extraterritorial conflict with armed groups constitute an armed conflict and its classification as an international or non-international armed conflict.

Reparation for victims of armed conflict

Cristián Correa, Shuichi Furuya and Clara Sandoval. - Oxford : Oxford University Press, 2020. - 294 p.

Are victims of armed conflict entitled to reparation, which legal rules govern the question, and how can reparation be implemented? These key questions of transitional justice are examined by three scholars whose professional, theoretical, and methodological backgrounds and outlooks differ greatly. They discuss how regional human rights case law, international criminal law, the practice of ad hoc international bodies, and domestic practice give rise to a right to reparation. This right emerges out of the interplay between international and domestic law. The problems of mass claims, fragile statehood, and the high risk of marginalisation of particular groups of victims are addressed. The analysis is alert to the current backlash against international legal institutions, and to the practical constraints in making post-conflict law work. The multiperspectivism of the trialogical setting exposes the divergence and complementarity of the authors' approaches and leads to a richer understanding of the law of reparation.

https://doi.org/10.1017/9781108628877 *

The requirement of effective control in the law of occupation

Marten Zwanenburg. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 263-280

This chapter focuses on the impact of control on occupation. Whether a State exercises effective control over territory of another State determines whether that territory is occupied. In other words, whether an occupation, i.e. a form of international armed conflict, exists and the law of occupation applies. If so, the State exercising effective control is an 'Occupying Power'. This contribution first addresses the role of the notion of effective control in the law of occupation. The second part deals with a possible second function of the notion of effective control, related to the phenomenon of occupation by proxy, when territory is occupied by an entity that is not part of a State, usually an organized armed group, acting on behalf of a State.

Research handbook on torture : Legal and medical perspectives on prohibition and prevention

ed. by Malcolm D. Evans, Jens Modvig. - Northampton ; Cheltenham : E. Elgar, 2020. - VIII, 598 p.

This Research Handbook is of great importance in an era where torture, whilst universally condemned, remains endemic. It explores the nature of the international prohibition of torture and the various means and mechanisms which have been put in place by the international community in an attempt to make that prohibition a reality. Edited by Chairs of the UN Committee against Torture and of the UN Subcommittee for Prevention of Torture, this Research Handbook considers both the legal and medical dimensions of torture, as well as societal and philosophical perspectives. Contributions from experts with personal experience of working with torture victims and survivors in medical, legal and political settings survey practice within the UN and regional human rights systems, international criminal and domestic legal settings, and in medical and rehabilitative contexts. These expert perspectives combine to offer a unique range of insights into the realities of tackling torture in the contemporary world. Critical and timely, the Research Handbook on Torture will prove compulsive reading for students and scholars of human rights. Its practical dimension will also engage practitioners in the field, as well as legal and medical professionals working on torture-related issues.

Responsibility of organized armed groups controlling territory : attributing conduct to ISIS

Katharine Fortin and Jann Kleffner. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 307-328

In stark contrast to the situation for states, international organizations and individuals, there is no coherent international legal framework governing the responsibility of non-state organized armed groups that are parties to armed conflicts. The present chapter explores the possibility of developing such a framework for international law by focusing first on formulating a set of rules on attribution of conduct; and, second, using the Islamic State (IS) as a case study, to explore how some core rules of attribution could be applied to a specific type of organized armed group, namely those that—at least during a certain period of their existence—exercise territorial control.

The 'revolving door' of direct participation in hostilities : a way forward ?

Alessandro Silvestri. In: Journal of international humanitarian legal studies Vol. 11, no. 2, 2020, p. 410-446

Contemporary trends of warfare have witnessed a so-called ‘civilian footprint’ in support of military operations while battlefields have increasingly shifted towards urban areas. International humanitarian law established a framework through which civilians are protected from direct attack ‘unless and for such time as they take a direct part in hostilities’. Three key areas have traditionally been associated with the analysis of direct participation in hostilities (‘DPH’): civilian legal status, what behaviour amounts to DPH, and what modalities govern this loss of protection. This article will focus on the latter and attempt to create a feasible and practical framework capable of harnessing the temporal scope of DPH and limit the so-called ‘revolving door phenomenon’. The framework developed in this article will account for criteria that could and should aid decision-making on the battlefield, most notably causal associations between individuals and DPH acts and the physical or non-physical nature of DPH acts’ deployments.

https://doi.org/10.1163/18781527-bja10022 *

The right to a fair trial in international law

Amal Clooney and Philippa Webb ; editorial assistants : Vera Padberg, Katharina Lewis, Samarth Patel, and Giulia Bernabei. - Oxford : Oxford University Press, 2020. - CXX, 931 p.

This book brings together the diverse sources of international law that define the right to a fair trial in the context of criminal proceedings. It aims to make the law accessible to counsel and meaningful to victims in courtrooms all over the world. By focusing on what the right to a fair trial means in practice, it seeks to bring to life the commitment made by over 170 states parties to the ICCPR. The book is subdivided into 14 substantive chapters each dealing with one component of the right to a fair trial. Each chapter collates and analyses international sources, highlighting both consensus and division in the international jurisprudence. The book aims to be the global reference for the most frequently litigated human right in the world.

https://opil.ouplaw.com/view/10.1093/law/9780198808398.001.0001/law-9780198808398 *

La rupture de l'équilibre juridique de l'article 141bis du code pénal belge par la jurisprudence sur les "combattants étrangers" : la remise en cause de la répartition des compétences entre le droit international humanitaire et le droit antiterroriste

Julien Tropini. In: The military law and the law of war review, Vol. 57, no. 1, 2018-2019, p. 145-188

Qu'est-ce qu'un « combattant étranger » en droit ? Quel est son statut juridique ? Quelles règles encadrent ses actes ? C'est à ces questions que cet article cherche à répondre. Extrait du travail doctoral de l'auteur en cours sur le statut juridique des « combattants étrangers » en droit international, cette étude revient sur les problématiques rencontrées par la jurisprudence belge dans le processus d'identification juridique de ces individus. Il est effectivement intéressant de constater que malgré l'ancienneté du phénomène, la notion de « combattant étranger » ne dispose aujourd'hui d'aucune définition contraignante. D'abord perçus comme acteurs étrangers des conflits armés, ces individus ont alors été soumis au droit international humanitaire. Cependant, depuis l'avènement du Califat de l'État islamique notamment, ces volontaires internationaux sont principalement rattachés au terrorisme international et soumis aux corpus antiterroriste comme « combattants terroristes étrangers ». Cette assimilation impliquant alors la superposition de deux corpus juridiques parfois contradictoires. Les tribunaux belges ont ainsi précisément eu à statuer sur la question de savoir si ces individus présentés comme des « combattants étrangers » devaient alors être soumis au droit international humanitaire ou au droit antiterroriste. Et pour ce faire, ils ont eu à interpréter et évaluer l'applicabilité de l'article 141bis du code pénal belge à ce phénomène. C'est alors sur ces conclusions jurisprudentielles que cet article propose de revenir.

http://www.ismllw.org/REVIEW/2018-2019%20ART%20Tropini.php

Russian mercenaries, state responsibility, and conflict in Syria : examining the Wagner group under international law

Michael A. Rizzotti. In: Wisconsin international law journal, Vol. 37, no. 3, p. 569-614

This article uses the involvement of the Wagner Group in the Syrian conflict as a case study to examine certain issues of legal significance raised by the use of Private Military Security Companies (PMSCs) in armed conflict, namely mercenarism under international humanitarian law and attribution under the law of state responsibility.

https://repository.law.wisc.edu/s/uwlaw/media/304633

SALA : aspects juridiques

Pauline Warnotte. - In: Robotisation des armées : enjeux militaires, éthiques et légaux. - Paris : Economica, 2020. - p. 127-146

Ce chapitre se propose d'aborder sous l'angle juridique relatif au droit des conflits armés la question hier futuriste, aujourd'hui en passe de devenir réalité, des systèmes d'armes létales autonomes (SALA).Nous présenterons d'abord les raisons pour lesquelles ce type d'armement taraude la communauté internationale, puis nous esquisserons une définition des SALA sans laquelle les questions de l'existence de ceux-ci pos(erai)ent au regard du droit international ne seraient que pures spéculations. Nous conclurons en proposant certaines recommandations et perspectives pour le futur des discussions.

The scope of military jurisdiction for violations of international humanitarian law

Claire Simmons. In: Israel law review : a journal of human rights, public and international law, Vol. 54, no. 1, 2021

Drafters of international humanitarian law (IHL) treaties clearly envisaged a role for military justice systems in the implementation and enforcement of these treaties. Nevertheless, the adequacy of military jurisdiction over violations of international law is being questioned in certain spheres. In the context of these debates this article considers the domestic rationale for military justice systems and explores the role and limits of military jurisdiction in combating impunity for violations of IHL. In focusing on the need to effectively repress and suppress all violations of IHL, the article addresses the extent to which some sort of military justice may be necessary for the effective enforcement of certain provisions. It also explores the way in which increased scrutiny of the impact of these justice systems on the rights of individuals has led to restrictions on the format and scope of military jurisdiction. Although there are difficulties in internationalising the discussion on military jurisdiction because of differences in domestic legal traditions, the choice of effective IHL enforcement mechanisms, which includes the choice of military or civilian jurisdiction, is key in combating impunity for violations of this body of law and protecting the rights of those involved.

https://doi.org/10.1017/S0021223720000217 *

Separation between jus ad bellum and jus in bello as insulation of results, not scopes, of application

Ka Lok Yip. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 1, 2020, p. 31-62

This article examines the tendencies to define the scope of application of jus ad bellum negatively in relation to the scope of application of jus in bello and demonstrates their neutralizing effect on the prohibition on the use of force under Article 2(4) of the Charter of the United Nations. It argues that individual acts of use of force during an international armed conflict regulated by jus in bello, whether in combat, in restricting the freedom of enemy nationals or in maintaining an occupation, are equally regulated by jus ad bellum. It clarifies the concept of 'separation' between jus ad bellum and jus in bello as the insulation between the results of their respective application, not the differentiation between their respective temporal, material and normative scopes of application. It also addresses the practical concerns raised by this conception of 'separation' between jus ad bellum and jus in bello.

https://doi.org/10.4337/mllwr.2020.01.02 *

Sequences of military necessity for the jus in bello

Dino Kritsiotis. - In: Necessity and proportionality in international peace and security law. - Oxford : Oxford University Press, 2021. - p. 247-284

This chapter considers several discrete snapshots or "sequences" in the life of military necessity—as it has come to be understood within the laws of the jus in bello. Commencing with its

relationship with self-preservation under the laws of war and peace, the chapter proceeds to examine the idea of "necessity" of self-defense within the laws of the jus ad bellum; it then turns to "military necessity" as invoked in the Lieber Code, the 1907 Hague Regulations, Additional Protocol I of 1977 and the 1954 Hague Convention, the ICRC Study on Customary International Humanitarian Law as well as the advisory jurisprudence of the International Court of Justice. Consideration is given, too, to "necessity" as it features within the law of State responsibility, in order to more fully understand the function, status and standing of "military necessity" more generally within the jus in bello.

The shaping of the notion of "control" in the law on international responsibility by certain international and regional courts

Gentian Zyberi. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 281-305

The notion of control plays an important role within the context of the law on international responsibility in terms of both ascertaining jurisdiction and attribution of responsibility for internationally wrongful acts, including for mass atrocity crimes committed in armed conflict situations. This chapter aims at analysing the use and the shaping of this notion through several landmark decisions issued by selected key international and regional courts. The international courts include the International Court of Justice, the two ad hoc international criminal tribunals, namely the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, and the International Criminal Court. From the three regional human rights courts, focus remains on the European Court of Human Rights. The aim is to find out how and to what extent this case law has shaped the notion of control in the law on international responsibility for States and individuals in the context of an armed conflict. Ultimately, this analysis will provide more clarity concerning standards of conduct and related legal obligations incumbent upon those involved in an armed conflict, especially civilian and military leaders, non-State armed groups, and State organs involved in planning and executing military operations

Some state practice regarding trade with occupied territories : from the GATT to today

Eugene Kontorovich. - In: The legality of economic activities in occupied territories : international law, EU law and business and human rights perspectives. - Abingdon : Routledge, 2020. - p. 65-87

This essay examines the legality of international trade with territories under belligerent occupation in light of state practice in the earliest years of the modern international trading system - shortly after World War II - combined with previously neglected aspects of state practice from recent years. The chapter will show that the provisions of the General Agreement on Tariffs and Trade (GATT) - the fundamental architecture of international trade - not only treat such business activity as permissible but also require other countries to extend full GATT preferences to them. It then turns to examining state practice, both to verify this understanding of the GATT and to compare it with any potential contemporary changes in the understanding of these relevant rules.

https://doi.org/10.4324/9780429288081 *

Some thoughts on the role of the notion of "control" in "choosing" the paradigm of hostilities or law enforcement as the governing framework for the use of force in military operations : is there any?

Eric Pouw. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 195-217

This contribution examines whether there is a role for 'control' in deciding which normative paradigm governing the use of force—law enforcement or hostilities—applies to a State's military operations.

The 'soul of an army' : a defence of military court trials for violations of the law of armed conflict

Conor Donohue. In: Israel law review : a journal of human rights, public and international law, Vol. 54, no. 1, 2021, p. 24-56

Military justice as a body of law was subject to much criticism in the preceding decades before undergoing significant reforms to ensure that fair trial rights could be achieved. However, modern military justice systems are appropriate mechanisms for addressing law of armed conflict (LOAC) violations committed by service members. It is argued that the goals of military justice are consistent with LOAC, and that military justice has a valid legal basis to try violations. Such trials have a large body of precedent. The purported disadvantages of military trials are sufficiently mitigated to prevent cover-ups and unfair trials. Furthermore, military justice offers several benefits that cannot be achieved in a civilian or international forum. It is concluded that although military legal systems are imperfect, their role in the enforcement of international criminal law is worthy of further debate.

https://doi.org/10.1017/S0021223720000205 *

Special rules of attribution of conduct in international law

Marko Milanovic. In: International law studies, Vol. 96, issue 1, 2020, p. 295-393

Are there are any special rules of attribution in international law? Are there, in other words, imputational rules that are not recognized as such in general international law, but are specific to particular branches of international law? This is the first article to systematically analyze the notion of special rules of attribution in international law. In particular, it searches for such rules in international humanitarian law, the law on the use of force, and European human rights law. The article argues that, to the extent special rules of attribution exist, they are rare and never uncontroversial. In most situations, putative special rules of attribution can be, and should be, conceptualized differently. It is particularly difficult to justify why rules of attribution should vary depending on the context or particular subject matter, for example, why a special rule of attribution should exist for terrorism but not (say) for genocide. Therefore, we should, to the extent reasonably possible, try to reconcile the various jurisprudential divergences identified in this article with the general attribution framework so as to minimize the incidence of special rules, unless there is a very good reason why such a rule should exist. One such reason could be emerging subject-specific state complicity doctrines, which do require sectoral adjustment, but even these doctrines would in most cases not be attributive in nature.

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Specifying the proportionality test and the standard of due precaution : problems of prognostic assessment in determining the meaning of "may be expected" and "anticipated"

Stefan Oeter. - In: Necessity and proportionality in international peace and security law. - Oxford : Oxford University Press, 2021. - p. 343-366

This chapter addresses the challenging legal and operational issues raised by the proportionality requirement to assess the legality of collateral damage. Specifically, the chapter engages closely with the relevant text of Articles 51(5)(b) and 57(2)(b) of the First Additional Protocol to the Geneva Conventions. The chapter first asks what makes an attack that unavoidably includes incidental loss of civilian lives or civilian property an “indiscriminate attack” under Article 51(5)(b). In more concrete terms, it asks how the formula for collateral damage—“excessive in relation to the concrete and direct military advantage anticipated”—may be operationalized. The chapter then moves to an analysis of the rule of precautions in Article 57(2)(b), with special emphasis on understanding how the military operator should navigate this rule in light of battlefield realities. The chapter then poses how these rules may be best understood under the regime of international criminal law.

State control over the use of autonomous weapon systems : risk management and state responsibility

Robin Geiss. - In: Military operations and the notion of control under international law. - The Hague : Asser Press, 2021. - p. 439-450

Starting from the premise that meaningful human control always needs to be ensured when deploying autonomous weapons systems and that anti-personnel autonomous weapons systems should be banned altogether, this contribution considers to what extent State control over the development and any later use of autonomous weapon systems is required, should these weapon systems and weapons nevertheless be developed. First, the questions that risk management and State responsibility pose in this regard are analysed, and what preventative steps may be taken. Second, attribution and State responsibility for the use of autonomous weapons are considered.

The status of rebels in non-international armed conflicts : do they have the right to life ?

Kentaro Wani. - In: Changing actors in international law. - Leiden ; Boston : Brill Nijhoff, 2021. - p. 356-379

The non-use of the term 'combatants' in the treaty law of non-international armed conflicts (NIAC) has caused controversy as to whether members of rebel forces in a NIAC may be killed at any time, as combatants in an international armed conflict (IAC) are. Neither the treaty law nor the customary law of NIAC provide a clear answer to this question. To resolve this long-standing controversy, it is essential, Kentaro Wani argues, to identify the rationale for the rule that combatants in IAC may be killed at any time, and to consider whether this rationale applies to NIACs.

Stepping back from the brink : why multilateral regulation of autonomy in weapons systems is difficult, yet imperative and feasible

Frank Sauer. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 235-259

This article explains why regulating autonomy in weapons systems, entailing the codification of a legally binding obligation to retain meaningful human control over the use of force, is such a challenging task within the framework of the United Nations Convention on Certain Conventional Weapons. It is difficult because it requires new diplomatic language, and because the military value of weapon autonomy is hard to forego in the current arms control winter. The article argues that regulation is nevertheless imperative, because the strategic as well as ethical risks outweigh the military benefits of unshackled weapon autonomy. To this end, it offers some thoughts on how the implementation of regulation can be expedited.

https://library.icrc.org/library/docs/DOC/irrc-913-sauer.pdf

Strategic proportionality : limitations on the use of force in modern armed conflicts

Noam Lubell and Amichai Cohen. In: International law studies, Vol. 96, issue 1, 2020, p. 160-195

The nature of modern armed conflicts, combined with traditional interpretations of proportionality, poses serious challenges to the jus ad bellum goal of limiting and controlling wars. In between the jus ad bellum focus on decisions to use force, and the international humanitarian law (IHL) regulation of specific attacks, there is a far-reaching space in which the regulatory role of international law is bereft of much needed clarity. Perhaps the most striking example is in relation to overall casualties of war. If the jus ad bellum is understood as applying to the opening moments of the conflict, then it cannot provide a solution to growing numbers of casualties later in the conflict. Moreover, if it does not apply to non-international armed conflicts, then it is of little use in relation to alleviating the suffering of war for a vast proportion of conflicts in the past half a century and more. IHL is equally unsuited for dealing with overall casualties, as

it may be the case that each individual attack is proportionate, but the cumulative number of civilians being killed is slowly rising to intolerable figures. A similar problem arises with regard to assessing other forms of accumulated destruction. This article sets out a new approach to proportionality in armed conflict and the regulation of war. It advocates for a principle of "strategic proportionality," stemming from general principles of international law and reflected in state practice, and which requires an ongoing assessment throughout the conflict balancing the overall harm against the strategic objectives. The article traces the historical development and aims of the principle of proportionality in war, sets out the scope and aims of strategic proportionality, and provides an analysis of how such a principle can be operationalized in practice.

https://digital-commons.usnwc.edu/ils/vol96/iss1/6/

The swarm that we already are : artificially intelligent (AI) swarming "insect drones", targeting and international humanitarian law in a posthuman ecology

Matilda Arvidsson. In: Journal of human rights and the environment, Vol. 11, no. 1, March 2020, p. 114-137

Over the last fifty-odd years the US Defense Advanced Research Project Agency (DARPA) has launched programs aiming at emulating and incorporating insect technologies in military technology. The US Army Unmanned Aircrafts Systems Roadmap 2010-2035 has specified insect swarming as a field of development for Unmanned Aviation Systems. While legal scholarship has paid substantial attention to drones, autonomous weapons systems and artificial intelligence (AI), developments based on insect swarming technologies have been largely ignored. This article takes emerging AI swarming technologies in military warfare systems as its starting point and asks about the significance of the swarming insect in and through contemporary International Humanitarian Law (IHL) and warfare. Taking up Gilles Deleuze and Felix Guattari's notions of 'the swarm' and the 'war machine ', and drawing on critical environmental legal scholarship, the article argues that rather than dispersing the human from its central position in the 'targeting loop', the increased interest in insects for commercial and warfare purposes is an intensification of transhumanist desires and an acceleration of late capitalism. As a counter-move, and as a contribution to a posthumanist turn in IHL, the article calls for becoming-insect, swarm and minoritarian as an epistemological practice and ontological shift in IHL and its critical scholarship, resulting in a posthumanitarian legal ordering of becoming.

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The swinging pendulum of cultural heritage crimes in international criminal law

Anne-Marie Carstens. - In: Intersections in International Cultural Heritage Law. - Oxford : Oxford University Press, 2020. - p. 109-132

Contemporary prosecutions in international criminal tribunals have exposed a long-standing debate over the role of cultural heritage-based crimes in international criminal law. This chapter presents an historical analysis that reveals that the pendulum has swung back and forth with regard to support for including offenses that expressly refer to the destruction or seizure of artistic, historic, and scientific property and of 'historic monuments'. While cultural heritage destruction was proposed as an offense after the First World War, a pervasive reluctance to include it largely prevailed from the postwar Nuremberg trials until the late 1980s. This chapter attributes this reluctance in part to coinciding developments in cultural property protection that were occurring outside international criminal law, such as the 1954 Hague Convention and the early drafts of the 1948 Genocide Convention. Before the end of the century, though, the pendulum swung back in favor of including the deliberate and unnecessary destruction of certain cultural heritage as a discrete and separate war crime. Both ad hoc international criminal codes and the Rome Statute of the International Criminal Court reflect lasting recognition of the role that cultural heritage destruction can play in the larger narrative of oppressing, persecuting, and even eradicating targeted collective groups.

Targeting private military and security companies

Tobias Vestner. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 57, no. 2, 2019, p. 251-278

The increasing use of Private Military and Security Companies (PMSCs) raises the question of their legal status. Given the close cooperation between states and PMSCs in conflict zones, as well as PMSCs' support to reaching military objectives, it is of particular interest if PMSCs can be lawfully targeted by parties to an armed conflict. Notably relevant for planners and operators, this has not been addressed, as such, in the existing literature. This article examines these questions. After outlining the general normative framework and related debates, it analyses the conditions under which PMSCs directly participate in hostilities (DPH). It then discusses conceptual limitations, notably regarding the nexus between DPH and the defence of others, and proposes practical dividing lines between defensive services which amount to DPH and those that do not. It then applies the legal tenets to different scenarios. The article concludes by applying the targeting rules under international humanitarian law (IHL) to attacks against PMSC staff.

http://www.ismllw.org/REVIEW/2018-2019%20ART%20Vestner.php

La théorie de la guerre juste et l'utilisation des drones armés : l'application des principes du jus in bello

Michaël Dewyn. - In: Robotisation des armées : enjeux militaires, éthiques et légaux. - Paris : Economica, 2020. - p. 105-123

Ce chapitre analyse dans quelle mesure les principes du jus in bello de la théorie de la guerre juste sont pertinents quand ils sont appliqués à l'utilisation des drones armés. "Pertinent", dans ce contexte-ci, signifie que les principes ont la capacité de nous aider à déterminer quelles règles devraient être respectées en utilisant des drones armés afin de pouvoir les catégoriser comme justes. Une première caractéristique inhérente aux drones armés sera analysée, à savoir le fait qu'aucun risque physique n'est pris lorsque nous les utilisons. La vision de la théorie de la guerre juste sera brièvement présentée et l'influence de la distance sur le comportement d'un opérateur de drone, ainsi que le problème des renseignements seront discutés. Ensuite, le principe de discrimination du jus in bello sera appliqué à l'utilisation des drones armés. Les conditions pour fixer exactement ce qui peut devenir ou non l'objet légitime d'une attaque de drone seront discutées ici. Enfin, le principe de proportionnalité sera étudié. Nous nous demanderons ce qui doit être intégré dans le calcul de proportionnalité et quels seraient les dangers de relativisme liés à ce principe.

To be or not to be ? : legal identity in crisis in non-international armed conflicts

Katharine M. A. Fortin. In: Human rights quarterly, Vol. 43, no. 1, February 2021, p. 29-69

Examining the situations of Syria, Iraq, and Ukraine, this article demonstrates how individuals living outside the control of the de jure government struggle to access birth registration and civil status documentation in times of non-international armed conflict. Evaluating how the right to legal identity is protected in international law, the article highlights the need for legal identity to be better protected in armed conflict, so that its conferral and denial is not used as a weapon by the fighting parties.

https://doi.org/10.1353/hrq.2021.0001 *

Toward the special computer law of targeting : "fully autonomous" weapons systems and the proportionality test

Masahiro Kurosaki. - In: Necessity and proportionality in international peace and security law. - Oxford : Oxford University Press, 2021. - p. 409-435

One of the implications of fully autonomous weapons systems (AWS) as an independent decision maker in the targeting process is that a human-centered paradigm should never be taken for granted. Indeed, they could allow a law of armed conflict (LOAC) debate immune from that

paradigm all the more so because the underlying "principle of human dignity" has failed to offer convincing reasons for its propriety in international legal discourse. Furthermore, the history of LOAC tells us that the existing human-centered approach to the proportionality test—the commander-centric approach—is, albeit strongly supported and developed by states and international criminal jurisprudence, particularly since the end of the Second World War, nothing more than a product of the time. So long as fully AWS exhibit the potential for better contribution to the LOAC goals to protect the victims of armed conflict than human soldiers, one could thus seek an alternative computer-centered approach to the law of targeting—a subset of LOAC—tailored to the defining characteristics of fully AWS in a manner to maximize their potential as well as to make the law more responsive to the needs of ever-changing battlespaces. With this in mind, this chapter aims to relativize the absoluteness of the existing human-centered approach to the proportionality test—which is not to deny the role of humans in the overall regulations of fully AWS whatsoever—and then, away from that approach, to propose an alternative one dedicated to fully AWS for their better regulation in response to the demands of changing times.

Trends in global disarmament treaties

Stuart Casey-Maslen and Tobias Vestner. In: Journal of conflict and security law, Vol. 25, no. 3, 2020, p. 449–471

Since the adoption of the UN Charter, states have concluded numerous international disarmament treaties. What are their core features, and are there any trends in their design? This article discusses the five global disarmament treaties, namely the 1971 Biological Weapons Convention, the 1992 Chemical Weapons Convention, the 1997 Anti-Personnel Mine Ban Convention, the 2008 Convention on Cluster Munitions and the 2017 Treaty on the Prohibition of Nuclear Weapons. It first considers how a broad set of prohibitions of activities with respect to specific weapons has evolved over time. Then, it analyses the treaties' implementation and compliance support mechanisms as well as their procedural aspects regarding entry into force and withdrawal. This article finds that a pattern has developed over the last two decades to outlaw all and any use of weapons by disarmament treaty, without first instituting a prohibition on their use under international humanitarian law (IHL). It also finds that reporting obligations, meetings of States Parties and treaty-related institutions are generally created, either directly by treaty or by subsequent state party decisions. Finally, there is a tendency to make the treaty's entry into force easier, and the withdrawal more difficult. It is argued that these trends arise from states' attempt to establish more easily disarmament treaties, design more robust disarmament treaties and more effectively protect civilians. The article concludes by reflecting whether these trends form the basis of a new branch of international law—international disarmament law—and discusses them in the context of emerging weapons and technologies.

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Twenty years on : international humanitarian law and the protection of civilians against the effects of cyber operations during armed conflicts

Laurent Gisel, Tilman Rodenhäuser and Knut Dörmann. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 287-334

In their different roles in the Legal Division of the International Committee of the Red Cross (ICRC), the authors of this article have followed developments related to the use of cyber operations during armed conflicts and the application of IHL to such operations closely. In this article, they first show that the use of cyber operations during armed conflict has become a reality of armed conflicts and is likely to be more prominent in the future. They then present a brief overview of multilateral discussions on the legal and normative framework regulating cyber operations during armed conflicts, looking in particular at various arguments around the applicability of IHL to cyber operations during armed conflict and the relationship between IHL and the UN Charter. They emphasize that in their view, there is no question that cyber operations during armed conflicts, or cyber warfare, are regulated by IHL. Thirdly, they zoom in on how IHL applies to cyber operations. Analyzing the most recent legal positions of States and experts, the authors revisit some of the most salient debates of the past decade, such as which cyber operations amount to an "attack" as defined in IHL and whether civilian data enjoys similar protection to "civilian objects". They also explore the IHL rules applicable to cyber operations other than

attacks and the special protection regimes for certain actors and infrastructure, such as medical facilities and humanitarian organizations.

https://library.icrc.org/library/docs/DOC/irrc-913-gisel.pdf

The updated ICRC Commentary on the Third Geneva Convention : a new tool to protect prisoners of war in the twenty-first century

Jemma Arman, Jean-Marie Henckaerts, Heleen Hiemstra and Kvitoslava Krotiuk. In: International review of the Red Cross, Vol. 102, no. 913, 2020, p. 389-416

Since their publication in the 1950s and 1980s respectively, the Commentaries on the Geneva Conventions of 1949 and their Additional Protocols of 1977 have become a major reference for the application and interpretation of those treaties. The International Committee of the Red Cross, together with a team of renowned experts, is currently updating these Commentaries in order to document developments and provide up-to-date interpretations of the treaty texts. This article highlights key points of interest covered in the updated Commentary on the Third Geneva Convention. It explains the fundamentals of the Convention: the historical background, the personal scope of application of the Convention and the fundamental protections that apply to all prisoners of war (PoWs). It then looks at the timing under which certain obligations are triggered, those prior to holding PoWs, those triggered by the taking of PoWs and during their captivity, and those at the end of a PoW's captivity. Finally, the article summarizes key substantive protections provided in the Third Convention.

https://library.icrc.org/library/docs/DOC/irrc-913-arman.pdf

The use of force for mission accomplishment : a pitfall in contemporary operations ?

Hanna Bourgeois, Jean-Emmanuel Perrin. In: The military law and the law of war review, Vol. 57, no. 1, 2018-2019, p. 59-102

Multinational operations are increasingly tasked with carrying out complex missions in volatile situations in which they face significant threats that can severely jeopardise the successful accomplishment of the mission. This article addresses two questions which arise in such situations. To begin with, it is often unclear to what extent these operations can use (potentially lethal) force to accomplish the mission. To formulate a response, this article maps the existing legal framework regarding the conditions for the use of force for the accomplishment of the mission. It concludes that human rights law and international humanitarian law allow for considerable leeway for the use of force to accomplish a mission in the conduct of hostilities. In situations which have no nexus with an armed conflict, the human rights law framework, however, significantly restricts the use of force which is (potentially) lethal in nature. These findings give rise to the second question, namely whether the law as it is still provides for enough margin to effectively govern contemporary conflicts or whether a new legal framework should be developed to fill the gap. This article argues that human rights law indeed appears to be less adapted to govern such situations that have no clear nexus with an armed conflict or that take place outside an armed conflict. However, after considering different options to effectively address the issues at stake, this article concludes that the best way forward is to accept the existing legal framework and the strict limits it imposes upon the use of force for mission accomplishment, while simultaneously exploring the use of possible non-lethal means.

http://www.ismllw.org/REVIEW/2018-2019%20ART%20Bourgeois%20Perrin.php

War crimes in cyberspace : prosecuting disruptive cyber operations under Article 8 of the Rome Statute

Georgia Beatty. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 58, no. 2, 2020, p. 209-239

This article reviews the existing scholarship concerning the applicability of IHL norms to cyberspace, and in particular the Tallinn Manual, which is considered to be the most authoritative restatement of international law applicable in the cyber context. In doing so, it seeks to answer

the question of whether purely disruptive (as opposed to physically destructive) cyber operations could be prosecuted as war crimes at the International Criminal Court under Article 8 of the Rome Statute. The Tallinn Manual, being a restatement of lex lata at the time that it was drafted, places a heavy emphasis on physical effects when applying the jus in bello to cyber warfare. If the ICC were to rely on the Tallinn Manual's conclusions to inform its interpretation of Article 8 in relation to cyber-based war crimes, this could have the effect of excluding disruptive cyber operations from its jurisdiction. This is a cause for concern in a world where militaries and civilian populations alike are becoming increasingly reliant on computer systems and the internet. Disruptive cyber operations can result in devastating consequences even though they do not cause physical damage, and are likely to become more powerful and sophisticated in future as technology develops.

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War crimes of conscription, enlistment and use of child soldiers : expendable human rights rhetoric of the International Criminal Court

Sergii Masol. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 3, H. 3/4, 2020, p. 193-208

This paper examines the definition of war crimes of conscripting or enlisting children under the age of fifteen years and using them to participate actively in hostilities. The focus is on the statutory framework and jurisprudence of the International Criminal Court. In the Lubanga case, the above-mentioned definition was construed with multiple references to human rights law. The common thread running through this paper is the relative weight given to international humanitarian law and human rights law by the International Criminal Court. It is submitted that the role of international criminal law and international humanitarian law is decisive in the Lubanga case, and rightly so. At the same time, references to human rights law merely confirm and legitimate the conclusions reached on other grounds rather than humanise the relevant international criminal law norms.

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The war lawyers : the United States, Israel, and juridical warfare

Craig Jones. - Oxford : Oxford University Press, 2020. - XXXII, 360 p.

The War Lawyers examines the laws of war interpreted and applied by military lawyers to aerial targeting operations carried out by the US military in Iraq and Afghanistan, and the Israel military in Gaza. Drawing on interviews with military lawyers and others, this book explains why some lawyers became integrated in the chain of command whereby military targets are identified and attacked, whether by manned aircraft, drones and/or ground forces, and with what results. This book shows just how important law and war lawyers have become in the conduct of contemporary warfare, and how it is understood. Jones argues that circulations of law and policy between the U.S. and Israel have expanded the scope of what constitutes a legitimate military target, contending that the involvement of war lawyers in targeting operations not only constrains military violence, but also enables, legitimises, and sometimes even extends it.

https://doi.org/10.1093/oso/9780198842927.001.0001 *

You cannot target child soldiers as if they were adults, can you ? : Solutions to close the gap between law and morals concerning child soldiers currently under discussion

Julia Jungfleisch. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 3, H. 3/4, 2020, p. 261-277

Whether child soldiers should be treated differently, i. e. more favourably than their adult counterparts, has long been the subject of academic and political debate. The aim of this paper is to show the current state of the academic discussion and analyse the different approaches to a solution to the aforementioned question. The paper therefore focuses on the legal framework concerning the legality of targeting child soldiers in armed conflicts. Whereas from a moral

perspective, children should be treated differently than adult soldiers due to their status as a special protected group under international law, international humanitarian law does not mirror this assumption and makes no distinction between adult and child soldiers with regard to targeting. This article presents approaches from literature and practice that aim to close this gap. It will be shown that (currently) there is no obligation to treat child soldiers differently from adult soldiers when it comes to their classification as a legitimate military target.

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