

# BIBLIOGRAPHY

## 1st Trimester 2014

### 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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International Committee Of The Red Cross  
Library and Public Archives  
19, avenue de la Paix  
1202 Geneva  
Tel: +41-22-730-2030  
Email: [library@icrc.org](mailto:library@icrc.org)  
April 2014

# Table of Content

TABLE OF CONTENT .....	2
INTRODUCTION .....	1
I. General issues .....	3
II. Types of conflicts .....	4
III. Armed forces / Non-state armed groups.....	8
IV. Multinational forces .....	9
V. Private entities .....	10
VI. Protection of persons.....	11
VII. Protection of objects .....	11
VIII. Detention, internment, treatment and judicial guarantees .....	13
IX. Law of occupation.....	14
X. Conduct of hostilities.....	15
XI. Weapons.....	18
XII. Implementation .....	19
XIII. International human rights law .....	22
XIV. International criminal law.....	24
XV. Contemporary challenges.....	28
XVI. Countries/Regions.....	30
Afghanistan.....	30
Australia .....	31
Belgium.....	31
Cambodia .....	31
Chechnya .....	31
Colombia.....	31
Cuba .....	32
Democratic republic of the congo.....	32
European union .....	32
France.....	32
Georgia .....	33
Hong kong.....	33
Iraq .....	33
Ireland .....	33
Israel .....	33
Israel – Palestine .....	34

Japan .....	35
Kenya .....	35
Lebanon .....	35
Libya .....	35
Malaysia .....	35
Mali .....	35
Netherlands .....	36
Norway .....	36
Pakistan .....	36
Russian federation .....	36
Saudi arabia .....	36
Serbia .....	36
Sierra leone .....	36
South africa .....	37
Sri lanka .....	37
Switzerland .....	37
Syria .....	37
Turkey .....	38
Uganda .....	38
United states .....	38
Yugoslavia .....	39
<b>ALL WITH ABSTRACTS .....</b>	<b>40</b>

# 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 (<http://www.cid.icrc.org/library/>) one of the most exhaustive resources for IHL research.

The Library is open to the public from Monday to Thursday (9 a.m. to 5 p.m. non-stop) and on Friday (9 a.m. to 1 p.m.).

## 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. At the end of the bibliographic heading, "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](mailto:library@icrc.org)

### Chronology

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

### Contents

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

### Sources

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

### Disclaimer

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

## Subscription and feedback

Please send your request for subscription or feedback to [library@icrc.org](mailto: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)

## Beginning of IHL application : overview and challenges

Louise Arimatsu. In: Collegium No 43, automne 2013, p. 71-82. - Cote 345.2/948  
<http://tinyurl.com/pslzutb>

## Bringing the commentaries on the Geneva Conventions and their Additional Protocols into the twenty-first century

Jean-Marie Henckaerts. In: International review of the Red Cross Vol. 94, no. 888, Winter 2012, p. 1551-1555  
<http://www.cid.icrc.org/library/docs/DOC/irrc-888-henckaerts.pdf>

## Le concept de conflit armé : enjeux et ambiguïtés

Eric David. - Bruxelles : Bruylant, 2013. - p. 55-71. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

## Droit international général et droit international humanitaire : retour aux sources

Vincent Chetail. - Bruxelles : Bruylant, 2013. - p. 13-51. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

## End of IHL application

Marko Milanovic. In: Collegium No 43, automne 2013, p. 83-94. - Cote 345.2/948  
<http://tinyurl.com/37965-Milanovic>

## The geographic reach of IHL : the law and current challenges

Tristan Ferraro. In: Collegium No 43, automne 2013, p. 105-113. - Cote 345.2/948  
<http://tinyurl.com/37967-Ferraro>

## Is there a need for clarification of the temporal scope of IHL ?

David Frend. In: Collegium No 43, automne 2013, p. 95-100. - Cote 345.2/948  
<http://tinyurl.com/37966-Frend>

## Permanence et mutation du droit des conflits armés

sous la dir. de Vincent Chetail. - Bruxelles : Bruylant, 2013. - 683 p. - Cote 345.2/945

## The practical guide to humanitarian law

Françoise Bouchet-Saulnier ; ed. and transl. by Laura Brav and Camille Michel. - Lanham [etc.] : Rowman and Littlefield, 2014. - 797 p. - Cote 345.2/635 (2014)

## Pray fire first Gentlemen of France : has 21st century chivalry been subsumed by humanitarian law ?

Evan J. Wallach. In: Harvard national security journal Vol. 3, issue 2, 2013, p. 431-469. - Cote 345.2/944 (Br.)  
<http://harvardnsj.org/wp-content/uploads/2013/02/Vol.3-Wallach-FINAL.pdf>

**Scope of application of international humanitarian law : proceedings of the 13th Bruges Colloquium, 18-19 October 2012 = Le champ d'application du droit international humanitaire : actes du 13e Colloque de Bruges, 18-19 octobre 2012**

CICR, Collège d'Europe. In: Collegium No 43, automne 2013, 155 p. - Cote 345.2/948

<http://tinyurl.com/37933-Bruges>

**The war report : 2012**

ed. by Stuart Casey-Maslen. - Oxford : Oxford University Press, 2013. - 499 p. – Cote 355/1018

## II. Types of conflicts

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

**Al Qaeda in the Arabian peninsula through the framework of international humanitarian law**

Simon Henderson. In: Al Nakhlah : online journal on Southwest Asia and Islamic civilization Spring 2012, 12 p. - Cote 303.6/17 (Br.)

<http://tinyurl.com/otqyq6z>

**An assessment of jus in bello issues concerning computer network attacks : a threat reflected in national security agenda**

Kalliopi Chainoglou. In: Romanian journal of international law Vol. 12, 2010. - Cote 345.25/294 (Br.)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1809127](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1809127)

**Attacked by our own government : does the War Powers Resolution or the law of armed conflict limit cyber strikes against social media companies ?**

Harry P. Koulos. In: The Georgetown journal of law and public policy Vol. 11, 2013, p. 705-736. - Cote 345.26/242 (Br.)

**Attacks in air and missile warfare**

by Arne Willy Dahl. In: Israel yearbook on human rights Vol. 43, 2013, p. 215-261

**Belligerent reprisals in non-international armed conflicts**

Veronika Bílková. In: International and comparative law quarterly Vol. 63, part 1, January 2014, p. 31-65

Only from ICRC headquarters: <http://dx.doi.org/10.1017/S002058931300047X>

**The boundaries of the battlefield : a critical look at the legal paradigms and rules in countering terrorism**

Jessica Dorsey and Christophe Paulussen. - The Hague : International Centre for Counter-Terrorism, April 2013. - 25 p. - Cote 303.6/32 (Br.)

<http://tinyurl.com/37917-Dorsey>

**Contemporary views on the lawfulness of naval blockades**

Martin David Fink. In: Aegean review of the law of the sea and maritime law Vol. 1, Issue 2, October 2011, p. 191-215. - Cote 347.799/149 (Br.)

<http://dare.uva.nl/document/361681>

### **Corresponding evolution : international law and the emergence of cyber warfare**

by Bradley Raboin. In: Journal of the national association of administrative law judiciary Vol. 31, no. 2, Fall 2011, p. 602-668. - Cote 345.26/246 (Br.)

<http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1013&context=naalj>

### **Cyber-attacks and international law of armed conflicts: a "jus ad bellum" perspective**

Titiriga Remus. In: Journal of international commercial law and technology Vol. 8, no. 3, 2013, p. 179-189. - Cote 345/648 (Br.)

<http://www.jiclt.com/index.php/jiclt/article/view/185/183>

### **Cyber-conflict, cyber-crime, and cyber-espionage**

David Weissbrodt. In: Minnesota journal of international law Vol. 22, Summer 2013, p. 347-387. - Cote 345.26/249 (Br.)

### **Cyber "hostilities" and the war powers resolution**

Allison Arnold. In: Military law review Vol. 217, Fall 2013, p. 174-192

### **Cyber war and international law : international law conference**

Robin Geiss... [et al.]. In: Israel yearbook on human rights Vol. 43, 2013, p. 1-169

### **Cyber warfare and non-international armed conflicts**

by Robin Geiss. In: Israel yearbook on human rights Vol. 43, 2013, p. 141-157

### **Cyber warfare and the crime of aggression : the need for individual accountability on tomorrow's battlefield**

Jonathan A. Ophardt. In: Duke law and technology review No. 3, 2013, [27] p. - Cote 344/617 (Br.)

<http://scholarship.law.duke.edu/dltr/vol9/iss1/2>

### **Cyberspace operations in international armed conflict : the principles of distinction and proportionality in relation to military objects**

Wieteke Theeuwen. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 4/2013, p. 188-194

### **Evolving battlefields : does Stuxnet demonstrate a need for modifications to the law of armed conflict ?**

Jeremy Richmond. In: Fordham international law journal Vol. 35, issue 3, 2012, p. 842-894. - Cote 345.25/296 (Br.)

Only from ICRC headquarters: <http://tinyurl.com/38025-Richmond>

### **Expertise, uncertainty, and international law : a study of the Tallinn Manual on cyberwarfare**

Oliver Kessler and Wouter Werner. In: Leiden journal of international law Vol. 26, no. 4, December 2013, p. 793-810

Only from ICRC headquarters:

<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9066321>

### **The geographic reach of IHL : the law and current challenges**

Tristan Ferraro. In: Collegium No 43, automne 2013, p. 105-113. - Cote 345.2/948

<http://tinyurl.com/37967-Ferraro>

### **Geography of armed conflict : why it is a mistake to fish for the red herring**

Geoffrey S. Corn. In: International law studies Vol. 89, 2013, p. 77-107

<http://tinyurl.com/38352-Corn>

### **The geography of cyber conflict : through a glass darkly**

Ashley S. Deeks. In: International law studies Vol. 89, 2013, p. 1-20  
<http://tinyurl.com/38349-Deeks>

### **Global armed conflict ? : the threshold of extraterritorial non-international armed conflicts**

Sasha Radin. In: International law studies Vol. 89, 2013, p. 696-743  
<http://tinyurl.com/38353-Radin>

### **The interaction between international human rights law and international humanitarian law : seeking the most effective protection for civilians in non-international armed conflicts**

Hannah Matthews. In: The international journal of human rights Vol. 17, issue 5-6, p. 633-645. - Cote 345.1/83 (Br.)

### **International law and cyber threats from non-state actors**

by Laurie R. Blank. In: Israel yearbook on human rights Vol. 43, 2013, p. 111-139

### **International law in cyberspace : the Koh speech and Tallinn Manual juxtaposed**

Michael N. Schmitt. In: Harvard international law journal Vol. 54, December 2012, p. 13-37. - Cote 345.26/245 (Br.)  
[http://www.harvardilj.org/wp-content/uploads/2012/12/HILJ-Online\\_54\\_Schmitt.pdf](http://www.harvardilj.org/wp-content/uploads/2012/12/HILJ-Online_54_Schmitt.pdf)

### **Law in the virtual battlespace : the Tallin Manual and the jus in bello**

Rain Liivoja and Tim McCormack. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 45-58  
Only from ICRC headquarters: [http://journals.cambridge.org/abstract\\_S1389135913000056](http://journals.cambridge.org/abstract_S1389135913000056)

### **Lawful targets in cyber operations : does the principle of distinction apply ?**

by Noam Lubell. In: Israel yearbook on human rights Vol. 43, 2013, p. 23-43

### **La mer comme espace de conflits armés**

Habib Gherari. - Bruxelles : Bruylant, 2013. - p. 357-381. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

### **The military response to criminal violent extremist groups: aligning use of force presumptions with threat reality**

Geoffrey S. Corn, Tanweer Kaleemullah. - [S.l.] : [s.n.], 2013. - [29] p. - Cote 345.27/134 (Br.)  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2251899](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2251899)

### **Navigating conflicts in cyberspace : legal lessons from the history of war at sea**

Jeremy Rabkin and Ariel Rabkin. In: Chicago journal of international law Vol. 14, no. 1, Summer 2013, p. 197-258. - Cote 345.26/250 (Br.)

### **Navigating jus ad bellum in the age of cyber warfare**

Reese Nguyen. In: California law review Vol. 101, issue 4, 2013, p. 1079-1129. - Cote 245.26/248 (Br.)  
<http://tinyurl.com/38020-Nguyen>

### **The new cyber face of battle : developing a legal approach to accommodate emerging trends in warfare**

Stephenie Gosnell Handler. In: Stanford journal of international law Vol. 48, no. 1, 2012, p. 209-237. - Cote 345.26/244 (Br.)

### **Non-international armed conflicts : the applicable law**

Sandesh Sivakumaran. In: Collegium No 43, automne 2013, p. 25-32. - Cote 345.2/948

<http://tinyurl.com/37950-Sivakumaran>

### **Personal scope of IHL protection in NIAC : legal and practical challenges**

Françoise Hampson. In: Collegium No 43, automne 2013, p. 59-62. - Cote 345.2/948

<http://tinyurl.com/37959-Hampson>

### **Precision air warfare and the law of armed conflict**

by Christopher J. Markham and Michael N. Schmitt. In: Israel yearbook on human rights Vol. 43, 2013, p. 297-319

<http://tinyurl.com/37649-Markham>

### **Le principe de distinction entre conflits armés interne et international**

Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 73-95. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

### **The role of counterterrorism law in shaping ad bellum norms for cyber warfare**

by William C. Banks. In: Israel yearbook on human rights Vol. 43, 2013, p. 45-80

### **Scope of application of international humanitarian law : proceedings of the 13th Bruges Colloquium, 18-19 October 2012 = Le champ d'application du droit international humanitaire : actes du 13e Colloque de Bruges, 18-19 octobre 2012**

CICR, Collège d'Europe. In: Collegium No 43, automne 2013, 155 p. - Cote 345.2/948

<http://tinyurl.com/37933-Bruges>

### **The seizure of Abu Anas Al-Libi : an international law assessment**

Gordon Modarai... [et al.]. In: International law studies Vol. 89, 2013, p. 817-838

<http://tinyurl.com/38357-Modarai>

### **The Tallin Manual and international cyber security law**

Wolff Heintschel von Heinegg. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 3-18

Only from ICRC headquarters: [http://journals.cambridge.org/abstract\\_S1389135913000032](http://journals.cambridge.org/abstract_S1389135913000032)

### **The Tallinn Manual on the international law applicable to cyber warfare : a commentary on chapter II : the use of force**

Nicholas Tsagourias. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 19-43

Only from ICRC headquarters: [http://journals.cambridge.org/abstract\\_S1389135913000044](http://journals.cambridge.org/abstract_S1389135913000044)

### **Target area bombing**

by Ove Bring. In: Israel yearbook on human rights Vol. 43, 2013, p. 199-213

### **Transnational armed conflict : does it exist ?**

Rogier Bartels. In: Collegium No 43, automne 2013, p. 114-128. - Cote 345.2/948

<http://tinyurl.com/37968-Bartels>

### **Unmanned platforms in the cyber age**

by William H. Boothby. In: Israel yearbook on human rights Vol. 43, 2013, p. 171-197

### **L'usage de la force dans le cyberspace et le droit international**

Loïc Simonet. In: Annuaire français de droit international 58, 2012, p. 117-143

### **The war report : 2012**

ed. by Stuart Casey-Maslen. - Oxford : Oxford University Press, 2013. - 499 p. - Cote 355/1018

### **What does IHL regulate and is the current armed conflict classification adequate ?**

Noam Lubell. In: Collegium No 43, automne 2013, p. 17-24. - Cote 345.2/948  
<http://tinyurl.com/37941-Lubell>

### **When does violence cross the armed conflict treshold : current dilemmas**

Paul Berman. In: Collegium No 43, automne 2013, p. 33-42. – Cote 345.2/948  
<http://tinyurl.com/37952-Berman>

## **III. Armed forces / Non-state armed groups**

(Combatant status, compliance with IHL, etc.)

### **Al Qaeda in the Arabian peninsula through the framework of international humanitarian law**

Simon Henderson. In: Al Nakhlah : online journal on Southwest Asia and Islamic civilization Spring 2012, 12 p. - Cote 303.6/17 (Br.)  
<http://tinyurl.com/otqyq6z>

### **An analysis of the legal status of CIA officers involved in drone strikes**

Donna R. Cline. In: San Diego international law journal Vol. 15, no. 1, 2013, p. 51-114. - Cote 345.29/204 (Br.)  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2370528](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2370528)

### **Blurred lines : an argument for a more robust legal framework governing the CIA drone program**

Andrew Burt [and] Alex Wagner. In: The Yale journal of international law online Vol. 38, Fall 2012, 15 p. - Cote 345.29/203 (Br.)  
<http://www.yjil.org/docs/pub/o-38-burt-wagner-blurred-lines.pdf>

### **Combattants et combattants illégaux**

Marco Sassòli. - Bruxelles : Bruylant, 2013. - p. 151-184. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

### **Does IHL protect "unlawful combatants" ?**

Gabor Rona. In: Collegium No 43, automne 2013, p. 63-67. - Cote 345.2/948  
<http://tinyurl.com/37961-Rona>

### **Le droit international humanitaire à l'épreuve des groupes armés non-étatiques**

Céline Bauloz. - Bruxelles : Bruylant, 2013. - p. 217-250. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

### **Ensuring human security in armed conflicts : the role of non-state actors and its reflection in current international humanitarian law**

Veronika Bílková. - Cambridge [etc.] : Intersentia, 2014. - p. 29-51. - In: Human security and international law : the challenge of non-state actors. - Cote 345/644

### **Human securities, international laws and non-state actors : bringing complexity back in**

Math Noortmann. - Cambridge [etc.] : Intersentia, 2014. - p. 13-27. - In: Human security and international law : the challenge of non-state actors. - Cote 345/644

### **Human security and international law : the challenge of non-state actors**

Cedric Ryngaert, Math Noortmann (eds.). - Cambridge [etc.] : Intersentia, 2014. - XII, 203 p. - Cote 345/644

### **International Conference on Military Jurisdiction : conference proceedings = Conférence internationale sur la juridiction militaire : textes de la conférence**

Société internationale de droit militaire et de droit de la guerre ; Stanislas Horvat, Ilja Van Hespén, Veerle Van Gijsegem (eds.). - Bruxelles : Société internationale de droit militaire et de droit de la guerre, 2013. - 522 p. - Cote 345.22/233

Only from ICRC headquarters: <http://tinyurl.com/37927-Military-jurisdiction>

### **International law and cyber threats from non-state actors**

by Laurie R. Blank. In: Israel yearbook on human rights Vol. 43, 2013, p. 111-139

### **Networks in non-international armed conflicts : crossing borders and defining "organized armed group"**

Peter Margulies. In: International law studies Vol. 89, 2013, p. 54-76

<http://tinyurl.com/38351-Margulies>

### **Personal scope of IHL protection in NIAC : legal and practical challenges**

Françoise Hampson. In: Collegium No 43, automne 2013, p. 59-62. – Cote 345.2/948

<http://tinyurl.com/37959-Hampson>

## **IV. Multinational forces**

### **The crime of attacking peacekeepers**

Andrea Spagnolo. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 153-170. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

### **Droit international et interventions armées**

Daniel Lagot. - Paris : L'Harmattan, 2013. - p. 9-32. - In: Droit international et conflits armés. - Cote 345/642

### **The duty to respect international humanitarian law during European Union-led operations**

Marten Zwanenburg. - The Hague : T.M.C. Asser Institute, 2012. - p. 63-78. - In: Human rights in EU crisis management operations : a duty to respect and to protect ? - Cote 345.26/243 (Br.)

[http://consilium.europa.eu/media/1874022/hazelzet\\_cleer\\_working\\_paper.pdf](http://consilium.europa.eu/media/1874022/hazelzet_cleer_working_paper.pdf)

### **Opérations de maintien de la paix et droit des conflits armés**

Nicolas Michel et Katherine Del Mar. - Bruxelles : Bruylant, 2013. - p. 185-216. - In: Permanence et mutation du droit des conflits armés. – Cote 345.2/945

## V. Private entities

### Constructive constraints ? : conceptual and practical challenges to regulating private military and security companies

Surabhi Ranganathan. - Cambridge [etc.] : Intersentia, 2014. - p. 175-193. - In: Human security and international law : the challenge of non-state actors. - Cote 345/644

### Corporations, international crimes and national courts : a Norwegian view

Simon O'Connor. In: International review of the Red Cross Vol. 94, no. 887, Autumn 2012, p. 1007-1025

### Ensuring human security in armed conflicts : the role of non-state actors and its reflection in current international humanitarian law

Veronika Bílková. - Cambridge [etc.] : Intersentia, 2014. - p. 29-51. - In: Human security and international law : the challenge of non-state actors. - Cote 345/644

### Human securities, international laws and non-state actors : bringing complexity back in

Math Noortmann. - Cambridge [etc.] : Intersentia, 2014. - p. 13-27. - In: Human security and international law : the challenge of non-state actors. - Cote 345/644

### Human security and international law : the challenge of non-state actors

Cedric Ryngaert, Math Noortmann (eds.). - Cambridge [etc.] : Intersentia, 2014. - 203 p. - Cote 345/644

### L'implication des sociétés militaires privées dans les conflits armés contemporains et le droit international humanitaire

Mamadou Hébié. - Bruxelles : Bruylant, 2013. - p. 251-301. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

### Private military and security companies in international law : a challenge for non-binding norms : the Montreux Document and the International Code of Conduct for Private Security Service Providers

Corinna Seiberth. - Cambridge [etc.] : Intersentia, 2014. - 295 p. - Cote 345.29/201

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<http://tinyurl.com/37940-Kincade>

### Ten questions to Philip Spoerri, ICRC director for international law and cooperation

In: International review of the Red Cross Vol. 94, no. 887, Autumn 2012, p. 1125-1134

<http://www.cid.icrc.org/library/docs/DOC/irrc-887-spoerri.pdf>

### Threats posed to human security by non-state corporate actors : the answer of international criminal law

Cedric Ryngaert and Heleen Struyven. - Cambridge [etc.] : Intersentia, 2014. - p. 101-134. - In: Human security and international law : the challenge of non-state actors. - Cote 345/644

## VI. Protection of persons

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

### The analytical framework of water and armed conflict : a focus on the 2006 Summer war between Israel and Lebanon

Mark Zeitoun, Karim Eid-Sabbagh and Jeremy Loveless. In: Disasters : the journal of disaster studies and management Vol. 38, no. 1, January 2014, p. 22-44

Only from ICRC headquarters: <http://onlinelibrary.wiley.com/doi/10.1111/disa.12039/pdf>

### The criminalization and prosecution of attacks against cultural property

Andrea Carcano. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 78-97. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

### The international legal protection of World Heritage sites during armed conflict

Anne-Marie Carstens. In: TDM Vol. 5, 2013, 11 p. - Cote 363.8/80 (Br.)

### Prosecuting the destruction of cultural property in international criminal law : with a case study on the Khmer Rouge's destruction of Cambodia's heritage

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### L'utopie de la "guerre verte" : insuffisances et lacunes du régime de protection de l'environnement en temps de guerre

Karine Bannelier-Christakis. - Bruxelles : Bruylant, 2013. - p. 383-412. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

## VII. Protection of objects

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

### Armed conflicts and protection of refugees

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### The arms trade treaty and human security : what role for NSAS ?

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### Boucliers humains volontaires et participation directe aux hostilités : analyse à la lumière du Guide interprétatif du CICR sur la participation directe aux hostilités

P. Antoine Kaboré. - Saarbrücken : Ed. universitaires européennes, 2012. - 94 p. - Cote 345.25/292

### La complicité de génocide

Daniel Dormoy. - Bruxelles : Bruylant, 2013. - p. 645-670. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

**Criminalizing rape and sexual violence as methods of warfare**

Ludovica Poli. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 136-152. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

**Droit international et interventions armées**

Daniel Lagot. - Paris : L'Harmattan, 2013. - p. 9-32. - In: Droit international et conflits armés. - Cote 345/642

**The duty to investigate civilian casualties during armed conflict and its implementation in practice**

Alon Margalit. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 155-186

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**The effects of the Lubanga case on understanding and preventing child soldiering**

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**The enlistment, conscription and use of child soldiers as war crimes**

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**Health care during armed conflict : a legal social perspective**

Mohammad Rubaiyat Rahman. - [S.l.] : [s.n.], June 2011. - 11 p. - Cote 356/262 (Br.)

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<http://tinyurl.com/icrc-002-4104-2013>

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**Legal implications of the membership of a Palestinian State in the UN on civilians in the light of international humanitarian law**

Floriana Fabbri and Jacopo Terrosi. - Newcastle upon Tyne : Cambridge scholars publishing, 2013. - p. 234-251. - In: Palestine membership in the United Nations : legal and practical implications. - Cote 345.28/106 (Br.)

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### **La protection spéciale des femmes et des enfants dans les conflits armés**

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### **The role of non-state actors in implementing the responsibility to protect**

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### **Scope of application of international humanitarian law : proceedings of the 13th Bruges Colloquium, 18-19 October 2012 = Le champ d'application du droit international humanitaire : actes du 13e Colloque de Bruges, 18-19 octobre 2012**

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### **Sexual violence against children on the battlefield as a crime of using child soldiers : square pegs in round holes and missed opportunities in Lubanga**

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### **"Special protection measures" : states parties reporting on article 38 of the Convention of the Rights of the Child**

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### **The war crime of child soldier recruitment**

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## **VIII. Detention, internment, treatment and judicial guarantees**

### **Better off as a prisoners of war : the differential standard of protection for military internees in Switzerland during World War II**

Dwight S. Mears. In: Journal of the history of international law Vol. 15, issue 2, 2013, p. 173-199. - Cote 400.2/348 (Br.)

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### The Copenhagen principles on the handling of detainees : implications for the procedural regulation of internment

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## IX. Law of occupation

### A propos de l'applicabilité du droit de l'occupation militaire aux forces des Nations Unies

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### L'applicabilité ratione temporis du droit de l'occupation de guerre : le début et la fin de l'occupation

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### Challenges to international humanitarian law : Israel's occupation policy

Peter Maurer. In: International review of the Red Cross Vol. 94, no. 888, Winter 2012, p. 1503-1510

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### Experts legal opinion : in relation with the petition filed by residents of villages in Firing Zone 918 against the intention to transfer them from their homes

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<http://www.acri.org.il/en/wp-content/uploads/2013/02/918-legal-opinion-SKB.pdf>

### Fighting terror within the law ? : terrorism, counterterrorism and military occupations

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## International humanitarian law, ICRC and Israel's status in the Territories

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# X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

## An assessment of jus in bello issues concerning computer network attacks : a threat reflected in national security agenda

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[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1809127](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1809127)

## Attacks in air and missile warfare

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## Belligerent targeting and the invalidity of a least harmful means rule

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## The challenges of establishing the facts in relation to "Hague law" violations

Stephen Wilkinson. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 313-330. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

## The crime of attacking peacekeepers

Andrea Spagnolo. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 153-170. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

## The criminalization and prosecution of attacks against cultural property

Andrea Carcano. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 78-97. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

## The criminalization of the use of biological and chemical weapons

Annita Larissa Sciacovelli. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 211-224. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

### **The criminalization of the violations of international humanitarian law from Nuremberg to the Rome statute**

Fausto Pocar. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 3-19. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

### **Criminalizing rape and sexual violence as methods of warfare**

Ludovica Poli. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 136-152. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

### **Cyberspace operations in international armed conflict : the principles of distinction and proportionality in relation to military objects**

Wieteke Theeuwen. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 4/2013, p. 188-194

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Francesco Moneta. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 59-77. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

### **Le droit de la Haye à l'épreuve des espaces aériens et extra-atmosphériques**

Mireille Couston et Géraldine Ruiz. - Bruxelles : Bruylant, 2013. - p. 305-355. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

### **The enlistment, conscription and use of child soldiers as war crimes**

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### **Lawful targets in cyber operations : does the principle of distinction apply ?**

by Noam Lubell. In: Israel yearbook on human rights Vol. 43, 2013, p. 23-43

### **New weapons, old crimes ?**

Marina Castellaneta. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 194-210. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

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### **Precision air warfare and the law of armed conflict**

by Christopher J. Markham and Michael N. Schmitt. In: Israel yearbook on human rights Vol. 43, 2013, p. 297-319

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### **Target area bombing**

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### **Unmanned platforms in the cyber age**

by William H. Boothby. In: Israel yearbook on human rights Vol. 43, 2013, p. 171-197

### **The use of force in armed conflicts : interplay between the conduct of hostilities and law enforcement paradigms : expert meeting : report**

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## XI. Weapons

**Les armes à sous-munitions en droit international humanitaire : enjeux et défis de leur interdiction**

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**The arms trade treaty and human security : what role for NSAS ?**

Zeray Yihdego. - Cambridge [etc.] : Intersentia, 2014. - p. 135-173. - In: Human security and international law : the challenge of non-state actors. - Cote 345/644

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Andrew Burt [and] Alex Wagner. In: The Yale journal of international law online Vol. 38, Fall 2012, 15 p. - Cote 345.29/203 (Br.)

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**The criminalization of the use of biological and chemical weapons**

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**Drones at trial : State and individual (criminal) liabilities for drones attacks**

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**New weapons, old crimes ?**

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**Sow what you reap ? : using predator and reaper drones to carry out assassinations or targeted killings of suspected Islamic terrorists**

Thomas Michael McDonnell. In: George Washington international law review Vol. 44, no. 2, 2012, p. 243-316. - Cote 341.67/28 (Br.)

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**Unmanned platforms in the cyber age**

by William H. Boothby. In: Israel yearbook on human rights Vol. 43, 2013, p. 171-197

**The use of prohibited weapons and war crimes**

Andrea Cannone. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 173-193. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. – Cote 345.25/289

## XII. Implementation

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

**All other breaches : state practice and the Geneva Conventions' nebulous class of less discussed prohibitions**

Jesse Medlong. In: Michigan journal of international law Vol. 34, Summer 2013, p. 829-856. - Cote 345.22/222 (Br.)

**Amnesty : evolving 21st century constraints under international law**

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### The challenges of establishing the facts in relation to "Hague law" violations

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**UN fact-finding commissions and the prosecution of war crimes : an evolution towards justice-oriented missions ?**

Micaela Frulli. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 331-348. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. – Cote 345.25/289

## XIII. International human rights law

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

**Au coeur des relations entre violence et droit : la pratique des meurtres ciblés au regard du droit international**

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## Complementarity between the ICRC and the United Nations and international humanitarian law and international human rights law, 1948-1968

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## Persons protected by IHL in international armed conflicts : the law and current challenges

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## Targeted killings (drone strikes) and the European Convention on Human Rights

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**UN fact-finding commissions and the prosecution of war crimes : an evolution towards justice-oriented missions ?**

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### **The prisoner of war camp trials**

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

### An analysis of the legal status of CIA officers involved in drone strikes

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**Unmanned platforms in the cyber age**

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**L'usage de la force dans le cyberspace et le droit international**

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**What does IHL regulate and is the current armed conflict classification adequate ?**

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## XVI. Countries/Regions

### Afghanistan

**L'applicabilité ratione temporis du droit de l'occupation de guerre : le début et la fin de l'occupation**

Robert Kolb et Sylvain Vité. - Bruxelles : Bruylant, 2013. - p. 97-148. - In: Permanence et mutation du droit des conflits armés. - Cote 345.2/945

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**National human rights institutions, displacement and human security**

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### **Guantánamo and beyond : exceptional courts and military commissions in comparative perspective**

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### The prisoner of war camp trials

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Marco Pertile. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 276-292. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

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### L'applicabilité ratione temporis du droit de l'occupation de guerre : le début et la fin de l'occupation

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### International humanitarian law, ICRC and Israel's status in the Territories

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### UN fact-finding commissions and the prosecution of war crimes : an evolution towards justice-oriented missions ?

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## Libya

### Droit international et interventions armées

Daniel Lagot. - Paris : L'Harmattan, 2013. - p. 9-32. - In: Droit international et conflits armés. - Cote 345/642

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## Malaysia

### National human rights institutions, displacement and human security

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## Netherlands

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### Corporations, international crimes and national courts : a Norwegian view

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## Pakistan

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## Russian federation

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

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## Saudi arabia

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## South africa

### The private military company complex in Central and Southern Africa : the problematic application of international humanitarian law

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## Switzerland

### Better off as a prisoners of war : the differential standard of protection for military internees in Switzerland during World War II

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## Turkey

### Fact-finding by international human rights institutions and criminal prosecution

Simone Vezzani. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 349-368. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

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**The relevance of international humanitarian law in national case law on terrorism**

Antonino Alì. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 293-310. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

**Threats posed to human security by non-state corporate actors : the answer of international criminal law**

Cedric Ryngaert and Heleen Struyven. - Cambridge [etc.] : Intersentia, 2014. - p. 101-134. - In: Human security and international law : the challenge of non-state actors. - Cote 345/644

## **Yugoslavia**

**The criminalization of the violations of international humanitarian law from Nuremberg to the Rome statute**

Fausto Pocar. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 3-19. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cote 345.25/289

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Stathis N. Palassis. In: International criminal law review Vol. 14, issue 1, 2014, p. 1-41

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# All with Abstracts

## **A propos de l'applicabilité du droit de l'occupation militaire aux forces des Nations Unies**

par Noemi Corso. In: Schweizerische Zeitschrift für internationale und europäisches Recht = Revue suisse de droit international et de droit européen = Rivista svizzera di diritto internazionale e europeo = Swiss review of international and european law 23. Jg, 4/2013, p. 609-638

La participation progressive (et physiologique) de l'ONU dans la gestion des crises internationales, et surtout les différentes typologies dans lesquelles le modèle originaire du peacekeeping s'est fragmenté aux cours des années, ont poussé la doctrine à s'interroger sur la possibilité d'élargir l'application matérielle du régime d'occupation même à ces contextes. La doctrine se présente divisée et peu résolue. D'un côté, on constate la tendance répandue à exclure sur le plan théorique l'hypothèse d'une éventuelle application de jure des normes sur l'occupation; de l'autre côté, on trouve ceux qui considèrent aptes à fonctionner, même pour les organisations internationales, les critères traditionnellement utilisés pour vérifier l'existence d'une occupation de la part d'un ou plusieurs Etats. Cette étude se propose d'apporter une contribution au débat en cours. Elle commence par réfuter l'objection de principe fondée sur la nature consensuelle des forces des Nations Unies. Elle analyse ensuite la thèse qui fait appel au critère du consentement selon laquelle s'il y a le consentement au déplacement des troupes sur le territoire, il n'y a pas d'occupation. Au travers de trois situations différentes, elle montre combien il est parfois difficile ou même impossible de se procurer ex ante, ou de maintenir ferme, le consentement au déploiement des troupes. Enfin, elle estime que la solution de compromis qui tend à accepter l'applicabilité du régime d'occupation par analogie ou de facto ne convainc pas en raison du sens obscur du concept d'application de facto.

## **Al Qaeda in the Arabian peninsula through the framework of international humanitarian law**

Simon Henderson. In: Al Nakhlah : online journal on Southwest Asia and Islamic civilization Spring 2012, 12 p. - Cote 303.6/17 (Br.)

This paper argues that international humanitarian law can encompass transnational armed conflicts. The author draws specifically upon Common Article 2 and 3 of the 1949 Geneva Conventions to discuss the case of Al-Qaeda in the Arabian Peninsula and the involvement of Yemen, Saudi Arabia and the US, arguing that this case fits the criteria of a transnational conflict. He suggests that where an armed conflict has not developed, states should be resorting to criminal law enforcement and international cooperation wherever possible, while protecting human rights. Finally, the author points out that the practical realities can make it difficult to apply this framework.

<http://tinyurl.com/otqyq6z>

## **All other breaches : state practice and the Geneva Conventions' nebulous class of less discussed prohibitions**

Jesse Medlong. In: Michigan journal of international law Vol. 34, Summer 2013, p. 829-856. - Cote 345.22/222 (Br.)

The article describes what sorts of conduct will qualify as minor breaches under the Geneva Conventions in an attempt to provide some contours to this class of violations. It briefly surveys state practice with respect to these breaches, which demonstrates the high degree of variability in the means employed for suppressing such breaches. It then addresses the broader inquiry of what the duty to suppress "means" in light of standard interpretative methods, but with especial attention to state practice as an interpretative tool. It asks what the implications are of a duty to suppress nongrave breaches, so construed, and attempts to provide some preliminary answers. Finally, It concludes the discussion by attempting to frame the issue so as to spur further development of this underexplored subject.

## Amnesty : evolving 21st century constraints under international law

Juan Carlos Portilla. In: The Fletcher Forum of world affairs Vol. 38:1, Winter 2014, p. 169-194. - Cote

By using the case of Colombia to illustrate the evolving duty to prosecute international crimes, this article sheds light on the unresolved question of the international legality of amnesties—one facet of the peace versus justice dilemma, and an enigma for international criminal law to elucidate in the years to come.

[http://www.fletcherforum.org/wp-content/uploads/2014/04/38-1\\_Portilla1.pdf](http://www.fletcherforum.org/wp-content/uploads/2014/04/38-1_Portilla1.pdf)

## An analysis of the legal status of CIA officers involved in drone strikes

Donna R. Cline. In: San Diego international law journal Vol. 15, no. 1, 2013, p. 51-114. - Cote 345.29/204 (Br.)

The United States uses drone strikes to target and kill suspected members of al Qaeda and its supporters, and many of these attacks have been carried out by CIA officers. This article analyzes whether the CIA officers participating in the drone strikes should be considered as civilians directly participating in hostilities, and what the possible consequences are for this status. The article first provides a background on international and non-international armed conflicts and presents the key elements used to distinguish between the two. An explanation of the legal categories of actors found in armed conflict is also provided, including a discussion of the "terrorist" and "unlawful combatant" labels and why they are not recognized legal categories in international humanitarian law. The article includes a section on when targeted killings may be justified by self-defense under Article 51 of the United Nations Charter. Finally, the article examines whether the targeted drone strikes are being carried out inside an armed conflict and what the legal status is of the CIA officers carrying out the drone strikes.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2370528](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2370528)

## The analytical framework of water and armed conflict : a focus on the 2006 Summer war between Israel and Lebanon

Mark Zeitoun, Karim Eid-Sabbagh and Jeremy Loveless. In: Disasters : the journal of disaster studies and management Vol. 38, no. 1, January 2014, p. 22-44

This paper develops an analytical framework to investigate the relationship between water and armed conflict, and applies it to the 'Summer War' of 2006 between Israel and Lebanon (Hezbollah). The framework broadens and deepens existing classifications by assessing the impact of acts of war as indiscriminate or targeted, and evaluating them in terms of international norms and law, in particular International Humanitarian Law (IHL). In the case at hand, the relationship is characterised by extensive damage in Lebanon to drinking water infrastructure and resources. This is seen as a clear violation of the letter and the spirit of IHL, while the partial destruction of more than 50 public water towers compromises water rights and national development goals. The absence of pre-war environmental baselines makes it difficult to gauge the impact on water resources, suggesting a role for those with first-hand knowledge of the hostilities to develop a more effective response before, during, and after armed conflict.

Only from ICRC Headquarters: <http://onlinelibrary.wiley.com/doi/10.1111/disa.12039/pdf>

## L'applicabilité ratione temporis du droit de l'occupation de guerre : le début et la fin de l'occupation

Robert Kolb et Sylvain Vité. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 97-148. - Cote 345.2/945

La définition juridique de l'occupation repose essentiellement sur des critères de fait, à savoir le principe d'effectivité. Il y a occupation au sens du droit international lorsque, d'une part, une armée contrôle de manière effective un territoire étranger dans le cadre d'un conflit armé international et que, d'autre part, ce contrôle n'a pas été accepté par le souverain du territoire concerné. La notion d'occupation dépend ainsi de l'interprétation que l'on donne à ces deux critères. Selon que l'on retienne une conception large ou étroite de la notion de contrôle effectif, ou encore selon le degré d'indépendance que l'on exige pour considérer qu'une partie a donné "librement" son consentement à la présence de troupes étrangères sur son territoire, l'application du régime de l'occupation à une situation donnée se fera plus ou moins tôt dans le déroulement de l'opération et durera plus ou moins longtemps. Comment cerner plus précisément la portée de ces critères ? Quels événements précis marquent le début et la fin de l'occupation ? Telles sont les questions que traite cette contribution. Il s'agit de la question majeure qui a la fois conditionne l'application du droit de l'occupation et la rend considérablement complexe.

## Armed conflicts and protection of refugees

Seshaiah Shasthri. - In: An introduction to international refugee law. - Leiden : M.Nijhoff, 2013. - p. 159-188. - Cote 325.3/3 (Br.)

Contemporary practices in humanitarian law emphasise on the complementarity nature and the growing interface between international humanitarian law, human rights and international refugee law for protection of basic rights of refugees. Stress the complementary nature, and indeed the convergence of IHL, human rights and the rights of refugees as instruments for the protection of life and human dignity. Moreover, the fundamental principles of human rights and most of the provisions of IHL that protect civilians and govern the conduct of hostilities are now part of customary international law. Persons fleeing armed conflicts do not fall within the frame of refugee protection per se. National legislation, regional conventions or binding directives guarantee the protection for those individuals affected by violence in cases of armed conflicts such as the 1969 OAU Refugee Convention or the EC Qualification Directive. It is for the above said reasons one must understand the interface between IHL and international refugee law in the context of protection to the refugees and examine their relevance in addressing the said concerns.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37862.pdf>

## Les armes à sous-munitions en droit international humanitaire : enjeux et défis de leur interdiction

Annyssa Bellal et Stuart Casey-Maslen. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 491-525. - Cote 345.2/945

Cet article aborde d'abord les caractéristiques des armes à sous-munitions (section I) ainsi que les principes généraux de droit humanitaire qui les régissent (section II). Les Etats ont estimé nécessaire de lancer un processus de négociation, aboutissant à de nouvelles règles stipulées dans la Convention sur les armes à sous-munitions, qui est examinée en détail (section III). Finalement, l'article s'attarde brièvement sur les autres règles spécifiques de droit international humanitaire qui abordent également la question (section IV).

## Les armes nouvelles non létales en jus in bello : le cas des agents psychotropes

David Cumin. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 453-489. - Cote 345.2/945

On appelle agents psychotropes, des produits agissant sur le système nerveux central, donc sur le psychisme. Ces incapacitants sont à la fois des armes chimiques ou biochimiques et des armes psychologiques ou neuropsychologiques. La problématique développée ici porte plus précisément sur les rapports entre cette catégorie d'arme non-létale et le jus in bello. S'agissant des armes non-létales, il n'existe ni convention ni définition conventionnelle. Ce chapitre se tourne donc vers les textes internes, le CICR ou la doctrine afin d'en dégager une définition et une typologie. Il se tourne ensuite vers la double utilisation qui en est faite comme moyen de nuire à l'ennemi: la propagande et l'interrogatoire. Dans ces deux cas, se posent deux questions: celle de l'usage d'agents chimiques ou biochimiques d'une part, et celle de la protection juridique du psychisme de l'individu ennemi d'autre part.

## The arms trade treaty and human security : what role for NSAS ?

Zeray Yihdego. - In: Human security and international law : the challenge of non-state actors. - Cambridge [etc.] : Intersentia, 2014. - p. 135-173. - Cote 345/644

In 2013 a UN-sponsored Arms Trade Treaty (ATT) that regulates the irresponsible spread of conventional arms was adopted. Zeray Yihdego traces how these weapons, which are manufactured and sold by NSAs, adversely affect human security and how NSAs are involved in the development of arms control regulations, focusing specifically on the ATT. Like all treaty negotiations, negotiations on the ATT were formally carried out by States. Yihdego draws our attention, however, to the various ways NSAs - both the arms industry resisting stringent regulation and civil society campaigners advocating for stricter regulation - have influenced these negotiations, and have informed - or not - State positions on specific issues. If anything, the dynamics of these negotiations show that NSAs are accorded participatory roles and rights in State-dominated international norm-setting processes. One should, however, not be deluded into thinking that this participatory revolution necessarily furthers human security. Participation allows NSAs to inject a variety of views into the debate. Some - such as those taken by civil society - may further human security; others - such as those taken by the arms industry - may not. Ultimately, the exact impact of discreet NSA lobbying on the outcome of international negotiations, will depend on the legitimacy of the cause defended, the access that various NSAs have to State administrations and diplomats, and the business interests involved. Civil society NSAs have come out on top by successfully pushing governments to conclude such human security-enhancing treaties as the Mine Ban Treaty (1997) or the Cluster Munitions Convention (2008).

## Arms transfer and complicity in war crimes

Antonio Leandro. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 225-240. - Cote 345.25/289

Leandro examines the current state of international law governing the transfer of arms. The author contemplates two separate sources of liability for weapons-dealers; liability from a breach in the rules of arms transfers, or liability from a breach of international criminal law (ICL). Leandro focuses on how arms dealers can be prosecuted under ICL for complicity in war crimes, and outlines the subjective and objective elements of this offence. Although an aider and abettor need not have the same intent as the principle perpetrator, the accessory must possess an awareness that he or she is assisting in the crime. Leandro believes establishing such awareness in light of the evidence can be difficult and argues for a flexible approach to the prosecutor's burden of proof. To be convicted of complicity in war crimes, the supplier must also have a "substantial effect" on the perpetuation of the principal's crime. Leandro refers to a report from the International Commission of Jurists, which discusses three ways for this "substantial effect" requirement to arise: enabling, facilitating, or exacerbating the principal's crime. He takes issue with these classifications, arguing that the lines between them are blurred in reality. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## Arms transfers to the Syrian Arab Republic : practice and legality

Mélanie De Groof. - Bruxelles : GRIP, 2013. - 55 p. - Cote 341.67/30 (Br.)

After more than two years of internal conflict in Syria, a pressing question relates to the practice and legality of arms transfers to both the groups opposing the regime of Assad and the Assad regime itself. Since the beginning of the conflict, regional and international players are arming one side or the other, which brought the UN Secretary-General to qualify the conflict as a 'proxy war'. In light of the lift of the EU arms embargo earlier this year, and the growing tensions at the regional and international level on the Syria question, there is no likelihood of decreasing arms transfers in the near future, which triggers the discussion on the permissibility of such arms transfers. Therefore, this research paper outlines the normative and practical framework which governs arms transfers to the myriad of actors involved in the Syrian armed conflict. The practical analysis concentrates on past and present arms transfers to Syria and the risks of proliferation of these arms in Syria and beyond. The legal analysis focuses on the most important international and European legal standards governing the transfer of military material and technology, as well as the international treaty and customary law rules regulating the threat or use of force in international relations. The main purpose of this report is to offer an in-depth legal and factual analysis on arms transfers to Syria.

<http://www.grip.org/fr/node/1132>

## An assessment of jus in bello issues concerning computer network attacks : a threat reflected in national security agenda

Kalliopi Chainoglou. In: Romanian journal of international law Vol. 12, 2010. - Cote 345.25/294 (Br.)

Since 2001, computer network attacks have become a feature of international relations; they have been conducted on a regular basis, leaving states troubled as to the appropriate way of responding to them. Limited bibliography exists on how the existing rules on the use of force (jus ad bellum) as well as the law of armed conflict (jus in bello) apply to computer network attacks. The scope of the present article is broader, as it seeks to explore issues that pertain to computer network attacks/operations in the light of jus in bello and present the new tendencies concerning this matter which is already being addressed by states and international organizations, i.e. NATO. The analysis takes into consideration the jus in bello and the codified existing law in the form of HPCR Manual on International Law Applicable to Air and Missile Warfare (2009) along with the strategy doctrines and military manuals of various states that have openly admitted to be conducting computer network operations and/or recognize the potential harm of cyber threats to their security. With the civilian and military cyber domain considered to be interlinked, states with significant digital infrastructure have moved to design national strategies to mitigate and establish agencies to counter threats in the cyber space. The dual (civilian/military) nature of the threat is underscored in most official policies while cyber warfare is expected or considered to be a part of conventional warfare. A number of states have claimed the severity of cyber threats, issued strategy doctrines which address the prospect of offensive and defensive computer network operations while they gradually upgrade computer network operations from "stand alone capabilities" to integrated operations in the conventional military force scheme/theatre of operations, and adjust military manuals to the complexities of computer network operations.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1809127](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1809127)

## At war with the robots : autonomous weapon systems and the Martens Clause

Tyler D. Evans. In: Hofstra law review Vol. 41, issue 3, Spring 2013, p. 697-733. - Cote 341.67/740 (Br.)

This Note examines arguments for preemptively prohibiting the development and use of autonomous weapon systems under the Martens Clause. This Note identifies the Martens Clause as a tenuous but discernible threat to such systems under the Law of Armed Conflict because the Clause's "dictates of the public conscience," interpreted broadly, could provide the grounds upon which to prohibit autonomous weapon systems before such systems even exist -- unlike the more traditional pillars of the Law of Armed Conflict, such as distinction and proportionality, which would require, at the very least, an analysis of the weapon systems' use and effects to invalidate any particular weapon. Having analyzed the various interpretations of the Martens Clause, this Note suggests how states seeking to develop autonomous weapon systems might proceed in order to protect their interests.

[http://www.hofstralawreview.org/wp-content/uploads/2013/09/DD.1.Evans\\_.final2\\_.pdf](http://www.hofstralawreview.org/wp-content/uploads/2013/09/DD.1.Evans_.final2_.pdf)

## Attacked by our own government : does the War Powers Resolution or the law of armed conflict limit cyber strikes against social media companies ?

Harry P. Koulos. In: The Georgetown journal of law and public policy Vol. 11, 2013, p. 705-736. - Cote 345.26/242 (Br.)

The use of email and social media to support terrorist acts poses a threat to the United States. Terrorists are known to communicate using a common email account's "drafts folder," which makes their activity much more difficult to track because no emails need be sent. And, potentially innocent use of social media could jeopardize American operations. This note confronts the potential situation where the US Government uses cyber strikes to shut down a social media site's private message service in order to protect national security. Using a hypothetical situation, it asks the following questions: "Does the Authorization for Use of Military Force (AUMF) authorize such an attack ? Assuming the AUMF does not apply, would the cyber strike against the social media company's server in the Middle East trigger the War Powers Resolution ? Assuming the US was in an armed conflict with the hypothetical terrorist group, would such a cyber strike comply with the law of armed conflict ?

## Attacks in air and missile warfare

by Arne Willy Dahl. In: Israel yearbook on human rights Vol. 43, 2013, p. 215-261

Focusing on air and missile warfare, the aim of this article is to discuss rules of customary international law for international armed conflict regarding attacks, understood as "acts of violence against the adversary, whether in offence or in defence". The ambition of this article is humble: to show what seems to be customary law with regard to attacks. The ideal way would be to study actual practise on the battlefield and how the actors justify their actions or their decisions when they choose not to act in a particular way. For practical reasons, a simple methodology is used. Where a particular rule is codified in a widely accepted treaty, it is assumed to reflect customary law unless there is reason to believe that it is rejected by one or more "most affected" States.

## Au coeur des relations entre violence et droit : la pratique des meurtres ciblés au regard du droit international

Muriel Ubéda-Saillard. In: Annuaire français de droit international 58, 2012, p. 83-116

La pratique des meurtres ciblés consiste en l'utilisation délibérée de la force meurtrière par des agents publics ou des membres de groupes armés organisés, en période de conflit armé, contre des individus préalablement identifiés qui ne se trouvent pas sous la garde physique de leur agresseur. Mise en oeuvre par certains États, y compris des États de droit, notamment dans le cadre du contre-terrorisme, à l'encontre de personnes dont les activités violentes sont jugées extrêmement dangereuses pour la sauvegarde de l'ordre public et la protection de la population, cette pratique soulève de nombreuses interrogations quant à son éventuelle licéité au regard du jus ad bellum et du jus in bello. Elle est présentée comme un moyen de mise en oeuvre des normes internationales mais il est difficile, sinon impossible, de l'appréhender sous l'angle de l'application du droit.

## Beginning of IHL application : overview and challenges

Louise Arimatsu. In: Collegium No 43, automne 2013, p. 71-82. - Cote 345.2/948

As a principle, the applicability of IHL is dependent on the existence of an armed conflict. The simplicity of this rule nevertheless obscures the difficulties faced in finding, and in naming, a particular situation of violence as an 'armed conflict'. The term 'armed conflict' is context-dependent in that the criteria for

determining the existence of an armed conflict differ according to whether the armed violence is one fought between States (international armed conflict) or between a State and non-State actor or between such actors (non-international armed conflict). The conditions that trigger the application of IHL for international and non-international armed conflict are therefore addressed separately.

<http://tinyurl.com/pslzutb>

## Behind the flag of Dunant : secrecy and the compliance mission of the International Committee of the Red Cross

Steven R. Ratner. - In: Transparency in international law. - Cambridge : Cambridge University Press, 2013. - p. 297-320. - Cote 362.191/1019 (Br.)

Much of the ICRC's work consists of hundreds of confidential visits and authorship of numerous secret reports to monitor compliance by armies, security forces and non-State armed groups with IHL. In doing so, it is deliberately opaque: it rarely identifies violators publicly; it leaves its legal position on many key issues ambiguous, sometimes even from the target of its discussions; and at times it avoids legal discourse entirely when persuading parties to follow legal rules. This aversion to transparency is not only at odds with the assumptions of the naming and shaming strategy regarding the most effective means to induce compliance. It also makes it almost impossible for outsiders to know the ICRC's legal characterization of specific cases. As a result, its approach to protection of victims, even if successful in individual cases, seems to undermine its self-professed role as the guardian of - the authoritative interpreter of and voice for - international humanitarian law. This tension between the role of the ICRC, and the ICRC's approach to it, should interest scholars and those concerned with the proper role for transparency in encouraging compliance with law generally. It also calls into question the assumption that transparency is necessarily beneficial for the promotion of international law.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37831.pdf>

## Belligerent reprisals in non-international armed conflicts

Veronika Bílková. In: International and comparative law quarterly Vol. 63, part 1, January 2014, p. 31-65

The paper offers the first comprehensive treatment of the applicability and regulation of belligerent reprisals in non-international armed conflicts. It introduces three approaches to the topic ('extralegal', 'permissive' and 'restrictive' approaches) which all enjoy some support among States and scholars. The paper shows that international humanitarian law (IHL) treaties, IHL customs and other legal sources do not make it possible to decide between these approaches, as they are either silent on the topic or allow for several interpretations. It is the assessment of extralegal considerations and of the general framework of IHL which allows us to conclude that belligerent reprisals are inapplicable in non-international armed conflicts ('extralegal' approach). Yet, there are signs indicating that a gradual shift toward the 'restrictive' approach could be under way. The paper cautions against a premature acceptance of this approach drawing attention to its limits.

Only from ICRC Headquarters: <http://dx.doi.org/10.1017/S002058931300047X>

## Belligerent targeting and the invalidity of a least harmful means rule

Geoffrey S. Corn, Laurie R. Blank, Chris Jenks, Eric Talbot Jensen. In: International law studies Vol. 89, 2013, p. 536-626

The law of armed conflict provides the authority to use lethal force as a first resort against identified enemy belligerent operatives. There is virtually no disagreement with the rule that once an enemy belligerent becomes hors de combat — what a soldier would recognize as “combat ineffective” — this authority to employ deadly force terminates. Recently, however, some have forcefully asserted that the LOAC includes an obligation to capture in lieu of employing deadly force whenever doing so presents no meaningful risk to attacking forces, even when the enemy belligerent is neither physically disabled or manifesting surrender. Proponents of this obligation to capture rather than kill, or use the least harmful means to incapacitate enemy belligerents, do not contest the general authority to employ deadly force derived from belligerent status determinations. Instead, they insist that the conditions that rebut this presumptive attack authority are broader than the traditional understanding of the meaning of hors de combat embraced by military experts, and include any situation where an enemy belligerent who has yet to be rendered physically incapable of engaging in hostilities may be subdued without subjecting friendly forces to significant risk of harm. This essay is a comprehensive rebuttal of this least harmful means LOAC interpretation. It highlights what Additional Protocol I does not require. In particular, the fact that Additional Protocol I — by any account the most humanitarian-oriented LOAC treaty ever developed — did not impose any affirmative least harmful means obligation vis à vis belligerents undermines any assertion that such an obligation may be derived from the positive LOAC. It emphasizes how this least harmful

means concept, especially when derived from an expanded interpretation of the meaning of the concept of hors de combat, is fundamentally inconsistent with the tactical, operational, and strategic objectives that dictate employment of military power.

<http://tinyurl.com/38380-Corn>

### **Better off as a prisoners of war : the differential standard of protection for military internees in Switzerland during World War II**

Dwight S. Mears. In: Journal of the history of international law Vol. 15, issue 2, 2013, p. 173-199. - Cote 400.2/348 (Br.)

During World War II, thousands of belligerent servicemen were interned in neutral countries. Those interned by permanent neutrals such as Switzerland experienced more stringent application of internment that denied the legal protections afforded to PoWs of enemy states, including harsh imprisonment for attempting to escape. The Swiss decision to deny PoW protection to internees triggered an international debate over customary protections of internees, and eventually led to explicit protections which were incorporated into the 1949 Geneva Convention (III) Relative to the Treatment of Prisoners of War. The ICRC's humanitarian mandate made it an authority on the law of armed conflict, including the law which protected internees of neutral countries. During World War II, concern over potential abuses of the law prompted the organization to clarify the customary international law of internment. This article retraces the diplomatic stalemate induced by the Swiss decision.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37936.pdf>

### **Between consolidation and innovation : the International Criminal Court's trial chamber judgment in the Lubanga case**

Sylvain Vité. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 61-85

The judgment delivered by Trial Chamber I of the International Criminal Court on 14 March 2012 in the case of The Prosecutor v. Thomas Lubanga Dyilo was welcomed by a number of experts as a landmark decision. Not only was the judgment the first ever adopted by the Court, thus marking a new step in the operationalization of the Rome Statute, but it also provided an opportunity for addressing a number of procedural and substantive issues that are essential to the progressive development of both international criminal and humanitarian law. This chapter does not seek to provide a comprehensive analysis of all these issues. It focuses instead on the core of the judgment, i.e., the definitions of the war crimes for which Thomas Lubanga Dyilo was convicted (Sect. 4.3). The Trial Chamber found that the accused was guilty of conscripting and enlisting children under 15 into an armed group, namely the Forces Patriotiques Pour la Libération du Congo (UPC/FPLC), and of using them to participate actively in hostilities. These crimes occurred in the Ituri region of the Democratic Republic of the Congo from September 2002 to August 2003. This article also examines how the Trial Chamber addressed the preliminary question of the characterization of the situation during the relevant period (Sect. 4.2). The judgment provides essential insight into the Trial Chamber's understanding of the notion of armed conflict within the framework of the Rome Statute.

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### **Between "constructive engagement", "collusion" and "critical distance" : the ICRC and the development of international criminal law**

Carsten Stahn. - [S.I.] : [s.n.], 2013. - 21 p. - Cote 362.191/1035 (Br.)

This article examines the approach and relationship of the ICRC to International Criminal Law. It argues that the ICRC's position navigates between normative support, collusion and institutional restraint. The ICRC has shaped some of the foundations of contemporary criminal justice, through its early focus on the implementation of International Humanitarian Law (e.g., through implementation and prosecution of 'grave breaches) and its role as 'gentle modernizer' of the law. But it has at the same time kept a critical distance towards International Criminal Law. Its approach is marked by three cardinal principles: 'structural independence', 'strategic engagement' and 'systemic support'. It is grounded in the distinct roles of the ICRC ('guardianship', 'protection', advocacy and dissemination') and deeper structural challenges in the relationship between International Humanitarian Law and International Criminal Law. This contribution argues for a re-conceptualization of some of the existing approaches. It claims that it is unhelpful to theorize the relationship between the ICRC and International Criminal Courts and Tribunals (ICCTs) on the basis of the premise that International Humanitarian Law provides a set of 'primary rules' that are enforced through criminal institutions, or complemented by 'secondary rules' under International Criminal Law (e.g., war crimes law).

It may be more appropriate to view the ICRC and ICCTs as part of a polycentric legal system that is built on a plurality of interactive normative structures and governed by certain checks and balances.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2364419](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2364419)

## **Beyond the battlefield, beyond al Qaeda : the destabilizing legal architecture of counterterrorism**

Robert M. Chesney. In: Michigan law review Vol. 112, no. 2, November 2013, p. 163-224. - Cote 303.6/224 (Br.)

By the end of the first post-9/11 decade, the legal architecture associated with the U.S. government's use of military detention and lethal force in the counterterrorism setting had come to seem relatively stable, supported by a remarkable degree of cross-branch and cross-party consensus (manifested by legislation, judicial decisions, and consistency of policy across two very different presidential administrations). That stability is certain to collapse during the second post-9/11 decade, however, thanks to the rapid erosion of two factors that have played a critical role in generating the recent appearance of consensus: the existence of an undisputed armed conflict in Afghanistan, as to which the law of armed conflict clearly applies, and the existence of a relatively identifiable enemy in the form of the original al Qaeda organization. Several long-term trends contribute to the erosion of these stabilizing factors. Most obviously, the overt phase of the war in Afghanistan is ending. At the same time, the U.S. government for a host of reasons places ever more emphasis on what we might call the "shadow war" model (i.e., the use of low-visibility or even deniable means to capture, disrupt, or kill terrorism-related targets in an array of locations around the world). The original al Qaeda organization, meanwhile, is undergoing an extraordinary process of simultaneous decimation, diffusion, and fragmentation; one upshot of this transformation has been the proliferation of loosely related regional groups that have varying degrees of connection to the remaining core al Qaeda leadership. These shifts in the strategic posture of both the United States and al Qaeda profoundly disrupt the stability of the current legal architecture on which military detention and lethal force rest. Specifically, these developments make it far more difficult (though not impossible) to establish the relevance of the law of armed conflict to U.S. counterterrorism activities, and they raise exceedingly difficult questions regarding whom these activities lawfully may be directed against. Critically, they also all but guarantee that there will be a new wave of judicial intervention to consider those very questions. Bearing that in mind, I conclude this Article by outlining steps that could be taken now to better align the legal architecture with the trends described above.

<http://www.michiganlawreview.org/assets/pdfs/112/Chesney.pdf>

## **Blurred lines : an argument for a more robust legal framework governing the CIA drone program**

Andrew Burt [and] Alex Wagner. In: The Yale journal of international law online Vol. 38, Fall 2012, 15 p. - Cote 345.29/203 (Br.)

In general, CIA employees are civilians and not combatants, and therefore do not enjoy any legal privilege to participate in hostilities pursuant to the laws of war. Military combatants are privileged to participate in hostilities and kill other combatants (or civilians who directly participate in hostilities) during armed conflict, where killing is a principal means of achieving the objective of attrition. Further, any such participation in hostilities, without marking themselves as such through uniforms or insignia to distinguish themselves from noncombatants, arguably renders CIA personnel in violation of the international humanitarian law requirement known as "distinction." That has led many to question whether the CIA civilian drone operators who engage in armed attacks against members of al Qaeda, the Taliban, and their associated forces might share the same legal status as the terrorists they combat. Initially, this Essay attempts to unpack that potential irony, laying out the legal framework that governs the law of armed conflict. More importantly, however, we propose possible courses of action that the Obama Administration could take to realign, revise, and strengthen the legal framework on which its highly effective drone program is based. We suggest two possible courses of action. First, and perhaps most intuitively, the Administration could transfer its drone program to military control and consolidate the separate CIA and military lists it reportedly maintains of targeted belligerents. Barring that transfer, however, we believe that broadening the U.S. government's view of who qualifies as a legal combatant—by publicly announcing the United States' acceptance, as a matter of legal obligation, of Articles 43 and 44 of the 1977 Additional Protocol I of the Geneva Conventions—would grant additional legitimacy under international law to buttress the drone program.

<http://www.yjil.org/docs/pub/o-38-burt-wagner-blurred-lines.pdf>

## **Boucliers humains volontaires et participation directe aux hostilités : analyse à la lumière du Guide interprétatif du CICR sur la participation directe aux hostilités**

P. Antoine Kaboré. - Saarbrücken : Ed. universitaires européennes, 2012. - VIII, 94 p. - Cote 345.25/292

Cette étude tente de clarifier une question controversée en droit international humanitaire: l'application d'une notion juridique aux contours imprécis (la participation directe aux hostilités) à une situation difficilement identifiable sur le terrain des hostilités (les boucliers humains volontaires). L'auteur part d'un postulat bien clair à savoir que les boucliers humains volontaires sont des civils qui ne doivent donc pas faire l'objet d'attaques directes sauf s'ils participent directement aux hostilités et pendant la durée de leur participation. La question juridique principale qui touche les boucliers humains volontaires est celle de savoir si l'attaquant peut être exonéré de son obligation de respecter le principe de proportionnalité. Pour l'auteur, l'attitude des boucliers humains volontaires peut justifier l'infléchissement de ce principe. Cette idée qualifiée de proportionnalité qualitative prône un "moindre poids" des boucliers humains volontaires dans le calcul de la proportionnalité, en raison de leur conduite. Cependant, pour éviter les abus, la proportionnalité qualitative ne doit s'appliquer que dans des cas très extrêmes et après le respect de plusieurs règles.

## **The boundaries of the battlefield : a critical look at the legal paradigms and rules in countering terrorism**

Jessica Dorsey and Christophe Paulussen. - The Hague : International Centre for Counter-Terrorism, April 2013. - 25 p. - Cote 303.6/32 (Br.)

This ICCT Research Paper is a detailed report from the two-day symposium entitled The Boundaries of the Battlefield: A Critical Look at the Legal Paradigms and Rules in Countering Terrorism, which was convened in The Hague in January 2013. The conference covered a range of issues that are relevant in debates about using force in counter-terrorism operations against non-state actors. Specifically, this paper elaborates on a number of key questions raised during the conference; these relate to the temporal and geographical limitations of armed conflict, the interplay between international humanitarian law and international human rights law, as well as the use of drones, the law enforcement approach to counter-terrorism and the possible need for a new framework for countering terrorism. The authors supplement participants' debates with detailed background information and theoretical discussions.

<http://tinyurl.com/37917-Dorsey>

## **Bringing the commentaries on the Geneva Conventions and their Additional Protocols into the twenty-first century**

Jean-Marie Henckaerts. In: International review of the Red Cross Vol. 94, no. 888, Winter 2012, p. 1551-1555

The ICRC Commentaries on the 1949 Geneva Conventions date back to the 1950s, and those on the 1977 Additional Protocols were written in the 1980s. Since the original Commentaries were published, the Conventions and Protocols have been put to the test, and practice with respect to their application and interpretation has developed significantly. In order to capture these new developments a major ICRC project to update the Commentaries on these six treaties is now well underway. Its goal is to contribute to a better understanding of, and respect for, international humanitarian law. Ultimately, the project seeks to enhance protection for the victims of armed conflicts.

<http://www.cid.icrc.org/library/docs/DOC/irrc-888-henckaerts.pdf>

## **Cadre juridique de l'emploi des drones au combat**

Sébastien Gallais. - Paris : L'Harmattan, 2013. - 192 p. - Cote 341.67/739

Initialement dévolus aux missions de renseignement et d'observation, les drones, aéronefs inhabités, deviennent, au fur et à mesure des conflits, des éléments essentiels des actions létales. Les drones accentuent l'efficacité des actions militaires tout en participant à une application de plus en plus rigoureuse du droit humanitaire. Les efforts technologiques en cours doivent rapidement permettre à ces robots aériens de répondre aux exigences légales d'insertion dans la circulation aérienne générale. Avec l'augmentation des performances des capteurs embarqués, les drones se transforment de systèmes automatisés en systèmes de plus en plus autonomes. D'une versatilité opérationnelle presque sans limite, les risques de dérives, tels que la banalisation voire la déshumanisation du combat, ne semblent pas utopiques. Les systèmes drones, et la robotique militaire en général, ouvrent de nouvelles perspectives pour lesquelles il convient d'analyser les impacts juridiques, humains et procéduraux.

## The challenges of establishing the facts in relation to "Hague law" violations

Stephen Wilkinson. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 313-330. - Cote 345.25/289

This article assesses the unique challenges associated with conduct of hostilities fact-finding. The author begins by presenting general challenges of fact-finding during armed conflict, such as security concerns and a shortage of primary sources. He then turns to the additional challenges presented by the framework of international humanitarian law (IHL). These challenges include determining the applicable IHL rules and the necessity of specific expertise. The article also expands on the complexities that arise in determining such matters as quantitative damages and the legitimacy of a particular target, and suggests measures for overcoming these challenges, such as relying on circumstantial evidence when clear-cut information is not available. The author touches on several types of circumstantial evidence that can be useful when used cumulatively, including assessment of burial sites and past behavioural patterns of those attacked. The article stresses the importance of the subjective assessment of the circumstances as perceived by the 'attacking' party through official and 'unofficial' reactions, statements, and testimony. The author concludes that these fact-finding challenges are not insurmountable and that the international community should urge the warring parties to review and report their behaviour during hostilities. The author contends that this self-reporting, coupled with creative fact-finding, can facilitate greater enforcement of IHL's norms. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## Challenges to international humanitarian law : Israel's occupation policy

Peter Maurer. In: International review of the Red Cross Vol. 94, no. 888, Winter 2012, p. 1503-1510

In this article, the ICRC's President Peter Maurer presents the ICRC's view on Israeli policies and practices regarding certain key issues related to the occupation, deriving from Israel's obligations under occupation law, namely the annexation of East Jerusalem, the routing of the West Bank Barrier and the building of Israeli settlements in the Occupied Palestinian Territory.

<http://www.cid.icrc.org/library/docs/DOC/irrc-888-maurer.pdf>

## Combattants et combattants illégaux

Marco Sassòli. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 151-184. - Cote 345.2/945

Cette contribution présente en premier lieu le régime traditionnel de la qualification du combattant tel qu'il ressort du texte des traités du droit international humanitaire et du droit international coutumier et montre que les controverses qui resurgissent de nos jours ne sont pas nouvelles. Elle discute ensuite des défis posés par la nature changeante des conflits armés et des approches adoptées par certains gouvernements, y compris dans le cadre de la guerre contre le terrorisme.

## Complementarity between the ICRC and the United Nations and international humanitarian law and international human rights law, 1948-1968

Katharine Fortin. In: International review of the Red Cross Vol. 94, no. 888, Winter 2012, p. 1433-1454

This article shows that between the drafting of the Universal Declaration of Human Rights in 1948 and the Tehran conference in 1968, international human rights law and international humanitarian law and their respective guardian institutions, the United Nations (UN) and the International Committee of the Red Cross (ICRC), were not so conceptually far apart as is sometimes suggested. Its purpose is to give further legitimacy to the role of human rights law in armed conflict and show that cooperation between the UN and the ICRC has a long history.

<http://www.cid.icrc.org/library/docs/DOC/irrc-888-fortin.pdf>

## La complicité de génocide

Daniel Dormoy. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 645-670. - Cote 345.2/945

Si les individus comme les Etats peuvent être reconnus responsables du crime de génocide, d'une manière ou d'une autre, ils peuvent aussi en être les complices, la complicité étant une forme de participation au crime de génocide prévue notamment par la Convention de 1948, forme de participation que les juridictions internationales, mais aussi la Cour internationale de justice, ont eu à appliquer. Cette dernière

ayant souligné la dualité des régimes de responsabilité résultant du droit international pénal et du droit international, c'est dans le cadre de cette distinction qu'est étudiée la complicité de génocide, tout d'abord comme forme de participation individuelle, puis comme forme de participation de l'Etat au crime de génocide.

### **Le concept de conflit armé : enjeux et ambiguïtés**

Eric David. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 55-71. - Cote 345.2/945

La notion de conflit armé n'est pas codifiée. Pourtant, elle est un fait, une condition qui fonde l'application non seulement du droit international humanitaire mais aussi d'autres règles. Ce chapitre montre au travers de la pratique que cette notion suppose des choses différentes selon que l'on se place du point de vue du droit international général ou de celui du droit international humanitaire.

### **Constructive constraints ? : conceptual and practical challenges to regulating private military and security companies**

Surabhi Ranganathan. - In: Human security and international law : the challenge of non-state actors. - Cambridge [etc.] : Intersentia, 2014. - p. 175-193. - Cote 345/644

This contribution provides an account of the impact that PMSCs have upon various dimensions of human security, and reflects upon various developments for their regulation. In particular, the author explores the promises held by private self-regulation adopted by the very NSAs whose activities affect human security. This novel regulatory approach, which defies the classic conception of law as a set of top-down, State-promulgated rules, involves NSAs in norm-design, norm-implementation, and compliance monitoring. This may, if certain conditions are satisfied, be more responsive to the reality in which NSAs operate, and protect the human security of affected populations at least as effectively as State regulation.

### **Contemporary views on the lawfulness of naval blockades**

Martin David Fink. In: Aegean review of the law of the sea and maritime law Vol. 1, Issue 2, October 2011, p. 191-215. - Cote 347.799/149 (Br.)

The traditional law of blockade has several technical requirements that if not met renders a blockade unlawful. These traditional requirements balance the interests of the belligerent and neutrals. A more contemporary view on the law of blockade, however, emphasizes that blockades are also subject to the restrictions and general obligations imposed by treaties and general principles of humanitarian law. Crucially, whether or not the consequences of a breach of humanitarian principles or humanitarian law render a naval blockade unlawful or not is however not at all clear. The recent use of naval blockades during the Israeli military operations has given rise again to the discussion as to what renders a blockade unlawful. The maturation of the law of blockade has seen an increasing willingness to embrace aspects of humanitarian law. However, the diversity of views from the international community as endorsed by the published reports on the flotilla incident demonstrates that there remains a lack of consensus and an active discussion on the state of the law of blockade.

<http://dare.uva.nl/document/361681>

### **The Copenhagen principles on the handling of detainees : implications for the procedural regulation of internment**

Lawrence Hill-Cawthorne. In: Journal of conflict and security law Vol. 18, no. 3, Winter 2013, p. 481-497

The Copenhagen Principles on the Handling of Detainees in International Military Operations were released in October 2012 after a five-year long process involving states and certain organizations. The Principles address a number of issues concerning the handling and transfer of detainees. They apply in military operations conducted by states abroad in the context of non-international armed conflicts and peace operations. This article focuses on those principles that address the procedural regulation of internment (ie preventive, security detention), as it is here that the current law is particularly unclear. On the one hand, the treaty provisions applicable in non-international armed conflicts contain no rules on the procedural regulation of internment, in comparison with the law of international armed conflict. On the other hand, the relevant rules under international human rights law (IHRL) appear derogable in such situations. This article demonstrates that the approach taken to this issue in the Copenhagen Principles is one which essentially draws on the procedural rules applicable to civilian internment in the international armed conflicts. These rules adopt standards that are lower than those under IHRL. Reference is then made to other recent practice, which illustrates that the Copenhagen Principles do not apply in a legal vacuum. In particular, two recent judicial developments highlight the continued relevance of human rights

law and domestic law, respectively, in regulating detention operations in the context of international military operations. Compliance with the Copenhagen Principles may not, therefore, be sufficient for detention to be lawful.

Only from ICRC Headquarters: <http://jcsf.oxfordjournals.org/content/18/3/481.full.pdf>

### **Corporations, international crimes and national courts : a Norwegian view**

Simon O'Connor. In: International review of the Red Cross Vol. 94, no. 887, Autumn 2012, p. 1007-1025

For a number of reasons, questions regarding the accountability of corporations for actions that might be complicit in the commission of international crimes have gained prominence in recent times. Though initiatives regarding what is more broadly described as business and human rights are to be welcomed, this sometimes distracts from existing systems of accountability, especially when those acts, which may be discussed as human rights violations, equally constitute crimes. Whilst not all criminal jurisdictions extend to legal persons, the Norwegian Penal Code does. This article analyses the Norwegian Penal Code's provisions, in light of amendments made to it in 2008 to include international crimes in it, with the effect of extending those crimes to corporations. The article first addresses the personal, material, temporal, and geographical scope of the penal code. It then addresses the potential consequence of the exercise of jurisdiction in light of the only case in recent times in Norway that deals explicitly with a corporation's potential criminal liability for war crimes. The article then addresses three additional issues with respect to provisions on complicity, intent, and defences under the Norwegian Penal Code, before concluding with some reflections on the possible future effects of this legislation and the possibility that it will inspire developments elsewhere.

### **Corresponding evolution : international law and the emergence of cyber warfare**

by Bradley Raboin. In: Journal of the national association of administrative law judiciary Vol. 31, no. 2, Fall 2011, p. 602-668. - Cote 345.26/246 (Br.)

The purpose of this comment is to consider how cyber warfare is currently addressed by international laws and the degree to which those laws remain both applicable and effective. The analysis proceeds in three Parts: Part I discusses the historical development of cyber warfare and its increasing usage in modern conflicts. Part II considers the applicability of current international laws to the realm of cyber warfare, and Part III considers broad changes needed within the international law paradigm to allow for the effective regulation of cyber warfare.

<http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1013&context=naalj>

### **The crime of attacking peacekeepers**

Andrea Spagnolo. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 153-170. - Cote 345.25/289

Spagnolo examines the protection of peacekeepers under International Humanitarian Law (IHL). He explains that customary rules provide peacekeepers, when they are not engaged as combatants, with the same protections accorded to civilians. Attacks on peacekeepers who are entitled to this level of protection are considered war crimes. However, the author notes that the blurred distinction between peacekeeping and peace enforcement makes it difficult to determine the protection granted to UN troops. Spagnolo argues that self-defense further complicates matters because, while the SCSL and ICC have concluded that self-defense does not automatically turn peacekeepers into combatants, the level of protection given is highly situational. He then analyzes the elements of the crime of attacking a peacekeeper. He first considers two interpretations of the actus reus, arguing that a broader interpretation of "attack" is consistent with the rationale for protecting peacekeepers in IHL. Finally, he examines the mens rea requirement, noting that the tendency to presume peacekeepers are always protected as civilians is dangerous because the population has different perceptions of peacekeepers. This means that intent must be analyzed closely. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **The criminalization and prosecution of attacks against cultural property**

Andrea Carcano. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 78-97. - Cote 345.25/289

Andrea Carcano discusses the status of cultural property in the context of international criminal law (ICL). Through an examination of case law and statutory analysis, the author outlines how the statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the statute of the International Criminal Court (ICC), and other ICL instruments have approached cultural property. The author argues that neither the ICTY's nor the ICC's statute criminalize attacks against cultural property, but that they criminalize attacks against a range of civilian objects, many of which could fit within the definition of cultural property. The author discusses the ICTY's and ICC's practices of prosecuting the destruction of protected objects with discriminatory intent as a crime against humanity. He argues that this approach has the advantage of enabling prosecution of attacks against cultural property in peacetime, but that it also dilutes IHL norms protecting cultural property as part of the cultural heritage of "every people." Ultimately, the author argues that the trend to criminalize attacks on cultural property in ICL has been conservative and that ICL does not yet provide a comprehensive regime by which to prosecute offences against cultural property. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **The criminalization of the use of biological and chemical weapons**

**Annita Larissa Sciacovelli.** - In: *War crimes and the conduct of hostilities : challenges to adjudication and investigation.* - Cheltenham ; Northampton : E. Elgar, 2013. - p. 211-224. - Cote 345.25/289

This article examines the criminalization of the employment of biological weapons (BW) and chemical weapons (CW). The author notes that while the prohibition of BW and CW reflects customary international law, the development of these weapons is outlawed by international conventions and national legislation. With respect to crimes under international law, she argues that domestic courts may be competent to prosecute both on the basis of their domestic jurisdiction and under the principle of universal jurisdiction. States Parties may also exercise their extraterritorial jurisdiction over crimes committed by foreigners. While the lack of specific reference to CW and BW in the International Criminal Court's (ICC) statute creates ambiguity, the author argues that the ICC's jurisdiction over the criminal use of "poison or poisoned weapons" and "prohibited gases" could be interpreted to cover BW and CW. In terms of individual criminal responsibility for the use – and complicity with use – of CW and BW, the author explores jurisprudence from South Africa, Iraq, the Netherlands, and the European Court of Human Rights. She concludes that individuals deploying BW and CW may be held accountable for war crimes, but the same cannot be said for ancillary activities, unless they incur accomplice liability for the production and/or supply of these weapons. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **The criminalization of the violations of international humanitarian law from Nuremberg to the Rome statute**

**Fausto Pocar.** - In: *War crimes and the conduct of hostilities : challenges to adjudication and investigation.* - Cheltenham ; Northampton : E. Elgar, 2013. - p. 3-19. - Cote 345.25/289

The author argues that while criminal prosecutions targeting violations of the laws governing the practice of warfare (IHL) have increased, more remains to be done. With the 1949 Geneva Conventions, states took steps towards codifying what had been customary law, and agreed to prosecute in domestic courts individuals who committed 'grave breaches' of IHL. However, despite the Geneva conventions, states have been strongly reluctant to accept that international jurisdiction could be exercised over crimes committed in internal conflicts. Steps towards accepting the applicability of IHL in internal conflicts were seemingly taken by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the early 1990s. An especially important case in this regard was Tadic, where the ICTY held that most acts constituting war crimes in international conflicts also constitute war crimes when committed in non-international conflicts. However, this progress was not maintained when the Rome Statute into effect in 2002. The Rome Statute, which governs the functioning and jurisdiction of the International Criminal Court, maintains the rigid traditional distinction between international and non-international conflicts. This is likely because the Rome Statute was negotiated by state parties, who remain unwilling to surrender any domestic jurisdiction. Thus the Rome Statute risks leaving IHL violations in internal conflicts immunized from prosecution. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **Criminalizing rape and sexual violence as methods of warfare**

**Ludovica Poli.** - In: *War crimes and the conduct of hostilities : challenges to adjudication and investigation.* - Cheltenham ; Northampton : E. Elgar, 2013. - p. 136-152. - Cote 345.25/289

Poli examines the criminalization of rape and sexual violence in International Humanitarian Law (IHL). She traces the evolution of IHL's understanding of rape from being a private act to the recognition of sex crimes as strategies of war by the International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR). She notes other positive changes in the law such as the use of gender-neutral language

and the change from defining rape as a crime against honor to a crime of violence. Although rape had long been outlawed, Poli explains that courts rarely enforced those laws, pointing to the International Military Tribunals at Nuremberg and Tokyo as examples of unsatisfactory prosecution of rape as a war crime. The author explores the contributions of the ICTY, ICTR, and the Special Court for Sierra Leone (SCSL), noting the criminalization of rape and the identification of sexual slavery and forced marriage as violations of laws of war. She also argues that the inclusion of an explicit list of sexual war crimes in the Statute of the International Criminal Court further increased protection against the use of sexual violence in armed conflict. Despite this progress, Poli argues that the definition of rape and the nature of consent still require further clarification. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **Cyber-attacks and international law of armed conflicts: a "jus ad bellum" perspective**

Titiriga Remus. In: *Journal of international commercial law and technology* Vol. 8, no. 3, 2013, p. 179-189. - Cote 345/648 (Br.)

This article highlights legal problems of cyber attacks from a 'jus ad bellum' perspective (international dispositions regarding the justification for entering a war). Since no international instrument whatsoever cover the cyber attacks the analogies with current international solutions are largely employed. We illustrate also the developments with relevant examples taken from main powers' doctrine and practice (US, Russia and China). The starting points are the provisions regarding the use of (armed)"force" under Article 2(4) and "armed attack" under Article 51 of United Nations Charter. The qualification of a cyber attack as use of "armed force" or "armed attack" is based a multi criteria threshold developed by Schmitt. Other developments focus the capacity of present International law concepts (direct and indirect armed attack, identification of the aggressor state, pertinence of pre-emptive or interceptive self defense vis-à-vis cyber 'armed attack', etc.) to answer cyber warfare's structures and challenges.

<http://www.jiclt.com/index.php/jiclt/article/view/185/183>

### **Cyber-conflict, cyber-crime, and cyber-espionage**

David Weissbrodt. In: *Minnesota journal of international law* Vol. 22, Summer 2013, p. 347-387. - Cote 345.26/249 (Br.)

This Article explores different types of computer network operations and the scope of existing legal paradigms that can be applied to computer network operations. This Article examines three recent examples of computer network operations and analyzes the situations to determine the types of computer network operation and what, if any, legal operations apply. Finally, this Article discusses the limitations of existing legal paradigms, and analyzes the attributes and weaknesses of the three more prominent proposals for addresses regulation of international computer network operations.

### **Cyber "hostilities" and the war powers resolution**

Allison Arnold. In: *Military law review* Vol. 217, Fall 2013, p. 174-192

This article begins with an analysis of the "Military Activities in Cyberspace" section of the National Defense Authorization Act for Fiscal Year 2012 (NDAA 2012) and its connection to the War Powers Resolution. Part III examines the record of the 1973 Congress to review how the term "hostilities" came to be the operative language of the War Powers Resolution. Part IV explores how the executive branch has explained which type of military activities it considers to be "hostilities" under the statute. In Part V, the "hostilities" analysis is then applied in the cyber context using the Stuxnet computer virus attack in Iran as a test case.

### **Cyber war and international law : international law conference**

Robin Geiss... [et al.]. In: *Israel yearbook on human rights* Vol. 43, 2013, p. 1-169

Content notamnt: Lawful targets in cyber operations : does the principle of distinction apply ? / N. Lubell. - The role of counterterrorism law in shaping ad bellum norms for cyber warfare / W. C. Banks. - International law and cyber threats from non-state actors / L. R. Blank. - Cyber warfare and non-international armed conflicts / R. Geiss

### **Cyber warfare and non-international armed conflicts**

by Robin Geiss. In: *Israel yearbook on human rights* Vol. 43, 2013, p. 141-157

This article seeks to discuss particular legal issues arising under the laws of armed conflict with regard to the use of military cyber operations in non-international armed conflicts. The analysis proceeds in three steps and will analyze three general questions. The first question that arises when considering the issue of cyber war-fare in non-international armed conflicts is whether cyber operations in and of themselves,

without accompanying kinetic military operations, could ever trigger a non-international armed conflict. The second question that arises when considering the issue of cyber warfare in non-international armed conflicts relates to the geographic scope of application of the laws of armed conflict. Finally, the third question relates to the use of cyber operations in the course of an already ongoing non-international armed conflict in which conventional kinetic military means and methods of warfare are being employed.

### **Cyber warfare and the crime of aggression : the need for individual accountability on tomorrow's battlefield**

Jonathan A. Ophardt. In: Duke law and technology review No. 3, 2013, [27] p. - Cote 344/617 (Br.)

As cyberspace matures, the international system faces a new challenge in confronting the use of force. Non-State actors continue to grow in importance, gaining the skill and the expertise necessary to wage asymmetric warfare using non-traditional weaponry that can create devastating real-world consequences. The international legal system must adapt to this battleground and provide workable mechanisms to hold aggressive actors accountable for their actions. The International Criminal Court--the only criminal tribunal in the world with global reach--holds significant promise in addressing this threat. The Assembly of State Parties should construct the definition of aggression to include these emerging challenges. By structuring the definition to confront the challenges of cyberspace--specifically non-State actors, the disaggregation of warfare, and new conceptions of territoriality--the International Criminal Court can become a viable framework of accountability for the wars of the twenty-first century.

<http://scholarship.law.duke.edu/dltr/vol9/iss1/2>

### **Cyberspace operations in international armed conflict : the principles of distinction and proportionality in relation to military objects**

Wieteke Theeuwen. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 4/2013, p. 188-194. - Cote

This article discusses the interpretation of international humanitarian law in relation to cyber warfare. The author examines when a cyber attack can be qualified as an attack under *ius in bello*, that is in the course of an international armed conflict. The main question is whether cyber attacks with non-kinetic outcomes can still be qualified as an armed attack under IHL. Applying the effects-based approach the author argues, in line with the view of a number of scholars, that a non-kinetic cyber operation which indirectly facilitates kinetic outcomes will qualify as an armed attack under *ius in bello*. A group of experts that drafted the Tallinn Manual on the applicability of international law came to the same conclusion. The article further discusses, applying the principles of distinction and proportionality, dual-use objects and their qualification as military or civilian objects. Despite the risk of being indiscriminate, cyber attacks could also lead to less collateral damage.

### **Decision-making process in military combat operations**

ICRC. - Geneva : ICRC, October 2013. - 53 p. - Cote 345.22/234

Directed at commanders, staff officers and military doctrine writers, this practical guidance manual illustrates where and how the application of the Law of Armed Conflict (LOAC) should be integrated into the operational and tactical decision-making process, as well as into operational orders in times of armed conflict. The manual is intended to help decision makers create the necessary conditions for the respect of the law in the conduct of military combat operations.

<http://www.cid.icrc.org/library/docs/DOC/icrc-002-4120.pdf>

### **Developments in international criminal law and the case of business involvement in international crimes**

Joanna Kyriakakis. In: International review of the Red Cross Vol. 94, no. 887, Autumn 2012, p. 981-1005

In the wake of the mandate of the Special Representative of the United Nations Secretary-General for Business and Human Rights (SRSG), international criminal law looks set to play a role in measures towards the legal accountability of business actors involved in gross human rights and humanitarian law violations. Against the backdrop of the SRSG's now completed mandate, this article looks at three recent developments in international criminal law to consider the field's potential relevance to business actors involved in conflict. The first is the newest mode of liability recently adopted by the International Criminal Court, indirect perpetration through an organisation. The second is the aiding and abetting doctrine as applied by the Special Court for Sierra Leone in the Charles Taylor case. The third is the potential uptake of

a practice of thematic prosecutions focusing on particular under-regulated issues of concern for the international community.

<http://www.cid.icrc.org/library/docs/DOC/irrc-887-kyriakakis.pdf>

## **Direct attacks on civilians and indiscriminate attacks as war crimes**

**Francesco Moneta.** - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 59-77. - Cote 345.25/289

Francesco Moneta analyzes the jurisprudence and legal provisions regulating attacks on civilians. The author argues that common article 3 of the Geneva Conventions determines if an attack is permissible on the basis of whether the civilian is taking part in hostilities. The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Moneta argues, has illustrated that attacks against civilians are criminal when the perpetrator acts willfully, which includes recklessness, but not mere negligence. The author also sets forth several challenges inherent in investigating and adjudicating attacks against civilians, such as the evidentiary difficulties in proving attacks are aimed at civilians in densely populated areas and in proving that the attacker knew the victims were civilians. Moneta proposes that two main issues have not been resolved in the ICTY's jurisprudence: namely, how to treat members of an organized armed group of non-state actors in non-international armed conflict; and the question of disproportionate attacks in non-international armed conflicts. Nevertheless, the author argues that international tribunals have made a significant contribution to IHL by providing a system for enforcing humanitarian principles protecting civilian populations from hostilities. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## **Does IHL protect "unlawful combatants" ?**

**Gabor Rona.** In: Collegium No 43, automne 2013, p. 63-67. - Cote 345.2/948

This contribution gives a little background to the notion of "unlawful combatant " and how it has no place in the construction of the third Geneva Convention and Additional Protocol I.

<http://tinyurl.com/37961-Rona>

## **Le droit de la Haye à l'épreuve des espaces aériens et extra-atmosphériques**

**Mireille Couston et Géraldine Ruiz.** - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 305-355. - Cote 345.2/945

Sans confondre les genres, l'air et l'espace ayant chacun des caractéristiques propres, leur intégration grandissante dans les conflits armés impose de les confronter aux principes qui gouvernent la conduite des hostilités. Ces normes sont issues de développements qui ont débuté à une époque se situant, technologiquement parlant, à des années-lumières de la nôtre. Il s'agit alors de mettre en parallèle les progressions techniques des deux espaces considérés et les développements du droit, pour dresser un tableau global de la place de l'air et de l'espace dans le conflit armé et dans son cadre juridique. Postuler la permanence des normes dans un contexte de mutation des caractéristiques empiriques de la guerre n'empêche néanmoins pas les difficultés qui naissent dès que les règles ont à passer le test de l'application concrète. Il est alors primordial d'envisager le droit dans les contextes nouveaux auquel il se trouve confronté afin d'évaluer la pertinence de ces normes.

## **Le droit des conflits armés devant les organes de contrôle des traités relatifs aux droits de l'homme**

**Emmanuel Decaux et Spyridon Aktypis.** - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 529-572. - Cote 345.2/945

Après un rapide passage en revue des différents problèmes étroitement liés au phénomène de juridictionnalisation du droit des conflits armés, ce chapitre se focalise sur l'analyse de ce droit devant les organes de contrôle des traités relatifs aux droits de l'homme sur le plan international en laissant de côté les perspectives régionales et les questions de droit comparé. Il envisage les principaux traités relatifs aux droits de l'homme adoptés au sein des Nations Unies selon trois aspects: la place des conflits armés dans les traités internationaux relatifs aux droits de l'homme, la prise en compte des conflits armés par les organes conventionnels de contrôle, et le contrôle de la Cour internationale de justice sur le respect des traités de droits de l'homme dans les situations de conflit armé.

## **Droit international et interventions armées**

Daniel Lagot. - In: Droit international et conflits armés. - Paris : L'Harmattan, 2013. - p. 9-32. - Cote 345/642

Présentation du droit international relatif aux conflits armés, ses diverses interprétations, et une brève analyse d'ensemble des conflits armés récents et actuels.

## **Droit international général et droit international humanitaire : retour aux sources**

Vincent Chetail. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 13-51. - Cote 345.2/945

Ce chapitre propose une brève cartographie des sources du droit international humanitaire. Il examine successivement le droit international humanitaire dans ses relations avec le droit des traités, le droit coutumier et le droit impératif. L'objectif est de mettre à jour les particularités du droit international humanitaire, ses points communs avec d'autres branches du droit international public, ainsi que ses limites.

## **Le droit international humanitaire à l'épreuve des groupes armés non-étatiques**

Céline Bauloz. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 217-250. - Cote 345.2/945

Tout groupe armé ne constitue pas automatiquement un groupe armé au sens du droit international humanitaire. Les développements normatifs dans ce domaine ont clairement délimité les situations où les groupes armés peuvent être considérés en tant que parties à un conflit (section I). Concernant les conflits armés non internationaux, plus particulièrement, la jurisprudence des tribunaux pénaux internationaux a par la suite joué un rôle majeur en affinant la définition des groupes armés en droit international humanitaire (section II). Une question reste néanmoins en suspens : le droit international humanitaire est-il à même de refléter la nature protéiforme des groupes armés contemporains ? Le cas des groupes armés terroristes opérant de manière transnationale et celui des bandes criminelles organisées seront ainsi abordés en conclusion.

## **Le droit international humanitaire dans la mission du président du CICR : expériences pratiques de Cornelio Sommaruga (Président du CICR 1987-1999)**

Cornelio Sommaruga. - [Genève] : [s.n.], Septembre 2013. - 15 p. - Cote 362.191/530 (Br.)

Présentation de quatorze thématiques rencontrées dans la pratique par Cornelio Sommaruga, alors Président du CICR, et relatives au respect du DIH : la diffusion, le respect de l'emblème, les forces des Nations-Unies, épargner les civils en conflit armé, les visites du CICR aux prisonniers de guerre et à d'autres personnes privées de liberté, le rapatriement des prisonniers à la fin des hostilités actives, la recherche des disparus, les territoires occupés et l'application de la quatrième Convention, les zones protégées, les actions de secours du CICR, les mines terrestres, l'arme nucléaire, le témoignage du personnel du CICR devant des tribunaux internationaux, la commission d'établissement des faits, et enfin, la négociation avec Fidel Castro d'un accord sur les visites de détenus de sécurité à Cuba.

<http://tinyurl.com/37907-Sommaruga>

## **Drones at trial : State and individual (criminal) liabilities for drones attacks**

Geert-Jan Alexander Knoops. In: International criminal law review Vol. 14, issue 1, 2014, p. 42-81

This article delves into issues of individual and State (criminal) liability for (lethal) drone operations; a yet unexplored area given the proliferation of drone attacks in recent years. The criteria under which military and political leaders can (possibly) be held criminally accountable for conducting drone attacks within and outside an armed conflict are outlined, based upon ICTY, ICC and ECHR-case law. Against this background, the discrepancies and pitfalls of the U.S. policy vis-à-vis drone attacks are discerned, as well as the subject-matter of responsibilities of third states which facilitate principal States such as the U.S. in these attacks.

Only from ICRC Headquarters: <http://dx.doi.org/10.1163/15718123-01402004>

## The duty to investigate civilian casualties during armed conflict and its implementation in practice

Alon Margalit. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 155-186

Seeking to balance military necessity with humanitarian considerations, the Law of Armed Conflict (LOAC) restricts the manner in which force can be used during warfare and prohibits certain kinds of attacks. In order to protect civilians and civilian objects while pursuing attacks against combatants and military objectives, LOAC prescribes strict targeting rules which are based on the principles of distinction, proportionality and precautions. The investigation of civilian casualties that have occurred during armed conflict enforces (and reinforces) these targeting rules and serves a similar purpose—protecting the civilian population from the effects of military operations. The present article discusses the circumstances which give rise to a duty to investigate civilian casualties. It considers whether and to what extent a State whose armed forces caused civilian casualties during combat is required—under LOAC—to investigate these incidents. While the starting point is the case where a suspected war crime is involved, the article also deals with the question whether there is a duty to investigate incidents which indicate a LOAC violation that does not trigger individual criminal responsibility, namely a suspected failure to take feasible precautions in attack. It further considers whether an obligation to investigate arises in each and every case of civilian casualties, notwithstanding they are not necessarily unlawful under LOAC.

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<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9129731>

## The duty to make amends to victims of armed conflict

Scott T. Paul. In: Tulane journal of international and comparative law Vol. 22, issue 1, Winter 2013, p. 87-117. - Cote 345.22/236 (Br.)

In the past decade, calls for monetary payments by warring parties to the civilians they harm have become significantly louder and more prominent. The law of armed conflict permits parties to harm civilians as long as the harm is not excessive to the concrete and direct military advantage they anticipate gaining through an attack. This Article examines the current state of international law regarding duties owed to victims suffering harm as a result of lawful combat operations, and it discusses the moral obligations these warring parties owe to them because they caused the harm. The Article notes that civilians who suffer incidental losses as a result of lawful acts during armed conflict are not currently entitled to any compensation or reparation and that the parties responsible for causing them harm typically ignore them. This Article argues that the solution proposed by international civil society groups and practiced by some states, known as "making amends", meets an important but long overlooked moral obligation on warring parties.

<http://tinyurl.com/38133-Scott>

## The duty to respect international humanitarian law during European Union-led operations

Marten Zwanenburg. - In: Human rights in EU crisis management operations : a duty to respect and to protect ?. - The Hague : T.M.C. Asser Institute, 2012. - p. 63-78. - Cote 345.26/243 (Br.)

The clear military nature of some of the EU missions calls for the more specific question of whether there is a duty to respect international humanitarian law (IHL) during EU-led operations, and if so, who is the addressee of this obligation. Marten Zwanenburg argues that the EU may indeed itself become a party to an armed conflict when an EU-led operation becomes involved in hostilities. At the same time, this does not preclude troop-contributing states from also becoming such parties. The question then is how to determine whether the EU or rather troop-contributing states are accountable under the rules of IHL.

[http://consilium.europa.eu/media/1874022/hazelzet\\_cleer\\_working\\_paper.pdf](http://consilium.europa.eu/media/1874022/hazelzet_cleer_working_paper.pdf)

## The effects of the Lubanga case on understanding and preventing child soldiering

Mark A. Drumbl. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 87-116

This article unpacks the relationships between the Lubanga proceedings and how the international community conceptualizes, and strives to prevent, child soldiering. The central thesis is that the Lubanga proceedings reinforce, and curvy, a stylized portrayal of the child soldier as a faultless passive victim, psychologically devastated, and irreparably damaged. These portrayals emerge rather starkly in the penal proceedings; they are much less prominent in the reparative phase of the case. This Article proceeds through several steps. First, it defines the term child soldier. Second, it discusses how child soldiers are portrayed within the international legal imagination. Third, the on-the-ground realities of child soldiering

are set out. The discussion, fourthly, then moves to a detailed analysis of the Lubanga trial and sentencing judgments, which are placed within the broader discursive and sociological contexts earlier discussed. This Article concludes with an overview and brief discussion of the Lubanga reparations decision.

Only from ICRC Headquarters: [http://journals.cambridge.org/abstract\\_S138913591300007X](http://journals.cambridge.org/abstract_S138913591300007X)

## End of IHL application

Marko Milanovic. In: *Collegium No 43*, automne 2013, p. 83-94. - Cote 345.2/948

The general principle is that if a particular situation can no longer be qualified as an IAC, a NIAC, or an occupation, even if it was so qualified at a particular point in the past, the application of IHL will end. In the absence of any specific guidance to the contrary, this general principle makes perfect sense in the factual, objective Geneva threshold framework. For IHL to apply, its thresholds of application must continue to be satisfied at any given point in time. In order to elaborate on this general principle further, we must, of course, look at the constitutive elements of each threshold in the context of those particular scenarios in which these elements might be extinguished. We must then establish whether a departure from the general rule is warranted. In doing so, we will observe certain terminating processes and events, which end the application of IHL altogether, and certain transformative processes and events, which end the application of one IHL sub-regime but engage another.

<http://tinyurl.com/37965-Milanovic>

## The enlistment, conscription and use of child soldiers as war crimes

Alberto Oddenino. - In: *War crimes and the conduct of hostilities : challenges to adjudication and investigation*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 119-135. - Cote 345.25/289

Oddenino analyzes international criminal law (ICL) governing the use of child soldiers, examining how the issue of criminalization fits into the wider context of human rights law (HRL) and international humanitarian law (IHL). The author begins by tracing the emergence of the protection of child soldiers in HRL and IHL. He notes that reliance on state responsibility is insufficient in contemporary conflicts due to the role of non-state actors undertaking illegal recruitment of children, and the outlines the development and content of individual international criminal responsibility regarding the conscription, enlistment and use of child soldiers for active participation in hostilities. The author explains that the material element of the crime of the use of child soldiers consists of any form of enlistment of a child whether voluntary, compulsory or forced. He also explains how the term "active participation in hostilities" has created difficulties for interpretation, as it is more expansive than the regulation of "direct participation" under IHL. He argues that there is discrepancy between the mental element of the crime required by the ICC statute versus the Elements of a Crime. Oddenino warns that the tendency to cross fertilize among ICL, HRL, and IHL carries the risk of violating strict legality. He concludes that analysis across these three frameworks should be used to assist in clarifying elements of the criminal provisions rather than for cross-pollination. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## Ensuring human security in armed conflicts : the role of non-state actors and its reflection in current international humanitarian law

Veronika Bílková. - In: *Human security and international law : the challenge of non-state actors*. - Cambridge [etc.] : Intersentia, 2014. - p. 29-51. - Cote 345/644

This chapter examines the interface between international humanitarian law and human security. More specifically, she examines whether, and to what extent, relevant NSAs in armed conflict interact with the three normative components of IHL - "rescue", "rights" and "responsibility" - and how these components, and non-State actor (NSA) activities relate to the concept of human security. The author avers that IHL is not ignorant of NSA human security threats and opportunities ; IHL has indeed conferred rights and obligations on such NSAs such as the ICRC, armed opposition groups and national liberation movements. A dialogue has even been established with some armed groups about the protection of civilians. The author problematizes, however, how IHL has equally afforded insufficient regulatory justice to the roles of other NSAs that are increasingly active in situations of violent conflict, in particular NGOs, transnational corporations and the mass media.

## Évolution jurisprudentielle du crime de guerre

Délidji Eric Degila. - In: *Permanence et mutation du droit des conflits armés*. - Bruxelles : Bruylant, 2013. - p. 613-643. - Cote 345.2/945

La présente contribution ambitionne de faire le point sur l'évolution du crime de guerre, à travers la récente jurisprudence de ces différentes juridictions pénales internationales. La notion de crime de guerre

a-t-elle évolué au cours des dernières décennies du fait de l'activité des juridictions pénales internationales ? Ou au contraire a-t-on assisté à une permanence quant à la définition de ce concept dans les jugements émis par ces différentes juridictions internationales ? Ainsi, la première partie analyse l'évolution du concept de crime de guerre à travers la jurisprudence du TPIY et celle du TPIR, en mettant l'accent sur les apports les plus pertinents de ces deux juridictions pénales ad hoc (Section I). Dans une deuxième partie, la notion de crime de guerre à travers les récentes décisions de la CPI (Section II) sera traitée. Il s'agira d'examiner, à la lumière des situations en République démocratique du Congo, en Ouganda, en République centrafricaine et au Darfour (Soudan), l'apport des différentes chambres de la Cour à la notion de crime de guerre.

### **Evolving battlefields : does Stuxnet demonstrate a need for modifications to the law of armed conflict ?**

Jeremy Richmond. In: Fordham international law journal Vol. 35, issue 3, 2012, p. 842-894. - Cote 345.25/296 (Br.)

this Note analyzes the facts surrounding one of the few publicly known cyber attacks, Stuxnet, but assumes a hypothetical situation in which the LOAC applies. This Note thus addresses whether the deployment of Stuxnet conforms to the LOAC. Part I presents the facts of Stuxnet's development and deployment. Part II briefly discusses the history of the LOAC and then describes LOAC principles relevant to Stuxnet. Part III then applies the current LOAC to Stuxnet, identifying possible violations. This Note concludes that, with the possible exception of certain "knock-on" effects, current LOAC rules adequately address Stuxnet and that Stuxnet therefore demonstrates the LOAC's capability of regulating cyber war.

Only from ICRC headquarters: <http://tinyurl.com/38025-Richmond>

### **Expertise, uncertainty, and international law : a study of the Tallinn Manual on cyberwarfare**

Oliver Kessler and Wouter Werner. In: Leiden journal of international law Vol. 26, no. 4, December 2013, p. 793-810

How should international law deal with the uncertainty arising from the rise of irregular forms of warfare? In the past decade, this question has been the topic of several reports produced by international groups of experts in the field of conflict and security law. The most recent examples include the study on the notion of the 'direct participation in hostilities' under the auspices of the International Committee of the Red Cross, and the Tallinn Manual on cyberwarfare prepared at the invitation of NATO. In this article, we discuss the Tallinn Manual, showing how experts faced with uncertainty as to the law's precise scope and meaning construct legal interpretations, legal definitions, and institutional facts and norms that can be used to make sense of a contingent world. At the same time, we argue, this absorption of uncertainty produces new uncertainty. Consequently, the power of experts does not reside in their knowledge, but in their control and management of uncertainty and non-knowledge.

Only from ICRC Headquarters: <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9066321>

### **Experts legal opinion : in relation with the petition filed by residents of villages in Firing Zone 918 against the intention to transfer them from their homes**

Yuval Shany, David Kretzmer, Eyal Benvenisti. - [S.l.] : [s.n.], January 2013. - 15 p. - Cote 345.28/108 (Br.)

The Association for Civil Rights in Israel filed a new petition on January 16, 2013 at the High Court of Justice of Israel against the State's plans to expel some 1,000 Palestinians living in eight rural villages in Firing Zone 918 in the South Hebron Hills. The petition include this experts legal opinion concerning the legality of transferring residents of Palestinian villages out from Firing Zone 918 and concerning the legality of declaring it as a Firing Zone. This opinion is based on the International Law provisions.

<http://www.acri.org.il/en/wp-content/uploads/2013/02/918-legal-opinion-SKB.pdf>

### **Fact-finding by international human rights institutions and criminal prosecution**

Simone Vezzani. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 349-368. - Cote 345.25/289

The author examines the positive contributions that human rights institutions can make to fact-finding, with an emphasis on European and Inter-American human rights institutions. The author begins by discussing circumstances in which human rights institutions are best suited to fact-finding. The author argues that such circumstances often include failure by the disputing parties to make successful use of domestic remedies as well as obvious bias on the part of local authorities in conducting human rights investigations. Although human rights institutions are not well suited to adjudicate international disputes regarding international humanitarian law, the author notes that human rights institutions often investigate the use of lethal force by state agents in a domestic setting. The author then looks into the value of factual findings by human rights institutions for criminal prosecutions. Although human rights institutions have no jurisdiction to find the criminal liability of individuals, the author argues that human rights investigations can play a significant role in fostering criminal investigations both at the domestic and international level. For example, human rights investigations may establish uncontroversial facts and provide information to prosecutors in order to determine whether a given case has a reasonable basis on which to proceed. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## **Fighting terror within the law ? : terrorism, counterterrorism and military occupations**

Marco Pertile. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 276-292. - Cote 345.25/289

This article examines the relationship between the political dimensions of terrorism and the application of international humanitarian law (IHL) in situations of belligerent occupation through two case studies: Iraq after the 2003 Anglo-American invasion and the occupation of the Palestinian Territories (OPT). With respect to the OPT, the author focuses on the use of the classification of 'unlawful combatants' to strip individuals of certain protections that a combatant would receive, such as prisoner of war status. Additionally, the author explores the role of 'settlers' in the OPT and how the HCJ uses acts of terror as evidence of armed conflict to justify the applicability of IHL. The author argues that the occupation of Iraq presents more complex case study as the situation involves diverse groups terrorizing the population, with an aim to preventing cooperation in establishment of a new government. The author also elaborates how the occupying powers breached the Hague Convention rules regulating public order in occupied territories and engages with the rights violations of alleged terrorists in Iraq who have been detained. Overall, the author concludes that political discourse impacts IHL and the interaction between legal and non-legal aspects of terrorism results in a complex relationship with IHL during asymmetrical warfare. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## **Folk international law : 9/11 lawyering and the transformation of the law of armed conflict to human rights policy and human rights law to war governance**

Naz K. Modirzadeh. In: Harvard national security journal Vol. 5, issue 1, 2014, p. 225-304. - Cote 345.2/946 (Br.)

This Article argues that the positions many U.S.-based lawyers in the disciplines of international humanitarian law and human rights law took in 2013 on issues of lethal force and framing of armed conflict vis-à-vis the Obama Administration would have been surprising and disappointing to those same professionals back in 2002 when they began their battle against the Bush Administration's formulations of the "Global War on Terror." By 2013, many U.S.-based humanitarian and human rights lawyers had traded in strict fealty to international law for potential influence on executive decision-making. These lawyers and advocates would help to shape the Obama Administration's articulation of its legal basis for the use of force against al Qaeda and others by making use of "folk international law," a law-like discourse that relies on a confusing and soft admixture of IHL, jus ad bellum, and IHRL to frame operations that do not, ultimately, seem bound by international law. In chronicling the collapse of multiple legal disciplines and fields of application into the "Law of 9/11," the Article illustrates how that result came about not simply through manipulation by a government seeking to protect national security or justify its actions but also through a particular approach to legal argumentation as mapped through various tactical moves during the course of the legal battle over the war on terror.

<http://harvardnsj.org/wp-content/uploads/2014/01/Modirzadeh-Final.pdf>

## **From The Hague to the Balkans : a victim-oriented reparations approach to improved international criminal justice**

Stathis N. Palassis. In: International criminal law review Vol. 14, issue 1, 2014, p. 1-41

The international crimes committed in the territory of the former Yugoslavia during the 1990s have been the subject of both State responsibility claims and prosecutions establishing individual criminal responsibility. On 26 February 2007 the International Court of Justice handed down its judgment in the

Genocide case while it is expected that in 2014 the International Criminal Tribunal for the former Yugoslavia will conclude all appeals from prosecutions. While these initiatives contribute to the acknowledgement of the commission of international crimes they have not provided the victims with any financial reparations. Instead victims have had to make compensation claims under domestic law. The article examines how, in addition to the international initiatives at The Hague, a regionally focused victim oriented reparations approach can assist in attaining improved international criminal justice for international crimes committed during the Yugoslav wars. A victim oriented reparations approach would enhance victims' rights through the provision of financial reparations, reflect improved international criminal justice and assist in the attainment long-term stability in the war-torn States of the former Yugoslavia.

Only from ICRC Headquarters: <http://dx.doi.org/10.1163/15718123-01402003>

## The geographic reach of IHL : the law and current challenges

Tristan Ferraro. In: Collegium No 43, automne 2013, p. 105-113. - Cote 345.2/948

This contribution tries to answer the following questions: is IHL restricted to the battlefield? Does it apply to the whole territory of the parties to the conflict? Could IHL apply outside the territory of these parties, for instance in the territory of neutral or non-belligerent States? The key challenges these questions raise are analyzed in light of the classic dichotomy set by IHL between international armed conflict and non-international armed conflicts.

<http://tinyurl.com/37967-Ferraro>

## Geography of armed conflict : why it is a mistake to fish for the red herring

Geoffrey S. Corn. In: International law studies Vol. 89, 2013, p. 77-107

The author argues that the two traditional categories of International and Non-International Armed Conflict are under-inclusive, particularly in light of the emergence of international terrorism as a national security threat. Transnational Armed Conflict (TAC) has gained traction as a potential new category of armed conflict but has also generated concerns over its apparent legitimization of military operations with unlimited geographic scope. In response to this concern, some have proposed limiting TACs to defined "hot zones" of conflict. However, the author argues that it is the nature of the threat that determines a state's military scope of operations. In particular, the idea of limiting operations against international terrorism to defined locales, betrays a critical aspect of the TAC typology – bringing the fight to the enemy. Further, history has shown that conflict geography is also affected by a complex interplay among concepts of jus ad bellum, jus in bello, and neutrality, rather than contained by pre-defined geographic limits. The author argues that the geographic constraints of armed conflict as determined by law are perhaps better achieved through political choices. Instead, focusing efforts on the TAC-related issues of targeting belligerents and limiting preventative detention during long-term conflicts will provide a better balance between national security realities and the individuals affected armed conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://tinyurl.com/38352-Corn>

## The geography of cyber conflict : through a glass darkly

Ashley S. Deeks. In: International law studies Vol. 89, 2013, p. 1-20

The author discusses the Unwilling and Unable test and its continued relevance for states responding to cyber, as opposed to conventional, attacks being launched from within non-hostile, third party states. Originally justified by the United States in response to non-state actors like Al-Qaeda in the wake of 9/11, the Unwilling and Unable test outlined the factors to consider when deciding whether or not to respond with force to attacks launched through third-party states deemed to be unwilling and unable to respond. Ashley Deeks argues that the Unwilling and Unable test can be used to justify responsive action to cyber armed attacks launched by non-state actors through the networks of non-hostile and third-party states. The test has five factors that victim states should use when assessing whether a third-party state has met the test of being unwilling and unable to respond to an attack launched from their servers. Deeks further argues that, despite the legal and technological uncertainty of cyber warfare, America has been working towards advancing the cyber law and applying it. She offers five reasons for why the US might be pursuing this course, which reflects an awareness of the controversy of its geographic approach to the Al Qaeda conflict, as well as a trend towards legalism. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://tinyurl.com/38349-Deeks>

## Global armed conflict ? : the threshold of extraterritorial non-international armed conflicts

Sasha Radin. In: International law studies Vol. 89, 2013, p. 696-743

This article discusses the application of the laws of war to 'extraterritorial non-international armed conflicts' (ENIACs): conflicts that cross international borders but which are not fought between sovereign states. Examples include the Israel-Hezbollah conflict, drone strikes, and attacks by Al Qaeda in the Arabian Peninsula. The difficulty applying the laws of war to ENIACs is that the Geneva Conventions cover only international wars and civil wars, while ENIACs occupy a distinct middle ground. The author discusses four common approaches to applying the laws of war to ENIACs: applying laws of international conflict, applying laws of civil (non-international) conflict, creating a third category of conflict, or not submitting ENIACs to any laws of war. The author uses the customary law established around the Geneva Conventions, especially Common Article 3 on non-international conflicts, to advocate applying the laws of non-international conflicts to ENIACs. The author then focuses on the significant work that would be required to adapt Common Article 3 to extraterritorial conflict. Two major concerns are applying the ICC's Tadic test for defining armed conflicts to situations involving loosely-structured paramilitary groups; and determining the geographic application of the chosen laws of war to conflicts spilling across territorial boundaries. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://tinyurl.com/38353-Radin>

## Guantánamo and beyond : exceptional courts and military commissions in comparative perspective

ed. by Fionnuala Ni Aoláin, Oren Gross. - Cambridge [etc.] : Cambridge University Press, 2013. - 385 p. - Cote 345.22/227

DescriptionContentsResourcesAbout the Authors The Military Commissions scheme established by President George W. Bush in November 2001 has garnered considerable controversy. In parallel with the detention facilities at Guantánamo Bay, Cuba, the creation of military courts has focused significant global attention on the use of such courts to process and try persons suspected of committing terrorist acts or offenses during armed conflict. This book brings together the viewpoints of leading scholars and policy makers on the topic of exceptional courts and military commissions with a series of unique contributions setting out the current 'state of the field'. The book assesses the relationship between such courts and other intersecting and overlapping legal arenas including constitutional law, international law, international human rights law, and international humanitarian law. By examining the comparative patterns, similarities and disjunctions arising from the use of such courts, this book also analyzes the political and legal challenges that the creation and operation of exceptional courts produces both within democratic states and for the international community.

## Health care during armed conflict : a legal social perspective

Mohammad Rubaiyat Rahman. - [S.l.] : [s.n.], June 2011. - 11 p. - Cote 356/262 (Br.)

The essay at the outset makes an endeavour to address the nature of health care system and its significance to human lives. It delves into analyzing of the impact of armed conflict on health care. The essay tries to highlight the impacts of armed conflict on health care facilities, children, women and the risk of trauma. It addresses the nature of the law of war and its pivotal role of securing human lives from the scourge of armed conflict and the direct health assistance of ICRC to get rid of human lives from the horrid impacts of conflict. The essay addresses the role of non-state actors, governments and its local mechanism on health care system during armed conflict and argues to place them as indefeasible components to tackle the breakdown of health care during armed conflict. The essay makes an attempt to bring forward the facts that need attention to tackle the collapse of health care during any conflict situation. The essay comes to its conclusion arguing that ensuring social equality, cultural and economic right would cease to resort to conflict and pave the solution of the health care crisis during armed conflict.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2296606](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2296606)

## Health care in danger : the responsibilities of health-care personnel working in armed conflicts and other emergencies

ICRC. - Geneva : ICRC, April 2013. - 103 p. - Cote 356/243 (2013 ENG)

A guidance document in simple language for health personnel, setting out their rights and responsibilities in conflict and other situations of violence. One surgeon who reviewed the text said: "It's what I wish I'd had in my pocket when I first went into the field as a surgeon with the ICRC." It explains how responsibilities and rights for health personnel can be derived from international humanitarian law, human rights law and medical ethics.

<http://tinyurl.com/icrc-002-4104-2013>

## The hidden histories of war crimes trials

ed. by Kevin Jon Heller and Gerry Simpson. - Oxford : Oxford University Press, 2013. - XXV, 463 p. - Cote 344/614

Content notament : The trial of Peter von Hagenbach : reconciling history, historiography and international criminal law / G. S. Gordon. - A narrative of justice and the (re)writing of history : lessons learned from World War II French trials / D. Jacobs. - Capitalism's victor's justice ? : the hidden stories behind the prosecution of industrialists post-WWII / G. Baars. - Trying communism through international criminal law ? : the experiences of the Hungarian historical justice trials / T. Hoffman. - Mass trials and modes of criminal responsibility for international crimes : the case of Ethiopia / F. K. Tiba.

<http://fdslive.oup.com/www.oup.com/academic/pdf/openaccess/9780199671144.pdf>

## Human securities, international laws and non-state actors : bringing complexity back in

Math Noortmann. - In: Human security and international law : the challenge of non-state actors. - Cambridge [etc.] : Intersentia, 2014. - p. 13-27. - Cote 345/644

This chapter critically engages, among other issues, with the possible conceptual confusion between human rights and human security. The human security discourse takes not only international human rights law into account, however, but also international humanitarian law and international criminal law, branches of international law that undeniably impose obligations on non-State actors (NSAs) given the risks their activities pose. In addition, the law regulating the use of force may come to play in human security discourse, primarily in the context of the international community's possible responsibility to protect civilians who are victims of gross human rights violations committed by their own government. Such use of force may be exercised by NSAs such as international organisations and perhaps even insurgents. Therefore, this chapter seeks to pack the connections between human security, international law and NSAs

## Human security and international law : the challenge of non-state actors

Cedric Ryngaert, Math Noortmann (eds.). - Cambridge [etc.] : Intersentia, 2014. - XII, 203 p. - Cote 345/644

In 1994, the United Nations Development Programme (UNDP) coined the term 'human security' in the seminal UNDP Human Development Report. This report approached 'security' for the first time from a holistic perspective: security would no longer be viewed from a purely military perspective, but rather it would encapsulate economic, food, health, environmental, personal, community and political security. Although the concept of human security accords a higher status to individual than to governmental interests, human security discourses have continually emphasised the central role of States as providers of human security. This volume challenges this paradigm, and highlights the part played by non-state actors in both threatening human security and also in rescuing or providing relief to those whose human security is endangered. It does so from a legal perspective, (international) law being one of the instruments used to realise human security as well as being a material source or guiding principle for the formation of human security-enhancing policies. In particular, the volume critically discusses how various non-state actors, such as armed opposition groups, multinational corporations, private military / security companies, non-governmental organisations, and national human rights institutions, participate in the construction of such policies, and how they are held legally accountable for their adverse impact on human security.

## Humanitarian law as a source of human rights law

Gerd Oberleitner. - In: The Oxford handbook of international human rights law. - Oxford : Oxford University Press, 2013. - p.275-294. - Cote 345.1/90 (Br.)

The view that the two legal regimes have evolved 'along entirely different and totally separate lines' seems untenable in light of their continuous interaction over time, in particular the interaction of the ideas, customs, and rules that formed their respective bases. On the other hand, although many features of humanitarian law have made this legal regime a 'trailblazer' for human rights, international humanitarian law is not simply an early version of human rights. The two fields have mutually influenced each other and continue to interact with each other, but there is no linear development from humanitarian law to human rights: throughout history, the humanitarian strand of the law of war has helped to inspire the idea of human rights, but the emerging concept of individual human rights has also affected the law of war.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37887.pdf>

## **ICRC's confidentiality rule and the fight against impunity : testimony before international criminal tribunals : the case of ICRC**

Zelalem Mogessie Teferra. - Saarbrücken : Lambert Academic Publishing, 2011. - XII, p. 92. - Cote 362.191/1495

The establishment of the ad hoc international criminal tribunals (ICTY and ICTR) in early 1990s by the Security Council was one of the major breakthrough in the development of the international criminal justice system which was in a state of "hibernation" since the Nuremberg and Tokyo trials. It once more bore out the commitment of the international community to fight impunity through a coordinated global effort. However, the possibility where justice could be impeded by lack of evidence to try the culprits of the most egregious breaches of international law became apparent days after the tribunals began to function. Resolutely, as a solution tribunals have had to turn on their eyes to those who are usually on the spot when those crimes are committed. Humanitarian organizations and their personnel who usually work in conflict areas have become the first to whom the tribunals have made recourse. This has created a "clash" of interests with most humanitarian organizations including ICRC whose work is essentially underpinned by confidentiality. In this book, the author delved into the legal, pragmatic and moral issues involved in this "clash" and attempted to come up with a solution.

## **L'implication des sociétés militaires privées dans les conflits armés contemporains et le droit international humanitaire**

Mamadou Hébié. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 251-301. - Cote 345.2/945

Sans confondre les genres, l'air et l'espace ayant chacun des caractéristiques propres, leur intégration grandissante dans les conflits armés impose de les confronter aux principes qui gouvernent la conduite des hostilités. Ces normes sont issues de développements qui ont débuté à une époque se situant, technologiquement parlant, à des années-lumières de la nôtre. Il s'agit alors de mettre en parallèle les progressions techniques des deux espaces considérés et les développements du droit, pour dresser un tableau global de la place de l'air et de l'espace dans le conflit armé et dans son cadre juridique (section I). Postuler la permanence des normes dans un contexte de mutation des caractéristiques empiriques de la guerre n'empêche néanmoins pas les difficultés qui naissent dès que les règles ont à passer le test de l'application concrète. Il est alors primordial d'envisager le droit dans les contextes nouveaux auquel il se trouve confronté afin d'évaluer la pertinence de ses normes (section II).

## **The interaction between international human rights law and international humanitarian law : seeking the most effective protection for civilians in non-international armed conflicts**

Hannah Matthews. In: The international journal of human rights Vol. 17, issue 5-6, p. 633-645. - Cote 345.1/83 (Br.)

International human rights law and international humanitarian law, of which Common Article 3 and Additional Protocol II are applicable in non-international armed conflicts, at first glance seem two separate bodies of law with contradicting foundations and provisions. However, this article explores the similarities between the two, demonstrating their shared philosophical underpinnings and purpose of protecting people's rights despite the varying contexts within which they apply. Through studying the application of the two bodies of law in varying jurisdictions, this article concludes that far from an either/or choice, the best way to ensure the protection of those who find themselves the victims of non-international armed conflicts is to use the two bodies of law together so that they complement and strengthen each other.

## **The International Committee of the Red Cross's (ICRC's) confidential approach : specific means employed by the ICRC to ensure respect for the law by State and non-State authorities : policy document**

ICRC. In: International review of the Red Cross Vol. 94, no. 887, Autumn 2012, p. 1135-1144

This policy document governs the use of confidential information pertaining to the very essence of the ICRC's mission, i.e. to ensure respect for international humanitarian law and other fundamental rules. The confidential approach is never to be construed as a line of conduct allowing violations to be committed with impunity; rather, it serves to create a space for dialogue with the authorities about observations independently established by the ICRC, within which the ICRC endeavours to persuade them to fulfil their obligations.

<http://www.cid.icrc.org/library/docs/DOC/irrc-887-confidentiality.pdf>

## **International Conference on Military Jurisdiction : conference proceedings = Conférence internationale sur la juridiction militaire : textes de la conférence**

Société internationale de droit militaire et de droit de la guerre ; Stanislas Horvat, Ilja Van Hespén, Veerle Van Gijsegem (eds.). - Bruxelles : Société internationale de droit militaire et de droit de la guerre, 2013. - 522 p. - Cote 345.22/233

In 2001 the "seminar on military jurisdiction" was held in Rhodes, gathering 125 participants from 45 countries and making a synthesis of 38 national reports about the theme. Ten years later, the International Society sent a vast questionnaire to its national groups and to the ministries of Defence and of Justice of numerous countries, a total of 77. Nearly all the answering countries (25) had reforms of the military justice system since the 2001 seminar, mainly with regard to the criminal procedure and this mostly to make it compatible with human rights law or the Covenant on Political and Civil Rights. Some countries - such as Belgium - abolished their military courts. At this moment there is discussion in certain countries about possible reforms. After the fundamental institutional reforms in Tunisia after the change of government, the whole judicial system has been modified. Discussions in Australia deal with independence and impartiality of military courts. France is considering modifying wartime legislation and the abolishment of the Tribunal des Armées (dealing with offences committed by French military during operations abroad). In Ireland amendments are on their way. Kenya is changing its legislation on armed forces in order to make it compatible with its constitution. It is also quite clear that the Salduz case of the European Court for Human Rights will result in substantial changes for the countries bound by the European Convention with regard to the inquiry regarding military aspects and that new reforms of (military) judicial systems will be necessary.

Only from ICRC Headquarters: <http://tinyurl.com/37927-Military-jurisdiction>

## **International criminal law**

Beth Van Schaack with the assistance of Kelly Madigan ; guest ed. : Cécile Aptel. - [Atlanta] : Emory University School of Law, International Humanitarian Law Clinic ; [Washington] : ICRC, Regional Delegation for United States and Canada, 2012. - 78 p. - Cote 344/82 (Br.)

This supplement is designed to provide material for one to three class periods depending on how in depth IHL/war crimes are covered in the course. Students are quite engaged with this topic in light of the United States' protracted involvement in overseas military engagements. This document includes both supplemental reading materials for distribution to students and teacher's manual commentary, merged together into one comprehensive supplement. The supplement is divided into four main substantive chapters on IHL, selected for their relevance to International Criminal Law (ICL). Each chapter contains 1) materials for distribution to students, including an introduction to the main IHL concepts; cases and primary source materials; and notes and questions for discussion; and 2) materials for professors, including general commentary at the beginning of each chapter and suggested answers and comments for discussion in response to the questions. For purposes of clarity, sections in italics are the teacher's manual commentary (with the exception of a few excerpted materials contained within those sections that are in regular type for accuracy purposes); sections in regular type are the student reading materials.

<http://tinyurl.com/37915-Vanschaak-teaching>

## **International criminal law : student materials**

Beth Van Schaack with the assistance of Kelly Madigan ; guest ed. : Cécile Aptel. - [Atlanta] : Emory University School of Law, International Humanitarian Law Clinic ; [Washington] : ICRC, Regional Delegation for United States and Canada, 2012. - 51 p. - Cote 344/82-1 (Br.)

This is a teaching supplement on the interface of international humanitarian law (IHL) and international criminal law (ICL). It is designed for use primarily in a course on ICL, but could also be assigned in an IHL course as well. It is part of a series being generated by the Emory International Humanitarian Law Clinic and the International Committee of the Red Cross to enable the teaching of the law of armed conflict in other substantive courses.

<http://tinyurl.com/37914-Vanschaak-student>

## **International humanitarian law, ICRC and Israel's status in the Territories**

Alan Baker. In: International review of the Red Cross Vol. 94, no. 888, Winter 2012, p. 1511-1521

This article discusses contentions voiced by ICRC President Maurer in a speech on 'Challenges to humanitarian action in contemporary conflicts: Israel, the Middle East and beyond', developed in the form of the article in this issue of the International Review of the Red Cross. It discusses challenges to international humanitarian law in situations where one party violates humanitarian norms, and questions some ICRC contentions and assumptions regarding the status of the West Bank territories, the status of Israel-Palestinian agreements, the status of the Gaza Strip, the concept of 'occupation', Israel's settlement policy, Israel's separation barrier, East Jerusalem, and concludes with a discussion of ICRC policies of confidentiality, as opposed to public engagement.

<http://www.cid.icrc.org/library/docs/DOC/irrc-888-baker.pdf>

## **International law and cyber threats from non-state actors**

by Laurie R. Blank. In: Israel yearbook on human rights Vol. 43, 2013, p. 111-139

This article focuses on the international legal framework that governs defense against cyber threats from non-State actors, specifically LOAC and the law governing the resort to force. In doing so, it identifies both essential paradigms for understanding options for response to cyber threats from non-State actors and key challenges in those paradigms. Section II addresses jus ad bellum and how it applies to and provides guidance for State responses to cyber actions by non-State actors. Section III analyzes when and how LOAC applies to non-State cyber acts and examines some of the specific challenges cyber acts pose for such analysis. Finally, Section IV highlights broader crosscutting issues, such as the challenges of multiple overlapping legal paradigms and the role and power of rhetoric, in exploring how States can and do respond to cyber threats from non-State actors.

## **International law in cyberspace : the Koh speech and Tallinn Manual juxtaposed**

Michael N. Schmitt. In: Harvard international law journal Vol. 54, December 2012, p. 13-37. - Cote 345.26/245 (Br.)

At a conference sponsored by United States Cyber Command (USCYBERCOM), State Department Legal Adviser Harold Koh offered brief answers to what he labeled the "fundamental questions" on how international law applies to cyberspace. He also identified several "unresolved questions" with which the United States would likely be forced to grapple in the future. Less than three weeks earlier, NATO's Cooperative Cyber Defence Centre of Excellence (CCD COE) had released a draft the long-awaited Tallinn Manual, due for formal publication in early 2013. The Manual is the product of a three-year project sponsored by the Centre in which an "International Group of Experts" examined, inter alia, the very issues cited in the Koh Speech. This article serves two purposes. First, it functions as a concordance between the positions articulated in the Koh speech and those found in the Tallinn Manual. The comparison is particularly apropos in light of the parallels in their content. Second, drawing on the Tallinn Manual, the article provides analytical granularity as to the legal basis for the positions proffered in the Koh Speech. In doing so, it usefully catalogues the various competing interpretive perspectives. The article is crafted around Mr. Koh's "Questions and Answers," which are reordered topically and set forth at the beginning of each section.

[http://www.harvardilj.org/wp-content/uploads/2012/12/HILJ-Online\\_54\\_Schmitt.pdf](http://www.harvardilj.org/wp-content/uploads/2012/12/HILJ-Online_54_Schmitt.pdf)

## **The international legal protection of World Heritage sites during armed conflict**

Anne-Marie Carstens. In: TDM Vol. 5, 2013, 11 p. - Cote 363.8/80 (Br.)

The World Heritage programme and the law of armed conflict governing the protection of cultural property share the common principle of preserving the 'cultural heritage of mankind'. World Heritage sites are vulnerable to deliberate destruction in modern warfare, particularly during conflicts motivated by ethnic and religious animus. The vulnerability of World Heritage sites has been proven by a succession of deliberate attacks on World Heritage sites, beginning with the shelling of the Old City of Dubrovnik in 1991 and continuing through attacks on World Heritage sites in Syria and Timbuktu in 2012. This article explores the extent to which belligerents must afford heightened protection to cultural sites on UNESCO's World Heritage List, pursuant to either the World Heritage programme or the law of armed conflict. In outlining the legal protection afforded by these regimes, it considers whether the World Heritage List can serve as a proxy for a list of properties entitled to prima facie heightened protection during armed conflict. Based on this analysis, a presumption of heightened protection should prevail for a significant subset of World Heritage sites, and the article therefore aims to identify the characteristics or categories of World Heritage sites that will support such a presumption.

## International terrorism, the law of war and the negotiation of a UN comprehensive convention

Giuseppe Nesi. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 243-256. - Cote 345.25/289

In December 1999, the UN General Assembly decided to begin negotiations on a comprehensive convention on terrorism, with the goal of filling in the gaps of existing law on terrorism. Nesi examines the progress that has been made toward the comprehensive convention. He starts by outlining the legal framework and existing judicial practices pertaining to the crime of terrorism in order to better explain the various positions of international actors. Nesi then argues that negotiations on the draft comprehensive convention on terrorism have focussed on two interrelated issues: defining terrorism (Art. 2 of the draft text) and the scope of the convention's application (Art. 3). In examining how the draft will relate to existing IHL when applied to acts committed during armed conflict, Nesi focuses on the impact of the draft's proposed preamble, which is intended to address the issue of impunity for those who breach existing IHL. He argues that the proposal may lead to inconsistent jurisprudence across nations, and that more judicial cooperation is needed. The future of the comprehensive convention, Nesi argues, remains to be seen. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## The "interoperability" of international humanitarian law and human rights law : evaluating the legal tools available to negotiate their relationship

Sarah McCosker. - In: International law in the new age of globalization. - Leiden ; Boston : M. Nijhoff, 2013. - p. 145-177. - Cote 345.1/93 (Br.)

This chapter examines some of the key legal concepts, principles and methodologies currently available as tools to navigate the relationship between international humanitarian law and human rights law, identifying their advantages and shortcomings. First, part II discusses some of the dominant metaphors in international law scholarship in characterising the relationship between the two bodies of law, and elaborates on the idea of "interoperability". Part III then discusses some of the key legal principles and concepts, including the *lex specialis* principle ; the "complementary theory" ; rules regarding derogations from human rights treaties ; and general rules of treaty interpretation, focusing in particular on the principle of systemic interpretation in article 31(3)(c) of the Vienna Convention on the Law of Treaties. It also discusses briefly the extraterritorial application of human rights obligations.

## Is there a need for clarification of the temporal scope of IHL ?

David Frend. In: Collegium No 43, automne 2013, p. 95-100. - Cote 345.2/948

This contribution presents some observations on the practical application of IHL in the context of the discussion as to whether further clarification is required in this area. By practical application, the Frend is referring to the bridge between the intellectual and academic debate over the temporal scope of IHL and its practice. One could say that the historical approach sought to establish the existence of a war as a matter *de jure*, whereas, the post-1949 approach sought to establish the existence of an armed conflict, as a matter *de facto* and make, therefore, IHL applicable. Pragmatism over prescription is, in the view of the author, of assistance to the practitioner. However, moving from a purely legal concept of the existence of war to a pragmatic evaluation of the existence of an armed conflict, as a matter of fact without a concurrent binding judicial arbiter, still provides significant room for policy considerations at the highest State level to come into play. In other words, there is still the possibility of one, or more, parties to a conflict arguing that the conflict has not reached a level of violence, sophistication, intensity or duration as to warrant the label of an 'armed conflict' and that therefore IHL is not applicable.

<http://tinyurl.com/37966-Frend>

## Le juge international et les nécessités militaires

Etienne Henry. - In: Le juge en droit européen et international = The judge in European and international law. - Genève : Schulthess, 2013. - p. 105-122. - Cote 345.25/290 (Br.)

Ce chapitre tente d'identifier et d'articuler le concept de « nécessité militaire » en tant que fait juridique mais aussi principe général du droit international humanitaire qui a pour objet d'autoriser les belligérants à utiliser la force nécessaire pour atteindre leurs objectifs. Celui-ci est concrétisé par de nombreuses dispositions du droit international humanitaire. Mais le juge international n'est que rarement appelé à juger de ce qui est militairement nécessaire. Diverses revendications infructueuses ont été formulées en vue d'empêcher les prononcés judiciaires sur ces questions. Il n'y a donc pas d'obstacle à ce que les tribunaux internationaux se prononcent dans des affaires portant sur une appréciation de la nécessité militaire. L'appréciation de la nécessité militaire, par le recours à des critères extrajuridiques qu'elle

implique, n'est cependant pas une tâche aisée pour le juge. Sur un plan plus fondamental, la tendance à limiter la compétence des tribunaux aux questions relevant du jus in bello - à l'exclusion du jus contra bellum - ainsi que la structure interétatique du droit international risquent de transformer le juge en instance de légitimation de certaines conduites immorales, voire illégales.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37827.pdf>

## La juridictionnalisation du droit des conflits armés : les tribunaux internationaux mixtes

Olivier de Frouville et Olivia Martelly. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 573-612. - Cote 345.2/945

Ce chapitre dresse un bilan de la contribution des tribunaux hybrides (tribunaux à la fois internes et internationaux) à la répression des crimes de guerre et à l'interprétation du droit international humanitaire. Il analyse plus particulièrement le Tribunal Special pour la Sierra Leone et la Cour d'Etat de Bosnie-Herzégovine. Il constate tout d'abord une reprise et une confirmation des solutions dégagées par les tribunaux pénaux internationaux. Ainsi, la pratique de ces deux tribunaux montre d'une part, une consolidation des conditions d'application de la qualification de crime de guerre et une consolidation des infractions sous-jacentes - viol, torture, terrorisme, mutilations - et un approfondissement de tendances émergentes, d'autre part. Ces tendances émergentes sont de relativiser deux distinctions traditionnelles du droit international humanitaire: la distinction entre conflit armé international et non-international quant au domaine d'application des incriminations et la distinction entre civils et combattants. Il constate ensuite que ces tribunaux, confrontés à de nouvelles questions, participent à la mutation du droit des conflits armés par l'apport de solutions intéressantes. Ces nouvelles questions concernent la compétence des tribunaux et la définition de nouveaux crimes.

## Law in the virtual battlespace : the Tallin Manual and the jus in bello

Rain Liivoja and Tim McCormack. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 45-58

This contribution offers some comments on the second part of the Tallin Manual dealing with jus in bello. The observations are limited to the methodology of drafting the Manual and to a few selected issues of substantive law that illustrate the difficulties in applying LOAC to cyber operations: cyber operations as hostilities and the principle of distinction, limitations on cyber operations not amounting to attacks, military occupation and neutrality.

Only from ICRC Headquarters: [http://journals.cambridge.org/abstract\\_S1389135913000056](http://journals.cambridge.org/abstract_S1389135913000056)

## Lawful targets in cyber operations : does the principle of distinction apply ?

by Noam Lubell. In: Israel yearbook on human rights Vol. 43, 2013, p. 23-43

The cyber sphere presents unique challenges to our ability to adequately distinguish between military and civilian and thereby adhere to the fundamental principle of distinction. Moreover, the nature of cyber operations is such that it does not neatly fit into the paradigm of hostilities around which the law of armed conflict (LOAC) is constructed. In fact, it has even been debated whether the LOAC rules on targeting would always apply to cyber operations, and whether the need to distinguish between military and civilian and the prohibition on attacking civilian targets are applicable to all forms of cyber operations or not. This article addresses the question of the nature of cyber operations that are likely to take place. It includes an examination of cyber operations as fitting within the notion of attack. It then turns to an analysis of the appropriate threshold of harm that would lead a cyber operation to be considered an attack under LOAC — and thus subject to the principle of distinction — with particular focus on destruction of data and harm that does not have direct physical manifestation.

## Legal implications of the membership of a Palestinian State in the UN on civilians in the light of international humanitarian law

Floriana Fabbri and Jacopo Terrosi. - In: Palestine membership in the United Nations : legal and practical implications. - Newcastle upon Tyne : Cambridge scholars publishing, 2013. - p. 234-251. - Cote 345.28/106 (Br.)

At present, the qualification of the conflict between Israel and the occupied territories is highly controversial, but some doctrinal interpretation tends to classify it as a non-international armed conflict. The present chapter demonstrates that the consolidation of a Palestinian State will result in a change in the legal assessment of the conflict, rendering it an international armed conflict. In particular, the new situation will confer on Palestine the status of an "occupied State" with the subjective right to have direct recourse to the Security Council. The Security Council will eventually have to take a decision to demand

Israel to leave the territory of Palestine immediately in order to restore peace in the area. Basing itself on the changes in the status of Palestine and in the definition of the conflict, this chapter will discuss the change in the legal status of the population of the territory in the light of the Geneva Conventions.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37849.pdf>

## La mer comme espace de conflits armés

Habib Gherari. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 357-381. - Cote 345.2/945

Après une revue historique du développement du droit des conflits armés en mer et le constat de la dispersion des sources de ce droit, ce chapitre s'attache à décrire où résident les mutations et où se nichent encore les solutions traditionnelles. Il s'interroge d'abord sur une éventuelle reconfiguration des zones d'opérations: quel est l'impact d'une part du nouveau droit de la mer, issu de la Convention de Montego Bay du 10 décembre 1982, et quelle est l'influence de la pratique relativement récente des zones dites d'exclusion? Il s'attache ensuite à voir en quoi les règles de droit international humanitaire exposées en particulier dans le Protocole additionnel I de 1977 peuvent s'appliquer, être transposables ou à tout le moins inspirer des règles valant pour les combats en mer.

## The military response to criminal violent extremist groups: aligning use of force presumptions with threat reality

Geoffrey S. Corn, Tanweer Kaleemullah. - [S.l.] : [s.n.], 2013. - [29] p. - Cote 345.27/134 (Br.)

The response to criminal disturbances appears to have been specifically excluded from situations triggering common article 3 when it was adopted in 1949. However, it is unlikely that the drafters of the conventions at that time anticipated the nature of organized criminal gangs and the destabilizing effect these groups have today in many areas of the world. The nature of this threat has resulted in the increasingly common utilization of regular military forces to restore government control in areas where they operate. This results in uses of force and exercise of incapacitation powers that far exceeds normal law enforcement response authority. It is therefore the thesis of this article that when the nature of these threats exceeds the normal law enforcement response authority and compels the state to resort to regular military force to restore order, international humanitarian law, or the law of armed conflict, provides the only viable legal regulatory framework for such operations. However it is also the view of the authors, that the risk of over breath of authority inherent in this legal framework necessitates a carefully tailored package of rules of engagement to mitigate the risk that the effort to restore order will result in unjustified deprivations of life liberty and property.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2251899](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2251899)

## National human rights institutions, displacement and human security

Richard Carver. - In: Human security and international law : the challenge of non-state actors. - Cambridge [etc.] : Intersentia, 2014. - p. 75-99. - Cote 345/644

One category of non-State actor that may play a useful role in preventing or remedying human security violations that may be characterised as human rights violations, are national human rights institutions (NHRIs). The Commission on Human Security indeed acknowledged the importance of NHRIs, especially for human rights advocates in countries with weak or non-existent human rights machinery. NHRIs are 'hybrid' actors that at first sight look like State actors, in that they enjoy formal legal powers by virtue of State law and are financed out of the State budget. But at the same time, NHRIs function at arm's length from the State, monitoring and providing a check on State legislation. An NHRI may be composed (in part) of NSA representatives, and form part of an international network that exists beyond the State. So far NHRIs have not often played a leading role during the very conflicts and crises that give rise to the most abject human security violations. This contribution argues, however, that there is no principled reason that should limit NHRIs' involvement in such situations. In fact, some NHRIs have engaged with humanitarian crises, and notably the displacement that has accompanied them. Drawing on a number of case studies, the author identifies the best practices of NHRIs monitoring and criticises instances of State-steered forced migration in a context of both man-made conflicts and natural disasters. The replication of these best practices elsewhere may strengthen NHRIs' potential to further human security worldwide, although much will obviously depend on the latitude and on the independence which local political actors give to NHRIs.

## National security law

Geoffrey S. Corn and Eric T. Jensen with the assistance of Anne Johnson ; guest ed. : Gary D. Solis. - [Atlanta] : Emory University School of Law, International Humanitarian Law Clinic ; [Washington] : ICRC, Regional Delegation for United States and Canada, [2012?]. - 30 p. - Cote 345.22/232 (Br.)

This teaching International humanitarian law Supplement offers materials for faculty interested in incorporating IHL into a National Security Law course. IHL offers several excellent illustrations of important national security law concepts. The examples provided are intended to facilitate the incorporation of these illustrations into a national security law curriculum. This pamphlet provides a brief narrative proposal for how to do so, references to suggested cases and potential questions and topics for classroom discussion. Section I provides a brief introduction to the key principles of IHL. The subsequent sections deal topically with National Security concepts into which IHL can be integrated as part of the teaching methodology.

<http://tinyurl.com/37911-Corn>

## Navigating conflicts in cyberspace : legal lessons from the history of war at sea

Jeremy Rabkin and Ariel Rabkin. In: Chicago journal of international law Vol. 14, no. 1, Summer 2013, p. 197-258. - Cote 345.26/250 (Br.)

Despite mounting concern about cyber attacks, the United States has been hesitant to embrace retaliatory cyber strikes in its overall defense strategy. Part of the hesitation seems to reflect concerns about limits imposed by the law of armed conflict. But analysts who invoke today's law of armed conflict forget that war on the seas has always followed different rules. The historic practice of naval war is a much better guide to reasonable tactics and necessary limits for conflict in cyberspace. Cyber conflict should be open - as naval war has been - to hostile measures short of war, to attacks on enemy commerce, to contributions from private auxiliaries. To keep such measures within safe bounds, we should consider special legal constraints, analogous to those traditionally enforced by prize courts.

## Navigating jus ad bellum in the age of cyber warfare

Reese Nguyen. In: California law review Vol. 101, issue 4, 2013, p. 1079-1129. - Cote 245.26/248 (Br.)

The last decade has witnessed the heightened destructive potential of cyber attacks; correspondingly, cyberspace has become the new battlefield for nation-states in conflict. Yet jus ad bellum - the body of international law governing legitimate use of force - provides little guidance about the legality of a cyber attack or when such an attack becomes an act of war justifying resort to responsive force. This Comment provides a new analytical framework for addressing that question. It begins by clarifying definitional ambiguities in the literature on cyber attack, setting forth a definition that focuses on computer networks as the instruments, rather than objects, of attack. It examines the technical concepts and considerations that influence the use-of-force analysis and animate the evaluation of potential analytical frameworks. It then discusses the governing jus ad bellum standards and critiques the leading approaches to assessing cyber attacks under these standards. This Comment departs from the traditional and accepted models of inquiry, drawing on cyber security research to propose a framework centered on cyber-physical systems that addresses cyber attacks under the laws of just war.

<http://tinyurl.com/38020-Nguyen>

## Networks in non-international armed conflicts : crossing borders and defining "organized armed group"

Peter Margulies. In: International law studies Vol. 89, 2013, p. 54-76

The author examines the definition of organized armed groups (OAGs) under the law of armed conflict and examines how that definition relates to Al Qaeda and the ability for States to use force against them. Additional Protocol II to the Geneva Convention defines OAGs narrowly to include groups that control part of a State's territory. The author argues for a broader interpretation of OAGs and as an example points to case law from the International Criminal Tribunal for the former Yugoslavia and the Inter-American Commission on Human Rights. A broader definition would allow States to target individuals performing a continuous combat function, as opposed to IHL's narrower, concrete imminent threat to the life of an individual requirement. A broader definition would also allow OAG members to be prosecuted by international tribunals rather than under municipal law. The author argues that Al Qaeda has sufficient organizational structure to be considered an OAG due to: the existence of bureaucracy, discipline mechanisms, monitoring and documentation, and the ability to assess performance. Furthermore, Al Qaeda has synergistic relationships with, and strategic influence over, other regional groups, including al

Shabab and Al Qaeda in the Arabian Peninsula. Al Qaeda's OAG status is sufficient to justify the targeting of these affiliate groups. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://tinyurl.com/38351-Margulies>

### **The new cyber face of battle : developing a legal approach to accommodate emerging trends in warfare**

Stephanie Gosnell Handler. In: Stanford journal of international law Vol. 48, no. 1, 2012, p. 209-237. - Cote 345.26/244 (Br.)

The article presents information on the cyberspace operations with reference to the emerging trend and the conduct of warfare. The Russian-Georgian War of 2008 was the first warfare executed with the use of non-kinetic cyberattacks. Information on the difference between cybercrimes and cyberattacks and the utilization of kinetic effects instead of traditional weapons by the cyberattacks, under the laws of war is also presented.

### **New weapons, old crimes ?**

Marina Castellaneta. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 194-210. - Cote 345.25/289

This article examines how new weapons have changed the way the criminality of their use is assessed. The author argues that even though there is an absence of specific prohibitions of certain types of new weapons, general principles of international humanitarian law (IHL) concerning the employment of weapons in armed conflicts and international criminal law are applicable, and must be taken into account in order to assess both the lawfulness of the use of such weapons and individual criminal responsibility. The author summarizes the application of IHL principles in the UN Fact-Finding Mission on the Gaza Conflict, and analyzes other contemporary situations involving the use of new weapons. In terms of criminal responsibility, the author argues that a lack of specific treaty rules does not preclude the prosecution of war crimes for serious IHL violations. However, the attribution of individual responsibility is sometimes difficult, particularly with respect to identifying a distant perpetrator of an attack. According to principle, the author argues, the person will be responsible for war crimes if the attack is conducted intentionally, and if the employment of the weapon has an indiscriminate effect or provokes large-scale damage to civilians or civilian objects. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **Non-international armed conflicts : the applicable law**

Sandesh Sivakumaran. In: Collegium No 43, automne 2013, p. 25-32. - Cote 345.2/948

The first part of this contribution reviews the historical steps that have led to a situation where today, there does exist a developed body of international law that governs non-international armed conflict. In many respects, it is similar to the law on international armed conflict. The second part then turns to difficulties linked with the scope of application of IHL that some of these recent developments (the increase substance of IHL applicable to non-international armed conflict, the role played by International human rights law, the conflation between bodies of law) have given rise to.

<http://tinyurl.com/37950-Sivakumaran>

### **La notion d'objectif militaire et les cibles duales**

Yves Sandoz. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 415-451. - Cote 345.2/945

Les cibles qualifiées de duales ont une double fonction, d'une part, celle de contribuer à l'action militaire, d'autre part, celle de jouer un rôle dans la vie civile. En fait, à l'exception des biens qui sont exclusivement militaires par nature, tous les biens entrant dans la définition d'objectif militaire sont potentiellement des biens qui peuvent avoir un usage civil. Cette contribution, après un examen des principes fondamentaux de la conduite des hostilités, s'attache à l'étude de la définition de l'objectif militaire matériel et aux nombreuses controverses l'entourant. Elle se penche également sur les principes qui complètent cette définition et qui déterminent la licéité d'une attaque. La définition de l'objectif militaire ne mentionne nullement que les biens doivent être utilisés exclusivement à de telles fonctions. Dès lors, c'est dans le cadre des principes de précaution et de proportionnalité que doit porter le débat sur les cibles duales.

## Opérations de maintien de la paix et droit des conflits armés

Nicolas Michel et Katherine Del Mar. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 185-216. - Cote 345.2/945

Ce chapitre s'attache à démontrer dans quelle mesure le droit des conflits armés est applicable aux opérations de maintien de la paix. L'histoire enseigne que la reconnaissance, puis la consécration de l'applicabilité du droit international humanitaire, ont été graduelles. Aujourd'hui, il n'y a plus de doute sur le principe. En revanche, l'application pratique et la définition des modalités concrètes souffrent encore de difficultés récurrentes, par exemple en ce qui concerne la détermination de l'existence d'un conflit armé ou celle de la nature de celui-ci. Elles pâtissent aussi du fait que les règles conventionnelles pertinentes ont été conçues pour s'appliquer essentiellement à des Etats.

## Palestinian prisoners in Israeli jails in light of the Third Geneva Convention : from jails to prisoner of war camps

Magdalena A. Pulido. - In: Palestine membership in the United Nations : legal and practical implications. - Newcastle upon Tyne : Cambridge scholars publishing, 2013. - p. 268-289. - Cote 400.2/140 (Br.)

The purpose of the present chapter is to discuss how the situation of Palestinian prisoners in Israeli jails could benefit from the establishment of a Palestinian State. The first part discusses Israel's position regarding the non-existence of POW status in relation to the conflict with Palestine. The second part elaborates on the importance of the existence of the State of Palestine for POW status, while addressing possible scenarios in which its existence would provide either for the status and treatment of Palestinian prisoners as POWs, or for the other mechanisms whereby Palestine could protect its nationals imprisoned in Israel.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37848.pdf>

## Permanence et mutation du droit des conflits armés

sous la dir. de Vincent Chetail. - Bruxelles : Bruylant, 2013. - XI, 683 p. - Cote 345.2/945

Le présent ouvrage réunit les principaux experts du droit international humanitaire pour réfléchir sur ses principes fondateurs et leur pertinence dans les conflits armés contemporains. Il propose un état des lieux sur les grandes questions du droit international humanitaire à la lumière de l'évolution récente de la pratique en la matière. L'approche retenue par cette étude se veut à la fois didactique et critique, de manière à mieux comprendre les enjeux contemporains du droit international humanitaire, son évolution et sa portée. L'ouvrage collectif s'articule à cette fin autour de cinq axes essentiels : - la notion de conflit armé ; - les nouveaux acteurs des conflits armés ; - les espaces des conflits armés ; - les méthodes de combat ; - la juridictionnalisation du droit des conflits armés.

## Personal scope of IHL protection in NIAC : legal and practical challenges

Françoise Hampson. In: Collegium No 43, automne 2013, p. 59-62. - Cote 345.2/948

While the principle of distinction is relatively straightforward in international armed conflict - two categories of persons can be targeted : the fighting members of the enemy's armed forces and civilians who at the times are taking a direct part in hostilities - in non-international armed conflict, there is no reference to combatant status. Therefore, in NIAC, the only persons who can be targeted are civilians at the time they are taking a direct part in hostilities. But what is meant by "for such time as" and what activities are covered by "direct participation". This contribution offers a critical look at the ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities.

<http://tinyurl.com/37959-Hampson>

## Persons protected by IHL in international armed conflicts : the law and current challenges

Kirby Abbott. In: Collegium No 43, automne 2013, p. 47-58. - Cote 345.2/948

Within the overarching issue of the interrelationship between IHRL and IHL are a number of operationally pressing sub-issues and challenges to IHL. This contribution briefly outlines seven of the most significant: 1) The absence of a methodology which allows for the practical application of the *lex specialis* doctrine ; 2) The interaction between ECtHR jurisprudence and the *lex specialis* doctrine when advising on the conduct of military operations during IAC ; 3) The extraterritorial scope of human rights treaties ; 4) Security Council Resolutions as a source of legal authority to engage IHL ; 5) Detention paragraph 100 in AI-Jedda ;

6) Right to life ; 7) Investigations of cases where force was lawful under IHL and the International Criminal Court

<http://tinyurl.com/37953-Abbott>

## The practical guide to humanitarian law

Françoise Bouchet-Saulnier ; ed. and transl. by Laura Brav and Camille Michel. - Lanham [etc.] : Rowman and Littlefield, 2014. - XXVII, 797 p. - Cote 345.2/635 (2014 ENG)

Now in a comprehensively updated edition, this indispensable handbook analyzes how international humanitarian law has evolved in the face of these many new challenges. Central concerns include the war on terror, new forms of armed conflict and humanitarian action, the emergence of international criminal justice, and the reshaping of fundamental rules and consensus in a multipolar world. The Practical Guide to Humanitarian Law provides the precise meaning and content for over 200 terms such as terrorism, refugee, genocide, armed conflict, protection, peacekeeping, torture, and private military companies—words that the media has introduced into everyday conversation, yet whose legal and political meanings are often obscure. The Guide definitively explains the terms, concepts, and rules of humanitarian law in accessible and reader-friendly alphabetical entries. Written from the perspective of victims and those who provide assistance to them, the Guide outlines the dangers, spells out the law, and points the way toward dealing with violations of the law. Entries are complemented by analysis of the decisions of relevant courts; detailed bibliographic references; addresses, phone numbers, and Internet links to the organizations presented; a thematic index; and an up-to-date list of the status of ratification of more than thirty international conventions and treaties concerning humanitarian law, human rights, refugee law, and international criminal law. This unprecedented work is an invaluable reference for policy makers and opinion leaders, students, relief workers, and members of humanitarian organizations.

## Pray fire first Gentlemen of France : has 21st century chivalry been subsumed by humanitarian law ?

Evan J. Wallach. In: Harvard national security journal Vol. 3, issue 2, 2013, p. 431-469. - Cote 345.2/944 (Br.)

In 1956 the U.S. Army's FM 27-10 required that belligerents conduct hostilities "with regard for the principles of ... chivalry... ". Similarly, the 1958 British Manual of Military Law Part III stated that chivalry was one of the three principles which determined development of the law of war, saying it "demands a certain amount of fairness and a certain mutual respect between the opposing forces... ". Despite those requirements, however, no clear definition of the term existed in a form which provided legal guidance for an officer concerned with international law compliance. The current (2004) British Manual drops the chivalry requirement, saying only that the Martens Clause<sup>5</sup> "incorporates the earlier rules of chivalry that opposing combatants were entitled to respect and honor." One premise of this Article is that international humanitarian law is not a substitute for the specific elements of chivalry, and that chivalric obligations must continue to guide military conduct, as U.S. law currently requires. It is written primarily at the tactical level, although aspects apply to operational and strategic matters. After an historical survey, it examines modern chivalry both through positive requirements and negative prohibitions in the national codes of the United States and the international law of war, and analyzes the application of those strictures in regulations, case authorities, and commentary.

<http://harvardnsj.org/wp-content/uploads/2013/02/Vol.3-Wallach-FINAL.pdf>

## Precision air warfare and the law of armed conflict

by Christopher J. Markham and Michael N. Schmitt. In: Israel yearbook on human rights Vol. 43, 2013, p. 297-319

The authors argue that the increasing use of precision weapons is partially because they enable conformity with the Law of Armed Conflict (LOAC) principles of distinction, proportionality, and indiscriminate attacks. They further argue that the evolution of precision systems is altering interpretations of LOAC's principles. Specifically, the authors suggest that 1) the relative precision displayed by American bombers in WWII would today be considered an indiscriminate attack, 2) what is considered excessive collateral damage under the principle of proportionality will vary depending on a party's capacity to conduct precision air attacks, and 3) requirements of reasonableness for precautions in attack may require the use of precision munitions if available. The authors then consider three emerging but controversial systems that raise issues of the relationship between precision and LOAC. Firstly, they argue that Unmanned Combat Aerial Vehicles can reduce collateral damage due to their ability to gather intelligence in environments too risky for human pilots. Secondly, automated weapons systems should not be prohibited as a class, because they may soon be able to distinguish targets and perform damage estimates as well as humans can. Finally, the authors argue that even precision cyber attacks can do immense non-physical

damage and this may force an evolution LOAC's traditional definitions of attack and collateral damage, both of which are based on physical damage. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://tinyurl.com/37649-Markham>

## The preoperational legal review of cyber capabilities : ensuring the legality of cyber weapons

P. J. Blount. In: Northern Kentucky law review Vol. 39, no. 2, 2012, p. 211-220. - Cote 341.67/34 (Br.)

This paper investigates the legal evaluation that must be given to a Military cyber capability before they can be made operational. This evaluation process is examined in the context of United States practice as well as international law.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2380359##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2380359##)

## Le principe de distinction entre conflits armés interne et international

Paul Tavernier. - In: Permanence et mutation du droit des conflits armés. - Bruxelles : Bruylant, 2013. - p. 73-95. - Cote 345.2/945

La distinction entre conflits armés internationaux et internes est certainement un des piliers du droit international humanitaire contemporain et ce au moins depuis 1949 et l'adoption du fameux article 3 commun aux quatre Conventions de Genève. Le principe de cette distinction, s'il est plutôt à ranger parmi les éléments de permanence du droit des conflits armés, subit néanmoins beaucoup de facteurs de mutation. Ce chapitre s'attache à montrer la dichotomie entre les règles du régime conventionnel et celles du régime coutumier. Ainsi, si une certaine permanence de la distinction des deux types de conflits est à noter dans le droit conventionnel, le développement du droit coutumier, lui, va dans le sens d'une atténuation progressive de la distinction.

## The prisoner of war camp trials

Yuma Totani. - In: Hong Kong's war crimes trials. - Oxford : Oxford University Press, 2013. - p. 71-94. - Cote 400.2/141 (Br.)

By analyzing a selection of British war crimes trials held in Hong Kong, this chapter assesses the British courts' findings on the organizational and individual responsibility of the Japanese military and civilian authorities for the mistreatment of prisoners of war. The British Hong Kong cases are particularly noteworthy because of the inclusion in the groups of defendants of a representative range of the Japanese camp authorities in wartime Hong Kong and Taiwan, thereby allowing an insight into structures, internal workings, and policy dimensions of the Japanese POW administration. They also bring to light the critical part that individuals fulfilled in the workings of POW administration. The rejection of the defence plea of superior orders by the British Hong Kong courts is significant in this respect, since it highlights how critical the acts of individual ranking Army officers and camp staff had been in sustaining the POW camp regime.

## Private military and security companies in international law : a challenge for non-binding norms : the Montreux Document and the International Code of Conduct for Private Security Service Providers

Corinna Seiberth. - Cambridge [etc.] : Intersentia, 2014. - XLV, 295 p. - Cote 345.29/201

Many states view Private Military and Security Companies (PMSCs) as crucial to implement their security policy. However, reoccurring incidents of human rights violations have led the international community, private sector and civil society to acknowledge the need for more control over the use of PMSCs. Growing state support for The Montreux Document and an ever growing number of signatory companies to the International Code of Conduct for Private Security Service Providers (ICoC) show that self-regulation through non-binding norms has shifted to the centre of this debate. This book examines the promises and dangers of emerging non-binding PMSC regulation alongside more traditional forms of law-making such as plans for an international convention on the use of PMSCs. It offers in-depth analysis of legal and political developments that led to the proliferation of The Montreux Document and the ICoC. Identifying the state side of duties and corporate responsibility as leaving gaps and grey zones in international law, it analyses how both instruments address the responsibility to protect and the responsibility to respect. Covering the Private Security Providers' Association's Articles of Association, the most recent developments on the establishment of a PMSC oversight mechanism are included. Finally, the book provides an original theory of how both instruments could become more effective to protect victims against PMSC human rights violations; The Montreux Document by developing into a form of customary

international law, the standards of the ICoC framework by developing into more binding normative standards as a form of 'corporate custom'.

### **The private military company complex in Central and Southern Africa : the problematic application of international humanitarian law**

Mathew Kincade. In: Washington university global studies law review Vol. 12, issue 1, 2013, p. 205-226. - Cote 345.29/202 (Br.)

There is some debate as to whether or not IHLs apply to PMCs in the same fashion they can at times apply to sovereigns. IHLs do not explicitly refer to PMCs, and most attempts to retroactively fit PMCs into IHL interpretations have been problematic. International legislation is also partially responsible for the difficulties in applying IHLs to PMCs due to the combination of a lack of time, effort, and political motivation for some sovereigns to address the issues. As a result, PMC activities potentially fall into a troublesome gray area with respect to human rights protections in armed conflict. Africa has been a point of considerable interest and curiosity with respect to PMC involvement. Africa has been considered a potential stage for increasing PMC involvement for a few reasons. First, the conflicts both in and between the various countries of Africa would provide a business opportunity for PMCs. Second, many of the leading PMCs originated from Africa and already possess regional geographic familiarity. Third, some African countries have already encouraged the use of PMCs by allowing the legislature to regulate their activities. These factors contribute to the notion that Africa is particularly susceptible to, if not in some places inviting, PMC activity. This article first looks at how contemporary IHL has attempted to tackle the existence of PMCs and "mercenaryism" then it compares and contrasts the different approaches of these Central and Southern African countries in regards to regulation of PMC activity. At the end of the analysis, this Note will synthesize the ramifications that each country's legislation may have on the international community.

<http://tinyurl.com/37940-Kincade>

### **Prosecuting the destruction of cultural property in international criminal law : with a case study on the Khmer Rouge's destruction of Cambodia's heritage**

by Caroline Ehlert. - Leiden ; Boston : M. Nijhoff, 2014. - XIV, 252 p. - Cote 363.8/81

This book offers an analysis of treaty law protecting cultural property from destruction and foremost of the relevant provisions for prosecuting the destruction of cultural property in international criminal law. The wanton destruction of valuable cultural property during armed conflict as well as during peacetime is omnipresent. Therefore it is of the utmost importance to provide for provisions criminalising the destruction of cultural property and offering a basis for the prosecution of possible perpetrators.

### **La protection spéciale des femmes et des enfants dans les conflits armés**

Gérard Aivo. - In: Justice et solidarité. - Bruxelles : Bruylant, 2012. - p. 99-121. - Cote 362.8/204 (Br.)

Le but de ce chapitre est d'analyser de manière globale la protection et le statut juridiques des deux catégories les plus vulnérables et les plus affectés par les conflits armés et dont le sort est généralement lié. L'observation des conflits armés montre que les femmes et les enfants sont des acteurs croissants des conflits armés, mais plus souvent des victimes sans défense, alors même que le droit international humanitaire leur confère une protection générale en tant que personnes civiles, et une protection spécifique en tant que catégorie spécifique (I). Toutefois, lorsque les femmes et les enfants participent directement aux conflits armés, ils ne bénéficient pas de la même protection et celle-ci varie selon que le conflit est international ou non international (II).

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37863.pdf>

### **The relevance of international humanitarian law in national case law on terrorism**

Antonino Alì. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 293-310. - Cote 345.25/289

This article examines acts of terrorism and war crimes, with a view to the application of international humanitarian law (IHL). In doing so, the author reviews jurisprudence that, he suggests, highlights some of the problematic aspects of the endeavour to apply IHL to terrorism. The author outlines various perspectives on the intersection of war crimes and terrorism, including the practice of how some tribunals classify terror as a war crime under customary international law. The author also expands on the difficulties in defining terrorism in domestic judicial decisions. The article also distinguishes between freedom fighters and terrorists and invokes relevant case law to evaluate how these classifications fit into

the international legal regime. Additionally, the article examines the treatment of prisoners of war in the context of the "War on Terror" by analyzing several US Supreme Court cases. The author argues that the case law tends to involve a selective and confused application of IHL, largely because the US Supreme Court has never clarified whether the 'War on Terror' constitutes an armed conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **Rethinking the criterion for assessing CIA-targeted killings : drones, proportionality and jus ad vim**

Megan Braun and Daniel R. Brunstetter. In: Journal of military ethics Vol. 12, issue 4, December 2013, p. 304-324

According to US government statements, drones succeed in killing terrorists while minimizing the risk to noncombatants, thus suggesting that they satisfy the jus in bello proportionality criterion. Scholars, however, are divided on whether drones are truly proportionate. What does it really mean to say drones are, or are not, proportionate? How are we to judge the proportionality of the CIA's drone program? We expose the fallacy of drone proponents who claim they are proportionate by repudiating what we call proportionality relativism – the use of impertinent comparisons to argue that drones are proportionate because they cause less collateral damage than other uses of force. We then analyze the existing data on drone strikes to expose problematic differences in how the US military and the CIA understand proportionality balancing. Finally, we employ what Walzer calls the category of jus ad vim – the just use of force short of war – to assess the ethics of drones. Jus ad vim demands a stricter relationship between the use of force short of war and the jus in bello principles of proportionality and discrimination, as well as human rights concerns of civilians not usually considered in the proportionality calculus, that severely restricts the scope of proportionality balancing. Assessing the CIA's use of drones in Pakistan according to this standard casts a dark shadow on claims that CIA drones are proportional.

Only from ICRC Headquarters: <http://www.tandfonline.com/doi/pdf/10.1080/15027570.2013.869390>

### **The role of counterterrorism law in shaping ad bellum norms for cyber warfare**

by William C. Banks. In: Israel yearbook on human rights Vol. 43, 2013, p. 45-80

Most cyber-intrusions now and in the foreseeable future will take place outside the traditional consensus normative framework for uses of force supplied by international law. For the myriad, multi-layered and multi-faceted cyber-attacks that disrupt but do not destroy, whether state-sponsored or perpetrated by organized private groups or single hacktivists, much work remains to be done to build a normative architecture that will set enforceable limits on cyber intrusions and provide guidelines for responses to disruptive cyber-intrusions. In this paper, the interest is directed at a subset of those cyber-attacks – those where terrorists are responsible or attribution is not known but points in terrorists' direction, and where the effects are very disruptive but not sufficiently destructive to cross the traditional LOAC and Charter self-defense thresholds. For this subset of cyber attacks, counterterrorism law may offer a useful complementary normative supplement to LOAC and the Charter. Especially over the last decade, a corpus of counterterrorism law has evolved as domestic and international law in response to transnational terrorism. In contrast to the dominant pre-September 11 conception that countering terrorism involved either the use of military force or enforcement of the criminal laws, counterterrorism law now incorporates a diverse range of responses to terrorism, many of which are borrowed, sometimes in modified form, from existing international and domestic law. Based on a maturing international legal regime, this article concludes that over time and through state practice, along with legal, strategy and policy development in the international community a set of counterterrorism law norms for cyber war could emerge.

### **The role of non-state actors in implementing the responsibility to protect**

Gentian Zyberi. - In: Human security and international law : the challenge of non-state actors. - Cambridge [etc.] : Intersentia, 2014. - p. 53-74. - Cote 345/644

The much-vaunted concept of a responsibility to protect (R2P) the civilian population from war crimes, crimes against humanity, genocide and ethnic cleansing - arguably the grossest attacks on individuals' human security - continues to centre around the responsibilities of States and the international community of States. However, non-State actors (NSAs) have a distinct role to play in discharging, or helping States and the international community to discharge, the R2P. In this respect, this chapter argues that armed opposition groups may also bear the duty of R2P, especially if they control a portion of a State's territory. Such groups are expected to protect the civilian population, implying that - as far as capacity and resources permit - they should contribute to the realisation of human security. Even when NSAs are not immediate R2P bearers, they may well have the capacity and the willingness to support the efforts of States and of the international community to protect civilian populations: NGOs may raise awareness as regards R2P or even actively mediate between the parties involved in violent conflict. Given the multiple R2P initiatives and responsibilities of NSAs, the obvious challenge is how to streamline the roles of non-governmental and inter-governmental actors.

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

Mark Kramer. - In: Pravoto-izkustvo za dobroto i spravedlivoto. - [Plovdiv] : Universitetsko izd. "Paisij Chilendarski", 2013. - p.493-504. - Cote 345.22/231 (Br.)

This paper 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 troops against separatist guerrillas in Chechnya in 1994 - 2006. The paper 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 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 paper highlights the changes and continuities in post-Soviet Russia's position and then uses the recent Russian-Chechen wars as a case study. The paper sheds light not only on Russia's policies in Chechnya but also on recent scholarly literature regarding international norms and state behavior. A norm in international relations, including the tenets of international humanitarian law (IHL), can be defined as a shared conception of the appropriate way to behave or the appropriate stance to take on a particular issue. Over time, as a norm becomes more prevalent, actors in the system come to expect that other actors will comply with it. The growing acceptance of a norm does not preclude the establishment of mechanisms to monitor and, if necessary, enforce compliance with it, but, at least in principle, a norm could eventually become self-enforcing or nearly so. The focus here is on compliance (or non-compliance) with norms relating to IHL and human rights. A key aspect of this issue is the process of internalization.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37909.pdf>

## Scope of application of international humanitarian law : proceedings of the 13th Bruges Colloquium, 18-19 October 2012 = Le champ d'application du droit international humanitaire : actes du 13e Colloque de Bruges, 18-19 octobre 2012

CICR, Collège d'Europe. In: Collegium No 43, automne 2013, 155 p. - Cote 345.2/948

Session 1 : Material scope of application of IHL. - Session 2 : Personal scope of application of IHL. - Session 3 : Temporal scope of application IHL. - Session 4 : Geographical scope of application of IHL.

<http://tinyurl.com/37933-Bruges>

## The Security Council and the obligation to prevent genocide and war crimes

Andreas Zimmermann. In: Polish yearbook of international law 32, 2012, p. 307-314. - Cote 345.22/230 (Br.)

This article addresses the question of the obligations of both, the Security Council as such, as well as of its individual members (including the five permanent members), when faced with genocide or in situations where violations of the Geneva Conventions are being committed, given that the contracting parties of the Genocide Convention are under a positive obligation to prevent genocide and are under an obligation to secure respect for the provisions of the Geneva Conventions.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37881.pdf>

## Seeking international criminal justice in Syria

Annika Jones. In: International law studies Vol. 89, 2013, p. 802-816

In light of the many and serious offences that have taken place during recent hostilities in Syria, the author concludes that prosecuting war crimes and crimes against humanity will require the use of both domestic and international courts. She contends that Syria's domestic courts have potential for greater impact within the Syrian population but could suffer from a lack of capacity and allegations of bias. The International Criminal Court (ICC) is suited for prosecuting high-profile perpetrators who may be more politically charged. However, since Syria is not a party to the Rome Statute there would be difficulties in bringing a Syrian case to the ICC. A UN Security Council referral is one solution, but some permanent members have expressed a lack of support for such a referral. An ad hoc international criminal justice tribunal, like that established for Yugoslavia or Rwanda, is a less attractive option than using the ICC, since it would still require a UN Security Council agreement, and would be less economically efficient. Finally, since war crimes and crimes against humanity are subject to universal jurisdiction, third-party State courts, could act, but they would likely encounter evidentiary difficulties. The author concludes that not only do both international and domestic courts seem necessary to ensure justice, but an involvement of

international courts would also likely benefit Syria's domestic courts through the exchange of experience. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://tinyurl.com/38356-Jones>

### **The seizure of Abu Anas Al-Libi : an international law assessment**

Gordon Modarai... [et al.]. In: International law studies Vol. 89, 2013, p. 817-838

The author analyzes the extraterritorial capture of Abu Anas Al-Libi by U.S. forces in Libya, in order to determine the international law issues that arise in such circumstances. The author first addresses the issue of border crossing and establishes that international law requires the consent of the territorial State, or absent that, a self-defence claim on the part of the actor State. In Al-Libi's case, the conflicting statements of U.S. and Libyan governments make it impossible to determine whether the U.S. had Libyan consent to carry out its operation. The author then explains that international law requires the actor State to have grounds in law for the physical capture of its target. A capture may be justified by the laws of armed conflict applicable in a non-international armed conflict (NIAC), which the U.S. claimed this was. Alternatively, if there is no NIAC ground, general international laws regulating enforcement of a State's domestic criminal jurisdiction must be the standard of evaluation. Finally, the author analyzes the factors that make a detention lawful both under the laws of armed conflict and human rights law, concluding that Al-Libi's detention in a warship was permissible since neither body of law expressly prohibited detention at sea. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://tinyurl.com/38357-Modarai>

### **Serious violations of the law on the conduct of hostilities : a neglected class of war crimes ?**

Paola Gaeta. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 20-37. - Cote 345.25/289

This article examines why prosecutions for violations of the law governing the conduct of hostilities are so rare, and argues that recent development may lead to an increase in such prosecutions. A first reason such violations have traditionally been prosecuted very rarely is that States are generally disinclined to accept restrictions on questions of national security, such as the fashion in which they can utilize their military power in battle. A second reason is the high degree of vagueness in the definitions of many crimes in this area of the law. A third reason is the difficulty of collecting evidence and establishing that an accused had the requisite mens rea. It was with an awareness of these challenges that states recently adopted the Rome Statute, which in turn created the International Criminal Court. The Statute establishes a set list of war crimes that automatically fall within the Court's jurisdiction. Nevertheless, vagueness remains a significant problem, and the list of weapon whose usage constitutes a war crime is limited. However, despite such problems, recent case law has gone some way towards clarifying the relevant rules. Whether this positive momentum will continue remains to be seen. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **Sexual violence against children on the battlefield as a crime of using child soldiers : square pegs in round holes and missed opportunities in Lubanga**

Joe Tan. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 117-151

On 14 March 2012, the International Criminal Court ('ICC') delivered its historic and much anticipated first judgment in the case of Prosecutor v Thomas Lubanga Dyilo. The Accused in the case was charged and convicted of conscripting and enlisting children under the age of 15 into armed forces or groups and using those children to participate actively in hostilities. One of the more significant contributions of the Lubanga judgment was the recognition of the crime of 'using' children to participate actively in hostilities as an offense in its own right, distinct from the 'recruitment' crimes of conscripting or enlisting children into armed forces or groups. All three crimes are referred to in the single provision of Article 8(2)(e)(vii) of the Rome Statute ('child soldiers provision'). The case is unique due to the Prosecution's attempt to run the novel argument that acts of sexual violence (rape, forced marriages and sexual slavery) by commanders against girls—primarily 'child soldiers' but also civilians—constituted the crime of using child soldiers. Section 6.2 of this article begins with an overview of how the prosecution of Mr. Lubanga was undertaken and progressed. Notably, sexual violence came to attain prominence haphazardly and belatedly in the proceedings rather than by way of any deliberate case theory properly investigated, pleaded and particularized in the Document Containing the Charges from the outset. Bound by charges of conscription, enlistment and use of child soldiers as confirmed by the Pre-Trial Chamber, the Prosecution found itself in the difficult position of pursuing a sexual violence case with the blunt instrument of the child soldiers provision. Misconceptions in the SCSL, which saw the crime of use conflated with conscription/enlistment, were also repeated by the Prosecution in Lubanga.

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### **Sow what you reap ? : using predator and reaper drones to carry out assassinations or targeted killings of suspected Islamic terrorists**

Thomas Michael McDonnell. In: George Washington international law review Vol. 44, no. 2, 2012, p. 243-316. - Cote 341.67/28 (Br.)

This article explores whether targeted killing of suspected Islamist terrorists comports with international law generally, whether any special rules apply in so-called "failed states," and whether deploying attack drones poses special risks for the civilian population, for humanitarian and human rights law, and for the struggle against terrorism. Part I of this article discusses the Predator Drone and its upgraded version Predator B, the Reaper, and analyzes their technological capabilities and innovations. Part II discusses international humanitarian law and international human rights law as applied to a state's targeting and killing an individual inside or outside armed conflict or in the territory of a failed state. Part III analyzes the wisdom of carrying out targeted killing drone attacks, even if otherwise legal, against the Taliban, al Qaeda and other Islamic terrorist organizations that have embraced suicide bombing.

<http://docs.law.gwu.edu/stdg/gwilr/PDFs/44-2/2-%20McDonnell.pdf>

### **"Special protection measures" : states parties reporting on article 38 of the Convention of the Rights of the Child**

Chaditsa Poulatova. In: The international journal of children's rights Vol. 21, no. 4, 2013, p. 569-589

In 1989 when the Convention on the Rights of the Child (CRC) came into existence children officially became right holders. This article reviews States Parties' reporting on Article 38 of the CRC to test how far the reporting guidelines have been fully met by the States Parties' reports to the Committee on the Rights of the Child. The first section analyses the adequacy and the depth of the reports submitted by the States Parties' up to the 44th session of the Committee (January 2007). The second examines and evaluates the Committee's use of List of Issues and its Concluding Observations. The third examines the relationship between the reporting performance and the geographical region, income level and regime type of the States Parties to the CRC. The fourth focuses on States Parties that have experienced war/conflict over the past years and have a well established record of use of child soldiers either in government or non-governmental militia groups. The fifth concludes that States Parties have provided the Committee with poor, inadequate or no reporting on article 38, despite its significance.

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<http://booksandjournals.brillonline.com/content/journals/10.1163/15718182-55680012>

### **Syria and the semantics of intervention, aggression and punishment : on "red lines" and "blurred lines"**

Carsten Stahn. In: Journal of international criminal justice Vol. 11, no. 5, December 2013, p. 955-977

The Syria crisis marked one of the greatest turns in the history of intervention. In late August and September 2013, military strikes were contemplated in response to the use of chemical weapons on 21 August 2013 against civilians near Damascus. Use of force was averted through an unexpected shift in diplomacy, i.e. Syria's agreement on the destruction of its chemical weapons and the adoption of a framework for disarmament, compliance and political settlement under Security Council Resolution 2118 (2013). In the discourse on intervention in Syria, it has been argued that the threat of the use of force constitutes a legitimate means to sanction violations of the ban on chemical weapons. This article challenges this assumption. The Syria debate folded criminal justifications into the rhetoric of intervention. Intervention was regarded as a threat and a potential means to achieve rationales of retribution. The author examines justifications invoked in relation to (i) regime accountability (Responsibility to Protect, 'humanitarian intervention', 'protection of civilians'); (ii) the 'punitive' and deterrence-based justification of intervention; and (iii) the semantics of 'aggression' and (iv) accountability strategies under Resolution 2118 (2013) to argue that use of force cannot and should not serve as a short cut to international justice or as a means of punishment. A new 'red line' regarding chemical weapons under Resolution 2118 (2013) should not detract from the need to address other categories of crimes in the Syrian conflict.

Only from ICRC Headquarters: <http://jicj.oxfordjournals.org/content/11/5/955.full.pdf>

## The Syrian crisis and the principle of non-refoulement

Mike Sanderson. In: International law studies Vol. 89, 2013, p. 776-801

The author advocates for a comprehensive right of non-refoulement for Syrians escaping from a violent civil war to surrounding states. Non-refoulement is the right not to be forcibly returned to a territory where one's freedom is threatened. This right is endorsed by the 1951 Refugee Convention and the 1967 Protocol to the Convention, which are the two basic legal instruments for the protection of refugees. Unfortunately, only two of the five States currently receiving Syrian refugees are parties to these instruments and neither has implemented them comprehensively. However, the author explains that the available protection regime can be enhanced by virtue of the fact that non-refoulement is guaranteed by the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT). All five receiving States are parties to both conventions. The author also argues that the right of non-refoulement has attained the status of preemptory public international law and is a supervening international norm that must be adhered to by all receiving States as well as any others choosing to involve themselves in the Syrian conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<http://tinyurl.com/38355-Sanderson>

## The Tallin Manual and international cyber security law

Wolff Heintschel von Heinegg. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 3-18

In 2009, the NATO Cooperative Cyber Defence Centre of Excellence (CCD COE) in Tallinn, Estonia, established an "International Group of Experts" to conduct the first comprehensive examination of the international law governing cyber warfare. The group consisted of twenty international law scholars and practitioners, including senior military officers responsible for legal advice on cyber operations. The resulting product of the three-year process was the "Tallinn Manual on the International Law Applicable to Cyber Warfare." This piece is a critical assessment of the Tallinn Manual. As the Tallinn Manual's focus is on public international law, and therefore inter-State relations, it does not accurately reflect the realities of cyberspace. This is especially so in light of its almost exclusive analysis of the *jus ad bellum* and the *jus in bello*. For the average person, cybercrime is of far greater concern than the 'high politics' of international relations. Moreover, the economic benefits derived from digital information and communications infrastructure are growing at an unparalleled rate. Despite these realities, recent events such as the Stuxnet incident illustrate the importance of the security dimension that underlies the Tallinn Manual.

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## The Tallinn Manual on the international law applicable to cyber warfare : a commentary on chapter II : the use of force

Nicholas Tsagourias. In: Yearbook of international humanitarian law Vol. 15, 2012, p. 19-43

This article presents and critically comments on the *jus ad bellum* rules found in Chapter II of the Tallinn Manual: that is, Rules 10–19. The aim of this commentary is to draw attention to certain important but contested issues, identify jurisprudential ambiguities, and where possible offer alternative views.

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## Target area bombing

by Ove Bring. In: Israel yearbook on human rights Vol. 43, 2013, p. 199-213

The method of warfare which treats a whole area as a legitimate target has been controversial at least since the time of the 1899 Hague Peace Conference, although the matter was not addressed in these terms until much later. This article shows how the "target area bombing" concept and its prohibition have evolved from 1899 to the recent 2009 HPCR Manual on international law applicable to air and missile warfare. For the purposes of this article, "target area bombing" is defined as air attacks by any means that treat multiple clearly separated and distinct military objectives located in or near a concentration of civilians or civilian objects as a single military objective.

## Targeted killings (drone strikes) and the European Convention on Human Rights

Adam Bodnar, Irmina Pacho. In: Polish yearbook of international law 32, 2012, p. 189-208. - Cote 345.1/85 (Br.)

More and more Member States of the Council of Europe are becoming interested in drone technology. Currently, a number of them either possess or wish to obtain unmanned aerial vehicles equipped with missiles. Due to the increased number of targeted killing operations committed with the use of drones by countries such as the United States or Israel there is a probability that Member States might also use them for such operations, especially if their forces will be subject to joint command. Although the issue of targeted killings with the use of drones has not yet been subject to the scrutiny of the European Court of Human Rights, there are two main reasons why this may change in the near future. First, the Court has already ruled on the extraterritorial applicability of the European Convention on Human Rights, and second, the Convention places strict limits on any attempts to carry out targeted killings and leaves only a limited space for their use, even in the context of warfare. In this article we assess whether the Member States of the Council of Europe might be ever justified under the European Convention on Human Rights to carry out targeted killing operations using drones.

ICRC access: <https://ext.icrc.org/library/docs/ArticlesPDF/37880.pdf>

## Targeting and the concept of intent

Jens David Ohlin. In: Michigan journal of international law Vol. 35, issue 1, Fall 2013, p. 79-130. - Cote 344/92 (Br.)

International law generally prohibits military forces from intentionally targeting civilians; this is the principle of distinction. In contrast, unintended collateral damage is permissible unless the anticipated civilian deaths outweigh the expected military advantage of the strike; this is the principle of proportionality. These cardinal targeting rules of international humanitarian law are generally assumed by military lawyers to be relatively well-settled. However, recent international tribunals applying this law in a string of little-noticed decisions have completely upended this understanding. Armed with criminal law principles from their own domestic systems—often civil law jurisdictions—prosecutors, judges and even scholars have progressively redefined what it means to "intentionally" target a civilian population. In particular, these accounts rely on the civil law notion of *dolus eventualis*, a mental state akin to common law recklessness that differs in at least one crucial respect: it classifies risk-taking behavior as a species of intent. This problem represents a clash of legal cultures. International lawyers trained in civil law jurisdictions are nonplussed by this development, while the Anglo-American literature on targeting has all but ignored this conflict. But when told of these decisions, U.S. military lawyers view this "reinterpretation" of intent as conflating the principles of distinction and proportionality. If a military commander anticipates that attacking a building may result in civilian casualties, why bother analyzing whether the collateral damage is proportional? Under the *dolus eventualis* view, the commander is already guilty of violating the principle of distinction. The following Article voices skepticism about this vanguard application of *dolus eventualis* to the law of targeting, in particular by noting that *dolus eventualis* was excluded by the framers of the Rome Statute and was nowhere considered by negotiators of Additional Protocol I of the Geneva Convention. Finally, and most importantly, a *dolus eventualis*-inspired law of targeting undermines the Doctrine of Double Effect, the principle of moral theology on which the collateral damage rule rests. At stake is nothing less than the moral and legal distinction between terrorists who deliberately kill civilians and lawful combatants who foresee collateral damage.

<http://tinyurl.com/37925-Ohlin>

## Ten questions to Philip Spoerri, ICRC director for international law and cooperation

In: International review of the Red Cross Vol. 94, no. 887, Autumn 2012, p. 1125-1134

With the globalisation of market economies, business has become an increasingly prominent actor in international relations. It is also increasingly present in situations of armed conflict. On the one hand, companies operating in volatile environments are exposed to violence and the consequences of armed conflicts. On the other hand, some of their conduct in armed conflict may lead to violations of the law. The International Committee of the Red Cross (ICRC) engages with the private sector on humanitarian issues, with the aim of ensuring compliance or clarifying the obligations that business actors have under international humanitarian law (IHL) and encouraging them to comply with the commitments they have undertaken under various international initiatives to respect IHL and human rights law. In times of conflict, IHL spells out certain responsibilities and rights for all parties involved. Knowledge of the relevant rules of IHL is therefore critical for local and international businesses operating in volatile contexts. In this Q&A section, Philip Spoerri, ICRC Director for International Law and Cooperation, gives an overview of

the rules applicable to business actors in situations of conflict, and discusses some of the ICRC's engagement with business actors.

<http://www.cid.icrc.org/library/docs/DOC/irrc-887-spoerri.pdf>

## **Terror and terrorism in armed conflicts : developments in international criminal law**

**Julinda Beqiraj.** - In: *War crimes and the conduct of hostilities : challenges to adjudication and investigation.* - Cheltenham ; Northampton : E. Elgar, 2013. - p. 257-275. - Cote 345.25/289

Beqiraj examines the law governing terrorist acts committed during armed conflict. Focusing on the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL), Beqiraj argues that there is a trend toward broadening the actus reus of terrorism offences. She notes that in the Galic case, the trial chambers of the ICTY provided a preliminary definition of the actus reus that required "death or serious injury." This definition, she argues, was expanded in Milošević to include "grave consequences," and again by the SCSL to include acts or threats of violence directed at property. In contrast, Beqiraj argues that the mens rea requirement has changed very little, as it still requires that the "primary purpose" of the act be the spread of terror among civilians. Beqiraj takes issue with this requirement, arguing that it poses a difficult evidentiary challenge for prosecutors. Beqiraj also discusses how the crime of terror relates to other war crimes, and the issue of cumulative convictions. She concludes that although the broadening scope of the crime reflects our moral condemnation of terrorism, judicial creativity must be limited in order to preserve the legitimacy of international criminal justice. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## **Threats posed to human security by non-state corporate actors : the answer of international criminal law**

**Cedric Ryngaert and Heleen Struyven.** - In: *Human security and international law : the challenge of non-state actors.* - Cambridge [etc.] : Intersentia, 2014. - p. 101-134. - Cote 345/644

Judicial precedents as regards corporate liability under international criminal law are scarce. In fact, the leading body of relevant case law is composed of a number of judgments rendered by Allied war crimes tribunals after World War II. As will be set out in section 2, these judgments developed legal principles to address German industrialists' complicity in international crimes perpetrated by the Nazi regime. Although the various tribunals' decisions are not always consistent, and all times lack legal clarity, they continue to be cited as leading standards for assessing corporate complicity. This is mainly so because later international criminal tribunals (Rwanda, Yugoslavia, and the International Criminal Court) have not heard corporate complicity cases, although they have further develop the general complicity standard (section 3). That being said, in recent times, corporate complicity litigation has been increasing in domestic courts, in particular in United States (UN) federal courts hearing tort cases against MNCs under the Alien Tort Claims Act (ATCA) (section 4), but also elsewhere, e.g, in the Netherlands (section 5). This increasing case law combined with historical precedents, the Rome Statute of the International Criminal Court (ICC), and considerations of criminal policy, allow us, in section 6, to develop general principles of corporate complicity that may guide future litigation brought by public prosecutors, or by victims of human security violations. For the sake of clarity, section 1 provides a definition, or rather definitions, of complicity, with a specific focus on corporate complicity.

## **To what extent do the international rules on human rights matter ?**

**Edoardo Greppi.** - In: *War crimes and the conduct of hostilities : challenges to adjudication and investigation.* - Cheltenham ; Northampton : E. Elgar, 2013. - p. 38-55. - Cote 345.25/289

This article discusses the distinction between international humanitarian law (IHL) and human rights law (HRL), and their growing convergence. IHL concerns the restriction imposed upon and rights owed to various parties during armed conflicts, while HRL aspires to protect individuals from the state and its agents. Since the end of World War Two, IHL has evolved and extended its scope of applicability from traditional international 'wars' to 'armed conflicts' of both an international and non-international character. HRL has similarly extended its scope of applicability, moving from municipal origins to a special focus on non-international conflicts. IHL and HRL both hold respect for human dignity as their fundamental *raison d'être*, and because of this are generally looked upon as complementary bodies of law. In general, the applicability of both IHL and HRL during times of armed conflict has been established. However, there are aspects of armed conflicts where IHL trumps HRL, especially with regards to whether killing that occurs throughout an armed conflict constitutes arbitrary death. The author identifies three

paradigmatic examples of the convergence of IHL and HRL: torture, detention, and disappearances. While customary and conventional IHL bans all three, it does not define them, and thus recourse to HRL is necessary to understand the content of these bans. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

### **The torture of children during armed conflicts : the ICC's failure to prosecute and the negation of children's human dignity**

Sonja C. Grover. - Heidelberg [etc.] : Springer, 2014. - XVIII, 228 p. - Cote 362.7/386

This book examines selected legal complexities of the notion of torture and the issue of the proper foundation for legally characterizing certain acts as torture, especially when children are the targeted victims of torture. ICC case law is used to highlight the International Criminal Court's reluctance in practice to prosecute as a separable offence the crime of torture as set out in one or more of the relevant provisions of the Rome Statute where children are the particularized targets as part of a common plan during armed conflict. Also addressed is the failure of the ICC to consider that the young age of the victims of torture (i.e. children) should be an aggravating factor taken into account in determining the ICC sentence for those convicted of the torture of civilians, including children, in the context of armed conflict as part of a common plan. The six UN-designated grave crimes against children (including child soldiering for State or non-State forces perpetrating mass atrocities, and sexual violence perpetrated on a systematic and widespread basis against children including child soldiers), it is argued, are also instances of the torture of children as part of a common plan such that separate charges of torture are legally supportable (along with the other charges relating to additional Rome Statute offences involved in such circumstances). Useful legal perspectives on the issue of the torture of children in its various manifestations gleaned from the case law of other international judicial forums such as the Inter-American Court of Human Rights and the ICTY are also examined.

### **Transnational armed conflict : does it exist ?**

Rogier Bartels. In: Collegium No 43, automne 2013, p. 114-128. - Cote 345.2/948

When one considers the (current) material scope of application of IHL, it becomes clear that transnational armed conflicts do not seem to fall under any of the "definitions" given in treaty law, literature, or jurisprudence. However, the author argues that, in any case, a new regime for a third category is neither necessary nor desirable and explains how the majority of transnational armed conflicts are not regulated by the law on non-international armed conflict, but are governed by the law on international armed conflict. To conclude, he proposes not to focus on the nature of the parties to the conflict, but rather to use the territorial borders of a State as guidance to characterise a conflict as international or as non-international. In the end, what determines whether there is an international or a non-international armed conflict is whether a State uses force against another State. The law of non-international armed conflict would regulate a State's use of force against an armed group on its own territory, because the conflict itself is non-international in character. However, that same State's transnational use of force against an armed group on the territory of another State that does not (explicitly) consent to such force is regulated by the law of international armed conflict, because such use of force itself amounts to an international armed conflict.

<http://tinyurl.com/37968-Bartels>

### **A turn to non-state actors : inducing compliance with international humanitarian law in war-torn areas of limited statehood**

Heike Kriege. - Berlin : DFG Collaborative Research Center (SFB) 700, June 2013. - 45 p. - Cote 345.22/226 (Br.)

Many of the perpetuated armed conflicts in the Great Lakes Region in Africa take place in war-torn areas of limited statehood. These conflicts are characterized by a high number of civilian victims, often resulting from utter disregard for international humanitarian law. Here, the rise of armed, violent non-state actors collides with the State-centric traditional nature of public international law. Thus, (classical) compliance structures seem to lose their significance, as they predominantly rely on the State for law enforcement and therefore mainly accommodate States' interests when inducing compliance. The working paper suggests that the international community responds to these challenges by allocating competences to other actors than the State. Particularly, international organizations increasingly contribute to enforcing international humanitarian law. However, since these organizations are dependent on their member States' political willingness to support measures for inducing compliance effectively, a proliferation of humanitarian non-state actors can be observed that step in where third States and international organizations are reluctant to act. The paper investigates reasons for compliance and arrives at the conclusion that traditional motives rooted in a logic of consequences, as well as appropriateness are still valid and must therefore be addressed by the corresponding compliance mechanisms. These compliance mechanisms are interdependent and mutually reinforcing. Persuasion and incentives work more effectively if they are used under a shadow of

hierarchy thrown by coercive legal enforcement instruments, such as international criminal justice and UN targeted sanctions. These instruments are in turn more effective if they are part of a concerted effort.

[http://www.sfb-governance.de/publikationen/sfbgov\\_wp/wp62/wp62.pdf?1372103158](http://www.sfb-governance.de/publikationen/sfbgov_wp/wp62/wp62.pdf?1372103158)

## **UN fact-finding commissions and the prosecution of war crimes : an evolution towards justice-oriented missions ?**

Micaela Frulli. - In: War crimes and the conduct of hostilities : challenges to adjudication and investigation. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 331-348. - Cote 345.25/289

The author analyzes the nature and role of fact-finding commissions established by the United Nations to investigate possible violations of international humanitarian law. Specifically, the author analyzes the relevance of the commissions to subsequent criminal prosecutions. The author begins by looking at different commissions established by the United Nations Security Council. The author contends that the International Commission of Inquiry on Darfur could serve as a model for efficient and prosecution-oriented fact-finding. The author notes, however, that this has not been done. Next, discussion moves to the establishment of more recent commissions by the United Nations Human Rights Council, rather than the Security Council. The author believes that this shift of responsibility to the Human Rights Council is largely driven by the increasing overlap between international humanitarian law and human rights law. Despite this overlap, the author notes that international humanitarian law and human rights law have different legal parameters, and argues that the Security Council, rather than the Human Rights Commission, has better tools for establishing fact-finding missions in the international humanitarian law context. The author thus concludes that it is not advisable to create commissions with mandates to investigate both international humanitarian law and human rights law issues, and that the former are better established by the United Nations Security Council. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## **Unmanned platforms in the cyber age**

by William H. Boothby. In: Israel yearbook on human rights Vol. 43, 2013, p. 171-197

The question that this chapter seeks to explore is how the application of the law of armed conflict targeting rules to unmanned and autonomous attack operations is likely to be affected by cyber operations. It shows in three fictitious scenarios how a cyber operation deceiving the other party, who is using unmanned combat aerial vehicles (UCAV), can lead to catastrophic consequences for civilians. It starts by summarising the legal rules on unmanned air operations and the precautions that are required in attack, as set out in the HPCR Manual on the law of air and missile warfare. Then it turns to the rules that apply to deception operations - the modern law of perfidy, ruses and misuse of indicia - and how they can apply to deception cyber operations.

## **L'usage de la force dans le cyberspace et le droit international**

Loïc Simonet. In: Annuaire français de droit international 58, 2012, p. 117-143

La mise en péril de la sécurité nationale d'un État par des moyens informatiques ne relève plus de la science-fiction, et les États se dotent de capacités d'action militaire dans le cyberspace. Dans ce contexte, assimiler l'acte de cyberhostilité à une attaque armée pourrait autoriser l'État victime à répliquer sur la base de la légitime défense individuelle ou collective. La succession d'une cyberattaque d'une gravité particulière et de contre-mesures de même ampleur, pourrait déboucher sur un conflit armé, ce qui soulève la question de la transposition à la "cyberguerre" du jus in bello, dont les normes sont aujourd'hui mises au défi par cet univers immatériel. La difficulté d'identifier l'auteur de la cyberattaque et de le rattacher aux autorités d'un État complique, elle aussi, l'appréhension de la cyberdéfense par le droit international. Un régime juridique international consacré au cyberspace permettrait-il d'introduire davantage de sécurité, pour autant que les États consentent à limiter leurs moyens d'action dans cet espace stratégique ?

## **The use of force in armed conflicts : interplay between the conduct of hostilities and law enforcement paradigms : expert meeting : report**

prepared and ed. by Gloria Gaggioli. - Geneva : ICRC, October 2013. - VII, 92 p. - Cote 345.25/293

This report provides an account of the debates that took place during a meeting of experts organized by the ICRC in January 2012 in Geneva. The subject of discussion was "Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms." The meeting sought to find the line dividing the conduct-of-hostilities and law-enforcement paradigms in situations of armed conflict. It paid especial attention to non-international armed conflicts, during which the interplay between the two is particularly discernible. The report is divided into three parts. First, it addresses the legal basis and

distinguishing features of the two paradigms. Then, it introduces and discusses five case studies pertaining to the use of force; these studies were developed to illustrate some of the concrete legal and practical issues that arise in the field: Case study 1: The use of force against potential targets (example of the isolated sleeping fighter) Case study 2: Riots (where civilians and fighters are blended in with each other) Case study 3: Fight against criminality Case study 4: Escape attempts and rioting detainees Case study 5: Checkpoints The third part explores legal issues relevant before and after the actual use of force – notably questions of planning and investigation. A brief conclusion sums up the points of agreement and the differences of opinion among the experts.

<http://www.cid.icrc.org/library/docs/DOC/icrc-002-4171.pdf>

## The use of prohibited weapons and war crimes

**Andrea Cannone.** - In: *War crimes and the conduct of hostilities : challenges to adjudication and investigation.* - Cheltenham ; Northampton : E. Elgar, 2013. - p. 173-193. - Cote 345.25/289

This article examines the relationship between the use of prohibited weapons and war crimes under international criminal law. The author begins by providing an overview of weapons prohibited under customary and international humanitarian law (IHL). She notes that the use of certain non-prohibited weapons is restricted to situations where they will not cause unnecessary suffering and/or superfluous injuries, and also in locations distant from civilians. The International Criminal Court (ICC) considers the use of most prohibited weapons to be war crimes. However, the author argues that an asymmetry exists between the prohibitions arising from customary and conventional IHL on use of weapons and the resulting criminal accountability for war crimes. Individual criminal responsibility has been more frequently asserted for the use of weapons in attacks directly or indiscriminately targeting civilians than for the use of a prohibited weapon per se. To illustrate this, she discusses recent fact-finding and arbitral commissions, including the NATO Bombing Campaign against Yugoslavia, Israeli military operations in Lebanon, the Gaza Conflict, the conflict in Georgia, alleged human rights violations in Libya, and the Eritrea-Ethiopia armed conflict. The author also explores international and national judicial decisions on the employment of weapons, including cases from the International Criminal Tribunal for Yugoslavia, Iraq, Japan, US, and Israel. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## Using human shields as a war crime

**Marco Pedrazzi.** - In: *War crimes and the conduct of hostilities : challenges to adjudication and investigation.* - Cheltenham ; Northampton : E. Elgar, 2013. - p. 98-116. - Cote 345.25/289

Marco Pedrazzi outlines and analyzes international treaties and jurisprudence regarding the use of human shields during armed conflicts. He begins by examining provisions prohibiting the use of human shields, including various provisions of the Geneva Conventions of 1949 and Additional Protocol I. Though these provisions prohibit such conduct, it is argued only article 8(2)(b)(xxiii) of the International Criminal Court's statute criminalizes the use of human shields. The author discusses the distinction between voluntary and involuntary human shields, concluding that civilians who participate voluntarily as human shields do not lose civilian status protecting them from attack. The author explains that there are no specific treaty provisions prohibiting the use of human shields in non-international armed conflicts, but argues that this prohibition can be deduced from other rules applicable to armed conflicts. Domestic case law from Germany and Israel indicates the use of prisoners of war as human shields may be criminalized, but this does not apply to civilians. As the International Criminal Tribunal for the Former Yugoslavia largely addressed the use of human shields under other categories of war crimes, the author concludes that the Tribunal did not establish that the use of human shields itself is an autonomous war crime. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

## L'utopie de la "guerre verte" : insuffisances et lacunes du régime de protection de l'environnement en temps de guerre

**Karine Bannelier-Christakis.** - In: *Permanence et mutation du droit des conflits armés.* - Bruxelles : Bruylant, 2013. - p. 383-412. - Cote 345.2/945

Cet article s'attache à présenter certains points saillants de l'encadrement juridique de la protection de l'environnement autour de quatre séries de remarques. Le droit de la guerre a, progressivement, développé des règles qui permettent de protéger directement (section I) ou indirectement l'environnement (section II) auxquelles il faut ajouter toute une série de règles du droit international de l'environnement qui, si elles n'ont pas été adoptées dans la perspective de régler les conflits armés peuvent, dans certaines situations, compléter le droit de la guerre (section III). Nous verrons enfin qu'il existe aujourd'hui différents mécanismes internationaux qui permettent, d'une part, de poursuivre pénalement des individus

auteurs de crimes écologiques et, d'autre part, d'engager la responsabilité internationale des Etats (section IV)

### **The war crime of child soldier recruitment**

Julie McBride. - The Hague : T.M.C. Asser Press : Springer, 2014. - XXV, 216 p. - Cote 362.7/388

The practice of using children to participate in conflict has become a defining characteristic of 21st century warfare and is the most recent addition to the canon of international war crimes. This book follows the development of this crime of recruiting, conscripting or using children for participation in armed conflict, from human rights principle to fully fledged war crime, prosecuted at the International Criminal Court. The background and reasons for the growing use of children in armed conflict are analysed, before discussing the origins of the crime in international humanitarian law and human rights law treaties, including the Convention on the Rights of the Child and its Optional Protocol. Specific focus is paid to the jurisprudence of the Special Court for Sierra Leone and the International Criminal Court in developing and expanding the elements of the crime, the modes of ascribing liability to perpetrators and the defences of mistake and negligence. The question of how the courts addressed issues of cultural sensitivity, notably in terms of the liability of children, is also addressed.

### **War crimes and the conduct of hostilities : challenges to adjudication and investigation**

ed. by Fausto Pocar, Marco Pedrazzi, Micaela Frulli. - Cheltenham ; Northampton : E. Elgar, 2013. - XXI, 383 p. - Cote 345.25/289

This comprehensive collection addresses an overlooked area: war crimes and the conduct of hostilities. It uplifts aspects that are particularly under-appreciated, including cultural property, fact-finding, arms transfer, chemical weapons, sexual violence, and attacks on peacekeepers. Through rigorous analysis, original insights, and vivacious interconnections, this book enlivens the actual enforcement and application of international war crimes law.

### **The war report : 2012**

ed. by Stuart Casey-Maslen. - Oxford : Oxford University Press, 2013. - XXXII, 499 p. - Cote 355/1018

This is a comprehensive Report on every armed conflict which took place during 2012. It is the first of a new series of annual reports on armed conflicts across the globe, offering an unprecedented overview of the nature, range, and impact of these conflicts and the legal issues they create. In Part I the Report describes its criteria for the identification and classification of armed conflicts under international law, and the legal consequences that flow from this classification. It sets out a list of armed conflicts in 2012, categorising each as international, non-international, or a military occupation, with estimates of civilian and military casualties. In Part II, each of these conflicts are examined in more detail, with an overview of the belligerents, means and methods of warfare, the applicable treaties and rules, and any prosecutions for, investigations into, or robust allegations of war crimes. Part III of the Report provides detailed thematic analysis of key legal developments which arose in the context of these conflicts, allowing for a more in-depth reflection on cross-cutting questions and controversies. The topics under investigation in this Report include drone strikes, the use of explosive weapons, small arms, forced displacement of civilians, detention at Guantanamo Bay, and the enforcement of international humanitarian and criminal law in both national and international courts.

### **What does IHL regulate and is the current armed conflict classification adequate ?**

Noam Lubell. In: Collegium No 43, automne 2013, p. 17-24. - Cote 345.2/948

This contribution looks at the traditional categories of armed conflicts - international, non-international (NIAC) and belligerent occupation - that IHL seems to regulate clearly and looks at whether they are in fact still as clear as expected. While the current challenges to the traditional classification are difficult to deal with, they appear manageable insofar. However, new developments, especially in the technological field (drones and cyber operations) are said to raise new questions that may require us to go further in our solutions.

<http://tinyurl.com/37941-Lubell>

## When does violence cross the armed conflict threshold : current dilemmas

Paul Berman. In: Collegium No 43, automne 2013, p. 33-42. - Cote 345.2/948

Does demonstrating that there is, in factual terms, an armed conflict always mean demonstrating the use of violence? And if so, what level of violence? What kind of violence? And what are the criteria for demonstrating that the threshold level of violence has been reached? Violence - the use of physical force against people and property - is at the heart of most people's concept of armed conflict. That is certainly the case for disciplines outside the legal world. The Uppsala Conflict Data Programme in Sweden which tracks ongoing armed conflicts uses a definition based on at least 25 battle-related deaths a year. That gives a figure of 27 internal, one international and nine so-called internationalised conflicts for 2011. The but determining the relationship between levels of violence and the threshold of the legal concept of armed conflict is much more problematic.

<http://tinyurl.com/37952-Berman>

International Committee Of The Red Cross  
Library and Public Archives  
19, avenue de la Paix  
1202 Geneva  
Switzerland  
Tel: +41-22-730-2030  
Email :library@icrc.org  
April 2014



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