BIBLIOGRAPHY
3rd 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)

The Additional Protocols at 40 : achievements and challenges : proceedings of the 18th Bruges Colloquium, 19-20 October 2017

CICR, Collège d'Europe. In: Collegium, No 48, Autumn/automne 2018, 226 p.
https://www.coleurope.eu/sites/default/files/uploads/page/collegium_48_webversie.pdf

Assistance to disaster victims in an armed conflict : the role of international humanitarian law

Sarah Williams and Gabrielle Simm. - In: Routledge handbook of human rights and disasters. - Abington : Routledge, 2020. - p. 43-62

Booty, bounty, blockade, and prize : time to reevaluate the law

Andrew Clapham. In: International law studies, Vol. 97, 2021, p. 1200-1268
https://digital-commons.usnwc.edu/ils/vol97/iss1/47/

British War Office manuals and international law, 1899–1907

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https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54956.pdf *

Common Article 3 at 70 : reappraising revolution and civil war in international law

Kathryn Greenman. In: Melbourne journal of international law, Vol. 21, issue 1, July 2020, 27 p.
https://law.unimelb.edu.au/__data/assets/pdf_file/0003/3577431/03Greenman-unpaginated.pdf

Le droit international comme corps de "droit privé" et de "droit public" : cours général de droit international public

par Robert Kolb. In: Recueil des cours : Académie de droit international de la Haye = Collected courses of the Hague academy of international law, T. 419, 2021, p. 9-668

Foreign bases in host states as a form of invited military assistance : legal implications

Michael J. Strauss. In: Journal on the use of force and international law, vol. 8, no 1, 2021, p. 67-90
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A forever war ? Rethinking the temporal scope of non-international armed conflict

Nathan Derejko. In: Journal of conflict and security law, Vol. 26, no. 2, Summer 2021, p. 347-376
https://doi.org/10.1093/jcsl/kraa018 *

Foundational myths in the laws of war : the 1863 Lieber Code, and the 1864 Geneva Convention

Adam Roberts. In: Melbourne journal of international law, Vol. 20, issue 1, July 2019, 39 p.
https://law.unimelb.edu.au/__data/assets/pdf_file/0020/3144314/Roberts.pdf

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Samuel Moyn. - New York : Farrar Straus and Giroux, 2021. - 400 p.

The interplay between 'peacetime' law and the law of armed conflict: consequences for post-conflict peacebuilding

Dieter Fleck. In: Journal of conflict and security law, Vol. 26, no. 2, Summer 2021, p. 289–307

https://doi.org/10.1093/jcsl/krab007 *

Law and sentiment in international politics : ethics, emotions, and the evolution of the laws of war

David Traven. - Cambridge : Cambridge University Press, 2021. - IX, 306 p.

https://doi.org/10.1017/9781108954280 *

Law-making and legitimacy in international humanitarian law

ed. by Heike Krieger ; with assistant editor Jonas Püschmann. - Cheltenham ; Northampton : E. Elgar, 2021. - XV, 466 p.

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Gary D. Solis. - New York : Cambridge University Press, 2022. - XXXIV, 743 p.

The law of war and peace : a gender analysis. Volume 1

Sara Bertotti, Gina Heathcote, Emily Jones, Sheri Labenski. - London : Zed Books, 2021. - X, 263 p.

The Martens Clause and environmental protection in relation to armed conflicts

Dieter Fleck. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 243-266

https://www.gojil.eu/issues/101/101_article_fleck.pdf

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Waseem Ahmad Qureshi. In: San Diego international law journal, Vol. 22, issue 2, Spring 2021, p. 219-262

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Revisiting the Memory of Solferino : knowledge production and the laws of war

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II. Types of conflicts

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

Access to water in Donbass and Crimea : attacks against water infrastructures and the blockade of the North Crimea Canal

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III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Alliés, partenaires et intermédiaires : vue d'ensemble des relations de soutien dans les conflits armés

[Initiative du CICR sur les relations de soutien dans les conflits armés]. - Genève : CICR, septembre 2021. - 35 p.
https://library.icrc.org/library/docs/DOC/icrc-4536-001.pdf

Combatant rank and socialization to norms of restraint : examining the Australian and Philippine armies

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Foreign fighters, terrorism and counter-terrorism

Sandra Krähenmann. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : Edward Elgar, 2020. - p. 239-255
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Annyssa Bellal. - In: Research handbook on globalisation and the law. - Cheltenham ; Northampton : E. Elgar, 2018. - p. 239-263

Homelands versus minelands : why do armed groups commit to the laws of war?

Tanisha M. Fazal and Margarita Konaev. In: Journal of global security studies, Vol. 4, no. 2, April 2019, Pages 149–168
https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54597.pdf *

Inviting non-state armed groups to the table : inclusive strategies towards a more fit for purpose international humanitarian law

Ezequiel Heffes and Jonathan Somer. - London : ODI, December 2020. - 15 p.
https://odi.org/documents/6303/odi-ec-nonstatearmedgrioups-briefingnote-dec20-proof01a.pdf

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https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/2/2021/08/legal-brief-on-foreign-nationals-held-in-detention-in-syria.pdf

Mind the gap : right to life of states' own military personnel in conduct of hostilities

by Yulia Mogutova. - Geneva : Geneva Academy of international humanitarian law and human rights, August 2020. - 35 p.
https://prix-henry-dunant.org/wp-content/uploads/2020-Research-MOGUTOVA-Gaggioli-LLM-Paper-19-20.pdf

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Ady Niv. In: Journal of international criminal justice, Vol. 19, no. 2, May 2021, p. 301-326
https://doi.org/10.1093/jicj/mqab043 *

IV. Multinational forces

Intelligence sharing in multinational military operations and complicity under international law

Marko Milanovic. In: International law studies, Vol. 97, 2021, p. 1269-1403
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The interplay between 'peacetime' law and the law of armed conflict: consequences for post-conflict peacebuilding

Dieter Fleck. In: Journal of conflict and security law, Vol. 26, no. 2, Summer 2021, p. 289–307
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V. Private actors

Are our red lines just marvelous fiction ? Determining limits to outsourcing during armed conflicts

Frauke Renz. In: Swiss review of international and European law = Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen, Vol. 31, no. 4, 2021, p. 565-595
https://heinonline.org/HOL/P?h=hein.journals/sriel31&i=575

Through the looking glass : corporate actors and environmental harm beyond the ILC

Daniëlla Dam-de Jong and Saskia Wolters. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 111-149
https://www.gojil.eu/issues/101/101_article_damdejong_wolters.pdf

War crimes, Inc. : the ATS case against the U.S. weapons industry for aiding and abetting atrocities in Yemen

Elizabeth Beavers. In: Florida journal of international law, Vol. 31, issue 2, 2020, p. 179-210
https://scholarship.law.ufl.edu/fjil/vol31/iss2/1/

VI. Protection of persons

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

Armed conflict and human rights law : protecting civilians and international humanitarian law

Daniel Ivo Odon. - London ; New York : Routledge, 2022. - XI, 156 p.

Assistance to disaster victims in an armed conflict : the role of international humanitarian law

Sarah Williams and Gabrielle Simm. - In: Routledge handbook of human rights and disasters. - Abington : Routledge, 2020. - p. 43-62

Can the Women, Peace and Security Agenda and international humanitarian law join forces ? : emerging findings and promising directions

Jeni Klugman, Robert U. Nagel, Mara Redlich Revkin, Orly Maya Stern. - [Washington D.C.] : Georgetown Institute for Women, Peace and Security, 2021. - 32 p.
https://giwps.georgetown.edu/wp-content/uploads/2021/01/Can-WPS-and-IHL-Join-Forces.pdf

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Leandro Anton M. Castro. In: Asia-Pacific journal of international humanitarian law, Vol. 2, no. 1, 2021, p. 31-65
https://apjihl.org/article/the-humanitarian-exemption-challenge-securing-the-philippine-humanitarian-space-in-the-anti-terrorism-act-of-2020/

International humanitarian law and counter-terrorism : fundamental values, conflicting obligations

David McKeever. In: International and comparative law quarterly, Vol. 69, part 1, January 2020, p. 43-78
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International law in disaster scenarios : applicable rules and principles

Flavia Zorzi Giustiniani. - Cham : Palgrave Macmillan, 2021. - XIV, 209 p.

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The legality of closure on land and safe passage between the Gaza Strip and the West Bank

Marco Longobardo. In: Asian journal of international law, Vol. 11, issue 1, January 2021, p. 50-88
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New dimensions and challenges of urban warfare

International Institute of Humanitarian Law ; ed. Gabriella Venturini; associated ed. Gian Luca Beruto. - Milano : Franco Angeli, 2021. - 151 p.
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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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Access to water in Donbass and Crimea : attacks against water infrastructures and the blockade of the North Crimea Canal

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Protecting protected areas in bello : learning from institutional design and conflict resilience in the Greater Virunga and Kidepo Landscapes

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SOUTH AFRICA

Can the Women, Peace and Security Agenda and international humanitarian law join forces ? : emerging findings and promising directions

Jeni Klugman, Robert U. Nagel, Mara Redlich Revkin, Orly Maya Stern. - [Washington D.C.] : Georgetown Institute for Women, Peace and Security, 2021. - 32 p.
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SOUTH AMERICA

Applying the "war on terror" to the "war on drugs" : the legal implications and benefits of recategorizing Latin American drug cartels as foreign terrorist organizations

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Protecting protected areas in bello : learning from institutional design and conflict resilience in the Greater Virunga and Kidepo Landscapes

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Rebel courts : the administration of justice by armed insurgents

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The Polisario Front and the future of Article 1(4)

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"Safe zones" : a protective alternative to flight or a tool of refugee containment ?: clarifying the international legal framework governing access to refugee protection against the backdrop of "safe zones" in conflict-affected contexts

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TURKEY

"Safe zones" : a protective alternative to flight or a tool of refugee containment? : clarifying the international legal framework governing access to refugee protection against the backdrop of "safe zones" in conflict-affected contexts

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UGANDA

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Reconceptualising the legal response to foreign fighters

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UNITED STATES

Applying the "war on terror" to the "war on drugs" : the legal implications and benefits of recategorizing Latin American drug cartels as foreign terrorist organizations

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Can the Women, Peace and Security Agenda and international humanitarian law join forces ? : emerging findings and promising directions

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The Cold War, the space race, and the law of outer space : space for peace

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Unilateral coercive measures : towards international humanitarian law and international human rights

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WESTERN SAHARA

The Polisario Front and the future of Article 1(4)

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YEMEN

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All with Abstracts

Access to water in Donbass and Crimea : attacks against water infrastructures and the blockade of the North Crimea Canal

Marco Pertile, Sondra Faccio. In: Review of European, comparative and international environmental law, Vol. 29, issue 1, April 2020, p. 56-66

This article analyses two situations currently endangering water security in Donbass and Crimea, highlighting the international law obligations of the actors involved. First, the article analyses the ongoing armed conflict in Donbass, exploring what responsibilities may be envisaged under the applicable rules of international humanitarian law and international criminal law for the actors involved in the continuous attack and damaging of water facilities. Second, the article focuses on the legality of Ukraine's decision to block the North Crimea Canal, thereby stopping the flow of water towards the occupied territory of Crimea. The question is whether this action can be qualified as a lawful sovereign decision or whether there are international rules limiting Ukraine's discretion. The article analyses the legal obligations of both Ukraine and the Russian Federation under general international law, international humanitarian law and human rights law.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54949.pdf *

The Additional Protocols at 40 : achievements and challenges : proceedings of the 18th Bruges Colloquium, 19-20 October 2017

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https://www.coleurope.eu/sites/default/files/uploads/page/collegium_48_webversie.pdf

Alliés, partenaires et intermédiaires : vue d'ensemble des relations de soutien dans les conflits armés

[Initiative du CICR sur les relations de soutien dans les conflits armés]. - Genève : CICR, septembre 2021. - 35 p.

Le CICR définit une relation de soutien comme toute contribution qui renforce la capacité d'une partie à un conflit armé de mener celui-ci. Le CICR considère que de telles relations apportent une opportunité, exploitée ou non, d'influencer positivement la protection apportée aux personnes hors de combat. Le CICR invite donc les acteurs qui apportent ou reçoivent du soutien à avoir une vue d'ensemble de leur influence possible sur la manière dont les combats sont menés et dont la période qui suit le conflit est gérée. Au travers d'un dialogue et d'un partage d'expériences continus avec les acteurs qui apportent ou reçoivent du soutien en situation de conflit armé, le CICR entend faciliter la compréhension des bonnes pratiques qui permettent de réduire le coût humain de la guerre. C'est dans cette optique que le présent document invite les décideurs à envisager des moyens pragmatiques d'atténuer le risque de conséquences néfastes sur le plan humanitaire et à renforcer la protection des personnes hors de combat, notamment au travers d'un meilleur respect du droit international humanitaire.

https://library.icrc.org/library/docs/DOC/icrc-4536-001.pdf

The application of the law of occupation in maritime zones and rights to 'occupied' marine resources

Shani Friedman. In: The international journal of maritime and coastal law, vol. 36, 2021, p. 419-437

This article seeks to contribute to the emerging literature concerning the application of belligerent occupation in maritime zones of the occupied State. It supports the approach that the law of occupation and the law of the sea apply simultaneously in case of occupation of coastal States, offering a new perspective on the jurisdiction of the occupying power to exploit marine resources in the occupied State's continental shelf

and exclusive economic zone. This perspective highlights some issues that have been ignored in the literature thus far to better understand the rights and obligations of the relevant Parties with respect to maritime zones of the occupied State.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54757.pdf *

Applying the "war on terror" to the "war on drugs" : the legal implications and benefits of recategorizing Latin American drug cartels as foreign terrorist organizations

Madison Standon. In: San Diego international law journal, Vol. 22, issue 2, Spring 2021, p. 365-408

This Comment analyzes, and ultimately rejects, the proposal for reclassifying Latin American Drug Cartels as Foreign Terrorist Organizations. Section I provides a brief history about the War on Drugs, the ineffectiveness of the policies implemented to combat the War on Drugs, and a brief history about the War on Terror. Section II discusses applicable international and domestic laws, including the Geneva Conventions, international human rights law, U.S. terrorism laws, U.S. drug laws, and U.S. case law. Section III considers whether Latin American Drug Cartels can be recategorized as Foreign Terrorist Organizations under current the current statutory scheme, analyzes how international laws would interact with the recategorized Latin American Drug Cartels, and outlines both the benefits and consequences of recategorizing Latin American Drug Cartels as Foreign Terrorist Organizations. Finally, section IV advocates against recategorizing Latin American Drug Cartels as Foreign Terrorist Organizations and instead advocates for change in U.S. domestic drug laws, which would have an international impact and fundamentally alter the War on Drugs and the American way of life.

https://digital.sandiego.edu/ilj/vol22/iss2/7

Are our red lines just marvelous fiction ? Determining limits to outsourcing during armed conflicts

Frauke Renz. In: Swiss review of international and European law = Schweizerische Zeitschrift für internationales und europäisches Recht = Revue suisse de droit international et de droit européen, Vol. 31, no. 4, 2021, p. 565-595

International humanitarian law (IHL) prohibits the outsourcing of only a few functions to private contractors, such as the administration of prisoner of war camps. For other roles, no explicit prohibitions exist. This becomes especially relevant when assessing new trends in warfare such as the operation of armed drones and the programming of increasingly autonomous weapon systems. Yet, this article argues that there are limits based on the fundamental principles of IHL. Contracting states cannot uphold the principle of distinction in good faith while relying on private contractors to directly participate in hostilities on a regular basis. This holds true even if the contractors are considered civilians based on contractual agreement. To uphold the principle of distinction, states should not outsource the widespread and regular direct participation in hostilities, especially if the acts are carried out in proximity to the battlefield.

https://heinonline.org/HOL/P?h=hein.journals/sriel31&i=575 *

Armed conflict and human rights law : protecting civilians and international humanitarian law

Daniel Ivo Odon. - London ; New York : Routledge, 2022. - XI, 156 p.

This book explores developments in international law regarding the relationship between human rights law and international humanitarian law and their coapplicability in armed conflict situations. The work examines the jurisprudence of the international human rights courts and looks at the Inter-American and European Courts of Human Rights case law in dealing with new emergencies in armed conflicts. It argues that a new interpretation and application of the law is required to deal with current needs while remaining faithful to moral commitments made in the international arena. In this way, the book deals with recent cases and their rationale to build a new understanding of law and international policy that complies with the globalization process and progress towards an enhancement of the international community's legal framework.

Arms control and disarmament law

Stuart Casey-Maslen. - Oxford : Oxford University Press, 2021. - XVI, 186 p.

Arms control and disarmament are key elements in promoting international peace and security. In recent decades the scope of disarmament law has broadened from a traditional focus on weapons of mass destruction to encompass conventional weapons. In this new volume in the Elements series, Stuart Casey-Maslen provides a concise and objective appraisal of international arms control and disarmament law. In seven concise chapters, he traces the history of arms control and disarmament in the modern era, addressing the issues surrounding biological and chemical weapons, the Non-Proliferation of Nuclear Weapons, and conventional weapon and arms transfer regimes. He concludes by considering how, in order to remain relevant, disarmament and arms control will need to adapt to rapidly evolving technologies that defy traditional means of verification and control. Arms Control and Disarmament Law is an accessible, go-to source for practicing international lawyers, judges and arbitrators, government and military officers, scholars, teachers, and students.

https://opil.ouplaw.com/view/10.1093/law/9780198865032.001.0001/law-9780198865032

Assistance to disaster victims in an armed conflict : the role of international humanitarian law

Sarah Williams and Gabrielle Simm. - In: Routledge handbook of human rights and disasters. - Abington : Routledge, 2020. - p. 43-62

This chapter considers the interaction between International Humanitarian Law (IHL) and International Disaster Law (IDL) in governing humanitarian assistance to disaster victims in an armed conflict. Disasters may occur in a State that is already experiencing armed conflict; or a disaster or series of disasters may lead to armed conflict. The relationship between IHL and IDL, and which law applies in practice, is unclear. Using examples from the Asia-Pacific region, this chapter discusses the International Law Commission (ILC) Draft Article that treats IHL as lex specialis in disasters. First, it outlines the principles of IHL on humanitarian assistance and how they potentially apply to those affected by a disaster. Next, it considers how the ILC has approached the role of IHL, before examining how IHL and IDL may interact in practice. Finally, the chapter argues that a more nuanced understanding of the relationship between IHL and IDL is required so as to take into account the context in which disasters occur and to recognise that the IHL and IDL may be complementary and mutually reinforcing.

Autonomie et létalité en robotique militaire

Centre de recherche des Écoles de Saint-Cyr Coëtquidan. - Paris : Comité d'études de défense nationale, 2018. - 264 p.

L'arrivée et la banalisation des robots militaires sur les champs de bataille ont d'ores et déjà transformé la théorie et la pratique des conflits armés. En une quinzaine d'années, le drone est devenu indispensable en opérations extérieures. Dans les quinze prochaines années, c'est la question de l'autonomie promise par les développements de l'intelligence artificielle (IA) qui sera au cœur des préoccupations. Ce Cahier de la Revue Défense Nationale rend compte de ces différents champs de la réflexion sur l'autonomie des systèmes robotiques militaires et la question de la létalité. Il s'efforce de dresser un état des questions actuelles, de préciser les concepts et de contribuer à la mise en perspective des enjeux qui se poseront dans les années à venir.

https://www.defnat.com/e-RDN/sommaire_cahier.php?cidcahier=1166

Autonomous weapon systems and accountability : putting the cart before the horse

Carrie McDougall. In: Melbourne journal of international law, Vol. 20, issue 1, July 2019, 30 p.

Arguments that in many scenarios there will exist an 'accountability gap' where civilians are unlawfully killed through the use of an autonomous weapon system ('AWS') have been advanced to justify either the prohibition or restriction of AWS. This article examines the accountability problem through a critical review of the literature on accountability and AWS in order to identify why some experts say there will be no accountability gap while others argue there will, why some do not see this as a problem and others do, and why some consider this is a problem that has a solution while others see it as irresolvable. It is demonstrated that in large part these differing conclusions are the result of varying assumptions and preconditions. Without questioning the inherent value of accountability in the broad, it is argued that solutions to the debate

over AWS will not be found in international criminal law, which should not be used as a backdoor to address perceived shortcomings in international humanitarian law. It is further argued that no analysis of the accountability problem will provide meaningful guidance as to whether the international community needs to prohibit or restrict AWS given that, one way or another, international criminal law can be amended to plug the accountability gap, if this is the desired policy outcome.

https://law.unimelb.edu.au/__data/assets/pdf_file/0006/3144309/McDougall.pdf

Autonomous weapons and the responsibility gap in light of the mens rea of the war crime of attacking civilians in the ICC statute

Marta Bo. In: Journal of international criminal justice, Vol. 19, no. 2, May 2021, p. 275-299

Within the broader context of the problems raised by the interaction between humans and machines in weaponry and targeting, this paper deals with the specific issue of the mens rea required to establish responsibility for the war crime of indiscriminate attacks, in the context of attacks performed with semi-autonomous weapons or with the support of artificial intelligence (AI) in targeting decision-making. The author presents the difficulties that are determined by the interaction between humans and machines, and highlights that an interpretation that would allow for risk-taking mental elements such as dolus eventualis and recklessness in the framework of the war crime of attacking civilians would be better able to capture the criminality of the conduct of the person who knowingly accepts the risk of killing civilians as part of an AI-powered attack where the result of hitting the civilian target is one of the possible outcomes. However, the article indicates that this construction can be employed only in specific circumstances, since in most scenarios even these lowered mens rea requirements would not be met. In most human-machine teaming scenarios, lower types of intent such as dolus eventualis would still be insufficient for the ascription of criminal responsibility for such indiscriminate attacks against civilians. This is because of the specific risks posed by the integration of autonomy in the targeting process and the resulting changes to the cognitive environment in which human agents operate, which significantly affect specific components of mens rea standards.

https://doi.org/10.1093/jicj/mqab005 *

Booty, bounty, blockade, and prize : time to reevaluate the law

Andrew Clapham. In: International law studies, Vol. 97, 2021, p. 1200-1268

This article considers the so-called belligerent rights of States in times of war. In particular it focuses on booty of war, blockade, and the capture of merchant ships and their cargo. It is suggested that, while the rules may not often be applied today, they nevertheless continue to exert a certain influence, contributing to confusion about the boundaries of the legitimate use of force and a blurring of the distinction between military objectives and civilian objects. Considering that the UN Charter has outlawed the use of force, the article also questions why such rules concerning capture should continue to have place in international law and its manuals. An application of the rules in effect rewards an aggressor State with the belligerent right to acquire enemy or neutral property. The chapter ends with suggestions for a radical rethink of the rules on seizure of enemy and neutral ships and the cargoes they are transporting. It asks why being at war should entitle States to capture and permanently acquire enemy or neutral property. In sum, it questions whether prize law should exist at all today. The article is part of a larger enquiry into how the concept of war permeates our thinking with often-disastrous effects.

https://digital-commons.usnwc.edu/ils/vol97/iss1/47/

British War Office manuals and international law, 1899–1907

Lia Brazil. - In: Empire and legal thought : ideas and institutions from Antiquity to Modernity. - Leiden : Brill Nijhoff, 2020. - p. 548-577

In the aftermath of the 1899 Hague Convention, Oxford Professor Thomas Erskine Holland was employed by the British War Office to write the section on the laws of war for the army's Manual of Military Law. In an era of rapid change and codification of international laws of war Holland's involvement with the Manual of Military Law exposed the deep divisions in the British Government over the content and purpose of the codified laws of war. Holland's conviction in the binding nature of international convention was challenged by the War Office and Foreign Office, who disputed his academic understanding of how and when international law should be applied in conflict. In the British civil service international legal expertise, feigned or legitimate, was claimed by many individuals making up what Robinson and Gallagher called the 'official mind of imperialism'. These layers of intergovernmental bureaucracy subjected his draft to constant revisions, exposing the multiple, and often contradictory, understandings of international law held by the military and civil service. This chapter first provides of a close reading of the correspondence surrounding

Holland's text to explore the reluctance of the government to commit to written codification on the laws of war. It then contrasts Holland's approach to the Manual of Military Law with that of the previous compiler, Lord Henry Thring, to track the changing sources of the laws of war for the War Office. These changes are situated in the context of the South African War (1899–1902), a cataclysm which preoccupied the secretariats of the Colonial Office, the Foreign Office, and the War Office like no other issue of the time. Together, these experiences and characters illustrate the disparate and often convoluted understandings of international law which contributed to the evolution of international legal thought in the British War Office.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54956.pdf *

Can the Women, Peace and Security Agenda and international humanitarian law join forces ? : emerging findings and promising directions

Jeni Klugman, Robert U. Nagel, Mara Redlich Revkin, Orly Maya Stern. - [Washington D.C.] : Georgetown Institute for Women, Peace and Security, 2021. - 32 p.

This report explores overlaps and synergies between International Humanitarian Law (IHL) and the women, peace and security (WPS) agenda, specifically the protection and participation pillars of WPS. IHL is the body of law that governs armed conflict. It is designed to protect combatants and civilians of all genders by restricting the means and methods of warfare. Although IHL has a track record of meaningfully protecting the rights of people in conflict-affected areas over the past five decades, there are notable shortcomings and blind spots in its ability to address the gendered dimensions of conflict. While the authors of the report do not advocate for the merging of these two agendas, they argue that there is potential to broaden the focus of the WPS protection pillar to ensure women and girls are safe from all forms of violence, and to use IHL to add legal force to the WPS agenda. Three case studies on the militaries of South Africa, Israel, and the United States highlight progress and challenges around WPS implementation and IHL compliance. South Africa is a case in which the military is engaged in peacekeeping operations, with frequent allegations made against it of sexual assault against civilians. The United States is a case in which women's participation in combat roles has increased significantly in recent years, as well as one in which soldiers are deployed in nonconflict situations (such as partner military training missions and black-site prison facilities) where IHL does not formally apply. Israel has the largest rate of women's participation of any state military in the world. These cases demonstrate persistent shortcomings but also crucial opportunities to better leverage WPS to promote IHL compliance and improve women's protection.

https://giwps.georgetown.edu/wp-content/uploads/2021/01/Can-WPS-and-IHL-Join-Forces.pdf

China's container missile deployments could violate the law of naval warfare

Raul Pedrozo. In: International law studies, Vol. 97, 2021, p. 1160-1170

China is reportedly developing long-range cruise missiles that can be fired from standard shipping containers loaded on merchant vessels. China is also converting heavy-lift civilian ships and roll-on roll-off (RORO) ferries to serve as de facto amphibious assault ships to support People's Liberation Army (PLA) amphibious operations. While none of these activities are illegal per se, they do raise potential concerns under the law of naval warfare. Only warships can engage in offensive belligerent rights during an international armed conflict. Using merchant vessels to engage in belligerent rights would violate international law unless China first converts the vessels into warships in accordance with the rules set out in the 1907 Hague Convention VII. Using converted commercial ships to directly support military operations increases the risk that all Chinese-flagged container ships and RORO ferries will be targeted as military objectives given that it will be difficult, if not impossible, to distinguish between a converted and non-converted vessel.

https://digital-commons.usnwc.edu/ils/vol97/iss1/45/

The Cold War, the space race, and the law of outer space : space for peace

Albert K. Lai. - London ; New York : Routledge, 2021. - VI, 218 p.

By the 1960s, the world faced the prospect of nuclear testing in outer space, the placement of weapons of mass destruction in orbit, and the militarization of the moon. This book tells the story of how the United Nations tried to seize the promise of peace through scientific cooperation and to ward off the potential for war in the Space Age through the adoption of the Outer Space Treaty, the Rescue and Return Agreement, the Liability Convention, the Registration Convention, and the Moon Agreement.

Combatant rank and socialization to norms of restraint : examining the Australian and Philippine armies

Andrew M. Bell, Fiona Terry. In: International interactions, Vol. 47, no. 5, 2021, p. 825-854

How does combatant rank influence the adoption of international humanitarian law (IHL) norms—or "norms of restraint"—within military organizations? To date, few political science studies have directly examined the impact of rank in influencing combatant socialization to norms of restraint. This study helps to fill this gap by examining combatant rank and the transmission and adoption of norms of restraint in military organizations. To do so, it conducts the first known comparative research study exploiting original survey and interview data from two state armed forces—the Australian Army and the Philippine Army. Research results show that under some conditions combatant rank can significantly influence the norm socialization process. Data further suggest that the adoption of such norms may be linked to the nature of command relationships within the military: the relative influence possessed by senior officers and junior enlisted members may affect the degree to which official norms are transmitted to enlisted combatants. Finally, data reveal the potentially problematic paradox of rank: the noncommissioned officers (NCOs) most influential for junior enlisted soldiers may themselves be more resistant to norms of restraint than senior officers operating at higher levels of command. Such data provide noteworthy new data enhancing our understanding of rank, military culture, and combatant socialization to norms of restraint.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54763.pdf *

Commentary on the Third Geneva Convention : Convention (III) relative to the treatment of prisoners of war

ed. committee: Knut Dörmann... [et al.] ; project team: Jean-Marie Henckaerts... [et al.]. - Cambridge [etc.] : Cambridge University Press ; Geneva : ICRC, 2021. - 2 vol. (XXVI, p. 1-976 ; XII, p. 977-2211)

The application and interpretation of the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 have developed significantly in the seventy years since the International Committee of the Red Cross (ICRC) first published its Commentaries on these important humanitarian treaties. To promote a better understanding of, and respect for, this body of law, the ICRC commissioned a comprehensive update of its original Commentaries, of which this is the third volume. The Commentary on the Third Convention, relative to the treatment of prisoners of war and their protections, takes into account developments in the law and practice in the past seven decades to provide up-to-date interpretations of the Convention. The new Commentary has been reviewed by humanitarian law practitioners and academics from around the world. This new Commentary will be an essential tool for anyone involved with international humanitarian law.

https://doi.org/10.1017/9781108979320 *

Common Article 3 at 70 : reappraising revolution and civil war in international law

Kathryn Greenman. In: Melbourne journal of international law, Vol. 21, issue 1, July 2020, 27 p.

Shortly after its adoption, Article 3 common to the Geneva Conventions of 1949 ('Common Article 3') was described as 'striking' and 'revolutionary', as well as a 'legal heresy' and 'unconceivable, from a legal point of view'. 70 years after its adoption and coming into force, I seek to explore what type of a 'revolution' or 'heresy' Common Article 3 represented. I argue that Common Article 3 was not revolutionary or heretical merely because it applied international law to civil war and revolution or imposed international obligations on rebels. The law of alien protection and the doctrine of belligerency already did this. It was certainly the first multilateral treaty to do so, but such a change in form is not, I argue, revolutionary or heretical in itself. What was groundbreaking about Common Article 3 was that it applied international law to civil war and revolution and imposed international obligations on rebels within a new framing of internal conflict as a humanitarian — rather than a primarily commercial — problem. It took many decades, however, and the rise of international human rights law, for this framing to come to predominate and for international lawyers to take a serious interest in the obligations of rebels.

https://law.unimelb.edu.au/__data/assets/pdf_file/0003/3577431/03Greenman-unpaginated.pdf

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

Elliot Winter. In: International and comparative law quarterly, Vol. 69, part 4, October 2020, p. 845-876

The law of armed conflict requires 'distinction' between civilians and combatants and provides that only the latter may be targeted. However, for proper implementation, distinction requires advanced observation and recognition abilities as well as the capacity to exercise judgement based on situational awareness. While the observation and recognition abilities of machines may now surpass those of humans, the capacity of machines to exercise judgement remains significantly more limited than our own. Consequently, this article contends that the deployment of 'autonomous weapons' based on current levels of technological sophistication would be incompatible with distinction and that, as such, their use in conflict would be unlawful.

https://doi.org/10.1017/S0020589320000378 *

A compilation of materials apparently reflective of states' views on international legal issues pertaining to the use of algorithmic and data-reliant socio-technical systems in armed conflict

Dustin A. Lewis (ed.) ; Sonia Chakrabarty… [et al.] (contributors). - [Cambridge] : Harvard Law School Program on International Law and Armed Conflict, December 2020. - 192 p.

This compilation was created as part of Harvard Law School Program on International Law and Armed Conflict (HLS PILAC)'s efforts to better understand the extent to which states have, and have not, elaborated publicly discernible views on international legal aspects concerning the actual or potential use of algorithmic and data-reliant socio-technical systems in armed conflict. Focus is placed here on the views of states due in part to the centrality of states in making and developing international law. Only those materials that at least may appear to arguably be reflective of a state's views are included. No international-law instrument applicable in relation to armed conflict contains a definition of "autonomous weapon," "lethal autonomous weapons system," "artificial intelligence," or the like. In seeking to canvass the range of states' views on potentially relevant applications of technology, including but not limited to the conduct of hostilities (not least weapons, means, and methods of warfare), restrictions on liberty, maritime systems, and humanitarian services, an editorial choice was made to adopt a relatively wide definition of possibly relevant applications of concern.

https://doi.org/10.54813/CAWZ3627

Counter-terrorism, principled humanitarian action, and international humanitarian law : ICRC's perspective on selected issues

Peter Maurer. - In: La lutte contre le terrorisme : ses acquis et ses idées : liber amicorum Gilles de Kerchove. - Bruxelles : Bruylant, 2021. - p. 489-503

This contribution illustrates some of the stakes raised by the interaction between counter-terrorism and armed conflict through the prism of two important issues: the fate of "foreign fighters and their families" on one hand and the impact of counter-terrorism on principled humanitarian action on the other hand, topics that the author discussed at length with Gilles de Kerchove.

Cultural heritage and international humanitarian law

Roger O'Keefe. - In: The Oxford handbook of international cultural heritage law. - Oxford : Oxford University Press, 2020. - p. 43-74

The beginnings of international cultural heritage law can be traced to rules on the treatment of cultural sites and objects in war - that is, to international humanitarian law, the branch of public international law dedicated to the regulation of the conduct of what we now refer to as armed conflict. Today there exists a detailed body of conventional and customary international humanitarian law designed to protect tangible cultural heritage, both immovable and movable, from destruction and damage and from all forms of misappropriation in the course of international and non-international armed conflict. The chapter provides an account and analysis of these rules.

Cultural heritage and state responsibility

Patrizia Vigni. - In: The Oxford handbook of international cultural heritage law. - Oxford : Oxford University Press, 2020. - p. 605-641

This chapter determines to what extent international norms on State responsibility may be applied in cases of the violation of international obligations concerning cultural heritage. It determines to which State wrongful behaviour may be attributed; second, which breaches of law consist in wrongful acts; third, whether such responsibility may be precluded; fourth, what consequences arise from the recognition of State responsibility including which persons are entitled to invoke such responsibility. Although cultural heritage treaties do not provide for a distinctive responsibility regime, the Draft Articles on State Responsibility are applicable to wrongful acts arising from the breach of the obligations established by these treaties. Moreover, the breach of the norms relating to cultural heritage, which have been recognized as part of customary international law, entails the application of general principles on State responsibility, including those contained in the Draft Articles. The chapter then considers the principle of 'responsibility to protect'.

Cultural heritage destruction during the Islamic State's genocide against the Yazidis

Seán Fobbe, Natia Navrouzov, Kristen Hopper, Ahmed Khudida Burjus, Graham Philip, Maher G Nawaf, Daniel Lawrence, Helen Walasek, Sara Birjandian, Majid Hassan Ali, Salim Rashidani, Hassan Salih, Dawood Sulaiman Qari and Faris Mishko. In: The Asian yearbook of human rights and humanitarian law, Vol. 5, 2021, p. 111-144

Discussions of the 2014 genocide committed by the Islamic State against the Êzidîs (also known as 'Yazidis' or 'Yezidis') have generally focused on murder, slavery and sexual exploitation. This paper analyzes the destruction of Êzidî tangible and intangible cultural heritage as a significant facet of the Islamic State's policy of ethnic cleansing and genocide. The authors provide original research, evidence and context on the destruction of Êzidî tangible cultural heritage in the Bahzani/Bashiqa and Sinjar areas of northern Iraq. They conclude that the destruction of the cultural heritage of the Êzidî people constituted a war crime, a crime against humanity (persecution) and compelling evidence of genocidal intent. They recommend the consideration of cultural heritage destruction in any prosecution of atrocity crimes, especially the crime of genocide.

Customary international humanitarian law : an overview of Kenya's state practice in the post-2010 Constitution era

Kenneth Wyne Mutuma. In: African yearbook on international humanitarian law, 2020, p. 121-158

With the exception of the shifta wars in the northern part of the country, Kenya has, for the greater part of its post-colonial history, enjoyed relative conditions of peace. This, in turn, has affected the volume of and quality of knowledge on Kenya's state practice on international humanitarian law (IHL). The Customary IHL study of the International Committee of the Red Cross (ICRC) in 2005 reviewed state practice in the country at the time, based on materials such as military manuals, national laws and case law. However, since 2005, two significant events have had a direct bearing on the country's IHL state practice. The first is the ushering in of a new constitutional order through the Constitution of Kenya, 2010, and the second is the Kenyan military troops' incursion into Somalia against the Somali terrorist group, Al-Shabaab. This paper looks at the significant ways in which these two events have led to key additions to Kenya's state practice, under four main headings: military manuals, national laws, court cases and other sources.

https://journals.co.za/doi/10.47348/AYIH/2020/a5 *

Deprivation of liberty and armed conflicts : exploring realities and remedies

International Institute of Humanitarian Law ; ed. Giorgio Battisti ; associated ed. Gian Luca Beruto. - Milano : Franco Angeli, 2019. - 315 p.

This collection of contributions made by renowned international experts and practitioners in the field of IHL explores realities and remedies of the deprivation of liberty in armed conflict. The 41st Round Table on current issues of international humanitarian law focused on some of the fundamental themes of international humanitarian law, such as the definition and the existence of a right to detain under customary international law, detention by non-state actors and armed groups, as well as the distinction between the law applicable to detainees in international armed conflict and non-international armed conflict. The Round

Table provided a forum to discuss other relevant topics including the transfer of detainees and responsibility in case of violations of detainees' rights, particularly when they occur in multinational operations.

https://iihl.org/deprivation-of-liberty-and-armed-conflicts-exploring-realities-and-remedies-proceedings/

Determining the termination of a non-international armed conflict : an analysis of the Boko Haram insurgency in Northern Nigeria

Solomon Ukhuegbe and Alero I. Fenemigho. In: Nigerian yearbook of international law, vol. 2018/2019, 2021, p. 299-327

Compared with the fairly settled rules on the termination of an international armed conflict (IAC), those relating to the termination of a non-international armed conflict (NIAC) are unclear and no definitive guidance is offered by case law and literature. The ongoing decade-old Boko Haram insurgency in North-eastern Nigeria has been characterised as a NIAC for 6 years. At the end of 2016, the Nigerian government declared the insurgency over, but this is not the reality. At least, not yet. This paper analyses the rules for determining the termination of a non-international armed conflict from the perspective of the Boko Haram insurgency. This is done with a view to finding an objective endpoint, if any, by which the insurgency as a NIAC may be considered over legally. In the view of the authors, the Boko Haram insurgency is a 'textbook example' of the problem of determining the end of a NIAC, especially with the current factionalization of the armed group. This paper analyzes the situation up to early 2019.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54760.pdf *

Dilemmas facing commissions of inquiry

Andrew Clapham. - In: The struggle for human rights : essays in honour of Philip Alston. - Oxford : Oxford University Press, 2021. - p. 251-262

Philip Alston was amongst the first to herald the significance and effectiveness of international Commissions of Inquiry as a response to human rights violations. He nevertheless also presented to the UN Human Rights Council a critical analysis of the shortcomings of national Commissions of Inquiry. He served on various Commissions, including the Commission set up by the Security Council on the Central African Republic, and the chapter seeks to build on some of the ideas which he advanced in this context. The author covers six selected dilemmas as they arise, more or less chronologically, over the life of a Commission. They are related to: the legal framework, questioning witnesses and suspected perpetrators, and future access to sensitive material.

Le droit international comme corps de "droit privé" et de "droit public" : cours général de droit international public

par Robert Kolb. In: Recueil des cours : Académie de droit international de la Haye = Collected courses of the Hague academy of international law, T. 419, 2021, p. 9-668

Ce cours radiographie le corps du droit international public sous l'angle d'une division courante dans tout ordre juridique, à savoir le «droit privé» et le «droit public». Le premier vise à satisfaire les intérêts des sujets de droit pris individuellement, alors que le second cherche à protéger les intérêts d'une collectivité de sujets (en droit interne l'Etat, en droit international des collectivités à géométrie variable). Des illustrations de la gravitation de ces deux forces sont données dans les grandes matières structurantes du droit international: les sources, les rapports de système, les personnes, la responsabilité, le règlement des différends, le jus ad bellum et le jus in bello, ainsi que les espaces communs. En suivant ce fil d'analyse inédit, une série d'équilibres et de déséquilibres formant le code génétique intime du droit international sont mis à jour. Le chapitre VIII est consacré au droit des conflits armés (p. 492-547). Le chapitre précédent couvre également les relations entre le jus in bello et le jus ad bellum.

The ecology of war and peace : marginalising slow and structural violence in international law

Eliana Cusato. - Cambridge [etc.] : Cambridge University Press, 2021. - X, 295 p.

The connection between ecology and conflict has been the object of extensive study by political scientists and economists. From the contribution of natural resource 'scarcity' to violent unrest and armed conflict; to resource 'abundance' as an incentive for initiating and prolonging armed struggles; to dysfunctional resource management and environmental degradation as obstacles to peacebuilding, this literature has exerted a huge influence upon academic discussions and policy developments. While international law is often invoked as

the solution to the socio-environmental challenges faced by conflict-affected countries, its relationship with the ecology of war and peace remains undertheorised. Drawing upon environmental justice perspectives and other theoretical traditions, the book unpacks and problematizes some of the assumptions that underlie the legal field. Through an analysis of the practice of international courts, the UN Security Council, and Truth Commissions, it shows how international law silences and even normalizes forms of structural and slow environmental violence.

"Embodied AI" and the direct participation in hostilities : a legal analysis

Francis Grimal and Michael J. Pollard. In: Georgetown journal of international law, Volume 51, issue 3, Spring 2020, p. 513-564

This article questions whether, under international humanitarian law (IHL), the concept of a "civilian" should be limited to humans. Prevailing debate within IHL scholarship has largely focused on the lawfulness (or not) of the recourse to autonomous weapons systems (AWS). However, the utilization of embodied artificial intelligence (EAI) in armed conflict, has yet to feature with any degree of prominence within the literature. An EAI is an "intelligent" robot capable of independent decision-making and action, without any human supervision. Predominately, the approach within the existing AWS/AI debate remains pre-occupied in ascertaining whether the military "system" is capable of determining/distinguishing between civilians and combatants. Furthermore, the built-in protection mechanisms within IHL are inherently "loaded" in favor of protecting humans from AWS, rather than vice-versa. IHL makes a clear distinction between civilians and civilian objects. However, increasingly advanced EAI's will make such a distinction highly problematic. The novel approach of this Article is twofold: to address the "EAI lacuna" in the broader sense, and to consider the application of EAI within a specific area of IHL: "Direct Participation in Hostilities (DPH)". In short, can a robot "participate"? DPH is firmly grounded within the cardinal principle of distinction, and proportionality assessments, in order to afford protection to the civilian population during hostilities. Fundamentally, this Article challenges the International Committee of the Red Cross's (ICRC) influential guidance on DPH. The Authors controversially submit that by continuing to follow that guidance, civilian objects will, under some circumstances, be afforded greater protection than human combatants.

https://www.law.georgetown.edu/international-law-journal/wp-content/uploads/sites/21/2020/06/GT-GJIL200038.pdf

Empirical assessment in IHL education and training : better protection for civilians and detainees in armed conflict

Jody M. Prescott. - London ; New York : Anthem Press, 2021. - 155 p.

Beginning with People on War, the ICRC's ground-breaking global survey in 1999 of the international public's perceptions and attitudes towards IHL, the book takes a historical approach in examining case studies of the use of empirical assessment in IHL training over the last twenty years. The case studies include the evolution of the ICRC's approach to IHL training, the views on IHL of newly promoted U.S. Army and Marine Corps majors in the aftermath of 9/11, mental health surveys of U.S. troops deployed to Afghanistan and Iraq that asked searching questions regarding IHL compliance, the remarkably successful battlefield ethics training program that was developed in Iraq to reverse those survey's results, and work done with Norwegian cadets Swiss Military Academy officers, new Malian soldiers, a U.S. Army battalion in Germany, and university students in Northern Ireland and Japan using war video games as an IHL instructional tool. The use of empirical assessment is occurring in the context of evolution in the approach to IHL training, one that increasingly recognizes the vital role played by military leaders in developing a values-oriented culture of compliance with the soldiers in their units.

https://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2949796&site=ehost-live *

Enhancing environmental protection during occupation through human rights

Karen Hulme. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 203-241

Environmental protection is not specifically included in treaty law relating to State obligations during situations of occupation. While clearly not of the same scale as damage caused to the environment during armed conflict, damage caused during occupation is often similar in nature – largely due to those who seek to exploit any governance vacuum and a failure to restore damaged environments. What can human rights offer in helping to protect the environment during occupations? What protection can be offered by an analysis of environmental human rights law? Following a brief analysis of the law governing occupation and the International Law Commission (ILC) Draft Principles, this contribution explores State practice on environmental human rights. This analysis evaluates the extent of binding obligations in terms of minimum core duties of protection. Using these findings, the final section contains some guidance for States, which builds upon the environmental protection recognized by the ILC's recently adopted Draft Principles.

https://www.gojil.eu/issues/101/101_article_hulme.pdf

Enhancing the protection of the environment in relation to armed conflicts : the Draft Principles of the International Law Commission and Beyond

Anne Dienelt and Britta Sjöstedt (special ed.). In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 13-343

In 2011, the UN International Law Commission (ILC) took up the topic Protection of the Environment in Relation to Armed Conflicts. Since the inclusion of the item on the ILC's agenda, the Commission has published five reports by the two special rapporteurs, Dr. Marie Jacobsson (2011-2016) and Dr. Marja Lehto (2017-). In 2019, the plenary adopted 28 Draft Principles on first reading. Nevertheless, it was clear from the beginning that the ILC would not be able to exhaustively deal with the topic for two main reasons. First, the Commission has a limited mandate. Second, some related issues touch upon controversial and political matters. Consequently, the ILC has been reluctant to include some of these issues in its workflow. Therefore, the adoption of the Draft Principles should be regarded as a starting point for shaping and developing the legal framework for environmental protection in relation to armed conflicts. As a part of that process, Hamburg University and Lund University organized an international workshop in March 2019 in Hamburg. Several members of the ILC, including two special rapporteurs, academic legal experts, and practitioners, attended the workshop to discuss the Draft Principles. The discussion also focused on some issues not covered by the ILC, such as the implications for gender and climate security. The engaging dialogue in Hamburg has inspired the publication of this Special Issue of the Goettingen Journal of International Law (GoJIL) to ensure that the outcomes and ideas of the workshop reach a wider audience. It has also contributed to maintaining the momentum of this topical area of international law by inviting contributions from researchers not present during the workshop in Hamburg.

https://www.gojil.eu/issues/101/101_complete_edition.pdf

Fighting words : targeting speech in armed conflict

A. Louis Evans. In: Washington international law journal, Vol. 30, no. 3, 2021, p. 598-651

Freedom of speech is considered one of the most fundamental human rights, but it is not without limits. In the context of an armed conflict, engaging in certain types of speech can form the basis for lethal targeting by States. Consensus exists in customary international law that speech-driven strikes constitute a lawful use of force under jus in bello standards. For example, a civilian who communicates the position of targets, or broadcasts tactical intelligence for a specific military operation has, by their speech, made themselves a lawful target. While customary international law agrees that speech-driven targeting is lawful, there has been little discussion by States or scholars of the requirements that form the basis for speech-driven targeting. The lack of scholarship concerning speech-driven targeting by States undercuts the legitimacy of speech-driven targeting and suggests that international law is not currently imposing adequate limits on the use of force by States against the fundamental human right of free speech. To justify speech-driven strikes, States and commentators use traditional tests based on a person's actions to determine whether an individual has forfeited their protected status and is targetable. These action-based tests are problematic and lead to inconsistent results because they are designed to assess an individual's actions as opposed to speech. To address this problem, this article will provide the first descriptive and normative analysis of speech-driven targeting. Descriptively, the article explains how speech-driven targeting currently exists in international law while simultaneously demonstrating the lack of guidance and agreement about what is required before the lawful use of lethal force. Next, from a normative perspective, the article proposes a core set of factors that should inform the speech-driven targeting analysis. The article then applies these factors to a real-world example of America's use of force in Yemen against Anwar al-Awlaki to explore how using the factors would affect the legality of such a strike. The article concludes that using these proposed factors would enhance protections for freedom of speech while simultaneously enhancing State decisions and actions from a substantive and procedural perspective.

https://digitalcommons.law.uw.edu/wilj/vol30/iss3/6

Foreign bases in host states as a form of invited military assistance : legal implications

Michael J. Strauss. In: Journal on the use of force and international law, vol. 8, no 1, 2021, p. 67-90

Many states are willing to host on their territory the armed forces of other states through military basing arrangements. This creates a form of long-term military assistance for the host states that can transcend periods of both peace and armed conflict. The assistance may be sought as such by the host states, or it may be a de facto situation that results from the presence of the foreign troops. This article defines and examines some questions of international law that arise from these arrangements, with a focus on the legal implications for the host states.

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Foreign fighters, terrorism and counter-terrorism

Sandra Krähenmann. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : Edward Elgar, 2020. - p. 239-255

This chapter examines international efforts to prevent and suppress foreign terrorist fighters (FTFs), following the influx of such persons into the conflicts in Syria and Iraq from around 2012. Security Council resolution 2178 (2014) induced the largest recent wave of new counter-terrorism measures and policies on a national level since resolution 1373 (2001). Yet the effectiveness and necessity of some of these measures is doubtful, including because of their indeterminacy; national measures excluding FTFs from citizenship; an emphasis on repression and incarceration, rather than prevention and rehabilitation and reintegration; and tensions between national and international security, and burden shifting rather than responsibility sharing.

https://doi.org/10.4337/9781788972222.00025 *

A forever war ? Rethinking the temporal scope of non-international armed conflict

Nathan Derejko. In: Journal of conflict and security law, Vol. 26, no. 2, Summer 2021, p. 347-376

How do we know when a Non-International Armed Conflict (NIAC) is over? What does International Humanitarian Law (IHL) say about its temporal scope of application during NIAC? In practice, identifying the end of a NIAC can prove exceptionally difficult. In part, this is the result of the complex spectrum of factors that contribute to the existence and continuance of NIAC, and in particular the objectives that underpin and propel a NIAC. In addition, the virtual silence of IHL regarding its temporal scope of application adds another layer of complexity to identifying the end of a NIAC. While considerable research has focused on IHL's threshold of activation during NIAC, much less attention has been given to its threshold of termination. However, the looming threat of the so-called 'forever war' has stimulated fresh interest in determining when and how NIACs (legally) end. This article provides a forensic examination of the temporal scope of IHL during NIAC, with an exclusive focus on IHL's threshold of termination. It examines two of the leading approaches for determining the temporal scope of NIAC, and argues that neither approach is entirely satisfactory, and as a result, advances and explores a novel alternative—a 'functional approach' for determining IHL's threshold of termination during NIAC.

https://doi.org/10.1093/jcsl/kraa018 *

Foundational myths in the laws of war : the 1863 Lieber Code, and the 1864 Geneva Convention

Adam Roberts. In: Melbourne journal of international law, Vol. 20, issue 1, July 2019, 39 p.

Limiting some of the terrible human consequences of war is an age-old aspiration. In 1863–64 it found concrete expression in two innovative and important documents on the laws of war: the Lieber Code, issued in 1863 by United States President Abraham Lincoln to US armies in the field in the US Civil War; and the first Geneva Convention, on wounded soldiers in armies in the field, adopted in 1864 by the representatives of 12 European states. These documents have a special and secure place in the history of international efforts to use law to limit war. They were responses to the wars of their time and to developments in science and technology. They are seen — especially within the country and continent from which each of them originated — as the foundation stones of the modern laws of war. Both texts contained important innovations — of form as well as content. Some of their principles, even some of their wording, can be traced through later codes and treaties, up to and including the military manuals and Geneva Conventions of the present day. The author considers whether the stories of these two agreements are properly describable as "myth", and what might be the downsides of these foundational myths.

https://law.unimelb.edu.au/__data/assets/pdf_file/0020/3144314/Roberts.pdf

Gaps in the law : the detention of transnational terror suspects

John B. Bellinger, III. - In: La lutte contre le terrorisme : ses acquis et ses idées : liber amicorum Gilles de Kerchove. - Bruxelles : Bruylant, 2021. - p. 557-570

This chapter looks at the gaps in the law regarding the detention of terror suspects outside a state's territory, which is not subject to an appropriate legal framework. The author uses the example of the conflict against ISIS to demonstrate that, although there has been some convergence in views between the United States and European countries, there is still much work to be done to reach agreement. According to him, governments

and international lawyers should seize that opportunity and begin working toward a much-needed legal framework for the detention of terror suspects captured outside a state's territory.

Health and international humanitarian law

Annyssa Bellal. - In: Research handbook on globalisation and the law. - Cheltenham ; Northampton : E. Elgar, 2018. - p. 239-263

This chapter underlines that the principle of humanity has entirely permeated the norms on the protection of health in IHL. Notably, this principle prohibits the infliction of suffering or injury, not necessary for achieving the legitimate purpose of a conflict, and protects all persons affected by the conflict, be they soldiers, members of non-state armed groups or civilians. The chapter starts with a short description of the restrictive conditions under which IHL is applicable. The second and the third sections go into the details of the norms applicable to the so-called wounded and sick, including the content of the obligation to respect and protect. Finally, the fourth section on non-state armed groups focuses on the law applicable in non-international armed conflicts, that is conflicts opposing states and non-states armed groups or armed groups between themselves.

Homelands versus minelands : why do armed groups commit to the laws of war ?

Tanisha M. Fazal and Margarita Konaev. In: Journal of global security studies, Vol. 4, no. 2, April 2019, Pages 149–168

Why do some armed groups commit to abide by the laws of war governing belligerent conduct during armed conflict, while others do not? We examine why only half the armed groups approached by the nongovernmental organization Geneva Call have signed a public Deed of Commitment banning the use of antipersonnel land mines. In contrast to recent studies that have tended to focus on the legitimacy concerns of armed groups, we argue that political objectives combine with military utility calculations to shape the behavior of armed groups in the realm of international humanitarian law. Utilizing original data on the ninety armed groups engaged by Geneva Call since 2000, we find that strong secessionist groups are most likely to sign the Deed of Commitment. Our findings have important implications for theories of international law, the study of civil wars, and on the ground efforts to mitigate the human costs of war.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54597.pdf *

Human rights imperialists : the extraterritorial application of the European Convention on Human Rights

Conall Mallory. - Oxford ; London ; New York ; New Delhi ; Sydney : Hart, 2020. - XV, 237 p.

Few topics have posed more of a challenge for the European Court of Human Rights than the issue of the Convention's extraterritorial application. This book provides a novel understanding on why this is by looking at the behaviour of those principally tasked with interpreting the treaty: the Strasbourg Court, state parties, and national courts. It offers a theory for how these communities operate: what motivates, constrains and ultimately shapes their interpretive practices. Through a detailed analysis of the jurisprudence, with a particular focus on British authorities and judges during and after the Iraq War (2003), the book provides an explanation of how the interpretation of extraterritorial obligations has developed over time and how these obligations are currently understood.

Humane : how the United States abandoned peace and reinvented war

Samuel Moyn. - New York : Farrar Straus and Giroux, 2021. - 400 p.

In Humane: How the United States Abandoned Peace and Reinvented War, Samuel Moyn asks a troubling but urgent question: What if efforts to make war more ethical—to ban torture and limit civilian casualties—have only shored up the military enterprise and made it sturdier? To advance this case, Moyn looks back at a century and a half of passionate arguments about the ethics of using force. In the nineteenth century, the founders of the Red Cross struggled mightily to make war less lethal even as they acknowledged its inevitability. Leo Tolstoy prominently opposed their efforts, reasoning that war needed to be abolished, not reformed—and over the subsequent century, a popular movement to abolish war flourished on both sides of the Atlantic. Eventually, however, reformers shifted their attention from opposing the crime of war to opposing war crimes, with fateful consequences. The ramifications of this shift became apparent in the post-9/11 era. By that time, the US military had embraced the agenda of humane war, driven both by the availability of precision weaponry and the need to protect its image. The battle shifted from the streets to the

courtroom, where the tactics of the war on terror were litigated but its foundational assumptions went without serious challenge. These trends only accelerated during the Obama and Trump presidencies. Even as the two administrations spoke of American power and morality in radically different tones, they ushered in the second decade of the "forever" war. Humane is the story of how America went off to fight and never came back, and how armed combat was transformed from an imperfect tool for resolving disputes into an integral component of the modern condition. As American wars have become more humane, they have also become endless. This provocative book argues that this development might not represent progress at all.

The humanitarian exemption challenge : securing the Philippine humanitarian space in the Anti-Terrorism Act of 2020

Leandro Anton M. Castro. In: Asia-Pacific journal of international humanitarian law, Vol. 2, no. 1, 2021, p. 31-65

The interaction between counter-terrorism law and international humanitarian law has long been the subject of extensive legal discourse. One of the most contentious topics in the area is the prohibition of the provision of material support to terrorist individuals or organizations and its conflict with rights and obligations provided by international humanitarian law. The most common remedy to such conflict is the integration of humanitarian exemptions in counter-terrorism legislation. The Philippines is no stranger to these issues having included both a prohibition against the provision of material support to terrorists and a humanitarian exemption to the Anti-Terrorism Act of 2020, its latest counter-terrorism measure. This article analyses the material support provision and the humanitarian exemption in the Anti-Terrorism Act of 2020. More particularly, the article tackles how the material support provision puts humanitarian organisations at risk of criminal prosecution and the inadequacy of the humanitarian exemption in the law.

https://apjihl.org/article/the-humanitarian-exemption-challenge-securing-the-philippine-humanitarian-space-in-the-anti-terrorism-act-of-2020/

Intelligence sharing in multinational military operations and complicity under international law

Marko Milanovic. In: International law studies, Vol. 97, 2021, p. 1269-1403

This article examines the international legal framework applicable to intelligence sharing in multinational military operations, with a particular focus on complicity scenarios. It first provides a theoretical overview of the role of fault in complicity, of how intent and knowledge can be conceptualized, and of the attribution of fault to States. It then looks in detail at the rule codified in Article 16 of the International Law Commission's Articles on State Responsibility, and argues that this rule is best understood as employing multiple modes of fault (direct and indirect intent and wilful blindness). The article also argues that international humanitarian law (IHL) and international human rights law (IHRL) possess their own complicity rules. These regime-specific rules can apply to State assistance to non-state actors and can employ more relaxed modes of fault than Article 16. A State could thus be responsible for facilitating the commission of serious violations of IHL and IHRL through the sharing of intelligence or the provision of other aid if it consciously disregarded a risk that its partner would commit such violations with the aid provided. The article then looks at the role that mitigation measures employed by the assisting State, such as diplomatic assurances, have in assessing its responsibility for complicity, and at whether risks generated by the provision of assistance can lawfully be balanced against the risks generated by suspending assistance. Finally, the article examines two basic scenarios – that of sharing intelligence that facilitates a partner's wrongful act, and that of receiving unlawfully obtained or shared intelligence.

https://digital-commons.usnwc.edu/ils/vol97/iss1/48/

International criminal law and the protection of cultural heritage

Micaela Frulli. - In: The Oxford handbook of international cultural heritage law. - Oxford : Oxford University Press, 2020. - p. 100-120

This chapter looks at how international criminal law has become a crucial tool to foster the protection of cultural heritage. On the normative level, the main developments consisted in the introduction of rules criminalizing acts against cultural property in binding treaties dealing with the protection of cultural property in times of armed conflict. Then, international criminal tribunals (ICTs) paved the way for implementing individual criminal responsibility. Three different and partially divergent approaches have characterized the criminalization of acts against cultural property. The first two - civilian use and cultural value - emerged in different moments and had a strong impact on the drafting of rules criminalizing acts against cultural property in times of armed conflict. The third one, the human dimension approach,

developed from the jurisprudence of ICTs and characterizes both the qualification of acts against cultural property as crimes against humanity and their role in proving the mental element of genocide.

International humanitarian law and counter-terrorism : fundamental values, conflicting obligations

David McKeever. In: International and comparative law quarterly, Vol. 69, part 1, January 2020, p. 43-78

The interaction of international counter-terrorism laws with IHL is an area of renewed focus, amid widespread concern that the former are being (mis)applied to criminalise the provision of humanitarian assistance envisaged under the latter. The Security Council has begun to consider this issue in resolutions adopted in March and July 2019, but difficult questions of law and fact remain. These questions have significant practical consequences—for humanitarian agencies and those they seek to assist, as well as for States that must weigh different, and possibly conflicting, legal obligations. Much of the analysis to date and the solutions proposed, pay insufficient attention to the specifics of each legal regime.

https://doi.org/10.1017/S0020589319000472 *

International humanitarian law and its application in outer space

Cassandra Steer and Dale Stephens. - In: War and peace in outer space : law, policy and ethics. - Oxford : Oxford University Press, 2021. - p. 23-53

International humanitarian law (IHL) is applicable in outer space as a matter of international law, yet there are some challenges when it comes to specific principles and rules. The kinds of weapons that have been and might be used in space are discussed, as well as the ways in which space assets are used with respect to conflicts on Earth. An analysis then follows of the core principles of IHL and how they apply in space: the principles of distinction, proportionality, and precaution in attack. While it is imperative that States recognize the applicability of IHL to all their activities in space that involve conflicts on Earth and/or in space, care must be taken in weighing the traditional principles and their application to this new domain. As the technology that increases warfighting capability advances, so does the imperative to understand the applicable legal framework for the use of such technology.

https://doi.org/10.1093/oso/9780197548684.001.0001 *

International law and the war with Islamic state : challenges for jus ad bellum and jus in bello

Saeed Bagheri. - Oxford ; London ; New York ; New Dehli ; Sydney : Hart, 2021. - XVIII, 186 p.

Armed non-state actors (ANSAs) often have economic aims that international law needs to respond to. This book looks at the aim of Islamic State to create an effective government, with an economically independent regime, which focused on key oilfields in Syria and Iraq. Having addressed Islamic State's quest for energy resources in Iraq and Syria, the book explores the lawfulness of the war with Islamic State from a variety of legal aspects. It has been attempted to make inroads into the most controversial aspects of contradictions in the application of jus ad bellum and jus in bello, particularly when discussing the use of extraterritorial armed force against ANSAs, and the obligation to protect civilian objects, including the natural environment. The question is whether the targeting of energy resources should be regarded as a violation of the laws of armed conflict, even though the war with Islamic State was classified as a non-international armed conflict.

International law and transition to peace in Colombia : assessing jus post bellum in practice

by César Rojas-Orozco. - Leiden : Brill Nijhoff, 2021. - VIII, 195 p.

In International Law and Transition to Peace in Colombia, César Rojas-Orozco analyses the role of international law in transition from armed conflict to peace, by using the analytical framework of jus post bellum and Colombia as a case study. While contemporary attention to jus post bellum has focused on its theoretical development and regarding international warfare, this book is the first work to comprehensively assess the concept in practice and in the context of a non-international armed conflict. Discussing the creative formulas adopted in Colombia to conciliate international legal requirements and the practical needs of peace, the book offers concrete elements to understand the concept of jus post bellum as a framework to guide other transitions around the world.

https://brill.com/view/title/58984

International law in disaster scenarios : applicable rules and principles

Flavia Zorzi Giustiniani. - Cham : Palgrave Macmillan, 2021. - XIV, 209 p.

The book identifies the main international concepts and rules that are of special relevance in disaster settings and critically analyses how they are implemented in such contexts. It shows that, although the crucial and growing importance of disaster response has resulted in a complex framework of international obligations, it is nonetheless guided by certain general principles/values. In particular, through an in-depth analysis of sovereignty, international cooperation and solidarity, and their manifestations in disaster contexts, the book assesses the concrete scope and nature of the obligations of the state affected by the disaster, and those of the international community, respectively. Considerable attention is devoted to the applicable legal framework governing disaster response in mixed situations of disaster and armed conflict, and to the main problems and operational challenges entailed by the involvement of foreign military personnel and assets in disaster response.

International responsibility and attribution of conduct : an analysis of case law on human rights and humanitarian law

by Remy Jorritsma. - [Maastricht] : [Maastricht University], 2021. - XXII, 251 p.

Legal rules on the attribution of conduct determine whether conduct is considered an act of the State for the purpose of holding it responsible under international law. This thesis analyses the standard and function of attribution rules in the case law of human rights courts, quasi-judicial human rights bodies, and international criminal courts with jurisdiction over violations of humanitarian law. This thesis analyses whether human rights courts on the one hand, and international criminal tribunals when dealing with humanitarian law on the other, have followed the standards of attribution as laid down in customary international law or, rather, whether these courts and tribunals have adopted or recognized special rules to determine whether certain conduct constitutes an act of the State. Additionally, this thesis examines whether these courts, tribunals and bodies apply attribution rules from the law of State responsibility to determine the applicable law and consequently enable the exercise of their judicial function. The latter is a question of the function of attribution rules.

The interplay between 'peacetime' law and the law of armed conflict: consequences for post-conflict peacebuilding

Dieter Fleck. In: Journal of conflict and security law, Vol. 26, no. 2, Summer 2021, p. 289–307

Focussing on the interplay between rules of international law applicable in peacetime and rules applicable during armed conflicts, this contribution examines the impact on the jus post bellum. In this context certain specific legal obligations are discussed to answer the question whether and if so, how their application post-conflict may be affected by the peacebuilding process after the (former) armed conflict. Essential norms of the protection of victims during armed conflicts continue to be relevant for peace operations and post-conflict peacebuilding. The author submits that post-conflict peacebuilding should be characterized by pragmatic limitation, conciliation and participation of the parties. This suggests certain deviations from peacetime principles and rules, deviations that may include certain limits of protection which will, however, be balanced out by the temporary nature of peacebuilding measures. While such interplay between the different branches of international law remains subject to changing situations, a few general principles are considered to be relevant for the jus post bellum. Even if codification remains difficult, further case-oriented research is encouraged to confirm general principles and rules of this important branch of international law.

https://doi.org/10.1093/jcsl/krab007 *

The invisible frames affecting wartime investigations : legal epistemology, metaphors, and cognitive biases

Shiri Krebs. - In: International law's invisible frames : social cognition and knowledge production in international legal processes. - Oxford : Oxford University Press, 2021. - p. 124-140

The chapter begins, in section II, with an exploration of the "fog of war" metaphor and its effect on investigations of military operations. Section III provides an overview of the ontological and epistemological frames shaping such investigations, and section IV explores cognitive and motivational biases that further challenge the collection of facts during armed conflicts. Based on these normative legal frames and cognitive processes, section V develops the concept of law-fulfilling prophecies, using concrete examples form the

Israeli investigation into the targeted killing of Hamas leader Salah Shehadeh in Gaza in 2002. Finally, section VI offers several recommendations designed to unlearn and reshape the invisible frames affecting fact-finding processes during armed conflicts, and to reimagine alternatives which are better suited to protect human lives.

Inviting non-state armed groups to the table : inclusive strategies towards a more fit for purpose international humanitarian law

Ezequiel Heffes and Jonathan Somer. - London : ODI, December 2020. - 15 p.

Millions around the globe are affected by the actions of non-state armed groups (NSAGs). Like states, NSAGs are bound by international humanitarian law (IHL) and are addressed by other nonbinding normative standards aimed at mitigating the harmful effects of armed conflict. Although a consensus is emerging on the importance of engaging NSAGs on these rules, they have not been included as participants in the processes that lead to rule development. NSAGs participation in such normative processes is important for two main reasons, despite concerns of 'legitimisation'. First, a self-regulatory compliance system such as IHL can only be fit for purpose if it is based on an understanding of the perspectives of the actors it regulates and the realities they face. Second, decades of experience and some evidence underscore that a sense of ownership of norms can be an important factor in securing NSAGs' compliance. This Brief proposes a strategic model aimed at the progressive inclusion of NSAGs in humanitarian norm development processes. At the very least, processes should consult NSAGs. Outcome documents, where appropriate, should not just address 'states', but 'parties to the conflict' (or similar) so that they can be endorsed by NSAGs. The model addresses potential sources of state opposition or apprehension and encourages the international community to find new ways of approaching these tensions and dilemmas.

https://odi.org/documents/6303/odi-ec-nonstatearmedgrioups-briefingnote-dec20-proof01a.pdf

Keeping camouflage out of the classroom : the Safe Schools Declaration and the Guidelines for protecting schools and universities from military use during armed conflict

Marten Zwanenburg. In: Journal of conflict and security law, Vol. 26, no, 2, Summer 2021, p. 255-288

The article looks at the drafting process of the 'Safe Schools Declaration' and the 'Guidelines for Protecting Schools and Universities from Military use during Armed Conflict', which involved non-governmental organizations (NGOs), international organizations and States. The article argues that the involvement of NGOs can be seen as reflective of a trend in which NGOs are increasingly involved in normative International Humanitarian Law (IHL) development. The role of international organizations was less pronounced, but nevertheless notable because international organizations traditionally do not have an active role in the field of IHL. The article contains an analysis of the Declaration and Guidelines, against the background of the applicable legal framework to the protection of schools and universities during armed conflict. It concludes that the principal focus of the Guidelines is the prevention of the use of schools and universities by armed forces in support of the military effort. IHL does not contain a rule prohibiting such use, but it can have far-reaching negative consequences for education. Other guidelines relate to, inter alia (limitations to), destroying or attacking schools and universities. These guidelines, while sometimes using phraseology from provisions of IHL treaty law, also largely go beyond existing obligations under IHL.

https://doi.org/10.1093/jcsl/krab002 *

Law and sentiment in international politics : ethics, emotions, and the evolution of the laws of war

David Traven. - Cambridge : Cambridge University Press, 2021. - IX, 306 p.

Drawing on recent research in moral psychology and neuroscience, this book argues that universal moral beliefs and emotions shaped the evolution of the laws of war, and in particular laws that protect civilians. It argues that civilian protection norms are not just a figment of the modern West, but that these norms were embryonic in earlier societies and civilizations, including Ancient China, early Islam, and medieval Europe. However, despite their ubiquity, this book argues that civilian protection rules are inherently fragile, and that their fragility lies not just in failures of compliance, but also in how moral emotions shaped the design of the law. The same beliefs and emotions that lead people to judge that it is wrong to intentionally target civilians can paradoxically constitute the basis for excusing states for incidental civilian casualties, or collateral damage. To make the laws of war work better for civilians, this book argues that we need to change how we think about the ethics of killing in war.

https://doi.org/10.1017/9781108954280 *

Law-making and legitimacy in international humanitarian law

ed. by Heike Krieger ; with assistant editor Jonas Püschmann. - Cheltenham ; Northampton : E. Elgar, 2021. - XV, 466 p.

International Humanitarian Law (IHL) is in a state of some turbulence, as a result of, among other things, non-international armed conflicts, terrorist threats and the rise of new technologies. This book observes that while states appear to be reluctant to act as agents of change, informal methods of law-making are flourishing. Illustrating that not only courts, but various non-state actors, push for legal developments, this timely work offers an insight into the causes of this somewhat ambivalent state of IHL by focusing attention on both the legitimacy of law-making processes and the actors involved.

The law of armed conflict : international humanitarian law in war

Gary D. Solis. - New York : Cambridge University Press, 2022. - XXXIV, 743 p.

Newly revised and updated, The Law of Armed Conflict, introduces students to the law of war in an age of terrorism. What law of armed conflict (LOAC) or its civilian counterpart, international humanitarian law (IHL), applies in a particular armed conflict? Are terrorists bound by that law? What constitutes a war crime? What (or who) is a lawful target and how are targeting decisions made? What are 'rules of engagement' and who formulates them? How can an autonomous weapon system be bound by the law of armed conflict? Why were the Guantanamo military commissions a failure? Featuring new chapters, this book takes students through these topics and more, employing real-world examples and legal opinions from the US and abroad. From Nuremberg to 9/11, from courts-martial to the US Supreme Court, from the nineteenth century to the twenty-first, the law of war is explained, interpreted, and applied with clarity and depth.

The law of war and peace : a gender analysis. Volume 1

Sara Bertotti, Gina Heathcote, Emily Jones, Sheri Labenski. - London : Zed Books, 2021. - X, 263 p.

The Law of War and Peace offers a cutting-edge analysis of the relationship between law, armed conflict, gender and peace. This book, which is the first of two volumes, focuses on the interplay between international law and gendered experiences of armed conflict. It provides an in-depth analysis of the key debates on collective security, unilateral force, the laws governing conflict, terrorism and international criminal law. While much of the current scholarship has centered on the UN Security Council's Resolutions on Women, Peace and Security, this two-volume work seeks to move understandings beyond the framework established by WPS. It does this through providing a critical and intersectional approach to gender and conflict which is mindful of transnational feminist and queer perspectives.

Law wars : experimental data on the impact of legal labels on wartime event beliefs

Shiri Krebs. In: Harvard national security journal, Vol. 11, issue 1, 2020, p. 106-150

On June 1, 2018, Razan Al-Najjar, a twenty-one-year-old Palestinian paramedic, was killed by Israeli fire during demonstrations along the Israel-Gaza border. Her death triggered intense debates about whether Israeli soldiers intentionally targeted her, in violation of international law. Before the factual debates could be settled, attention quickly shifted to the legal analysis. Several international and Israeli investigations reached opposing legal conclusions. As more information surfaced, the issues under dispute appeared to multiply. This included disputes about the relevant legal norms and the appropriate modes of interpretation. Despite the many fact-finding efforts, the facts are not settled, the legal debates linger, and meaningful accountability seems further away than ever. This episode highlights the growing focus of wartime investigations on legal truth. Furthermore, it suggests that, in the context of the Israeli-Palestinian conflict, framing facts in legal terms triggers backlash, anger, and denial. In other words, using legal terminology to frame public perception of wartime events is ineffective for dispute resolution. This Article explores this general claim employing interdisciplinary theories and methods using the 2018 Gaza border demonstrations as an illustrative example. It then tests these hypotheses with a 2017 survey experiment fielded in Israel with a representative sample of 2,000 Jewish-Israeli citizens. This experimental data provides systematic evidence of the effect legal labels have on people's beliefs about contested wartime actions committed by their fellow nationals. The findings demonstrate that discussing events using common legal labels, such as "war crimes," significantly decreases Jewish-Israelis' willingness to believe information about Palestinian casualties and fails to stimulate feelings of empathy toward the victims. Jewish-Israelis tend to reject facts described using war crimes terminology and are more likely to feel anger and resentment than guilt or shame. These findings contribute to the broader debate about the role played by international law during

armed conflicts, suggesting that, rather than serving as an educational and informative tool, it is cynically perceived as a political tool.

https://harvardnsj.org/wp-content/uploads/sites/13/2020/01/KREBS_Vol.-11.1.pdf

Legal and operational challenges raised by contemporary non-international armed conflicts : proceedings of the 19th Bruges Colloquium, 18-19 October 2018

CICR, Collège d'Europe. In: Collegium, No 49, Autumn/automne 2019, 240 p.

Session 1 : Selected issues on the applicability of international humanitarian law in contemporary non-international armed conflicts. - Session 2 : Selected issues on detention in contemporary non-international armed conflicts. - Session 3 : Selected issues on the conduct of hostilities in contemporary non-international armed conflicts. - Session 4 : Compliance with international humanitarian law in contemporary non-international armed conflicts.

https://www.coleurope.eu/sites/default/files/uploads/page/Collegium%2049.pdf

Legal challenges for protecting and assisting in current armed conflicts : proceedings of the 20th Bruges Colloquium, 17-18 October 2019

CICR, Collège d'Europe. In: Collegium, No 50, Autumn/automne 2020, 190 p.

Session 1 : The increasing complexity of armed conflicts. - Session 2 : Challenges to IHL arising from the use of new technologies of warfare. - Session 3 : Climate change and the protection of the natural environment. - Session 4 : Urbanization of warfare.

https://www.coleurope.eu/sites/default/files/uploads/page/collegium_50_lowres.pdf

The legal nexus between terrorism and transnational crime

Ben Saul. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : Edward Elgar, 2020. - p. 129-156

This chapter examines the legal relationship between terrorism and other transnational crimes. It considers how terrorist groups instrumentally commit other transnational crimes in order to support their terrorist activities, as well as when terrorist acts can qualify as other transnational crimes. The overlap and differentiation between terrorism and transnational organized crime is explored by reference to the UN Transnational Organized Crime Convention 2000 (UNTOC) and its three protocols on human trafficking, migrant smuggling, and firearms trafficking. In particular, the chapter examines the distinction between politically motivated terrorism and the financial or material benefit that is central to the definition under the UNTOC. Beyond the UNTOC, the chapter then investigates the relationship between terrorism and a cluster of more disparate transnational crimes, including drug trafficking, illicit trafficking in cultural property, illicit exploitation of natural resources and environmental crimes, and kidnapping for ransom. The chapter identifies gaps in existing legal regimes.

https://doi.org/10.4337/9781788972222.00017 *

The legal status of ISIS-affiliated foreign nationals held in detention in North-East Syria : legal brief = [The legal status of ISIS-affiliated foreign nationals held in detention in North-East Syria : legal brief (Arabic)]

Diakonia Lebanon International Humanitarian Law Resource Desk ; prepared by Matias Thomsen and Thomas Assaker under the supervision of Jelena Plamenac. - August 2019. - 43 p.

This Brief is an objective legal analysis of the obligations owed by all parties to conflict in North-East Syria under IHL and international human rights law, as well as the obligations owed by ISIS foreign fighters and affiliated women and children's countries of origin under general international law. It is not intended to offer political solutions to the problem of ISIS foreign fighters and affiliates held in detention in Syria. This Brief is of specific relevance to States, non-State actors, humanitarian organisations, military personnel, lawyers, judges, and any other stakeholders involved in the conflict or detention operations in North-East Syria. The legal advice is of general applicability to all NIACs

https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/2/2021/08/legal-brief-on-foreign-nationals-held-in-detention-in-syria.pdf

The legality of closure on land and safe passage between the Gaza Strip and the West Bank

Marco Longobardo. In: Asian journal of international law, Vol. 11, issue 1, January 2021, p. 50-88

This paper explores the legality of the land closure imposed upon the Gaza Strip by Israel. After having considered the area under occupation, the paper argues that the legality of the closure must be determined under international humanitarian law, international human rights law, the principle of self-determination of peoples, and the Israeli-Palestinian agreements. In the light of these rules, the arbitrary closure of the Gaza Strip should be considered illegal because it breaches the unity between the Gaza Strip and the West Bank, and because it violates the freedom of movement of the local population. Moreover, the closure breaches the relevant rules pertaining to the transit of goods in occupied territory. The paper concludes that most of the violations caused by the closure affect peremptory rules which produce obligations erga omnes, so that any state in the international community is entitled to react under the law of state responsibility.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54780.pdf *

The legality of keep-out, operational, and safety zones in outer space

Matthew Stubbs. - In: War and peace in outer space : law, policy and ethics. - Oxford : Oxford University Press, 2021. - p. 201-228

This chapter examines situations in which, as an exception to the general principle of the freedom of exploration and use of outer space by all States, a State might legally be permitted to declare a keep-out zone in outer space. It commences with two zones that are likely to be legally recognized: those declared by the UN Security Council acting under Chapter VII of the UN Charter and those declared by belligerents in the immediate area of operations in an armed conflict. It then examines the potential application to outer space of exclusion zones similar to those recognized in naval and air warfare. Finally, it examines two zones applicable in peacetime which may develop in space law in the future: a possible space object identification zone based on the air defense identification zone, and possible safety zones for space resource activities on celestial bodies.

https://doi.org/10.1093/oso/9780197548684.001.0001 *

Legality of use and challenges of new technologies in warfare : the use of autonomous weapons in contemporary or future wars

Agnieszka Szpak. In: European review, Vol. 28, no. 1, February 2020, p. 118-131

Along with the rapid development and proliferation of autonomous robotic weapons, machines are beginning to replace people on battlefields. The use by the USA of Predators or Reapers and other unmanned aerial vehicles in Afghanistan, Pakistan and other places in the world clearly signals a distancing of soldiers from their targets. In this article the author concentrates on fully autonomous weapons. The theses of the article are as follows: the use of autonomous weapons would be contrary to the basic and fundamental principles of international humanitarian law, such as the principles of distinction and proportionality, and thus illegal. As such, their use would threaten the wellbeing, life and health of civilians and civilian populations. Their use would undermine the whole concept of the rules of war. Still, there are scholars who are of the opinion that prohibiting the use of autonomous weapons would make no sense at all and that the development of such weapons is inevitable and will take place gradually. Their use would be an expression of the technological dimension of international security. As this article will attempt to demonstrate, the drawbacks of the use of autonomous weapons are of such magnitude that they exclude the legality of such devices.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54704.pdf *

The legitimacy of the Afghan amnesty law under international law

Catharina Hübner. - Baden-Baden : Nomos, 2020. - 339 p.

The continuing importance of amnesties, a form of impunity, is clearly illustrated by the example of Afghanistan. In 2010, the Afghan government announced the entry into force of a blanket and unconditional Amnesty Law. The declared aim of the law was to bring peace to Afghanistan. Whether this aim can be achieved through such a broad amnesty for serious international crimes is a tough question. The first part of this book examines whether the regulations of the Afghan Amnesty Law are compatible with Afghanistan's (prosecutorial) obligations under international law. The second part makes proposals for a comprehensive peace process in Afghanistan to pave the way for lasting peace and reconciliation, justice and respect for the

rule of law. The study analyses international statutes, conventions and documents as well as selected case law, state practice, United Nations practice and the academic debate on amnesties.

Less-lethal weapons under international law : a three-dimensional perspective

Elisabeth Hoffberger-Pippan. - Cambridge : Cambridge University Press, 2021. - XXVI, 234 p.

Hitherto 'less-lethal' weapons, in contrast to classical firearms and other highly destructive weapons, have literally slipped under the radar of public international law. This book is the first monograph addressing and analysing all international legal regimes applicable to less-lethal weapons, ranging from arms control treaties, international humanitarian, criminal and human rights law. In doing so the different scenarios in which less-lethal weapons come to use will be taken into account, such as law enforcement, armed conflict and law enforcement scenarios during armed conflict. The relationships between the different legal regimes will be elaborated thoroughly with a view to examining how international law responds to less-lethal weapons. The final chapter provides guidelines as well as recommendations on appropriate use and regulation of less-lethal weapons, where the different scenarios of application, such as in armed conflict and law enforcement, will be given due account.

https://doi.org/10.1017/9781108887977 *

Litigating the right to health under occupation : between bureaucracy and humanitarianism

Aeyal Gross. In: Minnesota journal of international law, Vol. 27, issue 2, 2018, p. 421-491

This article considers the right to health of Palestinians from the Occupied Palestinian Territory (OPT) as discussed in Israeli courts, a setting distinct from the discussion in the current literature on health rights litigation—one that raises unique questions. Part I of this Article outlines the normative framework relevant to the discussion. Part II focuses on freedom of movement, the issue identified as crucial in the litigation affecting access to health care. Part III deals with the protection of civilians and medical teams during hostilities. The conclusions sum up the various topics discussed, showing how Israeli case law on the right to health of Palestinians in the OPT is almost entirely lacking in any references to the right to health as a human right in international law and turns only rarely to the specific obligations under International Humanitarian Law (IHL). These lacunae are pointed out in the argumentation adopted by the courts especially, but not only, in the Gaza cases: Israeli courts often deal with access to health care by Palestinians from the OPT as mainly a humanitarian issue (not in the sense of binding obligations from IHL but in the sense of a humanitarian gesture) rather than as a matter raising questions of rights and duties.

https://minnjil.org/wp-content/uploads/2018/11/Gross_v27_i2_p421-491-FINAL.pdf

Maritime autonomous vehicles : new frontiers in the law of the sea

Natalie Klein, Douglas Guilfoyle, Saiful Karim and Rob MacLaughlin. In: International and comparative law quarterly, Vol. 69, part 3, July 2020, p. 719-734

The ongoing development of diverse maritime autonomous vehicles for varied ocean activities—ranging from scientific research, security surveillance, transportation of goods, military purposes and commission of crimes—is prompting greater consideration of how existing legal frameworks accommodate these vehicles. This article brings together the core legal issues, as well as current developments in relation to commercial shipping, the law of naval warfare, and maritime security. This article captures how these issues are now being addressed and what other legal questions will likely emerge as the newest technology impacts on one of the oldest bodies of international law.

https://doi.org/10.1017/S0020589320000226 *

The Martens Clause and environmental protection in relation to armed conflicts

Dieter Fleck. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 243-266

The existing treaty law on the protection of the natural environment during armed conflicts is less than adequate. Treaty provisions relating to international armed conflicts are limited to the prohibition of damage of an extreme kind and scale that has not occurred so far and may hardly be expected from the conduct of hostilities unless nuclear weapons would be used. Even in such a scenario, States possessing nuclear weapons have explicitly objected to the applicability of that treaty law. For internal wars, no pertinent treaty provisions exist in the law of armed conflict. Yet multilateral environmental agreements concluded in

peacetime stand as an alternative approach to enhance environmental protection during war. As a civilian object, the environment may not be targeted nor attacked in an armed conflict, but this does not exclude collateral damage, nor does this principle as such offer specific standards for proportionality in attacks. In an effort to close these apparent gaps of treaty law, the present contribution looks into other sources of international law that could be used. In this context, the author revisits the role of the famous Martens Clause in the interplay of international humanitarian law, international environmental law, and human rights law. The role of the Clause in closing gaps caused by the indeterminacy of treaty law is reviewed and customary rules, general principles, and best practices are considered to this effect. For the protection of the natural environment during armed conflicts, the Martens Clause may, indeed, be used as a door opener to facilitate the creation and application of uncodified principles and rules. Particular standards for proportionality in attacks can be derived from the Martens Clause. Pertinent soft law instruments need to be developed in international practical cooperation and by academia. Yet it deserves further study to explore whether, and to what extent, the Martens Clause, which was adopted in the law of armed conflict, may also apply in post-conflict peacebuilding as a case of interaction between the jus in bello and the jus post bellum, at least as far as the protection of the natural environment is concerned.

https://www.gojil.eu/issues/101/101_article_fleck.pdf

Mind the gap : right to life of states' own military personnel in conduct of hostilities

by Yulia Mogutova. - Geneva : Geneva Academy of international humanitarian law and human rights, August 2020. - 35 p.

This paper addresses the “blind zone” of the right to life of States’ own members of armed forces in the conduct of hostilities. It first analyzes the existing human rights framework and demonstrate that soldiers indeed benefit from the right to life, including in the context of military operations. The main focus of the research is the jurisprudence of the European Court of Human Rights (ECtHR) and the application of the European Convention on Human Rights (ECHR) since the limited scope of case law and soft law sources outside the Council of Europe (CoE). The second part is dedicated to the intermingling between international human rights law (IHRL) and international humanitarian law (IHL) in the sphere of the protection of life of soldiers in the conduct of hostilities. This part addresses how IHL is favourable for providing guarantees to the right to life of combatants and how IHRL can fill in the existing gap of protection in the regime of the conduct of hostilities. Finally, a critical analysis of the practical implications, existing challenges of the IHRL influence on IHL, and possible solutions thereto are provided.

https://prix-henry-dunant.org/wp-content/uploads/2020-Research-MOGUTOVA-Gaggioli-LLM-Paper-19-20.pdf

Modern war, nonstate actors and the Geneva Conventions : no longer fit for purpose?

Waseem Ahmad Qureshi. In: San Diego international law journal, Vol. 22, issue 2, Spring 2021, p. 219-262

Many enduring armed conflicts of the last couple of decades have displaced millions of civilians, giving rise to refugee predicaments around the globe. These wars caused many civilian casualties and the destruction of civilian objects, utterly disregarding the protection offered under the Geneva Conventions. Between the rise in violence and the underlying violations of humanitarian law, the Geneva Conventions have lost their significance. Thus, it must be considered whether the Geneva Conventions matter anymore with regard to their effectiveness and efficiency. If the Geneva Conventions are still relevant, then who is responsible for violations of humanitarian law? Further, when states fight, how can they avoid violations of humanitarian law? This Article scrutinizes the efficiency and effectiveness of the Geneva Conventions in protecting civilian lives and civilian objects from the devastation of warfare. This Article intends to list the major violations of the Geneva Conventions in modern times and investigate the shortcomings of the legal framework to explain the lacunae that are exploited by warring states and nonstate actors. Although this Article discusses the major challenges faced by the Geneva Conventions to protect civilians, it also provides a critical assessment of the crucial role of nonstate actors in hybrid and asymmetrical warfare in the context of its ramifications for the Geneva Conventions. Accordingly, this Article recommends ways to induce compliance among states and nonstate actors to better enforce humanitarian law and restore the efficacy of the Geneva Conventions in order to reduce human suffering and restore human dignity.

https://digital.sandiego.edu/ilj/vol22/iss2/2

New dimensions and challenges of urban warfare

International Institute of Humanitarian Law ; ed. Gabriella Venturini; associated ed. Gian Luca Beruto. - Milano : Franco Angeli, 2021. - 151 p.

This collection of contributions made by renowned international experts and practitioners addresses the new challenges concerning the application of IHL in urban military operations. The 43rd Round Table on current issues of international humanitarian law – celebrating the 50th anniversary of the Institute – focused on some of the fundamental issues regarding urban warfare, by examining the lessons learned from recent operations, the humanitarian consequences of urban conflict, the choice of means and methods in the urban context and if a change of approach from the different actors, concerning the protection of civilians, is required in the urban environment. The Round Table provided a forum to discuss related relevant topics including the challenges faced by women with disabilities living in a city of war, and the vulnerability of modern cities infrastructure affected by war.

https://iihl.org/new-dimensions-and-challenges-of-urban-warfare/

New technologies on the battlefield : friend or foe ? : proceedings of the 21st Bruges Colloquium, 12-16 October 2020

CICR, Collège d'Europe. In: Collegium, No 51, Autumn/automne 2021, 181 p.

Panel 1 : Cyber operations during armed conflict. - Panel 2 : the use of autonomous weapon systems : a challenge to the international rule of law ?. - Panel 3 : Artificial intelligence (AI) and machine learning. - Panel 4 : Military space operations : constraints under international law and potential humanitarian consequences. - Panel 5 : new technologies and humanitarian action.

https://www.coleurope.eu/sites/default/files/uploads/page/collegium_51_web.pdf

Next steps in chemical weapons control and protecting the right to protest : improvements to the legal regime controlling tear gas

Casey Morin. In: Fordham international law journal, Vol. 44, no. 5, 2021, p. 1267-1307

At a pivotal moment in the relationship between law enforcement and the global public, this Note recalls the principle that impunity for excessive use of force by the police should never be tolerated. Amid the growing calls for police reform and bans on the use of tear gas on protesters, this Note proposes a solution to balance the needs of law enforcement officers with the interests of the public to exercise the right to protest—an essential form of participation in public affairs. It analyzes current international approaches to regulating the use of riot control agents, including tear gas, and argues for the addition of an optional protocol to the Chemical Weapons Convention, the foremost arms control treaty, to effect this balance on a global scale. By following such an approach, the optional protocol will meet the needs of the many involved in protests and law enforcement and improve public discourse and safety.

https://ir.lawnet.fordham.edu/ilj/vol44/iss5/3 /

Perilous medicine : the struggle to protect health care from the violence of war

Leonard Rubenstein. - New York : Columbia University Press, 2021. - XVI, 392 p.

Leonard Rubenstein — a human rights lawyer who has investigated atrocities against health workers around the world — offers a gripping and powerful account of the dangers health workers face during conflict and the legal, political, and moral struggle to protect them. In a dozen case studies, he shares the stories of people who have been attacked while seeking to serve patients under dire circumstances including health workers hiding from soldiers in the forests of eastern Myanmar as they seek to serve oppressed ethnic communities, surgeons in Syria operating as their hospitals are bombed, and Afghan hospital staff attacked by the Taliban as well as government and foreign forces. Rubenstein reveals how political and military leaders evade their legal obligations to protect health care in war, punish doctors and nurses for adhering to their responsibilities to provide care to all in need, and fail to hold perpetrators to account.

The Polisario Front and the future of Article 1(4)

Dominic Gattuso. In: Texas law review, Vol. 99, issue 6, May 2021, p. 1201-1218

In this Note, the author discusses the implications of a 2015 decision from Switzerland on Article 1(4) of Additional Protocol I to the Geneva Conventions. The provision, which allows for the more comprehensive legal scheme of international armed conflict to apply to conflicts between states and national liberation movements, has never been successfully applied until this decision despite its controversial political history.

After establishing the continued relevance of the provision's internationalizing mechanism, the author discusses in detail the interpretive problems it has presented regarding the apparent failures of the provision in practice. Considering these issues, and similar problems presented by the provision's procedural process in Article 96(3), the author reviews the circumstances behind Switzerland's sudden validation of Article 1(4)'s invocation by the Polisario Front, a national liberation movement from the Western Sahara, and the history of the conflict underlying the decision. Finally, the author offers arguments for how the decision complicates established positions on the interpretation of Article 1(4) and lends to a more liberal construction and hopeful future for the provision's implementation. This piece contributes to the field of international humanitarian law by taking a more focused look at the current state of Article 1(4) and argues for its continued relevance while others have been quick to dismiss the provision as a "dead letter."

https://texaslawreview.org/wp-content/uploads/2021/05/Gattuso.Printer.pdf

Precaution in international environmental law and precautions in the law of armed conflict

Michael Bothe. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 267-281

The protection of the environment in relation to armed conflict, in particular during armed conflict is a complex problem as it involves at least two different fields of international law, the law of armed conflict (international humanitarian law) and international environmental law. Their mutual relationship is a delicate issue. International humanitarian law is not necessarily lex specialis. Three principles deserve particular attention in this connection: as to general international environmental law, the principle of prevention and the precautionary principle, as to international humanitarian law the duty to take precautions. The terms prevention and precaution are used in different contexts in environmental law (both national and international) and in the law of armed conflict. The duty, imposed by international humanitarian law, to take precautions has much in common with, but must be distinguished from, the precautionary approach of general environmental law. This paper shows what these principles mean and how they relate to each other. It answers the question to what extent the rules based on these concepts are effective in restraining environmental damage being caused by military activities. The application of these principles in peace and war serves intergenerational equity and is thus an important element of sustainable development.

https://www.gojil.eu/issues/101/101_article_bothe.pdf

Preliminary remarks on lethal autonomous weapon systems from an IHL perspective

Ali Masoudi Lamraski. In: Asia-Pacific journal of international humanitarian law, Vol. 2, no. 1, 2021, p. 8-30

During the past decades, developments for lethal autonomous weapons systems continued unabated and various States have dedicated significant resources to research and development on these systems. While there is no standard, universally-accepted definition of some of the key terms related to them, in their broadest sense, lethal autonomous weapon systems can operate outside direct human control and independently dispense lethal force in the battlespace based on internal programming. While these weapons, like all others, must comply with the law of armed conflict, there seems something troubling about this prospect. On one hand, there is growing advocacy asserting that these weapons can adhere to the law and even deliver more humanitarian outcomes in their dispensation of violence. Such advocacy assumes much about the normativity of the law. On the other hand, there exist grave concerns as to these weapons' level of autonomy. The fundamentals of IHL, best exemplified by the principles of distinction, proportionality, precaution and humanity require qualitative, context-dependent cognitive reasoning and judgment. These are the qualities that cannot be encoded into a weapon control system and machines are inherently incapable of. That is the reason humanitarians, roboticists and States have been struggling to define the extent to which weapons may be developed to conduct military operations without human control. This paper seeks to canvass the legal challenges posed by using autonomous weapons systems from an IHL perspective and interrogate how developments of the legal framework should be made on this matter.

https://apjihl.org/article/preliminary-remarks-on-lethal-autonomous-weapon-systems-from-an-ihl-perspective/

Promoting the comprehensive protection of cultural property : the 8th regional conference on international humanitarian law in Asia-Pacific, 24-26 September 2019, Bali, Indonesia

Christian Donny Putranto. In: Asia-Pacific journal of international humanitarian law, Vol. 2, no. 1, 2021, p. 173-187

This article provides an overview of the 8th Regional Conference on International Humanitarian Law in Asia-Pacific, which carried the umbrella theme of protection of cultural property. Co-hosted by the International Committee of the Red Cross (ICRC) and the United Nations Education, Scientific, and Cultural Organisation (UNESCO), the Regional Conference served as an avenue for the participating States to discuss and exchange views as well as good practices on the comprehensive protection of cultural property. The sub-themes covered during the Regional Conference were inter alia the international protection regime of cultural property, how cultural property is protected in times of emergency such as armed conflict or natural disaster, the importance of national implementation to protect cultural property, and the roles of government agencies and non-government organisations in protecting cultural property both at national, regional, and international levels.

https://apjihl.org/article/promoting-the-comprehensive-protection-of-cultural-property-the-8th-regional-conference-on-international-humanitarian-law-in-asia-pacific-24-26-september-2019-bali-indonesia/

Proportionality in international humanitarian law : consequences, precautions, and procedures

Amichai Cohen and David Zlotogorski. - New York : Oxford University Press, 2021. - XVIII, 262 p.

The principle of proportionality is one of the cornerstones of International Humanitarian Law (IHL). Almost all states involved in armed conflicts recognize that it is prohibited to launch an attack that is expected to cause incidental harm to civilians that exceeds the direct military advantage anticipated from the attack. This prohibition is included in military manuals, taught in professional courses, and accepted as almost axiomatic. And yet, the exact meaning of this principle is vague. Almost every issue is in dispute—from the most elementary question of how to compare civilian harm and military advantage, to the possible obligation to employ accurate but expensive weapons. Controversy is especially rife regarding asymmetrical conflicts, in which many modern democracies are involved. How exactly should proportionality be implemented when the enemy is not an army, but a non-state actor embedded within a civilian population? What does it mean to use precautions in attack, when almost every attack is directed at objects that are used for both military and civilian purposes?

https://doi.org/10.1093/oso/9780197556726.001.0001 *

Prosecution of core crimes in Ethiopia : domestic practice vis-à-vis international standards

by Tadesse Simie Metekia. - Leiden : Brill Nijhoff, 2021. - XV, 505 p.

Tadesse Simie Metekia's Prosecution of Core Crimes in Ethiopia offers an in-depth analysis of core crimes trials in Ethiopia within the broader frame of international criminal law. This book is a result of an unprecedented data collection, a meticulous exploration of relevant national and international norms and case laws, as well as a full engagement with the existing literature on the domestic application of international criminal law. A comparative examination of the actual trials and the manner in which Ethiopia set prosecutions of core crimes in motion, Metekia's book is a significant achievement in terms of furthering academic knowledge and of contributing to the wider policy debates on international criminal justice and on the role of states in prosecuting atrocities.

Prosecution of war crimes in Australia : prospects for victim participation

Mary Flanagan. In: Asia-Pacific journal of international humanitarian law, Vol. 2, no. 1, 2021, p. 143-169

An Office of Special Investigator has been established to investigate alleged war crimes committed by Australian Defence Force personnel in Afghanistan. The development follows an unprecedented investigation by the Inspector-General of the Australian Defence Force into alleged criminal conduct of Australian Special Forces. While the investigations to date have been extensive, there has been little public discussion regarding the participation of victims and their families in the investigations and their ability to participate in the potential criminal prosecutions. This article outlines the legal jurisdictions in which

Australian Defence Force personnel could be prosecuted in Australia and explores the legal framework for victim participation in those jurisdictions, including alternative third-party participation avenues such as amicus curiae and intervener applications.

https://apjihl.org/article/prosecution-of-war-crimes-in-australia-prospects-for-victim-participation/

Protecting protected areas in bello : learning from institutional design and conflict resilience in the Greater Virunga and Kidepo Landscapes

Elaine (Lan Yin) Hsiao. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 67-110

It has often been cited that major armed conflicts (>1,000 casualties) afflicted two-thirds (23) of the world's recognized biodiversity hotspots between 1950 and 2000. In 2011, the International Law Commission (ILC) included in its long-term work program Protection of the Environment in Relation to Armed Conflict. This led to the adoption of twenty-eight Draft Principles, including designation of protected zones where attacks against the environment are prohibited during armed conflict. Protected zone designations apply to places of major environmental and cultural importance, requiring that they "[...] shall be protected against any attack, as long as it does not contain a military objective." Most research on armed conflict and protected areas has focused on impacts to wildlife and less on how to protect these natural habitats from the ravages of armed conflict. This article highlights some of the gaps in the ILC Draft Principles towards protecting protected zones in bello. It uses transboundary protected areas (TBPAs) formalized through multilateral agreements to illustrate challenges on the ground. TBPAs are internationally designated "[...] protected areas that are ecologically connected across one or more international boundaries [...]" and sometimes even established for their promotion of peace (i.e., Parks for Peace). There is little legal research on how to design TBPA agreements for conflict resilience, conflict sensitivity, and ultimately positive peace. The research draws from two case studies in Africa's Great Rift Valley: the Greater Virunga Landscape (GVL) between the Democratic Republic of the Congo (DRC), Rwanda, and Uganda, and the Kidepo Landscape, which forms part of the broader Landscapes for Peace initiative between South Sudan and Uganda. Both suffer from armed conflicts of various types and present two of the only TBPAs in the world that have incorporated environmental peacebuilding into their transboundary agreements. The case studies illustrate different approaches to TBPA design and the pros and cons of each modality in the context of conflict resilience and conflict sensitivity. This guides us on how to better protect protected areas in bello, ensuring that protected zones endure on the ground and not just in principle.

https://www.gojil.eu/issues/101/101_article_hsiao.pdf

Protecting the environment from the perspective of the law of armed conflict : trying to fit in climate change

Bartłomiej Krzan. In: International community law review, Vol. 23, no. 2-3, 2021, p. 252-260

The present study analyses climate change from the perspective of the law of armed conflict. Climate may be both a victim and a means of warfare. Arguably, the existing normative framework is broad enough to allow for accommodating climate change. It cannot be denied that the environment is easily harmed, or at least jeopardized in times of armed conflicts. Despite the obvious lack of explicit references in the instruments of international humanitarian law, it may be argued that it is possible to fit climate change in. The accompanying analysis addresses the respective potential and the ensuing hurdles.

https://doi.org/10.1163/18719732-12341475 *

Protection of places with the UN flag (UN premises) during armed conflicts in the framework of the contrast between international humanitarian law and UN regulations

Seyed Hesamoddin Lesani. In: The Iranian review for UN studies, Vol. 1, no. 1, Summer and Autumn 2018, p. 99-117

Given that the UN has increased its humanitarian activities over the past years and sometimes uses its own places and bases to shelter displaced civilians, the protection of such places during armed conflicts is an issue that can be a subject of an independent study. International humanitarian laws, both customary and conventional, call for the places with a UN flag to be granted immunity. The statute of the International Criminal Court has, particularly, taken the issue into consideration. The UN regulations, including the Convention on the Privileges and Immunities of the United Nations (1946), too, have taken into account the issue to a greater extent. Still, there remain certain contradictions between the aforementioned legal instruments that will be discussed in the current paper. Nonetheless, the international humanitarian laws

and the UN regulations, aimed at protecting the UN flag, have been sadly trespassed during recent wars and armed conflicts worldwide.

https://dx.doi.org/10.22034/iruns.2018.80918

Protection of the environment in relation to armed conflicts : an overview of the International Law Commission's ongoing work

Marie Jacobsson and Marja Lehto. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 27-46

In 2011, the UN International Law Commission (ILC) took up the topic Protection of the Environment in Relation to Armed Conflicts. In this introductory note, Marja Lehto and Marie Jacobsson, the two special rapporteurs on the topic, provide valuable insights on the Commission's work. They chronologically introduce the process of including the topic on the Commission's agenda, its relation to other topics dealt with by the ILC, and how the Draft Principles have evolved into a set of 28 Draft Principles. The two special rapporteurs explain the rationale for decisions on the approach and contents of the Draft Principles. For instance, the decision to expand the topic to include all phases of an armed conflict allowed the ILC to deal with the topic from a more general international legal perspective. This broad approach shows that the ILC does not see itself as a forum to revise and adjust the sensitive law of armed conflict. The topic is rather suited for the ILC as it goes beyond this specialised field of international law. Furthermore, Jacobsson and Lehto explain how the Draft Principles relate to other initiatives under international law, such as the Global Pact for the Environment, the updated environmental guidelines of the International Committee of the Red Cross (ICRC), and the 2016 policy paper of the Office of the Prosecutor of the International Criminal Court. They conclude that the international legal landscape relating to the environment and armed conflicts has changed since 2011 when the ILC embarked on the topic. From being a highly specialized issue mainly regulated by the law of armed conflict, the Environmental Modification Convention (ENMOD) and international criminal law incorporating the narrow scope of Articles 35(3) and 55 of the Additional Protocol I (AP I)16 and Article 8(b)(iv) Rome Statute,17 the protection of the environment in relation to armed conflicts now covers a broader field including peacekeeping operations, corporate liability, human rights law, indigenous peoples' rights, and environmental peacebuilding.

https://www.gojil.eu/issues/101/101_article_jacobsson_lehto.pdf

The psychological impact of military operations on civilians and the UN Human Rights Committee Japalali decision : exploring mental anguish under a vida digna, right to life prism

Solon Solomon. In: Journal of conflict and security law, Vol. 26, no. 2, Summer 2021, p. 401-419

Among international scholars, much emphasis has been given on how in situations of warfare, international humanitarian law can impact upon international human rights law (IHRL). The opposite scenario has been little explored. On this account, the article will explore how under the influence of IHRL in instances of wounded civilians feeling mental anguish as a result of their uncertainty whether or not they will remain alive, a state can be found as violating these civilians' right to life vida digna facet. At the same time, the article will proceed to analyze how such vida digna mental anguish parameter must be seen not just as general carte blanche for expanding the notion of psychological injury beyond cases of mental harm in all military operations, but as relevant only in instances, like 'kill or capture' operations where the state is seen in a position to consider in advance the conditions under which a military engagement takes place.

https://doi.org/10.1093/jcsl/kraa017 *

La puissance occupante et les violations graves du droit international humanitaire dans les territoires arabes occupés

Mamoud Zani. In: L'observateur des Nations Unies, Vol. 50, 2021-1, p. 199-219

La question de la Palestine (Territoires arabes occupés) relève des conflits armés internationaux (CAI) ; en effet, il s'agit d'un territoire occupé par une puissance occupante, en l'occurrence Israël. Celle-ci est tenue par des obligations de comportement au regard des instruments des droits international, de droit international humanitaire et des droits de l'homme. En pratique, l'ONU, y compris l'Assemblée générale, le Conseil de sécurité et le Conseil des droits de l'homme ne cessent de dénoncer l'occupation illégale du Territoire palestinien et les diverses violations des règles desdits instruments, notamment la quatrième Convention de Genève relative à la protection des personnes civiles en temps de guerre (1949) par la puissance occupante. Du reste, la non-reconnaissance par Israël de l'application de cette convention aux

Territoires arabes occupés rend la situation complexe; cette complexité s'est amplifiée avec les frappes du 13 mai 2021 menées dans la bande de Gaza par l'armée israélienne en réplique au groupe Hamas faisant de nombreux blessés et morts parmi la population civile. Cet article propose d'analyser deux volets afin de clarifier les responsabilités de la puissance occupante, en l'occurrence les principales violations du DIH impliquant la puissance occupante, ainsi que les violations issues d'affrontements israélo-palestiniens du 10 au 21 mai 2021.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/54920.pdf *

Qassem Soleimani, targeted killing of state actors, and Executive Order 12,333

Taran Molloy. In: Victoria University of Wellington law review, Vol. 52, no. 1, 2021, p. 163-196

The targeted killing of the Iranian military leader Qassem Soleimani in an American drone strike in January 2020 marked a novel development in the operation of the United States' drone programme; targeting a member of a state's armed forces as opposed to a member of a non-state armed group. Soleimani's killing offers an opportunity to re-examine the scope of Executive Order 12,333, which prohibits employees of the United States Government from committing assassinations. This article applies Executive Order 12,333's "assassination ban "to the Soleimani strike. The assassination ban's scope varies depending on whether it is applied in a wartime or peacetime context. This article concludes from the surrounding factual and legal context that the strike should be analysed according to the peacetime definition of assassination, which necessitates an analysis of the strike's compliance with the jus ad bellum, the legal framework applicable to uses of interstate force. It finds that the strike's non-compliance with the jus ad bellum, in addition to its likely political motive create a strong argument that the strike would constitute a prohibited assassination under the terms of the Executive Order, but the legal framework surrounding the Executive Order limits its direct enforceability with respect to presidentially authorised uses of force. It ultimately concludes that, despite the assassination ban's lack of direct enforceability, it nevertheless creates a strong normative counterbalance against an increasing tendency toward expansive uses of extraterritorial force.

https://doi.org/10.26686/vuwlr.v52i1.6849

Reaping the whirlwind : the norm of reciprocity and the law of aerial bombardment during World War II

John Bennett. In: Melbourne journal of international law, Vol. 20, issue 2, December 2019, 44 p.

Despite the intense controversy surrounding the Allied bombing campaign during World War II, the extant scholarship lacks a detailed description of the law of war concerning aerial bombing as that law existed during the conflict — a remarkable gap in the research, considering the attention that has been devoted to this topic. This paper presents a brief history of the evolution of the law of war concerning aerial bombardment prior to and during World War II. The law of war in this period was shaped primarily by the norm of reciprocity, and this norm is critical to understanding how the Allies conceived of the bombing campaign. The norm of reciprocity had several functions deserving of examination: the norm, as a moral intuition, instilled a psychological motive for the Allied peoples to support the bombing, provided a framework of values to legitimate that support and then channelled that support into a policy perceived as legally just. The norm of reciprocity was central to legal justifications for the bombing campaign.

https://law.unimelb.edu.au/__data/assets/pdf_file/0009/3567438/Bennett.pdf

Rebel courts : the administration of justice by armed insurgents

René Provost. - New York : Oxford University Press, 2021. - XII, 474 p.

Warzones are sometimes described as lawless, but this is rarely the case. Armed insurgents often replace the state as the provider of law and justice in areas under their authority. Based on extensive fieldwork, Rebel Courts offers a compelling and unique insight into the judicial governance of armed groups, a phenomenon never studied comprehensively until now. Using a series of detailed case studies of non-state armed groups in a diverse range of conflict situations, including the FARC (Colombia), Islamic State (Syria and Iraq), Taliban (Afghanistan), Tamil Tigers (Sri Lanka), PKK (Turkey), PYD (Syria), and KRG (Iraq), Rebel Courts argues that it is possible for non-state armed groups to legally establish and operate a system of courts to administer justice. Rules of public international law that regulate the conduct of war can be interpreted as authorising the establishment of rebel courts by armed groups. When operating in a manner consistent with due process, rebel courts demand a certain degree of recognition by international states, institutions, and even other non-state armed groups.

https://doi.org/10.1093/oso/9780190912222.001.0001 *

Reconceptualising the legal response to foreign fighters

John Ip. In: International and comparative law quarterly, Vol. 69, part 1, January 2020, p. 103-134

The Syrian civil war has highlighted the phenomenon of foreign fighting, in which individuals leave their home State to join an armed conflict overseas. The predominant paradigm for regulating foreign fighting, centred on United Nations Security Council Resolution 2178, is based on counterterrorism, which in essence treats foreign fighting as a form of terrorism. This paradigm is largely reflective of the domestic legislation of the United Kingdom, United States, Canada and Australia. This article argues that this approach is problematic, and that an alternative paradigm based on the international law of neutrality and related domestic legislation provides a better means for regulating foreign fighting.

https://doi.org/10.1017/S0020589319000447 *

Reducing civilian harm in urban warfare : a commander's handbook

ICRC. - Geneva : ICRC, October 2021. - 83 p.

The handbook identifies the extent of civilian harm resulting from combat taking place in urban areas. It highlights those aspects of the law of armed conflict which are particularly relevant in urban areas. It presents to military commanders at brigade and battalion level a series of examples of good practice to reduce civilian harm, grouped under the headings of doctrine; training; planning and conduct of operations. It also offers specific guidance on operations that might not be conducted routinely by armed forces, such as planning and conducting evacuations and the screening of populations. It is relevant to commanders in state armed forces worldwide, particularly those involved in writing doctrine, overseeing training or planning for combat in urban areas.

https://library.icrc.org/library/docs/DOC/icrc-4569-002.pdf

Reflections on humanitarian law dimensions of the African Union Convention for the protection and assistance of internally displaced persons in Africa

Steve Tiwa Fomekong. In: African Yearbook on International Humanitarian Law, 2020, p. 78-120

While significant attention has thus far been paid to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the rules of humanitarian law that it sets out have not yet been the subject of a specific in-depth analysis. This contribution aims to fill this gap in the literature. It specifically examines the humanitarian law rules contained in the Kampala Convention to determine their meaning and scope, as well as their contribution to strengthening international humanitarian law (IHL). It begins by analysing the articulation of these regional humanitarian rules with the universal rules of IHL that preceded them to determine whether there is any divergence between them. Next, the paper attempts to determine the extent to which the humanitarian law provisions of the Kampala Convention enrich the legal protections provided by IHL for the improvement of the plight of internally displaced persons from armed conflict. Finally, with an approach centred around making suggestions for law reform, the paper demonstrates why and how these rules should inspire the future development of conventional and customary norms that would assist with the challenges of conflict-induced displacement.

https://journals.co.za/doi/10.47348/AYIH/2020/a4*

Reflections on the legality of attacks against the natural environment by way of reprisals

Stavros-Evdokimos Pantazopoulos. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 47-66

The paper examines the concept of belligerent reprisals and assesses the legality of attacking the environment by way of reprisals. The law of belligerent reprisals, which is linked to the principle of reciprocity, allows one belligerent State unlawfully injured by another to react by means of what under normal circumstances would constitute a violation of the jus in bello, so as to induce the violating State to comply with the law. The instances of lawful recourse to reprisals have been considerably limited, since their application is either explicitly prohibited against certain protected persons and objects, including against the natural environment, or is subject to stringent conditions according to customary International Humanitarian Law (IHL). Despite its narrowing scope, the doctrine of reprisals remains a valid concept under the existing legal framework. For one, the state of affairs under customary international law with

respect to reprisals directed at civilian objects (including against parts of the environment), subject to certain rigorous conditions, remains unclear. To complicate matters even further, any proposition on the status of reprisals in the context of a non-international armed conflict (NIAC) is shrouded in controversy, as there is no relevant treaty provision. In this regard, the present author endorses the approach espoused in the International Committee of the Red Cross (ICRC) Study on Customary IHL, namely to altogether prohibit resort to reprisals in the context of a NIAC. Turning to the status of reprisals against the natural environment under customary IHL, it is argued that a prohibition of attacks against the natural environment by way of reprisals is in the process of formation with respect to the use of weapons other than nuclear ones. All things considered, the International Law Commission (ILC) was confronted with an uncomfortable situation in the context of its work on the 'Protection of the Environment in Relation to Armed Conflicts'. By sticking to the verbatim reproduction of Article 55(2) of Additional Protocol I, the ILC chose the proper course of action, since any other formulation would not only undercut a significant treaty provision, but might also result in the normative standard of conduct being lowered.

https://www.gojil.eu/issues/101/101_article_pantazopoulos.pdf

Relationships between international criminal law and other branches of international law

William A. Schabas. In: Recueil des cours : Académie de droit international de la Haye = Collected courses of the Hague academy of international law, T. 417, 2021, p. 225-392

After lengthy decades of relative inactivity, in recent years international criminal law has emerged to become an important branch of public international law. It has significant affinities with three other branches, international human rights law, international humanitarian law, and international refugee law. The course examines the relationships, interactions and overlaps of these different subject areas, as well as considering the place of international criminal law within general international law.

Reproductive violence and international criminal law

Tanja Altunjan. - The Hague : Asser Press, 2021. - X, 299 p.

This book deals with the phenomenon of conflict-related reproductive violence and explores the international legal framework's capacity to respond to it. The international discourse on gender-based violence in conflicts tends to focus on sexualized crimes, which leads to incomplete narratives of the gendered dimensions of armed conflicts. In particular, international law has often remained silent on conflict-related violence affecting or aimed at the victim's reproductive system.

The responsibility of armed groups concerning displacement

Ben Saul. - In: The Oxford handbook of international refugee law. - Oxford : Oxford University Press, 2021. - p. 1138-1156

This chapter studies the responsibility of armed groups concerning displacement. Displacement frequently occurs in non-international armed conflicts (NIACs), whether as an incidental effect of actual or impending hostilities, a deliberate tactic of warfare, or as a preventive, protective measure to evacuate civilians at risk. In contrast to States parties to a NIAC, however, non-State armed groups (NSAGs) involved in conflict bear far fewer international obligations concerning protection from, during, and after displacement. The chapter charts how most of the relevant international law imposes obligations principally on States. Under the law of State responsibility, a State is only responsible for a NSAG's conduct in a limited range of situations. Even where State responsibility formally exists, it will often be an ineffective means of accountability in practice, and NSAGs themselves may not separately bear direct responsibility for their conduct. A critical, second issue the chapter discusses, therefore, is the extent to which international law directly binds NSAGs and holds them responsible for their breaches. By disaggregating the applicable specialized branches of law, it shows that NSAGs are clearly bound by international humanitarian law as groups, while international criminal law imposes individual criminal liability on their members.

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Revisiting the Memory of Solferino : knowledge production and the laws of war

Eyal Benvenisti and Doreen Lustig. - In: International law's invisible frames : social recognition and knowledge production in international legal processes. - Oxford : Oxford University Press, 2021. - p. 256-275

During the course of the second half of the nineteenth century, the rules regulating the conduct of armies during hostilities were internationally codified for the first time. The conventional narrative attributes the codification of the laws of war to the campaign of civil society, especially that of the founders of the Red Cross – Henry Dunant and Gustav Moynier. In what follows, we problematize this narrative and trace the history of the construction of this knowledge. We explore how the leading figures of the Red Cross, who were aware of the shortcomings of their project, were nonetheless invested in narrating its history as a history of success. Their struggle to control the narrative would eventually confer the International Committee of the Red Cross (ICRC) with considerable interpretive and agenda-setting authority in the realm of the laws of war. We dwell on the meaning of this conscious exercise in knowledge production and its normative ramifications.

The right to health, public health and COVID-19 : a discourse on the importance of the enforcement of humanitarian and human rights law in conflict settings for the future management of zoonotic pandemic diseases

M.C. Van Hout, J.S.G. Wells. In: Public health, Vol. 192, March 2021, p. 3-7

The catastrophic effects of armed conflict, particularly prolonged armed conflict, on individual and public health are well established. The 'right' to healthcare during armed conflict and its lack of enforcement despite a range of United Nations mandated requirements regarding health and healthcare provisions is likely to be a significant feature in future conflicts, as zoonotic-induced pandemics become a more common global public health challenge. The issue of enforcement of health rights assurance and its implications for the public health management of global pandemics such as coronavirus disease 2019 (COVID-19) in and between countries and regions in conflict is the objective of this Review.

https://doi.org/10.1016/j.puhe.2021.01.001

The right to life under international law : an interpretative manual

Stuart Casey-Maslen ; with a foreword by Christof Heyns. - Cambridge [etc.] : Cambridge University Press, 2021. - XXVIII, 756 p.

The Right to Life under International Law offers the first-ever comprehensive treatment under international law of the foundational human right to life. It describes the history, content, and status of the right, considers jurisdictional issues, and discusses the application of the right to a wide range of groups, such as women, children, persons with disabilities, members of minorities, LGBTI persons, refugees, and journalists. It defines the responsibility of not only governments but also the private sector, armed groups, and non-governmental organisations to respect the prohibition on arbitrary deprivation of life. It also explains the nature and substance of the duty to investigate potentially unlawful death as well as the mechanisms at global and regional level to promote respect for the right to life.

Rights of families of disappeared persons : how international bodies address the needs of families of disappeared persons in Europe

Grazyna Baranowska. - Cambridge : Intersentia, 2021. - XXII, 218 p.

This book examines how international judicial and non-judicial bodies in Europe address the needs of the families of forcibly disappeared persons. The needs in question are returning the remains of disappeared persons; the right to truth; the acceptance of responsibility by states; and the right to compensation. These have been identified as the four most commonly shared basic and fundamental needs of families in which an adult was disappeared many years previously and is now assumed to be dead, which is representative of the situation of the vast majority of families of disappeared persons in Europe. The analysis covers the judgments and decisions of the European Court of Human Rights, the UN Human Rights Committee, the International Criminal Tribunal for the former Yugoslavia, the Human Rights Chamber for Bosnia and Herzegovina, the Human Rights Advisory Panel in Kosovo, as well as the activities of the Committee on Missing Persons in Cyprus, the Special Process on Missing Persons in the Territory of former Yugoslavia, the UN Committee on Enforced Disappearances and the International Commission on Missing Persons. In so doing, the book demonstrates whether, how, and based on what principles these four needs of the families of disappeared persons can constitute a claim based on international human rights law.

The role of multilateral environmental agreements : a reconciliatory approach to environmental protection in armed conflict

Britta Sjöstedt. - Oxford ; London ; New York ; New Dehli ; Sydney : Hart, 2020. - XX, 309 p.

The environment suffers enormously during armed conflicts and, despite the increasing awareness of the pressing need to protect the planet, devastating environmental damage can occur legally at times of war. This book suggests that – apart from the protection offered under law of armed conflict – environmental treaties or multilateral agreements (MEAs) can complement and strengthen environmental protection when war occurs. Previous research has focused on the protection offered under the law of armed conflict (in particular international humanitarian law) and customary international environmental law concerning wartime environmental damage, or whether environmental treaties remain applicable at times of armed conflict. This book, however, is the first in-depth scholarly examination of how environmental treaties can apply in wartime and how they can contribute to the protection of the environment in relation to armed conflict. It also offers an updated study of environmental protection under the law of armed conflict, including the latest developments in the International Law Commission's work on this underexplored topic.

The Rome Statute as evidence of customary international law

by Yudan Tan. - Leiden ; Boston : Brill Nijhoff, 2021. - LXVII, 419 p.

In The Rome Statute as Evidence of Customary International Law, Yudan Tan offers a detailed analysis of topical issues concerning the Rome Statute of the International Criminal Court as evidence of customary international law. The 1998 Rome Statute has generated a great deal of scholarly interest. Providing a novel way of analysing the treaty-custom interactions, Yudan Tan examines the customary status of essential parts of the Rome Statute. Based on a flexible two-element identification approach, focusing more on opinio juris, Yudan Tan convincingly argues that provisions of the Rome Statute were partly declaratory of custom when adopted in 1998, and that they are also partly declaratory of custom at the present time.

Room for manoeuvre ? : promoting international humanitarian law and accountability while at the United Nations Security Council : a reflection on the role of elected members

Emilie Max. - Geneva : Geneva Academy of international humanitarian law and human rights, October 2020. - 42 p.

In recent years, the UNSC has been increasingly dealing with international humanitarian law (IHL) through specific debates as well as thematic and/or country resolutions. This involvement culminated in 2019 with the successive celebrations of the twentieth anniversary of the agenda item on the Protection of Civilians in Armed Conflict (the so-called 'PoC agenda') and the seventieth anniversary of the Geneva Conventions of 1949. This briefing assesses the United Nations (UN) Security Council's (UNSC) recent engagement with IHL. After some preliminary remarks, the briefing lays out the institutional framework relevant to the functioning of the Security Council, and the specificities associated with non-permanent membership. Moving from the abstract to the concrete, it then assesses, in turn, recent Security Council practice in relation to the situation in the Syrian Arab Republic, the PoC agenda, other relevant thematic agenda items (Children and Armed Conflict and Women, Peace and Security, respectively), as well as counterterrorism measures and sanctions regimes. The issue of accountability is examined transversally. Finally, it formulates general guiding questions addressed to future and prospective elected members.

https://www.geneva-academy.ch/joomlatools-files/docman-files/Briefing%2017.pdf

Rules for wrongdoers : law, morality, war

Arthur Ripstein ; with commentaries by Oona A. Hathaway, Christopher Kutz, Jeff McMahan ; ed. and introduced by Saira Mohamed. - Oxford : Oxford University Press, 2021. - X, 228 p.

The author's lectures focus on the two bodies of rules governing war: the jus ad bellum, which regulates resort to armed force, and the jus in bello, which sets forth rules governing the conduct of armed force and applies equally to all parties. He argues that recognizing both sets of rules as distinctive prohibitions, rather than as permissions, can reconcile the supposed tension between them. He contends that the law and morality of war are in fact aligned, because the central wrong of war is that war is the condition which force decides.

"Safe zones" : a protective alternative to flight or a tool of refugee containment? : clarifying the international legal framework governing access to refugee protection against the backdrop of "safe zones" in conflict-affected contexts

Harriet Macey. - Geneva : Geneva Academy of international humanitarian law and human rights, [2021]. - 41 p.

So-called 'safe zones', such as those established in northern Syria and elsewhere, pose an increasingly pressing threat to genuine and robust international legal protection for persons fleeing conflict. This paper aims to address the key challenges and risks of safe zones under international law and to provide some clarifications on the legal framework which must be respected by refugee-receiving states. Through assessing the intentions of preventing migration flows which underlies their creation, this paper will demonstrate that the existence of safe zones cannot be used to circumvent the obligations of refugee-receiving states under international law, specifically the right to leave and seek asylum and the prohibition of nonrefoulement. This paper concludes that safe zones should only be created as an urgent response to humanitarian crises in order to ensure the immediate safety of civilians in conflict zones, and only under very strict conditions. In this respect, this paper will demonstrate that even if safe zones comply with certain minimum protective standards, the volatility and complexities of the conflict environment means that they should not and cannot act as a substitute for genuine refugee protection under international law.

https://prix-henry-dunant.org/wp-content/uploads/Harriet-MACEY-LLM-Paper-20-21.pdf

S'approprier le DIH : lignes directrices pour la mise en œuvre nationale du droit international humanitaire

Services consultatifs en droit international humanitaire (CICR). - Genève : CICR, septembre 2021. - 54 p.

En décembre 2019, la XXXIIIe Conférence internationale de la Croix-Rouge et du Croissant-Rouge a adopté la résolution 1 (33IC/19/R1), intitulée « S'approprier le DIH : Feuille de route pour améliorer la mise en œuvre nationale du droit international humanitaire ». La résolution repose sur les idées largement répandues qu'un plus grand respect du droit international humanitaire (DIH) est indispensable pour protéger les victimes de conflits armés et que la mise en œuvre nationale de cette branche du droit est une étape essentielle vers la réalisation de cet objectif. Le présent document fournit des orientations aux États et aux Sociétés nationales afin qu'ils œuvrent ensemble à la mise en œuvre de la résolution au niveau national. Il recommande des mesures pratiques sous forme de listes de contrôle relatives aux paragraphes clés de la résolution. Les utilisateurs de cet outil sont invités à s'inspirer de ces recommandations dans les domaines les plus pertinents pour leur contexte. L'idée fondamentale est que la mise en œuvre nationale du DIH est un processus permanent et qu'il est toujours possible de prendre des mesures supplémentaires, à n'importe quel stade.

https://library.icrc.org/library/docs/DOC/icrc-4532-001.pdf

Signaling restraint : international engagement and rebel groups' commitment to international law

Hyeran Jo, Joshua K. Alley, Yohan Park and Soren Jordan. In: International interactions, Vol. 47, no. 5, 2021, p. 928-954

Approximately 20% of contemporary rebel groups have expressed commitment to international law and signaled their intention to exercise restraint during wartime. Which rebel groups make these commitments and under what conditions? We argue that international engagement shaped the likelihood of rebel commitment to international law. Rebel groups with transnational non-military support and clear organizational structure are likely to speak the language of international law, especially near peace negotiations. We find support for our argument in a statistical analysis of international law commitments by rebel groups between 1974 and 2010. The analysis has implications for humanitarian engagement and promoting restraint in war.

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State consent to the provision of humanitarian assistance in non-international armed conflicts

Jessica Schaffer. In: The University of Queensland law journal, Vol. 40, no. 1, 2021, p. 67-89

In light of repeated denials and obstruction of relief efforts by belligerent states, particularly when directed towards non-state armed groups designated as terrorist groups or justified as a legitimate response to the COVID-19 pandemic, this article provides a comprehensive analysis of the international legal position regarding the provision of humanitarian assistance in non-international armed conflicts. The article argues that although a general right of access has not crystalised, relief operations into territory under the effective control of a non-state armed group without state consent may be permissible with Security Council authorisation or otherwise, in appropriate circumstances, under the rules of state responsibility. More broadly, belligerent parties must abide by their legal obligations to ensure that the needs of civilians are met.

http://classic.austlii.edu.au/au/journals/UQLawJl/2021/3.html

Struggling for reparations in Northern Ireland

Luke Moffett. - In: Reparations for victims of genocide, war crimes and crimes against humanity : systems in place and systems in the making. - Leiden : Brill Nijhoff, 2020. - p. 678-709

This chapter examines the use of reparations in Northern Ireland in remedying the past. It traces the contested nature of victimhood, central to the continuing controversy surrounding the provision of reparations in Northern Ireland. It then summarises the current state of affairs in Northern Ireland in relation to the five main forms of reparations. This section also considers victims who have brought their reparation claims before the courts to seek redress, owing to the insufficiency of the status quo of reparations programmes in Northern Ireland. The final section concludes by finding that reparations offered to victims have been piecemeal, grossly insufficient in remedying their harm, and packaged as 'services' rather than rights. Instead, a rights-based approach to reparations is suggested alongside a truth process. As such, it is hoped that this analysis can offer insight into the challenges of introducing reparations into a protracted transitional justice context.

The Syrian detention conundrum : international and comparative legal complexities

Dan E. Stigall. In: Harvard national security journal, Vol. 11, issue 1, 2020, p. 54-105

The phenomenon of battlefield detention by non-state groups is increasingly common and has been recently brought into focus by events in Syria where, as part of the international effort to counter the Islamic State of Iraq and Syria ("ISIS"), the United States and coalition partners have worked "by, with, and through" a non-state armed group called the Syrian Democratic Forces ("SDF"). That successful partnership has resulted in significant battlefield victories—and the resultant detention by SDF of more than 2,000 ISIS foreign fighters. A detention conundrum has, however, been created by the modern reliance by states on non-state actors for counterterrorism operations, and their simultaneous reluctance to accept the return of terrorists captured and detained by non-state actors in the course of those operations. Specifically, SDF partners have signaled that they do not have the capacity or authority for the continued detention of the foreign terrorist fighters captured in the course of the successful counter-ISIS effort. Moreover, the countries of origin of these captured terrorists are reluctant to accept their return, citing to legal obstacles to repatriation. The inability of non-state partners to detain foreign fighters indefinitely, coupled with the refusal of countries to repatriate their nationals, risks the release of dangerous terrorists. To assist in navigating this complex situation, this Article illuminates the international and comparative legal issues associated with the detention of terrorists by non-state armed groups and clarifies the legal issues relating to the repatriation of detained foreign terrorist fighters by the SDF in Syria. Through this analysis, the Article ultimately demonstrates that international law and the domestic law of many international partners generally permits the lawful transfer of foreign fighters from the custody of a non-state entity to government authorities for prosecution, rehabilitation, or other appropriate means of preventing their return to terrorism.

https://harvardnsj.org/wp-content/uploads/sites/13/2020/01/STIGALL_Vol.-11.1-v3.pdf

Targeting of children in non-international armed conflicts

Fikire Tinsae Birhane. In: Journal of conflict and security law, Vol. 26, no. 2, Summer 2021, p. 377-400

Albeit the prohibition of recruitment and use in hostilities of children is an established norm of international law, recognized under both international humanitarian law and international human rights law, the problem still remains. The main actors responsible for this reality are non-state armed groups (NSAGs), which kept recruiting and involving children in various tasks, including direct participation in hostilities (DPH). This in turn generates a dilemma regarding targetability of such children: whether to extend the special protection afforded to them by international law from being recruited and/or used in hostilities for targeting purposes as well. Additionally, the difficulty to determine targeting rules in the context of non-international armed conflicts (NIACs), which led to controversies as to targetability of even adult members of NSAGs while they do not take a direct part in hostilities, exacerbates the dilemma. This piece, accepting persuasiveness of the proposal in the ICRC Interpretive Guidance that those members of armed groups who have continuous combat function (CCF) are targetable, in addition to civilians taking a direct part in hostilities, questions whether children with such function/role are targetable in the same manner as adults of the same position. It is argued here that though children can be targeted during their DPH or when they have CCF, there is support in the law that the notions of DPH and CCF should be applied to them differently than adults. The piece also analyzes if the same means and methods used to target adults could be lawful when employed against children.

https://doi.org/10.1093/jcsl/krab004 *

Terrorism and self-determination

Elizabeth Chadwick. - In: Research handbook on international law and terrorism. - Cheltenham ; Northampton : Edward Elgar, 2020. - p. 285-299

This chapter seeks to clarify and distinguish the purpose and role of the use of non-state violence in liberation struggles, not least because the current trend in global condemnation of all such violence as "terrorism" places a heavy burden indeed on apprehended persons when faced with extradition and/or prosecution for "terrorism". Inasmuch as many struggles for self-determination have indeed been exceedingly violent, it is useful to recall that violence to effect system change has been deemed necessary throughout history. On this basis, a wide and inclusive approach to self-determination and "freedom struggles" is adopted. Further, given the IHL regulatory framework is designed to restrain the use of force by all parties in conflict, and is situated at the crossroads of "peace" and war, it is particularly useful by way of reference to highlight many meaningful distinctions between purposeful "liberationist", and indiscriminate "terrorist", forms of non-state violence. IHL also helps to illustrate the legal gap which has widened in recent years between IHL standards and those in domestic law-and-order policies, which the latter are prone increasingly to exempt from official censure of excessive uses of state force. It is concluded that, as the resort to tactical violence to achieve strategic goals cannot be prevented but is instead a question of context, violent "terrorist" struggles for self-determination will likely continue to occur.

https://doi.org/10.4337/9781788972222.00028 *

Through the looking glass : corporate actors and environmental harm beyond the ILC

Daniëlla Dam-de Jong and Saskia Wolters. In: Goettingen journal of international law, Vol. 10, no. 1, 2020, p. 111-149

Corporate activities take place in a variety of social contexts, including in countries affected by armed conflict. Whether corporations are physically present in these regions or merely do business with partners from conflict zones, there is an increased risk that their activities contribute to egregious human rights abuses or serious environmental harm. This is especially so for corporations active in or relying on the extractives sector. It is against this background that the ILC included two principles addressing corporate responsibility for environmental harm in its Draft Principles on the protection of the environment in relation to armed conflict. Both principles explicitly call on the home States of these corporations to give effect to their complementary role in regulating and enforcing corporate social responsibility. Draft Principle 10 addresses the responsibility of home States to regulate multinational corporations under the heading of “corporate due diligence”, while Draft Principle 11 addresses the responsibility of home States to hold multinational corporations liable for environmental damage caused in conflict zones. The current contribution engages with the potential normative foundations underpinning extraterritorial responsibilities for the home States of multinational corporations with respect to the prevention and remediation of environmental harm in conflict zones, focusing on international humanitarian law and international human rights law. It concludes that the Draft Principles are certainly indicative of the direction in which the law is

evolving, but that no firm obligations beyond treaty law can be discerned as of yet. It was therefore a wise decision to phrase the respective Draft Principles as recommendations instead of obligations. At the same time, there are sufficient indications to conclude that it seems a matter of time before it is accepted that States have distinct obligations under customary international law for which their responsibility may be engaged. It is argued that the ILC Draft Principles provide an important impetus to these developments, not in the least because they provide a reference to States regarding the state-of-the-art and guidance for future action.

https://www.gojil.eu/issues/101/101_article_damdejong_wolters.pdf

To kill or not to kill : the use of force against legitimate targets in armed conflicts

Patrycja Grzebyk. In: Wroclaw review of law, administration and economics, Vol. 8, issue 2, December 2018, p. 331-345

The aim of this article is threefold. Firstly, it is to present arguments derived from the international humanitarian law (IHL) norms against the existence of an obligation to use the least harmful method against legitimate targets in armed conflicts. Secondly, it is to assess the argumentation (also based on the IHL) in favour of the existence of an obligation to minimize force used against legitimate targets. In both cases, advantages and disadvantages of each of the solutions will be presented. Thirdly, it is to assess the possibility of using other regimes to solve the dispute between two above-mentioned approaches and find some "golden means".

https://doi.org/10.1515/wrlae-2018-0051

Transparent uniforms : the legal status of reservists in international law

Ady Niv. In: Journal of international criminal justice, Vol. 19, no. 2, May 2021, p. 301-326

Reserve forces constitute an important component in most armies and play a crucial role in times of war. Notwithstanding, the legal status of reservists, when mobilized or demobilized, and their possible detention or classification as a military target according to international law has rarely been discussed. It is only in the last case before the International Criminal Tribunal for the former Yugoslavia, Prlić et al., that the Appeals Chamber had to assess whether the opposing party could detain men only because they were mobilized. The aim of this article is to remedy this lacuna, to discuss the status of reservists in international humanitarian law and to analyse the possible legal framework for detaining and targeting — both active and non-active — reservists.

https://doi.org/10.1093/jicj/mqab043 *

UN efforts to make ISIS accountable for international crimes : the challenges posed by Iraq's domestic law

Mohamad Ghazi Janaby and Ahmed Aubais Alfatlawi. In: International criminal law review, Vol. 21, no. 6, 2021, p. 1103-1134

Following the military defeat of ISIS in Iraq in December 2017, it has become clear that a logical next step would be to hold members of ISIS accountable for crimes committed during the capture of a number of principal Iraqi cities between 2014–2017. The UNSC, accordingly, decided to investigate ISIS crimes internationally by establishing UNITAD to document ISIS violations whilst leaving any proposed prosecutions to be conducted internally by Iraqi courts. The practical implementation of this hybrid international mechanism for prosecuting ISIS members has generated some legal challenges caused particularly by the national laws of Iraq. Some of these legal issues arise in relation to UNITAD's subjective jurisdiction to collect evidence concerning ISIS terrorist acts that might amount to evidence of war crimes, genocide and crimes against humanity. Others arise in relation to whether UNITAD's criminal investigation procedures align or conform with Iraq's criminal procedure laws. This paper examines these challenges and will propose some appropriate solutions.

https://doi.org/10.1163/15718123-bja10080 *

Unilateral coercive measures : towards international humanitarian law and international human rights

Louisa Ashley. - In: Unilateral sanctions in international law. - Oxford ; London ; New York ; New Delhi ; Sydney : Hart, 2021. - p. 233-254

This chapter provides some analysis of state practice in the use of unilateral coercive measures (UCMs) and explores the proposition that failing their abolition, IHL principles could be applied to correct the negative effect of unilateral sanctions on the enjoyment of human rights by, for example, examining the application of principles of IHL to both the decision to impose high-intensity economic UCMs, and their impact and consequences.

United Kingdom policy towards universal jurisdiction since the post-war period

Amina Adanan. In: International criminal law review, Vol. 21, no. 6, 2021, p. 1025-1063

From the 17th century onwards, Britain played a leading role in asserting the application of the universality principle to international piracy, the first crime to which the principle applied. Thereafter, during the quest for abolition, it exercised universality over slave traders at sea. With the exercise of universal jurisdiction over atrocity crimes in the post-War period there was a notable shift in the UK position to the principle. This article traces the history of UK policy towards the application of the universality principle to atrocity crimes since WWII. Using archival research from the UK National Archives and the travaux préparatoires to international treaties, it analyses UK policy towards the inclusion of universal jurisdiction in international treaties concerning atrocity crimes. It argues that historically, the UK supported the application of the principle to atrocity crimes committed during an international armed conflict, as this position supported its interests. The nexus between universal jurisdiction and international armed conflict shielded colonial abuses from prosecution in foreign courts. Once the colonial period had come to an end, there was a shift in UK support for the inclusion of universal jurisdiction in international treaties, which is evident since the negotiation of UNCAT and the Rome Statute.

https://doi.org/10.1163/15718123-bja10077 *

Use of cyber means to enforce unilateral coercive measures in international law

Ali Abusedra, Abu Bakar Munir and Md. Toriqul Islam. - In: Unilateral sanctions in international law. - Oxford ; London ; New York ; New Delhi ; Sydney : Hart, 2021. - p. 301-325

The objective of this chapter is to examine the use of cyber means to enforce unilateral coercive measures in international law. In doing so it considers the relationship between sanction regimes and cyberwarfare, and what might influence the effectiveness of such measures. It begins by discussing the concept of "cyber warfare" and the threats that cyberattacks pose to States, organizations and the international legal order. It then considers sanctions as a response to cyberwarfare, and whether there exists any basis in international law to support the imposition of sanctions as a consequence of cyberattacks. It also examines existing unilateral legal and institutional frameworks to address the threat of cyberwarfare and the need for cross-border law enforcement co-operation in confronting cyberattacks.

War and peace in outer space : law, policy and ethics

ed. by Cassandra Steer and Matthew Hersch, assistant director Kiernan McClelland ; with a foreword from Lieutenant General David D. Thompson. - Oxford : Oxford University Press, 2021. - XIII, 313 p.

This book delves into legal and ethical concerns over the increased weaponization of outer space and the potential for space-based conflict in the very near future. The essays included in this volume explore the moral and legal issues of space security in four sections. Part I provides a general legal framework for the law of war and peace in space. Part II tackles ethical issues. Part III looks at specific threats to space security. Part IV proposes possible legal and diplomatic solutions.

https://doi.org/10.1093/oso/9780197548684.001.0001 *

War crimes, Inc. : the ATS case against the U.S. weapons industry for aiding and abetting atrocities in Yemen

Elizabeth Beavers. In: Florida journal of international law, Vol. 31, issue 2, 2020, p. 179-210

The U.S. weapons industry provides much of the weaponry necessary to facilitate indiscriminate mass bombings by a Saudi-led coalition in Yemen, many of which amount to war crimes. The Alien Tort Statute (ATS) provides an avenue for Yemeni survivors to seek redress in U.S. Courts for unlawful strikes knowingly facilitated by U.S. weapons companies. This Article will assess, in four sections, the viability of an ATS case against a U.S. weapons manufacturer. The first section will outline the relevant background of the conflict in Yemen and the role that the United States government and weapons industry plays in fueling the conflict. The second section will set up the necessary background for a hypothetical ATS case by first detailing the relevant precedent, then identifying potential Yemeni plaintiffs. The third section will walk through three hurdles that our plaintiff will face in order to successfully mount their ATS case: (1) supporting claims that meet the test established by the Supreme Court's decision in Sosa v. Alvarez-Machain; (2) establishing that the claims sufficiently "touch and concern" the territory of the United States as required by Kiobel v. Royal Dutch Petroleum Co.; and (3) arguing that U.S. corporations may face liability under the ATS. The fourth and final section will walk through potential defenses that our corporate defendant may raise and why they should fail.

https://scholarship.law.ufl.edu/fjil/vol31/iss2/1/

Whither the human in armed conflict ? : IHL implications of new technology in warfare

International Institute of Humanitarian Law ; ed. Gabriella Venturini; associated ed. Gian Luca Beruto. - Milano : Franco Angeli, 2020. - 269 p.

This collection of contributions made by renowned international experts and practitioners explores the implications of international humanitarian law and the growing role of new technology in warfare. The 42nd Round Table on current issues of international humanitarian law focused on some of the fundamental legal questions arising from the increasing military use of autonomous weapons and cyber technologies within military operations and the broader context of international security. Experts highlighted the threats posed by the conduct of cyber-attacks against civilians and civilian objectives, as well as those caused in conflict areas by the expanding use of unmanned weapon systems with reduced or no human control. The Round Table provided a forum to discuss relevant topics related to the heightened development of technology with regard to military and security issues, including the applicability of IHL in outer space military operations and the role of new technologies in humanitarian operations.

https://iihl.org/whither-the-human-in-armed-conflict-ihl-implications-of-new-technology-in-warfare/

International Committee of the Red Cross
Library and Public Archives
19, avenue de la Paix
1202 Geneva
Switzerland
Tel: +41-22-730-2030
Email: library@icrc.org
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