BIBLIOGRAPHY
2nd Issue 2018

International Humanitarian Law

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

ICRC

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Introduction

The International Committee of the Red Cross Library

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

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

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

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

Origin and purpose of the IHL bibliography

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

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

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

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

How to use the IHL Bibliography

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

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

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

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

Access to document

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

Chronology

This bibliography is based on the acquisitions made by the ICRC Library over the past 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)

Approaching custom identification as a conflict avoidance technique : Tadic and Kupreškic revisited

Alexandre Skander Galand. In: Leiden journal of international law, Vol. 31, no. 2, June 2018, p. 403-429
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III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

Afghanistan and Syria : nonstate actors and their negative impact on human security

Mario Laborie. - In: Public international law and human rights violations by private military and security companies. - Cham : Springer, 2017. - p. 7-29

America, the 1949 Geneva Conventions, and war crime court-martial in the Vietnam conflict

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Civil-military 'legal' relations : where to from here ? : the civilian courts and the military in the United Kingdom, United States and Australia

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V. Private entities

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

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XI. Weapons

Are autonomous weapon systems the subject of article 36 of Additional Protocol I to the Geneva Conventions ?

by Thompson Chengeta

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XII. Implementation

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America, the 1949 Geneva Conventions, and war crime court-martial in the Vietnam conflict

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U.S.-hired private military and security companies in armed conflict : indirect participation and its consequences

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WEST BANK

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Deborah Casalin. - In: Convergences and divergences between international human rights, international humanitarian and international criminal law. - Cambridge [etc.] : Intersentia, 2018. - p. 223-257

Approaching custom identification as a conflict avoidance technique : Tadic and Kupreškic revisited

Alexandre Skander Galand. In: Leiden journal of international law, Vol. 31, no. 2, June 2018, p. 403-429
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Gotovina and the ICTY

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All with Abstracts

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Israel's half-a-century long rule over the West Bank and Gaza Strip, and some of its surrounding legal issues, have been the subject of extensive academic literature. Yet, to date, there has been no comprehensive, theoretically-informed, and empirically-based academic study of the role of various legal mechanisms, norms, and concepts in shaping, legitimizing, and responding to the Israeli control regime. This book seeks to fill this gap, while shedding new light on the subject. Through the format of an A-Z legal lexicon, it critically reflects on, challenges, and redefines the language, knowledge, and practices surrounding the Israeli control regime.

Afghanistan and Syria : nonstate actors and their negative impact on human security

Mario Laborie. - In: Public international law and human rights violations by private military and security companies. - Cham : Springer, 2017. - p. 7-29. - Cote 345.29/324

This chapter offers an in-depth look at the presence of nonstate actors in Afghanistan and Syria and shows how their direct participation in hostilities negatively impacts all aspects of human security, making them one of the main threats to peace and stability. In the case of Afghanistan, it highlights the presence of progovernment groups, including (a) militias, paramilitary groups, and auxiliary police forces and (b) PMSCs and the Afghan Public Protection Force (APPF). In addition to these groups, there are the insurgents: the Taliban; Al-Qaeda and its Uzbek affiliates, the Islamic Movement of Uzbekistan and the Islamic Jihad Union; the Haqqani Network; Hezb-e-Islami Gulbuddin; and Daesh. The conflict in Syria also features numerous nonstate armed actors (NSAAs), including (1) militias, (2) mercenaries and PMSCs (in particular, Russian private security contractors), and (3) foreign combatants and terrorists.

Aide-mémoire : operational guidance on maintaining the civilian and humanitarian character of sites and settlements

ICRC. In: International review of the Red Cross, Vol. 99, no. 904, 2017, p. 433-446.

Infringements to the civilian and humanitarian character of sites and settlements result in major protection concerns for internally displaced people and refugees hosted in the sites. The Aide-Mémoire resulted from consultations initiated by the ICRC and UNHCR, with valuable input from the UN Department of Peacekeeping Operations (DPKO). The first part of the Aide-Mémoire sets out the necessary context and principles with regard to the civilian and humanitarian character of sites. It provides a description of the main operational challenges and dilemmas that humanitarian actors confront and examines the content of applicable legal frameworks. The second part offers measures for humanitarian actors to consider when working toward maintaining the civilian and humanitarian character of sites. These measures include efforts to engage actors beyond the humanitarian community, recognizing that an effective interplay with security and political actors is fundamental in achieving protection outcomes.

https://library.icrc.org/library/docs/DOC/irrc-904-aide-memoire.pdf

America, the 1949 Geneva Conventions, and war crime court-martial in the Vietnam conflict

Gary D. Solis. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 105-136. - Cote 345.24/407

> Throughout the US-Vietnam conflict (1965–1973), American forces labored to comply with the Geneva Conventions and customary laws of war, though US war crimes largely overshadowed those efforts. This chapter relates the training US forces received on the law of war and describes how military lawyers practiced law "in country." US combatants were constantly directed to report war crimes, known or suspected. Too often those directives were not obeyed. My Lai is fully examined, including its badly failed military prosecutions. Disturbing post-trial clemency by civilian authorities, in many cases, is also detailed. On the whole, however, the sentences of US personnel convicted by courts-martial of war crimes were sincere efforts to appropriately punish battlefield criminality. This chapter argues that, under difficult conditions, US military efforts in Vietnam to comply with the Geneva Conventions, and to punish known US war crimes, were more genuine and effective than have been generally recognized.

The application of international humanitarian law by the Israel Defense Forces : a legal and organizational analysis

Amichai Cohen and Eyal Ben-Ari. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 194-219. - Cote 345.24/407

> This chapter describes how increased juridification and demands to apply international humanitarian law (IHL) have influenced the Israel Defense Forces (IDF). The authors analyze the IDF's compliance with IHL and other legal frameworks through a multilevel and multidimensional model of military compliance describing the law and external institutions involved in applying it. The past decades have seen the relatively autonomous sphere of the military increasingly come under judicial overview. Judicial and international pressures have also increased the role of the operational legal advisors. The chapter ends by discussing the ceremonies intended to promote compliance with IHL involving soldiers and junior officers. It is based on interviews (with Israeli academic experts, members of nongovernmental organizations [NGOs], and military commanders), off-the-record conversations with members of the IDF's Military Advocate General, and newspaper articles, reports of NGOs, and secondary material.

The approach of African human rights treaty bodies to international humanitarian law : normative basis and institutional practice

Brian Sang YK. In: African yearbook on international humanitarian law, 2017, p. 1-36.

> Unlike comparable human rights systems, there is scant literature on how the African system interacts with international humanitarian law (IHL). This article contributes toward filling this gap by assessing how and to what extent African human rights treaty bodies have been or can be utilised to induce compliance with IHL. It analyses legal and institutional bases for engagement with IHL, as reflected in the work of the African Commission on Human and Peoples' Rights, African Court on Human and Peoples' Rights, and African Committee of Experts on the Rights and Welfare of the Child, as well as the future role of the African Court of Justice and Human Rights. It argues that the African human rights system can strengthen the implementation of IHL because most African Union-based legal instruments integrate human rights law and IHL, thus providing an enabling normative basis for the respective human rights treaty bodies to have regard to IHL. Yet the practice of African treaty bodies demonstrates that this advantage is under-utilised.

Approaching custom identification as a conflict avoidance technique : Tadic and Kupreškic revisited

Alexandre Skander Galand. In: Leiden journal of international law, Vol. 31, no. 2, June 2018, p. 403-429.

> International human rights law (IHRL), international humanitarian law (IHL) and international criminal law (ICL) have trouble staying faithful to the two pillars of customary international law

– state practice and opinio juris. In ICL, the Tadic Interlocutory Appeal on Jurisdiction and the Kupreškic Trial Judgement have even gone as far as enunciating new models to identify customs. In this article, I show that the approaches to customs' identification postulated in these two cases were conflict-avoidance techniques used by the International Criminal Tribunal for the Former Yugoslavia (ICTY) to bring together IHRL and IHL. The crux of the matter in the Tadic and Kupreškic cases was that the human rights of the victims of war crimes committed in internal conflicts required that a new approach to customary international law be adopted. Thus, the criminal aspect of IHL (i.e., ICL) was updated, and conceptual conflicts between IHL and IHRL were avoided.

https://doi.org/10.1017/S0922156518000055

Are "unlawful combatants" protected under international humanitarian law ?

Xiao Mao. In: Amsterdam law forum, Vol. 10, no. 2, Spring 2018, p. 62-71. - Cote 345.29/325 (Br.)

This essay responds to the question whether there exists a legal black hole in international humanitarian law in which unlawful combatants may slip. The issue arose in the "war on terror" where the Bush Administration labelled some members of terrorist groups as "unlawful combatants" and denied the applicability of international humanitarian law to them. By analysing the origin of the term "unlawful combatants", certain provisions in the Geneva Conventions as well as a case study on war on terror, this essay supports the idea that not only is there no such legal black hole with regards to the status of "unlawful combatants" in existing international humanitarian law, but denial of any protection to them may lead to very dangerous consequences.

http://amsterdamlawforum.org/article/view/440

Are autonomous weapon systems the subject of article 36 of Additional Protocol I to the Geneva Conventions ?

by Thompson Chengeta. - Cote 341.67/865 (Br.)

States have an obligation to conduct a legal review of all new weapons to ascertain their legality and to determine whether their use will in all or some circumstances violate international law. This paper first asks whether fully Autonomous Weapon Systems are stricto sensu weapons for the purposes of conducting the legal review as required by Article 36 of API to the Geneva Conventions. Secondly, it discusses whether fully AWS are within the confines of the basic rules of weapons law - that is, the rule proscribing weapons that are indiscriminate in nature and weapons that cause superfluous harm or unnecessary suffering.

Armed conflict and forcible displacement : individual rights under international law

ed. by Elena Katselli Proukaki. - London ; New York : Routledge, 2018. - XXVI, 267 p. - Cote 365/528

This book addresses the involuntary and arbitrary displacement of individuals resulting from armed conflict and gross human rights violations. It shows that forcible displacement constitutes a serious violation of international law and of fundamental community interests. Armed Conflict and Forcible Displacement provides a critical legal analysis of the contemporary international framework, permeating forcible displacement in these circumstances and explores the rights that individuals possess with specific focus on the right not to be displaced and, where this fails, the right to return home and to receive property restitution. In doing so, this volume marries together different fields of international law and builds on the case studies of Cyprus, Colombia, Cambodia and Syria. While the case studies considered here are far from exhaustive, they are either little explored or present significant challenges due to the magnitude of displacement or contested international jurisprudence.

Armed conflict-related detention of particularly vulnerable persons : challenges and possibilities

Sandesh Sivakumaran. In: International law studies, Vol. 94, 2018, p. 39-74. - Cote 400/172 (Br.)

Certain groups of detainees are particularly vulnerable. Additionally, the way in which non-international armed conflicts are fought can make it difficult for some parties to the conflict to comply with the rules benefiting particularly vulnerable detainees. This article identifies groups of particularly vulnerable detainees and analyzes the general and special protections that are afforded to them under the conventional and customary international law of armed conflict. It then considers the realities of detention in armed conflict and sets out different ways in which these realities can be balanced with the importance of the protections for vulnerable groups. Finally, drawing on the law of international armed conflict, the article considers how possibilities including the release and repatriation of particularly vulnerable detainees and the accommodation of such detainees in a third State could be implemented in a non-international armed conflict.

http://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1718&context=ils

Armed non-state actors and the UN Convention on Enforced Disappearances

Andrew Clapham. - In: Réciprocité et universalité : sources et régimes du droit international des droits de l'homme : mélanges en l'honneur du Professeur Emmanuel Decaux. - Paris : Pedone, 2017. - p. 443-448. - Cote 345.1/683

This chapter analyses the United Nations Convention on enforced disappearances in relation with international humanitarian law. In particular, it addresses the provisions of the Convention on serious violations of IHL and on non-refoulement, and the without prejudice clause in article 43. Finally, it discusses the issue of detention by non-state armed groups and whether the Convention covers disappearances by armed groups.

Assessing the effects and effectiveness of the Geneva Conventions

Nina Tannenwald. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 1-34. - Cote 345.24/407

This chapter describes the Geneva Conventions as an international regime—its core principles and norms, the mechanisms by which it operates, and the particular challenges it faces. It reviews theoretical arguments in the literature about the effectiveness and impact of the laws of war. It develops a theoretical framework regarding the issue of compliance with and internalization of norms that informs the analysis conducted in the empirical cases. This framework is employed by authors of the empirical chapters to assess how “internalized” (or not) the Geneva Conventions are in the practices of the countries analyzed in the volume. Finally, the chapter concludes by laying out the plan of the rest of the book.

Atrocity, policy, and the laws of war : what does political science have to say to law ?

James D. Morrow. - In: Economic analysis of international law. - Cheltenham ; Northampton : E. Elgar, 2016. - p. 221-248. - Cote 345.24/412 (Br.)

This article seeks to analyze when and why warring states and militaries engage in ‘atrocities’, that is, acts which violate international agreements, and further analyzes how development in international law can influence parties away from such atrocities. The author develops two primary arguments: one concerning the strategic advantages gained through atrocities or restraint, and two, how militaries develop internal mechanisms of discipline and control. He begins with an analysis of inter-state wars, first looking at a series of non-legal explanations for why states do or do not turn to atrocities. He suggests that ratification of treaties serves signaling

and screening functions, and clearly delineates what sorts of conduct will constitute a 'violation' of international law. He then analyzes how and why democracies kill enemy civilians.

Autonomous weapon system : law of armed conflict (LOAC) and other legal challenges

Vivek Sehrawat. In: Computer law and security review, Vol. 33, issue 1, 2017, p. 38-56. - Cote 341.67/855 (Br.)

This paper first explores the myriad of laws designed to govern the potential future development and deployment of artificial intelligence and AWS in the context of International Humanitarian Law or LOAC. Second, the paper argues that it will be challenging for AWS to fulfill the requirements laid out under the International Committee of the Red Cross and LOAC for the rules of humanity, military necessity, distinction, proportionality and precaution, especially as it is related to noncombatants. Third, the paper discusses command responsibility and argues that states should establish accountability for wrongful acts committed by the AWS. Finally, this paper contends that there is an urgent need for a new legal framework to regulate these AWS and presents different solutions for the legal framework of AWS.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962760

Autonomous weapons systems : a paradigm shift for the law of armed conflict ?

Robin Geiß and Henning Lahmann. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 371-404. - Cote 345.22/891

The development of autonomous weapons systems (AWS) is widely considered a genuine revolution in weapons technology and of military affairs. To date, truly autonomous weapons systems do not yet exist. However, the majority of experts believe that it is only a matter of time until such systems will be ready for deployment. The International Committee of the Red Cross (ICRC) has rightly pointed out that, already today, different critical functions within existing weapons systems are carried out autonomously, that is, without human intervention. This chapter attempts to examine AWS within the context of current international law. After outlining the legal issues connected with the employment of AWS more generally, the chapter will focus on the questions of accountability and responsibility as regards the conduct of autonomously acting weapons. If a machine's actions amount to war crimes or other breaches of a norm of international law, who can be held legally responsible, and according to which regime.

"Be karbala miravim !" : Iran, or the challenges of internalizing international humanitarian law in a muslim country

Anicée van Engeland. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 250-280. - Cote 345.24/407

This chapter considers the extent to which Islamic governance can integrate international humanitarian law (IHL) into its own legal system by examining the case of Iran. It addresses the consequences of the emergence of an Islamic-universal hybrid legal system. The stakes are high because IHL's efficiency and necessity have been questioned: The existence of the Iranian hybrid system of law can be perceived as a threat by scholars arguing that international law is at risk of fragmentation due to the variety of domestic and regional approaches to fundamental legal standards. The importance of those stakes is illustrated by the Iran-Iraq War: The process of mixing a universal secular legal system with a religious domestic law occurred at a crucial time when Iran was at war with Iraq, with clear effects on the protection of civilians and the conduct of hostilities.

Biomedical enhancement of warfighters and the legal protection of military medical personnel in armed conflict

Rain Liivoja. In: Medical law review, Vol. 26, no. 3, 2017, p. 421-448. - Cote 359/134 (Br.)

Under international law, military medical personnel and facilities must be respected and protected in the event of an armed conflict. This special status only applies to personnel and facilities exclusively engaged in certain enumerated medical duties, especially the treatment of the wounded and sick, and the prevention of disease. Military medical personnel have, however, been called upon to engage in the biomedical enhancement of warfighters, as exemplified by the supply of central nervous system stimulants as a fatigue countermeasure. This article argues that international law of armed conflict does not recognise human enhancement as a medical duty, and that engaging in enhancement that is harmful to the enemy results in the loss of special protection normally enjoyed by military medical personnel and units.

https://library.ext.icrc.org/library/docs/ArticlesPDF/45103.pdf

Bringing occupation into the 21st century : the effective implementation of occupation by proxy

Alexander Gilder. In: Utrecht law review, Vol. 13, issue 1, 2017, p. 60-81. - Cote 351/144 (Br.)

The application of the law of belligerent occupation under international humanitarian law (IHL) has been defined narrowly which significantly hampers its effectiveness in conflicts. This article examines the law of occupation by proxy which was identified by the International Criminal Tribunal for the Former Yugoslavia in the Tadic case. In particular, this article reviews the necessary nature of occupation by proxy, the case law development of the concept and then its substantive content. The article next uses Eastern Ukraine as a practical example of a possible occupation by proxy situation. Lastly, the effectiveness of the concept is analysed to see if it could be applied in a conflict today and how the concept could be development and brought to the forefront of international humanitarian law.

http://doi.org/10.18352/ulr.355

Bringing the battlefield into the classroom : using video games to teach and assess international humanitarian law

Luke Moffett, Dug Cubie and Andrew Godden. In: The law teacher, Vol. 51, issue 4, 2017, p. 499-514. - Cote 345.23/116 (Br.)

The School of Law at Queen's University Belfast has developed a series of innovative computer scenarios based on the Arma 3 open world tactical war simulator. A variety of formative scenarios (addressing issues such as cluster munitions and landmines) were developed to familiarise the students with the factual scenario and the computer technology. Subsequently, students engaged in a summative assessment to test their legal understanding in the face of increasingly challenging conflict situations, in particular grey zones where legal argument can justify seemingly morally wrongful acts during war. This paper examines both the learning objectives of this project, and the project development cycle – from the initial proposal to its implementation in class, as well as positing the benefits and drawbacks in integrating technology and games into the legal teaching environment, reflecting on the emerging and traditional pedagogy in this area.

Challenging the Westphalian order : incorporating armed groups in law-making under international humanitarian law

Laura Iñigo Alvarez. In: Ordine internazionale e diritti umani, N. 2, maggio 2017, p. 167-189. - Cote 345.29/317 (Br.)

In recent times, much focus has been placed on the incorporation of certain non-State actors, such as NGOs and transnational corporations, into different law-making processes, despite the fact that the resulting rules are considered as soft law. Little attention has been paid, however, to the possibility of affording non-State armed groups a degree of participation in law-making processes. Although it is not realistic for non-State armed groups (NSAGs) to participate formally in the

drafting of multilateral treaties, it will be argued that it is possible for their views to be reflected in the development of future humanitarian rules. This paper deals with four mechanisms through which armed groups could be included in law-making processes. Furthermore, special consideration will be given to Geneva Call's Deed of Commitment applied in the case of Sudan, as this provides an example of the way in which the commitment of an armed group to adhere to rules of IHL can influence in practice the position of States in ratifying treaties on IHL, such as the Ottawa Convention in this case.

The characterization of remote warfare under international humanitarian law

Anthony Cullen. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 110-132. - Cote 345.22/891

This chapter examines the qualification of remote warfare as a form of armed conflict under international humanitarian law. It does so first by considering how armed conflict is defined and how the concept has evolved since the drafting of the Geneva Conventions of 1949. It then focuses on three modes of attack that are commonly associated with remote warfare: the use of remotely piloted vehicles, cyber operations, and autonomous weapon systems. Bearing in mind the challenges that each of these present to the applicability of the law, it will be argued that the concept of armed conflict needs to be interpreted in terms consistent with the object and purpose of international humanitarian law, in accordance with Article 31 of the Vienna Convention on the Law of Treaties.

Civil-military 'legal' relations : where to from here ? : the civilian courts and the military in the United Kingdom, United States and Australia

by Pauline Therese Collins. - Leiden ; Boston : Brill Nijhoff, 2018. - XVII, 387 p. - Cote 345.24/414

Civil-military relations establishes the civilian control over the military to protect democratic values. This book argues analysis of the CMR is distorted by the absence of consideration of the judicial arm, with the 'civil' seen as referring only to the executive and/or legislature. The civil courts approach to military discipline and the impact that has for CMR within — the United Kingdom, United States and Australia is investigated. The author concludes that by including the courts in the development of CMR theory militarisation of the civilian domain is discouraged. A paradigm shift acknowledging the fundamental role of all three organs of government in liberal democracies, for control of States' power is essential for genuine civilian oversight.

Code de droit international humanitaire : textes en vigueur au 2 février 2018

par Eric David... [et al.] ; avec la collab. de Sylvie Ruffenach. - Bruxelles : Bruylant, 2018. - XX, 790 p. - Cote 345.2/702 (FRE)

L'objectif de ce recueil, qui s'adresse aussi bien à un public belge qu'étranger, est de fournir aux étudiants, aux enseignants et aux chercheurs, aux avocats, aux magistrats et aux fonctionnaires, aux militants, aux membres d'organisations non gouvernementales et aux citoyens qui jouent un rôle essentiel en droit international humanitaire, un outil simple, pratique et maniable. Étant actualisé régulièrement, ce Code permet d'avoir un accès direct aux sources du droit international humanitaire et donc une meilleure connaissance de celui-ci.

The codification of the international law applicable to cyber operations : a matter for the ILC ?

François Delerue. In: ESIL reflections, Vol. 7, issue 4, July 2018, 10 p. - Cote 348/145 (Br.)

The failure to reach a consensus on a final report of the United Nations Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (UNGGE) in June 2017 questions the future of the multilateral discussions

on cybersecurity and cyberdefense, and more specifically the application of norms of international law to cyber phenomena. This article advocates that States should consider to dissociate the discussions regarding the applicability and application of norms of international law from the political and strategic discussions. Such political and strategic discussions, it is argued, should remain an interstate diplomacy exercise, while discussions on the legal framework should be referred to an international body comprised of legal experts rather than diplomats and State representatives, namely the International Law Commission (ILC).

http://esil-sedi.eu/wp-content/uploads/2018/06/ESIL-Reflection-Delerue.pdf

Combat drones : hives, swarms, and autonomous action ?

Francis Grimal and Jae Sundaram. In: Journal of conflict and security law, Vol. 23, no. 1, Spring 2018, p. 105-135.

Recent advances in technology allow combat drones to operate as a swarm—similar to their vespidae counterparts. This article posits a controversial position that the technological uniqueness of individual drones acting as a swarm necessitates a thorough deconstruction of the applicable legal framework. In other words, does the unique way in which a swarm operates lawfully comply with both jus ad bellum and jus in bello parameters? Crucial to this discussion, is to examine the extent to which a swarm is programmed both offensively and defensively—with a view to exploring the algorithm of an automated response from other drones within the swarm. Within this broader question, the article seeks to scrutinise two specific areas. First, to what extent is the drone swarm's architecture calibrated to comply with the cardinal self-defence parameters of necessity and proportionality should the swarm be attacked? And secondly, is the 'swarm' capable of being fully jus in bello compliant in terms of distinction and proportionality and the duty to take precautions ('The General Principles').

https://doi.org/10.1093/jcsl/kry008

Commentary on the Second Geneva Convention : Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

ed. committee: Knut Dörmann... [et al.] ; project team: Jean-Marie Henckaerts... [et al.]. - Cambridge [etc.] : Cambridge University Press ; Geneva : ICRC, 2017. - XXII, 1331 p. - Cote 345.21/8 (II 2017 ENG)

The application and interpretation of the four Geneva Conventions of 1949 have developed significantly in the sixty 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 second volume. Its preparation was coordinated by Jean-Marie Henckaerts, ICRC legal adviser and head of the project to update the Commentaries. The Second Convention is a key text of international humanitarian law. It contains the essential rules on the protection of the wounded, sick and shipwrecked at sea, those assigned to their care, and the vessels used for their treatment and evacuation. This article-by-article Commentary takes into account developments in the law and practice 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, including naval experts. It is an essential tool for anyone working or studying within this field.

Complementarity as a catalyst for gender justice in mass prosecutions

Amrita Kapur. - In: The Oxford handbook of gender and conflict. - Oxford : Oxford University Press, 2018. - p. 225-239. - Cote 362.8/274

This chapter explores the opportunities present in the Rome Statute to promote justice for victims of sexual and gender-based violence in the International Criminal Court (ICC). It focuses on the

concept of complementarity to show the ICC's potential for reform and to catalyze the prosecution of international crimes (genocide, crimes against humanity and war crimes). It then describes the ICC's broader approach to sexual violence and gender, as well as the domestic impact of this jurisprudence. The chapter concludes by suggesting that the Rome Statute's standards should be introduced into national law. This could create broader benefits for women and victims of sexual and gender-based violence beyond the prosecution of criminal perpetrators.

Concurrent application of international humanitarian law and international human rights law revisited

Jean-Marie Henckaerts and Ellen Nohle. In: Human rights and international legal discourse, Vol. 12, no. 1, 2018, p. 23-43.

The relationship between international humanitarian law and human rights law continues to be debated and tested in practice, informed by increasing scrutiny of military action by domestic and international courts and treaty bodies. The lack of sufficient enforcement mechanisms for victims under humanitarian law has contributed to the turn to national courts and human rights courts and treaty bodies by victims of violations committed during armed conflict. As a consequence, these courts and bodies are maintaining their influence in the debate on, and our understanding of, the relationship between humanitarian and human rights law. This trend has also created new demands on human rights courts and bodies, in particular in terms of their familiarity with humanitarian law and with respect to the need for rulings that take into account what is practically feasible in time of armed conflict. This article provides an overview of the judicial enforcement mechanisms and scope of application of international humanitarian and human rights law, as well as an assessment of some aspects of their concurrent application in practice.

Contorting common article 3 : reflections on the revised ICRC commentary

Michael A. Newton. In: Georgia journal of international and comparative law, Vol. 45, no. 3, Spring 2017, p. 513-527.

This short Essay describes the circularity of support between the ICRC Revised Commentary on the First Geneva Convention issued in 2016 and the Pre-Trial Chambers of the ICC in the case Prosecutor v. Bosco Ntaganda. Its successive sections describe the problematic potential of extending the substantive coverage of Common Article 3 to encompass members of the same armed group who commit criminal acts against one another. In particular, the Revised Commentary fails to address the due process ramifications of an enlarged Common Article 3, even as the development of the text documented by the readily available negotiating record warrants an alternative understanding. Lastly, the ICRC position could indicate a radical shift in the very design of the field of international humanitarian law. This Essay closes by restating the imperative balance between military pragmatism and humanitarian imperatives that are preserved by the careful blending of values within the laws and customs of warfare.

Convergences and divergences between international human rights, international humanitarian and international criminal law

ed. by Paul De Hert, Stefaan Smis, Mathias Holvoet. - Cambridge [etc.] : Intersentia, 2018. - XVI, 298 p. - Cote 345.1/682

The first part of this volume explores the convergences and divergences between international humanitarian law (IHL) and/or human rights (IHRL) on the one hand, and international criminal law (ICL) stricto sensu on the other hand. The second part investigates the convergences and divergences between IHRL and transnational crimes, or ICL in the broader sense. The last part of this volume provides the reader with novel and original insights as to how IHRL and IHL converge and diverge by considering if and how the norms of other branches of international law come into play and how the European Court of Human Rights has engaged with the sometimes contradicting norms of IHL. It furthermore analyses the relationship between the specific IHL and IHRL norms which prohibit arbitrary displacement and maps their interaction. Finally, the effectiveness of

States' investigations of war crimes committed by their armed forces is evaluated by emphasising attention to the relevant standards developed within IHRL.

The crime of aggression, humanity, and the soldier

Tom Dannenbaum. - Cambridge [etc.] : Cambridge University Press, 2018. - XXVII, 352 p. - Cote 344/732

The international criminality of waging illegal war, alongside only a few of the gravest human wrongs, is rooted not in its violation of sovereignty, but in the large-scale killing war entails. Yet when soldiers refuse to kill in illegal wars, nothing shields them from criminal sanction for that refusal. This seeming paradox in law demands explanation. Just as soldiers have no right not to kill in criminal wars, the death and suffering inflicted on them when they fight against aggression has been excluded repeatedly from the calculation of post-war reparations, whether monetary or symbolic. This, too, is jarring in an era of international law infused with human rights principles. Tom Dannenbaum explores these ambiguities and paradoxes, and argues for institutional reforms through which the law would better respect the rights and responsibilities of soldiers.

Les crimes de guerre

par Bruno Cotte. - In: Guerre et droit. - Paris : Hermann, 2017. - p. 225-234. - Cote 345/736

Cette contribution examine en premier lieu les prémisses de la notion de crime de guerre, du Code Lieber à Nuremberg. Elle examine ensuite le crime de guerre tel que défini par le statut et la jurisprudence des juridictions pénales internationales. Elle analyse enfin les défis posés par les nouvelles formes de guerre à la répression des crimes de guerre et revient sur les critiques formulées à l'égard des actuels tribunaux pénaux internationaux et, plus spécifiquement, la Cour pénale internationale.

A critique of the ICRC's updated commentary to the First Geneva Convention : arming medical personnel and the loss of protected status

Nicholas W. Mull. In: Georgia journal of international and comparative law, Vol. 45, no. 3, Spring 2017, p. 495-511.

This article was written in conjunction with the author's participation in a conference at the University of Georgia Dean Rusk Center for International Law as a government practitioner of the law of war to discuss concerns with the International Committee of the Red Cross's (ICRC) update to the Commentary of the First Geneva Convention released in spring of 2016. The updated commentary is in error on three issues regarding medical operations: one, that medical personnel can lose protected status by carrying larger than light personal weapons; two, that medical facilities can lose protected status solely by virtue of being placed in proximity to legitimate military objectives; and third, it infers that once protected status for medical personnel and facilities is lost due to committing acts "harmful to the enemy" it cannot be regained by a full restoration of humanitarian duties. The author uses his experience and knowledge of military operations to help inform the legal discussion, which makes conclusions that better advance humanitarian interests in combat than those made by the ICRC.

Cyberwarfare and international humanitarian law

Zen Chang. In: Creighton international and comparative law journal, Vol. 9, issue 1, 2017, p. 29-53. - Cote 348/146 (Br.)

The proliferation of cyber-attacks has shifted the paradigm of warfare. In May 2017, the WannaCry attack was the first instance where civilian lives were directly and intentionally endangered by a piece of malicious code. In the wake of this attack, calls have been made to codify a "Digital Geneva Convention." Although cyberwarfares are not regulated by any international humanitarian law ('IHL') treaties, 'their development and employment in armed conflict do not

occur in a legal vacuum.' This paper seeks to explore the interaction between cyberwarfare and IHL. Whilst 'the legal principles [of IHL] applies to all forms of warfare [including] those of the future,' how it is to apply remains contentious and subject to debate. This paper will critically analyse how the legal parameters of IHL, lex lata, apply in times of cyberwar. This paper seeks to show the nuances in cyber-IHL which military commanders, and military legal advisors, ought to take note.

http://dx.doi.org/10.2139/ssrn.2973182

Debating autonomous weapon systems, their ethics, and their regulation under international law

Kenneth Anderson and Matthew C. Waxman. - In: The Oxford handbook of law, regulation and technology. - Oxford : Oxford University Press, 2017. - p. 1097-1117. - Cote 341.67/848 (Br.)

In November 2012, a high-profile public debate over the law and ethics of autonomous weapon systems (AWS) was kicked off by the release of a policy memorandum issued by the United States Department of Defense and a public call to action by Human Rights Watch pressing for a ban. The aim of this chapter is to provide a basic overview of the current normative debates over AWS, as well as the processes through which these debates are taking place at national and international levels.

Defending the boundary : constraints and requirements on the use of autonomous weapon systems under international humanitarian and human rights law

Maya Brehm. - [Genève] : Geneva Academy of International Humanitarian law and Human Rights, 2017. - 71 p. - Cote 341.67/863 (Br.)

The focus of scholarly inquiry into the legality of autonomous weapon systems (AWS) has been on compliance with IHL rules on the conduct of hostilities. Comparably little attention has been given to the impact of AWS on human rights protection. This paper aims to close this gap and to support multilateral policy discussions on AWS. It examines the requirements and constraints that IHRL places on the use of force by means of an AWS, both in relation to the conduct of hostilities and for law enforcement purposes, in times of peace as well as during armed conflicts. The use of a 'sentry-AWS' to control a boundary, secure a perimeter or deny access to an area, for example along an international border – a possible application envisaged by proponents of AWS – forms the backdrop to the legal discussion. The paper finds that, although AWS tend to be portrayed as 'weapons of war', IHL would never be the sole, and in many instances, it would not be the primary legal frame of reference to assess the legality of their use.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2972071

Dépositaire : une impartialité sous surveillance : l'exemple de la Suisse

Claude Schenker. 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. 28, no. 1, 2018, p. 25-58.

Cette contribution traite d'abord des fonctions de dépositaire d'un traité, telles qu'elles sont prévues par le droit international d'une part ainsi que sous un angle pratique d'autre part. Elle analyse ensuite le devoir fondamental de tout dépositaire d'agir impartialement en toutes circonstances dans l'accomplissement de ses fonctions. Elle met en lumière spécialement, comme corollaire de ce devoir d'impartialité, la nécessaire distinction entre le rôle d'un Etat en tant que dépositaire d'un traité et le rôle du même Etat en tant que partie à ce traité. Cette monographie tente aussi de répondre à des questions délicates, telle celle de savoir quand le dépositaire peut reconnaître ou dénier la capacité d'agir en lien avec un traité. Elle détaille en particulier la situation des entités dont la qualité d'Etat est contestée et elle examine quelle procédure pourrait

résoudre le problème d'une manière qui soit valable erga omnes. De nombreux exemples tirés de la pratique du dépositaire suisse, des cas plus ou moins difficiles ainsi que quelques anecdotes viennent enrichir cet article.

Developing norms for cyber conflict

William C. Banks. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 273-297. - Cote 345.22/891

The prospect of cyber war has evolved from science fiction and doomsday depictions on television, in films and novels to reality and front page news. Despite the growing prominence of cyber threats, international law does relatively little to regulate cyber conflict. The language and structure of IHL and of the UN Charter present considerable analytic challenges in attempting to fit cyber into the conventional framework for armed conflict. This chapter first reviews and assesses the historical and contemporary normative justifications for cyber conflict, and then outlines the components of future cyber conflict norms.

Distinction matters : rethinking the protection of civilian objects in non-international armed conflicts

Noam Zamir. In: Israel law review, Vol. 48, issue 1, March 2015, p. 111-132. - Cote 357/173 (Br.)

This article examines the reasons for the differences in the protection of civilian objects under treaty law in international armed conflicts (IAC) and in non-international armed conflicts (NIAC), and the argument that customary law now provides equal protection for all civilian objects under both IAC and NIAC. The article argues that this equal protection may hinder the ability of states to maintain law and order under their domestic law in NIAC in situations where they may need to destroy property which belongs to armed opposition groups. The article advances the argument that the law regarding targeting should be that all civilian objects are protected in NIAC but, unlike the protection of civilian objects in IAC, this protection does not bar a state from destroying in its territory objects which were considered to be illegal under domestic law before the commencement of the NIAC, in accordance with international human rights law as lex specialis.

https://doi.org/10.1017/S0021223714000247

Le droit international humanitaire : conquêtes normatives et vicissitudes pratiques

Serge Sur. - In: Réciprocité et universalité : sources et régimes du droit international des droits de l'homme : mélanges en l'honneur du Professeur Emmanuel Decaux. - Paris : Pedone, 2017. - p. 161-174. - Cote 345.1/683

Cet article retrace l'histoire du développement des droits de l'homme et du droit international humanitaire, leurs principes clés et champs d'application respectifs, ainsi que leur association et dissociation. Il discute la promotion normative remarquable qu'a connue le droit international humanitaire ces dernières années. Cette montée en puissance normative va cependant de paie avec des vicissitudes pratiques: le tableau est beaucoup moins favorable en ce qui concerne le respect et l'application du droit international humanitaire.

Droit international humanitaire : introduction détaillée

[Nils Melzer ; coord. par Etienne Kuster]. - Genève : CICR, avril 2018. - 399 p. - Cote 345.2/999 (FRE)

Manuel destiné à encourager et renforcer la connaissance du droit international humanitaire (DIH) parmi les universitaires, les porteurs d'armes et les professionnels de l'action humanitaire et des médias. L'ouvrage présente les enjeux actuels relatifs au DIH sous une forme accessible et

pratique, qui reflète généralement la lecture du droit du CICR. Sa structure originale — avec ses sections « en bref », « pour aller plus loin » et ses encadrés thématiques — en font l'outil idéal pour toute personne désireuse de découvrir le DIH et intéressée par les questions relatives aux conflits, ainsi que pour le personnel militaire et humanitaire en quête d'orientations pertinentes sur un vaste éventail de thèmes.

https://library.icrc.org/library/docs/DOC/icrc-001-4231.pdf

Drone warfare and the erosion of traditional limits on war powers

Geoffrey Corn. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 246-272. - Cote 345.22/891

One important question related to the increasing availability and efficacy of drone capability is whether it dilutes the traditional legal barriers or constrains them to the use of military force. This chapter explores this question. Section II considers how, at least from a functional standpoint, drones offer national level decision-makers a combat capability that is really different from the other tools in the military force arsenal. Section III considers how this capability has influenced the assessment of when a threat triggers the law of armed conflict. It also explains why the impact of drones does not extend across the so-called spectrum of conflict, but instead is limited to the assessment of non-international armed conflict. Section IV then considers how drone capability impacts the assessment of constitutional war powers.

Drones, automated weapons, and private military contractors : challenges to domestic and international legal regimes governing armed conflict

Laura A. Dickinson. - In: New technologies for human rights law and practice. - Cambridge : Cambridge University Press, 2018. - p. 93-123. - Cote 341.67/866 (Br.)

This chapter charts the rapid and intertwined growth of unmanned and increasingly autonomous weapons, on the one hand, and private military and security contractors, on the other. And it grapples with the particular challenges this combination of forces creates under both domestic and international law. The first part describes the increased use of drones and more fully autonomous weapons as well as the growing role of contractors in developing and operating these systems. The next part discusses the destabilizing impact that this trend is having on one of the foundations of the US constitutional framework itself: the allocation of power between the president and Congress in deciding whether or not to use force overseas. The final part charts the similarly disruptive impact these trends have had on accountability and oversight under IHL. Together, the use of autonomous weapons and privatization have fragmented decision-making over the use of force, rendering accountability for violations of IHL principles much more difficult to achieve.

https://www.cambridge.org/core/services/aop-cambridge-core/content/view/C6F1C06CBFA06E46D7A8E67A0BB3065D/9781107179639c5_93-124.pdf/drones_automated_weapons_and_private_military_contractors.pdf

Enemy women and the laws of war in the american civil war

Stephanie McCurry. In: Law and history review, Vol. 35, no. 3, August 2017, p. 667-710. - Cote 345.22/977 (Br.)

One of the most important legacies of the American Civil War, not just in the re-united States of America but also in the nineteenth and twentieth century world, were the new laws of war that the conflict introduced. "Lieber's Code," named after the man who authored it for the Lincoln administration, was a set of instructions written and issued in April 1863 to govern the conduct of "the armies of the United States in the field." It became a template for all subsequent codes, including the Hague and Geneva conventions. Widely understood as a radical revision of the laws of war and a complete break with the Enlightenment tradition, the code, like the war that gave rise to it, reflected the new post-Napoleonic age of "people's wars." As such, it pointed forward, if not as the expression of the first total war, then at least as an expression of the first modern one,

with all the blurring of boundaries that involved. This article discusses the disruption of the pairing of women and innocence, and the subsequent erosion of civilian immunity represented by Lieber's code.

Erosion of the rule of law as a basis for command responsibility under international humanitarian law

Amy H. McCarthy. In: Chicago journal of international law, Vol. 18, no. 2, 2018, p. 553-593. - Cote 344/733 (Br.)

Many examples of modern war crimes exhibit a strong link between the institutional breakdown of the rule of law and subsequent commission of humanitarian abuses by service members. Unchecked misconduct, specifically including dehumanizing acts, tends to foster a climate where war crimes are likely to occur. Does the law adequately account for this common thread? This article examines the doctrine of command responsibility in the context of a superior's failure to maintain discipline among troops, and resulting criminal culpability for violations of the law of armed conflict. While customary international law, as applied by modern ad hoc tribunals, contemplates a wide range of misconduct that may trigger a commander's affirmative duty to prevent future abuses by subordinates, U.S. law does not. This article examines the contours of the command responsibility doctrine as it relates to this duty to prevent, and assesses its efficacy in averting humanitarian atrocities.

https://library.ext.icrc.org/library/docs/ArticlesPDF/45053.pdf

The European Court of Human Rights' approach to armed conflict and humanitarian law : ivory tower or pas de deux ?

Cedric De Koker. - In: Convergences and divergences between international human rights, international humanitarian and international criminal law. - Cambridge [etc.] : Intersentia, 2018. - p. 195-221. - Cote 345.1/682

This chapter discusses the increasing engagement of the European Court of Human Rights (ECtHR)'s dealings with armed-conflict related cases. It examines which trends and evolutions have rendered the strict compartementalisation between the jus in pace and the jus in bello untenable and have led to the introduction of armed conflict-related applications to the Strasbourg Court. It then analyses how the ECtHR has applied the European Human Rights Convention to the actions of the armed forces of State parties engaged in military operations, and the extent to which it has resorted to IHL when interpreting human rights norms.

Exploiting legal thresholds, fault-lines and gaps in the context of remote warfare

Mark Klamberg. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 186-209. - Cote 345.22/891

Conflicts increasingly involve action at a distance as opposed to traditional battlefield engagements. Development of new weapons, modern communications and growing economic interdependence between states push national decision-makers to adopt asymmetrical strategies to minimize the exposure to risk of their own forces while their opponents can be easily attacked, and also for the purpose of avoiding attribution and retribution. Since international law is used as a tool for legitimizing state policies, legal thresholds, fault-lines and gaps will be used by states to portray their own actions as legal or at least belonging to a grey area but never illegal. These issues have been brought to the fore not least by increased tensions between the West and Russia. This chapter first introduces means of remote warfare such as computer network attacks, psychological operations, use of irregular and/or nonstate groups, and expulsion of populations. It then discusses how remote warfare may exploit legal thresholds, fault-lines and gaps.

The extraterritorial use of armed drones and international human rights law : different views on legality in the US and Europe ?

Peter Vedel Kessing. - In: Europe and the Americas : transatlantic approaches to human rights. - Leiden ; Boston : Brill Nijhoff, 2015. - p. 360-392. - Cote 341.67/859 (Br.)

This chapter sets out with a brief description of the US position on the extraterritorial use of armed drones and international law. In the following sections it is discussed whether the extraterritorial killing of individuals with armed drones is in conflict with the right to life in international human rights law (IHRL). First it is described when it is legal pursuant to IHRL to target and kill an individual and which procedural safeguards must be respected. Then it is discussed whether IHRL is applicable when States are targeting individuals extraterritorially on the territory of other States with armed drones. The following section pro-vides a discussion of the application of IHRL in times of armed conflict and the interrelationship between the protection of life in IHRL and in international humanitarian law (IHL). Finally, concluding observations are provided and it is pointed out that there appear to be different views on the legality of the use of armed drones in the US and in Europe.

https://library.ext.icrc.org/library/docs/ArticlesPDF/44990.pdf

Fact finding and states in emergency

Charles Garraway. In: ILSA journal of international and comparative law, Vol. 22, issue 2 , 2016, p. 471-481. - Cote 345.24/304 (Br.)

In this article, the author looks at what is fact-finding and in particular fact-finding under the law of armed conflict, a term that will be used in preference to international humanitarian law or the laws of war, terms which are also used in this context. The article then looks at the International Humanitarian Fact-Finding Commission, a treaty body established under Article 90 of Additional Protocol I to the 1949 Geneva Conventions. The author assesses the role, both current and future, of this Commission

https://nsuworks.nova.edu/ilsajournal/vol22/iss2/7/

Forum isolation : social opprobrium and the origins of the international law of internal conflict

Giovanni Mantilla. In: International organization, Vol. 72, Spring 2018, p. 317-349. - Cote 345.22/975 (Br.)

Why have states created international laws to regulate internal armed conflicts? This article is the first to theorize the emergence and design of these international rules, focusing on Common Article 3 to the 1949 Geneva Conventions. Drawing on original multicountry archival research, I develop the mechanism of forum isolation to explain the origins of Common Article 3, demonstrating the importance of social opprobrium pressure to explain why Britain and France switched from staunch opposition to support and leadership in 1949. Specifically, forum isolation pressured these European empires to concede and to react strategically behind the scenes, saving face and safeguarding their security interests by deliberately inserting ambiguous language in the text of Common Article 3. This move later facilitated states' avoidance of this rule in many conflict cases.

The French army and the Geneva Conventions during the Algerian war of independence and after

Raphaëlle Branche. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 161-173. - Cote 345.24/407

France considered Algerian War of Independence an internal matter, and questioned the relevance of the Geneva Conventions. The International Committee of the Red Cross managed to

get permits to visit the prisons and camps in Algeria where not only detainees but also mere suspects were held. The French military took Common Article Three into account, although the status of prisoner of war (POW) was never granted to anyone detained in any military or civil premises. To acknowledge the existence of POWs was to acknowledge that a war existed in Algeria. The National Liberation Front (FLN) fought hard to impose this reality on the French. Indeed, as the prospect of peace arose, the conditions of detention of some prisoners did improve. The chapter ends by exploring the legacies of the Algerian war on the Geneva Conventions and the French army.

Frozen conflicts and international law

Thomas D. Grant. In: Cornell international law journal, Vol. 50, no. 3, 2017, p. 361-413. - Cote 345.22/980 (Br.)

Scholars (mostly in international relations and politics) and policymakers (in various countries) have referred to a series of conflicts in the space of the former USSR as "frozen conflicts." Because some now speak of new "frozen conflicts" emerging, it is timely to ask what— if any— legal meaning this expression contains. Moreover, how we characterize these conflicts affects legal and other procedures the parties and others might apply to resolve them. Beyond the open questions of semantics and taxonomy, the so-called "frozen conflicts" merit attention because of their salience to the dispute settlement machinery that they so largely have frustrated.

https://scholarship.law.cornell.edu/cilj/vol50/iss3/1/

Geneva Convention compliance in Iraq and Afghanistan

Elizabeth Grimm Arsenault. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 137-160. - Cote 345.24/407

US compliance with the Geneva Conventions in Iraq and Afghanistan appeared to vary with the particular subject matter and battle space. In military operations during the last decade, the US assessed the legality of virtually every proposed target to avoid the intentional targeting of civilians. Legal specialists also, however, flagrantly overlooked Common Article 3's minimum prescription that all captured individuals have the right to be treated humanely. This variation in compliance is explained by the shift in mission objectives: When the US approached these conflicts as purely counterterror operations, the goal was to disrupt the enemy. However, under the population-centric counterinsurgency mission, noncompliance with the Geneva Conventions equated to mission failure. The shift from counterterrorism to counterinsurgency increased US sensitivity to civilian casualties and the operational consequences of detainee abuse. By adapting practice to comply with the Conventions, the people became the prize in the war on terror.

The Geneva Conventions : do they matter in the context of peacekeeping missions ?

Siobhán Wills. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 303-322. - Cote 345.24/407

This chapter examines what relevance international humanitarian law might have to peacekeeping missions in light of expansion in the size of UN missions since the end of the Cold War and the much broader range of mission objectives and situations to which missions are deployed. It argues that these changes require that much more detailed attention be paid to the differences between missions and the consequent differences in the applicable legal regimes. International humanitarian law is of important but limited relevance: international human rights law is the primary legal frame that should govern peacekeeping operations. The fact that mission rules of engagement are normally classified—including those dealing with law enforcement tasks such as providing security during election periods or supporting the host state government to combat crime—is a violation of the rule of law standards that the United Nations is committed to upholding.

Gotovina and the ICTY

Robert Kolb. 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. 27, no. 4, 2017, p. 483-487.

In the Gotovina case, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) condemned Gotovina and Markac amongst other offences for unlawful attacks on civilians as a war crime. This is one of the most important judgments concerning the law of armed conflict on targeting. However, the Appeals Chamber quashed that judgment in a short and lightly motivated decision and dissmissed all the charges against the accused, which caused two judges to utter an unusually sharply worded dissent. In this article, the author proffers a few commentaries on the issue of targeting and on the appeals judgment in general.

A green light turning red ? : the potential influence of human rights on developing customary legal protection against conflict-driven displacement

Deborah Casalin. In: Human rights and international legal discourse, Vol. 12, no. 1, 2018, p. 62-78.

Globally, armed conflict remains a major driver of mass population displacement. Legal protection from displacement in international humanitarian law (IHL) remains limited to specific instances, as displacement was traditionally viewed as an inevitable side effect of conflict (i.e. a 'green light' approach). In light of the relationship between international humanitarian and human rights law, as well as the de facto role of international human rights mechanisms in applying international law in armed conflict, this article systematically analyzes the case law of these mechanisms to determine whether it evidences further development of customary IHL protection against displacement. It is found that although this case law does not overall indicate the development of an independent prohibition on displacement caused by unlawful acts in the conduct of hostilities, it does appear to confirm a broadening of the prohibition on ordering internal displacement in NIAC.

The guardians : an international history of the Dutch and 'Hague Law', 1944-1949

Boyd van Dijk. - In: Shaping the international relations of the Netherlands, 1815-2000 : a small country on the global scene. - London ; New York : Routledge, 2018. - p. 163-182. - Cote 345.22/964 (Br.)

This article explores the history of the origins of the Dutch as guardians of 'Hague Law'. Based on a collection of multilingual archival materials, and focusing on three principal questions in particular (i.e. war crimes, the law of occupation, and colonial warfare), the article shows how the Dutch played a far more significant role in revising the post-1945 international legal order than what is commonly assumed in the literature. Especially the now largely forgotten jurist M.W. Mouton played a critical role in promoting a new war crimes' regime that would lie at the origins of the ICC's founding statute. On the other hand, while trying to revise the Hague and Geneva Conventions, these Dutch officials had to bring their internationally progressive effort to promote criminal law into harmony with their own obligations as a loyal NATO partner and a declining colonial power. Adding a new dimension to ongoing debates about the War of Independence in Indonesia, this article also reveals how the Dutch rejected plans to apply the future Conventions to colonial wars. As a result of these clashing images, it became eventually impossible for them to uphold their role as the guardian of 'Hague Law'.

La guerre comme situation d'exception

par Pierre Delvolvé. - In: Guerre et droit. - Paris : Hermann, 2017. - p. 201-218. - Cote 345/736

Ni la notion de guerre ni celle de situation d'exception ne sont clairement définies. Cette contribution s'attache à démontrer en quoi la guerre, violence armée impliquant un ou plusieurs

Etats est une situation d'exception, circonstance hors du commun entraînant l'application de règles également hors du commun.

Guerre sous-marine, guerre perfide ? : les bateaux-pièges et le droit des conflits armés

Hamza Cherief. - In: La Grande Guerre et le droit public. - [Bayonne] : Institut universitaire Varenne, 2017. - p. 25-52. - Cote 345/738

Les bateaux-pièges, également appelés “cargo-tentateurs” ou “Q-ships », désignent les navires de commerce transformés en bâtiments de guerre, mais dont l’armement était dissimulé de façon à servir d’appât aux sous-marins ennemis, qu’ils attaquent au canon, une fois ceux-ci stoppés à proximité. Ils furent utilisés, principalement par le Royaume-Uni et la France, durant la Première Guerre mondiale comme instrument de lutte contre les sous-marins allemands. Cette contribution analyse le statut juridique des bateaux-pièges en droit des conflits armés et la légalité de leur emploi.

Guerres humanitaires ? : mensonges et intox

Rony Brauman; conversation avec Régis Meyran. - Paris : Textuel, 2018. - 127 p. - Cote 345.22/978

"C'est toujours au nom d'un Bien que se déclenchent les guerres" rappelle Rony Brauman dans cet ouvrage. Pour l'auteur, les guerres "humanitaires" récentes ne sont rien d'autre que des croisades morales fondées sur des mensonges. Les exemples de propagande belliciste ne manquent pas : prétendu arsenal d'armes de destruction massive détenu par feu Saddam Hussein en Irak, question du génocide discutable au Kosovo, chiffres bidons de la famine en Somalie, faux massacre de manifestants en Libye... Sans être non-interventionniste par principe, Rony Brauman se montre extrêmement méfiant à l'égard de l'engouement guerrier dont nombre de dirigeants font preuve aujourd'hui, et n'hésite pas à critiquer les instances internationales : le conseil de sécurité de l'ONU ou la Cour pénale internationale. Contre un prétendu "droit" d'ingérence, et en s'appuyant sur les critères de la "guerre juste", Brauman critique l'obsession occidentale d'imposer par la force les valeurs démocratiques, preuves à l'appui, sans jamais céder à une quelconque théorie du complot.

How the Geneva Conventions matter

Matthew Evangelista. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 323-348. - Cote 345.24/407

This chapter offers an assessment of the status of the Geneva Conventions as a normative regime and how it matters. The book’s case studies support the intuition that states fighting guerrilla insurgencies and terrorists face challenges in adhering to the laws of war. Yet many cases exhibit more compliance than the rationalist accounts would anticipate. In exploring mechanisms of noncompliance as well as compliance, the chapter highlights the importance of disaggregating the process—from leaders to individual soldiers—and highlights some of the counterintuitive insights that emerge. The international system—powerful states and institutions—serves not only as a constraint on human-rights abuses and war crimes but also sometimes as an enabler. Courts play less of a role than expected in the process of socialization and internalization of norms. The chapter concludes with reflections on the methodological challenges facing scholars who seek to assess the impact of international humanitarian law.

Human rights as a new standard of civilization in weapons control ?

Ritu Mathur. In: Alternatives : global, local, political, 2018, p. 1-17. - Cote 341.67/847 (Br.)

This article is an attempt to explore the intersecting dynamic of human rights and weapons control from a postcolonial perspective. It seeks to bring to the fore the contested terrain of human

rights discourses within which grand proclamations of "Human Rights" as a "new standard of civilization" are being championed. At the same time in the field of security studies, an effort to rejuvenate "disarmament as humanitarian action" is mobilizing scholars and activists. It is in this context that this article seeks to problematize deployment of specifically human rights–based discourses to address the problem of weapons. In this effort, it encourages scholars and activists to take note of the imperial legacy of human rights–based and civilization-based discourses. It then expresses concern with how these civilizational discourses of differences between the West and the Rest are exploited to encourage a licentious use of human rights language to acquire and maintain weapons by state and nonstate actors. This article then proceeds to express concern with a shift from anthropocentric to anthropomorphic discourses on weapons that threatens to constitute and reinforce a stratified human civilization. These reflections are undertaken to encourage scholars to think more deeply about the pernicious nature of a human rights–based discourse in the context of weapons control. It is an invitation for postcolonial scholarship to think more deeply about the intersecting discourses of human rights and weapons control and its implications for the Global South.

https://library.ext.icrc.org/library/docs/ArticlesPDF/44871.pdf

Human rights in armed conflict : metaphors, maxims, and the move to interoperability

Andrew Clapham. In: Human rights and international legal discourse, Vol. 12, no. 1, 2018, p. 9-22.

This contribution looks at the ways in which the relationship between human rights law and the law of armed conflict has been portrayed. It references the metaphors and maxims that are said to help understand this relationship and suggests that, rather than looking for an overarching theory, the time has come to focus on particular contexts and consider the policy choices available and what is at stake.

Human rights obligations of European states in the context of peace operations

Wouter Vandenhole. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra, Vol. 55, no. 1, 2016-2017, p. 31-74. - Cote

This contribution focuses primarily on the human rights obligations and responsibility of troop-contributing states in peace operations. Typically, peace operations take place outside the territories of the troop-contributing states. This raises the question whether the human rights obligations incumbent on them within their own territories also apply outside their territory. Recently, the legal debate has shifted from the question whether troop-contributing states to peace operations exercise jurisdiction and therefore have extraterritorial obligations, to the nature and scope of these obligations. In this article, the author submits that the scope of a troop-contributing state's human rights obligations can and should be divided and tailored, regardless of how jurisdiction is exercised. The author also seeks to challenge an emerging jurisprudence that waters down the human rights obligations incumbent on the state under the right to liberty in the context of armed conflict, 'against the background of international humanitarian law'. He proposes to accept a variable scope of human rights obligations during peace operations, but without fundamentally watering down human rights obligations, even not in the context of armed conflict.

Human trafficking for criminal exploitation and participation in armed conflicts : the Colombian case

Carolina Villacampa, Katherine Flórez. In: Crime, law and social change, No. 69, 2018, p. 421-444. - Cote 345.29/323 (Br.)

This paper shows how human trafficking for criminal exploitation can occur in armed conflicts in which adults and children are recruited to fight. It proposes that these people's status as victims should be taken into account when determining the degree of their criminal responsibility within the framework of a transitional justice process such as the one applied in Colombia under the 2005 Justice and Peace Act. It presents the results of a study carried out with 20 women inmates in Colombian prisons who were members of guerrilla groups and were demobilised. It is possible to identify them as victims of trafficking for criminal exploitation even though they have not been classified as such. In 80% of the analysed cases, the women suffered episodes of victimisation that led them to join the armed group, often against their will. These episodes involved the use of means to recruit them and to force them to stay active in the group that show they underwent a genuine process of human trafficking.

Humanity's common heritage : 2016 International Committee of the Red Cross Commentary on the First Geneva Convention

Geoffrey Corn... [et al.]. In: Georgia journal of international and comparative law, Vol. 45, no. 3, Spring 2017, p. 445-569. - Cote 345.22/924

Public panel rapporteur session : Canadian Major General Blaise Cathart, Professor Ryan Goodman, Professor Lauri Blank, and Professor Dapo Akande. - Afternoon rapporteur session one : the obligation to ensure respect for the Geneva Conventions. - Afternoon rapporteur session two : weaponry for medical personnel, location of hospitals, gender-related issues, proportionality and "all possible measures". - Afternoon rapporteur session three : classification of conflicts.

Forcible displacement as a weapon of war in the Syrian conflict : lessons and developments

Yasmine Nahlawi. - In: Armed conflict and forcible displacement : individual rights under international law. - London ; New York : Routledge, 2018. - p. 191-220. - Cote 365/528

This chapter analyses relevant developments in Syria pertaining to forcible displacement with reference to existing international legal norms, including international humanitarian law and international human rights law, as well as international case law. It evaluates relevant State practice and opinio juris arising from the Syrian conflict to assess the emergence or reinforcement, if any, of customary norms pertaining to forcible displacement and the rights of the forcibly displaced.

Ideas on the international minimum standard for the privatization, export and import of armed coercion

Helena Torroja. - In: Public international law and human rights violations by private military and security companies. - Cham : Springer, 2017. - p. 127-153. - Cote 345.29/324

This chapter argues that states should recognize the existence of such an international minimum standard, considering self-regulation (misleadingly called "co-regulation") insufficient. This standard could be established through an international convention on the minimum requirements, which could be narrower than the possible draft convention presented by the Working Group on Mercenaries in 2010. The convention would address areas requiring codification and progressive development. In summary, the convention would seek to promote respect for human rights in the processes and practices of outsourcing, contracting, exporting, and importing armed coercion by states. If there is insufficient maturity among states to adopt such a treaty, this international minimum standard could also be adopted as a General Assembly resolution.

Independent without independence : the Iraqi-Kurdish Peshmerga in international law

Crispin Smith. In: Harvard international law journal, Vol. 59, no. 1, Winter 2018, p. 245-277. - Cote 345.29/322 (Br.)

In popular discourse the Peshmerga is generally treated as a separate Kurdish armed force, unrelated to the Iraqi armed forces. The confusion is compounded by the complexities of the political situation in Iraq, with Kurdistan and its Peshmerga functioning almost entirely independently from Iraq. Despite these factual complexities, this article argues that as a matter of law, Iraq not only has State responsibility for the Kurdish Peshmerga, but in fact the Peshmerga must be understood to be a part of the Iraqi armed forces under IHL. This conclusion raises tensions and problems, which are explored in the article. Iraq has responsibility for an armed group which is alleged to have committed significant IHL violations during the conflict against ISIS, and has previously deployed (without Iraq's permission) into Syria. This, despite Iraq currently having no factual control over the Peshmerga, or any ability to prevent or punish. Western nations which directly supply the Peshmerga may be doing so in some cases based on flawed interpretations of the Peshmerga's status under IHL.

https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3088572_code2747883.pdf?abstractid=3003644&mirid=1&type=2

Indiscriminate attacks and the past, present, and future of the rules/standards and objective/subjective debates in international humanitarian law

Stephen Townley. In: Vanderbilt journal of transnational law, Vol. 50, no. 5, 2017, p. 1223-1279. - Cote 345.25/371 (Br.)

Civil society, the United Nations, and others often lack access to internal targeting data and therefore frequently render legal judgments based on the effects of attacks or assertions that particular weapons or methods of combat are inherently unlawful. This article analyzes the historical development of key provisions of international humanitarian law (IHL) within the framework of two perennial legal debates—that between rules and standards and that between objective and subjective tests. It argues that while targeting provisions have generally reflected a balance between those two dyads, the jurisprudence of the international criminal tribunals has made IHL more "standard-like." This Article then uses the prohibition of indiscriminate attacks as a case study and offers specific recommendations for how we might adjust the way we think about that prohibition to respond to the current legal and political environment.

https://wp0.vanderbilt.edu/jotl/wp-content/uploads/sites/78/8.-Townley-Final.pdf

The ineffectiveness of the current definition of a "mercenary" in international humanitarian and criminal law

José L. Gómez del Prado. - In: Public international law and human rights violations by private military and security companies. - Cham : Springer, 2017. - p. 59-81. - Cote 345.29/324

The United Nations has defined the use of mercenaries "as a means of violating human rights and impeding the exercise of the right of peoples to self-determination." In order to control this phenomenon, it adopted, in 1989, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The turning of the century has seen private military and security companies (PMSCs) increasingly taking part in hostilities and armed conflicts. The UN Convention, as well as other international instruments adopted in the mid-twentieth century, have become obsolete to deal with the new forms of mercenarism. This article underscores the difficulties to apply the provisions contained in the definition of the 1989 Convention and emphasizes the need to adopt a new binding international instrument regulating private military and security companies.

L'interdiction des "robots tueurs" au nom du désarmement humanitaire : quelques observations critiques

Julian Fernandez. - In: Réciprocité et universalité : sources et régimes du droit international des droits de l'homme : mélanges en l'honneur du Professeur Emmanuel Decaux. - Paris : Pedone, 2017. - p. 175-188. - Cote 345.1/683

> Ce chapitre fait le bilan du développement des systèmes d'armes létaux autonomes et de leur emploi actuel sur les champs de bataille, au regard des arguments avancés par les organisations et individus se mobilisant pour en obtenir l'interdiction. L'auteur plaide pour une première régulation sous la forme d'un code de bonne conduite, à l'instar de ce qui a été proposé pour encadrer les activités des sociétés militaires privées.

International law and cyberspace : challenges for and by non-state actors

remarks by Gary Corn... [et al.]. In: Proceedings of the [...] annual meeting of the American Society of International Law, Vol. 111, 2017, p. 57-67. - Cote

> The growing use of cyberspace by state and nonstate actors is testing the limits of our international legal rules. And the recent issuance of the Tallinn Manual, both in its first iteration and now in its second version as Tallinn 2.0, attempts to identify the emerging law in this area. But many of the principles it asserts are controversial. This panel grapples with some of the key contested issues in this emerging domain.
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> https://doi.org/10.1017/amp.2017.154

International law and military strategy : changes in the strategic operating environment

Kevin Rousseau. In: Journal of national security law and policy, Vol 9, no. 1, 2017, p. 1-27. - Cote 345.22/857 (Br.)

> The thesis of this paper is that developments in international humanitarian law (IHL) are introducing fundamental changes to the international strategic operating environment, primarily by challenging the principle of sovereignty. The analysis is not intended to judge whether or not this trend is politically desirable, but to recognize that lethal force is but one of many factors affecting outcomes in war. Strategists and policymakers must understand the legal dynamics that are exerting an increasingly powerful influence on the legitimate use of violence. This paper will examine some of the unintended consequences of trends in international law that are likely to increasingly affect strategy. The author concludes by observing that waning principles of sovereignty require the state to adapt to the changing international legal operating environment by more effectively wielding humanitarian law.
>
> http://jnslp.com/wp-content/uploads/2017/04/International_Law_and_Military_Strategy_FINAL.pdf

The international legal implications of military space operations : examining the interplay between international humanitarian law and the outer space legal regime

Dale Stephens. In: International law studies, Vol. 94, 2018, p. 75-101. - Cote 346/171 (Br.)

> The legal framework that governs military action in space during a time of armed conflict is not well explored. This article examines the interaction between International Humanitarian Law (IHL) and the Outer Space legal regime. Harmonization of legal regimes is a goal of any reconciliation project, although such harmonization may not always be readily possible. In such circumstances legal interpretative mechanisms may apply, but their utility is often elusive in particular situations. Hence, in those situations identification of relevant state practice can provide a more reliable guide as to treaty context. When all "normal" legal tools fail to render a satisfactory outcome, this article concludes that a stark policy choice will need to be made between what aspects of which particular treaty regime will apply. It offers a set of principles that might be invoked as a solution. Such an approach is advanced as means of resolving differences by

assimilating common value commitments contained within both the IHL and the Outer Space treaty regimes to provide a viable means of harmonization.

http://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1719&context=ils

The international legal status of armed groups : can one be determined outside the scope of armed conflict?

Tom Gal. In: Israel law review, Vol. 51, no. 2, 2018, p. 321-335. - Cote 345.29/287 (Br.)

In 2016 Daragh Murray published his book Human Rights Obligations of Non-State Armed Groups (Hart 2016). By way of distinction from many other contributions on this widely discussed topic, Murray tries to provide the reader with a complete overview of the legal framework that enables armed groups to acquire international legal status, and preferably outside the framework of armed conflict. He walks the reader through the path of international legal personality, leading towards the acknowledgement of armed groups as addressees of the law. Murray's attempt is courageous, interesting and innovative, but it has its shortcomings. These include his reliance on international criminal law as a source for defining armed groups, and his insistence on stepping outside international humanitarian law. Nonetheless, his contribution is essential for those who wish to include even more armed groups on the international plane.

https://library.ext.icrc.org/library/docs/ArticlesPDF/44913.pdf

The international responsibility of non-state armed groups : in search of the applicable rules

Ezequiel Heffes and Brian E. Frenkel. In: Goettingen journal of international law, Vol. 8, no. 1, 2017, p. 39-72. - Cote 345.29/318 (Br.)

In the last few decades, the role of non-state armed groups has become an essential topic of analysis and discussion to better understand international humanitarian law dynamics. While their increasing importance is uncontroversial, their place and regulation in specific areas of international law still remains unclear or insufficiently explored. Chief among these is the possible non-state armed groups' international responsibility. Although it is undisputed that some of these entities breach their international law obligations, others seemingly engage with certain rules on the topic. This article addresses some legal consequences of such scenarios. Taking into account the principle of equality of belligerents in non-international armed conflicts, two issues are dealt with: i) the existence of "non-state" organs that could trigger the attribution of violations of international rules to non-state armed groups; ii) possible reparations owed by these non-state entities for their breaches during armed conflicts.

http://www.gojil.eu/issues/81/81_article_heffes_frenkel.pdf

International soft law initiatives : the opportunities and limitations of the Montreux Document, ICoC, and security operations management system standards

Rebecca DeWinter-Schmitt. - In: Public international law and human rights violations by private military and security companies. - Cham : Springer, 2017. - p. 105-126. - Cote 345.29/324

Private security companies (PSCs), governments, civil society organizations, and other stakeholders of the private security industry have contributed to the development of an interlocking web of soft law initiatives to improve global governance of the private security industry. This chapter provides background on each initiative and examines their opportunities and limitations, to include their ability to ensure that PSCs respect applicable provisions of international human rights and humanitarian law in their operations and are held to account should they violate these laws. It concludes that rather than a forfeiture of the state's obligation to regulate the private security industry, over time we are seeing a hardening of soft law initiatives

as they make their way into procurement regulations and national laws. Nevertheless, remaining gaps in the soft law initiatives warrant greater efforts to develop binding laws and to provide greater support for successful implementation of these initiatives.

Internationalized armed conflicts in international law

Kubo Macák. - Oxford : Oxford University Press, 2018. - XL, 268 p. - Cote 345.22/982

This book provides the first comprehensive analysis of factors that transform a prima facie non-international armed conflict (NIAC) into an international armed conflict (IAC) and the consequences that follow from this process of internationalization. It examines in detail the historical development as well as the current state of the relevant rules of international humanitarian law. The discussion is grounded in general international law, complemented with abundant references to case law, and illustrated by examples from twentieth and twenty-first century armed conflicts. Notably, this book challenges the conventional wisdom that members of non-State armed groups do not normally benefit from combatant status. Finally, it addresses the issue of belligerent occupation, traditionally understood as a leading example of a notion that cannot be transposed to armed conflicts occurring in the territory of a single State.

The interplay between international human rights law and international humanitarian law during international criminal trials

Rogier Bartels. In: Human rights and international legal discourse, Vol. 12, no. 1, 2018, p. 44-61.

The protection regimes of international human rights law (IHRL) and international humanitarian law (IHL) partially overlap. Certain unwanted conduct may therefore violate both human rights norms and humanitarian law rules. For the purposes of international criminal law (ICL), such conduct may therefore qualify as both a crime against humanity and a war crime. The present contribution discusses the interplay between the crimes against humanity and war crimes regimes, including the impact of the existence of an armed conflict on the status of alleged victims of crimes against humanity. It further highlights the risk that certain acts that form part of military operations in times of armed conflict may be qualified as crimes against humanity even though they are not contrary to IHL. The author concludes that crimes against humanity and war crimes have to be considered with care, and kept separate when necessary, in order to avoid any negative impact on the development of IHL and/or IHRL, and to safeguard the rights of the accused under ICL.

Investigating civilian casualties in time of armed conflict and belligerent occupation : manoeuvring between legal regimes and paradigms for the use of force

by Alon Margalit. - Leiden ; Boston : Brill Nijhoff, 2018. - XII, 292 p. - Cote 345.24/415

This book discusses the appropriate State response to civilian casualties caused by its armed forces. Various legal and practical challenges, arising when investigating the fatal consequences of the use of force, are examined through the practice of the US, the UK, Canada and Israel during military operations in Afghanistan, Iraq, Somalia and the occupied Palestinian territory. The author considers this topical and sensitive issue within a broader context, namely the public scrutiny of State behaviour and influence of human rights law during armed conflict. The debate over the scope of the duty to investigate reflects competing approaches looking to (re)shape the balance between military necessity and humanitarian considerations.

Investigations in armed conflict : understanding the interaction between international humanitarian law and human rights law

Vito Todeschini. - In: Convergences and divergences between international human rights, international humanitarian and international criminal law. - Cambridge [etc.] : Intersentia, 2018. - p. 259-286. - Cote 345.1/682

This chapter examines the interaction between international humanitarian law (IHL) and human rights law (HRL) in relation to the duty to investigate in armed conflict. Considering how IHL and HRL respectively regulate this duty, it is shown that whereas the latter prescribes in detail the standards an investigation must follow in order to be deemed effective, the former does not. Accordingly, the research question is whether and how HRL may complement IHL and fill what is here considered a gap in the law.

Invisible injuries : concussive effects and international humanitarian law

Michael N. Schmitt and Chad E. Highfill. In: Harvard national security journal, Vol. 9, issue 1, 2018, p. 72-99. - Cote 345.25/373 (Br.)

The concussive effects of weapons used on the modern battlefield can cause Traumatic Brain Injury (TBI). Indeed, TBI has been termed the "signature wound" of the ongoing conflicts in Iraq and Afghanistan. To date, the injury has not been taken into account by armed forces in their application of international humanitarian law norms regarding attacks that affect civilians. Of particular note in this regard are the rule of proportionality and the requirement to take precautions in attack. This article opens the discussion about this recently discovered consequence of warfare for the civilian population. It examines the state of the science regarding TBI and queries whether the understanding of such injuries has reached the point at which commanders in the field are obligated to begin considering, as a matter of humanitarian law, the risk of causing TBI to civilians when they attack enemy forces. It concludes with a practical assessment of how they might do so.

https://library.ext.icrc.org/library/docs/ArticlesPDF/45058.pdf

The irony of the iron dome : intelligent defense systems, law, and security

Daphné Richemond-Barak, Ayal Feinberg. In: Harvard national security journal, Vol. 7, issue 2, 2016, p. 469-525. - Cote 341.67/862 (Br.)

International law does not directly address intelligent defense systems (IDSs), of which Israel's Iron Dome embodies the most successful implementation to date. This Article argues that international humanitarian law ("IHL") should encourage the development and use of systems like Iron Dome by conceptualizing such systems as civil defense. That IHL should incentivize IDSs is not as obvious as it may seem. While incentivizing IDSs would uphold humanitarian law's ultimate purpose (i.e., the protection of civilians), the data suggests that IDS deployment can lead to an increase in rockets and the (re)emergence of violent tactics. IDSs also challenge the prevailing logic of IHL, which is typically focused on protecting the other side and not one's own. However, IHL should choose to incentivize intelligent defense systems for reasons grounded in humanitarian law itself, data analysis on Iron Dome, and offense-defense theory.

http://harvardnsj.org/wp-content/uploads/2016/06/Richemond-Barak-and-Feinberg-FINAL-JM.pdf

Islamic law, international law, and non-international armed conflict in Syria

Patrick B. Grant. In: Boston university international law journal, Vol. 35, issue 1, spring 2017, p. 1-37. - Cote 345.22/700 (Br.)

Although the law governing non-international armed conflicts ("NIAC") has expanded, it may not always be enough to address the atrocities associated with such conflicts. Islamic law may serve as common ground for parties to a NIAC to apply greater protections than those provided by international law alone. Applying Islamic and international law to the Syrian conflict demonstrates that the doctrines have different triggering thresholds and varying degrees of similar protections. The doctrines are compatible, however, because use of one doctrine does not

preclude use of the other. Islamic law can therefore supplement international law among states that have diverse acceptance of international treaties. It is also a viable option for Islamic law to supplement international law because most Muslim states are either influenced by or directly apply Islamic law. Theses states' desire to either apply or accept Islamic law evidences probable concurrence to agreements that use Islamic law to supplement international law to provide greater protections in a NIAC.

https://www.bu.edu/ilj/files/2017/04/35-BU-ILJ-Grant.pdf

An issue of monumental proportions : the necessary changes to be made before international cultural heritage laws will protect immoveable cultural property

by Matthew Smart. In: Chicago-Kent law review, Vol. 91, issue 2, 2016, p. 759-802. - Cote 357/194 (Br.)

This Note offers multiple suggestions to improve the protection of immoveable cultural heritage property during conflicts. The destruction of moveable cultural heritage property, while an important issue, is largely outside the scope of this Note. To begin, Part I offers a more precise definition of cultural heritage. Part II explores the current conflict in Syria that is resulting in the destruction of a significant amount of the country's immoveable cultural property. Part III examines the historical evolution of international laws aimed at the protection of immoveable cultural property during conflicts and its applicability to Syria. Finally, Part IV advances necessary changes to the current regime of international treaties to increase the protection to cultural heritage property. In addition, Part IV argues for the creation of a military force dedicated to protecting immoveable cultural heritage property.

https://scholarship.kentlaw.iit.edu/cklawreview/vol91/iss2/16/

'It was the best of times, it was the worst of times' : a tale of detention in time of emergency

Frederica Favuzza. - In: Convergences and divergences between international human rights, international humanitarian and international criminal law. - Cambridge [etc.] : Intersentia, 2018. - p. 163-194. - Cote 345.1/682

This chapter aims to assess the impact of public emergencies on the right to personal liberty from a victim's perspective. To this end, it will tell the story of a fictional character suddenly deprived of his liberty by administrative authorities on security grounds and will compare his situation under international human rights law and humanitarian law, in the case of a situation of public emergency, of an international armed conflict and of a non-international armed conflict.

Japanese war criminals : the politics of justice after the Second World War

Sandra Wilson... [et al.]. - New York : Columbia University Press, 2017. - XV, 417 p. - Cote 344/718

Examining the complex moral, ethical, legal, and political issues surrounding the Allied prosecution project of Japanese war criminals, from the first investigations during the war to the final release of prisoners in 1958, this volume shows how a simple effort to punish the guilty evolved into a multidimensional struggle that muddied the assignment of criminal responsibility for war crimes. Over time, indignation in Japan over Allied military actions, particularly the deployment of the atomic bombs, eclipsed anger over Japanese atrocities, and, among the Western powers, new Cold War imperatives took hold. This book makes a unique contribution to our understanding of the construction of the postwar international order in Asia and to our comprehension of the difficulties of implementing transitional justice.

Justice and diplomacy : resolving contradictions in diplomatic practice and international humanitarian law

ed. by Mark S. Ellis, Yves Doutriaux, Timothy W. Ryback. - Cambridge [etc.] : Cambridge University Press, 2018. - IX, 116 p. - Cote 344/727

Diplomacy is used primarily to advance the interests of a state beyond its borders, within a set of global norms intended to assure a degree of international harmony. As a result of internal and international armed conflicts, the need to negotiate peace through an emerging system of international humanitarian and criminal law has required nations to use diplomacy to negotiate 'peace versus justice' trade-offs. Justice and Diplomacy is the product of a research project sponsored by the Academie Diplomatique Internationale and the International Bar Association, and focuses on specific moments of collision or contradiction in diplomatic and judicial processes during the humanitarian crises in Bosnia, Rwanda, Kosovo, Darfur, and Libya. The five case studies present critical issues at the intersection of justice and diplomacy, including the role of timing, signalling, legal terminology, accountability, and compliance. Each case study focuses on a specific moment and dynamic, highlighting the key issues and lessons learned.

Justice in post-conflict settings : islamic law and muslim communities as stakeholders in transition

Corri Zoli, M. Cherif Bassiouni and Hamid Khan. In: Utrecht journal of international and european law, Vol. 33, no. 85, 2017, p. 38–61 : graph.. - Cote 345.22/927 (Br.)

This essay identifies the underlying norms embedded in traditions of Islamic law as these apply to contemporary Muslim communities experiencing conflict. This endeavor draws upon comparative legal analyses, postconflict justice traditions, and empirical conflict studies to explore why Islamic legal norms are not often used as a resource for restraint and guidance in contemporary conflict settings. The authors make the case for strengthening commensurate Islamic and international conflict norms for complex conflicts and postconflict tradition. They also situate Islamic postconflict justice norms into contemporary problems of security policy and conflict prevention. They indicate the benefits of such a comparative approach for humanitarian and human rights practitioners trying to build pathways out of conflict. An additional benefit in excavating such shari'a norms is in providing the intellectual basis to counter politicized, extremist, and instrumentalist uses of Islamic law to justify extreme uses of political violence.

http://doi.org/10.5334/ujiel.382

La justiciabilité des infractions des forces armées dans les opérations de paix

Serge Théophile Bambara. In: Revue québécoise de droit international, Vol. 29, no 1, 2016, p. 1–26. - Cote 345.29/319 (Br.)

Devant le climat d'apparente indifférence ou d'impunité que les États de la communauté internationale semblent réserver aux infractions commises par les membres des contingents militaires des opérations de paix, il existe des faisceaux d'actions possibles, du moins théoriques, et juridiquement fondées qui puissent engager la responsabilité des coupables d'infractions au droit des conflits, aux droits nationaux et aux droits de l'homme. Cet article se propose alors de saisir les sustentations de la justiciabilité des infractions des membres militaires des opérations de paix. Cette justiciabilité s'articulera, d'une part, au prisme des linéaments de la justice pénale individuelle et par l'organisation des responsabilités des États et des organisations internationales qui restent tout à fait envisageables. D'autre part, elle s'articulera au creuset des rôles et compétences des mécanismes de mise en œuvre de cette responsabilité.

http://dx.doi.org/10.7202/1045108ar

A justification of command responsibility

Darryl Robinson. In: Criminal law forum, Vol. 28, 2017, p. 633-668. - Cote 344/737 (Br.)

In this article, the author advances a culpability-based justification for command responsibility. Command responsibility has attracted powerful, principled criticisms, particularly that its

controversial "should have known" fault standard may breach the culpability principle. Scholars are right to raise such questions, as a negligence-based mode of accessory liability seems to chafe against our analytical constructs. However, the author argues, in three steps, that the intuition of justice underlying the doctrine is sound. An upshot of this analysis is that the "should have known" standard in the ICC Statute, rather than being shunned, should be embraced. While Tribunal jurisprudence shied away from criminal negligence due to culpability concerns, the author argues that the "should have known" standard actually maps better onto personal culpability than the rival formulations developed by the Tribunals.

https://ssrn.com/abstract=2988003

'Lawfare', US military discourse, and the colonial constitution of law and war

Freya Irani. In: European journal of international security, Vol. 3, part 1, 2017, p. 113-133. - Cote 345.22/785 (Br.)

In this article, the author aims to reorient debates, in International Relations and Law, about the relationship between law and war. In the last decade, writers have challenged common understandings of law as a limit on, or moderator of, warfare. They have instead claimed that law is often used as a 'weapon of warfare', describing such uses as 'lawfare'. Below, rather than arguing that law is either a constraint on or an enabler of warfare, the author examines how law comes to be represented as such. Specifically, he examines representations, primarily by US military and other governmental lawyers, of 'non-Western' invocations of the laws of war, which seek to constrain the policies or practices of the US or Israeli governments. The author shows how these authors cast such invocations as not law at all, but as tools of war. He suggests that this move rests on, and reproduces, colonial discourses of 'non-Western' legal inadequacy or excess, which serve to render 'non-Western' law 'violent' or 'war-like'.

Lawless wars of empire ? : the international law of war in the Philippines, 1898–1903

Will Smiley. In: Law and history review, Vol. 36, issue 3, August 2018, p. 511-550. - Cote 345.22/984 (Br.)

This article explores conflicting and changing ideas of how the law was interpreted and deployed during the Philippine–American War. The author draws on United States archival sources to trace fraught debates among officers over what the law meant. United States officers reinterpreted the law so that it could simultaneously demonstrate their moral and cultural superiority, while also authorizing widespread summary violence. It will be seen that no United States officer believed that law was irrelevant to the conflict. Some argued that the law of war did not apply, either because Filipinos were inherently uncivilized and racially inferior, or because of insurgents' behavior; or because they had not signed the proper treaties. In the face of these challenges, and even of frequent violations of the law, the United States government consistently reiterated that the law did apply. This study provides a new understanding of the law's role in the Philippine–American War.

https://doi.org/10.1017/S0738248017000682

Legal issues of multinational military operations : an alliance perspective

Steven Hill, David Lemétayer. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra, Vol. 55, no. 1, 2016-2017, p. 13-29. - Cote

As an Alliance committed to the rule of law, ensuring the legal interoperability of multinational armed forces is fundamental to protecting and defending the indivisible security and the common values of NATO. In that respect, following many years of conducting joint operations, missions and exercises together, and despite the numerous challenges, the Alliance has demonstrated a

high standard in complying with international law in the course of its military operations. This shared experience amongst Allies and partners has provided many lessons for future operations that have been translated into practical measures to assist the nations in meeting their international obligations and to go even beyond what might be required from them. Simply put, adherence to international law is not only a legal requirement; it is part and parcel of NATO's core values and legitimacy.

Legal status of drones under LOAC and international law

Vivek Sehrawat. In: Penn state journal of law and international affairs, Vol. 5, no. 1, 2017, p. 165-206. - Cote 341.67/856 (Br.)

This article argues that drones should be treated as any other component of the United States' (U.S.) arsenal. A drone can be considered to be a weapons platform or singular weapon system. This article further argues that drones indeed offer extensive and enhanced opportunities for compliance with LOAC and other relevant laws governing the use of certain weapons. Particularly, drones are well suited to execute theories of self-defense in international affairs. Generally, this article examines the legality of drone strikes under LOAC based upon the geographical location of a given target. Finally, the article will conclude by exploring military command responsibility for the violations of LOAC during drone operations and the legal status of the drone operator.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962478

The legality of rebel courts during non-international armed conflicts

Mark Klamberg. In: Journal of international criminal justice, Vol. 16, no. 2, May 2018, p. 235-263.

This article examines relevant norms concerning trials conducted by courts established by armed non-state actors (referred to as 'rebels') during non-international armed conflicts. While such courts are often justified by rebels in the interest of securing law and order, states' perceptions are more negative, especially the territorial state concerned. This raises questions under international humanitarian law, human rights law and international criminal law on the legality of such courts and of fair trial guarantees. Legal deficiencies may result in individual criminal responsibility for the individuals involved, including judges and those carrying out sentences. This article pays attention to the intention held by states when drafting relevant norms and a recent case where a domestic court in Sweden ruled on the individual criminal responsibility of a soldier for carrying out sentences issued by a rebel court, a first for any court worldwide.

https://doi.org/10.1093/jicj/mqy012

Libya : a UN resolution and NATO's failure to protect

Jeff Bachman. - In: Land of blue helmets : the United Nations and the Arab world. - Oakland : University of California Press, 2017. - p. 212-230. - Cote 345.26/276 (Br.)

This chapter discusses the ongoing debate about NATO's 2011 intervention in Syria. Did NATO abandon its primary duty to protect members of the civilian population in Lydia because it committed first and foremost to ensuring the overthrow of Qaddafi, as some scholars argue? The following critical analysis of the NATO-led intervention in Libya seeks to determine whether there is further evidence that ulterior motives for the intervention adversely affected NATO policy during and subsequent to the intervention, thus putting civilians at greater risk of serious injury or death. In particular, this chapter addresses NATO's violations of international humanitarian law.

Living a legal vacuum : the case of Israel's legal position and policy towards Gaza residents

Michal Luft. In: Israel law review, Vol. 51, issue 2, July 2018, p. 193-234. - Cote 362/138 (Br.)

This article examines Israel's legal position towards the residents of Gaza and analyses its policy and practice with regard to their movement as well as the movement of goods. This review, based on dozens of policy papers, regulations and procedures, as well as numerous judgments handed down by Israeli courts, reveals that Israel maintains a deliberately deficient and ambiguous legal position with regard to the status of Gaza residents. Under this position, the residents are merely 'foreign residents' who have no particular rights in relation to Israel. The author argues that this position establishes a major legal vacuum in the protection afforded to Gaza residents and is therefore incompatible with both the reality of Israel's continuous control over Gaza as well as the objects and norms of international humanitarian law.

La lutte contre la prolifération des armes légères et de petit calibre

Julien Ancelin ; préface de Michel Bélanger ; avant-propos de Louis Balmond. - Bruxelles : Bruylant, 2017. - XXIII, 770 p. - Cote 341.67/846

La prolifération des armes légères et de petit calibre est un phénomène nouvellement saisi par le droit international. En tant que menace pour la paix et la sécurité internationales, elle fait, depuis la fin de la guerre froide, l'objet d'attentions grandissantes. Tout d'abord abordée par des organisations internationales régionales, elle constitue désormais le domaine d'action privilégié de l'Organisation des Nations Unies en matière de désarmement. Néanmoins, la construction d'une lutte contre la prolifération ambitieuse et cohérente est difficile et doit faire face à des oppositions nombreuses justifiées par des intérêts étatiques profondément divergents. Le corpus normatif adopté est donc sujet à d'importantes limites et insuffisances. Par ailleurs, les instruments classiques de l'ordre juridique international apparaissent inaptes à garantir l'effectivité de ces nouvelles règles qui étendent le champ du droit international. Dans la perspective de l'accélération de l'agenda international du désarmement et de l'évolution du droit international, cet ouvrage s'essaie à la formulation d'explications aux défaillances des processus internationaux engagés et aux normes internationales adoptées.

Making autonomous weapons accountable : command responsibility for computer-guided lethal force in armed conflicts

Peter Margulies. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - 405-442. - Cote 345.22/891

Some commentators view autonomous weapons systems (AWS) in armed conflict as a potential cure for defects in human perception and judgment. In contrast, AWS opponents warn of killer robots going rogue, and urge a ban on development and deployment of AWS. Proponents of a ban often also raise the specter of impunity, asserting that it will be impossible to hold a human accountable for the mistakes of a computer (a 'machine' or 'agent', in data scientists' parlance). This chapter argues that a ban on AWS is unwise. Adaptations in current procedures for the deployment and use of weapons can ensure that any AWS used in the field complies with IHL. Solving the AWS accountability problem hinges on the doctrine of command responsibility, applied in a three-pronged approach that the chapter calls 'dynamic diligence'.

A 'male' future ? : an analysis on the gendered discourses regarding lethal autonomous weapons

Juliana Santos de Carvalho. In: Amsterdam law forum, Vol. 10, no. 2, 2018, p. 41-61. - Cote 341.67/867 (Br.)

There is a lacuna on how gender informs the talks concerning the pre-emptive ban on lethal autonomous weapons (LAWs). This study does a critical discourse analysis on texts produced by participants of the Convention on Certain Conventional Weapons (CCW) on LAWs, in an attempt to unearth the gendered language within these debates. Propositions against the ban do a gender stereotyping on LAWs, and also try to imprint a „male-protector? imagery to the nation willing to use them. Discourses in favour of the ban have merely indirectly critiqued such hyper-

masculinised approach. To unpack deeper concerns regarding the usage of LAWs, this piece suggests a direct exposition of the masculinised layers of arguments against the ban.

http://amsterdamlawforum.org/article/view/441

Manhattan_Project.exe : a nuclear option for the digital age

David Laton. In: Catholic university journal of law and technology, Vol. 25, issue 1, 2017, p. 94-153. - Cote 348/143 (Br.)

This article explores the possible implications and consequences arising from the use of an artificial intelligence construct as a weapon of mass destruction. It first examines the current state of artificial intelligence as it exists in both the private sector and in military and intelligence applications. Second, this article discusses the distinctions between kinetic war and cyberwar and the deployment of weapons of mass destruction (WMDs); the capabilities and applications of a possible cyber-weapon of mass destruction (CWMD) is discussed at this point as well. Third, issues concerning international law are addressed as applicable to artificial intelligence, automated warfare, and WMDs generally. Finally, this article examines some dangers associated with the use of an artificial intelligence construct capable of learning as well as the necessity of such a program.

https://scholarship.law.edu/jlt/vol25/iss1/4/

Military strategy : the blind spot of international humanitarian law

Yishai Beer. In: Harvard national security journal, Vol. 8, issue 2, 2017, p. 333-378. - Cote 345.22/980 (Br)

The stated agenda of IHL is to humanize the theater of war. Since the strategic level of war most affects war's conduct, one might have expected IHL to focus upon it. Paradoxically, the prevailing law generally ignores the strategic plane and assesses the conduct of war through a tactical lens. This disregard of military strategy has a price that can be clearly observed in the prevailing law of targeting. This Article challenges the current blind spot of the law: its disregard of the direct consequences of war strategy and the war aims deriving from it. It asks those who want to comprehensively reduce war's hazards to leverage military strategy as a constraining tool. The effect of the suggested approach will be demonstrated through and analysis of targeting rules, where the restrictive attributes of military strategy, which could play a key role in limiting targeting, have been overlooked.

https://library.ext.icrc.org/library/docs/ArticlesPDF/45060.pdf

Modern drone warfare and the geographical scope of application of IHL : pushing the limits of territorial boundaries ?

Robert Heinsch. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 79-109. - Cote 345.22/891

The times where wars were fought with man-to-man combat on a clearly defined battleground seem to be over. Nowadays, more and more fighting activities take place by using remote controlled drones and other comparable weapons systems. The questions that arise for international humanitarian law (IHL) are whether these scenarios have to be seen (1) within the scope of IHL, and if so, whether (2) the existing rules are still able to deal with this type of weapon, or whether we need a reform of the current IHL regime. This chapter focuses primarily on the first question, and examines whether we have to think about expanding the concept of the geographical scope of IHL, or whether the current system is sufficient to cover all situations which are connected with remote warfare in armed conflict situations. It also looks at how this issue is related to the application of international human rights law, especially in cases of so-called "targeted killings".

The new warfare : rethinking rules for an unruly world

J. Martin Rochester. - London ; New York : Routledge, 2016. - XV, 159 p. - Cote 345.22/965

This book looks at the evolving relationship between war and international law, examining the complex practical and legal dilemmas posed by the changing nature of war in the contemporary world, whether the traditional rules governing the onset and conduct of hostilities apply anymore, and how they might be adapted to new realities. How can the United States and other countries be expected to fight honourably and observe the existing norms when they often are up against an adversary who recognizes no such obligations? Indeed, how do we even know whether an "armed conflict" is underway when modern wars tend to lack neat beginnings and endings and seem geographically indeterminate, as well? What is the legality of anticipatory self-defense, humanitarian intervention, targeted killings, drones, detention of captured prisoners without POW status, and other controversial practices? These questions are explored through a review of the United Nations Charter, Geneva Conventions, and other regimes and how they have operated in recent conflicts. Through a series of case studies, including the U.S. war on terror and the wars in Afghanistan, Iraq, Gaza, Kosovo, and Congo, the author illustrates the challenges we face today.

Noncompliance with the Geneva Conventions in the wars of Yugoslav secession

R. Craig Nation. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 220-249. - Cote 345.24/407

The wars of Yugoslav secession were characterized by multiple violations of the law of war and armed conflict. Understanding why these violations occurred is an important foundation for determining how such outcomes might be tempered looking forward. This chapter addresses the sources of war crimes during the Yugoslav wars from various perspectives, including the deficiencies of professional military education, ethnic mobilization on the basis of hate narratives in a context of state failure, the role of paramilitary forces, leadership failures, and ineffective legal constraint. In future armed conflicts of a comparable nature one must be aware of the gap between the conventional interstate conflicts for which the Geneva Conventions were originally devised and the demands of contemporary new wars, where sovereign states are no longer primary actors, irregular forces play a greater role, and emotionally laden discourses of identity and cultural integrity replace classic geostrategic goals.

Note on migration and the principle of non-refoulement

ICRC. In: International review of the Red Cross, Vol. 99, no. 904, 2017, p. 345-357.

Throughout history, high numbers of persons have left, or have been forced to leave, their countries of origin. In order to protect migrants or refugees against being returned to places in which their fundamental rights are in danger, States have developed the principle of non-refoulement. This principle, reflected in different bodies of international law, protects any person from being transferred (returned, expelled, extradited—whatever term is used) from one authority to another when there are substantial grounds for believing that the person would be in danger of being subjected to violations of certain fundamental rights. The principle is multi-faceted and its scope and application vary from context to context in accordance with the applicable law. The present note recalls the legal basis of the principle of non-refoulement in different bodies of international law, examines its scope of application, and presents how certain aspects of the principle have been interpreted by States, courts, human rights treaty bodies, or expert organizations. The note also explains – where relevant – which understanding of the principle of non-refoulement the ICRC follows in its dialogue with States.

https://library.icrc.org/library/docs/DOC/irrc-904-note.pdf

Occupied Iraq : imperial convergences ?

Kerry Rittich. In: Leiden journal of international law, Vol. 31, no. 3, September 2018, p. 479-508.

The occupation of Iraq in 2003 involved a wide-ranging set of interventions in the structures of the state, interventions that provoked a debate about whether the law of occupation should recognize a category of 'transformative' occupation. The occupation's administration involved a diffusion of power among international institutions as well as ratification by the Security Council through Resolution 1483. This article argues that the transformation of norms and practices elsewhere in the international order underwrote the idea that it was the law of occupation that was problematic. The orders of the occupying were infused in both form and substance with ideas of 'normal governance' traceable to myriad projects, policies and practices of other international institutions. Iraq then might be a revealing case with which to consider the character and locations of contemporary imperialism, as well as the role of international law and international institutions in its unfolding.

https://doi.org/10.1017/S0922156518000316

The origins and evolution of the 1949 Geneva Conventions and the 1977 Additional Protocols

Giovanni Mantilla. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 35-68. - Cote 345.24/407

This chapter traces the development of the 1949 Geneva Conventions from their origins in pre-1949 treaty law through the 1977 Additional Protocols and to the present. It argues that international humanitarian law (IHL) has historically emerged from a contentious mix of military interest, moral values, and emotions grounded in the traumatic episodes leading to its revision. It focuses specifically on the evolution of three general areas of IHL: the protection of combatants and prisoners of war (POWs) and captured fighters, the protection of noncombatants (or civilians), and the mechanisms for implementation and enforcement of the law. The chapter draws on novel archival research as well as key primary and secondary sources.

The Oxford handbook of gender and conflict

ed. by Fionnuala Ní Aoláin ... [et al.]. - Oxford : Oxford University Press, 2018. - XLIV, 628 p. - Cote 362.8/274

This book focuses on the multidimensionality of gender in conflict, yet it also prioritizes the experience of women, given both the changing nature of war and the historical de-emphasis on women's experiences. Today's wars are not staged encounters involving formal armies, but societal wars that operate at all levels, from house to village to city. Women are necessarily involved at each level. Operating from this basic intellectual foundation, the editors have arranged the volume into seven core sections: the theoretical foundations of the role of gender in violent conflicts; the sources for studying contemporary conflict; the conflicts themselves; the post-conflict process; institutions and actors; the challenges presented by the evolving nature of war; and, finally, a substantial set of case studies from across the globe.

Peacekeeping and international law

Nigel D. White. - In: The Oxford handbook of United Nations peacekeeping operations. - Oxford : Oxford University Press, 2015. - p. 43-59. - Cote 345.29/303 (Br.)

This chapter examines United Nations peacekeeping operations within the framework of international law, particularly in respect of the use of force. After providing an overview of the constitutional, institutional, and normative frameworks that governs peacekeeping, it looks at some of the laws applicable to peacekeeping operations. It then considers explicit civilian protection mandates under the UN Charter in relation to the legality of the use of force in peacekeeping operations. The chapter also discusses the three norms on which UN peacekeeping is traditionally based: consent, impartiality, and defensive use of force. Finally, the chapter considers whether international humanitarian law or international human rights law is applicable to the conduct of peacekeepers when performing their functions, before concluding with an

assessment of laws and remedies in terms of access to justice for victims of human rights violations.

http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199686049.001.0001/oxfordhb-9780199686049-e-17

Peacetime cyber responses and wartime cyber operations under international law : an analytical vade mecum

Michael N. Schmitt. In: Harvard national security journal, Vol. 8, issue 2, 2017, p. 239-282 : diagr.. - Cote 348/144 (Br.)

Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations examines the application of extant international law principles and rules to cyber activities occurring during both peacetime and armed conflict. The manual comprises 154 Rules, together with commentary explaining the source and application of the Rules. However, as a compendium of rules and commentary, the manual merely sets forth the law. In this article, the director of the Tallinn Manual Project offers a roadmap for thinking through cyber operations from the perspective of international law. Two flowcharts are provided, one addressing state responses to peacetime cyber operations, the other analyzing cyber attacks that take place during armed conflicts. The text explains each step in the analytical process. Together, they serve as a vade mecum designed to guide government legal advisers and others through the analytical process that applies in these two situations.

http://harvardnsj.org/wp-content/uploads/2017/02/Schmitt-NSJ-Vol-8.pdf

Précis de la méthodologie en droits de l'homme et droit international humanitaire

Dieudonné Kalindye Byanjira ; en collab. avec Jacques Kambale Bira'Mbovote. - Paris : L'Harmattan, 2018. - 277 p. - Cote 345.1/673

Dans le souci de mettre à la portée de la communauté scientifique en général, et des chercheurs - étudiants et apprenants - en droits de l'homme et droit international humanitaire en particulier, un outil de recherche, ce précis assemble et choisit les instruments nécessaires, tant méthodologiques qu'épistémologiques, susceptibles d'accompagner à bon port celui et celle qui s'engagent dans la vaste forêt de cette discipline à la fois enviée et tourmentée, respectée et bafouée qu'est la science des droits de l'homme.

Preparing for war : the USA and the making of the 1949 Geneva Conventions on the laws of war

Olivier Barsalou. In: Journal of conflict and security law, Vol. 23, no. 1, Spring 2018, p. 49-73.

The emerging Cold War exerted a decisive influence on both the structure and the text of the 1949 Geneva Conventions. More specifically, this article argues that emerging Cold War anxieties not only influenced how American officials conceived of the 1949 Geneva Conventions but also structured the conference debates and had a determinant influence on the content of the texts. The 1949 Geneva Conventions (and Conferences) thus looked both to the past and the future: it aimed to put an end to the Second World War while preparing for the next one.

https://doi.org/10.1093/jcsl/krx014

Prévention et répression des crimes de guerre et des crimes internationaux : quel rôle pour les magistrats ?

Mamadou Badio Camara. - In: Réciprocité et universalité : sources et régimes du droit international des droits de l'homme : mélanges en l'honneur du Professeur Emmanuel Decaux. - Paris : Pedone, 2017. - p. 189-201. - Cote 345.1/683

Mamadou Badio Camara, premier président de la Cour suprême du Sénégal, présente dans ce chapitre ses réflexions sur la répression des crimes de guerre. Il décrit le rôle que doit jouer le juge à cet égard, que ce soit dans des instances judiciaires nationales, des juridictions pénales internationales ad hoc, ou à la Cour pénale internationale (CPI). Enfin, il discute la collaboration entre la CPI et les juges nationaux pour l'efficacité de la répression contre les crimes de guerre.

The principle of distinction and remote warfare

Emily Crawford. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 50-78. - Cote 345.22/891

Although the notion of 'remote warfare' is, arguably, not a new phenomenon, truly remote warfare—warfare conducted thousands of miles from active hostilities—was only made possible with the technological breakthroughs of the 20th century, such as aerial bombardment, inter-continental ballistic weaponry, and unmanned armed aerial vehicles. These new weapons and new modes of delivery were, and are still, subject to the extant laws of armed conflict. The 'newness' of the weaponry, and the absence of any specific treaty obligation that regulates its use, does not relieve parties to the conflict from observing the fundamental principles of IHL, such as the principle of distinction. This chapter examines certain questions that arise regarding remote warfare and the principle of distinction, focusing on two specific types of remote warfare: targeted killing with armed UAVs and the emergent field of cyber warfare.

Private military and security companies

René de Nevers. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 281-302. - Cote 345.24/407

Private military and security company (PMSC) employees are not soldiers, but their activities often place them in conflict zones. Their presence has complicated efforts to ensure the effectiveness of international humanitarian law (IHL) in fluid situations involving state and nonstate actors. This chapter explores how PMSCs fit in the framework of IHL and the broader legal framework governing PMSCs, along with state and international efforts to ensure PMSC compliance with IHL. Critical issues concern the status of PMSC contractors under IHL, which determines the protections they should be accorded; their training in the laws of war; and the rules regarding the use of force under which contractors operate. The legal framework holding PMSC employees accountable remains uneven in its global reach, and voluntary frameworks have emerged to develop and enforce good business practices and adherence to human rights standards. Whether these measures will be effective remains to be seen.

The prohibition to recruit or use children in hostilities and the exercise of universal jurisdiction in the light of the optional protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)

Jorge Cardona. - In: Réciprocité et universalité : sources et régimes du droit international des droits de l'homme : mélanges en l'honneur du Professeur Emmanuel Decaux. - Paris : Pedone, 2017. - p. 151-159. - Cote 345.1/683

This chapter studies the parallel development of provisions prohibiting the recruitment and use of child soldiers in international human rights law (IHRL) and international humanitarian law (IHL). It looks at the way in which prohibition and criminalization of child recruitment and participation in hostilities is carried out and expanded under the Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict (OPAC). Finally, it analyses how the interpretation between IHRL and IHL configures the obligation of

States to prosecute persons suspected of crimes related to the involvement of children in armed conflict.

Prohibitions on arbitrary displacement in international humanitarian law and human rights : a time and place for everything

Deborah Casalin. - In: Convergences and divergences between international human rights, international humanitarian and international criminal law. - Cambridge [etc.] : Intersentia, 2018. - p. 223-257. - Cote 345.1/682

This chapter analyses the relationship between specific IHL and IHRL norms by examining the rules which prohibit arbitrary displacement. It is submitted that a number of conditions placed by IHRL on acts of displacement cannot be cumulated with more precise and context-specific IHL rules, and that the latter apply as lex specialis. In the conduct of hostilities in international armed conflict, this follows a familiar dynamic of IHL standards diverging from stricter IHRL norms to address the specificities of conflict. However, under occupation and in non-international armed conflict, the prevailing of more absolute IHL prohibitions on displacement demonstrates a less common paradigm of IHL as lex specialis providing stricter protection for civilians. Finally, the relevance of this analysis in practice is illustrated through a case study of the planned transfer of Bedouin communities in the occupied Palestinian territory.

Protecting civilians during violent conflict : challenges faced by international humanitarian law

Zainab Mustafa. In: RSIL law review, Vol. 1, no. 1, 2017, p. 73-83. - Cote 362/139 (Br.)

This article addresses the legal lacunas present in International Humanitarian Law's (IHL) protection regime for civilians and the challenges in its implementation. Furthermore it aims to suggest ways to overcome them in order to strengthen compliance. The article is divided into three parts: Part I depicts the realities faced by civilians on the ground; Part II highlights the obligations of states and non-state actors under IHL, in addition to illustrating what is meant by 'protection' under the tenets of IHL; Part III identifies lacunas in the protection regime and challenges faced by IHL, along with proposing solutions on how to fill these gaps within the law and ensure implementation.

http://journal.rsilpak.org/wp-content/uploads/2017/06/Protecting-Civilians-during-Violent-Conflict.pdf

Protecting internally displaced persons : the value of the Kampala Convention as a regional example

Adama Dieng. In: International review of the Red Cross, Vol. 99, no. 904, 2017, p. 263-282.

This article examines the value of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) in the general quest for the regional and global protection of internally displaced persons (IDPs). It contends that the absence of a globally binding legal instrument for the protection of IDPs underlines the importance of the Kampala Convention and the possible contribution it can make to global and regional efforts to create a binding legal framework for the protection of IDPs. While recognizing some challenges that may impact the full implementation of the Convention, the article concludes by noting its various positive elements that are invaluable in overall efforts to create a comprehensive global legal framework to enhance protection of IDPs.

https://library.icrc.org/library/docs/DOC/irrc-904-dieng.pdf

The protection of migrants under international humanitarian law

Helen Obregón Gieseken. In: International review of the Red Cross, Vol. 99, no. 904, 2017, p. 121-152.

The movement of migrants across international borders may result in grave humanitarian consequences and protection and assistance needs for those involved. Although many reach their destinations safely, others may find themselves in a country experiencing armed conflict – either because they live there or are travelling through there – and may endure great difficulties and be particularly vulnerable. In these situations, as civilians, migrants are protected under international humanitarian law (IHL) against the effects of hostilities and when in the hands of a party to the conflict. This article will provide an overview of the protection afforded by IHL to migrants as civilians in international and non- international armed conflicts. It will then examine more closely certain particularly relevant rules for the issue of migration, notably those related to the movement of migrants, family unity, and missing and dead migrants. In this way, this article will show that IHL provides important legal protections for migrants finding themselves in situations of armed conflict.

https://library.icrc.org/library/docs/DOC/irrc-904-obregon.pdf

The quest for justice : Joseph Kony and the Lord's Resistance Army

Christopher E. Bailey. In: Fordham international law journal, Vol. 40, issue 2, 2017, p. 247-328. - Cote 342.26/294 (Br.)

This article initially examines whether the Uganda-Lord's Resistance Army ("LRA") conflict is best characterized as a non-international armed conflict within the meaning of the Common Article 3 of the Geneva Conventions and the 1977 Additional Protocol II. This article also raises important questions about how the international community can assist African governments in achieving accountability for jus in bello (war crimes) violations—accountability that would be widely perceived as legitimate by the affected peoples. This article argues that Ugandan criminal law has significant shortcomings that would preclude effective accountability for the full range of offenses. This article further argues that the International Criminal Court ("ICC") cannot provide an effective forum for adjudicating the range of offenses committed in this conflict. This article concludes that the ICC should establish an agreement-based (i.e., a treaty) hybrid tribunal to prosecute war crimes committed over the course of the Uganda-LRA conflict from 1987 to the present.

https://ir.lawnet.fordham.edu/ilj/vol40/iss2/1/

Questioning the utility of the distinction between common articles 2 and 3 of the Geneva Conventions of 1949 since Tadic : a state sovereignty approach

Mikayla Brier-Mills. In: Macquarie law journal, Vol. 17, 2017, p. 17-36. - Cote 345.22/858 (Br.)

The distinction between common articles 2 and 3 of the Geneva Conventions of 1949 is unsupportable in the context of contemporary armed conflict. This article argues that the distinction should be eliminated for policy and legal reasons. The differing protection offered by common article 2, which applies in international armed conflicts, compared to common article 3, which applies in non-international armed conflicts, is outlined in Parts I and II. Part III addresses the landmark Tadic Interlocutory Decision of the International Criminal Tribunal of the Former Yugoslavia ('ICTY'), which acknowledged that there is a trend in international practice to diminish the distinction between common articles 2 and 3. Although the ICTY reasoned on the correctness of the distinction, it did not criticise its legality.

https://www.mq.edu.au/media/images/content-pages/macquarie-law-school/mlj/2017/mikayla-brier-mills-article-vol-2017.pdf

Rape in war : prosecuting the Islamic State of Iraq and the Levant and Boko Haram for sexual violence against women

David Sverdlov. In: Cornell international law journal, Vol. 50, no. 2, Spring 2017, p. 333-359. - Cote 362.9/345 (Br.)

This Note explores legal precedent on prosecuting rape as a weapon of war and recommend whether it is feasible to prosecute ISIL or Boko Haram under Articles VI and VII of the Rome Statute. To do so, this Note relies on the precedents established during the prosecutions of Rwandan and Yugoslavian war criminals. Part II provides a brief overview of ISIL, the Yazidis, and Boko Haram's histories. Part III provides facts on the Rwandan Hutu treatment of female Tutsis and the Bosnian Serb treatment of Bosnian Muslim women during their respective genocides and the legal precedent from the tribunals that dealt with both events. Part IV evaluates the known facts regarding ISIL and Boko Haram under legal precedent and concludes that ISIL leaders can be prosecuted for genocidal rape, but Boko Haram leaders must be prosecuted under different crimes in the Rome Statute. Part V provides suggestions for which militants to charge.

https://www.lawschool.cornell.edu/research/ILJ/upload/Sverdlov-note-final.pdf

(Re)considering gender jurisprudence

Patricia Viseur Sellers. - In: The Oxford handbook of gender and conflict. - Oxford : Oxford University Press, 2018. - p. 211-224. - Cote 362.8/274

The chapter reviews gender jurisprudence in international humanitarian law and international criminal law, and urges a reconsideration of this jurisprudence. It examines aspects of the crime of genocide to illustrate the "narrow" strand of gender jurisprudence focused on sexual violence, as well as a more "panoramic" view that has emerged in recent years. The chapter concludes by moving beyond the binary of the narrow and panoramic views of gender jurisprudence. It argues that gender jurisprudence acts as an independent measure of genocide, war crimes, and crimes against humanity. Such a comprehensive reading of gender jurisprudence provides an analytical tool for practitioners to reconceptualize redress under international criminal law.

Réciprocité et universalité : sources et régimes du droit international des droits de l'homme : mélanges en l'honneur du Professeur Emmanuel Decaux

[Vincent Coussirat-Coustère ... [et al.]]. - Paris : Pedone, 2017. - 1373 p. - Cote 345.1/683

Il est difficile de trouver un angle d'approche pour saisir dans toute leur richesse la carrière et l'œuvre d'Emmanuel Decaux. Toutefois, le thème du droit international des droits de l'homme est un champ qui, plus que tout autre dans le droit international contemporain, a bénéficié du travail et des efforts inlassables du dédicataire de ces Mélanges. De la réciprocité à l'universalité décrit bien l'itinéraire d'un universitaire et d'un acteur attentif aux évolutions du droit international général, gardant comme ligne d'horizon l'idée d'une réciprocité devenant synonyme d'universalité des obligations. Ce volume réunit des contributions de haute qualité relatives à la lutte contre l'impunité, la justice militaire, les disparitions forcées ou portant sur des thèmes moins connus, comme les droits culturels. Plus de quatre-vingt auteurs tentent ainsi d'embrasser les différentes dimensions d'une œuvre foisonnante, traduisant à la fois la curiosité du chercheur et une conscience profonde de la nécessité de l'action, que ce soit à l'OSCE ou aux Nations Unies.

Reconceptualizing individual or unit self-defense as a combatant privilege

E. L. Gaston. In: Harvard national security journal, Vol. 8, issue 2, 2017, p. 283-332. - Cote 345.25/372 (Br.)

In conflicts like those in Afghanistan, Iraq, and other U.S. counterterrorism engagements worldwide, self-defense, and a related concept known as "hostile intent" (used to refer to more ambiguous, distant threats), are used to justify an increasingly large share of uses of force. Although all agree that soldiers have a right to defend themselves in armed conflict, the theoretical origin of this right and its scope are ambiguous. The more pervasive use of these doctrines, untethered to international humanitarian law (IHL), creates ambiguities for soldiers in practice and can undermine IHL accountability. Relying on case studies of four states' practices (United States, United Kingdom, Germany, France) this Article demonstrates how the expanded use of self-defense and hostile intent in a greater number of use-of-force situations without clarifying its relationship with IHL principles has contributed to both overly broad and overly narrow

interpretations in practice. This Article recommends anchoring the right to self-defense in IHL as part of the combatant's privilege.

http://harvardnsj.org/wp-content/uploads/2017/02/Gaston-NSJ-Vol-8.pdf

Remote and autonomous warfare systems : precautions in attack and individual accountability

Ian S. Henderson, Patrick Keane and Josh Liddy. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 335-370. - Cote 345.22/891

The concept of autonomous decision-making by machine to conduct attacks on human beings arouses visceral trepidation for many and has given rise to calls for bans before the technology can be developed. This chapter focuses on the legal dimensions of remote autonomous weapons systems, analyzing how the precautions in attack in Article 57 of Additional Protocol I might apply to such systems and how the persons creating or using such systems may be held accountable under IHL for outcomes of their use.

Remoteness and human rights law

Gloria Gaggioli. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 133-185. - Cote 345.22/891

The legality of remote weapons systems, such as drones and autonomous weapons, is usually discussed through the lens of international humanitarian law (IHL). A less thoroughly discussed topic is whether human rights law (HRL) is relevant and may limit the use of force by drones or autonomous weapons. In that context, two broad sets of questions arise. The first set of questions relates to HRL as a complement to IHL in regulating remote warfare. The second set of questions addresses the relevance of HRL instead of IHL in law enforcement operations. Before discussing these issues, the first section of this chapter is dedicated to the concept of remoteness and to an overview of related practice. The chapter concludes with a critical assessment of the relevance of HRL for addressing the legality and suitability of remote weapons in warfare and law enforcement.

Remoteness and reciprocal risk

Jens David Ohlin. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 15-49. - Cote 345.22/891

The history of modern weaponry involves the construction of the technological capacity to produce lethal results while exposing the operator to the least amount of risk of death or injury. The most recent examples of this phenomenon are three new weapon categories: remotely piloted vehicles (drones), cyber-weapons, and Autonomous Weapons Systems (AWS). This chapter seeks to put these technological developments in historical context and will investigate the moral and legal consequences of every belligerent's desire to reduce risk while maximizing lethality. In short, this chapter will investigate whether reciprocal risk is an essential component of ethical and lawful warfare, whether the technological capacity to produce asymmetrical risk through remoteness is historically novel or continuous, and whether recent advances on that front should be celebrated or criticized.

Rethinking the permissive function of military necessity in internal non-international armed conflict

Kosuke Onishi. In: Israel law review, Vol. 51, issue 2, July 2018, p. 235-259. - Cote 345.22/976 (Br.)

This article advocates limiting the permissive impact of military necessity on the right to life. It has been argued that military necessity justifies deviations from international human rights law

(IHRL) because this body of law is inadequate to deal with the necessities arising out of armed conflict. The article argues that while this rationale is convincing, it should not mean that conduct that is lawful under humanitarian law is necessarily also lawful under human rights law. The article concludes by exploring the potential for IHRL to play a role in tempering superfluous violence in NIAC that is similar to that which jus ad bellum plays in international conflict.

Returns of internally displaced persons during armed conflict : international law and its application in Colombia

by David James Cantor. - Leiden ; Boston : Brill ; Nijhoff, 2018. - XXII, 651 p. - Cote 365/530

This book presents a detailed study of the return of conflict-affected internally displaced persons (IDPs) under international law. Part I of the book undertakes a wide-ranging analysis of the scope of protection under existing international law for IDP returns. Part II addresses the implementation of the international framework in practice through a case study of the national law, policy and practice of IDP returns during the most intense ten years of the armed conflict in Colombia. Part III, the conclusion, draws together these different strands of analysis.

The right not to be displaced by armed conflict under international law

Elena Katselli Proukaki. - In: Armed conflict and forcible displacement : individual rights under international law. - London ; New York : Routledge, 2018. - p. 1-45. - Cote 365/528

Forcible displacement caused by armed conflict and serious human rights violations presents a significant moral and legal challenge that the existing international legal standards remain inadequate to fully address. Importantly, the notion of an individual right not to be displaced under international law has been neglected. This chapters addresses this gap by establishing that contemporary international law recognises an individual right to be protected from forced displacement. It aims to show that such a right, albeit not absolute, has its grounding in international human rights law, international humanitarian law and international criminal law and is now well embedded in international customary law.

The right to return home and the right to property restitution under international law

Elena Katselli Proukaki. - In: Armed conflict and forcible displacement : individual rights under international law. - London ; New York : Routledge, 2018. - p. 46-83. - Cote 365/528

This chapter aims to demonstrate that the right to return home and the right to property restitution are well established under conventional as well as customary international law and that such rights, which extend to situations of mass displacement, are not dependent on nationality. It discusses how these rights are protected under both international humanitarian law and international human rights law, and how these two fields of law interrelates in that domain.

Robots and respect : assessing the case against autonomous weapon systems

Robert Sparrow. In: Ethics & international affairs, Vol. 30, no. 1, 2016, p. 93-116. - Cote 341.67/854 (Br.)

There is increasing speculation within military and policy circles that the future of armed conflict is likely to include extensive deployment of robots designed to identify targets and destroy them without the direct oversight of a human operator. The aim in this paper is twofold. First, it argues that the ethical case for allowing autonomous targeting, at least in specific restricted domains, is stronger than critics have typically acknowledged. Second, it attempts to defend the intuition that, even so, there is something ethically problematic about such targeting. The author argues that while the theoretical foundations of the idea that AWS are weapons that are “evil in themselves”

are weaker than critics have sometimes maintained, they are nonetheless sufficient to demand a prohibition of the development and deployment of such weapons.

https://doi.org/10.1017/S0892679415000647

The role of customary principles of international humanitarian law in environmental protection

Viola Vincze. In: Pécs journal of international and european law, Vol. 2017/2, p. 19-39. - Cote 358/165 (Br.)

This essay attempts to introduce and analyse the contemporary problems deriving from applying the customary principles of International Humanitarian Law (IHL) to environmental protection. Witnessing the environment degradation caused by conflicts, there is an unquestionable antagonism between the seemingly adequate provisions protecting the environment and their practical implementation. IHL sets forth an unrealistically high threshold of destruction that calls for the rationalisation of legal and environmental arguments. This article aims to uncover the gaps and weaknesses in the application of the relevant principles and their assessment is complemented with a short overview of the UN Work Program concerning reports providing another interpretation of the applicable IHL principles and with the introduction of NATO standards and doctrines specifically aiming at environmental protection during operations.

http://ceere.eu/pjiel/wp-content/uploads/2018/01/02.pdf

The rule of surrender in international humanitarian law

Russell Buchan. In: Israel law review, Vol. 51, issue 1, 2018, p. 3-27. - Cote 362/140 (Br.)

Under international humanitarian law it is prohibited to make the object of attack a person who has surrendered. This article explores the circumstances in which the act of surrender is effective under international humanitarian law and examines, in particular, how surrender can be achieved in practical terms during land warfare in the context of international and non-international armed conflict. First, the article situates surrender within its broader historical and theoretical setting, tracing its legal development as a rule of conventional and customary international humanitarian law and arguing that its crystallisation as a law of war derives from the lack of military necessity to directly target persons who have placed themselves outside the theatre of armed conflict. Second, after a careful examination of state practice, the article proposes a three-stage test for determining whether persons have surrendered under international humanitarian law.

https://library.ext.icrc.org/library/docs/ArticlesPDF/45055.pdf

Russia, Chechnya, and the Geneva Conventions, 1994-2006 : norms and the problem of internalization

Mark Kramer. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 174-193. - Cote 345.24/407

This chapter discusses Russia's position vis-à-vis the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 and the implications for the two wars fought by Russian troops against separatist guerrillas in Chechnya in 1994–2006. The chapter begins by tracing the Soviet Union's policies toward the Conventions and Additional Protocols and the effects (or lack thereof) of these documents on Soviet military operations both abroad and at home from the late 1940s through the early 1990s. The experience with the Conventions and Additional Protocols during the Soviet era has helped to shape the policies of the Russian Federation, which, as the legal successor state to the USSR, inherited the Soviet government's obligations under international treaties and agreements. The chapter highlights the changes and continuities in post-Soviet Russia's position and then uses the recent Russian-Chechen wars as a case study.

The silences in the rules that regulate women during times of armed conflict

Judith Gardam. - In: The Oxford handbook of gender and conflict. - Oxford : Oxford University Press, 2018. - p. 35-47. - Cote 362.8/274

This chapter describes the history of the law of armed conflict and its relevance to women. The law of armed conflict has not been heavily scrutinized by feminists but its provisions offer feminists many challenges. This chapter explores how, despite theoretically seeming to benefit women, these provisions from assumptions around combatancy status to civilian protection depict a gendered vision of women, reinforce destructive gender stereotypes, and fail to address systemic gender discrimination. The chapter concludes by exploring feminist encounters with the law of armed conflict and the extent to which protections for women in situations of armed conflict have improved over time. It also describes challenges that lie ahead and provides suggestions for feminist scholarship to probe further.

SIPRI compendium on article 36 reviews

Vincent Boulanin and Maaike Verbruggen. In: SIPRI background paper, December 2017, 27 p. - Cote 341.67/864 (Br.)

Article 36 of the 1977 Additional Protocol I to the 1949 Geneva Conventions imposes a practical obligation on states to review the legality of all new weapons, means or methods of warfare before they are used in an armed conflict. To encourage more widespread compliance with the obligation of Article 36 and support confidence building in the area of legal reviews, SIPRI has developed a compendium of existing national Article 36 review procedures. The compendium describes how the review process is conducted in the following countries: Belgium, Germany, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom and the United States. The country presentations are based on responses to a questionnaire that SIPRI submitted to relevant authorities. Each presentation summarizes the format and responsibilities of the reviewing authority, how states interpret the terms of reference and legal obligations of Article 36, and the methods employed to conduct the review.

https://www.sipri.org/sites/default/files/2017-12/sipri_bp_1712_article_36_compendium_2017.pdf

Soft law instruments regulating armed conflict : are international human rights standards reflected ?

Peter Vedel Kessing. In: Human rights and international legal discourse, Vol. 12, no. 1, 2018, p. 79-98.

The article describes soft law instruments regulating armed conflict and explores to what extent international human rights standards are reflected in them. It concludes that the majority of the existing soft law instruments deliberately exclude international human rights standards and hence seem to reflect an outdated legal position. Soft law instruments providing operational guidance to soldiers in armed conflict should reflect all relevant legal sources applicable to armed conflict, including international human rights law.

Some legal and operational considerations regarding remote warfare : drones and cyber warfare revisited

Terry D. Gill, Jelle van Haaster and Mark Roorda. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 298-331. – Cote 345.22/891

Weapons systems which allow the selection and engagement of targets by an operator far removed from the traditional battlespace are a relatively new phenomenon in warfare. Such weapons and techniques have in common that they need not be and usually are not controlled from the traditional area of operations, and are capable of being used against targets which are themselves not necessarily located on or near a 'hot battlefield'. In this chapter, some of the principal operational uses and possibilities of the use of drones and cyber warfare, two types of remote

warfare techniques and weapons, are presented. Their main characteristics, uses and limitations are set out. Some of the main legal challenges relating first to the use of drones and then in relation to cyber warfare are then discussed in two separate sections.

Some reflections on the theory of sources of international law : re-examining customary international law : book review essay

Ezequiel Heffes. In: Israel law review, 2018, p. 1-18. - Cote 345/776 (Br.)

This review explores certain challenges related to the notion of customary international law. The legal nature, its applicability and principles regulating customary international law are addressed in the book under review (Brian D Lepard (ed), Reexamining Customary International Law (Cambridge University Press 2017)) through several topical essays. The chapters offer a comprehensive analysis of these lawmaking processes and the challenges they portray from various perspectives and in various fields, such as: What is customary international law and why is it law? Is it law because it reflects a 'global legislative' model? What is the current value of the persistent objector theory? Is the two-element definition of customary international law still applicable? By meticulously addressing these and other inquiries, the book presents novel arguments and represents a stimulating addition to the literature on sources of international law.

The strategic implications of lethal autonomous weapons

Michael W. Meier. - In: Research handbook on remote warfare. - Cheltenham ; Northampton : E. Elgar, 2017. - p. 443-478. - Cote 345.22/891

This chapter focuses on the strategic and national security implications that have been raised with respect to Lethal Autonomous Weapons Systems (LAWS) by looking at four commonly cited concerns: (1) LAWS, if developed and used, will lower the threshold for armed conflict; (2) LAWS will have a negative impact on global and regional security through unintended engagements; (3) the use of LAWS will lead to more asymmetric warfare, including resorting to possible terrorist attacks; and (4) the development of LAWS will proliferate and could cause an arms race as states will feel compelled to develop or acquire them in order to maintain regional stability and balance of power. Finally, this chapter will propose actions the United States should take internationally within the Convention on Certain Conventional Weapons (CCW) framework, as well as on a national basis to mitigate these strategic stability concerns.

The struggle to fight a humane war : the United States, the Korean war, and the 1949 Geneva Conventions

Sahr Conway-Lanz. - In: Do the Geneva Conventions matter ?. - Oxford : Oxford University Press, 2017. - p. 69-104. - Cote 345.24/407

The Korean War demonstrated the serious problems that the United States had adhering to the new 1949 Geneva Conventions and the severely limited protections that these new treaties provided. The protections for war victims were undermined both by serious gaps in the treaties that failed to provide much safety from bombing to civilians and by US deviations from the agreements in the handling of refugees and prisoners of war. However, Americans did not discard the agreements in the wake of their troubled Korean War experiences. Instead, the war helped to legitimize and lay the foundation for the further internalization of the new laws through their formal implementation, the public controversy they generated, and a boomerang effect of atrocity accusations. Despite failing to provide much protection for Korean War victims, the treaties were part of a broader international consensus-building process that helped to spread humanitarian norms.

Suspected war criminals in Australia : law and policy

Gideon Boas and Pascale Chifflet. In: Melbourne university law review, Vol. 40, no. 1, 2016, p. 46-86. - Cote 344/728 (Br.)

The current conflicts in Syria and Iraq have for the first time in many years brought to public consciousness the issue of war criminals in Australia. Australia has historically dealt with this issue in a reactive fashion and with varying success, through the domestic prosecution of offenders, immigration screening procedures and extradition. These approaches have, however, generally been incongruent in theory and application. This article examines the issue of war criminals in Australia and demonstrates that Australia has an incomplete and largely dormant enforcement apparatus, a problematic immigration regime and a poor record of extraditing war criminals. Australia is in need of a coordinated and coherent policy and legal responses that re-emphasise the role of domestic investigations and prosecutions, if it is to rise to the challenge of 'putting an end to impunity' and assert itself as a nation committed to international criminal justice.

https://ssrn.com/abstract=2839658

Targeted capture

Alexander K.A. Greenawalt. In: Harvard international law journal, Vol. 59, no. 1, Winter 2018, p. 1-57. - Cote 345.25/376 (Br.)

This article confronts one of the most difficult and contested questions in the debate about targeted killing that has raged in academic and policy circles over the last decade. Suppose that, in wartime, the target of a military strike may readily be neutralized through nonlethal means such as capture. Do the attacking forces have an obligation to pursue that nonlethal alternative? The Article defends the duty to employ less restrictive means ("LRM") in wartime, and it advances several novel arguments in defense of that obligation. The author argues that the most plausible LRM obligation exists as a limitation embedded within the necessity principle itself. Indeed, the principle of military necessity supports not one, but two, related LRM restraints. The first restraint prohibits the killing of combatants for reasons unrelated to the pursuit of military advantage. The second restraint demands that lethal force benefit from a cognizable expectation of military advantage. The article develops and defends these claims and anticipates objections.

www.harvardilj.org/wp-content/uploads/HLI105_crop-1.pdf

Targeting, gender, and international posthumanitarian law and practice : framing the question of the human in international humanitarian law

Matilda Arvidsson. In: Australian feminist law journal, Vol. 44, issue 1, 2018, p. 9-28. - Cote 345.25/377 (Br.)

Focusing on targeting law and practice in contemporary high-tech warfare, this article brings international humanitarian legal scholarship into conversation with posthumanist feminist theory for the purpose of rethinking international humanitarian law (IHL) in terms of the posthuman condition. I suggest that posthumanist feminist theory – in particular Rosi Braidotti's scholarship – is helpful to the IHL scholar for understanding and describing high-tech warfare that recognises the 'targetable body' as both material and digital. Posthumanist feminist theory, moreover, avails us of a much-needed critical position from which to reframe the question of what the 'humanitarian' aim in IHL is: who, and what, can the 'human' of this humanitarianism be? This article sets out the framework for a posthumanitarian international law as an ethical-normative order worthy, as Braidotti puts it, of the complexity of our times.

https://doi.org/10.1080/13200968.2018.1465331

The targeting of non-state-affiliated civilians in cyberspace : lagging LOAC principles cause uncertainty on both sides

James Emory Tucker. In: North Carolina journal of international law, Vol. 42, issue 4, summer 2017, p. 1013-1059. - Cote 348/142 (Br.)

The Law of Armed Conflict ("LOAC") has evolved over the past century and a half to protect civilians from the harms caused by war as well as to put all parties on notice as to their expected

conduct. Civilians, like any other group, are not prohibited from directly participating in hostilities, but they lose their protection from being directly targeted for such time as they chose to do so. This protection for civilians is easier understood as it is applied to the physical domain, for which it was created. The cyber domain is vastly different. Accordingly, civilians and States who are party to international armed conflicts are left to apply their own understanding of how LOAC principles should be applied to the cyber domain. This article analyses legal questions surrounding civilians participating in cyber hostilities.

https://library.ext.icrc.org/library/docs/ArticlesPDF/44999.pdf

Terrorist or armed opposition group fighter ? : the experience of UK courts and the implications for public international law

Alexander Murray. In: International community law review Vol. 20, no. 3-4, 2018, p. 281-310.

The aim of this article is to explore British courts' jurisprudence relating to the actions of those who have committed acts abroad which, in some circumstances, might be considered terrorism. It does this by identifying three different types of attacks: against civilians, against UN-mandated forces and against another State's military forces. What emerges from this analysis is that British courts readily classified the first two forms of attack as terrorism while remaining flexible in respect of the third. The article draws on domestic law concerning terrorism and also that which relates to immigration and asylum claims. From this it is apparent the courts have used a complex patchwork of international and domestic law to distinguish between terrorism and 'legitimate armed attacks'. This is significant because the discussion of the issues by the courts might be of assistance in clarifying and developing the distinction in international law.

Two humanitarianisms in Ambrose Bierce's 'an occurrence at owl creek bridge'

John Fabian Witt. - [S.l.] : [Yale Law School], [2018]. - 29 p. - Cote 345.22/983 (Br.)

The short story “An Occurrence at Owl Creek Bridge” by Union Army veteran Ambrose Bierce — long a staple of high school curricula and the subject of music videos, television, and film — is not typically thought of as a study in the dilemmas of humanitarian law. But it is. It depicts an execution for violation of the laws of war. Even better, the text embodies a central tension in the laws of war. On the one hand stands a sentimental humanitarianism that aims to minimize the human suffering of war; Henri Dunant’s book, “A Memory of Solferino” popularized this stance and helped establish the ICRC in 1863. On the other hand, a righteous humanitarianism chafes at the constraints that sentimental humanitarianism places on the pursuit of justice. Francis Lieber, whose code of rules for the Union Army was published a year after Dunant’s book, embrace the righteous justice of particular causes. Bierce’s “Owl Creek” straddles the two planks of the modern laws of war.

http://dx.doi.org/10.2139/ssrn.3146444

U.S.-hired private military and security companies in armed conflict : indirect participation and its consequences

Alice S. Debarre. In: Harvard national security journal, Vol. 7, issue 2, 2016, p. 437-468. - Cote 345.29/302 (Br.)

As private military and security companies are increasingly hired to perform a wide variety of tasks in times of armed conflict, the importance of determining how IHL applies to their employees cannot be understated. Since the vast majority of these employees are civilians, one important legal question is whether they are directly participating in hostilities and are therefore legitimate targets. This article looks at the contractor activities authorized by U.S. law and policy and analyzes them using the narrow interpretation of direct participation in hostilities developed by the ICRC. This interpretation provides protection to most of the private military and security employees the U.S. hires, as many of their activities fall outside this narrow conception of direct

participation. This article argues that using this narrow approach would provide civilian contractors with a material increase in protection on the battlefield. It also endeavors to demonstrate that the way U.S. law and policy currently limits contractor activities insufficiently protects civilian contractors.

http://harvardnsj.org/wp-content/uploads/2016/06/Debarre-FINAL.pdf

Understanding international humanitarian law : a primer on IHL and Pakistan's domestic law

Maira Sheikh and Moghees Uddin Khan. - [S.l.] : Research Society of International Law Pakistan, [2016]. - Cote 345.2/1045 (Br.)

This document on international humanitarian law (IHL) is a selective examination of the law of armed conflict in a context most relevant to Pakistan. It was created to assist domestic stakeholders (i.e. policymakers, members of the judiciary, members of the Armed Forces, law enforcement, academics, etc.) to develop both an understanding and appreciation of IHL. The intent is to promote Pakistan's compliance with its obligations under IHL and to provide clearer guidelines for the Armed Forces and Civil Armed Forces engaged in military and law enforcement operations. This document reflects not the entirety of applicable IHL, but rather a limited selection of relevant legal principles and customary rules. As a whole, this document is intended to be a user-friendly introduction meant to build the capacity of a domestic audience. Certain provisions of domestic law were incorporated to ease apprehensions regarding the compatibility of domestic law with IHL principles.

http://dx.doi.org/10.2139/ssrn.2958928

Use of deadly force by peacekeepers operating outside of armed conflict situations : what laws apply ?

Siobhán Wills. In: Human rights quarterly : a comparative and international journal of the social sciences, humanities, and law, Vol. 40, no. 3, August 2018, p. 663-702.

The United Nations has not published any formal statement as to the legal framework governing peacekeepers' use of force when they are not engaged as combatants in an armed conflict. However, the United Nations has developed a working doctrine that it applies to all Chapter VII mandated missions, regardless of whether they are deployed into situations of armed conflict or not. This article analyzes this doctrine and its effects in practice, drawing on interviews with UN Legal Officers, relevant United Nations and human rights documents, and on information learned in the course of field research on the impact of UN operations to combat criminal violence in Haiti.

The vanishing act : punishing and deterring perpetrators through the concurrent application of diverse legal regimes to enforced disappearances

Danushka S. Medawatte. In: Florida journal of international law, Vol. 29, issue 2, August 2017, p. 227-251. - Cote 364/165 (Br.)

This paper assesses the possibility of punishing and deterring perpetrators of enforced disappearances by drawing on diverse legal regimes, such as international humanitarian law (IHL), international human rights law (IHRL) and international criminal law (ICL). To this effect, a preliminary inquiry is made concerning whether enforced disappearances have been used as a method of warfare and whether these crimes can be regarded as continuing offences. The author also analyses enforced disappearances committed by private persons and non-state actors. He discusses enforced disappearances as a crime against humanity and looks at how universal jurisdiction can be invoked to try cases of enforced disappearances.

War crimes trials and investigations : a multi-disciplinary introduction

Jonathan Waterlow and Jacques Schuhmacher. - [Basingstoke ; New York] : Palgrave Macmillan, 2018. - XIV, 338 p. - Cote 344/731

This book represents the first multi-disciplinary introduction to the study of war crimes trials and investigations. It introduces readers to the numerous disciplines engaged with this complex subject, including: Forensic Anthropology, Economics and Anthropometrics, Legal History, Violence Studies, International Criminal Justice, International Relations, and Moral Philosophy. Case studies illustrate how the respective disciplines work in practice, including examples from the Allied Hunger Blockade, WWII, the Guatemalan and Spanish Civil Wars, the Former Yugoslavia, and Uganda. Including bibliographical essays to offer readers crucial orientation when approaching the specialist literature in each case, this edited collection equips readers with what they need to know in order to navigate a complex, and until now, deeply fragmented field.

War, law and humanity : the campaign to control warfare, 1853-1914

James Crossland. - London [etc.] : Bloomsbury Academic, 2018. - XX, 256 p. - Cote 345.22/981

This book tells the story of the transatlantic campaign to either mitigate the destructive forces of the battlefield, or prevent wars from being waged altogether, in the decades prior to the disastrous summer of 1914. Starting with the Crimean War of the 1850s, the author traces this campaign to control warfare from the scandalous barracks of Scutari to the shambolic hospitals of the American Civil War, from the bloody sieges of Paris and Erzurum to the combative conference halls of Geneva and The Hague, uncovering the intertwined histories of a generation of humanitarians, surgeons, pacifists and utopians who were shocked into action by the barbarism and depravities of war. By examining the fascinating personal accounts of these figures, the author illuminates the complex motivations and influential actions of those committed to the campaign to control war, demonstrating how their labours built the foundation for the ideas that soldiers need caring for, weapons need restricting and wars need rules.

Wars of law : unintended consequences in the regulation of armed conflict

Tanisha M. Fazal. - Ithaca ; London : Cornell University Press, 2018. - XII, 327 p. - Cote 345.24/411

In Wars of Law, Tanisha M. Fazal assesses the unintended consequences of the proliferation of the laws of war for the commencement, conduct, and conclusion of wars over the course of the past one hundred fifty years. By using the laws of war strategically, Fazal suggests, belligerents in both interstate and civil wars relate those laws to their big-picture goals. In Wars of Law, we learn that, as codified IHL proliferates and changes in character—with an ever-greater focus on protected persons—states fighting interstate wars become increasingly reluctant to step over any bright lines that unequivocally oblige them to comply with IHL. On the other hand, Fazal argues, secessionists fighting wars for independence are more likely to engage with the laws of war because they have strong incentives to persuade the international community that, if admitted to the club of states, they will be good and capable members of that club. Why have states stopped issuing formal declarations of war? Why have states stopped concluding formal peace treaties? Why are civil wars especially likely to end in peace treaties today? Addressing such basic questions about international conflict, Fazal provides a lively and intriguing account of the implications of the laws of war.

Wartime sexual violence at the international level : a legal perspective

by Caterina E. Arrabal Ward. - Leiden : Brill Nijhoff, 2018. - VII, 262 p. - Cote 362.9/347

In Wartime Sexual Violence at the International Level: A Legal Perspective Dr. Caterina Arrabal Ward discusses the understanding of wartime sexual violence by the international tribunals and argues that wartime sexual violence often takes place without the explicit purpose to destroy a community or population and is not necessarily a strategic choice. This research suggests that a

more focused approach based on a much clearer definition of these crimes would help to remedy deficiencies at the different stages of international justice in relation to these crimes.

Wartime sexual violence : from silence to condemnation of a weapon of war

Kerry F. Crawford. - Washington, DC : Georgetown University Press, 2017. - X, 214 p. - Cote 362.9/346

Conflict-related sexual violence has transitioned rapidly from a neglected human rights issue to an unambiguous security concern on the agendas of powerful states and the United Nations Security Council. Through interviews and primary-source evidence, the author investigates the reasons for this dramatic change. Views about wartime sexual violence began changing in the 1990s as a result of the conflicts in the former Yugoslavia and Rwanda and then accelerated in the 2000s. Three case studies—the United States' response to sexual violence in the Democratic Republic of Congo, the adoption of UN Security Council Resolution 1820 in 2008, and the development of the United Kingdom's Preventing Sexual Violence in Conflict Initiative—illustrate that use of the weapon of war frame does not represent pure co-optation by the security sector. Rather, well-placed advocates have used this frame to advance the antisexual violence agenda.

What does the jurisdictional hurdle under international human rights law mean for the relationship between international human rights law and international humanitarian law ?

Ka Lok Yip. In: Human rights and international legal discourse, Vol. 12, no. 1, 2018, p. 99-119.

With increasing acceptance of the application of international human rights law ('IHRL') in armed conflicts, the early focus on 'jurisdiction' as a potential limit to applying IHRL extra-territorially has shifted to the relationship between IHRL and international humanitarian law ('IHL'). This article examines two competing conceptions of jurisdiction, based respectively on factual control and normative legitimacy, to examine what the jurisdictional hurdle under IHRL means for the relationship between IHRL and IHL. It argues that while control-based jurisdiction is theoretically under-developed, legitimacy-based jurisdiction constricts our vision of human rights and blinds us to the many non-sovereign actors holding structural power over lives in armed conflicts. It then proposes a reconceptualisation of 'jurisdiction' as structural power to reclaim the ambit of IHRL as demanding the transformation of institutions, sovereign or otherwise, so as to create the necessary structural conditions for the fuller enjoyment of human rights.

When terrorists govern : protecting civilians in conflicts with state-building armed groups

Mara R. Revkin. In: Harvard national security journal, Vol. 9, issue 1, 2018, p. 100-145 : tabl.. - Cote 345.29/320 (Br.)

The emergence of terrorist groups engaging in the dual functions of warfare and governance necessitates the implementation of a new targeting doctrine. Existing counter-terror targeting doctrines, notably U.S. counter-terrorism policies, have resulted in the death of civilians and destruction of objects, which ultimately implicates important international humanitarian law considerations. The author explores the consequences of the use of the current targeting doctrine and provides recommendations that promote greater adherence to international humanitarian law. This article is supported by archival Islamic State documents, social media data generated by users in or near Islamic State-controlled areas of Syria and Iraq, interviews with former Islamic State combatants and civilian employees, and original data on the targeting of 11 different "zakat" offices.

https://library.ext.icrc.org/library/docs/ArticlesPDF/45057.pdf

Whose armed conflict ? : which law of armed conflict ?

Adil Ahmad Haque. In: Georgia journal of international and comparative law, Vol. 45, no. 3, Spring 2017, p. 475-493.

When does an armed conflict begin? When does the law of armed conflict apply? It depends. There are two kinds of armed conflict and two laws of armed conflict: international armed conflicts (IACs) between states and non-international armed conflicts (NIACs) between states and organized armed groups or between such groups. This distinction matters because the law of IAC differs from the law of NIAC in certain important respects. Is the United States in an IAC with Syria, a NIAC with Daesh, or both? These are the types of questions this short article addresses. Its point of departure is the much-discussed 2016 Commentary on the First Geneva Convention recently released by the International Committee of the Red Cross (ICRC). This is as it should be, since the modern distinction between IAC and NIAC largely originates with Common Articles 2 and 3 of the Geneva Conventions of 1949.

Why a president cannot authorize the military to violate (most of) the law of war

John C. Dehn. In: William and Mary law review, Vol. 59, issue 3, 2018, p. 813-896. - Cote 345.24/413 (Br.)

This article examines whether a President has the power to order or authorize the military to violate international humanitarian law. Its focus is the extent to which Congress requires the U.S. military to comply with the law of war in its disciplinary code, the Uniform Code of Military Justice (UCMJ). It clarifies how Article 18 of the UCMJ empowers military criminal courts to try and punish not only conduct denominated a “war crime” by international law but also any other conduct for which the law of war permits punishment by military tribunal. Punishable conduct under Article 18 includes any law of war violation that entails or results in a criminal offense under the UCMJ. This article then explains why this execution of the law of war in the UCMJ limits a President’s authority as Commander-in-Chief: a President does not possess constitutional power to override congressional regulation of the military, particularly in matters of military discipline.

https://scholarship.law.wm.edu/wmlr/vol59/iss3/3/

Wounded combatants, military medical personnel, and the dilemma of collateral risk

Geoffrey Corn and Andrew Culliver. In: Georgia journal of international and comparative law, Vol. 45, no. 3, Spring 2017, p. 445-473.

This Article outlines an existing interpretive conflict regarding the extension of a proportionality obligation to commanders where an attack may present risk to wounded and sick member of the armed forces, military medical units and facilities, as well as military medical and religious personnel. Particular attention is directed at the military wounded and sick, as this category is specifically addressed by both parties — the ICRC 2016 Commentary to the First Geneva Convention, and the U.S. Department of Defense 2015 Law of War Manual — of the interpretive divide. This Article insists that both approaches offered by these particular sources are defective for being either cavalier with the extension of IHL, or dismissive of humanitarian concerns. This Article concludes by acknowledging an alternative approach, the Martens Clause, which by its basic nature provides both a reasoned method of addressing the humanitarian concerns of protected the wounded and sick members of the armed forces while remaining rooted in substantive IHL.

‘Yes, I do’: binding armed non-state actors to IHL and human rights norms through their consent

Annyssa Bellal and Ezequiel Heffes. In: Human rights and international legal discourse, Vol. 12, no. 1, 2018, p. 120-136.

In the last few decades, the role and status of armed non-state actors (ANSA) have become essential topics of analysis and discussion in order to better understand current international

humanitarian law (IHL) and international human rights law (IHRL) dynamics. One issue is related to the reasons why ANSAs are bound by international law. A classical approach to the traditional theory of sources of international law relies on the consent given by States to be bound by an international rule. When dealing with ANSAs, however, the reasons why they are obligated by both IHL and IHRL lie beyond merely accepting the existence of their obligations. While some views take into account their consent, others are based on their relationship with territorial States and the rules previously accepted by States' authorities. Implementing one or the other is not merely an intellectual exercise, and which alternative is taken will certainly have a direct impact on the effectiveness of international law as perceived by ANSAs.

Your country, my rules : can military occupations create successful transitions ?

Alonso Gurmendi Dunkelberg. In: Georgetown journal of international law, Vol. 46, issue 4, 2015, p. 979-1007. - Cote 351/141 (Br.)

This paper argues against the idea that successful transitions can be created in the context of transformative belligerent occupations. It explains that given the prevailing interests of occupying powers and their tendency to ignore or underestimate the needs and political participation of the local population in the transition process, military occupations are ill-suited for applying precepts of transitional justice. Instead, it calls for the implementation of either international or multilateral approaches to transition processes in times of occupation, both in the form of international administration of territories or the operationalization of good practices and jus post bellum concepts. In the end, however, the paper recognizes that the political situation in today's world makes these alternatives difficult to implement in practice, even if they are desirable lege ferenda.

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