

BIBLIOGRAPHY 2013

INTERNATIONAL HUMANITARIAN LAW



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International Committee of the Red Cross
19, avenue de la Paix
1202 Geneva, Switzerland
T +41 22 734 60 01 F +41 22 733 20 57
E-mail: shop@icrc.org www.icrc.org
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INTERNATIONAL HUMANITARIAN LAW

Compiled by Michèle Hou, Law Librarian

Based on the International Committee of the Red Cross Library classified acquisitions

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INTRODUCTION

THE INTERNATIONAL COMMITTEE OF THE RED CROSS LIBRARY

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

To this end, the Library holds a wide collection of specific IHL documents that can be consulted by the public: preparatory documents, reports, records and minutes of Diplomatic Conferences where the main IHL treaties were adopted; records of Red Cross and Red Crescent Movement conferences, during which many IHL matters are discussed;

every issue of the International Review of the Red Cross since it was founded; all ICRC publications; rare documents published in the period between the founding of ICRC and the end of the First World War and charting the influence of Dunant's ideas; and a unique collection of legislation and case law implementing IHL at domestic level.

The Library also acquires as many external IHL publications as possible, with those produced in English and French being the priority. Each journal article, chapter, book, working paper, report etc. is catalogued separately, making the Library's online catalogue (<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 produce a compilation of this quarterly electronic tool as an official annual publication.

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 (containing abstracts) for readers who need full information

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).

Chronology

This bibliography is based on the acquisitions made by the ICRC Library over the past year. The Library acquires and catalogues 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 or work load 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 pub-

lishers' 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

This publication is a compilation of a quarterly electronic bibliography. If you wish to receive the quarterly electronic bibliography directly by e-mail, please send your request to library@icrc.org with the subject heading "IHL bibliography subscription".

Feel free to send your questions, comments and feedback to the same e-mail address.

FOREWORD

Now that information has gone digital, and is readily accessible at the click of a button, it would be understandable if people saw the traditional paper bibliography as somewhat impractical, redundant or perhaps simply obsolete. As a librarian, and in particular as someone working in the ICRC library, I might even be the first to say that the simplest and most useful thing to do is to search our online catalogue. But that opinion, while probably widespread, misses some important points.

The first is that not all countries are equal when it comes to broadband. The parts of the world with the fewest internet connections are often precisely those where the ICRC is most active and where the goal of promoting international humanitarian law is most pressing. The second point is that how people search online varies from one reader to the next, and not just according to age. While occasional users can generally find what they are looking for in just a few clicks, a PhD student or a university professor would rather receive a list of references, without having to trawl through a database or an online catalogue every time. Moreover, paper, despite our environmental concerns, still provides the most pleasurable read. For that reason, many people continue to print out documents rather than reading them on-screen.

These considerations aside, we also aspired to make up for the absence of a top-notch bibliography of international humanitarian law, such as the one published jointly by the Henry Dunant Institute and the ICRC in 1987. It is still widely used for major projects, despite having

compiled only works published up to 1986. Several bibliographies, including some excellent ones, have flourished on the internet since then, but none have been published. We therefore decided to highlight our extensive collection of literature on humanitarian law by putting out a new bibliography that would retain as far as possible what worked well in the previous one, while bringing it up to date.

The works are grouped thematically. This has the advantage of enabling us to reflect the academic concerns of the day, but it also means that the collection may begin to seem dated in the medium term. The category "Contemporary Challenges," for instance, is of use when a bibliography is published annually, but will lose some of its relevance and consistency when we look forward 10 years. Likewise, some articles published three years ago under "Conduct of Hostilities" would now be classed under "International Human Rights Law," as academics start to agree on what law applies in certain situations. Nevertheless, we hope that the bibliography will remain in print for many years to come.

Finally, the bibliography is above all the fruit of the entire library team's labour. It would not have been possible without the careful acquiring, cataloguing and indexing of books by my colleagues. It can never be said too often that all academic research is built on the foundations laid by librarians.

Michèle Hou

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(GENERAL CATCH-ALL CATEGORY, CUSTOMARY LAW, RELIGION, DEVELOPMENT OF THE LAW, SCOPE, MULTIPLE SUBJECTS MONOGRAPHIES...)

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Iain Bonomy. - Oslo : Torkel Opsahl Academic EPublisher, 2013. - IV, 53 p.

WAR CRIMES AND GENOCIDE IN INTERNATIONAL LAW

Hoxha Rinor, Shveika Kateryna, Koldzo Nizama. - [S.l.] : [s.n.], [2012]. - 37 p.

WHAT HAVE WOMEN GOT TO DO WITH PEACE ? : A GENDER ANALYSIS OF THE LAWS OF WAR AND PEACEMAKING

Benedetta Faedi Duramy. - In: *Law and outsiders : norms, processes and "othering" in the twenty-first century*. - Oxford ; Portland : Hart, 2011. - p. 209-232

FULL LIST WITH ABSTRACTS

ABIDING BY AND ENFORCING INTERNATIONAL HUMANITARIAN LAW IN ASYMMETRIC WARFARE : THE CASE OF "OPERATION CAST LEAD"

Andreas Zimmermann. In: Polish yearbook of international law Vol. 31, 2011, p. 47-78

"Operation cast lead" undertaken by the Israeli armed forces against Hamas forces in the Gaza strip in 2008/2009 raises a significant number of international legal issues. These issues relate to the nature of the military conflict, the legal status of the Gaza strip under international humanitarian law, but also, more generally, to the applicability and suitability of international humanitarian law in such kinds of asymmetric warfare taking place in densely populated areas. Besides, the article also questions at least some of the findings made by the "Goldstone report" tasked by the United Nations Human Rights Council to investigate alleged violations of international humanitarian law during armed conflict.

ACCOUNTABILITY FOR PRIVATE MILITARY AND SECURITY CONTRACTORS IN THE INTERNATIONAL LEGAL REGIME

Kristine A. Huskey. In: Criminal justice ethics Vol. 31, no. 3, December 2012, p. 193-212

The two most infamous events of serious misconduct by PMSC personnel—one involving the firm formerly known as Blackwater and the other involving Titan and CACI—engendered scrutiny of available mechanisms for criminal and civil accountability of the individuals whose misconduct caused the harm. Along a parallel track, scholars and policymakers began examining the responsibility of states and international organizations for the harm that occurred. Both approaches have primarily focused on post-conduct accountability—of the individuals who caused the harm, of the state in which the harm occurred, or of the state or organization that hired the PMSC whose personnel caused the harm. Less attention, however, has been paid to the idea of pre-conduct accountability for PMSCs and their personnel. A broad understanding of "accountability for" PMSCs and their personnel encompasses not only responsibility for harm caused by conduct, but responsibility for hiring, hosting, and monitoring these entities, as well as responsibility to the victims of the harm. This article provides a comprehensive approach for analyzing the existing international legal regime, and whether and to what extent the legal regime provides "accountability for" PMSCs and their personnel. It does so by proposing a practical construct of three phases based on PMSC operations—contracting, in-the-field, and post-conduct—with which to assess the various bodies of international law.

ADVANCING THE LEGAL PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICT : PROTOCOL I'S THRESHOLD OF IMPERMISSIBLE ENVIRONMENTAL DAMAGE AND ALTERNATIVES

Carson Thomas. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 83-101

This article presents both legal and strategic arguments for increasing the level of environmental protection in wartime within the legal context created by Articles 35 and 55 of Additional Protocol I. These provisions bifurcate the legal protection of the environment in armed conflict. Above the threshold, environmental damage is prohibited. Beneath the threshold, other international humanitarian law instruments and customary principles

apply and may offer environmental protection, usually by balancing environmental damage against military necessity. The objective of this article is to propose legal and strategic frameworks to be addressed to military decision-makers considering environmentally harmful actions. It argues that the principle of military necessity, including strategic considerations, can be found compatible with enhanced environmental protections.

THE AFRICAN UNION AND INTERNATIONAL HUMANITARIAN LAW

Djacobina Liva Tehindrazanarivelo. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 503-530

Notwithstanding the lack of express mention of international humanitarian law (IHL) in the African Union (AU) Constitutive Act, there is undeniably an AU commitment to promote, respect and ensure respect for IHL. Such a commitment could be seen in the AU instruments relating to human rights and humanitarian concerns, in its peace and security instruments and activities, and in the AU principles and measures relating to the sanction for the violation of IHL. This chapter particularly considers in these three sections how the 53 AU member states act through the AU organs to uphold their obligation to respect and ensure respect for IHL in the conflict situations in Africa, as provided for in common article 1 of the Four Geneva Conventions to which all of them, except one, are parties.

L'AIDE HUMANITAIRE UTILISÉE POUR "GAGNER LES COEURS ET LES ESPRITS" : UN ÉCHEC COÛTEUX ?

Jamie A. Williamson. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/3, p. 139-169

Dans cet article, l'auteur explique que l'intégration de l'assistance humanitaire dans les opérations anti-insurrectionnelles tendant à "gagner les coeurs et les esprits" n'a pas été une réussite et que les coûts, sur le plan tant des opérations que du droit, l'emportent manifestement sur les avantages. Il démontre qu'une telle manipulation de l'assistance humanitaire est contraire aux principes fondamentaux du droit international humanitaire. En outre, des recherches de plus en plus nombreuses concluent que l'utilisation de programmes d'aide et de secours à court terme dans les contre-insurrections (COIN) a été inefficace et que, dans des pays comme l'Afghanistan, elle a même pu nuire à l'objectif militaire général qui était de vaincre les insurgés. Alors que les Etats-Unis et l'OTAN mettent progressivement fin à leurs opérations militaires en Afghanistan, le moment est venu pour les militaires et les décideurs politiques de réviser l'ordre donné de gagner les coeurs et les esprits comme stratégie anti-insurrectionnelle afin d'en tirer des enseignements et de reconnaître l'importance d'un espace neutre et indépendant pour l'aide humanitaire.

AIR TARGETING IN OPERATION UNIFIED PROTECTOR IN LIBYA : JUS AD BELLUM AND IHL ISSUES : AN EXTERNAL PERSPECTIVE

Giulio Bartolini. In: Recueils de la Société internationale de droit militaire et de droit de la guerre XIX, 2012, p. 242-279

This study analyzes several legal issues related to the military intervention in Libya undertaken within the

framework of UN Security Council resolution 1973 (2011). The main areas of interest are: (a) the impact of the mandate's *jus ad bellum* limitations concerning military operations carried out in the implementation of UN Security Council resolution 1973; (b) international humanitarian law (IHL) issues related to Operation Unified Protector and the mandate's potential impact on the interpretation and application of principles pertaining to the law of armed conflicts.

ALL NECESSARY MEASURES ? : RECONCILING INTERNATIONAL LEGAL REGIMES GOVERNING PEACE AND SECURITY, AND THE PROTECTION OF PERSONS, IN THE REALM OF COUNTER-TERRORISM

Karima Bennoune. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 667-705

Where action against terrorism is mandated or authorized by UN Security Council (SC) resolutions adopted under Chapter VII of the UN Charter, do member states' obligations under international human rights and humanitarian law still apply as they would otherwise? Alternatively, in such situations, are human rights and IHL obligations instead subordinate to state obligations to implement the resolutions of the SC? Examples might include an SC resolution that requires freezing the funds of suspected supporters of al-Qaeda without necessarily affording the due process required by human rights law, or SC resolutions authorizing the use of force (or otherwise necessitating the presence of member states' armed forces) in circumstances that may give rise to violations of those states' human rights and humanitarian law commitments. This chapter synthesizes the debate of the interplay of these legal regimes and brings together the international organizations and human rights issues.

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

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.

AMERICA'S DRONE WARS

Leila Nadya Sadat. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 215-234

The U.S. practice of targeted killing by remotely-piloted unmanned vehicles in Afghanistan, Pakistan, Yemen, Libya, Iraq and Somalia - popularly referred to as "America's drone wars" - raises the question of the application

of humanitarian law principles to the conduct of America's longest - running war. Yet, it not only presents complex issues of international law but difficult moral and ethical questions. Administration officials and some academics and commentators have praised targeted killing as effective and lawful. Others have criticized it as immoral, illegal, and unproductive. This article concludes that conducting targeted killing operations outside areas of active hostilities violates international law. In addition, even in areas in which targeted killings may be lawful, particular uses of drones may violate international humanitarian law if insufficient attention is paid to principles of proportionality and distinction in their use, particularly as regards decisions of whom, how, and when to target an individual for death.

ANALOGY AT WAR : PROPORTIONALITY, EQUALITY AND THE LAW OF TARGETING

Gregor Noll. In: Netherlands yearbook of international law Vol. 43, 2012, p. 205-230

This text is an inquiry into how the international community is understood in and through international law. The prism for this inquiry is the principle of proportionality in international humanitarian law, relating expected civilian losses to anticipated military advantage. To properly understand proportionality, the author reverts to the structure of analogical thinking in the thomistic tradition. Proportionality presupposes a third element to which civilian losses and military advantage can be related. In a first reading, he develops how this tradition of thought might explain the difficulties contemporary IHL doctrine has in understanding proportionality. If military commanders misconceive the third element as the sovereignty of their own state, they will invariably apply the proportionality principle in a paternalistic manner. This would obviate the most rudimentary idea of equality among states and do away with the common of an international community. In a second reading, he explores whether this third element could instead be thought of as a *demos*, while retaining the existing framework of analogical thinking. The argument is that this secularizing replacement is possible. Practically, its consequence would be a radical change in the task of the responsible military commander determining proportionality. That commander would now need to rethink civilians endangered by an attack as a *demos* whose potentiality must be preserved.

AND YET IT EXISTS : IN DEFENCE OF THE "EQUALITY OF BELLIGERENTS" PRINCIPLE

Vaios Koutroulis. In: Leiden journal of international law Vol. 26, no. 2, June 2013, p. 449-472

The present contribution is a reply to an article by Professor Michael Mandel, entitled "Aggressors' rights : the doctrine of "equality between belligerents" and the legacy of Nuremberg". The equal application of international humanitarian law (*jus in bello*) to all parties to an international armed conflict is a cornerstone principle of *jus in bello*. In his article, Professor Mandel casts doubt on the legal basis of this principle. Reacting to this claim, this contribution demonstrates that the 'equality of belligerents' is a principle firmly grounded in both conventional and customary international law. Moreover, its legal force withstands the test of international jurisprudence, including the International Court of Justice's controversial Nuclear Weapons advisory opinion.

L'APPLICABILITÉ DU DROIT INTERNATIONAL HUMANITAIRE AUX GROUPES ARMÉS ORGANISÉS

Jann K. Kleffner. In: *Revue internationale de la Croix-Rouge* : sélection française Vol. 93, 2011/2, p. 141-161

S'il est généralement admis aujourd'hui que le droit international humanitaire (DIH) s'applique aux groupes armés organisés, il n'est pas aisé de dire pour quelles raisons il en va ainsi, ni sur quelles bases s'appuyer pour expliquer en quoi le DIH a force obligatoire pour ces groupes. Différentes thèses ont été avancées et le présent article propose une analyse critique de cinq d'entre elles, à savoir que les groupes armés organisés sont liés par les obligations incombant à l'État sur le territoire duquel ils opèrent, qu'ils sont liés par le DIH dès lors que leurs membres le sont individuellement, que les normes du DIH ont un caractère contraignant pour les groupes armés organisés du fait qu'ils exercent de facto des fonctions gouvernementales, que le DIH coutumier s'applique aux groupes armés organisés en vertu de leur personnalité juridique internationale (limitée) et que les groupes armés organisés sont liés par le DIH dès lors qu'ils y ont consenti.

L'APPLICABILITÉ TEMPORELLE DU DROIT INTERNATIONAL HUMANITAIRE

Julia Grignon. - Genève : Faculté de droit de l'Université de Genève, 2012. - 495 p.

L'ambition de ce travail au regard de l'applicabilité rationnelle temporelle des instruments de droit international humanitaire est de dégager, sinon des critères, à tout le moins des indicateurs permettant d'encadrer juridiquement, avec toute la souplesse requise, le temps dans lequel le droit international humanitaire produit des effets, quelle que soit la situation dans laquelle il a vocation à s'appliquer. Pour ce faire et puisque la question à laquelle on entend répondre est celle de savoir à partir de quand et jusqu'à quand le droit international humanitaire s'applique aux situations de conflits armés, il conviendra d'étudier d'abord les éléments permettant de conclure au début de son applicabilité, puis ceux déterminant la fin de son applicabilité.

L'APPLICATION DU DROIT INTERNATIONAL HUMANITAIRE DANS LA GUERRE URBAINE : DE GUERNICA À GAZA

par Michel Veuthey. - In: *Conflits en zone urbaine*. - Nancy : Le Polémarque, 2013. - p. 109-144

La guerre urbaine, sans être entièrement nouvelle, apporte des problématiques humanitaires, notamment concernant la continuité de l'adaptation du droit international humanitaire aux conflits urbains actuels. Après une brève analyse historique de la guerre urbaine contemporaine, ce chapitre étudie les principes de droit international humanitaire mis au défi aujourd'hui dans ces types de conflits : le principe général de limite des méthodes et moyens de guerre, les principes de distinction, de proportionnalité et de confiance (interdiction de la perfidie). L'auteur termine par quelques propositions relatives à la mise en oeuvre.

THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN SITUATION OF PROLONGED OCCUPATION : ONLY A MATTER OF TIME ?

Vaios Koutroulis. In: *International review of the Red Cross* Vol. 94, no. 885, Spring 2012, p. 165-205

The article deals with the effect of the time factor in the application of international humanitarian law (IHL) and international human rights law (IHRL) in 'prolonged belligerent occupations'. It demonstrates that IHL applies in its entirety to such situations and that the adjustments necessary can be made through the interpretation of existing IHL norms. As for IHRL, the protracted character of an occupation reinforces the importance of respecting and applying human rights. It cannot, however, be invoked in order to influence the interpretation of the notion of a state of emergency leading to the adoption of derogations from IHRL rules.

THE APPLICATION OF SUPERIOR RESPONSIBILITY IN AN ERA OF UNLIMITED INFORMATION

Charles Garraway. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 187-206

The author examines how technological developments, in particular information availability, affect the doctrine of command responsibility. After a review of the history of the doctrine, he focuses on the knowledge requirement contained in article 28 of the Rome statute of the International Criminal Court as well as the modern commander's duty to take "... all necessary and reasonable measures within his or her power" to prevent or punish the crimes committed by subordinates.

APPLICATION SIMULTANÉE DU DROIT INTERNATIONAL DES DROITS DE L'HOMME : LES VICTIMES DE VIOLATIONS EN QUÊTE D'UN FORUM

Jean-Marie Henckaerts. - In: *L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier*. - Bruxelles : Bruylant, 2013. - p. 1297-1332

Le regain d'intérêt actuellement porté à la relation entre ces deux branches du droit international tient sans doute au fait que des actions militaires ont fait l'objet d'un examen judiciaire sous l'angle des droits de l'homme dans le cadre de plusieurs affaires, nationales et internationales. Le présent article vise à établir que cette tendance est largement due à l'action des victimes, en quête d'un forum qui leur permettrait d'obtenir réparation en cas d'atteintes à leurs droits lors d'un conflit armé. La structure de l'article reflète les principaux éléments de différenciation entre ces deux branches distinctes du droit international. Ainsi, leur origine historique et leur mise en oeuvre judiciaire sont tout d'abord étudiées. L'examen porte ensuite sur l'application du droit des droits de l'homme, d'une part, et du droit humanitaire, d'autre part. Enfin est analysée l'application simultanée, dans la pratique, du droit international humanitaire et du droit des droits de l'homme.

APPRECIATION DE L'APPLICATION DE CERTAINES RÈGLES DU DROIT INTERNATIONAL HUMANITAIRE DANS LES RAPPORTS PORTANT SUR L'INTERCEPTION DE LA FLOTTILLE NAVIGUANT VERS GAZA

par Vaïos Koutroulis. In: *Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht* Vol. 45, 2012-1, p. 90-122

Le présent article analyse les rapports issus du Conseil des droits de l'homme, des commissions établies par les gouvernements turc et israélien ainsi que du panel d'inspection mis en place par le Secrétaire général des

Nations Unies portant sur l'interception de la flottille naviguant vers Gaza, afin d'examiner comment ils interprètent certaines règles du droit international humanitaire relatives à la licéité du blocus israélien. En premier lieu, nous nous attardons sur le droit applicable au blocus. Sur ce point, les rapports confirment le caractère coutumier des règles énoncées dans le manuel de San Remo et précisent les relations de ces règles avec le droit de la mer ainsi qu'avec les autres règles générales du droit international humanitaire (DIH). En deuxième lieu, on analyse de plus près comment les rapports interprètent certaines règles du DIH, à savoir l'interdiction d'affamer la population civile, le principe de proportionnalité et l'interdiction d'infliger des peines collectives à la population civile. L'analyse identifie tant les interprétations qui sont conformes aux règles appliquées que celles qui s'écartent de ces règles.

THE ARCTIC ENVIRONMENT AND INTERNATIONAL HUMANITARIAN LAW

Ashley Barnes and Christopher Waters. In: *Canadian yearbook of international law* Vol. 49, 2011, p. 213-241

While the law of the sea is rightly viewed as the most suitable international legal regime for the settlement of disputes in the Arctic, the militarisation of this region in an era of climate change is also observable. Yet curiously, scant attention has been paid to the constraints International Humanitarian Law (IHL) would impose on armed conflict in the Arctic, as unlikely as such conflict may be. These include the specific prohibition on causing widespread, long-term and severe environmental damage under Additional Protocol I to the Geneva Conventions; as well as the related obligation to have "due regard" for the natural environment, as referred to in, for example, the San Remo Manual on Naval Warfare. Similarly, environmental factors must play into military assessments of targets based on the general principles of IHL related to targeting. The authors explore how these various legal obligations could be applied in the Arctic context. Referring to the scientific literature, they suggest that, due to the particularly vulnerable nature of this regional environment, many traditional war-fighting techniques would lead to damage that is not legally permissible. This conclusion should provide an additional incentive to policy makers to demilitarize the Arctic and to solve peacefully any disputes which may arise over sovereignty, navigation or resources.

ARMED CONFLICT AND INTERNATIONAL LAW : IN SEARCH OF THE HUMAN FACE : LIBER AMICORUM IN MEMORY OF AVRIL McDONALD

Mariëlle Matthee, Brigit Toebes, Marcel Brus ed.. - The Hague : T.M.C. Asser Press, 2013. - XXIV, 378 p.

Fourteen prominent scholars and practitioners have contributed to this book, which contains a rich variety of topics in Avril McDonald fields of expertise. The common thread is that they deal with the human perspectives in their relevant area of expertise. They concentrate on the impact of the developments in international law on humans, whether they are civilians, victims of war or soldiers. This human perspective of law makes this book an appropriate tribute to Avril McDonald and at the same time a unique and valuable contribution to international legal research in present society. A society that becomes more and more characterized by detailed legal systems, defined by institutions that may frequently lack sufficient contact with the people concerned.

ARMED CONFLICT AND LAW ENFORCEMENT : IS THERE A LEGAL DIVIDE ?

Charles Garraway. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald*. - The Hague : T.M.C. Asser Press, 2013. - p. 259-283

The division between peace and war has become increasingly blurred in factual terms in recent decades. Similarly, the law has progressed in a manner that has not necessarily been consistent. The author reviews how the laws covering the use of force in both peace and war have developed separately under the respective headings of the laws of war (also known as the law of armed conflict or international humanitarian law) and human rights law. The increasing overlap between these two bodies of public international law has led to tensions particularly in relation to the conduct of hostilities. The author suggests a way forward to ensure the applicability of the highest standards of protection whilst still enabling military operations to be carried out efficiently within a legal framework.

ARMED CONFLICT AND TERRORIST ORGANIZATIONS

Charles Garraway. - In: *Counter-terrorism strategies in a fragmented international legal order : meeting the challenges*. - Cambridge : Cambridge University Press, 2013. - p. 425-453

In a memorandum of 7 February 2007, President Bush clearly spoke of a US conflict with al Qaeda in Afghanistan or elsewhere throughout the world and drew a distinction between that conflict which was outwith the constructs of the Geneva Convention and the separate conflict with the Taliban, acting as the de facto government of Afghanistan, which he acknowledged was defined by the terms of the Geneva Conventions, even though he held that Taliban fighters did not qualify as prisoners of war under Article 4 of the Third Geneva Convention. But how does this bifurcation of conflict fit into the traditional legal construct? Can one have an armed conflict against a transnational terrorist group and if so, what are the applicable rules?

ARMED CONFLICT, INTERNAL DISTURBANCES OR SOMETHING ELSE ? : THE LOWER THRESHOLD OF NON-INTERNATIONAL ARMED CONFLICT

Tom Haecck. - Saarbrücken : LAP Lambert Academic Publishing, 2012. - IV, II, 117 p.

In this academic work, the author tries to shed light on the contemporary meaning and legal definition of the concept of "non-international armed conflict", which was originally created to cover situations of "classical" civil wars. In this book, Haecck tries to answer the question when a certain situation can be described as being a "non-international armed conflict". He analyses the answers that have been given by the international case-law and doctrine and creates a working-definition that can be used to determine if a situation can be classified as a non-international armed conflict. Subsequently, he sheds light on the possible reasons one might have to classify something as an armed conflict - or not. To clarify this theoretical and abstract exercise, the author applies his theoretical framework to three contemporary case-studies.

ARMED DRONES AND THE ETHICS OF WAR : MILITARY VIRTUE IN A POST-HEROIC AGE

Christian Enemark. - London ; New York : Routledge, 2014. - IX, 150 p.

This book considers the use of armed drones in the light of ethical principles that are intended to guard against unjust increases in the incidence and lethality of armed conflict. The evidence and arguments presented indicate that, in some respects, the use of armed drones is to be welcomed as an ethically superior mode of warfare. Over time, however, their continued and increased use is likely to generate more challenges than solutions, and perhaps do more harm than good.

L'ARRÊT AL-JEDDA DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME ET LE DROIT INTERNATIONAL HUMANITAIRE

Jelena Pejic. In: *Revue internationale de la Croix-Rouge* : sélection française Vol. 93, 2011/2, p. 365-381

L'arrêt rendu par la Cour européenne des droits de l'homme dans l'affaire Al-Jedda portait sur la licéité des pratiques de détention du Royaume-Uni en Irak au regard de la Convention européenne des droits de l'homme. On peut cependant considérer que cette décision de la Cour risque d'avoir des incidences plus larges sur la capacité des États parties à la Convention de mener des opérations de détention en situation de conflit armé. Cet article analyse ce que la Cour a dit, et aussi ce qu'elle n'a pas dit, au sujet de l'application du droit international humanitaire.

ARTICULATING INTERNATIONAL HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW : CONCILIATORY INTERPRETATION UNDER THE GUISE OF CONFLICT OF NORMS-RESOLUTION

Jean d'Aspremont. - In: *The interpretation and application of the European Convention of Human Rights : legal and practical implications*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 3-31

This chapter seeks to challenge the principle "Lex specialis derogat generali" elevated to the cornerstone of articulation of international humanitarian law (IHL) and human rights law (HRL) by both case-law and legal scholarship. It is argued that judges and legal experts do not actually articulate HRL and IHL along the lines of that principle but rather engage in a systemic integration of these two sets of rules. More specifically, it is submitted here that most judges and experts apply a principle of interpretation of international that is the principle of systemic integration of international law. The ambition of this chapter is accordingly to shed some light on the actual manner in which HRL and IHL have been articulated and dispel the impressions that are conveyed by the professed use of conflict-resolution mechanisms. This chapter will start by recalling the elementary features of the principle of systemic integration of international law (1) and those of the principle of Lex specialis derogat generali (2) with a view to showing that each of them constitute a very specific mechanism that does not serve the same purpose as the other. The chapter will then demonstrate how, in the context of the simultaneous application of IHL and HRL, these two mechanisms have been conflated, the systemic integration principle being applied under the guise of the Lex specialis derogat generali (3). Eventually, this chapter will try to unearth some of the reasons underlying the trompe l'oeil

created by the use of the Lex specialis derogat generali to carry out a systemic integration of IHL and HRL (4).

AN ASSESSMENT OF CYBER WARFARE ISSUES IN LIGHT OF INTERNATIONAL HUMANITARIAN LAW

Kalliopi Chainoglou. - In: *The liberal way of war : legal perspectives*. - Farnham ; Burlington : Ashgate, 2013. - p. 189-210

During the last few decades, the use of computer network attacks in modern warfare has significantly increased. Computer network attacks are operations that, by targeting a data stream, aim to manipulate, disrupt, deny or destroy electronic information that is resident in computers or computer network. In the contemporary battlefield, cyber attacks offer the possibility of attacking military objectives that would otherwise be inaccessible, for example due to the location of the military objectives or the risk of disproportionate civilian injury or damage to civilian objects. In certain circumstances, computer network attacks may reduce the humanitarian impact of military power and provide the kind of precise and tailored effects that a conventional military attack may not produce.

AN AUSTRALIAN PERSPECTIVE ON NON-INTERNATIONAL ARMED CONFLICT : AFGHANISTAN AND EAST TIMOR

Rob McLaughlin. In: *International law studies* Vol. 88, 2012, p. 293-319

The aim in this short study is to ask how, from a legal perspective, Australia has approached the issue of "NIAC." It seeks to achieve this by examining four discrete issues: conflict characterization, characterization of the opposing force, rules of engagement (ROE) and treatment of captured/detained personnel. The methodology adopted is to examine each of these issues through a broadly comparative prism - a comparison between a high-level non-NIAC operation (East Timor, 1999-2001) and a NIAC operation (Afghanistan, ongoing since 2005). The purpose behind adopting this methodology is to provide a framework for establishing an alternative against which NIAC practice can be compared. It also provides a means of illustrating the degree to which this practice is either consistent or different across the lower threshold of NIAC, that is, between less-than NIAC "peace" operations (law enforcement operations or stabilization/mitigation operations), and NIAC operations themselves. The reasons Australia has taken different characterization paths, and the consequences of these choices, are central to understanding any "Australian approach to NIAC." The underlying premise is that any legal understanding of NIAC and of the threshold between NIAC and less than NIAC is beholden to non-legal influences to a much greater degree than in dear law enforcement or dear IAC contexts.

AUTONOMOUS WEAPON SYSTEMS AND INTERNATIONAL HUMANITARIAN LAW : A REPLY TO THE CRITICS

Michael N. Schmitt. In: *Harvard national security journal*, Features, online February 5, 2013, 37 p.

This article is designed to infuse granularity and precision into the legal debates surrounding such weapon systems and their use in the future "battlespace." It suggests that whereas some conceivable autonomous weapon systems might be prohibited as a matter of law, the use of others will be unlawful only when employed in a manner that runs contrary to international humanitari-

an law's prescriptive norms. This article concludes that Human Rights Watch report "Losing Humanity"'s recommendation to ban the systems is insupportable as a matter of law, policy, and operational good sense. Human Rights Watch's analysis sells international humanitarian law short by failing to appreciate how the law tackles the very issues about which the organization expresses concern. Perhaps the most glaring weakness in the recommendation is the extent to which it is premature. No such weapons have even left the drawing board. To ban autonomous weapon systems altogether based on speculation as to their future form is to forfeit any potential uses of them that might minimize harm to civilians and civilian objects when compared to other systems in military arsenals.

AUTONOMY IN THE BATTLESPACE : INDEPENDENTLY OPERATING WEAPON SYSTEMS AND THE LAW OF ARMED CONFLICT

Markus Wagner. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 99-122

The author argues that, legally, autonomous unmanned systems can be employed only in the rarest of circumstances in light of the legal constraints inherent in the principles of distinction and proportionality. Thus, their potential deployment is limited to such an extent as to render them useless. In a first step, it retraces the history of autonomous weapons and differentiates future generations of autonomous weapon systems (AWS) from the current generation of weapons. It subsequently addresses the potential effect of AWS with respect to two cornerstones of IHL : the principle of distinction and the principle of proportionality. The last part contains concluding observations.

AVOIDING STRICT LIABILITY IN MIXED CONFLICTS : A SUBJECTIVIST APPROACH TO THE CONTEXTUAL ELEMENT OF WAR CRIMES

Henri Decoeur. In: *International criminal law review* Vol. 13, no. 2, 2013, p. 473-492

As long as distinct legal regimes apply to international and non-international armed conflicts, the determination of the nature of the conflict by a court of law directly impacts on the criminal responsibility of the accused for war crimes. As this article shows, the approach traditionally used in international criminal law to characterise mixed conflicts is not sufficiently reliable for the addressees of penal norms. Low-ranking perpetrators have generally little chance of being aware of the international character of the conflict. This article argues that the principle of individual guilt requires establishing the mens rea regarding the nature of the conflict. Accordingly, a mistake of fact, or alternatively, a mistake of legal element should be admissible defences. Furthermore, it is submitted that both the method of conflict characterisation and the definition of the corresponding mental element are not compatible with the requirements of the principle of legality.

BETWEEN LAW AND REALITY : "NEW WARS" AND INTERNATIONALISED ARMED CONFLICT

Jed Odermatt. In: *Amsterdam law forum* Vol. 5, issue 3, Summer 2013, p. 19-32

One of the key distinctions in the law of armed conflict is the one between so-called 'internal' wars and interna-

tional armed conflicts. 'New wars' do not easily fit in such neat legal categories, however. Even conflicts that may seem internal take place in a globalised context in which international actors play an ever-increasing role. While traditional inter-state wars have diminished, there are few wars that can be described as purely 'internal' in nature. The purpose of this contribution is to discuss how these 'new wars' present a challenge to the non-international/international armed conflict dichotomy. The first part of this contribution briefly examined the international/non-international dichotomy in international law. While this dichotomy is widely criticised by academics, lawyers and in the jurisprudence of international courts and tribunals, it remains an important element in the law of armed conflict, and will not truly be eroded any time soon. The primary reason for this is the fact that states continue to see a fundamental distinction between the two types of conflicts. The second part examined how the dichotomy is extremely difficult to apply to 'new wars', which contain both internal and international elements. It is especially difficult in cases where the support given by outside parties will not amount to the necessary level to 'internationalise' the armed conflict, or where the belligerents are primarily non-state actors. As the Syrian Civil War demonstrates, there really is a 'crisis of compliance'⁶¹ in these armed conflicts where significant atrocities are committed on both sides. How the 'old law' of armed conflict will adapt to these new wars remains a critical question for international law.

BEYOND OCCUPATION : APARTHEID, COLONIALISM AND INTERNATIONAL LAW IN THE OCCUPIED PALESTINIAN TERRITORIES

ed. by Virginia Tilley. - London : Pluto press, 2012. - XIX, 322 p.

Contient les chapitres suivants: 1. Sources of law and key concept 2. The legal context in the Occupied Palestinian Territories 3. Review of Israeli practices relative to the prohibition of colonialism 4. Review of Israeli practices relative to the prohibition of apartheid

BEYOND THE CALL OF DUTY : WHY SHOULDN'T VIDEO GAME PLAYERS FACE THE SAME DILEMMAS AS REAL SOLDIERS ?

Ben Clarke, Christian Rouffaer and François Sénéchaud. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 711-737

Video games are influencing users' perceptions about what soldiers are permitted to do during war. They may also be influencing the way combatants actually behave during today's armed conflicts. While highly entertaining escapism for millions of players, some video games create the impression that prohibited acts, such as torture and extrajudicial killing are standard behaviour. The authors argue that further integration of international humanitarian law (IHL) can improve knowledge of the rules of war among millions of players, including aspiring recruits and deployed soldiers. This, in turn, offers the promise of greater respect for IHL on tomorrow's battlefields.

"BLOODLESS WEAPONS" ? : THE NEED TO CONDUCT LEGAL REVIEWS OF CERTAIN CAPABILITIES AND THE IMPLICATIONS OF DEFINING THEM AS "WEAPONS"

Duncan Blake, Joseph S. Imburgia. In: *Air Force Law Review* Vol. 66, 2010, p. 157-203

The legal review of new weapons, means or methods of warfare is considered a customary obligation of all states, yet the decision to conduct such a review of some advanced technology capabilities, such as those associated with the space and cyberspace domains, remains a difficult one. This article is divided into four main parts. The first section examines the phrase "weapons, means or methods of warfare"; what effects, designs or intents must be considered; and the contexts for review. Of note, this paper will not discuss how that review should occur or the appropriate format. The paper will next consider space and cyberspace capabilities in general, along with a representative sample of specific capabilities. These contexts will form an important foundation for the third part of the paper, which will discuss the thresholds for *ius ad bellum* concepts like "threat or use of force" and "armed attack", as well as the other implications of characterizing a capability as a "weapon, means or method of warfare" in armed conflict. The paper will also consider whether space and cyberspace capabilities may be characterized as "weapons, means or methods of warfare" in some circumstances but not others.

BOMBS AHoy ! : TARGETING OF "PIRATE EQUIPMENT" IN SOMALIA : BETWEEN LAW ENFORCEMENT AND HOSTILITIES

Eliav Lieblich. - [S.l.] : [s.n.], 2012. - 32 p.

On 15 May 2012, EU forces (EU NAVFOR) conducted, for the first time, an aerial attack against 'pirate equipment' located in Somali coastal territory. The operation, which did not target persons, was underplayed by EU NAVFOR as a 'mere extension' of 'disruption actions' regularly taken against pirates at sea. However, attacks of this type – labeled in this article as 'forcible disruption operations' (FDOs) – raise a plethora of legal questions, the importance of which stretches well beyond the case of Somalia, to the core of the law enforcement/hostilities dichotomy so prevalent in contemporary international-legal discourse. First, the question arises whether such actions are law enforcement operations, or rather are hostile acts. Positing that FDOs are closer to the latter, we ask whether they can be justifiable under international humanitarian or human rights law (IHL and IHRL). We further discuss whether relevant UN Security Council resolutions, as well as the consent of Somali authorities, affect this analysis. Rather surprisingly, the article concludes that while FDOs may be problematic under IHL, IHRL – due to its system of derogations – might indeed allow such actions. However, these must conform to several Rule of Law conditions, that safeguard the right to life and the adherence to due process obligations.

LE CADRE JURIDIQUE DE L'ACCÈS HUMANITAIRE DANS LES CONFLITS ARMÉS

Felix Schwendimann. In: *Revue internationale de la Croix-Rouge* : sélection française Vol. 93, 2011/3, p. 121-138

Obtenir et maintenir l'accès des acteurs humanitaires aux populations ayant besoin d'aide représente un défi. Il existe en effet toutes sortes d'obstacles à l'accès humanitaire : hostilités en cours, climat d'insécurité, lourdeur fréquente des procédures administratives ou tentatives des parties aux conflits armés pour empêcher l'accès humanitaire. Ces difficultés sont souvent aggravées par la connaissance insuffisante qu'ont les États, les groupes armés non étatiques et les organisations

humanitaires du cadre juridique. Le présent article a avant tout pour objet de présenter le cadre juridique international qui régit actuellement l'accès humanitaire dans les situations de conflit armé.

CAN INSURGENT COURTS BE LEGITIMATE WITHIN INTERNATIONAL HUMANITARIAN LAW ?

Parth S. Gejji. In: *Texas law review* Vol. 91, no. 6, 2013, p. 1525-1559

As armed groups have increasingly resorted to establishing courts and conducting trials, however, other scholars have highlighted a growing need to account for insurgent courts within IHL. This project to account for insurgent courts within IHL leads to three questions: First, is there any interpretation of IHL that would recognize the legitimacy of courts of armed groups? Second, assuming that insurgent courts could be legitimate within IHL, which fair trial guarantees does IHL require of such courts? Third, even if the first two questions can be answered, what types of trials should IHL recognize as an appropriate exercise by an armed group? This Note responds to this discussion of insurgent courts by highlighting some previously ignored interpretive difficulties and argues that any interpretation of IHL that seeks to legitimize insurgent courts leads to problematic solutions.

CASSESE'S INTERNATIONAL CRIMINAL LAW

rev. by Antonio Cassese... [et al.]. - Oxford : Oxford University Press, 2013. - LII, 414 p.

Textbook providing a concise introduction to both international criminal law and international criminal procedure. Analysis of a vast array of cases from different jurisdictions, including consideration of the historical and human dimensions. All the international criminal courts and tribunals as well as mixed courts, are fully covered, both as regards their structure, functioning and proceedings and as far as their case law is concerned. Includes a chapter on domestic prosecution of international crimes and related international law obligations and a coverage of the key judgments on international criminal law delivered by national and international courts.

THE CATASTROPHIC HUMANITARIAN CONSEQUENCES OF NUCLEAR WEAPONS : THE KEY ISSUES AND PERSPECTIVE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

Lou Maresca. - In: *Viewing nuclear weapons through a humanitarian lens*. - New York ; Geneva : United Nations, 2013. - p. 131-144

This article will highlight the main issues and concerns of the ICRC in relation to nuclear weapons, and provide a summary of the efforts of the International Red Cross and Red Crescent Movement in this area since 1945. It will also offer several observations on what the changing dynamic on nuclear weapons may mean for the ongoing work on this issue.

CATEGORIZATION AND LEGALITY OF AUTONOMOUS AND REMOTE WEAPONS SYSTEMS

Hin-Yan Liu. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 627-652

This article reconsiders the status and legality of both autonomous and remote weapons systems under international humanitarian law. Technologically advanced unmanned military systems are being introduced into the modern battlespace with insufficient recognition of

their potential challenge to international humanitarian law. The article questions the understanding of both autonomous and remote weapons systems as 'weapons' and seeks to consider how their use may impact existing legal categories. Their use is then specifically situated to consider the legality of their deployment in certain contexts. Finally, the article raises the question of impunity for the use of both autonomous and remote weapons systems that arise from the inability to attribute responsibility for the harm they cause. It is imperative that law and policy are developed to govern the development and deployment of these advanced weapons systems to forestall these likely situations of impunity.

THE CHALLENGE OF AUTONOMOUS LETHAL ROBOTICS TO INTERNATIONAL HUMANITARIAN LAW

Chantal Grut. In: *Journal of conflict and security law* Vol. 18, no. 1, Spring 2013, p. 5-23

The concept of a truly autonomous weapons system—a system which is capable of operating itself, independently from human oversight—sounds more like science fiction than science fact. However, the reality is that weapons development is increasingly moving in this direction. Despite reassurances that humans will always be 'in the loop', significant amounts of autonomy have been given to certain weapons systems already. Such weapons present unique regulatory problems, arising not so much from their nature as weapons, but from their replacement of the human role in war and killing. This article considers the implications of increasing weapon autonomy for the humanitarian law principles of distinction and proportionality, and the concept of accountability for breaches of international humanitarian law.

CHALLENGES OF ENSURING ACCOUNTABILITY FOR INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW VIOLATIONS IN POST-WAR SITUATIONS : A CRITICAL APPRAISAL WITH REFERENCE TO SRI LANKA

Wasantha Seneviratne. In: *Sri Lanka journal of international law* Vol. 22, no. 2, 2010, p. 165-189

This article examines the need to reach a compromise between prosecuting alleged offenders and fostering reconciliation to Sri Lanka in the aftermath of the armed conflict by balancing the methods of retrospective justice and restorative justice. It evaluates the observations and comments made by the international community in this regard and the responses of the Government of Sri Lanka in the light of relevant provisions of international humanitarian law and human rights law instruments and customary international law principles.

CHANGING THE PARADIGM OF INTERNATIONAL CRIMINAL LAW : CONSIDERING THE WORK OF THE UNITED NATIONS WAR CRIMES COMMISSION OF 1943-1948

Dan Plesch and Shanti Sattler. In: *International community law review* Vol. 15, no. 2, 2013, p. 203-223

More than 2,000 international criminal trials were conducted at the end of World War II in addition to those held by the International Military Tribunals (IMTs) at Nuremberg and Tokyo. Fifteen national tribunals conducted these trials in conjunction with an international war crimes commission established by these same states in October 1943 under the name, The United Nations Commission (UNWCC). The extensive work of the UNWCC and these tribunals serves as a source of

customary international criminal law that relates directly to the current work of the International Criminal Court and the ad hoc tribunals in operation since the 1990s.

CHILD SOLDIERS AS SUPER-PRIVILEGED COMBATANTS

G. Alex Sinha. In: *The international journal of human rights* Vol. 17, no. 4, 2013, p. 584-603

Much of the children's rights literature, especially as pertains to child soldiers, constitutes hopeful child rights advocacy, based purely on intuition. This article anchors its recommendations in humanitarian law itself, advancing three major claims : first, international humanitarian law should explicitly identify a category of combatant that it implicitly recognises - namely, the super-privileged, or victimised combatant (for individuals who are victims in virtue of being combatants rather than victims only after other harm befalls them) ; second, children are fitting candidates for populating that category ; and third, the rationale behind identifying super-privileged combatants offers sharp and feasible guidelines for the treatment they warrant, including enhanced opportunities to withdraw from combat and modified treatment in detention. Both the first and second claims are defensible not solely based on intuition, but also by reference to the Geneva Conventions and their attendant commentaries. Thus, the Geneva Conventions already contain the ingredients necessary to extend greater protection to child soldiers than is commonly acknowledged.

CHILD SOLDIERS AS VICTIMS OF "GENOCIDAL FORCIBLE TRANSFER" : DARFUR AND SYRIA AS CASE EXAMPLES

Sonja Grover. In: *The international journal of human rights* Vol. 17, no. 3, 2013, p. 411-427

This article presents an original legal analysis of children appropriated as child soldiers by state or non-state armed groups or forces perpetrating mass atrocities and/or genocide as the victims of the 'genocidal forcible transfer of children'. A distinction is drawn between the genocidal forcible transfer of children as child soldiers versus the recruitment and use of child soldiers more generally by armed groups or forces not engaged in mass atrocities and/or genocide. The markers of genocidal forcible transfer of children as child soldiers are discussed with reference to the armed conflict in Darfur and Syria. Also discussed are certain of the barriers to effectively addressing this issue as well as key steps necessary for the prevention of the 'genocidal forcible transfer of children' as child soldiers during armed conflict and for ending impunity for this grave international crime.

CHILDREN AND ARMED CONFLICT

by Chaditsa Poulatova. - Newcastle upon Tyne : Cambridge scholars, 2013. - X, 279 p.

At a time of escalating global conflict and instability, this book examines international efforts to protect children from the effects of war and armed conflict through the Convention on the Rights of the Child (CRC), especially article 38, and the Convention's Optional Protocol on the involvement of Children in Armed Conflict (OPAC). The principal focus of the book is on the existing UN established machinery for implementing the CRC and OPAC – the Committee on the Rights of the Child and its processes for monitoring states' compliance with the CRC and OPAC. The book exposes major shortcoming in the monitoring process and concludes by examining possi-

ble ways in which compliance with the CRC and OPAC, and with human rights conventions in general, might be secured more effectively.

CHINESE HUMANITARIAN LAW AND INTERNATIONAL HUMANITARIAN LAW

Liu Daqun. - In: *The diversification and fragmentation of international criminal law*. - Leiden : M. Nijhoff, 2012. - p. 349-359

The development of international humanitarian law is traditionally associated with the awakening of a humanitarian consciousness in Europe and North America. The Lieber Code of 1863, the St. Petersburg Declaration of 1868 and the Hague Conferences of 1899 are commonly credited as the sources of international humanitarian law. By the same token, the philosophical basis of international humanitarian law is typically attributed to the writings of Aristotle, Plato, Cicero and Grotius. However, the genesis of international humanitarian law is not unique to Western civilization. The history of armed conflict is replete with examples of states and sovereigns developing rules to regulate the use of force, the protection of civilians and the behaviour of belligerents in their conduct of war. With its long history of over 5,000 years, splendid cultural heritage and many philosophers, jurists and thinkers, China has made a great contribution, not only to civilization, but also to the development of international humanitarian law.

A CHINK IN THE ARMOR : HOW A UNIFORM APPROACH TO PROPORTIONALITY ANALYSIS CAN END THE USE OF HUMAN SHIELDS

Margaret T. Artz. In: *Vanderbilt journal of transnational law* Vol. 45, no. 5, November 2012, p. 1447-1487

The appropriate response to human shields is a recurring issue in modern warfare. Technological asymmetry, disparate obligations, and doctrinal divergence between state and nonstate adversaries combine to make civilians account for 84 percent of combat deaths. Just as a slot machine entices a gambler though he rarely wins, the international community's inconsistent response to human shields has placed shield users on an intermittent reinforcement schedule, thereby ensuring that this tactic remains part of insurgent strategy. Long-term protection of civilians requires eliminating this tactic. Principles of behavior science indicate that an effective way to do so is to uniformly remove its desired consequence— combatants must never allow the presence of shields to impede access to the shielded military objective. And given the options (deterrence in the presence of human shields or pursuit of the military objective 100 percent of the time), the latter is the only option that disables human shield use as a functional behavior and effective strategy. Therefore, this Note suggests that the international community should adopt a broad understanding of proportionality analysis that allows attacking forces to achieve their military objective despite the presence of human shields. If this approach is pursued uniformly, it will extinguish the use of shields as an effective tactic, thereby increasing compliance with international humanitarian law principles and reaffirming the overarching premise of international humanitarian law to protect the right to life. This approach is supported by a broader, more forward-thinking conception of the principle of proportionality as reflected in current treaty and customary international law.

CHIVALRY : A PRINCIPLE OF THE LAW OF ARMED CONFLICT ?

Terry Gill. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald*. - The Hague : T.M.C. Asser Press, 2013. - p. 33-51

This contribution explores the role and relevance of chivalry in relation to warfare past and present and its relationship to the law of armed conflict and poses the question whether it still is a principle of that body of the law. It also briefly addresses the question of what its potential relevance is as a guiding principle in the interpretation of legal and extra legal obligations alongside rules contained in conventional and customary law.

CIVIL WAR, CUSTOM AND CASSESE

Jean-Marie Henckaerts. In: *Journal of international criminal justice* Vol. 10, no. 5, December 2012, p. 1095-1111

Civil war is still the prevalent form of armed conflict today. Nevertheless, its regulation in treaty law remains rudimentary compared to the regulation of international armed conflict. However, under the influence of practice, a number of customary rules regulating this type of conflict have evolved. Antonio Cassese played a prominent role in the identification of these customary rules, first as a scholar and then as a judge at the International Criminal Tribunal for the former Yugoslavia and President of the Independent Commission of Inquiry on Darfur. A study published by the International Committee of the Red Cross in 2005 took this identification process further and provides a comprehensive assessment of these rules. It indicates that the divide between the regulation of internal and international armed conflicts has been narrowed down considerably.

CIVIL WAR IN SYRIA AND THE "NEW WARS" DEBATE

Artur Malantowicz. In: *Amsterdam law forum* Vol. 5, issue 3, Summer 2013, p. 52-60

The last two decades saw a plethora of contributions to the academic debate on the shifting character of contemporary warfare. Some scholars praised the notion of unique features in the nature of contemporary violent conflicts and thereby coined new terms and approaches, such as 'new wars', 'postmodern wars', 'wars of the third kind', 'peoples' wars', 'privatized wars' or 'hybrid wars'; some, on the contrary, questioned the rationality of such distinctions, believing that these not-so-unique characteristics were long-present in the history of humankind. The most prominent – and hence the most commonly addressed by fellow scholars – among the aforementioned ideas was the one put forward by Mary Kaldor in her profound book "New & Old Wars. Organized Violence in a Global Era". This is why it will become the framework of the following reflection, which is not meant to take sides in the debate but only to offer a brief attempt to review the main arguments of the dispute¹ and look into its applicability in the context of the unfolding civil war in Syria.

CIVILIAN CASUALTIES AND DRONE ATTACKS : ISSUES IN INTERNATIONAL HUMANITARIAN LAW

Susan Breau. - In: *The liberal way of war : legal perspectives*. - Farnham ; Burlington : Ashgate, 2013. - p. 115-138

In addressing the rules of international humanitarian law that regulate civilian casualties that often accompany the use of drones, this chapter proceeds in three parts. The first section highlights the controversy over how many of these casualties have actually been uninvolved civilians, which engages the thorny issue of direct participation in hostilities. This portion of the chapter reviews the International Committee of the Red Cross (ICRC)'s newly released Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (Melzer 2008a) (hereafter Interpretive Guidance), which was adopted by the Assembly of the International Committee of the Red Cross on 26 February 2009, and assesses whether it provides sufficient clarity in this area. The second section of this chapter briefly reviews issues of targeting and the cardinal principle of proportionality. The third and pivotal section of this chapter introduces the little discussed but very real obligations in international humanitarian law towards missing and dead civilians. Regardless of whether or not the rules of international humanitarian law are complied with, civilians who are killed in these attacks are entitled to a dignified burial.

CLEARING SOME OF THE FOG OF WAR OVER COMBATING TERRORISTS ON THE FRONTIERS OF INTERNATIONAL LAW : TARGETED KILLING AND INTERNATIONAL HUMANITARIAN LAW

Brian Sang. In: African yearbook on international humanitarian law 2011, p. 1-46

This paper begins by clarifying the legal definition of "targeted killing". Subsequently, an examination is made of the applicable international legal framework governing targeted killings in international law, with specific reference being made to the international law of armed conflict. This leads to a review of the requisite "armed conflict" requirement, which is essential to the applicability of international humanitarian law. Thereafter, a discussion on the question regarding the categorisation of military operations against transnational terrorist groups (whether international, non-international or otherwise) follows. Afterwards, the *jus in bello* principles will be analysed, in turn, in the light of the notion of targeted killing. The paper then turns briefly to additional targeting obligations arising from human rights law before concluding.

CLIMATE CHANGE AND INTERNATIONAL HUMANITARIAN LAW

Karen Hulme. - In: International law in the era of climate change. - Cheltenham ; Northampton : E. Elgar, 2012. - p. 190-218

This chapter begins with an exploration of how climate change might impact on the waging of armed conflict, including potential effects on both the military fighting it and the civilians caught up in it. The following sections look for gaps in the current laws applicable during armed conflict, including aspects of targeting, civilian protections and weather manipulation. The final section looks to the future and the question of how any necessary changes in this area of law might be brought about.

THE CLUB-K ANTI-SHIP MISSILE SYSTEM : A CASE STUDY IN PERFDY AND ITS REPRESSION

by Robert Clarke. In: Human rights brief Vol. 20, issue 1, Fall 2012, p. 22-28

Secreted inside the ubiquitous intermodal shipping container and placed on the deck of a cargo carrier, the missile system reveals itself only when the container roof opens, and the missile rises from concealment and launches. As footage of test launches and displays at defense exhibitions illustrate, the Club-K's ease of transport and concealment offers obvious advantages for a belligerent in an asymmetric conflict by allowing a readily available launch platform to approach high-value warships unmolested and attack. The weapon's chameleon-like nature and advertised method of employment indicate that it is likely to be used to prepare and execute an attack while feigning civilian status. Such tactics are an example of perfidy, deliberately inducing trust on the part of an adversary in order to injure, kill, or capture them. However, although it may undermine the distinction between warships and civilian vessels, the fact that the Club-K is likely to be used perfidiously would not necessarily inculpate the weapon's manufacturers. In particular, the structural discreteness of the armed forces would make it difficult to prove a mental nexus between the commanders who determine the method of attack and the arms makers who provide the means. Thus, while the protection of civilians requires an institutional separation between them and combatants, such a divide may prevent the repression of civilian activity which imperils that same protection.

CODE DE DROIT INTERNATIONAL HUMANITAIRE : TEXTES RÉUNIS AU 1ER JUIN 2013

par Eric David, Françoise Tulkens, Damien Van dermeersch ; avec la collab. de Sylvie Ruffenach. - Bruxelles : Bruylant, 2013. - XXIII, 1042 p.

Textes des sources du droit international humanitaire

UNE COLLECTION DE CODES DE CONDUITE ÉTABLIS PAR DES GROUPES ARMÉS

compilée par Olivier Bangarter ; constituée et présentée par Nelleke van Amstel. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/2, p. 185-205

Ce numéro de la Revue internationale de la Croix-Rouge traite de l'importance qu'il y a de comprendre les groupes armés et les normes qui les lient. L'examen des règles et des décisions qu'ils choisissent d'adopter permet d'appréhender ces groupes et de travailler avec eux à l'amélioration du respect de la loi.

COMBAT STRATEGIES AND THE LAW OF WAR IN THE AGE OF TERRORISM : THE EVOLVING JURISPRUDENCE OF THE CRIME OF RAPE IN INTERNATIONAL CRIMINAL LAW

Phillip Weiner. In: Boston College international and comparative law review Vol. 36, May 2013, p. 1207 - 1236

For centuries, rape has served as a weapon of war, despite criminal prohibitions forbidding its use. Nevertheless, only in recent decades has international law made significant strides in defining and prosecuting rape as a war crime and crime against humanity. International criminal tribunals prosecuting crimes of sexual violence in prior conflict zones such as Rwanda, Sierra Leone, and the former Yugoslavia have struggled to develop a coherent definition of the elements of rape. This is largely due to the unique aspects of consent and coercion that are inherent within a surrounding context of armed conflict. This article begins by exploring the elements of

rape as defined by the major international criminal tribunals existing today, and subsequently examines the manner in which each court considers proof of consent and coercion. It then surveys some of the recent and more progressive developments in rape law jurisprudence both domestically and internationally. Finally, this article recommends several specific steps that international criminal tribunals could employ to more effectively and equitably prosecute rape as a war crime and crime against humanity.

COMBATANTS AND NON-COMBATANTS

Knut Ipsen. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 79-113

Content: General rules. - Combatants. - Non-combatants. - Persons accompanying the armed forces. - Civilian contractors. - Special forces. - Spies. - Special aspects of aerial and naval warfare.

COMBATING IMPUNITY : LEGAL NUANCES OF THE PHILIPPINE IHL ACT AND THE PHILIPPINE RATIFICATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

H. Harry L. Roque. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 262-281

When the Philippines ratified the Geneva Conventions, it entered into the obligation to enact domestic laws punishing violations thereof. After almost sixty years, the Philippines finally discharged this burden with the passage of the IHL Act on December 11, 2009. Subsequently thereafter, on August 22, 2011, after eleven long years of continuous lobby, the Philippine Senate gave its concurrence to the Rome Statute of the International Criminal Court ("Rome Statute"), paving the way for the deposit of the instrument of ratification with the UN Secretary-General. With this deposit, the Philippines became the 117th State party to the Rome Statute. Certainly, both developments are an important indication of the country's commitment to combat impunity in respect of grave breaches and serious violations of International Humanitarian Law. This paper seeks to analyze the legal nuances of both developments and the challenges that come with the entry into force of the IHL Act and the Rome Statute within Philippine jurisdiction.

DES COMBATTANTS, NON DES BANDITS : LE STATUT DES REBELLES EN DROIT ISLAMIQUE

Sadia Tabassum. In: Revue internationale de la Croix-Rouge : sélection française Vol. 93, 2011/1, p. 105-126

Le droit islamique relatif à la rébellion constitue un ensemble de normes suffisamment complet pour régler la conduite des hostilités dans les conflits armés non internationaux. Ce droit peut être pris pour modèle en vue d'améliorer le régime juridique international aujourd'hui en vigueur. Il offre en effet un critère objectif permettant de déterminer l'existence d'un conflit armé. De plus, il reconnaît le statut de combattant aux rebelles, ainsi que les corollaires nécessaires de l'autorité exercée de facto par les rebelles sur le territoire qu'ils contrôlent. Il contribue ainsi à réduire les souffrances des civils et des citoyens ordinaires pendant les guerres de rébellion et les guerres civiles. Parallèlement, le droit islamique affirme que le territoire se trouvant de facto sous le contrôle des rebelles fait de jure partie de l'État parent : il répond ainsi aux appréhensions de ceux qui

craignent que l'octroi du statut de combattant aux rebelles vienne conférer une légitimité à leur lutte.

COMBINED OPERATIONS, AN INTERNATIONAL WAR CRIMES PERSPECTIVE

Arne Willy Dahl. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 364-372

Peace support operations often take place as multinational operations (combined operations), in which forces from several States participate under the command of international organisations. However, combined operations may also take place in an international armed conflict, such as the Gulf War in 1991 where an international coalition stood against Iraq. We have also seen other war-fighting operations executed by multinational forces, i.e. as combined operations. It may be disputed whether International Humanitarian Law applies to Peace Support Operations - in some sort of PSO's, partially, by analogy or not at all. It may also be noted that it is typically those PSO's to which IHL/LOAC does not apply or applies only to a limited degree that are conducted under the command of the United Nations. This presentation focus is combined operations that are under the command of an international organisation and to which IHL/LOAC applies. It covers some legal interoperability aspects horizontally - between participating States - and vertically - between the international organization in command and the participating States.

LE COMITÉ INTERNATIONAL DE LA CROIX-ROUGE ET LE RÉGLEMENT DES DIFFÉRENDS INTERNATIONAUX

Aurélie Farah. - [S.l.] : [s.n.], 2012. - 155 p.

Depuis sa création en 1863, le Comité international de la Croix-Rouge porte assistance aux victimes des conflits armés internationaux et non internationaux. Il demeure ainsi l'acteur principal dans le développement de l'aide humanitaire afin de renforcer la protection juridique des victimes. Dans le cadre de ses interventions humanitaires dans un conflit entre plusieurs États ou entités, le CICR peut également être amené à contribuer directement ou indirectement à son règlement et aux différends survenant lors de ce conflit. Ceci-dit, lui-même peut être partie à un différend lorsqu'il est victime d'attaques pendant son intervention humanitaire. En outre, avec l'apparition progressive depuis 1945 des juridictions pénales internationales permettant une transition entre l'état de guerre et l'état de paix, les criminels de guerre présumés sont traduits en justice. Très souvent présent sur le terrain où ces criminels ont opéré, le CICR pourrait jouer un rôle dans l'obtention et l'administration des preuves nécessaires. Il apparaît ainsi utile d'analyser la conciliation des activités du CICR en tant qu'organisme humanitaire avec ses éventuelles interventions dans le règlement des différends internationaux durant un conflit armé ainsi que dans la phase post-conflit armé. Il importe de présenter la spécificité du rôle du CICR au sein de son propre Mouvement mais également au sein de la Communauté internationale qui lui permet de contribuer au règlement d'un différend d'une part avant de clarifier dans quel type de différends et de modes de règlement de différend le CICR peut intervenir d'autre part.

COMMAND RESPONSIBILITY IN IRREGULAR GROUPS

Sandesh Sivakumaran. In: Journal of international criminal justice Vol. 10, no. 5, December 2012, p. 1129-1150

This article considers the operation of command responsibility in irregular groups. It analyses the element of command responsibility relating to the obligation of a superior to take the necessary and reasonable measures to prevent crimes of subordinates and punish the perpetrators of those crimes. It focuses on two particular aspects. First, it explores the notion of a duty to take certain measures, in particular asking where that duty emanates from in the context of irregular groups. Second, it ascertains the content of the duty to take measures, considering measures that can be taken by superiors of irregular groups in view of the structure, operation, and workings of irregular groups.

COMMENTS ON ILLEGAL WAR AND ILLEGAL CONDUCT : ARE THE TWO RELATED ?

by Charles Garraway. In: *Netherlands international law review* Vol. 59, issue 3, 2012, page 473-492

This article examines whether there is a link between the legality or otherwise of an armed conflict under *jus ad bellum* and the subsequent conduct of the campaign under *jus in bello*. This is done by comparing two conflicts where the legality was not in serious dispute, The Falklands/Malvinas conflict and the Iraq War 1990-1991, and three where the legality has been questioned, Kosovo 1999, the 'global war on terror' and the Iraq War 2003. In looking for a common link, the author is drawn away from concerns over the *jus ad bellum* to doubts over the content of the relevant law governing the conduct of hostilities. Uncertainties in the law have occurred both from the extension to non-international armed conflict of 'Hague law', traditionally applicable only in international armed conflicts, and the overlap between human rights law and the law of armed conflict. The author concludes that there is a danger that the balance between military necessity and humanity may be disturbed so that the law will become impracticable in the cauldron of conflict to the detriment of all, soldier and civilian alike.

COMMISSIONS OF INQUIRY INTO ARMED CONFLICT, BREACHES OF THE LAWS OF WAR, AND HUMAN RIGHTS ABUSES : PROCESS, STANDARDS, AND LESSONS LEARNED

by Philip Alston, Agnieszka Jachec Neale, Heidi Tagliavini. In: *Proceedings of the 105th annual meeting [of the] American Society of International Law 2011*, p. 81-94

Contient : Introduction : commissions of inquiry as human rights fact-finding tools / P. Alston. - Human rights fact-finding into armed conflict and breaches of the laws of war / A. Jachec Neale. - The August 2008 conflict in Georgia / H. Tagliavini

THE COMPETENCE OF UN HUMAN RIGHT COUNCIL COMMISSIONS OF INQUIRY TO MAKE FINDINGS OF INTERNATIONAL CRIMES

Catherine Harwood. - [S.l.] : [s.n.], 2013. - 25 p.

International commissions of inquiry established by the UN Human Rights Council (HRC) have often gone beyond the realm of international human rights law, also making findings of violations of international humanitarian law (IHL) and international criminal law (ICL). This article discusses HRC commissions' practice of making findings of international crimes by exploring two senses of competence: jurisdiction and proficiency. While some claimed sources of ICL jurisdiction are unpersuasive, commissions may have acquired such jurisdiction

through practice. However, viewing ICL through a human rights lens has the potential to distort ICL, blur the boundaries between the bodies of law and damage the wider projects of international human rights and international criminal justice.

THE CONCEPT OF "ARMED CONFLICT" IN INTERNATIONAL ARMED CONFLICT

Masahiko Asada. - In: *What is war ? : an investigation in the wake of 9/11*. - Leiden ; Boston : M. Nijhoff, 2012. - p. 51-67

This chapter tries to identify possible parameters with which to determine when the rules applicable in international armed conflicts apply, particularly whether they apply when only low intensity fighting has occurred. It will examine legal texts, State practice and judicial decisions, as well as legal doctrines.

CONCLUDING REMARKS ON NON-INTERNATIONAL ARMED CONFLICTS

Yoram Dinstein. In: *International law studies* Vol. 88, 2012, p. 399-421

This closing address focuses on six main themes: the proper definition of a NIAC; the thresholds of armed conflicts; the application of the *jus in bello* in a NIAC; the various types of recognition relevant to a NIAC; intervention by a foreign country in a NIAC; and the interaction between NIACs and IACs.

THE CONDUCT OF HOSTILITIES IN INTERNATIONAL HUMANITARIAN LAW

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - 2 vol. (XXVIII, XXX, 534, 570 p.)

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

LA CONDUITE DES HOSTILITÉS DANS LES CONFLITS ARMÉS ASYMÉTRIQUES : UN DÉFI AU DROIT HUMANITAIRE

Lorenzo Redalié. - Genève [etc.] : Schulthess : Faculté de droit de l'Université de Genève ; Paris : L.G.D.J., 2013. - XXIII, 378 p.

Le droit international humanitaire (DIH) aurait-il perdu sa pertinence face aux réalités des conflits armés asymétriques contemporains ? Pour répondre à cette question, l'auteur confronte les principales règles de conduite des hostilités aux particularités propres aux guerres asymétriques qui opposent des forces irrégulières à des forces régulières largement supérieures en termes de capacités militaires et technologiques. Identifier la nature et prendre la mesure des défis posés aux principes de "distinction", "proportionnalité" et "précaution", ainsi qu'à l'"interdiction de la perfidie" et au "principe de réciprocité", répond avant tout à l'exigence de vérifier la capacité même des parties au conflit asymétrique de respecter le DIH.

**CONFLICT WITHOUT CASUALTIES ... A NOTE OF CAUTION :
NON-LETHAL WEAPONS AND INTERNATIONAL
HUMANITARIAN LAW**

Eve Massingham. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 673-685

In the last decade considerable expense has been invested in non-lethal weapons development programmes, including by the United States military and other members of the North Atlantic Treaty Organization and members of the European Working Group Non-Lethal Weapons. This paper acknowledges the potential suitability of non-lethal weapons for specific situations arising on the battlefield, but cautions against those who advocate for any weakening of existing international humanitarian law frameworks to provide for greater employment of non-lethal technologies.

**LE CONFLIT ARMÉ EN AFGHANISTAN A-T-IL UN IMPACT SUR
LES RÈGLES RELATIVES À LA CONDUITE DES HOSTILITÉS ?**

Robin Geiss et Michael Siegrist. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/1, p. 63-104

Le conflit armé en cours en Afghanistan depuis 2001 continue de soulever de multiples questions en rapport avec les règles humanitaires relatives à la conduite des hostilités. Comme cela se passe souvent dans les conflits dits asymétriques, les limites géographiques et temporelles du champ de bataille sont de plus en plus floues en Afghanistan, où l'on voit s'estomper toujours davantage la distinction entre civils et combattants. Le niveau de risque est donc élevé tant pour la population civile que pour les soldats opérant en Afghanistan. Le présent article vise à établir si – et, en ce cas, dans quelle mesure – le conflit armé en Afghanistan a une incidence sur l'application et l'interprétation des principes qui se trouvent au cœur des normes juridiques régissant la conduite des hostilités, à savoir les principes de distinction, de proportionnalité et de précaution.

**CONFRONTING COMPLEXITY AND NEW TECHNOLOGIES : A
NEED TO RETURN TO FIRST PRINCIPLES OF INTERNATIONAL
LAW**

by Louise Doswald-Beck. In: *Proceedings of the [...] annual meeting of the American Society of International Law* No. 106, 2012, p. 107-116

These remarks were presented in the context of a panel discussion on international humanitarian law and new technology. The author argues that cyber warfare and robots (including drones) might be capable of respecting the basic principles of IHL but nevertheless seriously undermine international law. In this regard the basic principle of international law, in particular the post-Charter grundnorm of international peace and security, need to be revisited in the analysis of the future of these new technologies.

**CONSTRAINING TARGETING IN NONINTERNATIONAL ARMED
CONFLICTS : SAFE CONDUCT FOR COMBATANTS
CONDUCTING INFORMAL DISPUTE RESOLUTION**

Peter Margulies. In: *Vanderbilt journal of transnational law* Vol. 46, no. 4, p. 1041-1077

Some evidence suggests that informal negotiators have been either targeted or become collateral damage in U.S. drone strikes. This evidence might be unreliable.

However, if it is accurate, even in part, that should be a concern even for those who support the broad outlines of the U.S. targeting strategy. Responding to this concern, this Article argues that informal negotiators from an armed non-state group should receive an "implied safe conduct," not only shielding them from targeting but also imposing an affirmative duty on a state party to a noninternational armed conflict (NIAC) to ensure their safety. The expansion of implied safe conduct suggested here reflects what can be called a "stewardship model" for third-party states, such as the United States, that participate in NIACs in host countries, such as Afghanistan, Pakistan, Somalia, or Yemen. A stewardship model, which this author has also advanced in another recent piece dealing with the interaction of American and international law, seeks to reconcile LOAC and international human rights law in order to promote the preservation of indigenous governance and the transition to civil order in the host state.

**CONTEMPORARY LEGAL DOCTRINE ON PROPORTIONALITY
IN ARMED CONFLICTS : A SELECT REVIEW**

Ben Clarke. In: *Journal of international humanitarian legal studies* Vol. 3, issue 2, 2012, p. 391-414

In an attempt to impose limits on the level of acceptable incidental civilian suffering during armed conflict, international humanitarian law (IHL) articulates a proportionality formula as the test to determine whether or not an attack is lawful. Efforts to comply with that formula during the conduct of hostilities can involve a host of legal and operational challenges. A recent international conference in Jerusalem, co-sponsored by the delegation of the ICRC in Israel and the Occupied Territories and the Minerva center for human rights at the Hebrew university of Jerusalem, brought together human rights lawyers, military experts and scholars from a variety of disciplines to assess recent developments relating to the proportionality principle in international humanitarian law. This report examines ten conference presentations which offer important insights into: the nature, scope of application and operational requirements of the proportionality principle under IHL; the modalities of investigation and review of proportionality decisions or the challenges involved in proportionality decision-making.

CONTEXTUALIZING MILITARY NECESSITY

Nobuo Hayashi. In: *Emory international law review* vol. 27, issue 1, 2013, p. 189-283

Modern theories correctly reject the *Kriegsriison* doctrine, according to which the laws of war do not override the necessities of war and it is rather the latter that override the former. One such theory holds that unqualified rules of international humanitarian law ("IHL") exclude military necessity being invoked *de novo* as a ground for deviation therefrom, yet not as a ground for additional restraint thereon. This theory-let us call it "counter *Kriegsriison* "-is unacceptable for two reasons. First, in none of the three pertinent contexts does military necessity restrict or prohibit militarily unnecessary conduct *per se*. Seen in a strictly material context of war-fighting, military necessity merely embodies a truism that it is in one's strategic self-interest to pursue what is materially conducive to success and that it is similarly in one's strategic self-interest to avoid what is not so conducive. Nor, in the context of IHL norm-creation, does military necessity give the law reason to forbid or limit given conduct. Unnecessary evil does, but unnecessary sim-

pliciter does not, mean illegitimate. In positive international humanitarian law, military necessity functions exclusively as an exceptional clause. If not, or no longer, militarily necessary, deviant conduct simply reverts to being governed by the principal rule. It is the principal rule, rather than the military non-necessity of the conduct or the now inoperative exceptional clause, that renders such conduct unlawful. The second reason for which counter-Kriegsriison is untenable is the same reason for which Kriegsriison is untenable. Positive international humanitarian law has already "accounted for" military necessity. This means that no relevant element of military necessity has survived the process of IHL norm-creation and may consequently be invoked de novo vis-a-vis unqualified rules once this process has validly posited them. Where given conduct is unlawful according to a validly posited IHL rule of an unqualified character, then, even if the conduct constitutes material military necessity, invoking it does not "repair" or "right" the conduct's unlawfulness. Conversely, where given conduct is unqualifiedly lawful according to the applicable rule of positive international humanitarian law, the conduct's lack of material military necessity does not "wrong" or "vitiates" its otherwise conclusive lawfulness.

THE CONTRIBUTION OF THE SPECIAL COURT FOR SIERRA LEONE TO THE DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

by Ousman Njikam. - Berlin : Duncker and Humblot, 2013. - 332 p.

The objective of this thesis is to provide a comprehensive analysis of the contribution of the Special Court to the development of international humanitarian law. Similar to its predecessors (ad hoc Tribunals), the Special Court consolidated the principle under international law of individual criminal responsibility. The author evaluates the Special Court's mandate to "prosecute those who 'bear the greatest responsibility' " as being in itself a contribution to the development of international humanitarian law since the ICTY and ICTR at the time of their inception did not have this limitation *rationae personae* / prosecutorial discretion. The author assesses some of the interesting and challenging issues dealt with such as the recruitment of child soldiers, amnesty for international crimes, head of state immunity and the crime of forced marriage. He concludes that the Special Court contributed albeit to a limited extent to the development of international humanitarian law.

LE CONTRÔLE DU RESPECT DES NORMES HUMANITAIRES PAR LES ACTEURS ARMÉS NON ÉTATIQUES : UN APERÇU DES MÉCANISMES INTERNATIONAUX ET L'ACTE D'ENGAGEMENT DE L'APPEL DE GENÈVE

Pascal Bongard et Jonathan Somer. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/2, p. 257-296

Alors que la plupart des conflits armés d'aujourd'hui impliquent des acteurs armés non étatiques, le droit international comprend peu de mécanismes permettant de garantir que ces acteurs respectent les normes humanitaires qui leur sont applicables. Rares, en particulier, sont les traités multilatéraux qui contiennent des mécanismes de contrôle et de vérification du comportement des acteurs armés non étatiques. Lorsque tel est le cas, ces mécanismes sont faibles et ne sont pas appliqués dans la pratique. Au cours des années récentes, un certain nombre de mécanismes parallèles ont été mis

au point pour mieux contrôler le respect des normes humanitaires dans les conflits armés internes et vérifier les allégations de violations. Le présent article examine la valeur de ces divers mécanismes, pour se concentrer ensuite sur l'Acte d'engagement, un instrument novateur conçu par l'Appel de Genève, organisation non gouvernementale sise en Suisse, afin d'amener les acteurs armés non étatiques à répondre de leurs actes. L'expérience acquise dans le cadre de l'Acte d'engagement en matière d'interdiction des mines anti-personnel montre que ces mécanismes alternatifs peuvent être efficaces pour assurer un meilleur respect du droit international humanitaire, tout au moins certaines de ses normes.

THE CONVENTION ON CLUSTER MUNITIONS (2008) : IMPLICATIONS FOR INTERNATIONAL HUMANITARIAN LAW (IHL) IN AFRICA

Kesolofetse Lefenya. In: *African yearbook on international humanitarian law* 2011, p. 107-128

The article starts by defining the concept of "cluster munitions and the humanitarian consequences of using them, especially in Africa. It then goes on reviewing how the international humanitarian law treaties dispositions and principles apply to cluster munitions. Describing the Oslo process which culminated in the adoption of the Convention on Cluster Munitions in Dublin on 30 May 2008, the author focuses on how the African continent has been actively involved at every stage of the process and the various regional arrangements on cluster munitions the continent has reached to supplement the international arrangements that have unfolded thus far.

THE COPENHAGEN PRINCIPLES, INTERNATIONAL MILITARY OPERATIONS AND DETENTIONS

Bruce "Ossie" Oswald. In: *Journal of international peacekeeping* Vol. 17, no. 1-2, 2013, p. 116-147

The primary purpose of this article is to introduce the Copenhagen process principles and guidelines so as to better understand how they relate to detentions in military operations. The Copenhagen principles and guidelines were "welcomed" by a number of states in October 2012 and concern the taking and handling of detainees in non-international armed conflicts and peace operations.

COUNTERINSURGENCY LAW : NEW DIRECTIONS IN ASYMMETRIC WARFARE

William Banks. - Oxford [etc.] : Oxford University Press, 2013. - XXII, 287 p.

Exploration from an interdisciplinary legal and policy perspective the multiple challenges that counterinsurgency operations pose today to the rule of law - international, humanitarian, human rights, criminal, and domestic. Addressing the considerable challenges for the future of armed conflict, each contributor in the book explores the premise that in COIN operations, international humanitarian law, human rights law, international law more generally, and domestic national security laws do not provide adequate legal and policy coverage and guidance for multiple reasons, many of which are explored in this book. A second shared premise is that these problems are not only challenges for the law in post-9/11 security environments-but matters of policy with implications for the international community and for global security more generally.

THE COUNTERINSURGENT'S CONSTITUTION : LAW IN THE AGE OF SMALL WARS

Ganesh Sitaraman. - Oxford [etc.] : Oxford University Press, 2013. - XV, 328 p.

Since the "surge" in Iraq in 2006, counterinsurgency effectively became America's dominant approach for fighting wars. Yet many of the major controversies and debates surrounding counterinsurgency have turned not on military questions but on legal ones. The Counterinsurgent's Constitution tackles this wide range of legal issues from the vantage point of counterinsurgency strategy. Ganesh Sitaraman explains why law matters in counterinsurgency: how it operates on the ground and how law and counterinsurgency strategy can be better integrated. Counterinsurgency, Sitaraman notes, focuses on winning over the population, providing essential services, building political and legal institutions, and fostering economic development. So, unlike in conventional war, where law places humanitarian restraints on combat, law and counterinsurgency are well aligned and reinforce one another. Indeed, following the law and building the rule of law is not just the right thing to do, it is strategically beneficial. Moreover, reconciliation with enemies can both help to end the conflict and preserve the possibility of justice for war crimes. Following the rule of law is an important element of success.

LA COUR EUROPÉENNE DES DROITS DE L'HOMME ET LE DROIT INTERNATIONAL HUMANITAIRE

Eric David. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1227-1248

Dès le début de ses activités, la Cour européenne des droits de l'homme a été confrontée à des problèmes de droits humains liés à des situations de conflit armé où le DIH aurait pu s'appliquer. Or, ce n'est que beaucoup plus tard et très progressivement, que la Cour a intégré le DIH dans ses arrêts. Ce chapitre examine la jurisprudence contemporaine de la Cour non pas tant à l'égard du DIH qu'à l'égard des situations qui en relevaient, afin de tenter une synthèse des attitudes de la Cour dans ce domaine. Si la Cour européenne des droits de l'homme n'est pas la gardienne du DIH, tantôt elle l'utilise comme instrument de mesure ou d'évaluation du respect des droits humains, tantôt elle le complète et le renforce, soit en appliquant la Convention européenne des droits de l'homme à des situations de conflit armé, soit en l'utilisant de telle manière qu'elle contribue au respect des valeurs portées par le DIH. Dans la jurisprudence de la Cour, le DIH remplit donc une fonction de catalyseur des arrêts de la Cour et, réciproquement, la Convention devient un complément ou un adjuvant précieux au DIH et à son respect.

LA COUR EUROPÉENNE DES DROITS DE L'HOMME ET LE DROIT INTERNATIONAL HUMANITAIRE : DE LA RÉTICENCE À L'UTILISATION ASSUMÉE

Marina Eudes. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1249-1254

Ce chapitre résume brièvement l'évolution de la jurisprudence de la Cour européenne des droits de l'homme. Au départ d'une réticence initiale indéniable à l'égard du DIH, elle laisse récemment place à une certaine reconnaissance de la pertinence de ce corpus juridique.

THE CRIME AND PUNISHMENT OF STATES

Gabriella Blum. In: The Yale journal of international law Vol. 38, issue 1, 2013, p. 57-122

The moral rhetoric of "crime" and "punishment" of states has been excised from mainstream international law, and replaced with an amoral rhetoric of "threat" and "prevention." Today, individuals alone are subject to international punishment, while states are subject only to preventive, regulatory or enforcement measures. Through a historical survey of the shift from punishment to prevention in various spheres of international law, the preference for prevention has been motivated by a strong preference for peace over justice as the ultimate goal of the international system. Drawing on debates over preventive sanctions in U.S. domestic criminal law, it is argued that even though prevention may sound like a less oppressive policy than punishment, it may in fact be far less constrained and more ruthless. At the same time, a preventive paradigm might be paralyzed from operating where there is a crime that does not immediately threaten other international actors. The author demonstrates both possibilities using the contemporary debates over anticipatory self-defense and humanitarian intervention.

CRIMES AGAINST HUMANITY AND THE ARMED CONFLICT NEXUS : FROM NUREMBERG TO THE ICC

Hirad Abtahi. - [S.l.] : European Society of International Law, 2013. - 11 p.

This study charts the development of the concept of crimes against humanity from the "golden age" of jus in bello into a "golden age" of international criminal justice. In the past two decades, the concept of crimes against humanity has evolved in the legislative and jurisprudential sphere, in that it is no longer shackled to the jus in bello framework. This study will first briefly consider crimes against humanity's armed conflict nexus during the Golden Age of jus in bello in order to accurately appreciate the subsequent work of practitioners on these crimes. The study then analyses some potential reasons behind the erosion – and yet often perceived presence – of the armed conflict nexus, using the ICC as a case study.

THE CURRENT RELEVANCE OF THE RECOGNITION OF BELLIGERENCY

Sasha Radin. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 115-152

The doctrine of belligerency often came to the fore in the 19th and early 20th centuries. Since this time it has rarely been used, leading many to claim that the concept has fallen into desuetude. Others maintain that the recognition of belligerency continues to be relevant today. Should the doctrine still have significance, it can contribute to providing more detailed protection for those involved in such conflicts. This article suggests that the doctrine of belligerency is not obsolete, but because of developments in international law and changes in realities on the ground, a number of aspects of the doctrine need to be revisited in order to clarify what the doctrine might look like in a post-World War II world. The concept as traditionally conceived must be adjusted for it to remain relevant.

CYBER CONFLICT AND INTERNATIONAL HUMANITARIAN LAW

Herbert Lin. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 515-531

Conflict in cyberspace refers to actions taken by parties to a conflict to gain advantage over their adversaries in cyberspace by using various technological tools and peoplebased techniques. In principle, advantages can be obtained by damaging, destroying, disabling, or usurping an adversary's computer systems ('cyber attack') or by obtaining information that the adversary would prefer to keep secret ('cyber espionage' or 'cyber exploitation'). A variety of actors have access to these tools and techniques, including nation-states, individuals, organized crime groups, and terrorist groups, and there is a wide variety of motivations for conducting cyber attacks and/ or cyber espionage, including financial, military, political, and personal. Conflict in cyberspace is different from conflict in physical space in many dimensions, and attributing hostile cyber operations to a responsible party can be difficult. The problems of defending against and deterring hostile cyber operations remain intellectually unresolved. The UN Charter and the Geneva Conventions are relevant to cyber operations, but the specifics of such relevance are today unclear because cyberspace is new compared to these instruments.

CYBER WAR AND THE CONCEPT OF "ATTACK" IN INTERNATIONAL HUMANITARIAN LAW

David Turns. - In: *International humanitarian law and the changing technology of war.* - Leiden ; Boston : M. Nijhoff, 2013. - p. 209-227

This chapter first consider the types of actions which constitute so-called "cyber attacks", before analysing in detail the requirements of the concept of an "attack" generally under the existing law of armed conflict, based on the definition provided in Additional Protocol I of 1977. Those requirements will then be "mapped" to the salient features of "cyber attack" already identified, with a view to identifying the characteristics of "cyber attack" that render them "attacks" under IHL. State practice as to the use of such "cyber attack" in situations of armed conflict is almost non-existent, the sole known example being that of the Russia-Georgia conflict in 2008. Reported examples of "cyber attacks" from that conflict will be considered, as a concluding case study, to illustrate the operation of these principles in practice.

CYBER WARFARE : APPLYING THE PRINCIPLE OF DISTINCTION IN AN INTERCONNECTED SPACE

Robin Geiss and Henning Lahmann. In: *Israel law review* Vol. 45, no. 3, 2012, p. 381-399

While the rules of the jus in bello are generally operative in cyberspace, it appears to be problematic to apply the fundamental principle of distinction because of the systemic interconnection of military and civilian infrastructure in the cyber realm. In this regard, the application of the accepted legal definition of military objectives will make various components of the civilian cyber infrastructure a legitimate military objective. In order to avoid serious repercussions for the civilian population that might follow from this inherent interconnectedness, different concepts are analysed that could provide potential solutions for a clearer separation of legitimate military targets and protected civilian installations and networks. The approaches discussed range from the ex-

emption of central cyber infrastructure components that serve important civilian functions, to the creation of 'digital safe havens' and possible precautionary obligations regarding the segregation of military and civilian networks. As a solution, the authors propose a dynamic interpretation of the wording 'damage to civilian objects' within the principle of proportionality of Article 51(5)(b) of Additional Protocol I, an interpretation that would comprise the degradation of the functionality of systems that serve important civilian functions.

CYBERWAR AND UNMANNED AERIAL VEHICLES : USING NEW TECHNOLOGIES, FROM ESPIONAGE TO ACTION

Jessica A. Feil. In: *Case Western Reserve journal of international law* Vol. 45, Issues 1 and 2, Fall 2012, p. 513-544

American military and civilian national security agencies are frontrunners in developing cyber tools that will help keep soldiers and operatives safe and provide a tactical advantage. These cyberweapons have been in development for decades. Some policymakers and academics call for new regulation or even prohibition of cyberweapons, both domestically and internationally. Such regulation would be short-sighted and reactionary. Cyberweapons offer significant range of utility. Properly written computer code ensures targets and goals are met accurately. New technologies offer precision unknown in previous weaponry. Cyberweapons are not the only new technology generating concern. Unmanned aerial vehicles are similarly critiqued. The American government has provided more expansive legal justifications for drone campaigns abroad. The public information available about drone campaigns sheds light on how cyberweapons will fit into the twenty-first century national security universe.

DEALING WITH THE PRINCIPLE OF PROPORTIONALITY IN ARMED CONFLICT IN RETROSPECT : THE APPLICATION OF THE PRINCIPLE IN INTERNATIONAL CRIMINAL TRIALS

Rogier Bartels. In: *Israel law review* Vol. 46, issue 2, July 2013, p. 271-315

The principle of proportionality is one of the core principles of international humanitarian law. The principle is not easy to apply on the battlefield, but is even harder to apply retrospectively, in the courtroom. This article discusses the challenges in applying the principle during international criminal trials. It discusses the principle itself, followed by an explanation of the general challenges of dealing with violations of international humanitarian law, and more specifically the rules related to the conduct of hostilities, during war crime trials. The way in which the principle has been used before the International Criminal Tribunal for the former Yugoslavia is examined, including an in-depth discussion of the recent Gotovina case. The second part consists of an evaluation of Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court, and discusses the difficulties the International Criminal Court would face in cases dealing with violations of the principle of proportionality.

DECONSTRUCTING TERRORISM AS A WAR CRIME : THE CHARLES TAYLOR CASE

Kirsten M.F. Keith. In: *Journal of international criminal justice* Vol. 11, no. 4, September 2013, p. 813-833

For his role in the wartime atrocities in Sierra Leone, Charles Taylor was convicted of the war crime of terror-

izing the civilian population. This article critically examines the legal and factual treatment of this war crime in the Taylor Trial Judgment, drawing attention to the Chamber's strengths and weaknesses. While the Chamber's reasoning is shown at times to be inconsistent, particularly in addressing the central question of specific intent, this article highlights the areas of the judgment that could serve as persuasive precedent in future cases. As Taylor's conviction for sexual violence as an underlying act of terrorism demonstrates, terrorism as a war crime has the potential to be used as an umbrella charge encompassing other crimes committed with the purpose of instilling fear in the civilian population.

DEFINING NON-INTERNATIONAL ARMED CONFLICT : A HISTORICALLY DIFFICULT TASK

David E. Graham. In: *International law studies* Vol. 88, 2012, p. 43-55

This contribution establishes the framework for a broad and comprehensive discussion of NIAC by assessing, historically, the way in which the international community has attempted to define this particular form of conflict, to include the issue of whether there now exist various types of NIAC. It then addresses the U.S. practice with respect to the manner in which the United States has determined whether to designate certain hostilities as NIACs.

THE DESIGN AND PLANNING OF MONITORING, REPORTING, AND FACT-FINDING MISSIONS

Rob Grace. - Cambridge (MA) : Program on humanitarian policy and conflict research Harvard university, December 2013. - 52 p.

The design and planning process is crucial to the implementation of monitoring, reporting, and fact-finding (MRF) mechanisms geared toward investigating violations of international law, including human rights, international criminal law, and international humanitarian law. However, many disagreements exist about how MRF actors should weigh different factors in their design and planning decision-making processes. This paper — to provide a point of reference indicating the implications of different methodological choices — examines areas of methodological agreement and disagreement, trends of professional decision-making, and normative perceptions that practitioners hold about best practices regarding the design and planning of MRF mechanisms. Based on an assessment of fifteen MRF missions implemented over the past decade, this paper analyzes how commissioners on these missions interpreted the mission's investigative scope, examines the factors that guided decisions about the activities that the mission would undertake, and offers an overview of common staffing dilemmas. Overall, the paper aims to present a portrait of the state of MRF practice, in terms of how practitioners approach fulfilling their mandates.

DETENTION AND OCCUPATION IN INTERNATIONAL HUMANITARIAN LAW

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - XXXIII, 539 p.

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have be-

come influential as this body of law develops in the 21st century.

DETENTION IN NON-INTERNATIONAL ARMED CONFLICTS

Knut Dörmann. In: *International law studies* Vol. 88, 2012, p. 347-366

The article focuses on two main issues. It first addresses the applicable legal framework to detention in NIAC and, in particular, the interplay between international humanitarian law (IHL) and international human rights law; and second, present the International Committee of the Red Cross's (ICRC's) analysis of the need to strengthen the law in light of humanitarian problems observed in its field operations and the related normative weaknesses. The concluding remarks will then summarize how the international community has responded to the ICRC's analysis. Before addressing these two issues, some observations on the sources of law applicable in NIAC should be made to set the frame.

DETENTION OF TERRORISTS IN THE TWENTY-FIRST CENTURY

William K. Lietzau. In: *International law studies* Vol. 88, 2012, p. 323-345

The United States used to not think about what law applied in NIAC, particularly with regard to those detained during the conflict. In fact, the United States' last experience with long-term detention was of prisoners of war captured during World War II. The law then was clear—enemy prisoners of war could be held until the end of the conflict. But twenty-first-century conflicts have changed. Now the war is not with another State, but with a non-State actor, al Qaeda. In the early period of this new type of war, the United States was accused of holding detainees indefinitely without providing a means of review to determine whether there was sufficient basis for the detention. Today, newly captured individuals are submitted to a Detainee Review Board. The Board, comprised of three field-grade military officers, reviews each individual's detention for both legality and necessity of continued detention. The detainee receives expert assistance from a U.S. officer who is authorized access to all reasonably available information pertaining to that detainee. This review is repeated periodically after the initial hearing, which must take place within sixty days of arrival at the internment facility. Now some argue that the pendulum has swung too far, and that the United States is releasing detainees (some of whom have returned to the fight) too quickly. What is unarguable is that an indefinite detention without some form of process in these new wars will not be stomachable.

LA DÉTENTION PAR LES GROUPES ARMÉS : SURMONTER LES OBSTACLES À L'ACTION HUMANITAIRE

David Tuck. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/2, p. 337-363

Le conflit armé et la privation de liberté sont inextricablement liés. La privation de liberté par des groupes armés non étatiques est une conséquence de la prédominance des conflits non internationaux dans le monde actuel. Quelle que soit la nature de l'autorité détentrice ou la légalité théorique de ses opérations de détention, la privation de liberté peut avoir de graves conséquences pour les personnes détenues en termes humanitaires. Pour nécessaire qu'elle soit, l'action humanitaire se heurte à divers obstacles, comme le risque ressenti de légitimation du groupe armé. Le Comité

international de la Croix-Rouge (CICR) a toujours cherché à surmonter ces écueils, depuis l'action fondatrice de son créateur Henry Dunant. Il tire parti à cette fin de son expérience de l'action humanitaire en matière de détention par les États, en l'adaptant aux exigences des groupes armés et aux particularités de leur pratique de la détention. Malgré des revers occasionnels, le CICR conserve un rôle sans égal dans ce domaine et ne ménage pas ses efforts pour améliorer le traitement et les conditions de détention des personnes privées de liberté par des groupes armés.

DETERMINING THE BEGINNING AND END OF AN OCCUPATION UNDER INTERNATIONAL HUMANITARIAN LAW

Tristan Ferraro. In: *International review of the Red Cross* Vol. 94, no. 885, Spring 2012, p. 133-163

International humanitarian law (IHL) does not provide a precise definition of the notion of occupation, nor does it propose clear-cut standards for determining when an occupation starts and when it ends. This article analyses in detail the notion of occupation under IHL and its constitutive elements, and sets out a legal test for identifying when a situation qualifies as an occupation for the purposes of IHL. It concludes by suggesting an adjustment of the legal test to the specific characteristics of occupation by proxy and occupation by multinational forces.

DEVELOPING LOCAL CAPACITY FOR WAR CRIMES TRIALS : INSIGHTS FROM BIH, SIERRA LEONE, AND COLOMBIA

Alejandro Chehtman. In: *Stanford journal of international law* Vol. 49, issue 2, Summer 2013, p. 297-329

Generally, in post-conflict situations the domestic justice system is in a state of collapse. Doubts exist as to whether alleged perpetrators of international crimes will be prosecuted effectively, or as to whether they will receive a fair trial. International penal interventions are therefore envisaged as a way to assure individual accountability. Yet it has become increasingly clear that these tribunals themselves lack the capacity to deal with the vast majority of cases. If the tribunals' impact is to be enhanced, they will need to rely on national courts. The way out of this circle is for them to develop the capacity of local legal systems. This Article examines the impact of international tribunals on municipal legal systems by providing an in-depth, comparative analysis of four different international or internationalized tribunals—the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, the Special Court for Sierra Leone, and the Court of Bosnia and Herzegovina—and their impact on the respective domestic legal systems. This Article critically examines the main direct and indirect ways in which the international community has sought to develop local capacity for war crimes trials, such as training initiatives, "on the job" knowledge transfer, and the provision of information and access to evidence. Yet, it argues that the focus in this area should be more on the structural or institutional aspects, such as the institutional position of the international or internationalized tribunal vis-a-vis the local judiciary, the law applicable before each tribunal, and the main features of each exit strategy.

THE DEVELOPMENT AND PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - XXIV, 562 p.

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

DIALOGUE HUMANITAIRE ET LUTTE CONTRE LE TERRORISME : ANTAGONISME DES NORMES ET ÉMERGENCE D'UN NOUVEAU PAYSAGE POLITIQUE

Naz K. Modirzadeh, Dustin A. Lewis et Claude Bruderlein. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/2, p. 225-255

Le présent article met en évidence deux ensembles de normes antagonistes. Le premier corpus, qui vise à protéger la population, encourage l'établissement d'un dialogue entre humanitaires et groupes armés non étatiques (GANÉ) en période de conflit armé. Le second, qui vise à protéger la sécurité nationale et/ou internationale, interdit un tel dialogue avec des groupes listés en tant que « terroristes ». Les auteurs examinent en quoi cet antagonisme juridique pourrait affecter la capacité des organisations humanitaires à procurer une aide vitale aux populations dans les zones contrôlées par un de ces groupes. Ancré dans le droit international humanitaire (DIH), le premier ensemble de règles constitue la base sur laquelle un dialogue humanitaire peut être engagé en période de conflit armé interne, dans le double but de porter assistance aux populations vivant sous le contrôle de groupes armés non étatiques et d'encourager ces derniers à respecter les règles du DIH. Le second ensemble vise à empêcher l'apport d'un soutien financier ou matériel (formation technique et coordination comprises) à des entités listées en tant que « terroristes », dont certaines peuvent être considérées comme des groupes armés non étatiques au sens du DIH. L'article met l'accent sur les réglementations anti-terroristes élaborées par les États-Unis et par le Conseil de sécurité des Nations Unies, bien que d'autres États et organes multilatéraux se soient dotés de dispositifs similaires. Pour conclure, les auteurs décrivent brièvement diverses réponses possibles des organisations humanitaires aux difficultés évoquées.

DIFFERENCES IN THE LAW OF WEAPONRY WHEN APPLIED TO NON-INTERNATIONAL ARMED CONFLICTS

William H. Boothby. In: *International law studies* Vol. 88, 2012, p. 197-210

It is sensible to pose the question whether there is a meaningful distinction between the weapons law that applies during international armed conflict and that which governs hostilities during a non-international armed conflict. After all, philosophically, it could be argued that there is no rational basis for such a distinction. Why, the rhetorical question would go, should it be legitimate to expose individuals during a civil war to injuring mechanisms that have been found to be unacceptable for employment during wars between States?! If this is seen as a plea that the law applicable in these classes of conflict be merged, that is not the purpose of this article. Rather, the intent is to consider whether there are in fact such differences in the law as it is, to identify the precise extent of any such divergences and to ask whether they make sense.

DIFFERENT LEGAL ISSUES RELATED TO THE PROTECTION OF CULTURAL PROPERTY IN PEACETIME AND WARTIME

Jan Hladik. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 106, 2012, p. 453-462

The author first discusses the 2003 UNESCO Declaration concerning the intentional destruction of cultural heritage. He then covers the issue of sanctions under the 1954 Hague Convention for the protection of cultural property in the event of armed conflict and its Second Protocol. Finally, he compares protection provided by the 1954 Hague Convention and its Second Protocol with that provided under the 1972 World Heritage Convention.

A DIFFERENT SENSE OF HUMANITY : OCCUPATION ON FRANCIS LIEBER'S CODE

Rotem Giladi. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 81-116

Accounts narrating the history of the modern law of occupation display ambivalence to the 1863 Lieber Code. At times, they mark the humanity of its provisions on occupied territories; at others, they find its concept of humanity in occupation limited compared to subsequent developments. A broader reading of the Code against Lieber's published works, teaching, and correspondence reveals a unique – and disconcerting – sense of humanity pervading through its provisions. Lieber's different sense of humanity, not directed at individuals, throws light on the history of the law governing occupied territories today and paves the way for critical reflections on its conceptual bases.

THE DILEMMAS OF PROTECTING CIVILIANS IN OCCUPIED TERRITORY : THE PRECURSORY EXAMPLE OF WORLD WAR I

Annette Becker. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 117-132

Advances in the law of Geneva and the law of The Hague did not remain a dead letter during the World War I, but this was essentially with regard to the wounded and prisoners of war. Those categories of persons were better protected than civilians by treaty-based humanitarian law, which was still in its infancy. Although the ideal of humanity was realized on a large scale thanks to the efforts of the International Committee of the Red Cross (ICRC) and myriad other charitable, denominational, or non-denominational organizations, none of the belligerents hesitated to infringe and violate the law whenever they could. The various occupied populations, on the Western and Eastern fronts and in the Balkans, served as their guinea pigs and were their perfect victims.

DIRECT PARTICIPATION IN CYBER HOSTILITIES : TERMS OF REFERENCE FOR LIKE-MINDED STATES ?

Jody M. Prescott. - In: 2012 4th International conference on cyber conflict : proceedings. - Tallinn : NATO CCD COE, 2012. - p. 251-266

According to its recently published cyber strategy, the U.S. seeks to develop international consensus on how traditional law of armed conflict (LOAC) norms and understandings are modified and applied in cyberspace to help secure this global commons. Although the International Committee of the Red Cross's Interpretive Guidance on Direct Participation in hostilities and the recent

U.S. cyber strategy documents and policy statements are very different in many ways, examination of the relationships between their different aspects could be very useful in setting terms of reference framing the discussions which must occur to develop consensus on how LOAC rules and understandings regarding direct participation in hostilities could be adapted for use in cyberspace. This requires identification of their respective strengths and weaknesses, and potential areas of common ground between them. To be useful, this examination must include consideration of the significance of rules of engagement, formulations of hostile intent, and the proper inferences to be drawn from intelligence analyses as well as the legal standards by which direct participation in hostilities is determined.

DIRECT PARTICIPATION IN HOSTILITIES AS A WAR CRIME : AMERICA'S FAILED EFFORTS TO CHANGE THE LAW OF WAR

David J.R. Frakt. In: Valparaiso University law review Vol. 46, no. 3, 2012, p. 729-764

This article addresses, in part, the question of what to do with civilian direct participants in hostilities (DPH) who are not killed by opposing armed forces, but are captured. Specifically, the article address the potential criminal prosecution of detained DPHs. The ability to detain provides an opportunity to the detaining power to prosecute the DPH "for an offence arising out of the hostilities." But is it a crime for someone who does not meet the Geneva Convention requirements for POW status to directly participate in hostilities? In other words, are all DPHs criminals? If so, are they war criminals, or, rather, common domestic criminals? The prevailing international view is that direct participation in hostilities in and of itself is not a war crime. Contrary to the prevailing international view, the United States has attempted, through the military commissions of Guantánamo, to treat direct participation in hostilities as a war crime. This article examines that effort, including the prosecutions of David Hicks and Omar Khadr, and the failed prosecution of Mohammed Jawad for alleged direct participation in hostilities. The article concludes that America's effort to convert all fighting against the U.S. by unprivileged enemy belligerents into a war crime has been a failure.

DISAPPEARANCE CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS AND THE UN HUMAN RIGHTS COMMITTEE : CONVERGENCES AND DIVERGENCES

Helen Keller and Olga Chernishova. In: Human Rights Law Journal : HRLJ Vol. 32, no. 7-12, p. 237-249

The legal definition of enforced disappearance formulated in the International convention for the protection of all persons from enforced disappearance (ICED) and in the Rome statute for the International criminal court is relatively recent, but the international prohibition of the conduct essentially constituting disappearance has a much longer history. The absence of a legal definition of disappearance for many decades has not prevented international human rights bodies from tackling the phenomenon. They have addressed it as a crosscutting issue combining several human rights violations. Most prominent is the jurisprudence of the UN Human rights committee and European court of human rights. On the basis of the classical human rights approach, these two bodies have developed a remarkable case-law which, no doubt, contributed to the general acceptance of disappearance as a crime under customary international law by the end of 1990s and paved the way for the

adoption of the ICED. This article analyses these two bodies case-law, identifying the convergence and divergences in the results.

DISARMAMENT AND NON-PROLIFERATION

Mirko Sossai. - In: *Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum.* - Cheltenham ; Northampton : E. Elgar, 2013. - p. 41-66

This chapter is aimed at assessing the law governing disarmament as one of the pillars constituting the overall framework for the maintenance of international peace and security. The modern law on weaponry is characterized by a close relationship between disarmament law and the law of armed conflict. Both branches of law are aimed at reducing the destructive potential of war, but while the former serves the purpose of lessening the probability of the outbreak of war, the primary aim of the law of armed conflict is to preserve certain core humanitarian values during hostilities. The focus of the present analysis is the content of the relevant conventions on disarmament and non-proliferation, in order to individuate which features are recurrent in most of them.

DISCREPANCIES BETWEEN INTERNATIONAL HUMANITARIAN LAW ON THE BATTLEFIELD AND IN THE COURTROOM : THE CHALLENGES OF APPLYING INTERNATIONAL HUMANITARIAN LAW DURING INTERNATIONAL CRIMINAL TRIALS

Rogier Bartels. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald.* - The Hague : T.M.C. Asser Press, 2013. - p. 339-378

International humanitarian law and international criminal law are distinct but related fields. The application of international humanitarian law to concrete facts by international tribunals and courts has contributed to the development and clarification of this body of law. However, using a law in the courtroom that was created instead, to be applied on the battlefield poses significant challenges. In the process of such use, the law may have been distorted to fit facts that it was not envisioned to cover. Its use is as a means to punish unwanted behaviour during armed conflicts and to combat impunity risks contorting the balance on which international humanitarian law is based: military necessity and humanity. This chapter highlights some findings by international criminal tribunals and courts that do not sit easily with international humanitarian law as applied by armed forces, and discusses the consequences that applying the laws of armed conflict during criminal trials may have for this branch of international law.

DISRUPTION OF SATELLITE TRANSMISSIONS AD BELLUM AND IN BELLO : LAUNCHING A NEW PARADIGM OF CONVERGENCE

Deborah Housen-Couriel. In: *Israel law review* Vol. 45, no. 3, 2012, p. 431-458

The dramatic increase over the past decade in the quantity and sophistication of communications satellites in the earth's orbit raises new legal questions regarding the hostile disruption of satellite transmissions. As dependence on satellite communications in the military, governmental, economic and civilian spheres escalates globally, both states and non-state entities have become increasingly vulnerable to the consequences of disrupted transmissions, whether accidental or intentional. The

implications of this new phenomenon for international humanitarian law (IHL) are better understood in the context of a preliminary analysis of the principles and norms underlying three regimes which now converge around satellite activities ad bellum. These are the substantive law regarding freedom of transborder communication, including relevant jus cogens prohibitions; international telecommunications regulation; and space law. The present analysis focuses on (a) the development of a taxonomy of the types of hostile disruption of satellite transmissions, (b) an examination of the three present normative regimes which govern international satellite transmissions in peacetime, and (c) the relevance of these three regimes for the development of applicable IHL. Overall, the article addresses the legal and policy aspects of an improved international response to the growing phenomenon of transmission disruption on the part of state and non-state entities both in peacetime and during war. Greater clarity regarding the applicable legal norms will enable both state and non-state actors to utilise satellite systems with increased certainty, reliability and effectiveness.

DO NO HARM : THE DISPUTE OVER ACCESS TO HEALTH CARE BETWEEN ISRAEL AND THE PALESTINIAN TERRITORIES

Emma Glazer. In: *Cardozo journal of international and comparative law* Vol. 22, no. 1, Fall 2013, p. 51-84

Some, including the Israeli government, argue that the West Bank is not an occupied territory, and Israel therefore is not obligated under IHL to the Palestinians living in those territories. This Note focuses on the interplay between Israeli security concerns and whether international humanitarian law (IHL) applies to Israel's obligation to provide health care to residents of the West Bank in this context. It will argue that IHL requires Israel to provide for health care services to Palestinians injured in cross-border fire, but does not mandate that Israel provide all-encompassing medical services to civilians in the West Bank who are seeking medical attention for more routine concerns, such as child birth.

DOCTORS IN ARMS : EXPLORING THE LEGAL AND ETHICAL POSITION OF MILITARY MEDICAL PERSONNEL IN ARMED CONFLICTS

Brigit Toebes. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald.* - The Hague : T.M.C. Asser Press, 2013. - p. 169-194

This contribution discusses the legal and ethical position of military medical personnel during armed conflicts. In such situations two difficult issues arise. Firstly, military health workers frequently become the object of an attack, which is a violation of their neutrality as medical personnel. Secondly, they themselves face difficult issues of "dual loyalty": they need to navigate between the interests of the patient, on the one hand, and that of their employer, the military, on the other. This contribution attempts to clarify and strengthen the legal position of military medical personnel, in particular when it comes to providing medical services around the battlefield. To do so, a basis is sought in the intertwined areas of international humanitarian law (IHL), human rights law (HRL), and medical ethics. It is argued that insufficient attention has been paid to bringing these three discourses together conceptually. It will be shown that these three disciplines provide a somewhat incoherent yet compel-

ling framework for medical personnel during armed conflicts. In a nutshell, this framework guarantees the inviolability and neutrality of medical personnel and it stipulates that medical considerations should prevail over military ones when it comes to priority setting between patients.

DOCTRINES OF EQUIVALENCE ? A CRITICAL COMPARISON OF THE INSTRUMENTALIZATION OF INTERNATIONAL HUMANITARIAN LAW AND THE ISLAMIC JUS IN BELLO FOR THE PURPOSES OF TARGETING

Matthew Hoisington. In: *The Fletcher Forum of world affairs* Vol. 37:2, Summer 2013, p. 153-170

As the battle between the United States and al-Qaeda and its associated forces continues, in a large number of geographic locations and seemingly without end, the targeting decisions undertaken by both sides and the way in which they have been justified to their respective constituencies deserve careful scrutiny. Matthew Hoisington addresses a subset of the decision-making process, namely, the instrumentalization of international humanitarian law (IHL) and the Islamic jus in bello for the purposes of targeting. The article begins with an examination of the radical innovations in the Islamic jus in bello that resulted in its instrumentalization by al-Qaeda and other Islamic armed groups in the name of jihad. It then addresses the key legal arguments of the U.S.-led response, particularly post-September 11. Finally, it offers a critical appraisal of the use of targeting rules to justify killing by both sides.

DOCUMENTING VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW FROM SPACE : A CRITICAL REVIEW OF GEOSPATIAL ANALYSIS OF SATELLITE IMAGERY DURING ARMED CONFLICTS IN GAZA (2009), GEORGIA (2008), AND SRI LANKA (2009)

Joshua Lyons. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 739-763

Since the launch of the first commercial very high resolution satellite sensor in 1999 there has been a growing awareness and application of space technology for the remote identification of potential violations of human rights and international humanitarian law. As examined in the three cases of armed conflict in Gaza, Georgia, and Sri Lanka, analysis of satellite imagery was able to provide investigators with independent, verifiable, and compelling evidence of serious violations of international humanitarian law. Also examined are the important limitations to such imagery-based analysis, including the larger technical, analytical, and political challenges facing the humanitarian and human rights community for conducting satellite-based analysis in the future.

DOES IHL PROHIBIT THE FORCED DISPLACEMENT OF CIVILIANS DURING WAR ?

David James Cantor. In: *International journal of refugee law* Vol. 24, no. 4, December 2012, p. 840-846

This opinion addresses the question of whether international humanitarian law (IHL) prohibits the forced displacement of civilians during armed conflict. It argues that the relevant rules of IHL do not take as their starting point a general prohibition of displacement. Rather, the author contends that the laws of war depart from an understanding of this phenomenon as a sad and often inevitable fact of war. As a result, only certain forms of forced displacement are directly regulated by this body

of rules. The opinion is written in a concise format with the non-specialist humanitarian practitioner in mind.

DROIT DE LA GUERRE ET CONFLITS INFORMATIQUES : QUELLE ALLIANCE ?

Arnaud Garrigues. - In: *Stratégies dans le cyberspace*. - Sceaux : L'esprit du livre, 2011. - p. 81-95

Début février 2011 s'est tenue la 47^e conférence de Sécurité de Munich, conférence qui a vu se réunir de nombreux pays et dont les objectifs étaient constitués d'échanges sur les problématiques de sécurité internationale. Toutefois, c'est surtout la parution d'un rapport corédigé par des chercheurs américains et russes qui a retenu l'attention et provoqué le débat, en appelant à la mise en cohérence des règles du droit des conflits armés (et notamment les Conventions de Genève et de La Haye) avec les problématiques spécifiques de la lutte informatique sur Internet. Cet article passe en revue les principaux points soulevés par ce rapport et apporte des éléments d'analyse.

DROIT DE LA MER

Philippe Gautier. - In: *Droit international humanitaire : un régime spécial de droit international ?*. - Bruxelles : Bruylant, 2013. - p. 301-319

L'objectif de ce chapitre est d'examiner les rapports entre le droit humanitaire - en tant que sous-système composé de règles spéciales - et le sous-système que constitue le droit de la mer, en particulier les règles du droit de la mer applicables en cas de conflits armés. La première partie s'attarde sur les dispositions du droit de la mer qui s'appliquent en temps de conflit armé. La deuxième partie passe en revue quelques cas choisis d'incidents survenus au cours de conflits navals pour donner un aperçu des questions qui se posent lorsque des tensions se manifestent entre les règles du droit de la mer et les règles de droit humanitaire.

LE DROIT HUMANITAIRE RATRAPÉ PAR LES DROITS DE L'HOMME ?

par Giorgio Malinverni. - In: *La conscience des droits : mélanges en l'honneur de Jean-Paul Costa*. - Paris : Dalloz, 2011. - p. 401-419

Après un rapide aperçu des signes de rapprochements qui se sont opérés entre le droit international humanitaire et le droit international des droits de l'homme, tant sur le plan doctrinal que dans la jurisprudence des juridictions internationales, l'auteur se demande si ce rapprochement n'est pas remplacé par un autre phénomène: celui de l'empiètement progressif des droits de l'homme dans le domaine traditionnel et réservé du droit international humanitaire, comme il le montre à la lecture de certaines décisions récentes prises par les organes internationaux chargés d'assurer le respect des droits de l'homme. Au regard du cercle des personnes protégées, des obligations procédurales qui sont inhérentes à une protection effective des droits de l'homme, et de la nature des organes de contrôle du respect de ces deux branches du droit international, il est peut-être permis de penser que les droits de l'homme offrent une meilleure protection que le droit international humanitaire.

DROIT INTERNATIONAL DE L'ENVIRONNEMENT

Mara Tignino. - In: *Droit international humanitaire : un régime spécial de droit international ?*. - Bruxelles : Bruylant, 2013. - p. 267-299

Ce chapitre vise à analyser un double mouvement tendant d'une part vers la protection de l'environnement par le droit humanitaire et d'autre part, vers la prise en compte des conflits armés par le droit international de l'environnement. Il s'interroge ensuite sur les liens systémiques existant entre ces deux branches du droit international. Une attention particulière est accordée au régime juridique relatif à la protection de l'eau dans la mesure où ce régime fournit des enseignements importants sur les points de contact et les interactions entre le droit humanitaire et le droit international de l'environnement.

DROIT INTERNATIONAL DES DROITS DE L'HOMME, DROIT INTERNATIONAL HUMANITAIRE ET DROIT INTERNATIONAL PÉNAL, VERS LA FUSION DES BRANCHES ?

Hélène Tigroudja. - In: *L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier*. - Bruxelles : Bruylant, 2013. - p. 1465-1487

Les liens entre le droit international des droits de l'homme et le droit international humanitaire est manifeste et se constate au travers de l'humanitarisation du premier et de l'humanisation du second, phénomènes expliqués par cette contribution. Cependant, le droit international pénal et le droit international des droits de l'homme sont également devenu perméables l'un à l'autre. Ainsi le droit international pénal intègre le respect des droits de l'homme, particulièrement dans la procédure pénale internationale au travers du droit de l'accusé à un procès équitable et les juridictions pénales internationales utilisent le droit international des droits de l'homme dans la définition du droit international pénal matériel. De leur côté, les organes des droits de l'homme utilisent aujourd'hui le droit international pénal pour juger certaines affaires.

DROIT INTERNATIONAL HUMANITAIRE

Joseph Owona. - Paris : L'Harmattan, 2012. - 210 p.

Cette étude du droit international humanitaire pose trois types de problèmes, celui des sources, règles et principes, celui des institutions d'application et du contrôle d'application de ce droit et celui de la répression de ses violations, tout en ajoutant des observations sur l'Afrique et le droit international humanitaire.

DROIT INTERNATIONAL HUMANITAIRE : UN RÉGIME SPÉCIAL DE DROIT INTERNATIONAL ?

sous la dir. de Raphaël van Steenberghe ; préf. de Bruno Simma. - Bruxelles : Bruylant, 2013. - XIV, 352 p.

Dans le cadre de ses travaux relatifs à la fragmentation du droit international et, en particulier, à l'existence de régimes juridiques « autonomes » ou « spéciaux », la Commission du droit international a identifié le droit international humanitaire comme l'un des exemples de régime qui se distinguerait en droit international par sa spécificité fonctionnelle. L'objectif du présent ouvrage est notamment de fournir des éclaircissements sur la signification de cette qualification. Après avoir circonscrit les contours de la notion de régime spécial en droit international, l'ouvrage s'interroge sur les éventuelles spécificités du droit international humanitaire tant par

rapport au « système général », c'est-à-dire aux règles secondaires du droit international général, que par rapport à d'autres « sous-systèmes », tels que le droit international pénal, les droits de l'homme ou le droit international de l'environnement. Cette analyse entend cerner au mieux les rapports existant entre le droit international humanitaire et les autres systèmes – général ou spéciaux – de droit international et se prononcer ainsi sur la question sous-jacente de l'« autonomisation » de ce droit. Elle montre que, loin de produire une « cacophonie » au sein de l'ordre juridique international, cet enchevêtrement de différents systèmes relevant de cet ordre s'apparente le plus souvent à une « polyphonie » harmonieuse.

DROIT INTERNATIONAL PÉNAL

Damien Scalia. - In: *Droit international humanitaire : un régime spécial de droit international ?*. - Bruxelles : Bruylant, 2013. - p. 195-224

L'étude du droit international pénal présente un intérêt évident pour répondre à la question de l'autonomisation du droit humanitaire et, en particulier, des rapports existant entre ce droit et d'autres sous-systèmes du droit international. L'auteur constate d'abord que le droit humanitaire est largement dépendant du droit international pénal d'une part parce que le droit international pénal est l'un des principaux mécanismes de mise en œuvre du droit humanitaire et d'autre part, parce que les juridictions pénales internationales constituent l'un des principaux lieux ou l'interprétation du droit humanitaire est donnée. Il constate ensuite que le droit international pénal est également dépendant du droit humanitaire en ce qu'il puise dans ce dernier les éléments nécessaires à son application. Enfin, il rajoute à cette relation de dépendance réciproque une relation par laquelle le droit international pénal participe à la fragmentation du droit international général en contribuant à l'autonomisation du droit humanitaire par rapport au droit international général.

DROIT INTERNATIONAL PÉNAL : PRÉCIS

Robert Kolb, Damien Scalia éd. ; avec la collab. de Annyssa Bellal... [et al.]. - Bâle : Helbing Lichtenhahn, 2012. - X, 672 p.

Contient notamment : Finding war crimes : the criminalization of international humanitarian law / T. Liefänder. - The relevance of international criminal law for interpreting and applying human rights treaties : a study of the case law of the European Court of Human Rights / G. Gaggioli. - National prosecution of international crimes and universal jurisdiction / P. Grant.

DROITS DE L'HOMME

Yasmin Naqvi. - In: *Droit international humanitaire : un régime spécial de droit international ?*. - Bruxelles : Bruylant, 2013. - p. 225-266

Ce chapitre analyse les approches "traditionnelles" relatives à l'applicabilité concomitante du droit humanitaire et des droits de l'homme, à savoir les approches de la "lex specialis", de la "lex posterior", de la complémentarité et la méthode de convergence. Il démontre au travers de la jurisprudence internationale, des décisions des organes de contrôles et des rapports des experts nommés par les Nations unies que ces méthodes ne sont en réalité utilisées que dans un seul et même sens, celui de l'interprétation systémique et "harmonisée" des

deux corps de règles. Des cas de jurisprudence spécifiques éclairent d'avantage le sens de ce principe d'harmonisation. L'auteur soutient que l'application du principe d'harmonisation a pour résultat non seulement d'"humaniser" le droit humanitaire, mais également d'"humanitariser" les droits de l'homme, y compris en temps de paix et que cette méthode a la capacité d'établir une certaine cohésion et profondeur au sein d'un système juridique "fragmentable".

LE DRONE, L'ÉTHIQUE ET LE DROIT

Philippe Lagrange. - In: *L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier*. - Bruxelles : Bruylant, 2013. - p. 1333-1353

D'un point de vue technique et éthique, le drone est certainement une "révolution dans les affaires militaires" et plus largement dans la conduite des guerres du futur. Ce sont ces deux aspects qui sont analysés dans la première partie de cette contribution. D'un point de vue juridique en revanche, la réponse est plus nuancée dans la deuxième partie. Tant que le drone restera soumis à une volonté humaine et qu'il ne sera pas devenu un robot à part entière, doué d'une intelligence artificielle le rendant indépendant dans ses choix et pleinement autonome dans son fonctionnement, il faudra le considérer comme un système d'arme ordinaire dont le développement et l'utilisation pourront trouver sans difficulté limites et encadrement dans le droit international humanitaire positif.

DUE DILIGENCE OBLIGATIONS OF CONDUCT : DEVELOPING A RESPONSIBILITY REGIME FOR PMSCs

Nigel D. White. In: *Criminal justice ethics* Vol. 31, no. 3, December 2012, p. 233-261

As non-state actors, PMSCs are not embraced by traditional state-dominated doctrines of international law. However, international law has itself failed to keep pace with the evolution of states and state-based actors, to which strong Westphalian notions of sovereignty are no longer applicable. It is argued that these structural inadequacies stand in the way of international regulation of PMSCs, rather than defects in international human rights and humanitarian law per se. By analyzing understandings of legal responsibility, where such structural issues come to the fore, it is argued that, rather than attempting to resolve the essentially ideological dispute about the inherent functions of a state, regulatory regimes should focus on the positive obligations of states and PMSCs, and the interactions between them. Applying the results of this analysis, current and proposed regulatory regimes are evaluated and their shortcomings revealed.

THE DUTY TO CAPTURE

Jens David Ohlin. In: *Minnesota Law Review* Vol. 97, no. 4, 2013, p. 1268-1342

The article examines the duty to capture and the divergent approaches that each legal regime takes to this normative requirement, and evaluates internal debates within these regimes over when a duty to capture might apply. Part I begins by examining the scope of international humanitarian law (IHL); concludes that its application is often unduly constrained; and offers a new analysis of the classification of armed conflicts, the level of organization required before a non-state actor can be a party to an armed conflict, and the legal geography of

armed conflict. Part II examines the concept of necessity and concludes that military necessity is fundamentally incompatible with human-rights law and its understanding of necessity as the least-restrictive means. Finally, Part III concludes that the IHL regime, and its permissive notion of military necessity, should apply when the state is acting as a belligerent against other co-equal belligerents, but that human-rights law, and its more restrictive notion of necessity, should apply when the state acts as a sovereign over its own subjects. However, being a U.S. citizen does not automatically make an individual a "subject" under a sovereign, as opposed to a belligerent. Rather, this article concludes that belligerency is always a relationship between collectives, and that the relevant question is whether the United States stands in a relationship of belligerency to a non-state organization of which the individual is a member.

EARTHQUAKES AND WARS : THE LOGIC OF INTERNATIONAL REPARATIONS

Gabriella Blum and Natalie J. Lockwood. - [Harvard] : Harvard Law School, 2012. - 33 p.

International law requires states to compensate victims of war crimes, but not of incidental damage that is lawful under the laws of war. Recently, scholars and advocacy groups have called to expand the duty to repair so as to cover all wartime harm. We inquire into the possible justifications for expanding this duty and test them against a hypothetical expansion of the duty to compensate victims of natural disasters. The effort is ultimately to inquire whether there is something unique about war – as distinct from all other disasters – which demands special consideration.

ELEMENTS OF ACCESSORIAL MODES OF LIABILITY : ARTICLE 25(3)(B) AND (C) OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

by Sarah Finnin. - Leiden ; Boston : M. Nijhoff, 2012. - XXXIV, 234 p.

This volume continues the work of the preparatory commission of the international criminal court by developing "elements" for ordering, instigating and aiding and abetting the commission of international crimes under article 25(3)(b) and (c) of the Rome statute. The development of proposed elements for these accessory modes of liability is necessary because while detailed elements for the substantive crimes within the jurisdiction of the court were identified in the "elements of crimes", no such elements were elaborated for the modes of liability for those crimes. The proposed elements in this volume break new ground and are designed to assist the ICC in applying the provisions of the Rome statute to the cases before it for trial with consistency and accuracy.

THE ELEMENTS OF THE CRIME OF GENOCIDE AND THE IMPERATIVE TO PROTECT CERTAIN GROUPS : NORMATIVE SHAPERS IN CRIMINAL LAW AND HUMANITARIAN PERSPECTIVE

Gerhard Kemp and Sina Ackermann. In: *African yearbook on international humanitarian law* 2012, p. 64-78

This article reviews the legacy of one judgment by an international criminal tribunal : *Prosecutor v. Akayesu* before the International Criminal Tribunal for Rwanda. It is done not as a revisit per se but to caution against the "flexible" use of criminal law where there are real or

perceived humanitarian concerns. The article first critically analyzes the historical contribution of the Trial Chamber's to defining the crime of genocide, specifically its finding on the factual matrix and material elements necessary for criminal liability for genocide. Then it turns to the Trial Chamber's finding that "protected groups" for purposes of the crime of genocide are not limited to the four groups listed in the Genocide Convention and indeed article 2 of the ICTR Statute, but included in "any stable and permanent group". Although the judgment in Akayesu achieved justice at macro level, the Trial Chamber's treatment of criminal law principles and aspects of the definition of genocide are judged more critically.

THE EMERGENCE AND EARLY DEMISE OF CODIFIED RACIAL SEGREGATION OF PRISONERS OF WAR UNDER THE GENEVA CONVENTIONS OF 1929 AND 1949

Timothy L. Schroer. In: *Journal of the history of international law* Vol. 15, 2013, p. 53-76

The 1929 Convention relative to the treatment of prisoners of war included the following provision in article 9 : "Belligerents shall, so far as possible, avoid assembling in a single camp prisoners of different races or nationalities". This article will examine the question of how and why that provision came into being and what it reveals about prevailing ideas at the time concerning "race" and the law of war. The article will conclude by examining the 1949 convention on prisoners of war, which eliminated the requirement to segregate prisoners by race, thereby throwing into higher relief the move to codify racial segregation in the 1929 convention.

LES ENGAGEMENTS PRIS PAR LES GROUPES ARMÉS ET LES ENSEIGNEMENTS À EN TIRER POUR LE DROIT DES CONFLITS ARMÉS : DÉFINITION DES CIBLES LÉGITIMES ET PRISONNIERS DE GUERRE

Sandesh Sivakumaran. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/2, p. 163-184

Il est fréquent que les groupes armés prennent des engagements ad hoc qui comportent un élément de droit des conflits armés. Ces engagements visent à exposer de façon détaillée les obligations de ces groupes quant au respect du droit international humanitaire, des Conventions de Genève ou de règles particulières qui y sont énoncées. Par ces textes, le groupe peut s'engager à respecter les normes internationales – en dépassant même parfois leurs exigences – ou, à certains égards, violer ces mêmes normes. Bien qu'ils passent souvent inaperçus, ces engagements offrent certains enseignements pour le droit des conflits armés. Le présent article a pour objet d'étudier les engagements des groupes armés par rapport à deux domaines spécifiques du droit dont l'interprétation est contestée ou qui semblent inapplicables aux conflits armés non internationaux, à savoir la définition des cibles légitimes et le régime des prisonniers de guerre.

ENGAGING WITH ALL ACTORS OF VIOLENCE : NECESSITY, DUTY AND DILEMMAS FROM AN ICRC DELEGATE'S PERSPECTIVE

Pierre Gentile. - In: *Principled engagement : negotiating human rights in repressive states.* - Farnham : Burlington : Ashgate, 2013. - p. 57-73

The ICRC works to promote better respect of international humanitarian law (IHL) and other legal norms protecting civilians and people hors de combat and, for that purpose, seeks to establish direct dialogue with all actors in situations of armed conflict or other situations of violence, regardless of their ideological stance or human rights record. In this respect it can be considered a "principle engager". This chapter argues - in line with the ICRC's institutional position - for the necessity for the ICRC to be able to access and engage meaningfully with all actors in situations of violence, including with opposition armed groups. This is a long practice that derives from the organisation's unique mandate and from the fact that IHL binds all parties to an armed conflict (including non-state actors), as opposed to human rights laws which are binding only on states parties. Nevertheless, it must be recognised that the ICRC's stance is not always an easy one to maintain. Thus, this contribution details some of the dilemmas and challenges that ICRC delegates encounter in the field.

ENSURING COMPLIANCE OF NON-STATE ACTORS WITH RULES OF INTERNATIONAL HUMANITARIAN LAW ON THE USE OF WEAPONS IN NIAC : A WAY TO FOLLOW ?

Rustam B. Atadjanov. In: *Asia-Pacific yearbook of international humanitarian law* Vol. 4, 2008-2011, p. 140-182

This article provides a brief account of existing definitions, legal rules, gaps and problems related to the compliance of NSAs with the international humanitarian law (IHL) applicable to a NIAC, then goes on to less explored issues such as the use of specific weapons by non-State armed groups, examples of this and threats posed by such use, and, finally, delineates the ways suggested to ensure the NSAs' proper compliance in this regard. The principal argument that the article proposes is this: despite the absence of a "solid" treaty-based grounding as it is traditionally understood in international law, as well as the existing problematic legal and political questions over armed groups' compliance with relevant IHL norms — and because of the very necessity of taking into proper account the reality of armed conflicts today — the question of non-State actors' compliance with IHL rules on the use of weapons should be given more consideration, and different ways aimed at ensuring such compliance should be sought.

ENTRE SÉCURITÉ ET PROTECTION DE L'INDIVIDU : LA CONVENTION SUR LES ARMES À SOUS-MUNITIONS COMME DERNIER EXEMPLE D'UN NOUVEAU TYPE DE TRAITÉ - ET UN MODÈLE POUR L'AVENIR ?

Daniel Rietiker. In: *Journal du droit international* No 4, 139e année, octobre-novembre-décembre 2012, p. 1295-1322

D'inspiration profondément humanitaire et interdisant toute une catégorie d'armes, la Convention sur les armes à sous-munitions suit largement la logique de la Convention d'Ottawa et, dans une moindre mesure, les Conventions sur les armes biologiques et chimiques. L'occasion de l'entrée en vigueur récent de ce traité mérite l'analyse des traits communs de ces instruments. L'exercice consiste en la comparaison de leurs éléments caractéristiques (obligations générales, intérêts poursuivis, contrôle du respect des obligations, droit de retrait) avec les solutions retenues aux instruments relevant du droit humanitaire et de la protection des droits de l'homme. Il s'avère que ces traités ne se laissent pas facilement classer dans l'une ou l'autre catégorie établie

en droit international. Il sera enfin aussi mentionné que l'acquis humanitaire que constitue ce traité est déjà menacé.

ENVIRONMENTAL PROTECTION IN ARMED CONFLICT : FILLING THE GAPS WITH SUSTAINABLE DEVELOPMENT

Onita Das. In: *Nordic journal of international law* Vol. 82, no. 1, 2013, p. 103-128

Recent years have witnessed growing concern over the ever more increasing urgent and pervasive global environmental problems. Environmental problems and challenges in relation to armed conflict are amongst them. Such environmental pressures can cause violent or armed conflict which in turn can cause devastating damage and destruction to the environment. This article explores the possibility of utilising the overarching concept of sustainable development and its relevant substantive principles to fill the gaps of environmental protection provided by international humanitarian law. The concept of sustainable development generally refers to development or the process of improving the quality of life of the present generation without compromising the future generations. This article thus reviews the limits of the protection of the environment during armed conflict within the current legal framework and suggests setting out a new, more comprehensive set of Environmental Rules based on the "Berlin Rules" approach. It is argued that these proposed Rules, by comprehensively and clearly prescribing rights and duties in respect of the ecological impact of armed conflict including the integration of the concept of sustainable development, could not only mitigate the impact of conflict-related environmental damage on both the environment and the human population, it could further contribute to the development of international law and conflict-related environmental protection specifically.

THE ERA OF CYBER WARFARE : APPLYING INTERNATIONAL HUMANITARIAN LAW TO THE 2008 RUSSIAN-GEORGIAN CYBER CONFLICT

Lesley Swanson. In: *Loyola of Los Angeles international and comparative law review* Vol. 32, no. 2, Spring 2010, p. 303-333

This article argues that existing IHL principles should be used to analyze the legality of cyber attacks. Part II of this article discusses the increasing use of cyber warfare in international conflict. Part III of this article explains that IHL principles apply whenever cyber attacks, ascribed to a state, are more than simply sporadic in nature and are intended to cause, or will foreseeably cause, injury, death, damage, or destruction. On the other hand, IHL most likely does not apply in the absence of those consequences. Part IV applies IHL principles to the 2008 Russian-Georgian cyber conflict. Given the complexities and novelties involved in this new kind of warfare, however. Part V further proposes that the international community and powerful states should seek to supplement existing IHL principles with more explicit and transparent policies that best correspond to modern Internet technology and address the ways in which this technology can legally be used to carry out cyber attacks.

ETHICS AND THE LAWS OF WAR : THE MORAL JUSTIFICATION OF LEGAL NORMS

Antony Lamb. - London ; New York : Routledge, 2013. - [XII], 158 p.

This book is an examination of the permissions, prohibitions and obligations found in just war theory, and the moral grounds for laws concerning war. Pronouncing an action or course of actions to be prohibited, permitted or obligatory by just war theory does not thereby establish the moral grounds of that prohibition, permission or obligation ; nor does such a pronouncement have sufficient persuasive force to govern actions in the public arena. So what are the moral grounds of laws concerning war, and what ought these laws to be ? Adopting the distinction between *jus ad bellum* and *jus in bello*, the author argues that rules governing conduct in war can be morally grounded in a form of rule-consequentialism of negative duties. Looking towards the public rules, the book argues for a new interpretation of existing laws, and in some cases the implementation of completely new laws. These include recognising rights of encompassing groups to necessary self-defence ; recognising a duty to rescue ; and considering all persons neither in uniform nor bearing arms as civilians and therefore fully immune from attack, thus ruling out "targeted" or "named" killings.

ETHNIC CLEANSING : A LEGAL QUALIFICATION

Clotilde Pégurier. - London ; New York : Routledge, 2013. - XXIV, 173 p.

This book confronts the problem of the legal uncertainty surrounding the definition and classification of ethnic cleansing, exploring whether the use of the term "ethnic cleansing" constitutes a valuable contribution to legal understanding and praxis. The premise underlying this book is that acts of ethnic cleansing are, first and foremost, a criminal issue and must therefore be precisely placed within the context of the international law order. In particular, it addresses the question of the specificity of the act and its relation to existing categories of international crimes, exploring the relationship between ethnic cleansing and genocide, but also extending to war crimes and crimes against humanity. The book goes on to show how the current understanding of ethnic cleansing singularly fails to provide an efficient instrument for identification, and argues that the act, in having its own distinctive characteristics, conditions and exigencies, ought to be granted its own classification as a specific independent crime.

L'ÉTUDE SUR LE DROIT INTERNATIONAL COUTUMIER : LES VOIES D'UNE NORMATIVITÉ EN ACTION

Sandra Szurek. - In: *L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier*. - Bruxelles : Bruylant, 2013. - p.1447-1464

Ce chapitre commente le double apport de l'Étude de droit international humanitaire coutumier de 2005: L'enrichissement et la mise à jour nécessaire des sources matérielles du droit international humanitaire d'une part et la portée au grand jour du processus coutumier. L'Étude montre que le droit international humanitaire actuel est largement le produit non seulement de l'action des États, mais encore de celle des Nations unies et des juridictions internationales. De plus, le système de recensement de la pratique opéré par l'Étude est un exercice doctrinal inédit qui pourrait servir de modèle dans d'autres domaines de l'ordre juridique international marqué par une apparente fragmentation ou du moins, un éparpillement des normes de droit international.

THE EUROPEAN COURT OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

Lindsay Moir. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 480-502

Whilst, historically, it is probably fair to say that the European court of human rights encountered a relatively limited range of cases in which humanitarian law was relevant, even when given the opportunity to use humanitarian law as just such and interpretative device, it has chosen not to do so. This chapter assesses the approach of the Court to those situations where state forces have been engaged in hostilities and where an appreciation of the rules and application of international humanitarian law might therefore be seen to be necessary or, at least, helpful in addressing the existence of human rights violations. Three such categories can be identified: namely, cases arising in the context of internal armed conflicts; cases involving the extra-territorial use of military force; and article 7 cases, arising from domestic prosecution for violations of the laws of war, and necessitating an understanding of the state of the law in historical context.

THE EVITABILITY OF AUTONOMOUS ROBOT WARFARE

Noel E. Sharkey. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 787-799

This is a call for the prohibition of autonomous lethal targeting by free-ranging robots. This article first points out the three main international humanitarian law (IHL)/ethical issues with armed autonomous robots and then move on to discuss a major stumbling block to their evitability: misunderstandings about the limitations of robotic systems and artificial intelligence. This is partly due to a mythical narrative from science fiction and the media, but the real danger is in the language being used by military researchers and others to describe robots and what they can do. The article looks at some anthropomorphic ways that robots have been discussed by the military and then go on to provide a robotics case study in which the language used obfuscates the IHL issues. Finally, the article looks at problems with some of the current legal instruments and suggest a way forward to prohibition.

L'ÉVOLUTION DES FONCTIONS DU JUGE PÉNAL INTERNATIONAL ET LE DÉVELOPPEMENT DU DROIT INTERNATIONAL HUMANITAIRE

Jérôme de Hemptinne ; ed. : Nico Krisch, Mario Prost, Anne van Aaken. - [S.l.] : European Society of International Law, 2013. - 10 p.

Les spécificités du droit humanitaire influencent les rôles du juge pénal international et vice versa. D'une part, les particularités de ce droit – notamment son imprécision et son inadaptation à la répression pénale internationale ainsi que sa nécessaire flexibilité – ont amené le juge à exercer des fonctions législatives hors-normes. Selon l'auteur, cet exercice n'est toutefois pas incompatible avec une conception fonctionnelle de la légalité pénale. Manié avec précaution, il peut même s'avérer être un outil essentiel pour éviter que le droit humanitaire ne demeure figé une fois pour toute. D'autre part, les spécificités des fonctions du juge – en particulier sa quête de légitimité et sa volonté d'exercer un pouvoir de réconciliation – ont conditionné le développement du droit humanitaire. En effet, cette recherche de légitimité a ame-

né le juge à constamment veiller à ce que les principes de droit humanitaire qu'il applique soient fondés sur des normes coutumières largement partagées ou sur des sortes de « méta-principes » indiscutables moralement. En outre, soucieux de promouvoir un esprit de réconciliation, le juge a fait une large place aux considérations d'humanité dans son travail d'interprétation de ces principes.

"EXCESSIVE" AMBIGUITY : ANALYSING AND REFINING THE PROPORTIONALITY STANDARD

Jason Wright. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 819-854

This article analyses the jus in bello proportionality standard under international humanitarian law to assist judge advocates and practitioners in achieving a measure of clarity as to what constitutes 'excessive' collateral damage when planning or executing an attack on a legitimate military objective when incidental harm to civilians is expected. Applying international humanitarian law, the author analyses existing US practice to evidence the need for states to adopt further institutional mechanisms and methodologies to clarify targeting principles and proportionality assessments. A subjective-objective standard for determining 'excessive' collateral damage is proposed, along with a seven-step targeting methodology that is readily applicable to the US, and all other state and non-state actors engaged in the conduct of hostilities.

EXECUTIVE BRANCH POLICY MEETS INTERNATIONAL LAW IN THE EVOLUTION OF THE DOMESTIC LAW OF DETENTION

Thomas B. Nachbar. In: *Virginia journal of international law* Vol. 53, no. 2, 2013, p. 201-246

This paper considers the role that the executive branch can play in modifying international law through a specific case: the March, 2011 issuance of Executive Order 13567: Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force. As its title suggests, the Order establishes a system of periodic review for detainees held at Guantanamo Bay, but the release of the Order suggests much more than merely the adoption of new procedures for reviewing detention determinations. In a "Fact Sheet" issued with the Order, the Obama administration suggested some concrete changes to how the United States views the international law of detention, specifically with regard to Additional Protocols I and II of the Geneva Conventions. Those changes, when combined with the content of the Order itself, may signal an even more profound shift in the role of international law in the shaping of the domestic law of detention and in the role of the executive branch in shaping both international and domestic law. The paper proceeds by describing the Order in detail and comparing the procedures adopted in the Order with those that preceded it, namely Combatant Status Review Tribunals and detainee Administrative Review Boards. The paper next analyzes the Order's procedures under Article 75 of Additional Protocol I and Articles 4-6 of Additional Protocol II, as suggested by the Fact Sheet. Finally, the paper considers the broader questions raised by the Order and Fact Sheet's stated approach to the international law of detention. By recognizing an increased role for Additional Protocols I and II, the Order and Fact Sheet go some distance toward providing an avenue for incorporating international human rights norms into the U.S.

domestic law of detention, an approach that sharply diverges with previous U.S. positions on the law of armed conflict, and does so through the executive branch operating alone.

EXPANDING THE R2P TOOL-KIT : NEW POLITICAL POSSIBILITIES AND ATTENDANT LEGAL UNCERTAINTIES

John Cerone. In: *ILSA journal of international and comparative law* Vol. 18, issue 1, 2011-2012, p. 531-563

In mid-February 2011, in the wake of popular uprisings in Tunisia and Egypt, members of the Libyan public began protesting against the decades-old regime of Libyan leader Muammar Gaddafi. The situation rapidly escalated as the government sought to forcibly suppress the demonstrations. By early March the situation had deteriorated into an armed conflict. A number of international organizations responded to the crisis in Libya as it evolved. They utilized a variety of different tools, ranging from official statements and press communiques to the adoption of sanctions and other legal measures. On March 19, 2011, a coalition of states initiated a bombing campaign in Libya. The United Nations (U.N.) Security Council authorized this enforcement action in response to reports of serious violations of international human rights law and the international law of armed conflict committed in Libya by persons acting on behalf of the Gaddafi regime. This article provides an overview of applicable rules of international law through different phases of the situation in Libya and sketches out various modes of enforcement action employed by international organizations to respond to the crisis, analyzing several of the controversial legal issues that arise in that context. The article concludes with an analysis of the unresolved legal issues implicated by the evolving situation in Libya and by the international community's responses to it.

EXPERT OPINION ON THE PARTICIPATION OF RESIDENTS OF AREA C OF THE OCCUPIED PALESTINIAN TERRITORY OF THE WEST BANK IN THE PLANNING PROCESS RE HOUSING

Max du Plessis and Christopher Carl Gevers. In: *African yearbook on international humanitarian law* 2012, p. 201-221

The authors were engaged by Rabbis for Human Rights to submit an expert opinion to the Israeli High Court in the case against the cancellation of local and district planning committees in the West Bank by MO 418 - HCJ 5667/11 *Dirat-Rfaiyya v Minister of Defence*. The opinion first goes through the relationship between human rights law and international humanitarian law following the *Lex Specialis* doctrine, then analyzes the application of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to the conduct of the Israeli Civil Administration in Area C. It reaches the conclusion that Israel is obliged to allow Palestinian residents of the West Banks - and Area C in particular - to participate meaningfully in the planning processes relating to their community's housing needs, which MO 418 denies both by design and impact.

EXPLAINING THE PRINCIPLE OF MALA IN SE

Morten Dige. In: *Journal of military ethics* Vol. 11, issue 4, December 2012, p. 318-332

Certain methods and weapons are traditionally considered to be "mala in se", i.e. evil in themselves. Examples

are mass rape campaigns and land mines. This article examines different interpretations of the principle that belligerents ought not to use such means. Some interpretations are reductionist in the sense that they see the principle as an instance of other principles regulating conduct in war (*jus in bello*), namely the principles of discrimination and proportionality. The author suggests a horizontal and a vertical dimension of the latter. Resort to violence can then be unjustified if (1) the persons are not liable to be attacked because they bear no (or not enough) responsibility for the relevant threat, (2) the amount of harm is disproportionate compared to what can be achieved by the resort to violent force, or (3) the kind of harm is disproportionate by making individual persons suffer in ways that no one should have to endure. The author defends the vertical dimension of proportionality as a key to understanding the principle of *mala in se* and consider whether it leads to an absolute prohibition against such means.

EXTRATERRITORIAL APPLICATION OF THE RIGHTS TO LIFE AND PERSONAL LIBERTY, INCLUDING HABEAS CORPUS, DURING SITUATIONS OF ARMED CONFLICT

Robert K. Goldman. - In: *Counter-terrorism strategies in a fragmented international legal order : meeting the challenges*. - Cambridge : Cambridge University Press, 2013. - p. 454-481

Is a state bound by its human rights obligations when its agents operate outside of national territory? And, if so, how do those obligations interrelate with the state's other obligations under international humanitarian law when its counter-terrorism operations coincide with situations of armed conflict. This chapter examines in particular the extraterritorial reach of two fundamental human rights during two situations recognized in international law. These rights are the right to life and the right to liberty and the related procedural safeguard of habeas corpus. The two situations examined are (1) international armed conflict, including occupation and (2) non-international armed conflicts. This paper surveys the jurisprudence on the extraterritorial application of the International covenant on civil and political rights, the American convention on human rights and the American declaration of the rights and duties of man and the European convention on human rights and the extent to which rights in these instruments can be derogated from. It also examines how the treaty bodies supervising these instruments view the relationship between international human rights and international humanitarian law in situations of armed conflict.

THE EXTRATERRITORIAL OBLIGATION TO PREVENT THE USE OF CHILD SOLDIERS

Tracey B. C. Begley. In: *The American University international law review* Vol. 27, no.3, 2012, p. 613-641

Regardless of how children end up in armies and rebel groups, whether through forced recruitment or "voluntary" enlistment, the international community recognizes that children should not be fighting wars. There are a variety of international and national instruments that prohibit warring factions from conscripting children. First, this paper discusses the global use of child soldiers, the legal framework regarding child soldiers, and state obligations to protect the rights of children. Next, this paper argues that international and national instruments create extraterritorial obligations for states to prevent the use of child soldiers beyond their own borders. Lastly, this

paper examines U.S. extraterritorial obligations regarding child soldiers and the country's ability to uphold its obligations.

FAR BE IT FROM THEE TO SLAY THE RIGHTEOUS WITH THE WICKED : AN HISTORICAL AND HISTORIOGRAPHICAL SKETCH OF THE BELLICOSE DEBATE CONCERNING THE DISTINCTION BETWEEN JUS AD BELLUM AND JUS IN BELLO

JHH Weiler and Abby Deshman. In: *European journal of international law = Journal européen de droit international* Vol. 24, no. 1, February 2013, p. 25-61

The question whether jus in bello and jus ad bellum should interact, or remain in hermetically sealed spheres, has generated a voluminous and vociferous body of contemporary literature. The goal of this article is to take a step back from the particulars of the arguments and examine the shape and direction of the debate itself. The authors trace how the debate has evolved in response to political culture and sensibilities, focusing in on paradigmatic points throughout the 20th century. In each era the discussion on how these two areas of law should, or should not, intersect arises. And contrary to what might be implied by the recent debate where both sides often rely on 'fundamental principles', the dialogue regarding the relationship between jus in bello and jus ad bellum is not a static argument. The discourse is dynamic and politically contextualized – impacted by, and impacting upon, the external controversies of the day. Certain consistent threads have guided the debate – first order political interests, institutional considerations, and consequences, and a legal and sociological conservatism run throughout. Distinct visions and assessments of the morality of war and who is to blame for its evils and how best to work towards peace also push and pull the flow of debate. Frequently, the positions on jus in bello and jus ad bellum serve as proxies for deeper or shallower courses of discussion. And although the contemporary discourse is more fractured, these same influences are discernable today.

FIGHTING BY THE PRINCIPLES : PRINCIPLES AS A SOURCE OF INTERNATIONAL HUMANITARIAN LAW

Jeroen C. van den Boogaard. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald*. - The Hague : T.M.C. Asser Press, 2013. - p. 3-31

The rules of international humanitarian law of armed conflict are codified in a rather extensive body of treaty law. In addition, extensive research has been conducted into the rules of customary international humanitarian law. The author of this contribution argues that there is another important source of positive international humanitarian law: principles of international humanitarian law. In this chapter, the role of the principles of international humanitarian law, the functions they perform and their legal significance as a source of international humanitarian law will be assessed. With general public international law as its starting point, the chapter discusses the sources of international humanitarian law. It explains the important role of the Martens Clause and provides examples of how the principles of international humanitarian law may be applied in contemporary armed conflicts.

FINDING CUSTOM : THE ICJ AND THE INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS COMPARED

Yeghishe Kirakosyan. - In: *The diversification and fragmentation of international criminal law*. - Leiden ; Boston : M. Nijhoff, 2012. - p. 149-161

International criminal tribunals have had frequent recourse to customary international law. Given the flexible nature of this source of law, this recourse might be the one of the main causes of internal fragmentation of substantive international criminal law. The use of customary international criminal law by international criminal courts has been criticized, in particular by continental criminal lawyers who are unfamiliar with the application of unwritten law in criminal proceedings. This chapter will analyse the use of customary international law by international criminal tribunals through a different lens. It will examine whether the method that international criminal courts and tribunals use to determine the existence of a rule of customary international law constitutes an instance of fragmentation in itself. More specifically, this chapter investigates whether and to what extent international criminal courts and tribunals depart from the conventional methodology of identifying custom in the realm of public international law.

FINDING WAR CRIMES : THE CRIMINALIZATION OF INTERNATIONAL HUMANITARIAN LAW

Thomas Liefländer. - In: *Droit international pénal : précis*. - Bâle : Helbing Lichtenhahn, 2012. - p. 319-346

The chapter starts by considering the legal structure of war crimes law. It addresses its fundamental elements : the existence of primary rules binding individuals in times of armed conflict and the existence of a secondary rule imposing individual criminal liability (rule of criminalization). The second section deals more precisely with the content of the secondary rule that imposes criminal liability. It demonstrates that various approaches have been employed in the jurisprudence of international criminal tribunals and that complete coherence has so far not been achieved. The third section briefly considers whether special rules apply where a rule applicable to international armed conflicts is extended to cover non-international armed conflicts as well. It is argued that the need for criminalization of individual rules is in part dependent on whether the rules of international armed conflicts and those of non-international armed conflicts are perceived as forming two separate, if related systems, or whether they are part of the same body of rules, merely having different scopes of application. Finally, the author briefly explores the means by which the existence of a secondary rule criminalizing certain conduct in international law can be discerned.

THE FIRST AMENDMENT TO THE ROME STATUTE : BRINGING ARTICLE 8 OF THE ROME STATUTE IN LINE WITH INTERNATIONAL HUMANITARIAN LAW

Eve La Haye and Anne-Marie La Rosa. - In: *From Rome to Kampala : the first 2 amendments to the Rome Statute*. - Bruxelles : Bruylant, 2012. - p. 67-146

The first amendment adopted in Kampala expands the International Criminal Court's existing jurisdiction over war crimes in international armed conflict to non-international armed conflict, by including the following crimes: employing poison or poisoned weapons; employing asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices; and employing

bullets which expand or flatten easily in the human body. The adoption of such an amendment initiated a movement towards a greater protection for civilians as well as combatants in non-international armed conflict. The amendment also brought article 8 of the Rome Statute more in line with the content of customary international humanitarian law. This chapter briefly recalls the history behind the weapons amendment. The authors examine the conditions to be fulfilled for a crime to be included in Article 8 of the Statute and study the elements of the crimes covered by the weapons amendment in order to determine more clearly their scope of application. Finally the entry into force of the amendment is tackled.

THE FOG OF VICTORY

Gabriella Blum. In: *European journal of international law = Journal européen de droit international* Vol. 24, no. 1, February 2013, p. 391-421

What does victory mean today? How do we know who 'won' the war and what does the winner win by winning? This article uses the prism of victory to view the transformation of the goals, means, and targets of war, and assesses the applicability of the conventional Just War doctrine (through the traditional laws of war) to the modern battlefield. Specifically, the article claims that the military and civilian components of war have grown so intertwined in both the conduct and ending of hostilities that the laws of war, with their emphasis on combat, are hard-pressed to offer a normative yardstick for a just modern war.

FORCIBLE DISPLACEMENT THROUGHOUT THE AGES : TOWARDS AN INTERNATIONAL CONVENTION FOR THE PREVENTION AND PUNISHMENT OF THE CRIME OF FORCIBLE DISPLACEMENT

by Grant Dawson and Sonia Farber. - Leiden ; Boston : M. Nijhoff, 2012. - XIV, 197 p.

Forcible displacement transforms cultures and can even lead to their destruction. Beginning with the origins of the human species millions of years ago and ending up in our present day era, this book analyses examples of forcible displacement in order to examine the crime in its many different forms. The legal contours of the crime receive a comprehensive treatment, including the experience of the international tribunals and decades of scholarly work in the area. The authors suggest that a paradigm shift is needed in order to bring development-induced displacement into the mainstream discourse on forcible displacement. The book concludes with a proposal for a new convention for the prevention and punishment of the crime of forcible displacement.

FRIEND OR FOE ? : ON THE PROTECTIVE REACH OF THE LAW OF ARMED CONFLICT : A NOTE ON THE SCSL TRIAL CHAMBER'S JUDGMENT IN THE CASE OF PROSECUTOR V. SESAY, KALLON AND GBAO

Jann K. Kleffner. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald*. - The Hague : T.M.C. Asser Press, 2013. - p. 285-302

In its 2009 judgment in the case of Prosecutor v Sesay, Kallon and Gbao, the Special Court for Sierra Leone asserted that "the killing of a member of an armed group by another member of the same group does not constitute a war crime". The current chapter subjects that categorical assertion to critical examination. It concludes

that the reasoning of the Special Court for Sierra Leone is unconvincing and displays a misapprehension of the protective reach of the law of armed conflict.

FROM ENGINES FOR CONFLICT INTO ENGINES FOR SUSTAINABLE DEVELOPMENT : THE POTENTIAL OF INTERNATIONAL LAW TO ADDRESS PREDATORY EXPLOITATION OF NATURAL RESOURCES IN SITUATIONS OF INTERNAL ARMED CONFLICT

Daniëlla Dam-de Jong. In: *Nordic journal of international law* Vol. 82, no. 1, 2013, p. 155-177

Since the end of the Cold War, natural resources have proven an adequate replacement for external funding of armed conflicts. The prospects for parties to an armed conflict to gain 'easy' profits from resource exploitation encourage these parties to engage in predatory practices that are highly detrimental to environmental conservation. The environmental degradation caused by predatory resource exploitation by parties to an armed conflict also severely hampers efforts towards the post-conflict reconstruction of a State. Environmental degradation of land may spark new tensions in the fragile phase of post-conflict reconstruction. In addition, natural resources are an important engine to restart the economy of a war-torn State after the conflict has come to an end. If the resources are severely degraded or even exhausted as a consequence of their exploitation during armed conflict, it becomes even more difficult to kick-start the economy of a State emerging from conflict. This article argues that current international law is not sufficiently equipped to deal with these challenges. The existing regulatory framework is fragmented and imprecise. It is only through case specific responses under Security Council sanctions regimes that the challenges are currently addressed.

FROM ROME TO KAMPALA : THE FIRST 2 AMENDMENTS TO THE ROME STATUTE

ed. by Gérard Dive, Benjamin Goes, Damien Vandermeersch. - Bruxelles : Bruylant, 2012. - 174 p.

Contient notamment : Definition, elements and entry into force of the crime of aggression / E. David. - The understandings regarding the amendments to the Rome Statute of the International Criminal Court on the crime of aggression / C. Ryngaert. - Exercise of jurisdiction and entry into force of the amendments on the crime of aggression. S. Barriga - History of negotiations : from Rome to Kampala and the future ; the procedure for drafting the amendments, where we stand today / P. Rietjens. - The First Amendment to the Rome Statute : bringing article 8 of the Rome Statute in line with international humanitarian law / E. La Haye and A.-M. La Rosa.

THE FUNCTIONAL BEGINNING OF BELLIGERENT OCCUPATION

written by Michael Siegrist. - [S.l.] : [s.n.], 2010. - XII, 81 p.

The ICRC commentary on the fourth Geneva Convention advocates the so-called functional beginning of belligerent occupation. Accordingly, the rules on occupied territories of the Fourth Geneva Convention apply as soon as a "protected person" falls into the hands of a party to the conflict present in enemy territory. It is argued in this paper that the application of the functional beginning of occupation is the preferred solution. This

would fill probable gaps of protection during the invasion phase and would be in line with the object and purpose of the Geneva Conventions. Moreover, an analysis of the rules relating to belligerent occupation suggests that invading troops would not be disproportionately burdened with additional and impractical obligations. Quite the contrary, the wording of most articles leaves enough leeway to adapt and take into account the difficult circumstances prevailing during an invasion. Furthermore, the functional beginning of belligerent occupation would also bestow certain rights upon the invading power, like a legal basis for security measures and internment.

FUNDAMENTAL STANDARDS OF HUMANITY : HOW INTERNATIONAL LAW REGULATES INTERNAL STRIFE

Tilman Rodenhäuser. In: *Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict* Vol. 26, 3/2013, p. 121-129

In recent years an unprecedented uprising of people against despotic regimes or masses standing up to claim fundamental rights can be witnessed. The "Arab Spring" is the most prominent example of such events. States regularly respond to internal disturbances or tensions by arresting large numbers of people or by using of excessive force. This article examines how international law addresses situations of internal disturbances, which do not amount to non-international armed conflicts. It essentially raises the question if fundamental standards of humanity exist that apply at all times and to all actors involved in internal violence - irrespective of the classification of the situation as an armed conflict or the invocation of a state of emergency. Due to the importance of the protection of detained people in such situations, this article focuses particularly on the prohibition or arbitrary detention, the right to fair trial and the right to humane treatment.

FUTURE WAR, FUTURE LAW

Eric Talbot Jensen. In: *Minnesota journal of international law* Vol. 22, Summer 2013, p. 282-323

Advancing technology will dramatically affect the weapons and tactics of future armed conflict, including the "places" where conflicts are fought, the "actors" by whom they are fought, and the "means and methods" by which they are fought. These changes will stress even the fundamental principles of the law of armed conflict, or LOAC. While it is likely that the contemporary LOAC will be sufficient to regulate the majority of future conflicts, the international community must be willing to evolve the LOAC in an effort to ensure these future weapons and tactics remain under control of the law. Though many of these advancing technologies are still in the early stages of development and design, the time to act is now. In anticipation of these developments, the international community needs to recognize the gaps in the current LOAC and seek solutions in advance of the situation. As the LOAC evolves to face anticipated future threats, it will help ensure that advancing technologies comply with the foundational principles of the LOAC and future armed conflicts remain constrained by law.

THE GAZA FLOTILLA INCIDENT AND THE MODERN LAW OF BLOCKADE

James Farrant. In: *Naval war college review* Vol. 66, no. 3, Summer 2013, p. 81-98

Three years on, the Mavi Marmara incident (in May 2010 the Israeli Defense Forces (IDF) boarded a flotilla of ships attempting to breach a blockade in the Mediterranean Sea) remains a valuable case study, because it raises legal issues on several levels. At the grand strategic, when will the international community tolerate the imposition of a blockade, and when will states accept consequent interference with the navigational rights of vessels flying their flags? At the operational, how far from the blockaded coast should the naval commander be prepared to enforce the blockade? At the tactical, what level of force is acceptable for the individual members of a blockade-enforcement boarding party to use? This article considers the incident anew and use it to establish some principles that might guide maritime doctrine on the future establishment and enforcement of blockades.

THE GAZA FREEDOM FLOTILLA : POLITICIZING MARITIME LAW IN ASYMMETRIC CONTEXTS

Corri Zoli. - In: *Counterinsurgency law : new directions in asymmetric warfare*. - Oxford [etc.] : Oxford University Press, 2013. - p. 178-194

This chapter explores the Gaza flotilla incident in 2010 to illustrate the ways in which asymmetric warfare challenges traditional international humanitarian law. It explores the politicization of the incident, and shows how the legal and policy shortcomings of postmodern warfare are especially attenuated when conflicts take place in a maritime environment.

GENERAL ORDERS NO. 100 : WHY THE LIEBER CODE'S REQUIREMENT FOR COMBATANTS TO WEAR UNIFORMS IS STILL APPLICABLE FOR THE PROTECTION OF CIVILIAN POPULATIONS IN MODERN WARFARE

Robert Cummings. In: *Northern Kentucky law review* Vol. 39, no. 4, 2012, p. 785-805

Robert Cummings argues that the United States must maintain its policy concerning the identification and classification of lawful combatants, a policy that finds precedent in Francis Lieber's Civil War-era General Orders No. 100 ("Lieber Code"). Fundamental to this code is the understanding that armed conflict need not result in the death of innocent civilians, nor indiscriminately destroy their property. In order to protect innocent lives, the laws of war demand that combatants distinguish themselves from non-combatants: a lawful combatant must wear a uniform or distinctive insignia. Those granted lawful combatant status are afforded all the legal benefits granted to prisoners of war upon capture, whereas unlawful combatants are not, incentivizing combatants to distinguish themselves. In Cummings' view, because United States is currently engaged in a conflict with enemies who do not distinguish themselves, and who often disappear into civilian populations, the Lieber Code finds renewed relevance. If followed, it would limit the number of civilian casualties caused by military missions. Elements of the Lieber Code were incorporated into The Hague and Geneva Conventions; however, Additional Protocols I blurred the Code's bright line rules of distinction. The category of those considered lawful combatants was expanded to include non-uniformed combatants. Such an expansion allows for an interpretation of international humanitarian law that includes terrorists and insurgents in the category of lawful combatants. Opposition to this expansion was a primary reason for United States' refusal to ratify the Protocol.

United States, however, has occasionally acted in accordance with Additional Protocol I, potentially contributing to a precedent that Cummings does not want to set. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

THE GENEVA CONVENTIONS AND THE DICHOTOMY BETWEEN INTERNATIONAL AND NON-INTERNATIONAL ARMED CONFLICT : CURSE OR BLESSING FOR THE 'PRINCIPLE OF HUMANITY' ?

Cecilie Hellestveit. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 86-123

In recent years, the dichotomy introduced in the Geneva Conventions between international armed conflicts (IAC) and non-international armed conflicts (NIAC) has come under increased strain due to its perceived impediment to the principle of humanity. This chapter briefly depicts the historical background of the dichotomy, and presents the rationale and efforts in recent years to move towards a unified body of humanitarian law. It then lists seven arguments that support upholding the binary structure of IAC and NIAC, making the case that despite prima facie inadequacies of the rules regulating NIAC, the dichotomy enables and sustains important protective features. It concludes that sixty years on, the dichotomy between international and non-international armed conflicts should be seen as a blessing to be upheld rather than a curse to be dismantled, if the aim is maximising protection and furthering the principle of humanity for persons caught up in armed conflicts.

THE GENEVA CONVENTIONS IN 21ST CENTURY WARFARE : HOW THE CONVENTIONS SHOULD TREAT CIVILIANS' DIRECT PARTICIPATION IN HOSTILITIES : INTRODUCTION : TARGETING IN AN ASYMMETRICAL WORLD

D. A. Jeremy Telman. In: Valparaiso University law review Vol. 46, no. 3, 2012, p. 697-728

Part I of this Introduction lays out the framework created by the Geneva Conventions ("the Conventions") and their Additional Protocols ("AP I" and "AP II" respectively) within which targeting decisions are made. It also addresses the recent efforts by the International Committee of the Red Cross ("ICRC") to provide guidelines for state actors confronting non-combatants who directly participate in hostilities. In Part II, this Introduction summarizes two contributions to this Issue that highlight ways in which the United States has primarily relied on domestic mechanisms in attempting to devise strategies that can address the problems that have arisen in asymmetrical conflicts—such as those in Iraq and Afghanistan. Finally, in Part III, the Introduction summarizes three contributions to this Issue that propose ways forward through transnational mechanisms that will enable states to address the challenges of the new warfare without violating LOAC principles or compromising national security.

THE GEOGRAPHY OF THE BATTLEFIELD : A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE

Jennifer C. Daskal. In: University of Pennsylvania law review Vol. 161, issue 5, April 2013, p. 1165-1234

The U.S. conflict with al Qaeda raises a number of complicated and contested questions regarding the geo-

graphic scope of the battlefield and the related limits on the state's authority to use lethal force and to detain without charge. To date, the legal and policy discussions on this issue have resulted in a heated and intractable debate. On the one hand, the United States and its supporters argue that the conflict — and broad detention and targeting authorities — extend to wherever the alleged enemy is found, subject to a series of malleable policy constraints. On the other hand, European allies, human rights groups, and other scholars, fearing the creep of war, counter that the conflict and related authorities are geographically limited to Afghanistan and possibly northwest Pakistan. Based on this view, state action outside these areas is governed exclusively by civilian law enforcement, tempered by international human rights norms. This Article breaks through the impasse. It offers a new and comprehensive law-of-war framework that mediates the multifaceted security, liberty, and foreign policy interests at stake. Specifically, the Article recognizes the state's need to respond to the enemy threat wherever it is located, but argues that the rules for doing so ought to distinguish between the so-called "hot" battlefield and elsewhere. It proposes a set of binding standards that would limit and legitimize the use of targeted killings and law-of-war detention outside zones of active hostilities — subjecting their use to an individualized threat assessment, a least-harmful-means test, and significant procedural safeguards. The Article concludes by describing how and why this approach should be incorporated into U.S. and international law and applied to what are likely to be increasingly common threats posed by transnational nonstate actors in the future

GET OFF MY CLOUD : CYBER WARFARE, INTERNATIONAL HUMANITARIAN LAW, AND THE PROTECTION OF CIVILIANS

Cordula Droege. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 533-578

Cyber warfare figures prominently on the agenda of policymakers and military leaders around the world. New units to ensure cyber security are created at various levels of government, including in the armed forces. But cyber operations in armed conflict situations could have potentially very serious consequences, in particular when their effect is not limited to the data of the targeted computer system or computer. Indeed, cyber operations are usually intended to have an effect in the 'real world'. For instance, by tampering with the supporting computer systems, one can manipulate an enemy's air traffic control systems, oil pipeline flow systems, or nuclear plants. The potential humanitarian impact of some cyber operations on the civilian population is enormous. It is therefore important to discuss the rules of international humanitarian law (IHL) that govern such operations because one of the main objectives of this body of law is to protect the civilian population from the effects of warfare. This article seeks to address some of the questions that arise when applying IHL — a body of law that was drafted with traditional kinetic warfare in mind — to cyber technology. The first question is: when is cyber war really war in the sense of 'armed conflict'? After discussing this question, the article goes on to look at some of the most important rules of IHL governing the conduct of hostilities and the interpretation in the cyber realm of those rules, namely the principles of distinction, proportionality, and precaution. With respect to all of these rules, the cyber realm poses a number of questions that are still open. In particular, the interconnectedness of

cyber space poses a challenge to the most fundamental premise of the rules on the conduct of hostilities, namely that civilian and military objects can and must be distinguished at all times. Thus, whether the traditional rules of IHL will provide sufficient protection to civilians from the effects of cyber warfare remains to be seen. Their interpretation will certainly need to take the specificities of cyber space into account. In the absence of better knowledge of the potential effects of cyber warfare, it cannot be excluded that more stringent rules might be necessary.

A GLOBAL BATTLEFIELD ? : DRONES AND THE GEOGRAPHICAL SCOPE OF ARMED CONFLICT

Noam Lubell and Nathan Derejko. In: *Journal of international criminal justice* Vol. 11, no. 1, March 2013, p. 65-88

The ever-increasing use of drones in the pursuit of the 'war on terror' has given rise to concerns over the emergence of a global battlefield whereby the entire planet is subject to the application of the laws of armed conflict. These concerns stem from drone strikes frequently occurring outside the 'active battlefields' of Afghanistan and into the border regions of Pakistan and expanding further afield into Yemen and Somalia. In response to emerging practice, a significant body of academic literature has emerged on the legal classification of transnational armed violence. Less attention however, has been given to the geographical scope of the concept of armed conflict itself. This article provides a detailed analysis of the geographical scope of non-international armed conflict under international humanitarian law, and in the context of drone strikes. In particular, it focuses upon the legal implications of the geographical disjunction between the location of drone strikes and primary battlefields from the point-of-view of the application of international humanitarian law.

A "GLOBAL WAR ON PIRACY ?" : INTERNATIONAL LAW AND THE USE OF FORCE AGAINST SEA PIRATES

Eric A. Heinze. - In: *Maritime piracy and the construction of global governance*. - London ; New York : Routledge, 2013. - p. 47-70

The first part discusses the evolution of the law of piracy from the classic law of nations to the contemporary regime centered on the United Nations Convention on the law of the sea (UNCLOS), wherein the author highlights several legal obstacles to combating piracy in the context of Somalia. The second section examines whether the UN Security Council resolutions that purport to authorize the use of force against pirates were intended by the Council to implicate the law of armed conflict, as well as whether the international law of armed conflict would prima facie apply to the anti-piracy activities off the coast of Somalia. Finally, the author considers whether recent anti-piracy activity by states off of the coast of Somalia rises to the level of armed conflict.

GREAT RESOURCES MEAN GREAT RESPONSIBILITY : A FRAMEWORK OF ANALYSIS FOR ASSESSING COMPLIANCE WITH API OBLIGATIONS IN THE INFORMATION AGE

Kimberly Trapp. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 153-170

This chapter explores the standard of diligence which should apply in evaluating compliance with the obliga-

tions to take precautionary measures, in light of new information technologies, bearing in mind the necessity of a context sensitive appreciation of the capacity of state parties to an armed conflict. While states with the most advanced technological capabilities involved in long term armed conflicts will be the focus of this chapter (utilising the American experience as a case study), the framework of analysis set out in this chapter also responds to the particular circumstances of less developed states.

LES GROUPES ARMÉS DANS UN SYSTÈME DE DROIT INTERNATIONAL CENTRÉ SUR L'ÉTAT

Zakaria Daboné. In: *Revue internationale de la Croix-Rouge* : sélection française Vol. 93, 2011/2, p. 85-118

Comment situer les groupes armés non étatiques au sein du droit international public, un système conçu pour et par les États ? Cet article analyse cette question en examinant la place des groupes armés principalement dans le jus ad bellum et le jus in bello. Il démontre que le groupe armé est essentiellement un élément déclencheur du jus ad bellum, mais qu'il n'est pas lui-même titulaire d'un droit à la paix. Le jus in bello confère des droits et des obligations au groupe armé mais dans le cadre d'un rapport inégal avec l'État. Le régime de la détention par les groupes armés dans les conflits non-internationaux illustre en particulier cette inégalité devant le droit. Malgré leur importance dans les conflits actuels, les groupes armés représentent une « anomalie » d'un système juridique qui demeure état-centrique.

LES GROUPES ARMÉS NON ÉTATIQUES COMME DESTINATAIRES DES SANCTIONS N'IMPLIQUANT PAS L'EMPLOI DE LA FORCE

Rafael A. Prieto Sanjuán. - In: *L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier*. - Bruxelles : Bruylant, 2013. - p. 315-329

Des attaques indiscriminées, des agressions contre la population civile, ou contre l'environnement, des pillages, des viols, des tortures, enfin des comportements contraires au droit international humanitaire ou en violation d'accords passés entre des belligérants, ce sont certainement des conduites interdites qui peuvent être juridiquement attribuables aux parties dans un conflit armé. Cependant, ces actes ne sont que très difficilement constitutifs de responsabilité internationale dans le cas où les auteurs appartiennent à des groupes armés dissidents ou non étatiques y compris des forces irrégulières, des milices armées ou de caractère paramilitaire affines aux intérêts de l'Etat, mais qui gardent un caractère privés. Cette contribution examine certaines mesures de caractère international - institutionnel - adoptées contre des entités non étatiques n'impliquant pas l'emploi de la force armées: les mesures d'embargo et les mesures de caractère plus ciblé ou individuel telles que les restrictions à la mobilité et le gel des avoirs.

HAGUE CONVENTIONS : A COMPILATION OF DOCUMENTS

L. de Beer (ed.). - Nijmegen : Wolf Legal Publishers, 2011. - 614 p.

Two international peace conferences were held just before and after the turn of the 20th century at The Hague, the Netherlands. These conferences shaped modern International (Criminal) Law. The Conventions turned out to be the basic principles of the laws of war into a written document agreed to by a Convention of

delegates from all over the world. In this publication the most important documents related to this conference are being presented. The book starts with an introduction explaining the importance of the Conferences and conventions on the development of modern International Law. After the full text documents of both conventions there is a list added of signatory and contracting powers of the Hague Conventions and the Martens Clause is introduced. The Martens clause is highly instructive to the debate and tensions surrounding the laws of war. The results and influence of both Hague conferences on International Law will be described in the second part of this book. The establishing of the Permanent Court of Arbitration is named and both pacific settlements are added. Moreover, the impact of the Geneva Conventions will be discussed and full text documents of those are appended. As a conclusion the dispute regulation, the reduction of armament and Humanitarian (war) Law is reviewed. The development of Humanitarian War Law, started as a core area of (the first) Hague Conference, turned out to be a pillar of today's International Law.

HAMDAN V. UNITED STATES : A DEATH KNEEL FOR MILITARY COMMISSIONS ?

Jennifer Daskal. In: *Journal of international criminal justice* Vol. 11, no. 4, September 2013, p. 875-898

In October 2012, a panel of the D.C. Circuit dealt a blow to the United States' post-September 11, 2001 decade-long experiment with military commissions as a forum for trying Guantanamo Bay detainees. Specifically, the court concluded that prior to the 2006 statutory reforms, military commission jurisdiction was limited to violations of internationally-recognized war crimes; that providing material support to terrorism was not an internationally-recognized war crime; and that the military commission conviction of Salim Hamdan for material support charges based on pre-2006 conduct was therefore invalid. Three months later, a panel of the D.C. Circuit reached the same conclusion with respect to conspiracy and solicitation charges, and vacated the conviction and life sentence of Guantanamo Bay detainee Ali Hamza Ahmad al Bahlul. That case is now on appeal to an en banc (full court) panel of the D.C. Circuit. This article analyses the D.C. Circuit's ruling in Hamdan's case, explaining why the ultimate holding is the right one, even though some of the reasoning is flawed, and why the ruling should be upheld on appeal. It also highlights the many unresolved questions and the implications for the future of military commissions at Guantanamo Bay. As the article explains, the D.C. Circuit's rulings are a major victory for the rule of law and a major defeat for commissions.

THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW

ed. by Dieter Fleck ; in collab. with Knut Dörmann... [et al.]. - Oxford : Oxford University Press, 2013. - LII, 714 p.

Ouvrage en 14 parties : 1. Historical development and legal basis. 2. Scope of application of international humanitarian law. 3. Combatants and non-combatants. 4. Methods and means of combat. 5. Protection of the civilian population. 6. Protection of the wounded, sick and shipwrecked. 7. Protection of prisoners in armed conflict. 8. Protection of religious personnel. 9. Protection of cultural property. 10. The law of armed conflict at sea. 11. The law of neutrality. 12. The law of non-international armed conflicts. 13. The law of international

peace operations. 14. Implementation and enforcement of international humanitarian law.

HARMONY OF CONFLICT ? : THE INTERPLAY BETWEEN HUMAN RIGHTS AND HUMANITARIAN LAW IN THE FIGHT AGAINST TERRORISM

Helen Duffy. - In: *Counter-terrorism strategies in a fragmented international legal order : meeting the challenges*. - Cambridge : Cambridge University Press, 2013. - p. 482-526

Section 1 looks at the applicability of each of international humanitarian law and international human rights law in the context of the fight against terrorism, as a necessary precursor to the more detailed consideration of the interplay between these branches of the law. Section 2 considers various theoretical approaches to interplay, and the role of the International Court of Justice and human rights courts and bodies to date. Section 3 highlights a few of the many outstanding questions arising in respect of the interrelationship and the *lex specialis* notion in particular. Section 4 addresses the three issues that demonstrate the implications of these approaches to interplay in different situations of some of the questions they raise.

HEALTH AND HUMANITARIAN ASSISTANCE : TOWARDS AN INTEGRATED NORM UNDER INTERNATIONAL LAW

Brigit Toebes. In: *Tilburg law review* Vol. 18, issue 2, 2013, 133-151

This contribution assesses how a set of health-related norms under international law and ethics apply to situations where humanitarian assistance is provided. It asserts that the right to health, as an international human rights norm, is reinforced by similar standards under international humanitarian law, medical ethics and the International Health Regulations (WHO). Based on this integrated norm, there is a legal obligation to ensure access to a set of essential health-related services during emergencies, and to offer health-related protection. With respect to the duty to deliver such services we suggest that there is a shared responsibility of a number of actors. For the State where the emergency is taking place there is a primary legal responsibility to deliver essential health services. Nonetheless, if the services are (partly) provided by third parties there is a legal duty on the part of this State to respect and to guarantee the safe delivery of the services, and a duty to consent to the delivery of such aid. These duties could potentially also fall upon non-state actors, for example armed opposition groups, if they exercise certain governmental functions and *de facto* authority over a population. Arguably the international community and donor States have correlated duties to provide a certain amount of assistance and cooperation. Lastly, humanitarian aid organizations and their staff are bound by their professional ethical standards, including the principle of medical neutrality, which requires that medical aid is to be provided to everyone, irrespective of nationality and civil status.

HISTORICAL DEVELOPMENT AND LEGAL BASIS

Mary Ellen O'Connell. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 1-42

Content: Definition of the term "humanitarian law". - Historical development. - Legal sources. - Humanitarian

requirements and military necessity. - Binding effect of international law for the soldier. - Tasks of the legal adviser.

A HOBBSIAN APPROACH TO CRUELTY AND THE RULES OF WAR

Larry May. In: *Leiden journal of international law* Vol. 26, no. 2, June 2013, p. 293-313

Contrary to the way Hobbes has been interpreted for centuries, the author argues that Hobbes laid the groundwork for contemporary international law and for a distinctly moral approach to the rules of war. The paper has the following structure. First, the author explains the role that the laws of nature play in Hobbes's understanding of the state of war. Second, he explains Hobbes's views of self-preservation and inflicting cruelty. Third, he reconstructs Hobbes's important insight that rationality governs all human affairs, even those concerning war. Fourth, he explicates the idea of cruelty moving from what Hobbes says to a plausible Hobbesian position. Fifth, he addresses recent philosophical writing on how best to understand the rules of war. Sixth, he then turns to legal discussions of cruelty's place in debates about the laws of war, showing how his Hobbesian approach can ground these laws.

HOW CYBER CHANGES THE LAWS OF WAR

Jack Goldsmith. In: *European journal of international law = Journal européen de droit international* Vol. 24, no. 1, February 2013, p. 129-138

Michael Walzer's *Just and Unjust Wars* anticipated many problems and developments in the laws of war, but it understandably did not anticipate how the Internet and associated computer and telecommunications revolutions would change war or the laws that govern it. This article seeks to assess, in general terms, the ways that the rise of cyber exploitation and cyber attacks challenge prevailing conceptions of the laws of war.

HOW FAR HAS THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA REALLY COME SINCE AKAYESU IN THE PROSECUTION AND INVESTIGATION OF SEXUAL OFFENCES COMMITTED AGAINST WOMEN ? : AN ANALYSIS OF NDINDILYIMANA ET AL.

Helen Trouille. In: *International criminal law review* Vol. 13, issue 4, 2013, p. 747-788

During the first trial before the International Criminal Tribunal for Rwanda (ICTR), that of Jean-Paul Akayesu, it became evident that many Tutsi and moderate Hutu women had been raped, that "rape was the rule and its absence was the exception". Although, initially, not a single charge of sexual violence was proffered against Akayesu, presiding Judge Navanethem Pillay interrupted the proceedings, allowing ICTR prosecutors to amend the indictment and include counts of rape and sexual violence. Akayesu subsequently became the first case to recognise the concept of genocidal rape. However, post-Akayesu, comparatively few defendants appearing before the ICTR have been convicted of sexual violence. An analysis of the recent case of *Ndindilyimana et al* reveals that major shortcomings beset the investigation and prosecution procedures, so that crimes of sexual violence go unpunished, although research suggests that adequate legislation is in place at the ICTR to prosecute rape and sexual violence successfully.

HOW FAR WILL THE LAW ALLOW UNMANNED TARGETING TO GO ?

Bill Boothby. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 45-63

In this chapter, the author considers how the principle of distinction and the targeting rules, particularly the precautions in attack prescribed by article 57 of Additional Protocol I, may limit the utility of such autonomous technology. It concludes that autonomous attack may be legitimate under appropriate, but somewhat restrictive circumstances and explores the legal distinction between positive attack decisions by a person, and the ability of an individual to veto a mechanically made attack decision. In a concluding section, Boothby's chapter considers approaches that may make the use of this advanced technology more acceptable.

HUGO GROTIUS ON THE LAW OF WAR AND PEACE

Hugo Grotius ; ed. and annotated by Stephen C. Neff. - Cambridge [etc.] : Cambridge University Press, 2012. - XXXVIII, 508 p.

Student edition of this significant work that has influenced international law, international relations, natural law and political thought in general. It contains succinct but thorough introduction outlines the nature of Grotius's contributions to natural law, political theory and international law, extensive annotations explain technical points of law and arguments that are otherwise difficult to follow. Extraneous material were removed from original text.

THE HUMAN RIGHTS COUNCIL AND THE CONVERGENCE OF HUMANITARIAN LAW AND HUMAN RIGHTS LAW

Daphné Richemond-Barak. - In: *Counterinsurgency law : new directions in asymmetric warfare*. - Oxford [etc.] : Oxford University Press, 2013. - p. 3-23

This chapter's contribution lies in its analysis of the Human Rights Council's involvement in International Humanitarian Law (IHL) as a manifestation of the convergence of human rights law and IHL. It begins by examining the circumstances of the Council's creation and its recent forays into international humanitarian law (IHL). It then compares the treatment of IHL by the Council and by other human rights bodies. Unlike the Council, other human rights bodies facing similar challenges have not encroached so directly on the territory of IHL: they have generally been reluctant to address humanitarian law head-on, and have felt compelled to justify any interpretation of application of IHL. While being mindful of the growing convergence of IHL and human rights law, it is argued that the Council has neither the mandate nor the expertise necessary to act as enforcer of IHL. Finally, the consequences of the blurring of the IHL/Human rights divide by the Council is envisaged.

HUMAN RIGHTS IMPLICATIONS OF THE USAGE OF DRONES AND UNMANNED ROBOTS IN WARFARE

Nils Melzer. - Brussels : European parliament, 2013. - 53 p.

In recent years, the use of drones and other unmanned robots in warfare and other situations of violence has increased exponentially, and States continue to invest significantly into increasing the operational autonomy of such systems. While most unmanned robots are un-

armed and fulfil functions that do not give rise to particular legal concerns, the use of weaponized robots, including armed drones, has important legal and policy implications. Given that such unmanned weapon systems involve the application of armed force, the international lawfulness of their use is governed primarily by human rights law and, in situations of armed conflict, by international humanitarian law. When the use of armed robots interferes with the territorial sovereignty of other States, it may also raise issues of legality under the UN Charter.

HUMAN RIGHTS IN ARMED CONFLICT : TEN YEARS OF AFFIRMATIVE STATE PRACTICE WITHIN UNITED NATIONS RESOLUTIONS

Iliia Maria Siatitsa and Maia Titberidze. In: *Journal of international humanitarian legal studies* Vol. 3, issue 2, 2012, p. 233-262

The debate concerning the interrelation of international human rights law and international humanitarian law is certainly not new within the relevant academic circles. Nevertheless, a comprehensive study of recent State practice in the UN political bodies, that puts the opposition to the applicability of human rights to a real test, adds a new and rather intriguing twist to the matter. It appears that the statements of governments arguing for the exclusive application of international humanitarian law in armed conflicts are not always supported by their own practice within the UN political bodies. The present article explores the potential influence and importance of this observation for bridging the possible gaps between these two bodies of international law. It further identifies a number of interesting trends in the application of specific human rights norms in armed conflicts.

HUMAN RIGHTS IN NON-INTERNATIONAL ARMED CONFLICTS : A COUNTER-TERRORISM ISSUE ?

Hans J. Giessmann. In: *S+F : Sicherheit und Frieden* Jg. 31, Nr. 2, 2013, p. 59-64

Most armed conflicts today are asymmetric by nature, i.e. we see both state actors and non-state actors engaged and fighting against each other. More often than not, the conflicting actors use stigma, by labelling the opponents as terrorists, in order to gain both the public's and the international community's support for the use of force. Under the flag of countering terrorism, the parties involved in the conflict claim to protect the human rights of their own constituency while more often than not neglecting the human rights of their political, armed opponents. Against this background, this article reflects on the political implications of non-international armed conflicts for the human rights of the affected people, combatants and non-combatants alike. It sheds light on the consequences of blurring boundaries between these two types of actors for the protection of human rights and discusses some preliminary conclusions for strengthening the regime for human rights protection in non-international armed conflicts.

HUMAN RIGHTS IN THE CONTEXT OF INTERNATIONAL CRIMINAL LAW: RESPECTING THEM AND ENSURING RESPECT FOR THEM

Damien Scalia. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 575-589

The links between international criminal law and human rights law are complex, as becomes evident in view of

the number of questions raised in this chapter: Are human rights (including the rights of the accused) respected in international criminal law? Are they a source of law for the international criminal courts? What influence do human rights have on international criminal law? Furthermore, to paraphrase the title of the well-known work written on the relationship between human rights law and criminal law: are they the shield or the sword of international criminal law? The purpose of human rights law is to protect individuals when they are confronted by a superior power (legitimate or not), be it the State, the judicial system or the prison system, etc. The situation should be the same in international criminal law, the superior power being in such instances international criminal jurisdictions. However, international criminal law must face two prospects: on the one hand, international law must apply human rights law, on the other hand, it must enforce it. It has to respect human rights law and ensure respect for them. The aim of this chapter is to analyse how this duality of function plays out before the international criminal tribunals.

HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW AS LIMITS FOR SECURITY COUNCIL ACTION

Michael Bothe. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 371-390

The activities of the Security Council in the maintaining or restoring of international peace and security have expanded enormously since the end of the Cold War. The breakthrough for Security Council action was the Kuwait crisis – the invasion of Kuwait by Iraq, and the ensuing successful military action to repel it. On this occasion, the Security Council showed considerable creativity in designing measures to cope with the situation, and not all of them corresponded exactly to what could be anticipated by just reading the relevant texts of the UN Charter. This fact and further developments have fomented a debate which existed already during earlier decades, namely a discourse on the legal basis of the powers of the Security Council and their limitations. The question whether and to what extent the norms of international human rights law and international humanitarian law limit the freedom of action, or the creativity of the Security Council in designing action, is a major part of that debate. The political developments and the ensuing legal debate highlight legal uncertainties. Organs of the United Nations exercise public authority in relation to individuals – which raises the question whether they have to apply human rights in doing so, and whether human rights, thus, limit the freedom of action of UN organs, including the Security Council. Armed forces of the United Nations are involved in military hostilities – which raises the question whether the rules of international law relating to such hostilities if conducted by States apply as well to the military operations conducted by the UN.

HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW BETWEEN 1945 AND THE AFTERMATH OF THE TEHRAN CONFERENCE OF 1968

Robert Kolb. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 35-52

This chapter looks into the past and informs about the reasons why international humanitarian law (IHL) and international human rights law (IHRL) started with sepa-

ratism and why they progressively converged. The two areas of law have undergone a profound technical, ideological and structural transformation since 1945 where hardly any branches of international law have undergone such changes. Essentially, IHL shifted at least partially from "military" law to "humanitarian" law (protection of victims). Conversely, IHRL shifted from an "aspiration-law", enmeshed in politics, into a fully-fledged branch of positive international law. The humanization of the law of armed conflict and the "positivation" of IRHL opened the way for a partial merger of the two areas of the law.

HUMAN RIGHTS OBLIGATIONS IN MILITARY OCCUPATION

Noam Lubell. In: *International review of the Red Cross* Vol. 94, no. 885, Spring 2012, p. 317-337

This article examines the applicability of international human rights law in situations of military occupation. Proceeding from the position that human rights obligations can exist in these circumstances, the article provides an analysis of the precise modalities of application. It examines the tests for the determination of human rights applicability, and how these are linked to the concept of occupation. Finally, it recognizes the practical and legal challenges to the implementation of human rights obligations, and argues for a contextual approach that provides for human rights protection while recognizing the realities of military occupation.

HUMAN RIGHTS OBLIGATIONS OF NON-STATE ARMED GROUPS : A POSSIBLE CONTRIBUTION FROM CUSTOMARY INTERNATIONAL LAW ?

Jean-Marie Henckaerts and Cornelius Wiesener. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 146-169

This chapter examines whether and to what extent non-state armed groups can be considered bound by human rights law. First, it discusses the applicability of international humanitarian law to armed groups. It contrasts this with the applicability of international human rights, both treaty law and customary law, to such groups. In doing so, it presents arguments in favour of and against extending human rights obligations to armed groups. It tries to match these arguments with examples from the practice of UN bodies and experts, including UN Security Council. On this basis, it examines whether armed groups can now be considered bound by human rights law as a matter of customary international law. This chapter only addresses this question as a matter of principle and does not examine the practical interaction between humanitarian and human rights law obligations of armed groups, should they be considered to exist.

HUMAN RIGHTS OBLIGATIONS OF NON-STATE ARMED GROUPS IN OTHER SITUATIONS OF VIOLENCE : THE SYRIA EXAMPLE

Tilman Rodenhäuser. In: *Journal of international humanitarian legal studies* Vol. 3, issue 2, 2012, p. 263-290

In February 2012, the Independent International Commission of Inquiry on the Syrian Arab Republic found that opposition groups fighting against the Assad regime are bound by human rights obligations constituting peremptory norms of international law. This finding is innovative for two reasons. First, human rights obligations apply generally to the vertical relation between States

and their subjects. Second, whereas it seems accepted that non-state armed groups can have human rights obligations when they control territory, the Commission of Inquiry was unable to confirm that Syrian opposition forces exercised such control over territory. This article examines whether the finding that non-state armed groups are bound by peremptory human rights norms is supported by contemporary international law. Moreover, recent trends in the practice of the United Nations with regard to human rights obligations of non-state actors will be analysed. Even though this article argues that non-state armed groups can have human rights obligations in other situations of violence, it points out particular challenges to their practical application.

HUMAN RIGHTS OBLIGATIONS OF TERRITORIAL NON-STATE ACTORS

Yaël Ronen. In: *Cornell international law journal* Vol. 46, no. 1, Winter 2013, p. 21-50

This article considers the extension of international human rights law to encompass a particular category of non-state actors (NSAs), namely those that exercise effective territorial control to the exclusion of a government (territorial NSAs). Part I discusses the need for extending international human rights law to NSAs, suggesting that it is particularly appropriate to do so for territorial NSAs. This section also considers the breadth of such an extension. Part II assesses the present state of the law by examining state practice, decisions of judicial and quasi-judicial bodies, and reports of experts in order to determine whether human rights obligations already apply to NSAs as a matter of customary international law. The article concludes with observations about the direction in which the notion of NSA responsibility for human rights violations may be developing at present.

HUMAN RIGHTS PROTECTION DURING EXTRA-TERRITORIAL MILITARY OPERATIONS : PERSPECTIVES AT INTERNATIONAL AND ENGLISH LAW

Alexander Orakhelashvili. - In: *Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 598-637

Alexander Orakhelashvili analyzes the international and English jurisprudence regarding the effect of human rights treaties during extra-territorial military operations. The author traces the evolution of jurisprudence relating to Article 1 of the European Convention on Human Rights (ECHR). He concludes that Article 1 focuses on jurisdiction, not territory, which indicates an inherent incorporation of an extra-territoriality element. The exercise of jurisdiction inherently arises from the exercise of a state's authority through its agents. The extra-territorial element in Article 1 is to be given its ordinary meaning. Moreover, the author argues that 'effective control' is not necessary to activate Article 1, nor is Article 1 only meant to be applied regionally. The author then turns to an analysis of English approaches to the ECHR. He submits that the correct approach to the statutory effect of Article 1 is to focus on the parameters of parliamentary intention. He argues that English courts have a duty to follow the ECHR interpretation of the European Court of Human Rights. Most importantly, the author argues that the content and scope of the ECHR should be ascertained through regular methods of treaty interpretation, namely that jurisdiction should be given its ordinary

and natural meaning. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

HUMANITARIAN ASSISTANCE AND THE CONUNDRUM OF CONSENT : A LEGAL PERSPECTIVE

Cedric Ryngaert. In: *Amsterdam law forum* Vol. 5, no. 2, 2013, p. 5-19

Syria's refusal to allow humanitarian actors to provide assistance to the Syrian population in need, at least on a number of occasions, has again drawn attention to the continued validity of the requirement of state consent with regard to the outside provision of humanitarian assistance. This refusal to give consent has again foregrounded such questions as to whether a state's denial of access is an entirely discretionary decision and whether humanitarian actors can provide assistance without obtaining consent to operate.

HUMANITARIAN ASSISTANCE TO PROTECT HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

Roberto Giuffrida. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 294-319

Humanitarian assistance plays a crucial role in the International Community and a strong debate currently revolves around many of its facets: funding sources, adequacy of means, and the solutions adopted to grant universal access to victims. In case of humanitarian emergency, contrasts among the States often arise, as well as conflicts among, or inside, the main International Organizations. Public opinion plays a key role too, by facilitating the achievement of the defined goals as well as by monitoring the development of humanitarian activities to make sure they follow clear and transparent procedures. The search for this transparency is assigned to the media, which are frequently accused of arbitrarily putting forward some emergencies while ignoring others. Or, also, of creating the illusion of a prompt response from the International Community even when this is lacking. The aforementioned debate is amplified by natural disasters and armed conflicts, particularly asymmetric conflicts, where, unfortunately, we witness an increase in civil victims and the killing of humanitarian operators. In situations of conflict, the presence of humanitarian assistance operations are nowadays considered to be not only an important condition for the calling of a truce, but a necessary element to reach, in the words of the UN Secretary General, 'Global Peace', which requires the solution of social, economic, cultural and humanitarian problems. Therefore, any obstacle to the delivery of aid is correctly considered as a danger to international peace and security. But this integrated approach is often criticized as it would interfere with the independence of humanitarian operations.

THE HUMANITARIAN PROBLEM WITH DRONES

Frédéric Mégret. - [S.l.] : [s.n.], [2013]. - [30] p.

This article outlines a series of ways in which drones have been seen as problematic which it is argued are either not specifically humanitarian, or really interested in something else such as what the legal framework applicable to the "war on terror" should be. Separating these very important debates from the humanitarian questions that ought to be asked about drones as such is crucial if one is to make conceptual headway. The author examines the issue of whether there is anything

that is specific and/or inherent to drones, and address the question of whether it is that drones cause unwarranted harm to civilians. He seeks to explain how, regardless of the answer to that complicated question, drones are much more likely to be perceived as inflicting excessive damage due to their highly discriminatory potential but also, crucially, the way in which they maximize the safety of the drone operator. If anything, it is this aspect that is most specific and novel about drones. He argues that this absolute safety of the operator not only maximizes states' ability to minimize collateral harm, as has already been observed elsewhere, but also has the potential to fundamentally alter the laws of war's tolerance for collateral harm, which was always based on the assumption of a tradeoff between harm to the attacker and to "enemy civilians." It is this tradeoff that is increasingly at risk of being rendered moot. The author finishes with an attempt to contextualize the drone problem within a larger history of exogenous technological shock to international humanitarian law and how it has addressed them. Overall, the article is interested not just in determining whether drone use may or may not be "legal" but also more broadly how it impacts some of the moral underpinnings of the laws of war.

"HUMANITARIAN RIGHTS" : HOW TO ENSURE RESPECT FOR HUMAN RIGHTS AND HUMANITARIAN LAW IN ARMED CONFLICTS

Dan Kuwali. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 343-370

This chapter intends to explore the challenges in the implementation of human rights and international humanitarian law (IHL in peace support operations in order to suggest legal approaches to ensure compliance of the law by belligerents. The implementation mechanisms of human rights and humanitarian law can be classified into three groups, that is, preventive measures to be taken in peacetime; mechanisms to ensure respect during armed conflicts; and mechanisms to repress violations post facto. Although, the twenty-first century is the century of prevention, the regime for the protection of human rights and IHL has largely been reactive and event driven in the face of specific threats or acts of repression, yet prevention is more effective and cheaper than reacting after the fact. Given that observance of the law in prospect is more worthwhile for the victims than punishment of perpetrators retrospect, this discussion examines the following issues: (a) how to ensure compliance of human rights and humanitarian law by the belligerents in an armed conflict; and (b) how to protect civilians in an on-going armed conflict by deterring potential perpetrators of violations. Since the challenges revolve around the implementation and enforcement of human rights and humanitarian law in the current legal regime, it is necessary to contextualize the problems at the outset.

HUMANIZING THE LAWS OF WAR : SELECTED WRITINGS OF RICHARD BAXTER

Richard R. Baxter ; Detlev F. Vagts...[et al.]. - Oxford : Oxford University Press, 2013. - VIII, 380 p.

This book celebrates the scholarship of Richard Baxter, former Judge of the International Court of Justice and former Professor of International Law at Harvard Law School. The volume brings together Professor Baxter's writings on the laws of war, on which he was one of the

most influential scholars of the twentieth century. The collection of essays contained in this book once again makes his exceptional writings available to scholars and students in the field. His work remains timely and relevant to today's issues, and offers many analyses which have been borne out in subsequent years. It includes, amongst many wide-ranging topics within the laws of war, Baxter's studies of the Geneva Conventions, human rights in times of war, and the legal problems of international military command. Featuring a new introduction by Professor Detlev Vagts exploring the importance of Baxter's writings, and a Biographical Note by Judge Stephen Schwebel assessing Baxter's life, this book is essential reading for scholars and students of international humanitarian law.

IHL 2.0 : IS THERE A ROLE FOR SOCIAL MEDIA IN MONITORING AND ENFORCEMENT ?

Anne Herzberg and Gerald M. Steinberg. In: *Israel law review* Vol. 45, no. 3, 2012, p. 493-536

This article will examine the opportunities and limitations of using social media in the execution of legal duties relating to the monitoring and enforcement of IHL. The article will first provide an overview of social media. Next it will briefly summarise the normative framework of IHL as well as the legal duties of the primary actors and promoters of IHL (for example, states, the UN, NGOs, the International Committee of the Red Cross and courts) to monitor and enforce these rules. The article will then address specific legal obligations relating to IHL monitoring and enforcement and the impact of social media on meeting these requirements. Throughout, the article will use case studies from several conflict zones, including Sudan, Uganda, Mexico, Somalia, Gaza and Libya. The article will conclude that social media can play a critical role in promoting IHL education, and monitoring for potential violations. The benefits of this technology, however, are less clear for carrying out legal obligations related to the enforcement of IHL, such as fact-finding, arrest and prosecution. It is essential, therefore, that clear guidelines for utilising this quickly evolving technology, particularly in official fact-finding and judicial frameworks, be established.

"IHL" AS "ISLAMIC HUMANITARIAN LAW" : A COMPARATIVE ANALYSIS OF INTERNATIONAL HUMANITARIAN LAW AND ISLAMIC MILITARY JURISPRUDENCE AMIDST CHANGING HISTORICAL CONTEXTS

Omar Yousaf. In: *Florida journal of international law* Vol. 24, no. 2, August 2012, p. 439-468

This analysis illustrates the similarities between Islamic military jurisprudence and international humanitarian law (IHL), while demonstrating that most of the inconsistencies between the two are due to the social contexts in which they were formulated, not an innate incompatibility. As such, an underlying theme of this Note is that relevant principles of armed conflict must be looked at through the prism in which they were formulated because that will help establish their continued relevance today. After an introduction to the relevant sources of law in each respective tradition so as to illustrate their legitimacy and their influence on the regulation of armed conflict, this Note discusses the importance of *jus ad bellum*, and how the socio-historical contexts that underlie the justifications of going to war have shaped the laws that regulate the conduct of war. Next, it turns to a comparative analysis of particular principles related to

the regulation of armed conflict, including civilian immunity and the principle of distinction (including the distinction between civilian and military objectives), the combatant's privilege, and prisoners of war (POWs). It concludes by demonstrating that Islam can stay true to its own traditions, while working within, and contributing to, the broader international framework.

THE ILA USE OF FORCE COMMITTEE'S FINAL REPORT ON THE DEFINITION OF ARMED CONFLICT IN INTERNATIONAL LAW (AUGUST 2010)

International Law Association Committee on the Use of Force. - In: *What is war ? : an investigation in the wake of 9/11*. - Leiden ; Boston : M. Nijhoff, 2012. - p. 319-367

In May 2005, the Executive Committee of the International Law Association approved a mandate for the Use of Force Committee to produce a report on the meaning of war or armed conflict in international law. The report was motivated by the United States' position following the attacks of 11 September 2001 that it was involved in a "global war on terror". The U.S. position was contrary to a trend by states attempting to avoid acknowledging involvement in wars or armed conflicts. The Committee was asked to study the evidence in international law and report on how international law defines and distinguishes situations of war and peace. Given that important aspects of international law turn on whether a situation is properly defined as armed conflict, providing a clear understanding of what counts as armed conflict would support the proper functioning of the law in general. Most fundamentally, it would support the proper application of human rights law.

THE ILLEGALITY OF MILITARY SUPPORT TO REBELS IN THE LIBYAN WAR : ASPECTS OF JUS CONTRA BELLUM AND JUS IN BELLO

Olivier Corten and Vaios Koutroulis. In: *Journal of conflict and security law* Vol. 18, no. 1, Spring 2013, p. 59-93

One of the most prominent aspects of the 2011 conflict in Libya was the overt support, both military and non-military, offered to the Libyan anti-Gaddafi rebels by the States that intervened in the conflict. The present article evaluates the conformity of this support with the rules of *jus contra bellum* and *jus in bello*. From a *jus contra bellum* perspective, support of the Libyan rebels exceeds the 'necessary measures' that the intervening States were allowed to take in order to protect the civilian population in the Libyan conflict according to Security Council resolution 1973 (2011). From a *jus in bello* perspective, instead of identifying possible violations of international humanitarian law during military operations on a case-by-case basis, the article takes a step back and analyses the legality of the support of the rebels as such. In view of the violations of humanitarian rules reportedly committed by the rebels, the continuous support of the rebels constitutes, on behalf of the supporting States, a violation of the customary obligation to ensure respect for international humanitarian law.

THE ILLEGALITY OF OFFENSIVE LETHAL AUTONOMY

David Akerson. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 65-98

Because a robot cannot replicate human emotive and perceptive traits at the present time, this chapter argues

that offensive lethal autonomous robots (OLARs) are inherently illegal under IHL for three reasons. First, the fundamental rules of IHL - including the principles of distinction and proportionality - require the application of judgment and discretion. These terms necessarily refer to human judgment and discretion, which are not reducible to mathematical precision. Second, if technology provides OLARs with human-like judgment and discretion, they must then be legally analyzed as combatants. Under such analysis, OLARs as a class would be illegal, as they do not meet the IHL definition of a "member of an armed force". Finally, this chapter argues that OLARs are so contrary to considerations of humanity and public conscience that they should be banned regardless of the previous two arguments.

THE IMPACT OF MILITARY JUSTICE REFORMS ON THE LAW OF ARMED CONFLICT : HOW TO AVOID UNINTENDED CONSEQUENCES

Victor Hansen. In: Michigan State international law review Vol. 21, issue 2, 2013, p. 229-272

One consequence of the "civilianization" of the military justice systems in Canada the United Kingdom and elsewhere potentially impacts the commander's own personal criminal liability. The doctrine of command responsibility holds that a commander may be criminally liable for the law-of-war violations committed by the forces under his command if a commander fails to prevent, suppress, or punish law-of-war violations that he either knew about or was reckless or negligent in failing to notice, he can be punished as if he committed the underlying offenses. It is the commander who, by use of all the resources and authority available to him, ensures that his forces do not violate the laws of war. If those forces do, it is in large part attributable to the commander's failings. If, as a result of the civilianization of military justice, commanders lose a significant portion of the disciplinary authority they have traditionally held, do they no longer occupy that critical position of responsibility over the forces under their command? If they have lost that authority, to whom does the law now turn to for accountability? Does the commander, who has lost some of his authority, lose the ability to maintain discipline through the military justice system, and does he find himself in a situation where he is given responsibility to maintain discipline and control without having sufficient authority to meet that obligation? This article raises and addresses these important questions and it provides a framework for considering military justice reforms that preserve the commander's critical role in law of war compliance.

IMPLEMENTATION AND ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW

Silja Vöneky. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 647-700

Content: General. - Public opinion. - Reciprocal interests of the parties to the conflict. - Maintenance of discipline. - Reprisals. - Command responsibility. - Penal and disciplinary measures. - Reparation. - Protecting powers and their substitutes. - International fact-finding. - The international Committee of the Red Cross. - Implementation roles of the UN. - The Security Council and international humanitarian law. - Diplomatic activities. - The role of non-governmental organizations. - National imple-

menting measures. - Dissemination of humanitarian law. - Personal responsibility of the individual.

THE IMPLEMENTATION AND ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - XXIV, 505 p.

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

IMPLEMENTATION IN PRACTICE : 60 YEARS OF DISSEMINATION AND OTHER IMPLEMENTATION EFFORTS FROM A NORWEGIAN PERSPECTIVE

Arne Willy Dahl and Camilla Guldahl Cooper. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 319-345

This chapter gives an overview of the Norwegian efforts to implement and disseminate the law of armed conflict, from the ratification of the four 1949 Geneva Conventions to the present. The authors' particular focus is to describe the extent to which references are made, or not made, to a "principle of humanity" or to humanitarian considerations in national implementation and dissemination efforts. They demonstrate how the increased participation of Norway in armed conflicts (such as through the contribution of troops to the ISAF operation in Afghanistan) has led to increased attention to international humanitarian law in general, and also to an increased focus on the humanitarian aspects of these rules. It is suggested that the Norwegian perspective on international humanitarian law is influenced by the lack of armed conflicts involving Norwegian territory and interests.

IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW IN TANZANIA : A LEGAL ENQUIRY

Khoti Kamanga. In: African yearbook on international humanitarian law 2012, p. 40-63

At the core of this paper are three fundamental questions that arise in respect of Tanzania. First is whether the Geneva Conventions (and other relevant treaties) have been signed, ratified and "domesticated". Secondly, is the identification of the core, fundamental obligations arising from "expressing consent to be bound" by the Geneva Conventions and their Additional Protocols. Thirdly, to examine the extent to which, if any, in Tanzania, as a State Party, has honoured its treaty obligations. In pursuing the aforementioned three questions, and to give a regional dimension, the corresponding situation in two of Tanzania's neighbours; that is, Kenya and Uganda, is given, even if in respect to only select national implementation measures.

IMPRESCRIPTIBILITÉ DES CRIMES DE GUERRE : RÉFLEXIONS À PARTIR D'UN CAS CONCERNANT LA TURQUIE

Melike Batur Yamaner ; Emre Öktem. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1171-1184

L'imprescriptibilité des crimes de guerre a toujours été un thème de débat fort controversé en droit international, notamment depuis la Seconde Guerre Mondiale. Toutefois, la doctrine turque s'y était peu intéressée, probablement en raison du fait que, depuis 1945, ce pays n'avait eu qu'une expérience limitée de conflits armés, à savoir la guerre de Corée (1950) et l'intervention à Chypre (1974). C'est justement en relation avec ce dernier conflit que la justice turque a dû s'interroger, de manière bien tardive et inattendue, sur l'imprescriptibilité des crimes de guerre. La complexité, aussi bien factuelle que juridique de l'affaire, invite à l'analyse. Le génocide et les crimes contre l'humanité et les crimes de guerre constituent des catégories distinctes en tant qu'infractions graves aux Conventions de Genève. Or le nouveau Code Pénal prévoit l'imprescriptibilité pour le génocide et les crimes contre l'humanité, alors qu'il l'omet en ce qui concerne les crimes de guerre. Le choix du législateur est-il délibéré? En tout cas, ce choix est clair: les crimes de guerre ne sont pas imprescriptibles. Il serait superflu d'affirmer que le droit pénal est hermétiquement clos à tout raisonnement par analogie à plus forte raison quand l'analogie opère directement au détriment de l'accusé.

IN SEARCH OF A HUMAN FACE IN THE MIDDLE EAST : ADDRESSING ISRAELI IMPUNITY FOR WAR CRIMES

Jeff Handmaker. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald*. - The Hague : T.M.C. Asser Press, 2013. - p. 155-168

This essay addresses the response of Avril McDonald and others to the behaviour of Israel's military during its 2006 bombing of Qana in Southern Lebanon, which was followed by further aggression in Gaza in 2008–2009. Recalling the responses of states to South Africa's military aggression in the 1980s, this short contribution reflects on Avril's scholarly contributions in order to find a "human face" through advancing international humanitarian law order to restrain Israel's military and to protect civilians.

IN SEARCH OF LEGAL GROUNDS TO DETAIN FOR ARMED GROUPS

Nelleke Van Amstel. In: *Journal of international humanitarian legal studies* Vol. 3, issue 1, 2012, p. 160-191

Arbitrary deprivation of liberty is prohibited by international law; hence even during armed conflict internment of adversaries must have a legal basis in international humanitarian law or national law. The law of non-international armed conflict contains an inherent power to intern. Nevertheless, a further legal source is needed to ensure detention is not arbitrary, outlining grounds and procedure of detention. Such legal grounds do not exist for internment by organised armed groups. This article will outline the possible consequences for members of armed groups when interning without a further legal basis, thus in violation of the prohibition of arbitrary detention, and will subsequently suggest solutions to overcome the imbalance between obligations imposed upon and instruments granted to these actors.

THE "INCENDIARY" EFFECT OF WHITE PHOSPHOROUS IN COUNTERINSURGENCY OPERATIONS

Shane R. Reeves. In: *The army lawyer* Issue 6, June 2010, p. 84-90

Under the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) of the Certain Conventional Weapons Treaty the use of white phosphorus munitions is held to a more restrictive standard when it is employed in an incendiary role as opposed to a non-incendiary role. Recent events may be eroding the acceptability of this dual standard. The findings of the UN's 2010 "Goldstone Report" argued that use of white phosphorus in either role was increasingly likely to generate negative reactions from the international community. The author argues that these findings, combined with the ratification of Protocol III by the US, indicate that it is strategically beneficial for military commanders to voluntarily restrict their use of white phosphorus during counter-insurgency operations. The author suggests this is the case because winning the support of the local population is so critical to success. Accordingly, the author concludes by recommending that commanders should consider using their Rules of Engagement to regulate all uses of white phosphorus, both incendiary and non-incendiary, even when this exceeds what is currently required under international humanitarian law. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

INITIAL REPORT OF THE ILA USE OF FORCE COMMITTEE ON THE DEFINITION OF ARMED CONFLICT (2008)

prepared by the International Law Association Committee on the Use of Force. - In: *What is war ? : an investigation in the wake of 9/11*. - Leiden ; Boston : M. Nijhoff, 2012. - p. 275-305

In May 2005, the Executive Committee of the International Law Association approved a mandate for the Use of Force Committee to produce a report on the meaning of war or armed conflict in international law. The report was motivated by the United States' position following the attacks of 11 September 2001 that it was involved in a "global war on terror". The U.S. position was contrary to a trend by states attempting to avoid acknowledging involvement in wars or armed conflicts. The Committee was asked to study the evidence in international law and report on how international law defines and distinguishes situations of war and peace. Given that important aspects of international law turn on whether a situation is properly defined as armed conflict, providing a clear understanding of what counts as armed conflict would support the proper functioning of the law in general. Most fundamentally, it would support the proper application of human rights law.

THE INTER-AMERICAN COURT OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

Hélène Tigroudja. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 466-479

In order to cast light on the relationship between the American convention on human rights as interpreted by the inter-American court of human rights and humanitarian rules, this chapter looks at and comments different cases where these latter were invoked and used. The position of the Court has evolved from the *Las Palmeras v. Colombia* case (2000) to the more recent, *Prison Miguel Castro Castro v. Péru* (2006). In the former, the Court strongly refused to condemn Colombia for the breach of international humanitarian law and international criminal law. From the mid-2000s, precise and numerous references to the Geneva Conventions, their

Protocols or customary law are so frequent that one can ask the question whether the differences between international law of human rights and humanitarian law exist.

THE INTERACTION BETWEEN INVESTMENT LAW AND THE LAW OF ARMED CONFLICT IN THE INTERPRETATION OF FULL PROTECTION AND SECURITY CLAUSES

Gleider I. Hernández. - In: Investment law within international law : integrationist perspectives. - Cambridge : Cambridge university press, 2013. - p. 21-50

The present study focuses on the interaction of international investment law with the law governing armed conflict; a phenomenon of increasing importance, given the emergence of situations of violence in states that have, in recent years, actively entered in bilateral investment treaties (BITs). Many of these BITs contain so-called "full protection and security" clauses, which impose a positive obligation on contracting states to take measures to provide a certain measure of protection; the question remains whether this obligation can be said to remain unaffected by the emergence of a situations of armed conflict. This chapter is an attempt to consider the workings of investment law during situations of armed conflict through the prism of public international law. The first section considers the impact of armed conflict in public international law generally, and make the claim that international humanitarian law constitutes a form of *lex specialis*, which can come to modify, in case of conflict between them, treaty obligations such as those contained in BITs. The second section examines practice in the investment law sphere in relation to "full protection and security" clauses, in order to assess whether investment law has adopted an approach consistent with international law.

L'INTERACTION NORMATIVE ENTRE DROIT INTERNATIONAL HUMANITAIRE ET DROIT INTERNATIONAL DES DROITS DE L'HOMME : DE LA FRAGMENTATION À LA COMPLÉMENTARITÉ

Jean Baptiste Harelimana. In: Anuário brasileiro de direito internacional Vol. 2, no. 13, julho de 2012, p. 11-62

L'article invite à une odyssee prospective du débat consacré à la relation entre le droit des conflits armés et le droit international des droits de l'homme. L'auteur y aborde la problématique de leur interaction, signifiant dynamique et non statique, à partir du débat large portant sur le caractère fragmentaire du droit international. L'examen des différentes manières dont ces corpus s'articulent permet de comprendre que leur complémentarité s'est construite sous l'influence mutuelle de la doctrine, du juge et du législateur, tous trois surdéterminés par la nécessité de relever les défis des conflits armés asymétriques et identitaires pour mieux protéger l'universel humain.

INTERACTIONS BETWEEN INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW FOR THE PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS = INTERACCIÓN ENTRE EL DERECHO INTERNACIONAL HUMANITARIO Y EL DERECHO INTERNACIONAL DE LOS DERECHOS HUMANOS PARA LA PROTECCIÓN DE LOS DERECHOS ECONÓMICOS, SOCIALES Y CULTURALES

Koldo Casla. In: Revista electrónica de estudios internacionales Núm. 23, junio 2012, 17 p.

Economic, social and cultural rights (ESCR) are at risk on the battlefield. Thus, human rights lawyers must look

for legal means to guarantee the best possible protection of these rights in case of war. It is generally accepted nowadays that both international humanitarian law (IHL) and international human rights law (IHRL) are applicable during armed conflicts. Adding on that and based on a procedural and substantive legal analysis, this paper claims that both IHL and IHRL constantly interact in a relation of synergy or norms.

INTERCEPTION ON THE HIGH SEAS IN THE CONTEXT OF PEACE AND SECURITY : THE RIGHT OF VISIT IN CASES OF ARMED CONFLICT AND SECURITY COUNCIL'S ACTION

Efthymios Papastavridis. - In: The interception of vessels on the high seas : contemporary challenges to the legal order of the oceans. - Oxford ; Portland : Hart, 2013. - p. 83-112

This chapter discusses a series of recent cases where either the belligerent right of visit was applied or the interdiction operations were mandated by the UN Security Council. The author argues that it is legally more justifiable to classify such interdiction operations under the rubric of the law of naval warfare, rather than under the *jus ad bellum* and the right of self-defence, this being more congruent with the basic tenet of "la juridicité" of the high seas, as well as with the fundamental principle of legal certainty under general international law.

INTERNAL CONTROL : CODES OF CONDUCT WITHIN INSURGENT ARMED GROUPS

by Olivier Bangerter. - Geneva : Small Arms Survey, 2012. - XII, 143 p.

Whatever their objectives, armed groups in various contexts tend to rely on similar mechanisms to control their fighters. These include a recruitment process that aims to provide the group with the appropriate human resources in quantity and quality; a socialization process for new recruits (such as through oaths and initiation rituals); and the elaboration of internal regulations—such as codes of conduct—and their dissemination among the rank and file. The past few years have witnessed a surge of interest in codes of conduct, but confusion persists regarding their role and significance. The term 'code of conduct' is a loose concept that lacks a universal definition. Across armed groups, codes of conduct share few commonalities. Some are oral, some are written; some are short and some are very long; some are entitled 'code of conduct' while others have entirely different names, such as 'creed' or 'rules and points for attention'. What they do have in common is that they constitute part of the internal regulations of armed groups, defining the type of behaviour that the leadership expects from all of its members. This Occasional Paper sets out to define more methodically what constitutes a code of conduct, and how it compares to other types of internal regulations known to have been used by armed groups. Using case study analysis, it then reflects on the conditions under which codes of conduct are effective in controlling the behaviour of fighters. Finally, the report examines whether codes of conduct are a potential tool for enhancing respect for humanitarian norms, with a particular focus on weapons control.

AN INTERNATIONAL CALL FOR MORATORIUM ON THE USE OF DEPLETED URANIUM IN MILITARY WEAPONS

Michael Kabai. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 3/2013, p. 137-141

The use of depleted uranium in military weapons is a commonplace in countries like the US and the UK. It seems, though, the international community is not in favour of the use of depleted uranium in military weapons. The rationale being that the use of depleted uranium in weapons results in environmental damage and severe impact on human health. The paper will examine the international measures results in environmental damage and sever impact on human health. The paper will examine the international measures impacting on the use of depleted uranium in military weapons. It will also examine the case laws on the use of depleted uranium in military weapons. Finally, the paper will argue that the use of depleted uranium in military weapons should be prohibited and that there should be an immediate international moratorium on the use of depleted uranium in military weapons.

THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND HUMAN RIGHTS LAW

Godofredo Torreblanca. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 540-569

There is nowadays a common agreement that Human Rights Law (HRL) applies in peace and wartime. In the former case, its scope of application obviously includes situations of internal violence. This chapter attempts to scrutinise how the ICRC deals with this law in fulfilling its international mandate in either armed conflicts or situations of internal violence. More precisely, it looks at whether the ICRC can or should take HRL into account in performing its mandate; and secondly, how the ICRC makes use of this law in its day-to-day work. The first part of this chapter focuses briefly on the ICRC's legal nature, some of its main features and its international mandate in case of armed conflicts or situations of internal violence. This part ends with a legal analysis of the ICRC's competence in dealing with HRL. The second part presents the ICRC position vis-à-vis HRL from an historical perspective. It finally explores from a practical viewpoint the ways the ICRC uses and applies HRL in its day-to-day work.

THE INTERNATIONAL COURT OF JUSTICE AND THE LAW OF ARMED CONFLICTS

Claus Kress. - In: The development of international law by the International Court of Justice. - Oxford : Oxford University Press, 2013. - p. 263-298

This chapter shows in what way the International Court of Justice has contributed to the development of the law of armed conflict by reviewing its case law. It shows that the court strongly emphasized that the substitution of the concept "international humanitarian law" for that of "laws and customs of war" was not only a terminological matter, but also signified the liberation of the law of armed conflicts from the normative limitations flowing from the traditional idea of inter-state reciprocity as expressed by traditional concepts such as the *si omnes* clause and belligerent reprisals. The Court reconceptualized the traditional "laws and customs of war", the codification of which was driven to a significant extent by a utilitarian calculation of state interest, as an integral humanitarian legal regime designed, above all, to ensure respect for the human person. At the same time and despite its clearly articulated humanitarian impetus, the Court, all in all, has been significantly less adventurous than the ICTY when it comes to the progressive

development of the law of armed conflicts. This is primarily due to the fact that the occasions on which the Court has had the opportunity to pronounce on questions of the law of armed conflicts have been fairly limited in number, but also because the Court has not fully seized its relatively few opportunities.

INTERNATIONAL CRIMINAL COURT (ICC) STATUTE AND IMPLEMENTATION OF THE GENEVA CONVENTIONS

Commonwealth Secretariat. In: Commonwealth law bulletin Vol. 37, no. 4, December 2011, p. 681-781

Armed conflicts are usually accompanied by the worst atrocities known to mankind, namely, crimes against humanity, war crimes and genocide. The pressing need to bring perpetrators of these atrocities to account has seen the establishment of tribunals culminating in the permanent International Criminal Court (ICC) established by the Rome Statute. Commonwealth governments have consistently pronounced support for the ICC and what it represents, which is consistent with Commonwealth values. The support of the Commonwealth is translated into a variety of technical assistance provided to member countries to ratify and implement the Rome Statute and strengthen national criminal justice systems to enable the domestic prosecution of ICC crimes. A model law was developed in 2004 and revised in 2011 in view of contemporary legal developments. This article presents the revised model law with commentary and among other things notes the impact on international humanitarian law.

INTERNATIONAL ENFORCEMENT IN NON-INTERNATIONAL ARMED CONFLICT : SEARCHING FOR SYNERGY AMONG LEGAL REGIMES IN THE CASE OF LIBYA

John Cerone. In: International law studies Vol. 88, 2012, p. 369-395

This article provides an overview of applicable rules of international law through different phases of the situation in Libya and sketches out various modes of enforcement action employed by international organizations to respond to the crisis, analyzing several of the controversial legal issues that arise in that context. The article concludes with an analysis of the unresolved legal issues implicated by the evolving situation in Libya and by the international community's responses to it.

THE INTERNATIONAL HUMANITARIAN FACT-FINDING COMMISSION AND THE LAW OF HUMAN RIGHTS

Eric David. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 570-574

After some 20 years of existence, the International Humanitarian Fact-finding Commission (IHFFC) has never received any request for investigation. This 'technical unemployment' of IHFFC is surprising because, if among the 72 States that have recognized the competence of the Commission, few are, or were confronted with armed conflicts, such conflicts have not disappeared since 1991, and nothing precludes a third State or an international organization to request a fact-finding mission from the Commission. The object of this short note to describe whether the Commission could deal with human rights violations. Given the lack of practice of the Commission, the following developments remain purely theoretical. The question of the jurisdiction of the Commission with respect to human rights may arise for

two reasons: as part of an agreement between two parties to lodge a request with the Commission for an investigation outside the context of an armed conflict; and as part of an armed conflict when an allegation of human rights violation is submitted to the Commission. This chapter contends that the Commission can exercise its jurisdiction in the second case but not in the first one.

INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

Matthew Happold. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 444-466

Matthew Happold examines the relationship between international human rights law and international humanitarian law. He examines situations in which both bodies of law simultaneously govern a matter, highlighting the jurisprudence of the International Court of Justice, the Inter-American Court of Human Rights and the European Court of Human Rights. Human rights law is important because it helps regulate state conduct in situations of derogation in civil conflict, which is not covered by humanitarian law. Furthermore, states' human rights obligations apply when they are in effective control of an occupied territory and when they have detained persons outside their national territory. The author concludes that where both bodies of law apply the more general rule will be interpreted in reference to the more specific, with the goal of norm conflict avoidance. In some cases, however, the relative permissiveness of international humanitarian law cannot be reconciled with international human rights law. Attempts to reconcile the two bodies of law can only be done on a case-by-case basis. Because international humanitarian law is not based on an individual rights paradigm, and thus does not provide mechanisms for individual legal redress, individuals will continue to bring complaints regarding armed conflict before human rights bodies. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS RULES IN AGREEMENTS REGULATING OR TERMINATING AN INTERNAL ARMED CONFLICT

Luisa Vierucci. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 416-438

This chapter focuses on the provisions of the agreements stipulated between a government and an armed opposition group to regulate the relations that originate from internal armed conflict concerning the regulation of the conduct of hostilities and the treatment of persons deprived of their liberty in connection with armed conflict, as well as the protection of human rights. These provisions can be included in the agreements that specifically aim to regulate those very aspects of the relations originating from the conflict or in the agreements having a different object, for example in the pacts establishing a ceasefire. The objective of the inquiry is to verify whether these agreements' provisions amount to international law regulating an armed conflict, namely international humanitarian law (IHL), or guaranteeing internationally protected human rights.

INTERNATIONAL HUMANITARIAN LAW AND NEW WEAPON TECHNOLOGIES, 34TH ROUND TABLE ON CURRENT ISSUES OF INTERNATIONAL HUMANITARIAN LAW, SAN REMO, 8-10 SEPTEMBER 2011

keynote address by Jakob Kellenberger and conclusions by Philip Spoerri. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 809-817

The keynote address goes through the technologies that have only recently entered the battle field or could potentially enter it: Cyber warfare, remote-controlled weapon systems and robotic weapon systems. The conclusion highlights five aspects that appeared to be recurring: the uncertainty of facts - it is not always clear what is technically feasible in today's theatres of war, and less clear what will be feasible in the future and when and also not always clear what the humanitarian impact is; the fact that new technologies remove soldiers further and further away from the battle field ; the lack of transparency about the effects of certain weapons for the civilian population ; the fact that new technologies can actually also be tools for more transparency, namely to support the witnessing, recording and investigation of violations ; whether new technologies will reduce our capacity to allocate responsibility and accountability for violations remains to be seen ; and finally, the most recurrent overarching theme was maybe that technology, in itself, is neither good nor bad. It can be a source of good and progress or result in terrible consequences at worst.

INTERNATIONAL HUMANITARIAN LAW AND THE CHANGING TECHNOLOGY OF WAR

ed. by Dan Saxon. - Leiden ; Boston : M. Nijhoff, 2013. - XVIII, 357 p.

Increasingly, war is and will be fought by machines - and virtual networks linking machines - which, to varying degrees, are controlled by humans. This book explores the legal challenges for armed forces resulting from the development and use of new military technologies - automated and autonomous weapon systems, cyber weapons, "non-lethal" weapons and advanced communications - for the conduct of warfare. The contributions, each written by scholars and military officers with expertise in international humanitarian law (IHL), provide analysis and recommendations for armed forces as to how these new technologies may be used in accordance with international law. Moreover, the chapters provide suggestions for military doctrine to ensure continued compliance with IHL during this ever-more rapid evolution of technology.

INTERNATIONAL HUMANITARIAN LAW CODE : TEXTS UP TO 1 JUNE 2013

by Eric David, Françoise Tulkens, Damien Vandermeersch ; in collab. with Sylvie Ruffenach. - Bruxelles : Bruylant, 2013. - XXIII, 1022 p.

Sources of international humanitarian law

INTERNATIONAL HUMANITARIAN LAW IN TIMES OF CONTEMPORARY WARFARE : THE NEW CHALLENGE OF CYBER ATTACKS AND CIVILIAN PARTICIPATION

Charlotte Lülfi. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 26, 2/2013, p. 74-82

In the past few years, armed conflicts have been increasingly affected by the deployment of modern weapon technologies. As a new phenomenon, cyber space and operations against or through computers come to the fore. But this new technology is not the only challenge. The participation of civilians, especially technical experts, challenges fundamental principles of humanitarian law, as for instance the principle of distinction. One has to question whether traditional humanitarian law and its rules can still be effectively applied to cyber attacks.

INTERNATIONAL HUMANITARIAN LAW TRANSPARENCY

Lesley Wexler. - [S.l.] : [s.n.], [2013]. - [16] p.

Demands for enhanced public transparency span the range of IHL activities: the classification of conflicts, the sorting of combatants and civilians, the numbers of civilian casualties, the deployment of unlawful weapons, conditions of detention, the use of coercive interrogation, its facilitation via extraordinary rendition, and punishment for unlawful activities. Part I begins by broadly contextualizing some of the most frequently deployed mechanisms of public transparency (Official acknowledgement by governments, third parties actors revelations, disclosure obligations made mandatory by domestic law, ...). Part II uses a 2010 German ordered air strike in Kunduz, Afghanistan to investigate the role of various transparency mechanisms in the current IHL climate. The strike raised such questions as whether an armed conflict existed, what rules of IHL applied, what the facts on the ground were concerning civilian casualties, and whether government actors had lied or engaged in a cover up. Part III turns to the substantive content of IHL itself to survey existing and possible future transparency requirements. While legal scholars have exhaustively discussed domestic information forcing statutes, they have written much less about how IHL itself can be used as a tool to compel disclosure. While such requirements would still require domestic implementation, they affect transparency on a global scale. This paper concludes by noting the contours of this new IHL frontier. What normative priors inform this frontier? What questions demand further research? What sort of reforms need to be assessed?

INTERNATIONAL LAW AND ARMED CONFLICT : FUNDAMENTAL PRINCIPLES AND CONTEMPORARY CHALLENGES IN THE LAW OF WAR

Laurie R. Blank, Gregory P. Noone. - New York :
Wolters Kluwer, 2013. - XL, 690 p.

This coursebook is organized in a practical manner. Rather than dealing with the various law of armed conflict topics based on their appearance in key treaty instruments, the book begins by examining the "why" (or purpose) of the law of armed conflict, before turning to the "what" (definition) and "when" (scope of application). The authors then deal serially with the "who" (participants) and the "how" (conduct of hostilities) of the law of armed conflict before concluding with an examination of the ways in which this body of law is implemented and enforced. Alongside more conventional materials (treaty law, domestic and international jurisprudence), woven throughout the book are short first-person vignettes, real stories written by practitioners with operational experience and expertise in the specific topic. Each topic ends with a list of questions to challenge the reader to seek answers to difficult issues.

INTERNATIONAL LAW AND CIVIL WARS : INTERVENTION AND CONSENT

Eliav Lieblch. - London ; New York : Routledge, 2013. -
XVII, 286 p.

This book examines the international law of forcible intervention in civil wars, in particular the role of party-consent in affecting the legality of such intervention. In modern international law, it is a near consensus that no state can use force against another - the main exceptions being self-defense and actions mandated by a UN Security Council resolution. However, one more potential exception exists : forcible intervention undertaken upon the invitation or consent of a government, seeking assistance in confronting armed opposition groups within its territory. Although the latter exception is of increasing importance, the numerous questions it raises have received scant attention in the current body of literature. This volume fills this gap by analyzing the consent-exception in a wide context, and attempting to delineate its limits, including cases in which government consent power is not only negated, but might be transferred to opposition groups. The book also discusses the concept of consensual intervention in contemporary international law, in juxtaposition to traditional legal doctrines. It traces the development of law in this context by drawing from historical examples such as the Spanish civil war, as well as recent cases such as those of the Democratic Republic of the Congo, Somalia, Libya and Syria. This book will be of much interest to students of international law, civil wars, the responsibility to protect, war and conflict studies and IR in general.

INTERNATIONAL LAW, POLITICS AND INHUMANE WEAPONS : THE EFFECTIVENESS OF GLOBAL LANDMINE REGIMES

Alan Bryden. - Abingdon ; New York : Routledge, 2013.
- XII, 173 p.

Two treaties have emerged under International humanitarian law (IHL) in response to the humanitarian scourge of landmines. However, despite a considerable body of related literature, clear understandings have not been established on the effectiveness of these international legal frameworks in meeting the challenges that prompted their creation. This book seeks to address this lacuna. An analytical framework grounded in regime theory helps move beyond the limitations in the current literature through a structured focus on principles, norms, rules, procedures, actors and issue areas. On the one hand, this clarifies how political considerations determine opportunities and constraints in designing and implementing IHL regimes. On the other, it enables us to explore how and why 'ideal' policy prescriptions are threatened when faced with complex challenges in post-conflict contexts.

INTERNATIONAL LEGAL IMPLICATIONS OF ISRAEL'S ATTACK ON THE GAZA AID FLOTILLA

Sari Bashi... [et al.]. In: Proceedings of the 105th annual
meeting [of the] American Society of International Law
2011, p. 463-475

Contient : Law and the Israeli attack on the humanitarian
aid flotilla to Gaza / D. L. Khairallah. - Remarks by Sari
Bashi, Sarah Weiss Ma'udi and Naz Modirzadeh

INTERNATIONAL ORGANISATIONS' INVOLVEMENT IN PEACE OPERATIONS : APPLICABLE LEGAL FRAMEWORK AND THE ISSUE OF RESPONSIBILITY : PROCEEDINGS OF THE 12TH BRUGES COLLOQUIUM, 20-21 OCTOBER 2011 = L'IMPLICATION DES ORGANISATIONS INTERNATIONALES DANS LES MISSIONS DE PAIX : LE CADRE JURIDIQUE APPLICABLE ET LA QUESTION DE LA RESPONSABILITÉ : ACTES DU 12E COLLOQUE DE BRUGES, 20-21 OCTOBRE 2011

CICR, Collège d'Europe. In: Collegium No 42, automne 2012, 179 p.

Session 1 : Applicability/application of IHL to international organisations (IO) involved in peace operations. - Session 2 (panel discussion) : Applicability/application of human rights law to IOs involved in peace operations. - Session 3 : The determination of international responsibility for wrongful acts committed in the course of peace operations. - Session 4 : Effectuating international responsibility during peace operations ? - Session 5 : Individual responsibility for IHL/HRL violations committed during peace operations.

INTERVIEW WITH RAJA SHEHADEH

by Vincent Bernard, Michael Siegrist and Anton Camen. In: *International review of the Red Cross* Vol. 94, no. 885, Spring 2012, p. 13-28

In this interview, Raja Shehadeh gives his views on the relevance of occupation law today, as well as his personal reflections on Israel, the Palestinian Authority, and the work of international organizations such as the ICRC.

IRREGULAR NAVAL WARFARE AND BLOCKADE

by James Kraska and Raul Pedrozo. - In: *International maritime security law*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 859-901

The law of naval warfare is a subset of the law of armed conflict, and it consists mostly of *jus in bello*, or the conduct of hostilities during a state of war. The law of naval warfare still reflects a great dose of customary international law, although much of it has been codified in treaty. The contemporary law of naval warfare was developed largely through customary international law from the time of the age of sail through the end of World War I, and it was largely codified by the Hague Conventions of 1907. The 1995 San Remo manual on international law applicable to armed conflicts at sea, which was developed in the aftermath of the Iran-Iraq "tanker war" of the 1980s, contains a restatement of current practice in the law of naval warfare.

IS JUS IN BELLO IN CRISIS ?

Jens David Ohlin. In: *Journal of international criminal justice* Vol. 11, no. 1, March 2013, p. 27-45

It is a truism that new technologies are remaking the tactical and legal landscape of armed conflict. While such statements are undoubtedly true, it is important to separate genuine trends from scholarly exaggeration. The following essay, an introduction to the Drone Wars symposium of the *Journal*, catalogues today's most pressing disputes regarding international humanitarian law (IHL) and their consequences for criminal responsibility. These include: (i) the triggering and classification of armed conflicts with non-state actors; (ii) the relative scope of IHL and international human rights law in asymmetrical conflicts; (iii) the targeting of suspected

terrorists under concept- or status-based classifications that render them subject to lawful attack; (iv) the legal fate of Central Intelligence Agency (CIA) drone operators who participate in armed conflict without the orthodox privilege of combatancy conferred on members of the armed forces; and (v) the principle of proportionality as it applies to drone strikes that produce collateral damage. What emerges from this survey is a portrait of drones as a technological development that has radically escalated pre-existing tensions in IHL that first emerged with manned aerial attacks and artillery. As conflicts with non-state actors proliferate and intensify, these pre-existing tensions will continue to transform, via state practice, the reciprocity usually associated with orthodox IHL.

IS THE LAW OF OCCUPATION APPLICABLE TO THE INVASION PHASE ?

Marten Zwanenburg, Michael Bothe and Marco Sassòli. In: *International review of the Red Cross* Vol. 94, no. 885, Spring 2012, p. 29-50

It is not always easy to determine when an invasion has become an occupation and whether or not the law of occupation could already be applied during the invasion phase. In this regard, two main positions are usually put forward in legal literature. Generally it is held that the provisions of occupation law only apply once the elements underpinning the definition set out in Article 42 of the 1907 Hague Regulations are met. However, the so-called 'Pictet theory', as formulated by Jean S. Pictet in the ICRC's Commentary on the Geneva Conventions, proposes that no intermediate phase between invasion and occupation exists and that certain provisions of occupation law already apply during an invasion. Three experts in the field of occupation law have agreed to participate in this debate and to defend three approaches. Marten Zwanenburg maintains that for determining when an invasion turns into an occupation the only test is the one set out in Article 42 of the 1907 Hague Regulations, and therefore rejects the 'Pictet theory'. Michael Bothe, while also rejecting the 'Pictet theory', argues that a possible intermediate situation between invasion and occupation, if there is any at all, would be very short and that, once an invader has gained control over a part of an invaded territory, the law of occupation applies. Finally, Marco Sassòli defends the 'Pictet theory' and argues that, in order to avoid legal vacuums, there is no distinction between an invasion phase and an occupation phase for applying the rules of the Fourth Geneva Convention.

IS THERE A COURT FOR GAZA ? : A TEST BENCH FOR INTERNATIONAL JUSTICE

Chantal Meloni, Gianni Tognoni ed.. - The Hague : T. M. C. Asser Press, 2012. - XIX, 594 p.

The Israeli attack on Gaza of 27 December 2008 - 18 January 2009 (so-called 'Operation Cast Lead') started a critical debate at the international level on the alleged war crimes and possible crimes against humanity committed during and before the operation. The book collects contributions by professors and scholars in the field of international law and puts together official documents that were produced at the international level before and as follow-up to the "Goldstone report". Part 1 brings together selected materials from the international conference "Is there a court for Gaza?", that was held on 22 May 2009 in Rome. Part 2 brings together contributions

on the UN fact finding mission on the Gaza conflict and follow-up at the international and domestic level. Part 3 is dedicated to the legal debate on the admissibility of the Palestinian declaration pursuant to article 12(3) of the Rome Statute of the International Criminal Court. Finally part 4 deals with non-judicial responses, more specifically the Russell Tribunal on Palestine.

IS THERE A NEED FOR NEW INTERNATIONAL HUMANITARIAN LAW IMPLEMENTATION MECHANISMS ?

Paolo Benvenuti and Giulio Bartolini. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 590-627

The contributions contained in this chapter prompt some remarks about the effectiveness of the traditional means of enforcement envisaged by international humanitarian law (IHL) and about the advisability of reinforcing them, eventually grafting on to them some human rights (HR) implementation approaches. We must look at the means of implementation of IHL with some innovative ideas in order to overcome a situation in which the contemporary realities of armed conflicts are frequently paved with regrettable humanitarian defeats.

THE ISLAMIC LAW OF QITAL AND THE LAW OF ARMED CONFLICT : A COMPARISON

Niaz A. Shah. - In: The liberal way of war : legal perspectives. - Farnham ; Burlington : Ashgate, 2013. - p. 213-238

This chapter seeks to demonstrate the broad compatibility between the Islamic law of qital and the law of armed conflict by examining the basics and general principles of both bodies of law. It does this in two parts. The first part discusses and compares the basic principles of the Islamic law of qital - military necessity, distinction, proportionality, humanity and an obligation to accept offers of peace- with similar basic principles of the law of armed conflict. The second part of this chapter discusses and compares some general principles of the Islamic law of qital, related to genocide, war crimes and crimes against humanity, the treatment of war captives, rape as a war crime, civilian immunity, individual criminal responsibility, mutilation, perfidy and ruses of war, child soldiers, safe passage and quarter, hostages and truces and armistices, with identical general principles of the law of armed conflict. Although not discussed in detail in this chapter, it should be pointed out that the grey areas and blind spots of the Islamic law of qital can also be clarified; they can be expanded upon and developed to ensure their compatibility with the law of armed conflict.

ISLAMIC LAW ON PROTECTION AND ASSISTANCE OF CIVILIANS AFFECTED BY ARMED CONFLICTS AND NATURAL DISASTERS, METHODS AND MEANS OF WARFARE, AND TREATMENT OF PRISONERS OF WAR

Mohd Hisham Mohd Kamal. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 245-261

Islamic law has several branches, and the one relevant in times of wars and armed conflicts is al-siyar, which is the Islamic conception of international relations that generally prescribe the behavior of Muslim States in dealing with non-Muslim States. Human life is one of the five human interests; its protection is one of the objectives of Islamic law. The other four are faith of Muslims,

dignity, intellect, and property. Al-siyar contains, among other things, the law of war, the law of peace, and neutrality. The concept of jihad is the main issue in al-siyar. With regard to the humanitarian aspect, al-siyar enumerates the permissible and the forbidden conducts in the State of war, including conducts of belligerence towards civilians and prisoners of war. Civilians are people who do not take part in hostilities, while prisoners of war are captured combatants. This article focuses on three aspects. The first aspect provides protection and assistance to civilians who are affected by armed conflicts and natural disasters. It is to be noted that the conduct of Muslim States in response to natural disaster is not covered by al-siyar. The second aspect deals with the methods and means of warfare, while the third concerns the treatment of prisoners of war.

THE ISSUE OF INTERNATIONAL HUMANITARIAN LAW APPLICABILITY TO RECENT UN, NATO AND AFRICAN UNION PEACE OPERATIONS (LIBYA, SOMALIA, DEMOCRATIC REPUBLIC OF CONGO, IVORY COAST...)

Tristan Ferraro. In: Recueils de la Société internationale de droit militaire et de droit de la guerre 19, 2013, p. 315-323

After first underscoring that peace operations (PO) are characterized by the fact that - very often - the troops contributing countries (TCC) and the international organizations (IO) involved tend to deny IHL applicability to their own action, this article addresses in more details three specific contexts. The UN forces in Democratic Republic of Congo context is quite emblematic because until 2006, the UN forces deployed were generally viewed as non-belligerent, thus entitled to protections granted by IHL to civilians. At the end of 2006 then again in 2007 and 2008, the UN forces took part in military against non-state organized armed groups, thus asking the question whether the UN forces should be considered as party to the NIAC in DRC. The "Unified Protector" operation in Libya allows the analysis of the applicability of IHL to TCC and IO under an IAC prism. Arguments have been put forward that TCC were not involved in an armed conflict nor did they carry out military operations whose objective was to submit/defeat the enemy. The African Union's implication in the NIAC in Somalia is interesting because it illustrates how the legitimate use of force in self-defence can turn peace forces into party to a NIAC.

IUS IN BELLO UNDER ISLAMIC INTERNATIONAL LAW

Mohamed Elewa Badar. In: International criminal law review Vol. 13, issue 3, 2013, p. 593-625

In 1966, Judge Jessup of the International Court of Justice pointed out that the appearance of an English translation of the teaching on the 'Islamic law of nations' of an eighth-century Islamic jurist (Shaybani) is particularly timely and of so much interest because of the debate over the question whether the international law, of which Hugo Grotius is often called the father, is so completely Western-European in inspiration and outlook as to make it unsuitable for universal application in the context of a much wider and more varied international community of States. However, there has been little analysis of the role of Islam in shaping the modern European law of war and its progeny, international humanitarian law. This article argues that there is a room for the contribution of the Islamic civilisation within international humanitarian law and a conversation between different civilisations is

needed in developing and applying international humanitarian law norms.

JOURNALISTS AS A PROTECTED CATEGORY : A NEW STATUS FOR THE MEDIA IN INTERNATIONAL HUMANITARIAN LAW

Elizabeth Levin. In: *UCLA journal of international law and foreign affairs* Vol. 17, issue 1 & 2, Spring 2013, p. 215-250

The nature of modern warfare has vastly changed the role of journalists in conflict and, therefore, the reliability of the protections afforded to them. Countries such as the United States have interpreted international humanitarian law in such a way that leaves journalists vulnerable to targeting decisions based solely on the content of their writings. International law must take a firm step forward in not only securing de facto protection for journalists, but in reaffirming their importance to the public. Such a step may best be taken by adopting a new status for journalists. Under this new status, a journalist could not be said to have directly participated in conflict without a proven intention to incite violence and would therefore remain immune from direct targeting no matter how much the content of the reporting supports or undermines the objectives of a belligerent party.

LA "JUDICIARISATION" DES OPÉRATIONS MILITAIRES : THÉMIS ET ATHÉNA

Christophe Barthélemy. - Paris : L'Harmattan, 2012. - 269 p.

La guerre, domaine de l'extraordinaire, est régie par des règles qui lui sont propres. Mais le droit des conflits armés est de plus en plus happé par le droit commun. Or il existe une différence majeure entre le droit des conflits armés et le droit interne. Le droit des conflits armés prohibe l'excès dans l'emploi de la force armée contre l'ennemi, l'emploi de la force armée contre les non-combattants et les biens culturels, enfin les atteintes à la vie, à l'intégrité corporelle et à la dignité des non combattants. Inversement, le droit interne n'autorise l'emploi de la force qu'en légitime défense ou sous l'empire de l'état de nécessité, même pour les forces de l'ordre. Le problème principal, pour les forces européennes, et avant tout françaises et britanniques, réside ainsi dans l'application de leur droit pénal national et dans la judiciarisation des opérations militaires hors du territoire national qui s'ensuit. Cette problématique devient d'autant plus prégnante que les opérations dans lesquelles elles sont engagées depuis une vingtaine d'années relèvent de plus en plus de la "guerre au milieu des populations". L'analyse porte plus précisément sur les opérations combinant les quatre caractéristiques suivantes: 1. L'emploi de la force armée et l'exercice de la contrainte (y compris à l'égard des prisonniers détenus); 2. L'exécution hors du territoire national, c'est-à-dire en territoire étranger ou en haute mer: en temps de paix, dans les territoires et eaux nationales, le militaire est un citoyen ordinaire et le maintien de l'ordre relève de formations spécialisées et de modes d'action spécifiques, sous l'autorité des préfets et des hauts commissaires; 3. La conduite d'opérations militaires, soit par les objectifs poursuivis, soit par les forces et les modes d'action employés; 4. L'absence d'état de guerre, au sens du code de justice militaire, qui est construit, en application de la Constitution, autour de la distinction cardinale entre le "temps de paix" et le "temps de guerre.

JUGER EN TEMPS DE GUERRE

par Françoise Dreyfus. - In: *Mélanges François Julien-Laferrière*. - Bruxelles : Bruylant, 2011. - p. 219-229

Ce chapitre analyse deux décisions de la Cour suprême d'Israël siégeant en tant que Haute cour de justice, ayant eu à se prononcer sur deux requêtes relatives à la situation humanitaire résultant des opérations conduites dans la bande de Gaza. Ces recours introduits le 7 et 9 janvier 2009, demandaient à la Cour de donner des injonctions, d'une part, pour permettre l'évacuation des blessés et faire cesser les attaques dont les ambulances et le personnel médical étaient victimes et, d'autre part, pour mettre fin à la coupure d'électricité empêchant, entre autres, les hôpitaux de fonctionner normalement. Le jugement rendu le 19 janvier et rejetant la requête est intéressant à analyser parce qu'il intervient à chaud, alors que les moyens mis en œuvre pour "mettre un terme aux attaques à la roquette de l'organisation terroriste hamas contre Israël" ont été particulièrement meurtriers et considérés comme totalement disproportionnés par l'opinion internationale.

JUS AD BELLUM, JUS IN BELLO ET DROITS DE L'HOMME

William A. Schabas. - In: *L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier*. - Bruxelles : Bruylant, 2013. - p. 1417-1427

Ce chapitre revient sur les difficultés importantes liées à la compréhension du rapport entre le droit international humanitaire et le droit international des droits de l'homme qui persistent, et particulièrement l'application de la théorie de la *Lex specialis*. Tout d'abord, l'auteur constate que si le raisonnement la Cour internationale de justice est fondé sur la théorie de la *Lex Specialis*, elle n'a en réalité pas trouvé nécessaire d'écarter le droit international des droits de l'homme avec une norme de droit international humanitaire mais a plutôt effectué une réconciliation entre les deux systèmes. Il analyse ensuite l'interprétation de la notion d'"atteinte arbitraire" à la vie du Pacte international relatif aux droits civils et politiques. Si la théorie de la *lex specialis* est adoptée, le sens du mot "arbitraire" est évalué à la lumière de la norme de droit humanitaire, or la protection offerte par le droit humanitaire est plus nuancée étant donné que le but de la guerre est de porter atteinte à la vie des combattants. Enfin, il note qu'il n'est ni nécessaire ni souhaitable que les droits de l'homme ignorent la question de la légalité du recours à la force meurtrière en temps de conflit armé. Or la théorie de la *lex specialis* nous amène à écarter le débat sur le *jus ad bellum* car on ne s'interroge pas sur le but légitime du combattant sous le régime du droit humanitaire car cela risque de menacer l'efficacité du *jus in bello*.

JUS AD/CONTRA BELLUM

Vaios Koutroulis. - In: *Droit international humanitaire : un régime spécial de droit international ?*. - Bruxelles : Bruylant, 2013. - p. 157-194

Ce chapitre traite de la question des relations entre le *jus contra bellum* et le *jus in bello* afin de déterminer si ces deux branches du droit international sont complètement indépendantes l'une de l'autre ou si, au contraire, elles s'influencent réciproquement et, le cas échéant, si cette influence aboutit à leur (con)fusion comme l'affirmation de manière récurrente certaines théories. La première section est consacrée à l'étude de la relation d'indépendance existant entre le *jus contra bellum* et le

jus in bello, qui constitue la caractéristique principale des rapports entre les deux corps de règles. La deuxième section confronte les champs d'application ratione materiae respectifs du jus contra bellum et du jus in bello afin d'identifier leur liens éventuels. La section trois étudie en profondeur les notions de nécessité et de proportionnalité qui sont souvent présentées comme formant des "ponts" permettant une certaine interaction entre ces deux corps de règles. Cette double étude des points de contact permettra de déterminer s'il convient de remettre en question la séparation entre le jus contra bellum et le jus in bello.

JUS POST BELLUM IN THE AGE OF TERRORISM

introductory remarks by Kristen Boon ; remarks by Larry May... et al.. In: Proceedings of the [...] annual meeting of the American Society of International Law No. 106, 2012, p. 331-345

These contributions critically assess the place of the nonstate actor in the context of jus post bellum in light of the war on terrorism and the increase in intra-state conflict. In particular, they discuss the philosophical justifications for a jus post bellum, its contents and scope, the limits of the concept as compared to transitional justice and the law of peace, and how jus post bellum might be applied to conflicts in Northern Ireland and Afghanistan.

JUSTICE THROUGH ARMED GROUPS' GOVERNANCE : AN OXYMORON ?

Jan Willms. - Berlin : DFG Collaborative Research Center (SFB) 700, October 2012. - 30 p.

In this paper, the author addresses the question of whether armed groups' courts are suitable to enforce international humanitarian law. The ensuing question of whether the existence of these courts conforms to international law is answered in the affirmative: international humanitarian law and human rights law do not in principle prohibit the operation of such courts. Adjudication by armed groups has a relatively high potential to deter the groups' fighters from committing violations of international humanitarian law. This is to a large extent because convictions by armed groups' courts gain more attention among fighters than convictions by national or international criminal courts. However, the empirical record of armed groups' courts is mixed. The African armed groups examined in this paper violated international humanitarian law, including due process guarantees. Yet, they showed more respect for civilians than many armed groups without their own jurisdiction.

THE KIDS BEFORE KHADR : HAITIAN REFUGEE CHILDREN ON GUANTANAMO : A COMMENT ON RICHARD J. WILSON'S OMAR KHADR : DOMESTIC AND INTERNATIONAL LITIGATION STRATEGIES FOR A CHILD IN ARMED CONFLICT HELD AT GUANTANAMO

Kate Jastram. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 81-98

Richard J. Wilson provides an invaluable insider's account of international law in the case of Omar Khadr. A number of themes in his troubling essay are worthy of further reflection.

This Comment focuses on the kids before Khadr, the Haitian children whose dangerous escape by sea from their violent, impoverished homeland ended in military custody on Guantanamo. While other Guantanamo

narratives have examined the important constitutional and law of war precedents such as *Johnson v. Eisen-trager*, it was the Haitian refugees' legal struggles in the 1990s that set the stage for the post-9/11 litigation over what rights, if any, could be claimed by Khadr and other non-U.S. citizens held there.

KILLING IN THE FOG OF WAR

Adil Ahmad Haque. In: Southern California law review Vol. 86, no. 1, November 2012, p. 63-116

This Article answers two of the most urgent and important questions facing the contemporary law of armed conflict. First, how certain must a soldier be that a given individual is a combatant and not a civilian before attacking that individual? Second, what risks must soldiers accept to themselves and to their mission in order to reduce the risk of mistakenly killing civilians?

KNOCK, KNOCK; WHO'S THERE ? : ANNOUNCING TARGETED KILLING PROCEDURES AND THE LAW OF ARMED CONFLICT

John C. Harwood. In: Syracuse journal of international law and commerce Vol. 40, no. 1, Fall 2012, p. 1-27

Acting as a Special Rapporteur on extrajudicial, summary, or arbitrary executions for the Human Rights Council of the United Nations, in 2010 Professor Alston published a report addressing the targeted killing programs of the U.S., Israel, and Russia. The report focused on issues such as national sovereignty, the right to self-defense, who may be targeted (and its corollary, what constitutes a "direct participation in hostilities"), the use of Remotely Piloted Aircrafts (RPA) in targeted killings, and "[t]he requirements of transparency and accountability." This article focuses on Alston's specific assertion that LOAC and IHRL require transparency and accountability for targeted killing programs. This article summarizes the current use of RPAs by the U.S. in Afghanistan and Pakistan, analyzes the argument put forward for transparency in the targeting procedures, and counters the assertion that states should be obligated to disclose the criteria and procedures of their targeted killing programs. Specifically, this article argues that because the conflict between U.S. forces and al Qaeda and the Taliban is properly characterized as "armed conflict," with the application of LOAC as the *lex specialis*, there is no requirement to publicize or disclose the criteria and procedures of the U.S. targeted killing program.

THE LAST ROUND ? : A POST-GOTOVINA REASSESSMENT OF THE LEGALITY OF USING ARTILLERY AGAINST BUILT-UP AREAS

Darren Vallentgoed. In: Journal of conflict and security law Vol. 18, no. 1, Spring 2013, p. 25-57

Artillery has been a staple of siege warfare for centuries as a cheap and effective weapon against area and point targets; however, its legality under the rules of International Humanitarian Law may be changing. The recent Ante Gotovina case at the International Criminal Tribunal for the Former Yugoslavia (ICTY) reflects an evolving line of jurisprudence that could result in a global reassessment of the legal norms for using artillery against targets located in urban areas. Thus far, commentators have criticized the Gotovina trial judgement on the basis that the law should conform to the technical limitations of artillery, but this article proposes that if basic artillery cannot conform to the standards of accu-

racy required under IHL, then it should not be paired to targets in urban areas. At a minimum, if after a calculation of probable errors of the fall of shot, the margin of error lies outside of that accepted by international tribunals, then a decision to nonetheless engage the urban target may rise to the standard of recklessness and result in possible criminal liability for the commander. In a 3-2 majority decision, the ICTY Appeals Chamber overturned the Trial Chamber decision in Gotovina, but did not articulate what legal standard it applied in doing so. The result muddies the legal waters as it pertains to artillery and exposes a deep divide in the application of the law by international criminal tribunals.

LAW AND ETHICS FOR AUTONOMOUS WEAPON SYSTEMS : WHY A BAN WON'T WORK AND HOW THE LAWS OF WAR CAN

Kenneth Anderson, Matthew C. Waxman. In: Washington College of law research paper No. 11, 2013, 32 p.

Public debate is heating up over the future development of autonomous weapon systems. Some concerned critics portray that future, often invoking science-fiction imagery, as a plain choice between a world in which those systems are banned outright and a world of legal void and ethical collapse on the battlefield. Yet an outright ban on autonomous weapon systems, even if it could be made effective, trades whatever risks autonomous weapon systems might pose in war for the real, if less visible, risk of failing to develop forms of automation that might make the use of force more precise and less harmful for civilians caught near it. Grounded in a more realistic assessment of technology - acknowledging what is known and what is yet unknown - as well as the interests of the many international and domestic actors involved, this paper outlines a practical alternative : the gradual evolution of codes of conduct based on traditional legal and ethical principles governing weapons and warfare.

THE LAW OF ARMED CONFLICT : AN OPERATIONAL APPROACH

Geoffrey S. Corn... [et al.]. - New York : Wolters Kluwer Law & Business, 2012. - XLIV, 599 p.

This book covers all aspects of the law of armed conflict, explaining the difference between law and policy in regulation of military operations. It provides a complete operational scenario and introduction to the operational organization of United States armed forces. The focus remains on United States law perspective, balanced with exposure to areas where the interpretation of its allied forces diverge. Jus ad bellum and jus in bello issues are addressed at length. The text includes excerpts from treaties and treaty commentaries, domestic and international cases, Department of Defense directives, service field manuals, and regulations implementing legal obligations.

THE LAW OF ARMED CONFLICT AT SEA

Wolff Heintschel von Heinegg. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 463-547

Content: General. - Military objectives and protected objects in armed conflicts at sea. - Special provisions concerning methods of naval warfare. - Hospital Ships.

THE LAW OF BELLIGERENT OCCUPATION IN THE SUPREME COURT OF ISRAEL

David Kretzmer. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 207-236

Since the 1967 War, in the course of which Israel occupied the West Bank and Gaza, the Supreme Court of Israel has considered thousands of petitions relating to acts of the military and other authorities in those territories (OT). This article reviews the contribution to the law of belligerent occupation of the Court's jurisprudence in these cases. After discussing issues of jurisdiction and the applicable norms, the article reviews the way in which the Court has interpreted military needs, the welfare of the local population, changes in the local law, and use of resources; the attitude of the Court to the long-term nature of the occupation and the existence of Israeli settlements, settlers, and commuters in the OT; the introduction of a three-pronged test of proportionality in assessing military necessity; and hostilities in occupied territories. The final section draws some general conclusions on the Court's contribution to the law of occupation.

THE LAW OF COMMAND RESPONSIBILITY

M. P. W. Brouwers (ed.). - Nijmegen : Wolf Legal Publishers, 2012. - 245 p.

This book elaborates on issues related to the application and development of the law of command responsibility or superior responsibility. It clarifies the evolution and the nature of the law of command responsibility, followed by the elements of command responsibility, such as the "superior-subordinate relationship", the mental elements: "knew or had to know" and the "failure to prevent and punish". A brief comment is also made on the practical application of the law of command responsibility, such as the phases of investigation and prosecution, trial and the conviction and sentence. It primarily draws from the case-law of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone which have taken the lead in the legal development of the law of command responsibility.

THE LAW OF INTERNATIONAL PEACE OPERATIONS

Ben F. Klappé. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 611-646

Content: General. - Applicable law. - Mandates. - Rules of engagement (ROE). - Search, apprehension, and detention. - Child soldiers. - Humanitarian assistance by armed forces.

THE LAW OF MILITARY OCCUPATION AND THE ROLE OF DE JURE AND DE FACTO SOVEREIGNTY

Salvatore Fabio Nicolosi. In: Polish yearbook of international law Vol. 31, 2011, p. 165-187

This article aims at defining the specific tenets of the doctrine of "military occupation" and assessing how it deals with the issue of "sovereignty", looking at the problem from a historical perspective. Accordingly, after tracing the evolution of belligerent occupation as a legal institution of international law, attention is turned to the concepts of "effectiveness" and "temporariness" and the interplay between de jure and de facto sovereignty in the light of the "occupation zone model", as it has been

applied in the course of international practice. Against this background the article discusses the hypothesis that the codification of the "laws of war" and evolution of the doctrine of military occupation as a temporary and limited regime, whose final aim is to restore legitimate sovereignty over the occupied territory, constitutes a paradigm which could and should apply to various unlawful territorial situations today which have arisen as a result of a misapplication of the law of military occupation.

THE LAW OF NEUTRALITY

Michael Bothe. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 549-580

Content: General. - The rights and duties of neutral states.

THE LAW OF NON-INTERNATIONAL ARMED CONFLICT

Dieter Fleck. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 581-610

Content: General. - Applicable law. - Legal distinction between international and non-international armed conflicts. - Compliance. - Termination of hostilities.

THE LAW OF OCCUPATION AND HUMAN RIGHTS LAW : SOME SELECTED ISSUES

Tristan Ferraro. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 273-293

This contribution addresses the issue of the co-application of human rights law and the law of occupation through the lens of three specific themes. First it asks the question whether the implementation of human rights law can be used as a justification for the occupying power's "transformative" agenda. Second, it analyzes the role of human rights law in situations of prolonged occupation as an extension of the occupying power's authority in occupied territory. Finally it addresses the issue of human rights and the use of force in occupied territory.

THE LAW OF THE POSSIBLE IN ARMED CONFLICT : A COMMENT ON UNPRIVILEGED BELLIGERENTS, PREVENTIVE DETENTION, AND FUNDAMENTAL FAIRNESS

Deborah Pearlstein. In: *Santa Clara journal of international law* Vol. 11, no. 1, 2012, p. 181-187

While it might once have been possible to imagine that international humanitarian law (IHL) simply supplanted human rights law (HRL) during armed conflict, acting as the exclusive body of law governing the conduct of warring parties and occupying forces, the rapid development of HRL after World War II, coupled with the proliferation of non-traditional armed conflicts, have helped drive the development of a consensus view that both bodies of law matter in times of armed conflict. But the consensus on how they matter is far from specific. How do the laws interact ? When they can be read as complementary ? In particular, which law should prevail in the event specific rules in application conflict ? All of these questions remain the subject of much scholarship and dispute.

THE LAW OF WAR

Ingrid Detter. - Farnham ; Burlington : Ashgate, 2013. - XXXI, 534 p.

This work explores the changing legal context of modern warfare in light of events over the last decade. The author reviews the status of non-state actors, as individuals and groups become more prominent in international society. Covering post 9/11 events and the resulting changes in the ethos of war, she analyses the role of military companies and examines what their legitimacy means for international society. It also discusses certain "intrinsic" rules in the law of war, such as rules giving individuals the right to be spared genocide, torture, slavery and apartheid and assure them basic democratic rights. The author questions the right of "illegal" combatants to be treated as prisoners of war and suggests that a minimum standard must be afforded to all, whether captured dictators or detainees suspected of terrorism. In the modern world, the individual (the soldier, the civilian, the dictator, the terrorist or the pirate) can no longer behave as they wish. Further new topics include "target killings", the "right to protect" ("R2P" - claimed to be a new form of intervention), the use of unregulated weapons such as drones and robots, the war scenario in outer space and cyber crimes. There is also a discussion of new developments in the field of war crimes including severe criticism of the novel concept "joint criminal enterprise" (JCE), which, in the opinion of the author, undermines the rule of law.

LAWS OF OCCUPATION

Christine Chinkin. - In: *Multilateralism and international law with Western Sahara as a case study*. - [Pretoria] : VerLoren van Themaat Centre, University of South Africa, 2010. - p. 196-221

This presentation looks at the legal definitions of belligerent occupation and its consequences. What might be termed 'occupation law' is both complex and lacking in clarity. These difficulties derive from both legal and factual considerations. Factually, the state of occupation covers a range of political and ideological scenarios. Legally, occupation law is found across a range of treaties, soft law instruments, customary international law, and, in the case of Iraq, modified by Security Council (SC) resolution. This last has led to a spate of litigation and academic writing which poses the question whether occupation law has undergone significant transformation, or whether the situation in Iraq is exceptional and of little precedential value. The very multiplicity of legal regimes creates inconsistencies and gaps in the law. Despite the inconsistencies and uncertainties in occupation law, one aspect is uncontroversial: occupation is the flip side of the coin to self-determination.. This presentation focuses on the situation of Western Sahara and Morocco.

LAWS OF WAR, MORALITY, AND INTERNATIONAL POLITICS : COMPLIANCE, STRINGENCY, AND LIMITS

Henry Shue. In: *Leiden journal of international law* Vol. 26, no. 2, June 2013, p. 271-292

A person with moral commitments can respect International Humanitarian Law (IHL) only if the permissions granted by it do not depart radically from their basic morality, but the features of contemporary war require considerable departures from morality in the content of any rules applicable to war. The features of the contemporary international political arena, in turn, and especial-

ly the dominant interpretation of sovereignty, require that IHL be the same for all parties. But, contrary to the arguments of some influential analytic philosophers, such 'symmetry' in the laws need not involve their content's departing excessively from basic morality. Insisting on the same rules for all, however, leads to the problem that, other things equal, the more stringent the content of a set of rules, the greater the temptation on the part of self-interested parties to flout the rules. However, a hard-headed view of IHL requires no concessions to terrorists or anti-terrorists.

LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY : THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE

Laurie R. Blank. In: University of Pennsylvania law review online Vol. 161, p. 347-361

This Essay, written as a response to Professor Jennifer Daskal's thought-provoking article on the geography of the battlefield, addresses the debate over the geographical parameters of armed conflict through a focus on the operational consequences of efforts to draw geographical lines setting the parameters of conflict. The question of geographical application of LOAC is both highly relevant in the most pragmatic sense – the difference between being in an area of armed conflict or not can literally be life or death – and also not susceptible to specific and concrete definition. This combination of relevance and thorniness has led not only to extensive debates about how to conceptualize the geographic parameters of the battlespace in an armed conflict but also to alternative paradigms for regulating the use of force through rules-based frameworks, hybrid paradigms or other mechanisms. This essay highlights two primary concerns as a counterpoint to the idea of a new set of rules based on shifting geographical combat zones, even in light of the potential procedural benefits such new rules and frameworks might engender: 1) how the lack of strategic clarity trickles down to affect operational and tactical clarity, and 2) the long-term consequences for the development and implementation of the law of armed conflict.

LEGAL AND POLICY IMPERATIVES FOR THE PREVENTION, PROTECTION, ASSISTANCE AND DURABLE SOLUTION TO THE PLIGHT OF INTERNALLY DISPLACED PERSONS (IDPs) IN NIGERIA

Muhammed Tawfiq Ladan. In: African yearbook on international humanitarian law 2011, p. 79-106

This paper sets the following objectives: to provide a situation analysis on the causes and impact of internal displacement on internally displaced persons (IDPs); to review the current national response to the plight of IDPs through an examination of the country's existing legal, political and institutional frameworks; to explore the challenges to the development of a national response to the plight of IDPs; and to present a number of viable options for alleviating the plight of IDPs in Nigeria.

A LEGAL ASSESSMENT OF THE US DRONE STRIKES IN PAKISTAN

Shakeel Ahmad. In: International criminal law review Vol. 13, issue 4, 2013, p. 917-930

While assessing the legality of the US drone strikes in Pakistan, this article takes into account the nature of

armed conflict which has potential to be converted into an international armed conflict (IAC) from a non-international armed conflict (NIAC). The growing trust-deficit between Pakistan and the US is catalyst for determination of nature of armed conflict. The arguments based on tacit consent of Pakistan no longer stands valid after a clear protest by Pakistani officials at national, bilateral and international level. It also examines the observance of the rules of International Humanitarian Law (IHL) in comparison with official US statements. Continued drone strikes are now being considered as counter-productive and resulting in increased suicide bombing in various cities of Pakistan. The author suggests a collaborative effort by considering other social, political and economic factors to minimize the violation of IHL for desired results.

A LEGAL "RED LINE" ? : SYRIA AND THE USE OF CHEMICAL WEAPONS IN CIVIL CONFLICT

Jillian Blake and Aqsa Mahmud. In: UCLA law review discourse Vol. 61, 2013, p. 244-260

This essay analyzes the prohibition on the use of chemical weapons in civil conflicts and applies its findings to the Syrian civil war. International humanitarian law and international criminal law provide a clear ban on the use of chemical weapons in international armed conflict. This prohibition is less clear in noninternational armed conflict, suggesting the need for legal reforms to firmly ban the use of chemical weapons in all armed conflicts. Furthermore, the use of chemical weapons in Syria does not, by itself, cross a legal red line justifying military intervention. Instead, the use of chemical weapons is one factor in determining the existence of a humanitarian crisis requiring strong international action.

THE LEGAL REGIME GOVERNING THE USE OF LETHAL FORCE IN THE FIGHT AGAINST TERRORISM

David Kretzmer. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 559-588

The case study that forms the starting point for this analysis involves use of lethal force by one State (A) against a non-state actor who is currently in the territory of another State (B). State A claims that the said non-state actor is involved in terrorist activities directed against it or its citizens, and that State B has failed to take action to apprehend him and put an end to his terrorist activities, because it is either unwilling or incapable of doing so. The question for discussion is which regime of international law applies to the action of State A. In analysing this question it is important to distinguish between two separate, though connected, issues: (1) legality of using force in the territory of another state; (2) the right to life of the individual concerned.

THE LEGAL REGIME GOVERNING TRANSFER OF PERSONS IN THE FIGHT AGAINST TERRORISM

Margaret L. Satterthwaite. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 589-638

Crimes of terrorism are frequently committed by individuals and groups in countries other than those they target. Even when "home-grown" terrorists are responsible for violent acts, they often flee across borders to evade

justice. States seeking to punish acts of terrorism therefore regularly need to obtain custody of individuals accused of committing such acts. They may do so by requesting the extradition or deportation of a suspect from a state where the individual is found. States also directly apprehend suspected terrorists in other countries and deliver them to justice before their own or third states' courts through "rendition to justice". Finally, when terrorism occurs in the context of armed conflict, states may move suspects from one state to another through war-time processes such as the transfer of prisoners of war. Because they are carried out in a wide variety of settings, a careful examination of relevant rules of international human rights and humanitarian law is needed. This chapter examines the legal norms governing such transfers and sets out a minimum standard that must be upheld in all settings. This standard is most relevant for informal transfers, since they are almost always accomplished without regard to the full set of protections due to the individual being transferred, therefore this chapter focuses mainly on the minimum rules required when states transfer individuals outside of deportation or extradition proceedings.

THE LEGAL REGIME GOVERNING TREATMENT AND PROCEDURAL GUARANTEES FOR PERSONS DETAINED IN THE FIGHT AGAINST TERRORISM

Jelena Pejic and Cordula Droege. - In: *Counter-terrorism strategies in a fragmented international legal order : meeting the challenges*. - Cambridge : Cambridge University Press, 2013. - p. 527-558

The term "terrorist" has been marked by inverted commas not to downplay the extremely serious nature of terrorist acts, but to indicate that the designation has become almost legally meaningless. It is habitually used to cover both violent attacks directed against the general population in peacetime, which are prohibited by several bodies of law, as well as the use of force against legitimate military objectives in armed conflict, which are not prohibited under international humanitarian law (even though they remain prohibited under the domestic law of the detaining state). Thus, any attempt to examine the legal framework governing the response to conduct colloquially labelled "terrorist" must take into account the context in which it took place: peacetime or armed conflict? This chapter attempts to briefly outline the rules governing the treatment of persons detained and their procedural rights based on this contextual distinction, with situation of armed conflict, i.e. international humanitarian law, serving as the starting point. As will be shown, in some cases the rules are the same regardless of the situation at hand, whereas in others they differ. The analysis focuses on (1) the rules governing treatment; and (2) procedural safeguards applicable in detention, in particular security detention.

LEGAL REGULATION OF BELLIGERENT REPRISALS IN INTERNATIONAL HUMANITARIAN LAW : HISTORICAL DEVELOPEMENT AND PRESENT STATUS

Brian Sang YK. In: *African yearbook on international humanitarian law 2012*, p. 134-184

This author discusses the ongoing debate over the place of belligerent reprisals in international humanitarian law, and proposes reforms that would allow for the more measured use of such reprisals. Belligerent reprisals are otherwise illegal actions, taken by an aggrieved state only after a prior violation of the law of war by a

second state or a non-state actor, in an attempt to coerce the offending party into changing its conduct. Despite a long-standing history, belligerent reprisals remains highly controversial, with some arguing that their usage leads to immorality and war crimes. Belligerent reprisals were heavily proscribed by the 1977 additional protocols to the Geneva Convention, which banned their use against civilians, civilian objects, cultural property, the natural environment and more. However, many states continue to argue that belligerent reprisals are the only effective recourse against an adversary who intentionally disregards the laws of war, and especially against modern phenomenons such as terrorism. The author concludes by suggesting international law incorporate change to belligerent reprisals. His new conception of belligerent reprisals would place fundamental stress on basic principles such as proportionality, fair notice, and the usage of reprisals only as a last resort. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

LÉGALITÉ ET LÉGITIMITÉ DES DRONES ARMÉS

par Jean-Baptiste Jeangène Vilmer. In: *Politique étrangère* Vol. 78, 3, automne 2013, p. 119-132

Les drones armés passent pour illégaux au regard du droit international humanitaire. Ils ne sont, en réalité, que les instruments nouveaux de guerres qui s'opèrent de plus en plus à distance de l'adversaire ; et ils permettent même sans doute des frappes plus discriminées que des armes plus classiques. Leur automatisation croissante pose, par contre, nombre de questions que de nouvelles réglementations internationales se doivent de prendre en compte.

THE LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS : THE ICJ ADVISORY OPINION RECONSIDERED

Daniel Thürer. - In: *Völkerrecht und die Dynamik der Menschenrechte : Liber Amicorum Wolfram Karl*. - Wien : Facultas.wuv, 2012. - p. 538-552

The most serious, insidious and publicly neglected challenge in today's world and international law is the legal status of nuclear weapons. This chapter introduces the subject with some remarks of a historical and rather general nature. It concentrates on the 1996 Nuclear weapons opinion of the International Court of Justice and formulates seven critiques concerning the Opinion based on fundamental principles and concepts of international law. In conclusion, it asks whether the Court would or should decide differently, if it had to deal with the General Assembly's request today.

LEGITIMATE TARGET : A CRITERIA-BASED APPROACH TO TARGETED KILLING

Amos N. Guiora. - Oxford [etc.] : Oxford University Press, 2013. - XIV, 107 p.

In *Legitimate target*, a criteria-based approach to targeted killing, Amos Guiora proposes that targeted killing decisions must reflect consideration of four distinct elements : law, policy, morality, and operational details, thus ensuring that it complies with principles of domestic international laws. The author, writing from personal experience and an academic perspective, offers important criticism and insight into the policy as presently implemented, highlighting the need for a criteria-based decision making process in defining and identifying a legitimate target. *Legitimate target*, a criteria-based

approach to targeted killing blends concrete examples with a nuanced study of the current targeted killing paradigm with an emphasis on the dilemmas of morality and the law.

LETHAL ROBOTIC TECHNOLOGIES : THE IMPLICATIONS FOR HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

comment by Philip Alston. In: *Journal of law, information and science* Vol. 21, no. 2, 2011/2012, p. 35-60

This analysis is predicated on three principal assumptions. The first is that the new robotic technologies are developing very rapidly and that the unmanned, lethal weapons carrying vehicles that are currently in operation will, before very long, be operating on an autonomous basis in relation to many and perhaps most of their key functions, including in particular the decision to actually deploy lethal force in a given situation. The second is that these technologies have very important ramifications for human rights in general and for the right to life in particular, and that they raise issues that need to be addressed urgently, before it is too late. The third is that, although a large part of the research and technological innovation currently being undertaken is driven by military and related concerns, there is no inherent reason why human rights and humanitarian law considerations cannot be proactively factored into the design and operationalization of the new technologies.

A LEX FAVORABILIS ? : RESOLVING NORM CONFLICTS BETWEEN HUMAN RIGHTS LAW AND HUMANITARIAN LAW

Anne-Laurence Graf-Brugère. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 251-270

This chapter seeks to answer the question of whether the conflicts of norms between international humanitarian law (IHL) and human rights law (HRL) can (or must) be solved in the way that is the most favourable to the individual. The principle of "the most favourable" is however still generally considered to be a rule of norm conflict confined to HRL. Accordingly, even though there is a debate in doctrine as to which norm prevails when HRL and IHL are applied simultaneously (that is, in time of armed conflict), the principle is largely ignored in his respect. This article first examines the purpose of the principle in HRL then it addresses the question of whether such a principle exists in IHL. The article finally considers the extent to which the principle could be taken as a rule of norm conflict (as far as states are concerned) between HRL and IHL norms. The answer differs depending on whether HRL and IHL are considered as two distinct bodies of law or as one body of law designed to serve human beings.

THE LIBERAL DISCOURSE AND THE "NEW WARS" OF/ON CHILDREN

Noëlle Quénavet. In: *Brooklyn journal of international law* Vol. 38, issue 3, 2013, p. 1053-1107

The typical war of the last few decades is not one where high technology – unmanned drone, guided missiles – is used; rather, it is a war fought by young people with AK-47 and machetes. Since the early 90s an array of NGOs and individual activists have strongly argued against the use of children – individuals below 18 years of age – in armed conflict and lobbied for laws condemning the recruitment and use of children in hostilities. This article argues that this liberal discourse raises a number of

issues. Through a politics of age dictating that a child is anyone under 18 this discourse refuses to acknowledge that childhood/adulthood can be determined in other ways. Moreover, it denies children any agency in deciding whether they wish to participate in the hostilities. To some extent, it might be argued that liberalism has adopted a rather patronising approach towards children in so-called non-liberal States.

THE LIBERAL WAY OF WAR : LEGAL PERSPECTIVES

ed. by Robert P. Barnidge. - Farnham ; Burlington : Ashgate, 2013. - XX, 306 p.

Examining some of the huge challenges that liberal States faced in the decade after 11 September 2001, the chapters in this book address three aspects of the impact of more than a decade of military action. This book begins by considering four different expressions of universalist moral aspirations, including the prohibition of torture, and discusses migration and 'responsibility to protect,' as well as the United Nations Human Rights Committee's Concluding Observations about security and liberty in the last decade. International humanitarian law and the problems posed by the territorial character of war and the effects of new technologies and child soldiers are also analysed. Finally, Islamic law and its interface with international law is considered from a new perspective, and contributions in this final part offer a different way of thinking about an authentically Islamic modernisation that would be compatible with Western models of political order.

LIMITING THE KILLING IN WAR : MILITARY NECESSITY AND THE ST. PETERSBURG ASSUMPTION

Janina Dill and Henry Shue. In: *Ethics and international affairs* Vol. 26, no. 3, 2012, p. 311-333

This article suggests that the best available normative framework for guiding conduct in war rests on categories that do not echo the terms of an individual rights-based morality, but acknowledge the impossibility of rendering warfare fully morally justified. Avoiding the undue moralization of conduct in war is an imperative for a normative framework that strives to actually give behavioral guidance to combatants, most of whom will inevitably be ignorant of the moral status of the individuals they encounter on the battlefield and will often be uncertain or mistaken about the justice of their own cause. The article identifies the requirement of military necessity, applied on the basis of what is referred to as the "St. Petersburg assumption", as the main principle according to which a combatant should act, regardless of which side or in which battlefield encounter she finds herself. This pragmatic normative framework enjoys moral traction for three reasons: first, in the circumstances of war it protects human life to a certain extent; second, it makes no false claims about the moral justification of individual conduct in combat operations; and, third, it fulfils morally important functions of law. However, the criterion of military necessity interpreted on the basis of the St. Petersburg assumption does not directly replicate fundamental moral prescriptions about the preservation of individual rights.

THE LIMITS OF ECONOMIC SANCTIONS UNDER INTERNATIONAL HUMANITARIAN LAW : THE CASE OF THE CONGO

Mallory Owen. In: *Texas international law journal* Vol. 48, issue 1, 2012, p. 103-123

Today, economic sanctions are frequently used as a "unilateral technique in international politics, though not necessarily explicitly." The most recent example of this technique is Section 1502 of the Dodd-Frank Wall Street Reform Act ("Section 1502"). Section 1502 was created to address the humanitarian crisis in the Democratic Republic of the Congo ("DR Congo"). It requires public companies to disclose whether certain minerals in their supply chain originate from the DR Congo or its neighboring countries. Section 1502 has been widely criticized for failing to address the root causes of conflict in the DR Congo and, instead, creating a de facto embargo on a minerals trade that hundreds of thousands of civilians rely on for their livelihoods. In light of these unintended consequences, this Note poses the question: How should we think about influence strategies like economic sanctions that are likely to directly or indirectly produce significant collateral damage? This Note provides a general discussion of international humanitarian law ("IHL") and how it can and should be applied to economic sanctions specifically. It that because economic instruments like Section 1502 are coercive in nature, they should be assessed under an IHL framework. Left unregulated, sanctions programs will continue to map new patterns of inequality and violence in target countries.

LINCOLN'S CODE : THE LAWS OF WAR IN AMERICAN HISTORY

John Fabian Witt. - New York [etc.] : Free Press, 2012. - VIII, 498 p.

The hidden story of the laws of war in the first century of the United States—and of the extraordinary code that emerged from it to change the course of world history. Lincoln's Code is the story of an idea in American history: the idea that conduct in war can be regulated by law. For many, the very idea of a law for war has seemed like an oxymoron. But with sweep and vitality, this book unfolds the story of the cast of characters who invented the modern laws of war. Washington, Jefferson, and Franklin championed Enlightenment rules for civilized warfare.

LINKING HUMANITARIAN LAW AND NUCLEAR DISARMAMENT ACTION : THE CASE FOR A NUCLEAR WEAPONS CONVENTION

Rebecca Johnson. In: *Austrian review of international and European law* Vol. 15, 2010, p.173-196

The humanitarian case for banning nuclear weapons can be made on three core grounds : ethics, international law, and human security and survival. This article focuses primarily on international humanitarian law and security. After considering basic arguments, it briefly discusses how centralising humanitarian interests over national military concerns makes the achievement of comprehensive nuclear weapons conventions more realisable and practical in the near term than sticking with the step-by-step arms reduction paradigm that keeps faltering and sliding backwards.

LITIGATING WAR : ARBITRATION OF CIVIL INJURY BY THE ERITREA-ETHIOPIA CLAIMS COMMISSION

Sean D. Murphy, Won Kidane, Thomas R. Snider. - Oxford [etc.] : Oxford University Press, 2013. - XXI, 1038 p.

This book offers an in-depth examination of the law and procedure of the Eritrea-Ethiopia Claims Commission,

which was tasked with deciding, through binding arbitration, claims for losses, damages, and injuries resulting from the 1998-2000 Eritrean-Ethiopian war. After providing an overview of the war, the authors describe how the Commission was established, its jurisdiction, the sources of law it applied, its treatment of nationality and evidentiary issues, and the relief it rendered. Separate chapters then address particular topics, such as the initiation of the war, battlefield conduct, belligerent occupation, aerial bombardment, prisoners of war, enemy aliens and their property, diplomats and diplomatic property, and general economic loss. A final chapter examines the lessons that might be learned from the experience of the Claims Commission, especially with an eye to the establishment of such commissions in the future. The volume also reproduces all the key documents relating to the Commission: the bilateral agreement establishing the Commission; its rules of procedure; and its numerous decisions and arbitral awards.

LOCALISED ARMED CONFLICT : A FACTUAL REALITY, A LEGAL MISNOMER

Mutsa Mangezi. In: *African yearbook on international humanitarian law* 2012, p. 79-97

Between May and July 2012, a number of statements from individuals within the ICRC suggested that the conflict in Syria could be classified as a non-international armed conflict in certain parts of Syria but not throughout the territory. This article uses the Syrian conflict as the starting point for a discussion of the concept of 'localised armed conflict'. The author explores the consequences of the adoption of this concept in our current international legal framework, focusing specifically on international humanitarian law. The author argues that although it is important to recognize localised armed conflict as a factual reality, as a legal concept it is a misnomer. After giving a brief overview of the traditional approach to the application of international humanitarian law, the author provides reasons for rejecting localised armed conflict as a legal concept. The author argues that the utilization of the concept could significantly undermine the power of international humanitarian law. Specifically, he asserts that the concept is not supported by any of the Geneva Conventions or their Additional Protocols and that its application could undermine the protective purpose of international humanitarian law, complicate military strategy, and create operational difficulties in the application of international humanitarian law. The author concludes that the traditional application of international humanitarian law should be maintained, whereby it is applied throughout an entire state, even if hostilities are localised. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

LOOTING AND RAPE IN WARTIME : LAW AND CHANGE IN INTERNATIONAL RELATIONS

Tuba Inal. - Philadelphia : University of Pennsylvania Press, 2013. - 269 p.

Women were historically treated in wartime as property. Yet in the Hague Conventions of 1899 and 1907, prohibitions against pillaging property did not extend to the female body. There is a gap of nearly a hundred years between those early prohibitions of pillage and the prohibition of rape finally enacted in the Rome Statute of 1998. "Looting and Rape in Wartime" addresses the development of these two separate "prohibition re-

gimes," exploring why states make and agree to laws that determine the way war is conducted, and what role gender plays in this process. In examining the historical and ideological context of how these two regimes evolved, Looting and Rape in Wartime provides vital perspective on the forces that block or bring about change in international relations.

LOSING HUMANITY : THE CASE AGAINST KILLER ROBOTS

Human Rights Watch, International Human Rights Clinic. - [New York] : Human Rights Watch, 2012. - 49 p.

This report analyzes whether the technology would comply with international humanitarian law and preserve other checks on the killing of civilians. It finds that fully autonomous weapons would not only be unable to meet legal standards but would also undermine essential non-legal safeguards for civilians. The research and analysis strongly conclude that fully autonomous weapons should be banned and that governments should urgently pursue that end.

LOSING THE FOREST FOR THE TREES : SYRIA, LAW, AND THE PRAGMATICS OF CONFLICT RECOGNITION

Laurie R. Blank, Geoffrey S. Corn. In: *Vanderbilt journal of transnational law* Vol. 46, no. 3, May 2013, p. 693-746

The international community's year-long reluctance to characterize the situation in Syria as an armed conflict highlights a clear disparity between the object and purpose of the LOAC and the increasingly formalistic interpretation of the law's triggering provisions. Focusing on Syria, this article critiques the overly technical approach to the definition of non-international conflict currently in vogue—based on Prosecutor v. Tadic's framework of intensity and organization—and how this approach undermines the original objectives of common article 3 of the Geneva Conventions. This overly legalistic focus on an elements test, rather than the totality of the circumstances, means that the world has witnessed a retrograde of international humanitarian efficacy: Syria appears to be a lawless conflict like those that inspired common article 3—the regime employs its full combat capability to shell entire cities, block humanitarian assistance, and target journalists and medical personnel directly. The LOAC is specifically designed to address exactly this type of conduct, and yet the discourse on Syria highlights the dangers of allowing over-legalization to override—and undermine—logic, resulting in a deleterious impact on human life.

THE MAIN EPOCHS OF MODERN INTERNATIONAL HUMANITARIAN LAW SINCE 1864 AND THEIR RELATED DOMINANT LEGAL CONSTRUCTIONS

Robert Kolb. - In: *Searching for a "principle of humanity" in international humanitarian law*. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 23-71

The author distinguishes four main phases of evolution of international humanitarian law. The early phase (1864-1899) saw states produce, construe and deal with IHL essentially as a matter of municipal military law, codified in the international sphere mainly through model rules, where lacunae and subregulations constituted a salient feature. The next phase (1899-1946) saw the evolution of a system where the predominance of sovereignty tended to prevail over the Martens Clause and to enhance the centrality of military necessities. A further

phase (1949-1993) developed in which IHL became centred around the concept of humanitarian protection of the victims of war through the introduction of very detailed and non-derogable rules, thereby restricting the freedom of state action, even in non-international armed conflicts. Finally, in the current phase (1993 to date), IHL is becoming progressively "humanised", i.e. "homo-centred" instead of "state-centred", but also increasingly "supplementary", in the sense that it progressively merges with human rights law considerations while being sanctioned and developed through the growing branch of international criminal law. At the same time, military functions are themselves becoming increasingly diverse and multifunctional, creating a need for further regulation of branches of international law other than IHL.

MAXIMISING COMPLIANCE WITH IHL AND THE UTILITY OF DATA IN AN AGE OF UNLIMITED INFORMATION : OPERATIONAL ISSUES

Darren Stewart. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 171-186

This chapter considers whether in an age of unlimited information, access to vast volumes of data is truly useful in maximising compliance with LOAC by considering three aspects: the military context in which data contributes to decision-making, which may have an impact on the application of the law; mechanisms by which enhanced levels of data flow may allow for the integration of legal principles in order to enhance LOAC compliance; and whether access to such enhanced levels of information actually contributes to enhancing LOAC compliance.

THE MEANING AND PROTECTION OF "CULTURAL OBJECTS AND PLACES OF WORSHIP" UNDER THE 1977 ADDITIONAL PROTOCOLS

by Marina Lostal Becerril. In: *Netherlands international law review* Vol. 59, 2012, p. 455-472

This article addresses R. O'Keefe's 1999 publication entitled 'The Meaning of "Cultural Property" under the 1954 Hague Convention'. There the author made two points regarding the protection of 'cultural objects and places of worship' in the 1977 Additional Protocols to the Four Geneva Conventions of 1949 that have been commonly shared by legal scholarship and practice. First, he claimed that despite the divergences between the definitions of cultural property in the 1954 Hague Convention and the 1977 Additional Protocols, the spectrum of cultural property they covered was exactly the same. Secondly, he held that the Additional Protocols awarded a higher regime of protection to cultural property for not being subject to imperative military necessity. This article reconsiders and qualifies these statements. It argues that while both instruments tackle objects which represent each party's national heritage, their scope of application differ since the 1954 Hague Convention cannot cover places of worship that constitute the spiritual heritage of peoples per se. This, we will see, has resulted in its own different consequences in international practice. It is erroneous to maintain tout court that the 1954 Hague Convention offers a weaker regime of protection for cultural property. From a closer look at the relationship between the concepts of 'military objectives' and 'imperative military necessity', a distinct and more nuanced conclusion follows: the 1954 Hague Con-

vention offers stricter guarantees against the likelihood of acts of hostility aimed at cultural property. This article continues a scholarly debate initiated by O'Keefe, casts some clarity on issues that seem to trouble the ICTY, and challenges the mainstream interpretation given to the protection of cultural property under the two Additional Protocols.

THE MEANING OF ARMED CONFLICT : NON-INTERNATIONAL ARMED CONFLICT

Christine Gray. - In: What is war ? : an investigation in the wake of 9/11. - Leiden ; Boston : M. Nijhoff, 2012. - p. 69-95

There is a growing perception that the existence of different regimes - one governing international armed conflict and on governing non-international armed conflict, with late and limited provision made for the latter - is not satisfactory, given the humanitarian concerns common to both. Classification is difficult for tribunals - as the author reviewing the cases of the international tribunals and the US Supreme Court - concludes. In theory it is even more difficult for those actually involved in armed conflict, but in practice there is little or no question of classification affecting behaviour. The experience of the International Criminal Tribunal for ex-Yugoslavia indicates that ex post facto decision-making by criminal tribunals is unlikely to increase the effectiveness of international humanitarian law in conflict.

THE MENTAL ELEMENT IN THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Kristina Janjac. - Oosterwijk : Wolf legal, 2013. - 76 p.

This book examines the concept of guilt in the Rome Statute of the International Criminal Court as the most significant factor in determining individual criminal responsibility for the most serious violations of international humanitarian law. The Rome Statute provides a general definition of guilt for the first time in the history of international criminal law, since none of the Statutes of previous international Tribunals contained general rules on this matter. The book also questions the regulation of guilt in the Rome Statute in light of the principle of legality.

MESURES ANTI-PIRATERIE EN SOMALIE ENTRE LES DROITS DE L'HOMME ET LES GARANTIES DU DROIT HUMANITAIRE : LA CONTRIBUTION DE LA JURISPRUDENCE ET DE LA PRATIQUE DES MÉCANISMES DE CONTRÔLE NON JURIDICTIONNEL

Maria Chiara Noto. - In: International courts and the development of international law : essays in honour of Tullio Treves. - The Hague : T.M.C Asser Press, 2013. - p. 497-512

La présente étude vise à analyser les questions qui sous-tendent l'application contextuelle du droit international humanitaire et des droits de l'homme dans les opérations anti-piraterie. Premièrement, [l'auteur] cherchera à identifier le statut juridique des pirates qui n'est pas simple à déterminer, sauf dans les cas de flagrant délit. Deuxièmement, [elle] analysera le fondement juridique qui justifie l'application contextuelle du droit international humanitaire et des droits de l'homme dans les opérations anti-piraterie. Enfin, sur la base de la jurisprudence de la Cour internationale de justice (CIJ) et la pratique des mécanismes de contrôle non juridictionnel pertinents, [l'auteur] se penchera sur la relation entre le

système du droit international humanitaire et celui des droits de l'homme, afin de déterminer le niveau de protection qui s'appliquera, par l'interaction des deux systèmes, aux pirates et aux otages éventuellement capturés.

METHODOLOGY OF LAW-MAKING : CUSTOMARY INTERNATIONAL LAW AND NEW MILITARY TECHNOLOGIES

Robert Heinsch. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 17-41

Dr. Robert Heinsch explores the role that customary international law might play in addressing the rapid technological changes in warfare over the last decades. It is a study of the method of formation of rules in this area and does not venture into the substance of new customary law. In particular, this chapter discusses the appropriate standards and test for the formation of new customary international law as the methods of warfare, and matters of "state practice", evolve so dramatically, at least for those states and non-state actors that can access the new technologies.

METHODS AND MEANS OF COMBAT

Stefan Oeter. - In: The handbook of international humanitarian law. - Oxford : Oxford University Press, 2013. - p. 115-230

Content: General rules. - Means of combat. -Methods of combat.

METHODS AND MEANS OF NAVAL WARFARE IN NON-INTERNATIONAL ARMED CONFLICTS

Wolff Heintschel von Heinegg. In: International law studies Vol. 88, 2012, p. 211-236

The focus of the present article is on the question of whether, and to what extent, the parties to a non-international armed conflict are entitled to exercise belligerent rights under the law of naval warfare. The first part gives a short overview of nations' practice involving the use of methods and means of naval warfare during non-international armed conflicts. The second part addresses the question of a geographical limitation of the hostilities. The third part deals with the conduct of hostilities and the fourth part discusses measures taken by the parties to the conflict that interfere with the shipping and/or aviation of other States. It will be shown that the law of naval warfare can be applied to non-international armed conflicts, albeit partly modified, between the parties to the conflict. If, however, the parties interfere with the shipping and/or aviation of other States beyond the outer limit of the State party's territorial sea or contiguous zone, an additional legal basis for the measures in question must be found.

MEXICO'S DRUG "WAR" : DRAWING A LINE BETWEEN RHETORIC AND REALITY

Andrea Nill Sánchez. In: Yale journal of international law Vol. 38, issue 2, p. 467-509

Across the border, lawmakers and public officials in the United States are increasingly confronted with a loaded question: is Mexico's metaphorical drug war transforming into a verifiable armed conflict under the laws of war? This Note argues that the answer is no. Although the current approach is largely inadequate, applying a law-of-war framework is not legally appropriate, nor

would it provide the appropriate remedies. The worsening violence in Mexico has rightfully motivated many people to reassess the current anti-cartel strategy. Nevertheless, redefining the situation in Mexico as an armed conflict and recasting drug cartels as terrorists or insurgents would misapprehend the drug cartels' true nature. Further, applying the law of armed conflict framework would trigger a military approach and accompanying legal regime that are ill suited to meet the challenges that drug cartels pose.

MEXICO'S DRUG WAR, INTERNATIONAL JURISPRUDENCE, AND THE ROLE OF NON-INTERNATIONAL ARMED CONFLICT STATUS

Michael T. Wotherspoon. In: *Journal of international humanitarian legal studies* Vol. 3, issue 2, 2012, p. 291-321

When the Calderon administration escalated anti-drug efforts in 2006, drug-related violence in Mexico reached unprecedented levels. The growing intensity of drug-related violence has led to uncertainty over how to classify the violence spreading across Mexico. Much of the public rhetoric argues that Mexico's drug-related violence has surpassed that which typically characterizes the drug trade and is instead more similar to armed conflict. Due to the changing landscape of Mexican drug violence, an assessment of whether or not the conflict meets the requisite conditions for a non-international armed conflict (NIAC) is needed to determine if the application of international humanitarian law is appropriate. This paper argues that Mexico's drug war meets the conditions for NIAC status and application of IHL is appropriate. The question of how to respond to drug-related violence is becoming increasingly relevant as the effects of such violence extends to a more diverse geographic area within Mexico. NIAC status plays a central role in the future of anti-drug policy and has the potential to prompt significant changes in the handling of drug-related violence in Mexico. This paper attempts to provide a comprehensive answer to this question and identify the potential implications that recognition as a NIAC will have on Mexican anti-drug policy.

MEXICO'S DRUG WAR : IS IT REALLY A WAR ?

Callin Kerr. In: *South Texas law review* Vol. 54, Fall 2012, p. 193-224

What force may Mexico use against the drug cartels? This Comment addresses whether the "drug war" is in fact a war within the legal definition of war. Part II analyzes the history of the drug violence in Mexico, the evolution of the laws of war, and what laws may apply to the Mexican drug war. Part III applies factors developed by the International Committee of the Red Cross and international tribunals to interpret the type of conflict. Part IV explains what force may be used against the cartels and the legal implications of using such force. Part V addresses the customary international law and humanitarian perspective on non-international armed conflict. Finally, Part VI discusses the various, and not so intuitive, repercussions of invoking the laws of war in the Mexican drug war.

MILESTONES IN THE DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

Daniel Thürer. - In: *Making peoples heard : essays on human rights in honour of Gudmundur Alfredsson*. - Leiden ; Boston : M. Nijhoff, 2011. - p. 3-14

The author reviews the milestone in the development of international humanitarian law starting from how the Red Cross came about, then the Geneva Conventions and their Additional Protocols of 2005. He then turns to two problems to which humanitarian law has been confronted in recent years: the "global war on terror" and "asymmetrical warfare" which appear to be a problem more acute than ever. He finally moves to the prospects of humanitarian law regarding weapons of mass destruction, arms trafficking and international criminal justice and accountability.

MILITARY CAPTIVITY IN TWO WORLD WARS : LEGAL FRAMEWORKS AND CAMP REGIMES

Iris Rachamimov. - In: *War and the modern world*. - Cambridge [etc.] : Cambridge University Press, 2012. - p. 214-235

The evolving legal codification of POW treatment in the period 1899-1949 affected not only the treatment of military captives, but also the framing of captivity itself. The aim of this chapter is to examine the development of this legal framework and to analyse its complex historical interaction with regimes of treatment during both world wars. The chapter argues that although the story of captivity offers some of the most harrowing and murderous episodes in modern warfare, an internationally recognized standard of treatment had evolved by the middle of the twentieth century. This established standard became a binding reference point, which exerted moral and political pressure even on belligerent countries that objected to its "western" provenance or the liberal values that were encoded in it.

MILITARY CHAPLAINCY IN CONTENTION : CHAPLAINS, CHURCHES AND THE MORALITY OF CONFLICT

ed. by Andrew Todd. - Farnham ; Burlington : Ashgate, 2013. - XII, 183 p.

Chaplaincy highlights the need for faith and society to re-engage with vital moral questions. Military chaplains continue to operate within the dynamic tension between faith communities, the armed services and society, offering a distinct moral presence and contribution. Drawing the reader into the world of the military chaplain, this book explores insights into the complex moral issues that arise in combat (especially in Afghanistan), and in everyday military life. These include the increasing significance of the Law of Armed Conflict and the moral significance of drones. Through the unique chaplain's eye view of the significance of their experience for understanding the ethics of war, this book offers clearer understanding of chaplaincy in the context of the changing nature of international conflict (shaped around insurgency and non-state forces) and explores the response of faith communities to the role of the armed services. It makes the case for relocating understandings of just war within a theological framework and for a clear understanding of the relationship between the mission of chaplaincy and that of the military.

MILITARY NECESSITY AND THE CULTURES OF MILITARY LAW

David Luban. In: *Leiden journal of international law* Vol. 26, no. 2, June 2013, p. 315-349

Military and humanitarian lawyers approach the laws of war in different ways. For military lawyers, the starting point is military necessity, and the reigning assumption is that legal regulation of war must accommodate mili-

tary necessity. For humanitarian lawyers, the starting point is human dignity and human rights. The result is two interpretive communities that systematically disagree not only over the meaning of particular law-of-war norms, but also over the sources and methods of law that could be used to resolve the disagreements. That raises the question whether military lawyers' advice should acknowledge any validity to the contrary views of the 'humanitarian' community. The article offers a systematic analysis of the concept of military necessity, showing that civilian interests must figure in assessing military necessity itself. Even on its own terms, the military version of the law of war should seek to accommodate the civilian perspectives featured in the humanitarian version.

MILITARY NECESSITY AS NORMATIVE INDIFFERENCE

Nobuo Hayashi. In: *Georgetown journal of international law* Vol. 44, issue 2, 2013, p. 675-782

What does it mean to say that international humanitarian law (IHL) "accounts for" military necessity? According to one theory, unqualified IHL rules exclude not only military necessity pleas but also humanity pleas in support of deviant behavior. Three propositions underpin this view. They are, first, that military necessity generates imperatives; second, that the imperatives emanating from military necessity inevitably conflict with those emanating from humanity; and third, that all positive IHL rules embody the military necessity-humanity interplay in the process of their norm-creation. In lieu of what may be termed an "inevitable conflict" thesis, this Article proposes and develops a "joint satisfaction" thesis. In the process of IHL norm-creation, military necessity does not furnish the law with reason to obligate or forbid given conduct. Rather, it only generates permissions. It not only robustly permits pursuing military necessities and avoiding non-necessities; it also permits, albeit moderately, forgoing success and inviting failure. In other words, military necessity is normatively indifferent. By acting as non-indifferently exhorted or demanded by humanity, the belligerent never acts in a manner affirmatively contrary to what military necessity indifferently permits. Where both humanitarian exhortations or demands and military necessity's indifferent permissions are at stake, one always jointly satisfies them by acting in accordance with the former. When the framers of IHL validly posit an unqualified rule regarding given conduct, the rule does two things. First, it unqualifiedly obligates the pursuit of joint military necessity-humanity satisfaction with respect to the conduct in question. Second, this rule extinguishes any indifferent permission, including that emanating from military necessity, not to pursue the said satisfaction. It is for this reason, rather than the empirically troublesome claim that every positive IHL rule embodies the military necessity-humanity interplay, that unqualified IHL rules admit no military necessity and other *de novo* indifference pleas. The same does not necessarily hold for non-indifference considerations. It is possible that these latter considerations may survive the process of IHL norm-creation. The mere fact of an IHL rule being validly posited may not resolve the relatively rare, yet genuine, norm conflict that arises where the said rule unqualifiedly obligates certain action while humanity exhorts or demands contrary action.

MILITARY OCCUPATION OF EASTERN KARELIA BY FINLAND IN 1941-1944 : WAS INTERNATIONAL LAW PUSHED ASIDE?

Lauri Hannikainen. - In: *Searching for a "principle of humanity" in international humanitarian law.* - Cambridge [etc.] : Cambridge University Press, 2013. - p. 183-205

This chapter addresses legal issues relating to the Finnish occupation of Eastern Karelia from 1941 to 1944. He provides a most sombre presentation of the circumstances and considerations that led to the invasion, and of the goals and intentions behind it. In describing Finnish efforts to create an ethnically clean Eastern Karelia and to annex the area, the author shows that the occupying forces' treatment of the civilian population involved inhuman acts contrary both to the 1907 Hague Regulations and the Martens Clause, including humanitarian considerations. He also describes, and criticises, the post-war tendency in Finland to present the occupation in a positive light.

MILITARY ROBOTS AND THE PRINCIPLE OF HUMANITY : DISTORTING THE HUMAN FACE OF THE LAW ?

Hanna Brollowski. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald.* - The Hague : T.M.C. Asser Press, 2013. - p. 53-96

This article aims to raise awareness of the potential challenges involved in sending (autonomous) robots to war. Drawing on multiple disciplines, the author finds that the advantages and disadvantages of using robotic soldiers may well allow one to argue either way. However, taking into consideration the principle of humanity as a cornerstone of international humanitarian law, particularly strong concerns arise. Since robots are not able to conceive of ethical and moral concerns in addition to lacking analytical skills, it is held that they are not able to act in accordance with the rules which are applicable during armed conflict. An urgent need is recognised for the international (legal) community to take ownership of the process to regulate the deployment of robots in war situations.

MIND THE GAP : LACUNAE IN THE INTERNATIONAL LEGAL FRAMEWORK GOVERNING PRIVATE MILITARY AND SECURITY COMPANIES

Benjamin Perrin. In: *Criminal justice ethics* Vol. 31, no. 3, December 2012, p. 213-232

This article examines the common claim that there are gaps in international law that undermine accountability of private military and security companies. A multi-actor analysis examines this question in relation to the commission of international crimes, violations of fundamental human rights, and ordinary crimes. Without this critical first step of identifying specific deficiencies in international law, the debate about how to enhance accountability within this sector is likely to be misguided at best.

MISSING THE TARGET : WHERE THE GENEVA CONVENTIONS FALL SHORT IN THE CONTEXT OF TARGETED KILLING

Michelle Mallette-Piasecki. In: *Albany Law Review* Vol. 76, issue 1, p. 263-297

Even though Additional Protocols I and II were implemented in 1977 specifically to deal with the changing nature of armed conflict and advances in weapons technology, their adoption was a retroactive response to the

increase in internal State conflicts, civil wars, and national liberation movements rather than a prospective means of encompassing any future advances in warfare. Over the last decade, the International Committee of the Red Cross (ICRC) has issued several reports to rectify areas of ambiguity in the Conventions and other areas of customary international law in general, but gaps still remain. This note explores those gaps by focusing on the issue of targeted killing and the current problems the international legal community faces in upholding International Humanitarian Law (IHL). Part II examines the emergence of targeted killing as part of the United States and Israeli policies to combat terrorism. Part III discusses the law of armed conflict as it is codified in the Conventions and how classification of an armed conflict affects the legality of targeted killing. Part IV contrasts the United States' position justifying targeted killing as preemptive self-defense with the international legal community's position of strict adherence to Article 51 of the U.N. Charter. Part V explores the recent targeted killings of Osama bin Laden and Anwar Al-Aulaqi, and the disparate treatment afforded to each under international law. The note concludes with a discussion on how the Geneva Conventions can be reformed to eliminate gaps in the future.

LES MISSIONS AUTORISÉES PAR LE CONSEIL DE SÉCURITÉ À L'HEURE DE LA R2P : VERS UNE APPLICATION DIFFÉRENCIÉE DU JUS IN BELLO ?

Frédéric Mégret. - [S.l.] : [s.n.], 2012. - [22] p.

Dans l'ensemble le droit international positif pose une séparation complète entre jus ad bellum et jus in bello. En d'autres termes, un organe international qui intervient pour protéger des civils ou empêcher des crimes de droit international n'aurait ni plus ni moins d'obligations humanitaires qu'un autre acteur intervenant pour une cause illicite ou moins légitime. Cette position de principe, très rigide dans la doctrine, se comprend bien traditionnellement s'agissant d'un Etat qui souhaiterait échapper à ses obligations humanitaires en invoquant la légitimité de sa cause. Sans doute le fait de réclamer un moins disant en matière d'obligations humanitaires est-il inquiétant (en lui même car il prive la mise en oeuvre du DIH d'une partie, et en termes communicatifs, par rapport à d'autres parties qui se sentiront éventuellement d'autant moins liées), et c'est bien ce danger qui a obnubilé la doctrine depuis des décennies. L'idée d'une application différenciée imposant des obligations supérieures à certaines parties, en revanche, est loin de faire courir les mêmes dangers. Cette perspective pourrait au contraire contribuer à substantiellement renouveler les termes d'un débat plus subtil qu'il n'y paraît. C'est avec ces considérations à l'esprit que l'on se propose d'envisager en quoi la logique humanitaire d'une part et le rôle spécifique du Conseil de sécurité d'autre part posent un défi à l'idée d'une séparation rigide entre jus in bello et ad bellum (I), avant d'envisager certaines des implications concrètes qui pourraient résulter pour le droit de la guerre d'une plus fine prise en compte de la spécificité d'opérations pro humanitas multilatérales (II).

MULTINATIONAL PEACE OPERATIONS FORCES INVOLVED IN ARMED CONFLICT : WHO ARE THE PARTIES ?

Ola Engdahl. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 233-271

This chapter addresses the concept of "parties" to an armed conflict in a context of multinational peace operations. This issue is of considerable importance in both international and non-international armed conflicts, not least with regard to questions of responsibility. Using the ISAF operation in Afghanistan as a case study, the author discusses who the "parties" to such a conflict are. He shows that even among like-minded states, the position on the conflict differs with regard to the qualification of that conflict and to the status of troop contributing nations in the conflict, and consequently, to the applicability of international humanitarian law.

NANOTECHNOLOGY AND CHALLENGES TO INTERNATIONAL HUMANITARIAN LAW : A PRELIMINARY LEGAL ASSESSMENT

Hitoshi Nasu. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 653-672

The introduction of nanotechnology into our civil life and warfare is expected to influence the application and interpretation of the existing rules of international humanitarian law. This article examines the challenges posed to international humanitarian law by the widespread use of nanotechnology in light of four basic rules of international humanitarian law: (1) the obligation to ensure the legality of weapons; (2) distinction; (3) proportionality; and (4) precaution. It concludes by identifying three areas of concern, which arise from widespread use of nanotechnology, for the application of international humanitarian law.

NATIONAL PROSECUTION OF INTERNATIONAL CRIMES AND UNIVERSAL JURISDICTION

Philip Grant. - In: Droit international pénal : précis. - Bâle : Helbing Lichtenhahn, 2012. - p. 579-604

The present article [...] will firstly limit itself to briefly expounding the meaning of "jurisdiction" over international crimes. It will then review the conditions set out in international law concerning the establishment and the exercise of criminal jurisdiction over international crimes, both with respect to the so-called "traditional" titles of jurisdiction and with respect to the principle of universal jurisdiction.

NATO GENDER MAINSTREAMING AND THE FEMINIST CRITIQUE OF THE LAW OF ARMED CONFLICT

Jody M. Prescott. In: The Georgetown journal of gender and the law Vol. 14, no. 1, Winter 2013, p. 83-131

To establish the proper context within which the feminist critique of law of armed conflict (LOAC) should be understood, this article first sets out the scope and nature of armed conflict's impacts upon women and girls. After noting different general feminist concepts which are applicable to the assessment of NATO's efforts, this article will then detail the feminist critique of LOAC by examining both LOAC treaty law and customary LOAC. Next, the U.S., Swedish, UN and EU programs will be briefly discussed, so that positive and negative trends and practices may be identified. The article then explores in detail NATO's gender mainstreaming efforts in the areas of infrastructure, doctrine, training and education, and plans and operations ; and assesses them against the deficiencies identified by the feminist critique of LOAC. The article concludes that these efforts do not effectively address these deficiencies at the moment, but that trends suggest they might begin to in the near

term, and will probably, within certain boundaries, address them meaningfully in the future.

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

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.

NEW CAPABILITIES IN WARFARE : AN OVERVIEW OF CONTEMPORARY TECHNOLOGICAL DEVELOPMENTS AND THE ASSOCIATED LEGAL AND ENGINEERING ISSUES IN ARTICLE 36 WEAPONS REVIEWS

Alan Backstrom and Ian Henderson. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 483-514

The increasing complexity of weapon systems requires an interdisciplinary approach to the conduct of weapon reviews. Developers need to be aware of international humanitarian law principles that apply to the employment of weapons. Lawyers need to be aware of how a weapon will be operationally employed and use this knowledge to help formulate meaningful operational guidelines in light of any technological issues identified in relation to international humanitarian law. As the details of a weapon's capability are often highly classified and compartmentalized, lawyers, engineers, and operators need to work cooperatively and imaginatively to overcome security classification and compartmental access limitations.

THE "NEW WARS" OF CHILDREN OR ON CHILDREN ? : INTERNATIONAL HUMANITARIAN LAW AND THE "UNDERAGED COMBATANT"

Noëlle Quéniévet. - In: *The liberal way of war : legal perspectives*. - Farnham ; Burlington : Ashgate, 2013. - p. 139-165

This chapter rethinks the notion of 'underaged combatant' in international humanitarian law in order to assess whether a change in the law is necessary. It begins by exploring how and why the phenomenon of child soldiering has gained prominence in recent years. It then examines the current legal framework in relation to the recruitment, conscription, enlistment and participation of children in armed conflict. The chapter ends by critically analysing international law in this area through the prism of two values that are essential to liberal thinkers : universality, the view that liberal values apply across cultures; and autonomy, the idea that each individual is able to take decisions independently. It concludes that the issue of child soldiering is more difficult to grasp than

liberal thinkers present it and that the Zero Under 18 Campaign launched by the United Nations Special Representative for Children and Armed Conflict, which well reflects the current liberal approach, is unlikely to be successful because it fails to take into consideration the weight of history, politics and culture.

NEW WEAPONS : LEGAL AND POLICY ISSUES ASSOCIATED WITH WEAPONS DESCRIBED AS "NON-LETHAL"

Neil Davison. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 281-313

This chapter outlines the approach taken by the International Committee of the Red Cross with respect to any new weapon introduced by the military. At its core this requires that any new weapon technology, prior to its deployment, be subject to proper legal review to assess its compatibility with IHL. Furthermore, it explores two common assumptions made about "non-lethal" weapons: first, that a class of weapons exists that truly may be characterised as "non-lethal", and second whether there is significant military utility for these "non-lethal" weapons across a wide range of military operations ranging from law enforcement through peacekeeping to counterinsurgency combat.

A NEW WORLD COURT OF HUMAN RIGHTS : A ROLE FOR INTERNATIONAL HUMANITARIAN LAW ?

Manfred Nowak. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 531-539

On the occasion of the 60th anniversary of the Universal Declaration of Human Rights, the Swiss Government presented an 'Agenda for Human Rights'. The Swiss Agenda includes an institutional proposal of a World Court of Human Rights established by a multilateral treaty under the auspices of the United Nations. This chapter discusses a consolidated draft statute for the World court submitted by the author of this piece, Julia Kozma and Martin Scheinin. It first recalls the rationale behind the future World court of human rights. It then asks, since legally speaking, it is up to the drafters of the Statute of the World court to decide which treaties shall be subject to the jurisdiction of the Court, if there is a role for international humanitarian law in the course of developing such Statute.

NON-INTERNATIONAL ARMED CONFLICTS IN THE PHILIPPINES

Raymundo B. Ferrer and Randolph G. Cabangbang. In: *International law studies* Vol. 88, 2012, p. 263-278

This article discusses NIACs in the Philippines and briefly notes the challenges they pose to the security sector in applying the rules of international humanitarian law (IHL). To provide a basic framework in understanding the nature of conflict in the Philippines, an organizational-level analysis of the NIACs is necessary. It must be noted that on the ground, from the individual and operational levels of analysis, it is not so neatly delineated. Civilians can be recruited to work seasonally for an insurgent group and then quickly and seamlessly resume their civilian lives after operations are completed. Added to this complexity are the changing organizational labels civilians effortlessly assume without much question. Some civilians may work for one insurgent group that has an outstanding peace agreement with the govern-

ment and then on the same day join a command structure of a known terrorist group. Then they very quickly switch to supporting relatives and kin who belong to a group currently in peace negotiations with the government. The NIACs in the Philippines are largely a home-grown phenomenon with some components heavily influenced by foreign elements. Conflicts rooted in ideologies outside the Philippines have been coopted to provide a philosophical justification to a grassroots-driven insurgency. This article will primarily focus on two major NIACs facing the Philippines: the Maoist group and the Moro group.

NON-LETHAL WEAPONS AND FORCE-CASUALTY AVERSION IN 21ST CENTURY WARFARE

Chukwuma Osakwe, Ubong Essien Umoh. In: *Journal of military and strategic studies* Vol. 15, issue 1, 2013, p. 1-20

Military Operations Other Than War (MOOTW) such as humanitarian intervention in peacekeeping operations have been the main arguments for the development and deployment of non-lethal weapons. Such weapons which are spin-offs of the current Revolution in Military Affairs (RMA) seek to reduce human casualties in warfare by reducing deaths and neutralising bloodshed. This constitutes a great leap-backward from the destructive arsenals of previous centuries. Previous studies have examined the motivation for the use of non-lethal weapons as being influenced by deterring capability, civil policing, riot control, and stability and peace support operations. The support for the development and deployment of non-lethal weapons to avert casualties in warfare has been left in relative neglect. Among democracies, there has been increasing articulation on the use of force without resultant casualties. In essence, could casualties be averted while at the same time applying the required force needed to attain stated political objectives? The phrase 'Force-Casualty Aversion' (FCA) is what is used to describe this operational puzzle. This paper argues that the most significant military utility of non-lethal weapons in warfare in 21st century lies in Force-Casualty Aversion (FCA).

NORTH KOREA AND CYBERWARFARE : HOW NORTH KOREA'S CYBER ATTACKS VIOLATE THE LAWS OF WAR

Tom Papain. In: *Journal of Korean law* Vol. 11, no. 1, December 2011, p. 29-54

On July 4th, 2009, North Korea launched the first of three "DDOS" (Distributed Denial of Service) attacks upon the government and private networks of both the United States and South Korea, effectively flooding these networks with millions of requests from computers which were infected with the North Korean botnet virus "MyDoom." Considered by several experts (including Richard A. Clark) as a precursor of things to come, such attacks are quickly becoming an alternative means of waging war on enemy countries. This is especially true for countries such as North Korea, whose struggling economy and limited resources lead it to attack its enemies in a cheaper - albeit effective - way. In this note, Tom Papain will talk about the laws of war and cyberwar, both in general and as they pertain to the 2009 cyber attacks, and the various treaties which North Korea violated by launching these cyber attacks, including the U.N. Charter Article 2(4), the Geneva Convention, Additional Protocol I, Article 48, and the Hague Cultural Property Convention. In the end, he will talk about pos-

sible future developments in the realm of cyberwarfare, including what the International Community should do to combat North Korea's use of cyber weapons, and efforts by the U.S. and Russia to come up with a treaty regulating cyberwarfare.

THE OBLIGATION TO WITHHOLD FROM TRADING IN ORDER NOT TO RECOGNIZE AND ASSIST SETTLEMENTS AND THEIR ECONOMIC ACTIVITY IN OCCUPIED TERRITORIES

Tom Moerenhout. In: *Journal of international humanitarian legal studies* Vol. 3, issue 2, 2012, p. 344-385

This article argues that trade embargoes toward illegal settlements in occupied territories are an obligation under general public international law, when such trade primarily benefits the occupant. In this case, the self-executing duty of non-recognition applies. There is no need for an explicit trade embargo imposed by the United Nations Security Council. For, transferring parts of an occupant's civilian population to occupied territories, and gaining economic benefits from occupation, both violate peremptory norms of public international law. Equally, withholding trade is also permitted under the law of the World Trade Organization (WTO). This article shows that according to Article XXVI.5.(a) of the General Agreement on Tariffs and Trade (GATT), the GATT does not apply to illegal settlements. A WTO panel could reach this conclusion, either by denying jurisdiction through finding that the occupying State has no legal standing or by scrutinizing Article XXVI.5.(a) on its merits. However, if a panel would, erroneously, decide the GATT does apply to settlements; trade sanctions could still be allowed in a dispute settlement. This can be done by either accepting the relevant rules of public international law as an independent defense, or by using it in the interpretation of public moral and security exceptions under GATT Article XX and XXI.

LES OBLIGATIONS DÉCOULANT DU DROIT INTERNATIONAL HUMANITAIRE DEVRAIENT-ELLES ÊTRE VRAIMENT ÉGALES POUR LES ÉTATS ET LES GROUPES ARMÉS ?

Marco Sassòli et Yuval Shany. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/2, p. 119-133

Pour ce premier débat, la Revue a demandé à deux membres de son Comité de rédaction, les professeurs Marco Sassòli et Yuval Shany, de débattre sur le thème de l'égalité des États et des groupes armés en droit international humanitaire. Les commentaires du professeur René Provost apportent un troisième éclairage à ces échanges. La question cruciale est de savoir s'il est réaliste d'appliquer aux groupes armés non étatiques le régime juridique en vigueur. Comment les groupes armés, qui ont des moyens parfois très limités et une organisation rudimentaire, pourraient-ils s'acquitter des mêmes obligations que les États ? Qu'est-ce qui inciterait les groupes armés à respecter les règles établies par leurs adversaires ? Pourquoi devraient-ils respecter des règles quand le fait même de prendre les armes contre l'État fait déjà d'eux des 'hors-la-loi' ? Les participants à cette discussion aspirent tous à assurer une meilleure protection juridique à toutes les personnes touchées par les conflits armés non internationaux. Les professeurs Sassòli et Shany ont convenu de présenter deux positions 'radicalement' opposées, le professeur Sassòli soulignant la nécessité de reconsidérer l'égalité et de la remplacer par une gradation des obligations, et le professeur Shany réfutant ce point de vue. Le profes-

seur Provost propose ensuite une réflexion sur les positions exposées par les deux intervenants et nous invite à revisiter la notion même d'égalité des belligérants. Par souci de clarté et de concision, les débatteurs ont simplifié la complexité de leur raisonnement juridique. Les lecteurs de la Revue garderont à l'esprit que les positions des intervenants sur ce point de droit sont en réalité plus nuancées que ne le laisse apparaître ce débat.

OBSERVANCE OF INTERNATIONAL HUMANITARIAN LAW BY FORCES UNDER THE COMMAND OF INTERNATIONAL ORGANISATIONS

Arne Willy Dahl. In: *Recueils de la Société internationale de droit militaire et de droit de la guerre* 19, 2013, p. 345-363

This lecture concerns international legal interoperability issues arising where forces from several states participate in combined operations under the command of an international organization. First, the source of these issues is discussed followed by various examples ranging from anti-personnel mines to the status and treatment of prisoners of war. Second, the author discusses problems that arise between states and the international organization in command, specifically, whether the command relationship relieves troop-contributing states of their obligation to international law. Seven principles that govern these matters are offered including the host state's need to impose restrictions on the operations of visiting states to avoid liability for acts by those states, a state's responsibility over only the conduct of their personnel and a state's inability to invoke participation in combined operations as a justification for failing to adhere to international law. This last principle was contested when the European Court of Human Rights found the UN, rather than the participating states, liable for failing to adhere to international law in 2007. Lastly, the author recommends that states discuss and resolve matters of legal interoperability prior to deployment by, for example, assigning states to tasks where legal limitations and conflicting legal obligations are avoided. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

OBSERVANCE OF INTERNATIONAL HUMANITARIAN LAW BY FORCES UNDER THE COMMAND OF THE EUROPEAN UNION

Frederik Naert. In: *Recueils de la Société internationale de droit militaire et de droit de la guerre* 19, 2013, p. 373-404

This article assesses when and how IHL is applicable in European Union (EU) military operations. The author outlines the types of operations the EU can conduct and examines the legal framework that shapes the actions of EU forces. The author expands on the role of customary international law and international human rights discourse in the planning, command, control and conduct of EU operations. The applicability of IHL in EU operations is best understood through a state-centric paradigm, where the author submits that the IHL obligations in EU military operations primarily rest on the legal duties of states. Additionally, member states have different treaty obligations, which can complicate these operations. It is argued that when IHL does not apply, the EU uses international human rights law as grounded within their treaty obligations, and the obligations of its member states, to guide its conduct in military actions. The author argues that an assessment must be made for

each EU operation as to how international law will be applicable to the mission. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

OCCUPATION LAW DURING AND AFTER IRAQ : THE EXPEDIENCE OF CONSERVATIONISM EVIDENCED IN THE MINUTES AND RESOLUTIONS OF THE IRAQI GOVERNING COUNCIL

Jordan E. Toone. In: *Florida journal of international law* Vol. 24, December 2012, p. 469-511

The legality of the 2003 invasion of Iraq has attracted intense scholarly and public scrutiny. In an attempt to address the weaknesses in the existing literature on the subject, the article makes a distinctive contribution: It relies primarily on the minutes kept and resolutions adopted by the Iraqi Governing Council (the "IGC") (the quasi-governmental body established by the Coalition Provisional Authority in June of 2003 and officially recognized in U.N. General Assembly Resolutions 1483 and 1511 prior to its dissolution in June 2004) to examine the relevance of occupation law to contemporary, state-building occupations and, in turn, to determine the degree to which the United States adhered to its legal mandate as the occupying power in Iraq. Relying principally on the insights provided by the hitherto unreferenced resolutions adopted and meeting minutes kept by the IGC, this Article provides compelling justifications for the application of the conservationist principle--the axiom of occupation law--to contemporary, state-building occupations, while also casting incriminating shadows upon the United States' adherence to its obligations under occupation law as the occupying power in Iraq. In addition to examining the relevance of the law of occupation to contemporary occupations and the United States' adherence to this law in its occupation of Iraq, the Article contributes to the growing body of literature on the emerging international legal doctrine, *ius post bellum*, by outlining three fundamental principles that must supplement the existing proposals related to the *ius post bellum* law of transformative occupations. Foremost among these principles is the necessity of preserving popular sovereignty during transformative occupations in the form of an executive council made up of elected citizen representatives from the occupied state that have veto power over all proposed reforms to the legal, economic, and political infrastructure of the occupied state.

THE OCCUPIED AND THE OCCUPIER : THE CASE OF NORWAY

Sigrud Redse Johansen. - In: *Searching for a "principle of humanity" in international humanitarian law.* - Cambridge [etc.] : Cambridge University Press, 2013. - p. 206-232

This chapter addresses legal issues relating to the German occupation of Norway from 1940 to 1945, with a particular focus on the occupying state's interference in the internal affairs of the occupied state. Norway had a peculiar arrangement during the war, where the appointed 'national' fascist government supported the occupying force. The author uses the example of Norway to demonstrate how requirements of humanity represent a driving force in the development of international humanitarian law, and that even if an occupying force may try to camouflage its actions by legal terms, considerations of morality or humanity may override the positive law.

OF WOLVES AND SHEEP : A PURPOSIVE ANALYSIS OF PERFDY PROHIBITIONS IN INTERNATIONAL HUMANITARIAN LAW

Mike Madden. In: *Journal of conflict and security law* Vol. 17, no. 3, Winter 2012, p. 439-463

A combatant in an armed conflict, like a wolf in sheep's clothing, can seek to gain a tactical or strategic advantage by resort to deception and trickery. International Humanitarian Law (IHL), however, distinguishes between permissible ruses of war and illegal acts of perfidy. How, then, should combatants conduct themselves so as to avoid violating IHL's perfidy prohibitions? This article argues that belligerents should interpret prohibitions against perfidy in a purposive manner (looking to causative links that may exist between perfidy and harm) in order to avoid eroding the protection that IHL affords to designated groups. A close analysis of potentially perfidious land, air and sea combat practices will further reveal that some accepted practices may need to be reassessed and/or ceased if States wish to comply with purposively interpreted perfidy prohibitions.

THE OLD BRIDGE OF MOSTAR AND INCREASING RESPECT FOR CULTURAL PROPERTY IN ARMED CONFLICT

by Jadranka Petrovic. - Leiden ; Boston : M. Nijhoff, 2013. - XVIII, 354 p.

Although it is precious to all humanity, including future generations, cultural property is targeted wilfully during armed conflict. In the litany of other war crimes the wilful destruction of cultural property is pushed from centre stage. The deliberate destruction of the Old Bridge of Mostar is emblematic of tragedies wrought on priceless cultural objects internationally. Drawing on the relevant rules of international humanitarian law and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, this book analyses the normative implications of the deliberate targeting and destruction of the Old Bridge and also examines enforcement efforts in order to identify issues relating to international legal protection of cultural property arising from this incident.

OMAR KHADR : DOMESTIC AND INTERNATIONAL LITIGATION STRATEGIES FOR A CHILD IN ARMED CONFLICT HELD AT GUANTANAMO

Richard J. Wilson. In: *Santa Clara journal of international law* Vol. 11, no. 1, 2012, p. 29-79

The author will first examine, in Part I, the broad context of the Khadr case. That context includes the Khadr family background, the relevant law relating to children in armed conflict, the overall situation of juvenile detainees at Guantanamo Bay and elsewhere, and a bit of history on the prosecution of children in armed conflict. In Part II, he will document the efforts to put the issue of Omar's youth before the Washington federal court in habeas corpus proceedings, including some effort to develop the facts relating to Omar's capture and subsequent detention in Afghanistan and Guantanamo. In Part III, the author will examine the ways in which the question of juvenile status affected military commission proceedings, both before and after the Hamdan decision. In Part IV, the role of the Canadian courts in this complex array of litigation will be explored through the lens of Omar's age. He will examine the ways in which the issue of Omar's youth was addressed in proceedings before the Inter-American Commission on Human Rights in Part V, and Part VI will discuss the outcome of the Khadr case.

It will also offer his own conclusions and reflections on the ways in which the international law of armed conflict and human rights interacted in these proceedings.

ON BANNING AUTONOMOUS WEAPON SYSTEMS : HUMAN RIGHTS, AUTOMATION, AND THE DEHUMANIZATION OF LETHAL DECISION-MAKING

Peter Asaro. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 687-709

This article considers the recent literature concerned with establishing an international prohibition on autonomous weapon systems. It seeks to address concerns expressed by some scholars that such a ban might be problematic for various reasons. It argues in favour of a theoretical foundation for such a ban based on human rights and humanitarian principles that are not only moral, but also legal ones. In particular, an implicit requirement for human judgement can be found in international humanitarian law governing armed conflict. Indeed, this requirement is implicit in the principles of distinction, proportionality, and military necessity that are found in international treaties, such as the 1949 Geneva Conventions, and firmly established in international customary law. Similar principles are also implicit in international human rights law, which ensures certain human rights for all people, regardless of national origins or local laws, at all times. I argue that the human rights to life and due process, and the limited conditions under which they can be overridden, imply a specific duty with respect to a broad range of automated and autonomous technologies. In particular, there is a duty upon individuals and states in peacetime, as well as combatants, military organizations, and states in armed conflict situations, not to delegate to a machine or automated process the authority or capability to initiate the use of lethal force independently of human determinations of its moral and legal legitimacy in each and every case. I argue that it would be beneficial to establish this duty as an international norm, and express this with a treaty, before the emergence of a broad range of automated and autonomous weapons systems begin to appear that are likely to pose grave threats to the basic rights of individuals.

ON LOCATING THE RIGHTS TO LOST

Ricardo A. Sunga III. In: *The John Marshall law review* Vol. 45, no. 4, Summer 2012, p. 1051-1119

This Article investigates the status and scope of the right to know the truth. It asks the question: What is the nature of the violation that the denial of the truth about disappeared and missing persons constitutes, and how has international law responded to this nature? In the process, the Article explores the need for complete recognition in international human rights law of a distinct right to know the truth and, in this context, critically examines the express guarantee of this right embodied in Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance. The Article analyzes the specific dimensions of the violation that a denial of the truth about the disappeared and missing constitutes and examines the extent to which international law and jurisprudence adequately reflect its full nature.

"ONE HELL OF A KILLING MACHINE" : SIGNATURE STRIKES AND INTERNATIONAL LAW

Kevin Jon Heller. In: *Journal of international criminal justice* Vol. 11, no. 1, March 2013, p. 89-119

Although the vast majority of drone attacks conducted by the United States have been signature strikes — strikes that target "groups of men who bear certain signatures, or defining characteristics associated with terrorist activity, but whose identities aren't known"—scholars have paid almost no attention to their legality under international law. This article attempts to fill that lacuna. Section 2 explains why a signature strike must be justified under either international humanitarian law (IHL) or international human rights law (IHRL) even if the strike was a legitimate act of self-defence under Article 51 of the UN Charter. Section 3 explores the legality of signature strikes under IHL. It concludes that although some signature strikes clearly comply with the principle of distinction, others either violate that principle as a matter of law or require evidence concerning the target that the United States is unlikely to possess prior to the attack. Section 4 then provides a similar analysis for IHRL, concluding that most of the signature strikes permitted by IHL — though certainly not all — would violate IHRL's insistence that individuals cannot be arbitrarily deprived of their right to life.

"OUT OF THE LOOP" : AUTONOMOUS WEAPON SYSTEMS AND THE LAW OF ARMED CONFLICT

Michael N. Schmitt and Jeffrey S. Thurnher. In: *Harvard national security journal* vol. 4, issue 2, 2013, p. 231-281

The introduction of autonomous weapon systems into the "battlespace" will profoundly influence the nature of future warfare. This reality has begun to draw the attention of the international legal community, with increasing calls for an outright ban on the use of autonomous weapons systems in armed conflict. This article is intended to help infuse granularity and precision into the legal debates surrounding such weapon systems and their future uses. It suggests that whereas some conceivable autonomous weapon systems might be prohibited as a matter of law, the use of others will be unlawful only when employed in a manner that runs contrary to the law of armed conflict's prescriptive norms governing the "conduct of hostilities." This article concludes that an outright ban of autonomous weapon systems is insupportable as a matter of law, policy, and operational good sense. Indeed, proponents of a ban underestimate the extent to which the law of armed conflict, including its customary law aspect, will control autonomous weapon system operations. Some autonomous weapon systems that might be developed would already be unlawful *per se* under existing customary law, irrespective of any treaty ban. The use of certain others would be severely limited by that law.

PANDORA'S BOX ? : DRONE STRIKES UNDER JUS AD BELLUM, JUS IN BELLO, AND INTERNATIONAL HUMAN RIGHTS LAW

Stuart Casey-Maslen. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 597-625

Armed drones pose a major threat to the general prohibition on the inter-state use of force and to respect for human rights. On the battlefield, in a situation of armed conflict, the use of armed drones may be able to satisfy the fundamental international humanitarian law rules of distinction and proportionality (although attributing international criminal responsibility for their unlawful use may prove a significant challenge). Away from the battlefield, the use of drone strikes will often amount to a violation of fundamental human rights. Greater clarity on the

applicable legal regime along with restraints to prevent the further proliferation of drone technology are urgently needed.

PARTIALITY AND WEIGHING HARM TO NON-COMBATANTS

David Lefkowitz. - In: *Global justice and international affairs*. - Leiden ; Boston : Brill, 2012. - p. 251-270

Suppose that under certain conditions, combatants waging a just war are morally permitted to engage in acts that cause collateral damage; that is, harm done to non-combatants as a side effect of an attack on a morally permissible target. Does it matter morally whether those noncombatants who will be harmed are citizens of the same state as the combatants who carry out the attack, or are instead citizens of the state against whom these combatants are waging war? The author refutes attempt to defend partiality to compatriot non-combatants by appeal to an alleged asymmetry between the sacrifice one must make to save others, and the sacrifice one may impose on a third party in order to save those same people. Rather, it is because an attack that causes harm to neutrals involves a distinct moral wrong absent from an attack that harms only compatriot non-combatants, namely a violation of the neutral state's sovereignty. The disvalue of this wrong is great enough that, at least up to a point, it requires choosing an act that will result in more non-combatant deaths than would result from committing the alternative act under consideration.

PARTICIPANTS IN CONFLICT : CYBER WARRIORS, PATRIOTIC HACKERS AND THE LAWS OF WAR

Heather A. Harrison Dinniss. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 251-278

The purpose of this chapter is to examine the role of those participants who are involved in cyber operations whether as part of a State's armed forces or as civilians directly participating in the hostilities. The requirements for lawful combatancy are reviewed with the aim of exploring how they translate into a medium where anonymity is the norm and distance and proximity are largely irrelevant. Secondly, the specialist nature of new technologies and the downsizing of military forces have resulted in increased civilianisation of State armed forces; thus care must be taken in deciding what roles may be outsourced to civilian contractors without jeopardising their legal protections under international conventions. Likewise, increasing numbers of non-State actors, including so-called "patriotic hackers" are becoming involved in conflicts and may be used as proxies by States keen to benefit from the associated advantage of plausible deniability. In light of these developments, and the ongoing debate in international legal circles regarding the concept of direct participation in hostilities, the second half of the chapter reviews the criteria that were the subject of general agreement in the ICRC expert process to provide guidance on the notion of direct participation and examines how they might apply to participants in cyber operations.

THE PATH TO LESS LETHAL AND DESTRUCTIVE WAR ? : TECHNOLOGICAL AND DOCTRINAL DEVELOPMENTS AND INTERNATIONAL HUMANITARIAN LAW AFTER IRAQ AND AFGHANISTAN

David P. Fidler. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 315-336

This chapter examines the use of "non-lethal" weapons in the context of the counterinsurgency (COIN) campaigns in Iraq and Afghanistan. In a COIN environment, it is essential that military commanders use appropriate and measured levels of force and apply that force precisely so that it accomplishes the mission without unnecessary loss of life or suffering. The author applies some of the lessons learned in Iraq and Afghanistan to the more recent conflicts in Libya and Syria. He explores whether the impact of the COIN doctrine influences military thinking concerning new technologies, in particular "non-lethal" and "less-lethal" technologies, and how this new thinking may affect compliance with IHL.

PEACE SETTLEMENTS AND INTERNATIONAL LAW : FROM LEX PACIFICATORIA TO JUS POST BELLUM

Christine Bell. - In: *Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 499-546

This chapter examines the ways in which peace settlements are producing a *lex pacificatoria*, a new 'law of the peacemakers', in a range of different areas relating to international conflict and security law. The chapter considers the relationship between this 'lex pax' and proposals for re-invigorating a concept of *jus post bellum*. The chapter illustrates how the practice of fashioning and implementing peace settlements is forcing a revision of relevant international law, as the traditional assumptions and boundaries of relevant legal regimes do not fit within post-settlement political landscapes, are inadequate for enabling and regulating peace settlement implementation, and do not contain guidance for the dilemmas faced post-settlement. The chapter sets out the relationship between peace agreements and international law, describing the ways in which a lack of fit between peace settlement dilemmas and international legal doctrines has generated new practices and new articulations of international law. Building on earlier arguments, it is argued that these revisions constitute a new *lex pacificatoria*, or 'law of the peacemakers', in the form of a normativized practice of conflict resolution. The extent to which these new practices constitute 'law' at all is critically evaluated throughout the chapter. In conclusion, it considers whether it is possible, useful and desirable to frame and develop the 'new law' as a new *jus post bellum* that might supplement existing categories of *jus ad bellum* and *jus in bello*. The contemporary peace settlement is a post-Cold War phenomenon.

PERFIDY IN NON-INTERNATIONAL ARMED CONFLICTS

Richard B. Jackson. In: *International law studies* Vol. 88, 2012, p. 237-259

The question to be addressed is whether the war crime of perfidy exists in the law of war pertaining to non-international armed conflicts. Is it appropriate to apply this term outside of international armed conflict, where the rules are defined by treaty and customary international law? The *Manual on the Law of Non-International Armed Conflict* suggests that at least some of the conduct defined as perfidy when occurring during an international armed conflict is also perfidious when occurring during non-international armed conflicts. What are its parameters and how many of the concepts from international armed conflict are to be incorporated into the law of non-international armed conflicts? The law that applies to the conduct of armed forces in a non-

international armed conflict is derived from treaty law and customary international law. However, the customary international law status of perfidy in non-international conflict is difficult to establish under the current U.S. view of customary international law. There is little or no evidence of perfidy violations being prosecuted under international law in non-international armed conflicts, nor is there clear *opinio juris* by States on this matter.

POLITICALLY INCONVENIENT, LEGALLY CORRECT : A NON-INTERNATIONAL ARMED CONFLICT IN SOUTHERN THAILAND

Benjamin Zawacki. In: *Journal of conflict and security law* Vol. 18, no. 1, Spring 2013, p. 151-179

This article argues that the insurgency in southern Thailand, currently into its ninth consecutive year, is a non-international armed conflict (NIAC). The title implies the contentiousness of the argument, which is responsive to the government of Thailand's express claim that the situation in the South is rather one of banditry, organized crime, and/or ill-defined insurgency. The article begins with brief sections on the nature and applicability of international humanitarian law (IHL) and the factual background of Thailand's conflict. The conflict began in January 2004 and has pitted variously armed and organized ethnic Malays—nearly all Muslims—against the predominantly Buddhist Thai state and its security forces. Over 5000 people have been killed and thousands more injured. Reference is made to a recent report by Amnesty International (for which the author works), which characterized insurgency attacks as war crimes under IHL. The article then applies the relevant IHL to these facts by addressing, through their various constituency sub-elements, the two main legal elements of Common Article 3 NIACs, organization and intensity. Each sub-element is at least partially satisfied, such that the requisite 'minimum levels' of both organization and intensity are plainly established, and the situation's character as a NIAC becomes clear. The article draws upon both primary and secondary source material, and for the first time marshals the facts in southern Thailand relevant to Common Article 3 NIACs in a coherent and purposeful manner. Finally, the article dispenses with the specific claim that Thailand's southern violence is primarily of a non-ideological, criminal nature and that such militates against its constituting a NIAC.

PORTER LE FLAMBEAU DE L'HUMANITÉ JUSQU'AU COEUR DES CONFLITS, UNE TRADITION SUISSE À RELAYER

par Didier Burkhalter. In: *Schweizerische Zeitschrift für internationales 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* 23e année, 1/2013, p. 9-17

Discours prononcé à l'occasion de la journée du droit international public à Berne, le 19 octobre 2012.

POSITIVE OBLIGATIONS IN HUMAN RIGHTS LAW DURING ARMED CONFLICTS

Sandra Krähenmann. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 170-187

This chapter proposes to focus on a series of obligations that are particularly relevant in the context of armed conflicts. First, states have to take measures to protect individuals from the effects of hostilities. Second, states

have a duty to account for the fate of persons during times of armed conflicts. Third, states have to take measures to protect individuals against both rebels and paramilitary forces.

POTENTIAL PITFALLS OF "STRATEGIC LITIGATION" : HOW THE AL-AULAQI LAWSUIT THREATENED TO UNDERMINE INTERNATIONAL HUMANITARIAN LAW

Michael W. Lewis. In: *Loyola university Chicago international law review* Vol. 9, issue 1, 2011, p. 177-186

In 2010 the American Civil Liberties Union (ACLU) filed a lawsuit that attempted to enjoin the Obama Administration from continuing to target Anwar al-Aulaqi. An integral part of the legal basis for that lawsuit was the claim that the targeting of al-Aulaqi as a member of Al-Qaeda in the Arabian Peninsula (AQAP) in Yemen was occurring "outside of armed conflict." Although the lawsuit was dismissed on procedural grounds, this short essay examines the ACLU's central legal argument that strikes in Yemen were occurring outside of armed conflict and therefore beyond the scope of IHL (International Humanitarian Law). If this proposed limitation on the scope of IHL were accepted it would effectively turn IHL on its head. Such a limitation would fundamentally undermine IHL by offering sanctuaries to groups like al-Qaeda and AQAP that until now were disfavored because their conduct (targeting civilians and blending in with the civilian population) was antithetical to IHL's core purposes of protecting the civilian population from harm.

THE POWER TO DETAIN : DETENTION OF TERRORISM SUSPECTS AFTER 9/11

Oona Hathaway... [et al.]. In: *Yale journal of international law* Vol. 38, no. 1, 2013, p. 124-177

The sources of the U.S. government's authority to detain suspected terrorists, and the limitations on that authority, remain ill-defined. This article aims to fill this gap by clarifying the reach and limits of existing sources of U.S. government authority to detain suspected terrorists in the ongoing conflict with al-Qaeda and associated forces. While prior scholarship has examined pieces of the detention picture, this article seeks to offer a more comprehensive view—examining both statutory and constitutional authority for law-of-war detention, and comparing it to detention and prosecution of terrorism suspects under domestic criminal law. In the process, the article shows that law-of-war detention has weaknesses not often recognized by those who champion its use for terrorism suspects. In many cases, criminal law detention and prosecution of terrorism suspects is not only more consistent with U.S. legal principles and commitments, but is also likely to be more effective in battling terrorism.

THE POWER TO KILL OR CAPTURE ENEMY COMBATANTS

Ryan Goodman. In: *European journal of international law = Journal européen de droit international* Vol. 24, no. 3, August 2013, p. 819-853

During wartime a critical legal question involves the scope of authority to choose whether to kill or capture enemy combatants. One view maintains that a combatant is lawfully subject to lethal force wherever the person is found – unless and until the individual offers to surrender. In contrast, this article concludes that important restraints on the use of deadly force were a part of the agreement reached by states and codified in the 1977

First Additional Protocol to the Geneva Conventions. When nations of the world focused their attention on balancing principles of humanity and military necessity, and making higher law, they agreed on two important sets of rules. Under Article 35, states agreed to prohibit the manifestly unnecessary killing of enemy combatants. And, under Article 41, they agreed that combatants who are completely defenceless, at the mercy of enemy forces, shall be considered hors de combat. – including alternative specifications of standards and burdens of proof. Nevertheless, the general constraint – and its key components – should be understood to have a solid foundation in the structure, rules, and practices of modern warfare.

PRACTICES OF LEGALIZATION IN ARMS CONTROL AND DISARMAMENT : THE ICRC, CCW AND LANDMINES

Ritu Mathur. In: *Contemporary security policy* Vol. 33, no. 3, December 2012, p. 413-436

It has long been assumed that progress toward arms control and disarmament is possible only after constituting legal frameworks from which such an action could be initiated. Although the legal framework regarding a particular weapon might be questioned for its effectiveness, the related practices of legalization themselves are rarely interrogated. This article problematizes practices of legalization in the field of arms control and disarmament. It builds upon innovations by critical security studies scholars to scrutinize the ICRC's engagement with the problem of conventional weapons, especially landmines. Study of practices of legalization demonstrate the embeddedness of legal discourses in the regulation and prohibition of weapons. It compels state and non-state actors to represent their interests in legal terms and represents their efforts as attempts towards developing existing legal frameworks. This article acknowledges the experiences with practices of legalization in the preceding half century of arms control and disarmament negotiations. A reflection on these experiences exposes the limitations and possibilities of practices of legalization and encourages alternative approaches to regulating and prohibiting weapons.

PREOCCUPIED WITH OCCUPATION : CRITICAL EXAMINATIONS OF THE HISTORICAL DEVELOPMENT OF THE LAW OF OCCUPATION

Yutaka Arai-Takahashi. In: *International review of the Red Cross* Vol. 94, no. 885, Spring 2012, p. 51-80

This article examines the historical evolution of the law of occupation from two angles. First, it analyses scholarly discourse and practice with respect to the general prohibition on the Occupying Power making changes to the laws and administrative structure of the occupied country, as embodied in Article 43 of the 1907 Hague Regulations. Many Occupying Powers and scholars have endeavoured to rationalize exceptions to this 'general principle' governing the entire corpus of the law of occupation. Their studies support the contingent nature of the law of occupation, with its interpretation being dependent on different historical settings and social context. The second part of the article focuses on how the law of occupation that evolved as a European project has rationalized excluding the system of colonialism from the framework of that law. The historical assessment of this body of jus in bello would be incomplete and biased if it did not address the narratives of such structural exclusivity.

PRESENT AND FUTURE CONCEPTIONS OF THE STATUS OF GOVERNMENT FORCES IN NON-INTERNATIONAL ARMED CONFLICT

Sean Watts. In: *International law studies* Vol. 88, 2012, p. 145-180

This chapter focuses on the use of status to determine lawfulness of participation in hostilities, or what is sometimes referred to in international armed conflict as combatant status. In particular, this chapter explores the extent to which the international law of non-international armed conflict (NIAC) regulates the status of persons who participate in hostilities on behalf of the State. This chapter begins by addressing the descriptive question whether the international law of NIAC speaks to government forces' status at all. An analytical section accompanies, offering explanations of the likely influences behind the state of the law. A predictive effort follows, addressed to the question whether the law is settled or instead likely to change. This section identifies a number of pressures conspiring to fill the NIAC status void. An argument in favor of imposing status-like limitations on government forces in NIAC is derived from the law-of-war principle of distinction, and then rebutted by logical, structural and operational arguments. The chapter concludes by addressing a series of considerations related to the chapter's opening generalization about international legal voids as an opportunity to reflect more deliberately on an appropriate interpretive approach to the law of NIAC.

PRÉVENIR ET RÉPRIMER LES CRIMES INTERNATIONAUX : VERS UNE APPROCHE "INTÉGRÉE" FONDÉE SUR LA PRATIQUE NATIONALE : RAPPORT DE LA TROISIÈME RÉUNION UNIVERSELLE DES COMMISSIONS NATIONALES DE MISE EN OEUVRE DU DROIT INTERNATIONAL HUMANITAIRE

rédigé par Anne-Marie La Rosa. - Genève : CICR, juin 2013. - 2 vol. (116, 338 p.)

Ce rapport prend en considération les travaux et réflexions qui ont suivi la réunion universelle. Il inclut un compte rendu des discussions sur les moyens et solutions permettant de répondre aux défis de l'incorporation du DIH (aspects répressifs) dans le droit national. Il présente également des réflexions sur des sujets d'importance, tels la compétence universelle ou encore le rôle de la sanction dans la prévention des violations graves du DIH. Le volume 2 du rapport, vise à soutenir les efforts des Etats dans les domaines examinés par la réunion universelle.

PRINCIPES DE DROIT DES CONFLITS ARMÉS

par Eric David. - Bruxelles : Bruylant, 2012. - 1151 p.

Cette cinquième édition s'est vue ajouter: une synthèse du Guide interprétatif du CICR sur la participation directe aux hostilités ; une présentation révisée de la notion de conflit armé ; l'intégration des rapports des commissions d'établissement des faits établis à la suite de certains épisodes récents du conflit israélo-palestinien (guerre de Gaza, « flottilles de la paix », guerre du Liban) ; le traitement de la jurisprudence pertinente de ces quatre dernières années, du Harvard Project adopté en 2009 et des travaux de la CDI, notamment ceux relatifs aux effets des conflits armés sur les traités (2011).

THE PRINCIPLE OF AMBITUITY AND THE PROHIBITION AGAINST EXCESSIVE COLLATERAL DAMAGE TO THE ENVIRONMENT DURING ARMED CONFLICT

Erik V. Koppe. In: *Nordic journal of international law* Vol. 82, no. 1, 2013, p. 53-82

This article aims to clarify the legal basis of the protection of the environment during armed conflict in general, and of the prohibition against excessive collateral damage to the environment in particular. It is submitted that the legal basis for the conventional and customary rules which protect the (intrinsic value of the) environment during armed conflict cannot be deduced from the four fundamental principles of the law of armed conflict: the principles of military necessity, distinction, proportionality and humanity. Rather, the specific obligations relating to environmental protection in times of armed conflict flow from the fundamental principle of ambiguity. Similar to the principle of humanity, the principle of ambiguity, which qualifies as a general principle of law in the sense of Article 38(1)(c) ICJ Statute, provides for an absolute limitation to the necessities of war. As such the principle of ambiguity may be used to interpret existing conventional or customary rules of international law during armed conflict, to supplement, or under exceptional circumstances to modify or set aside these rules. With regard to the prohibition against excessive collateral damage to the environment during armed conflict, it is submitted that this prohibition flows from a customary rule which emerged in the 1990s, rather than from Articles 51 and 52 of Additional Protocol I, and which complements Articles 35 and 55 AP I (i.e. for States Parties to AP I). This article argues that any military action which causes collateral damage to the environment must first be assessed under this relatively new customary prohibition; and subsequently, if no breach can be established and if applicable, by reference to Articles 35(3) and 55 AP I. In order to enhance the scope of this prohibition and provide better protection for the environment against collateral damage it is suggested that further investigations should be conducted into the consequences of warfare on the environment.

THE PRINCIPLE OF DISTINCTION IN VIRTUAL WAR : RESTRAINTS AND PRECAUTIONARY MEASURES UNDER INTERNATIONAL HUMANITARIAN LAW

Jimena M. Conde Jiminián. In: *Tilburg law review* Vol. 15, 2010, p. 69-91

This piece analyzes the notion of virtual war as it is known today. In the first part, the rise, developments, and characteristics of virtual military technology, or hi-tech warfare, and the present practical applications of such technology and combat strategy, will be briefly described. In the second part, the application of the principle of distinction under current treaty and custom-based IHL applicable to virtual war will be analyzed. In doing so, reference will be made to other principles governing the law of armed conflict (LOAC), as well as the possibility of equating the participation of civilians (e.g. roboticists, engineers, computer scientists) with direct participation in hostilities when these actively aid the military in technological projects. The third paragraph will briefly examine the effects resulting when distinction fails in virtual war, as well as the existing restraints and precautionary measures under applicable IHL. Lastly, the key challenges that hi-tech warfare poses to IHL, ethics, morality, and command responsibility, will be outlined.

THE PRINCIPLE OF HUMANITY IN THE DEVELOPMENT OF "SPECIAL PROTECTION" FOR CHILDREN IN ARMED CONFLICT : 60 YEARS BEYOND THE GENEVA CONVENTIONS AND 20 YEARS BEYOND THE CONVENTION ON THE RIGHTS OF THE CHILD

Katarina Mansson. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 149-180

This chapter explores how the duty of humanity towards one of the most vulnerable groups in society has developed into a legal duty of states and other actors under international law, and how that legal duty has, or has not, ensured their "special protection" in times of armed conflict. The intertwining of the 1949 Geneva Conventions and relevant human rights instruments, the 1989 Convention of the Rights of the Child in particular, is at the heart of the discussion. Particular attention is given to the plight of children involved in armed conflict, by exploring the legal provisions seeking to protect children from the recruitment and use in armed forces and armed groups. It aspires to demonstrate how the codification of the protection of children is particularly illustrative of the convergence between international humanitarian law and human rights law.

A "PRINCIPLE OF HUMANITY" OR A "PRINCIPLE OF HUMAN-RIGHTISM" ?

Kjetil Mujezinovic Larsen. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 124-148

This chapter makes an inquiry into the relationship between international humanitarian law (IHL) and international human rights law with a view to examine the current impact of the latter regime on the conduct of hostilities, and to discuss the relevance of that impact for the existence and/or status of a "principle of humanity" in IHL. This chapter addresses these issues primarily through an analysis of the case law from the European Court of Human Rights in cases concerning alleged human rights violations during armed conflicts.

THE PRINCIPLE OF PROPORTIONALITY

Yoram Dinstein. - In: Searching for a "principle of humanity" in international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2013. - p. 72-85

In the author's opinion, the reference to a principle or principles of humanity is rather loose and partly misleading. He argues that it is important not to equate principles of humanity with other principles integrated in positive IHL and legally binding as such, namely the principles of distinction, unnecessary suffering and proportionality. By contrast, the principles of humanity should be viewed not as legal norms but as extra-legal considerations. IHL must be predicated on a subtle balance - and compromise - between conflicting considerations of humanity, on the one hand, and the demands of military necessity, on the other.

PRINCIPLES OF DISTINCTION AND PROTECTION AT THE ICTY

Iain Bonomy. - Oslo : Torkel Opsahl Academic EPublisher, 2013. - IV, 53 p.

The assessment of military conduct during armed hostilities as either lawful or criminal involves striking a bal-

ance between the requirements of humanity and those of military necessity. Throughout its existence, the International Criminal Tribunal for the former Yugoslavia (ICTY) has tackled this balancing exercise in the context of individual criminal responsibility by reference to the laws of war. Indeed, the Appeals Chamber of the ICTY in the Kunarac case noted that "the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of acts committed in its midst". Accordingly, for many years, the Trial and Appeals Chambers of the ICTY have been guided by the well known principles of distinction and protection, which, according to one of the Trial Chambers, form "the foundation of international humanitarian law". In applying these guiding principles the Chambers have also had regard to and analysed the prohibition against indiscriminate and disproportionate attacks. This has all been done in the context of the Statute establishing the ICTY. The relevant provisions in the Statute are Article 2 (grave breaches of the Geneva Conventions), Article 3 (violations of law or customs of war other than those covered by Articles 2, 4, and 5), and Article 5 (crimes against humanity). This paper considers pertinent ICTY's jurisprudence and provides an overview of the application of these principles in the various cases. In doing so, it focuses on those most relevant to the issue of what qualifies as lawful conduct in armed hostilities.

PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

Jonathan Crowe, Kylie Weston-Scheuber. - Cheltenham ; Northampton : E. Elgar, 2013. - VIII, 198 p.

This book provides a clear and concise explanation of the central principles of international humanitarian law (or the law of armed conflict) while situating them in a broader philosophical, ethical and legal context. The authors consider a range of wider issues relevant to international humanitarian law, including its ethical foundations, relationship to other bodies of international law and contemporary modes of enforcement. This helps to develop a richer context for understanding the law of war and a sound basis for examining the changing nature of contemporary armed conflict. The book also discusses important recent decisions by international courts and tribunals, tracks the historical development of humanitarian principles in warfare and considers the legal position of states, individuals and non-state groups.

PRIVATE MILITARY AND SECURITY COMPANIES (PMSCs) AND THE QUEST FOR ACCOUNTABILITY

Guest ed. : George Andreopoulos and John Kleinig. In: Criminal justice ethics Vol. 31, no. 3, December 2012, 318 p.

Special issue devoted to ethical issues arising from the activities, roles, and status of private military and security companies. In recent years these issues have grown in prominence globally. Matters of law, ethics, the scope of state power, the powers of corporate entities, and the complex intersection of law, authority, accountability, and the scope of discretion are all involved. The articles in this issue are revised and elaborated versions of papers originally presented at a conference on that topic at John Jay College Criminal Justice in October 2011.

PRIVATE MILITARY COMPANIES

Chia Lehnardt. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and

jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p.421-443

This article examines the regulation of private military companies within the framework of international humanitarian law. The author seeks to assess what elements of the legal regime are applicable to private military companies' conduct in conflict situations. The author examines how private military companies are governed, including how these companies can be regulated and whether individuals within these companies are considered to be civilians or combatants. The article is also concerned with whether private military companies are entitled to prisoner of war status provided that they do not violate the laws of war if they take part in hostilities. The article elaborates on when and how these companies can participate in hostilities. The author goes on to expand on state control over the private military entity, and explains that despite these companies not being part of a formal state organ, their actions can still implicate the state if they are seen as acting on behalf of the state. Finally, the article evaluates the peacekeeping capacities of these companies and submits that private military companies undermine international law when they fulfil military functions. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

THE PRIVATE MILITARY COMPANY COMPLEX IN CENTRAL AND SOUTHERN AFRICA : THE PROBLEMATIC APPLICATION OF INTERNATIONAL HUMANITARIAN LAW

Mathew Kincade. In: Global studies law review Vol. 12, no. 1, 2013, p. 205-226

The article discusses that the international humanitarian laws has been designed to control state armies and to protect human rights during armed conflict. It addresses that three major issues discussed in Geneva Convention regarding a major role of Private Military Companies (PMC), a private armed security service, in Africa. It expresses four penalty options for PMC regulation with uniform legislative approach regarding mercenary conduct and completely bans PMC use.

THE PRIVATIZATION OF WAR : FROM PRIVATEERS AND MERCENARIES TO PRIVATE MILITARY AND SECURITY COMPANIES

Amanda Foong. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 210-244

The recent cascade of academic literature on where private military and security companies (PMSCs) sit in the international legal framework has been sparked by contemporary controversies such as the killing of seventeen civilians by PMSC employees in Nisoor Square, Baghdad. Commentators in the field have generally focused on States' obligations under international humanitarian law (IHL) and the need for industry regulation, epitomized in the Montreux Document of 2008. This essay seeks to examine the privatization of war from a theoretical and historical perspective, by looking at the moral and ethical concerns often voiced in the debate over PMSCs, and the extent to which these have been taken into account by the Montreux regulatory framework. The legal framework envisaged by the Montreux Document with regards to PMSC involvement in situations of war is primarily based on IHL, given that IHL is *lex specialis* in the context of international and internal armed conflicts. This is potentially problematic as IHL is arguably an amoral regime that legitimizes violence. However, when faced with a new dilemma such as that

of PMSCs, one should ask not only how to adapt the current legal regime to accommodate these changes, but also what the underlying goals and purposes of the law should be. Thus, traditional hard law obligations, such as those under IHL, may not provide satisfactory solutions to the issue of PMSCs.

PRIVATIZING WAR : PRIVATE MILITARY AND SECURITY COMPANIES UNDER PUBLIC INTERNATIONAL LAW

Lindsey Cameron and Vincent Chetail. - Cambridge [etc.] : Cambridge University Press, 2013. - XXXV, 720 p.

A growing number of states use private military and security companies (PMSCs) for a variety of tasks, which were traditionally fulfilled by soldiers. This book provides a comprehensive analysis of the law that applies to PMSCs active in situations of armed conflict, focusing on international humanitarian law. It examines the limits in international law on how states may use private actors, taking the debate beyond the question of whether PMSCs are mercenaries. The authors delve into issues such as how PMSCs are bound by humanitarian law, whether their staff are civilians or combatants, and how the use of force in self-defence relates to direct participation in hostilities, a key issue for an industry that operates by exploiting the right to use force in self-defence. Throughout, the authors identify how existing legal obligations, including under state and individual criminal responsibility should play a role in the regulation of the industry.

THE PROHIBITION OF ENFORCED DISAPPEARANCES : A MEANINGFUL EXAMPLE OF A PARTIAL MERGER BETWEEN HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

Gloria Gaggioli. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 320-342

This chapter presents successively how international humanitarian law, human rights law and international criminal law contributed, in their own way, to the prohibition and criminalization of enforced disappearances. It shows that these bodies of law are complementary and that their mutual influence allowed a progressive enhancement of the legal protection of persons against enforced disappearances. Finally, it shows how the merger of the rules belonging to these different bodies of law into the Convention against enforced disappearances contributed to strengthen the prohibition of enforced disappearances in international law.

PROMOTING INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL DISASTER RESPONSE LAWS, RULES AND PRINCIPLES WITHIN THE COMMONWEALTH

Leonard Blazebay and David Fisher. In: Commonwealth Law Bulletin Vol. 36, no. 4, December 2010, p. 709-715

The purpose of this paper is to update Commonwealth member states on developments in international humanitarian law (IHL) and in international disaster response laws, rules and principles (IDRL) since the Senior Officials of Commonwealth law Ministries meeting in 2007. It also gives some indication of possible future developments and related Commonwealth actions.

PROPORTIONALITY AND PRECAUTIONS IN CYBER ATTACKS

Michael A. Newton. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 229-249

This chapter first describes the conceptual roots of the proportionality principle, particularly insofar as the *jus ad bellum* and *jus in bello* usages provide a useful distinction in the context of cyber operations. It then summarizes the normative contours of the modern *lex lata* related to proportionality, which is the necessary predicate for the application of its modern formulations to cyber attacks. This chapter concludes that the current formulations of proportionality provide sufficient granularity and flexibility to be well applied to cyberspace. Phrased another way, there is sufficient law to provide operational guidance for the conduct of robust cyber operations without wholly abandoning the humanizing influences that provide the existential foundations of the laws and customs of warfare.

PROPORTIONALITY IN ARMED CONFLICTS : A PRINCIPLE IN NEED OF CLARIFICATION ?

Ben Clarke. In: *Journal of international humanitarian legal studies* Vol. 3, no. 1, 2012, p. 73-123

In their quest to find ways to reduce civilian casualties during armed conflict, States often emphasise the importance of compliance with fundamental rules of international humanitarian law that apply during the conduct of hostilities. Chief among them are the rule of distinction, proportionality and precaution. This contribution focuses on the proportionality principle. It examines whether there is a need for clarification or development of this rule. After highlighting reasons why clarification of the law on proportionality is necessary, the author proposes a guidance document on proportionality decision-making in armed conflict. To lay the foundation for such a document, the author identifies a range of issues that could be addressed in the document.

PROPORTIONALITY IN MILITARY FORCE AT WAR'S MULTIPLE LEVELS : AVERTING CIVILIAN CASUALTIES VS. SAFEGUARDING SOLDIERS

Ziv Bohrer, Mark Osiel. In: *Vanderbilt journal of transnational law* Vol. 46, no. 3, May 2013, p. 747-822

To what lengths may a state go to protect its soldiers in war? May it design its military operations to further that goal if this significantly increases civilian casualties? International law currently offers no clear answers. Because recent wars have seen many states prioritize soldier safety over avoiding civilian casualties, spirited debate has arisen over the legal defensibility of this practice. This debate currently focuses on an ethics code proposed by two influential Israeli thinkers and allegedly embodied in Israel's conduct of its 2008–2009 Gaza war with Hamas. This article shows that current discussion fails to appreciate how judgments about proportionality in the use of military force necessarily differ at the tactical, operational, and strategic levels of warfare. It illustrates this with empirical material from recent armed conflicts. If international law is to address war's inescapable moral complexities, it must be interpreted to reflect the variation in the kind of decisions that soldiers confront at distinct organizational echelons. This approach largely resolves one of the most vexing conundrums that has perennially bedeviled the law of war.

PROSECUTING GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES IN CANADIAN COURTS

Fannie Lafontaine. - Toronto : Carswell, 2012. - XXX, 405 p.

This book explores the manner in which Canada has implemented some of its obligations under the Rome Statute of the International Criminal Court and how it has dealt with its legal and moral obligations in the fight against impunity for genocide, crimes against humanity and war crimes. It presents the historical context of the adoption of the Crimes against Humanity and War Crimes Act and explains the complex relation that Canada has traditionally entertained with war criminals present on its territory. It offers an assessment of the jurisdictional bases available for the prosecution of international crimes before Canadian courts, including universal jurisdiction and the requirement of the presence of the accused on Canada's territory as a precondition to its exercise. It also explores the role of the Attorney General of Canada in the exercise of jurisdiction and the criteria that guide – or should guide – the decision to prosecute, in light of the other (non-criminal) remedies available to ensure that the country does not harbor suspected war criminals. The book further offers an analysis of the general principles that are applicable to all crimes pursuant to the Act, particularly the reliance on customary international law in the crimes' definitions. The study also presents an analysis of the specific definitions of genocide, crimes against humanity and war crimes pursuant to the Act, highlighting potential difficulties in their interpretation or tensions between international law and Canadian criminal and human rights law. It aims at identifying whether the choice made in the Act to rely exclusively on Canadian criminal law to determine individual responsibility may create problems in war crimes prosecutions in Canada and whether the applicable principles might need to be adapted to the particular – collective and massive – nature of crimes against humanity, war crimes and genocide.

PROSECUTION OF ATTACKS AGAINST PEACEKEEPERS IN INTERNATIONAL COURTS AND TRIBUNALS

Ola Engdahl. In: *Revue de droit militaire et de droit de la guerre = The military law and law of war review = Tijdschrift voor militair recht en oorlogsrecht = Zeitschrift für Wehrrecht und Kriegsvölkerrecht = Rivista di diritto militare e di diritto della guerra = Revista de derecho militar y de derecho de la guerra* 51/2, 2012, p. 249-284

This article analyses the practice of international courts and tribunals regarding attacks against peacekeepers based on judgments of the International Criminal Tribunal for Rwanda, the Special Court Sierra Leone (SCSL) and the Pre-trial Chamber of the International Criminal Court (ICC). Directing attacks against personnel involved in peacekeeping missions, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict, is defined as a specific war crime in the ICC Statute and was later incorporated into the Statute of the SCSL.

THE PROSECUTION OF CHILD SOLDIERS : BALANCING ACCOUNTABILITY WITH JUSTICE

Erin Lafayette. In: *Syracuse law review* Vol. 63, no. 2, 2013, p. 297-325

There are currently over 300,000 children under the age of eighteen participating in armed conflicts across the

world. They are responsible for countless deaths, rapes, mutilations, and other atrocities. However, the international community has failed to reach a consensus regarding the age at which a child can be held legally responsible for their crimes. Consequently, despite the perpetration of international horrors, children unanimously escape criminal liability in international tribunals. Victims are left with little or no recourse to justice for the pain they have experienced. While some domestic courts have prosecuted individuals under eighteen-years-old for crimes committed during an armed conflict, but not war crimes, this provides little relief within a global perspective due to the wide range of minimum ages of criminal responsibility and consequent inequitable results. This Note explores the need for both international and domestic reform with regards to crimes committed by children during armed conflicts. International tribunals must begin to expressly state within their statutes the age at which they can claim jurisdiction over individuals. Domestic courts, such as those within the United States, can help this process by clarifying their own rules and thereby attempt to set precedent. Ultimately, instead of using eighteen as an arbitrary age of delineation for criminal responsibility, courts must have discretion to prosecute children for international atrocities by looking at the individual's physical, mental, and moral development as well as their cultural norms. Part I of this Note introduces the basic concepts of international law, including international criminal law and the legal protections that have been established for individuals under eighteen-years-old. Part II examines the difficulties that arise when determining the roles of children in armed conflict and the extent to which they can be held responsible for their actions. Additionally, it suggests several possible defenses that should be made available to juveniles if they are prosecuted in an international tribunal. The third section of the Note provides a case study of the only person under eighteen-years-old who has been prosecuted for a war crime since World War II and further evaluates the United States' role in this trial and their general perspective towards the treatment of minors in combat. Finally, Part IV emphasizes the need for an international consensus regarding the minimum age of criminal responsibility in international courts and suggests this reform must begin at the domestic level.

PROSECUTION OF WAR CRIMES IN BOSNIAN CANTONAL AND DISTRICT COURTS : THE ROLE OF THE RULE OF LAW

Sanja Popovic. - In: *International law in domestic courts : rule of law reform in post-conflict states*. - Cambridge [etc.] : Intersentia, 2012. - p. 221-240

In this chapter on the prosecution of war crimes in Bosnian cantonal and district courts, the author explores the judicial inadequacies that have become apparent through case law and proposes potential ways for rectification. With the establishment of the ICTY, an international body was set up specifically designed to bring to justice those who committed serious violations of international humanitarian law during the conflict in the former Yugoslavia since 1991. Concurrently, Bosnian local courts were empowered to try those cases that concerned "less serious" war crimes. The role of the local courts will, however, considerably increase once the ICTY's mandate expires. By taking into account the tangibility of an assessment of local courts' *modi operandi* and the impossibility of an operation of the rule of law without the desire to be bound by the respective

laws, the contribution examines some of the decision taken by Bosnian cantonal and district courts. Particular attention is paid to the preservation of international criminal law norms and standardism and its impact on the receptiveness of the judicial branch. In some instances the practice of Bosnian courts displays their failure to follow international precedents, and at times it has been proven to be irreconcilable with basic principles of war crimes prosecution.

PROTECTED PERSONS IN INTERNATIONAL ARMED CONFLICTS

Tom Ruys and Christian De Cock. - In: *Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 375-420

The four Geneva Conventions and the First Additional Protocol of 1977 are the international legal statutes relevant to the protection of persons in the hands of enemy forces during international hostilities. All four Geneva Conventions have been ratified universally and exist separately from 'Hague Law', which regulates the actual conduct of hostilities. This article discusses the protective regimes and basic substantive rules governing the treatment of different categories of individuals captured by the enemy. The authors begin with an overview of the basic criteria by which an individual in an international conflict is classified as a combatant or a civilian. The authors outline the categories of individuals that are subject to attack and some of the practical difficulties that arise from the existing classification scheme. In the remainder of the article, the authors discuss the application of the Geneva Convention regime to various groups in the context of captivity. These groups include persons *hors de combat* such as prisoners of war and the sick and wounded, as well as special categories of protected persons such as medical personnel, journalists, and civilian women and children. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

PROTECTING AUSTRALIAN CYBERSPACE: ARE OUR INTERNATIONAL LAWYERS READY ?

Stephen Tully. In: *Australian international law journal* Vol. 19, 2012, p. 49-77

Cyberspace is an important element of Australia's critical national infrastructure. Recent policy developments within this field seek to maintain economic opportunity and protect national security. This article discusses four contemporary threats posed to the Australian military and civilian electronic information infrastructure: 'cyber war' conducted by hostile states, 'cyber conflicts' by foreign combatants, attacks committed by 'cyberterrorists' and the commission of 'cybercrimes'. This article reviews the existing international legal paradigms relevant to each and identifies the issues raised from a survey of the existing literature. It concludes that each paradigm is presently inadequate for addressing the nature of these threats and calls for further contributions from Australian government, military and international lawyers to articulate a distinctive national perspective on these questions.

PROTECTING CIVILIANS FROM THE EFFECTS OF EXPLOSIVE WEAPONS : AN ANALYSIS OF INTERNATIONAL LEGAL AND POLICY STANDARDS

Maya Brehm. - New York ; Geneva : United Nations ; Geneva : UNIDIR, 2012. - XIII, 169 p.

The use of explosive weapons (shells, bombs, etc.) in populated areas causes grave humanitarian harm. This study analyses how explosive weapons are regulated in international law and policy, what constraints are placed on the use of explosive weapons, and how civilians are protected against the effects of explosive weapons. It concludes that the dominant legal and policy discourse fails to articulate the serious risk of harm associated with the use of explosive weapons in populated areas in a manner that adequately protects civilians. Systematic characterization of the humanitarian harm, and a detailed assessment of the risk of harm and the measures taken to reduce that risk, could further the elaboration of legal and policy standards that enhance the protection of civilians.

PROTECTING CULTURAL HERITAGE : WAR CRIMES AND CRIMES AGAINST HUMANITY DURING CONFLICTS AND REVOLUTIONS IN NORTH AFRICA AND THE MIDDLE EAST

Edward Phillips. - In: The Arab spring : new patterns for democracy and international law. - Leiden ; Boston : M. Nijhoff, 2013. - p. 225-236

This article highlights the important role played by cultural property in nation building, and the author discusses the failings of the international legal regime put in place to protect such property during times of conflict. Cultural properties - which include, inter alia, architecture, works of art, libraries, museums and archives - are essential emblems of identity and nationhood, embraced equally by different populations within a country. Because of its importance, cultural property is frequently intentionally targeted during times of war, as has been evident in various conflicts in recent years. According to Phillips, the totality of recent experience has raised serious questions about the international legal regime put in place to protect cultural properties. The duty to protect cultural property has been part of customary international law for centuries, and was explicitly codified in a number of treaties following World War Two. However, it has proven difficult for the international community to enforce these commitments. An especially egregious failure can be seen in the destructive way in which the United States treated cultural property during the Iraq War, actions which were met with little denunciation and no international sanctions. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

PROTECTING THE RIGHT TO LIFE OF JOURNALISTS : THE NEED FOR A HIGHER LEVEL OF ENGAGEMENT

Christof Heyns, Sharath Srinivasan. In: Human rights quarterly : a comparative and international journal of the social sciences, humanities, and law Vol. 35, no. 2, May 2013, p. 304-332

Journalists play a central role in fostering a society based on the open discussion of facts and the pursuit of the truth, as opposed to one based on rumor, prejudice, and the naked exercise of power. As a result, journalists are often literally in the line of fire and deserve special protection. This article considers the characteristics of deadly attacks on journalists over the last two decades and examines how the applicable legal and policy

frameworks can be used better or improved to provide a higher level of protection. Impunity, often a by-product of the politicized nature of journalistic activities, is seen as the major cause of continuous attacks on journalists. The conclusion is drawn that one of the key elements of a strategy to better protect journalists is to "elevate" the issue on a number of fronts: to move prevention and accountability from the local to the central level within domestic jurisdictions, while simultaneously heightening the level of international engagement with this issue.

LA PROTECTION DE LA POPULATION CIVILE AU COURS DES CONFLITS ARMÉS

by Djamchid Momtaz. - In: International challenges to peace and security in the new millennium : 2002 international law session. - Athens ; Thessaloniki : Sakkoulas Publications, 2010. - p. 301-352

Étude des règles destinées à protéger la population civile contre l'arbitraire des parties aux conflits armés et de celles prévues pour mettre la population civile et les biens de caractère civil à l'abri des dangers qui résultent des opérations militaires elles-mêmes.

THE PROTECTION OF CIVILIANS IN ARMED CONFLICT : FOUR CONCEPTS

Hugh Breaky. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Paris [etc.] : United Nations University Press, 2012. - p. 40-61

This chapter details the nature of Protection of Civilians (POC) in the contemporary context. It argues that while all POC actors have a broadly shared understanding of the core concerns of POC - the basic rights of non-combatants and the types of violence that threaten them - the different perspectives, resources and powers possessed by separate types of POC actors make those actors develop distinct POC roles and responsibilities.

PROTECTION OF CIVILIANS IN INTERNATIONAL HUMANITARIAN LAW AND BY THE USE OF FORCE UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS

Keiichiro Okimoto. In: Asia-Pacific yearbook of international humanitarian law Vol. 4, 2008-2011, p. 1-102

in recent years, the United Nations (UN) Security Council of the has become increasingly involved in the protection of civilians during armed conflict, including through the use of force as authorized under Chapter VII of the UN Charter. Such trend revives the question of whether UN forces can be bound by JHL, and at the same time raises the question of whether they can be actors enforcing IHL and whether such actions can have positive and negative consequences. This article begins with the theoretical framework, namely the relationship between jus ad bellum and jus in bello, and the applicability of the latter to UN forces as an actor bound by, and enforcing, IHL. The article then discusses the distinction between the protection of civilians in IHL and the protective regime of the use of force under Chapter VII. The relationship between the two types of protection for civilians and the potentially positive and negative aspects of civilian protection by the use of force under Chapter VII is discussed at the end of the paper.

PROTECTION OF CULTURAL PROPERTY

Roger O'Keefe. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 425-461

Content: Definition of 'cultural property'. - Respect for cultural property. - Safeguarding of cultural property. - Protection of cultural property during occupation. - Transport of cultural property. - Personnel engaged in the protection of cultural property. - Distinctive marking of cultural property.

PROTECTION OF ENVIRONMENT DURING ARMED CONFLICT : IS A NEW FRAME OF LAWS NECESSARY ?

A. P. Singh. In: *Journal of the Indian law institute* Vol. 52, no. 3-4, 2010, p. 453-466

There is a growing realization at the national and international levels that personal growth and happiness which has come to be recognized as fundamental human rights cannot be achieved in a severely damaged environment. The right to a healthy natural environment is thus gaining increasingly wide acceptance as a fundamental human right. It is expressly provided for in various international treaties, other legal texts and the constitutions of many States. And, therefore, despite the current prescriptive framework regarding protection of the environment during armed conflict being weak, the current trend towards general acceptance of environmental protection as vital for the survival of humanity raises a certain hope about the practical usefulness and effectiveness of current normative guidance. This paper intends to argue a point that instead of blaming the current frame of law and laxity in implementation and arguing for a possibly unproductive codification process, a special effort should be made to ensure that the existing rules are adopted by as many States as possible. The paper also, seeks to articulate some suggestions to strengthen existing regime of protection of environment during armed conflict,

THE PROTECTION OF JOURNALISTS IN ARMED CONFLICTS : HOW CAN THEY BE BETTER SAFEGUARDED ?

Isabel Düsterhöft. In: *Merkourios* Vol. 29, issue 76, 2013, p. 4-22

The years 2011 and 2012 were among the most deadly for journalists reporting from conflict situations worldwide. The numbers of assaults, arrests and attacks have been on a constant rise and portray a dramatic image of the journalistic profession. In light of the increasing threats in armed conflicts, being a war reporter has become an inherently dangerous task. Journalists are not only at risk of becoming so-called collateral damage during military operations, they are also increasingly targeted. Their role as a watchdog and witness to the horrors of war, in addition to the undeniable power of the word and image they spread, has made them popular targets. It is therefore essential that the international community re-evaluate journalists' de jure and de facto protections in armed conflicts to allow for better safeguards and consequently less casualties in the imminent future. This article examines the current protections afforded to journalists and aims at detecting proposals for enhanced safeguards that are most likely to effectively improve journalists' safety in the field. In this regard, this article will argue that the legal protections are in fact sufficient and hardly amendable and that therefore, a more practical, hands-on approach to implementation of those pro-

tections must be the focus of future actions. This goal can only be achieved by a comprehensive mission jointly pursued by governments, militaries, journalists, media, NGOs and society.

PROTECTION OF PRISONERS IN ARMED CONFLICT

Sandra Krähenmann. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 359-411

Content: General. - Beginning of captivity. - Conditions of captivity. - Escape of prisoners of war. - Termination of captivity.

PROTECTION OF RELIGIOUS PERSONNEL

Nilendra Kumar. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 413-424

Content: General rules. - Protection of religious personnel. - Legal status of religious personnel retained by a foreign power.

PROTECTION OF THE CIVILIAN POPULATION

Hans-Peter Gasser and Knut Dörmann. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 231-320

Content : General rules. - Civil defence. - Humanitarian assistance. - Belligerent occupation. - Aliens in the territory of a party to the conflict. - Internment of civilians.

PROTECTION OF THE ENVIRONMENT DURING ARMED CONFLICT

Susan Breau. - In: *Routledge handbook of international environmental law*. - London ; New York : Routledge, 2013. - p. 617-632

One of the concerns of international humanitarian law is lack of enforcement of customary and treaty rules on protection of the environment during armed conflict. Environmental degradation may be a priority issue for the international community but the same cannot be said for addressing environmental damage during wars. This chapter assesses the effectiveness of treaty and customary international law rules with respect to the environment and armed conflict. It argues that investigation of the conflict in Kosovo illustrates the weakness of the treaty regime. This chapter argues that it is customary humanitarian law which offers hope for environmental protection in armed conflict.

THE PROTECTION OF THE ENVIRONMENT IN ARMED CONFLICT : LEGAL OBLIGATIONS IN THE ABSENCE OF SPECIFIC RULES

Dieter Fleck. In: *Nordic journal of international law* Vol. 82, no. 1, 2013, p. 7-20

While a general rule of "eco-protection" in armed conflict may be derived from the basic principles of distinction, proportionality, avoidance of unnecessary suffering and humanity, international humanitarian law provides little by way of more specific rules for the protection of the natural environment except for in extreme situations that can rarely be expected to occur. Nevertheless, opinio juris has changed since the adoption of pertinent instruments in 1977. This development needs to be balanced against a still prevailing general reluctance to accept specific ecological obligations and procedures in

military operations. Thus a detailed evaluation of planning and decision-making processes appears necessary. Revisiting the San Remo Manual on International Law Applicable to Armed Conflicts at Sea and the ICRC Study on Customary International Humanitarian Law, this article argues that certain qualifications made in these documents relating to requirements of "imperative military necessity" are to be assessed in the light of their specific implications and should be used with caution. Furthermore, it is suggested that pertinent consequences of the International Law Commission's Draft Articles on the Effects of Armed Conflicts on Treaties deserve further study. To this end, interdisciplinary case studies should be conducted to support fact-oriented evaluations of military requirements, ecological assessments and political effects post-conflict, rather than insisting on thresholds for legal regulation that already appeared to be escapist decades ago and which may prove counter-productive in the years to come. New activities aimed at protecting the natural environment in armed conflict should focus on a reaffirmation of existing rules and their effective implementation.

THE PROTECTION OF THE NATURAL ENVIRONMENT IN ARMED CONFLICT : EXISTING RULES AND NEED FOR FURTHER LEGAL PROTECTION

Cordula Droeger, Marie-Louise Tougas. In: *Nordic journal of international law* Vol. 82, no. 1, 2013, p. 21-52

Considerable research has been conducted, particularly since the Iraq-Kuwait war of 1991, on the legal protection of the environment in armed conflicts. Much of this research has focused either on the specific protections provided in international humanitarian law (IHL), or on the applicability of international environmental law to situations of armed conflict. Rather than focusing on these specific provisions, this article seeks to examine the general protections under IHL, in particular the characterisation of the natural environment as a civilian object and the legal protection flowing from this characterisation – namely the general rules on the conduct of hostilities. After addressing these general rules, it briefly recalls some other relevant provisions of IHL before turning to possible avenues to strengthen the legal protection of the environment in armed conflict by clarifying or further developing IHL in this respect, taking into account the protection provided by international human rights law and international environmental law.

PROTECTION OF THE WOUNDED, SICK AND SHIPWRECKED

Jann K. Kleffner. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 321-357

Content: Wounded, sick, and shipwrecked persons. - The dead and missing. - Medical units and transport. - Medical personnel. - Medical aircraft Wolf Heintschel von Heinegg. - Hospital and safety zones and localities; neutralized zones. - The distinctive emblem.

PUZZLING OVER AMNESTIES : DEFRAGMENTING THE DEBATE FOR INTERNATIONAL CRIMINAL TRIBUNALS

Dov Jacobs. - In: *The diversification and fragmentation of international criminal law*. - Leiden : Martinus Nijhoff, 2012. - p. 305-345

This chapter first examines the human rights law and international humanitarian law approach to the question of amnesties; and more particularly a duty to prosecute

human rights violations and grave breaches of humanitarian law or how duties to prosecute have developed in relation to other crimes of international law. It then examines how fragmentation within international criminal law (substantial, procedural and institutional) applies to the debate on amnesties. The study concludes that international criminal tribunals are under a statutory obligation to prosecute the crimes within their jurisdiction and amnesties will not be recognized in the absence of an express provision to the contrary in their Statute.

THE QUEST FOR A NON-CONFLICTUAL COEXISTENCE OF INTERNATIONAL HUMAN RIGHTS LAW AND HUMANITARIAN LAW : WHICH ROLE FOR THE LEX SPECIALIS PRINCIPLE ?

Jean d'Aspremont. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 223-250

This chapter seeks to appraise the tools to which international lawyers and judges have resorted to alleviate the frictions between international humanitarian law (IHL) and human rights law (HRL). After making the argument that the relationship between IHL and HRL should not be seen in terms of conflict but rather in terms of competition, the chapter provides some critical views on the principle *lex specialis non derogat generali*, which is so commonly used by international lawyers and judges when confronted with possible frictions between IHL and HRL and then reevaluates its relevance in situations of competition of rules short of any real conflict.

LES RAISONS POUR LES GROUPES ARMÉS DE CHOISIR DE RESPECTER LE DROIT INTERNATIONAL HUMANITAIRE, OU PAS

Olivier Bangerter. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/2, p. 51-84

Le choix de respecter le droit – ou pas - est loin d'être automatique pour un groupe armé ou un État. Le respect du droit des conflits armés ne peut être encouragé – et donc amélioré - que si les ressorts du respect et des violations sont compris et si l'argumentation en faveur du respect les prend en compte. Parmi les raisons de respecter le droit, deux domaines ont un poids particulier pour les groupes armés : l'image de soi et l'avantage militaire. Parmi les raisons de ne pas respecter le droit, trois dominent : le but du groupe, l'avantage militaire et ce que le DIH représente pour le groupe.

RAPPORTS ENTRE LE DROIT INTERNATIONAL HUMANITAIRE ET LE DROIT INTERNATIONAL DES DROITS DE L'HOMME

Pavel Sturma. - In: *L'homme dans la société internationale en hommage au professeur Paul Tavernier*. - Bruxelles : Bruylant, 2013. - p. 1430-1446

Les règles du droit international humanitaire (DIH) et du droit international des droits de l'homme (DIDH) présentent des traits différents qui concernent leurs sources, leurs sujets, leur portée d'application, ainsi que leurs objets et leurs buts. Cette contribution s'attarde sur l'applicabilité *ratione temporis* de qui appartient aux critères de différenciation des règles du DIH et du DIDH. Si des dérogations permettent à l'Etat de suspendre quelques dispositions des traités internationaux des droits de l'homme, certains droits de l'homme sont indérogeables et s'appliquent donc en toute circonstances, se chevauchant ainsi avec des règles du DIH. Il y a cependant des situations où certains droits de l'homme sont suspendus alors que les règles de DIH ne sont pas encore appli-

cables, il s'agit des troubles intérieurs et des tensions internes pour lesquels l'auteur explique en quoi consiste la lacune en droit. Il analyse ensuite l'apport de la justice internationale dans des cas concernant les droits de l'homme dans les conflits armés.

RECKLESS ENDANGERMENT WARFARE : CIVILIAN CASUALTIES AND THE COLLATERAL DAMAGE EXCEPTION IN INTERNATIONAL HUMANITARIAN LAW

Bruce Cronin. In: *Journal of Peace Research* Vol. 50, no. 2, March 2013, p. 175-187

This article examines how military organizations that are generally committed to following the laws and customs of war exploit what the author terms 'the collateral damage exemption', by employing legally-sanctioned war-fighting strategies that result in significant numbers of civilian casualties. This exemption shields combatants from legal liability for 'incidental' or 'inadvertent' civilian losses and the destruction of civilian objects that may occur during lawful actions. The author argues that military strategies which promote the use of overwhelming force under conditions that are likely to adversely affect the civilian population on a significant scale push the boundaries of legal behavior. Under these conditions, collateral damage is not inadvertent, but the calculated results of policy decisions. Most academics, journalists, and political leaders focus on blatant violations of International Humanitarian Law (IHL), for example, deliberate attacks on civilian populations. However, these actions are in many ways the least interesting from both a policy and scholarly perspective. This is because such violations are usually unambiguous, easily detected, and difficult to defend. More insidious are practices that deliberately straddle the line between legitimate action and violation by exploiting the collateral damage exception to IHL. This article demonstrates that high rates of civilian casualties that occur under the shroud of legality threaten the integrity of the laws and customs of armed conflict.

LE RECOURS À LA FORCE DANS LES OPÉRATIONS DE MAINTIEN DE LA PAIX CONTEMPORAINES

Ophélie Thielen ; préf. de Hervé Ascensio. - Paris : Librairie Générale de Droit et de Jurisprudence : Lextenso, 2013. - XVI, 437 p.

De la pratique contemporaine des Nations Unies est né un genre nouveau d'opérations de maintien de la paix, caractérisé par une autorisation, au niveau tactique, d'user de la force et de la contrainte armées pour l'exécution du mandat, la protection des populations ou la lutte contre les groupes armés irréguliers. Cette évolution empirique fait l'objet d'une réflexion au sein des instances onusiennes, visant à conceptualiser, en partenariat avec les Etats décideurs et contributeurs, ce qu'implique l'autorisation d'user de la force, en termes d'interprétation et de mise en oeuvre des mandats et des règles d'engagement, de planification des opérations et d'entraînement et d'équipement des contingents. Cette réflexion semble pour autant rester axée sur les questions de faisabilité politique et opérationnelle, sans que soient analysés les aspects juridiques de l'autorisation de l'usage de la force par les Casques bleus. Cette pratique soulève ainsi de multiples questions - s'agissant du statut des forces de maintien de la paix au regard du droit international humanitaire, des règles encadrant la conduite des opérations militaires, de la non-indemnisation par les Nations Unies des dommages

résultant des opérations de combat ou encore des particularités du statut pénal des membres des forces de maintien de la paix - questions renouvelées dans leur contenu et, pourtant, encore largement occultées, que cette étude se propose de contribuer à clarifier, à défaut de prétendre résoudre.

LE RECOURS À LA FORCE POUR PROTÉGER LES CIVILS ET L'ACTION HUMANITAIRE : LE CAS LIBYEN ET AU-DELÀ

Bruno Pommier. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/3, p. 171-193

La crise libyenne en 2011 a soulevé une fois de plus le problème crucial du choix des moyens d'assurer la protection des civils. Le recours à la force pour la protection des civils agréé par la communauté internationale dans le cadre des opérations militaires menées en Libye a relancé le concept de "guerre humanitaire" et a fait émerger un certain nombre d'enjeux pour les organisations humanitaires opérantes, en particulier pour la notion de l'action humanitaire neutre, impartiale et indépendante. Le présent article fait le point sur ces enjeux humanitaires et notamment sur l'impact que pourrait avoir sur ceux-ci le concept de responsabilité de protéger - qui sous-tendait l'intervention en Libye.

REFLECTIONS ON PROPORTIONALITY, MILITARY NECESSITY AND THE CLAUSEWITZIAN WAR

Rotem M. Giladi. In: *Israel law review* Vol. 45, issue 2, July 2012, p. 323-340

This article explores the significance of the reference, in proportionality analyses, to proper purpose and legitimate ends, given the traditional aversion of international humanitarian law (IHL) to questions of (political) legitimacy. It demonstrates the centrality of that aversion in doctrinal assertions concerning the goals, characteristics and operational strategy of IHL yet argues that, at its historical and conceptual foundations, the law draws on a construction of war that presupposes legitimacy of the political type. That construction remains embedded, though implicit, in contemporary proportionality analyses. Thus, the instrumental understanding of war by Carl von Clausewitz poses several challenges to entrenched contemporary doctrinal claims about the law, how it operates and the effects it produces. This provides an impetus for critical reassessment of the aversion to politics and the interaction between the humanitarian, military and political spheres in the operation of IHL norms. Such critique helps to identify novel strategies of humanitarian protection in war outside the confines demarcated by orthodox doctrine.

LES RÈGLES D'ENGAGEMENT, UN OBJET JURIDIQUE ?

Guilhem Brouard, Antonin Tisseron. In: *Revue défense nationale* No 730, mai 2013, p. 35-41

Le 4 septembre 2009, près de Kunduz en Afghanistan, un avion américain guidé par un contrôleur aérien avancé allemand détruit un camion-citerne aux mains des insurgés, occasionnant la mort de plus d'une centaine de civils. Un mois plus tard, du fait des répercussions de ce bombardement dans l'opinion publique allemande, le chef d'état-major de la Bundeswehr et un secrétaire d'Etat à la Défense démissionnent. Faut-il en conclure que l'action militaire doit être soumise à un contrôle plus stricte, au risque de renoncer au combat ? Faut-il au contraire libérer l'usage de la force en prenant le risque de dommages collatéraux, scandaleux aussi bien pour

l'opinion publique afghane qu'occidentale ? Alors que les règles d'engagement sont au cœur de cette contradiction qu'elles visent à résoudre, elles sont pourtant bien souvent perçues comme une limite à l'efficacité des forces armées, réveillant une tension ancienne entre l'objectif final, qui impose la retenue dans l'usage de la force, et la nécessaire efficacité de l'action militaire contre un adversaire agressif et aguerri. À la croisée de l'opérationnel, du juridique et du politique, elles sont devenues essentielles à l'action militaire. Et pourtant, l'actualité de ces objets "introuvables" voire "rejetés" impose de mieux les cerner, dans leur dimension juridique, mais aussi militaire et politique.

REGULATING THE USE OF UNMANNED COMBAT VEHICLES : ARE GENERAL PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW SUFFICIENT ?

comment by Meredith Hagger and Tim McCormack. In: *Journal of law, information and science* Vol. 21, no. 2, 2011/2012, p. 74-99

Some weapons are prohibited by a specific multilateral treaty regime and others by customary law. Neither source of prohibition applies to unmanned combat vehicles (UCVs). In the absence of a specific legal prohibition, UCVs can lawfully be deployed in armed conflict provided their use is consistent with so-called general principles of international humanitarian law (IHL). These general principles limit or restrict the circumstances in which UCVs can lawfully be deployed. In combat operations militaries utilising UCV technology are closely scrutinised and generally do try to ensure compliance with IHL. The real concerns lie with dubious usage of UCVs in covert operations where the IHL framework seems to provide a conveniently permissive legal regime, there is an apparent absence of any effective review of compliance with IHL and no accountability for alleged violations of the law. In some circumstances it is highly questionable whether IHL is the applicable legal framework.

REINTERPRETING COMPETING INTERPRETATIONS OF THE SCOPE AND POTENTIAL OF THE MARTENS CLAUSE

Michael Salter. In: *Journal of conflict and security law* Vol. 17, no. 3, Winter 2012, p. 403-437

This article, whose materials are extracted from a wider project on the doctrinal and humanitarian significance of the 1899/1907 Martens Clause, reviews the strengths and limitations of competing interpretations and judicial applications of this Clause. It identifies four distinct, if interrelated, approaches to defining its meaning and scope assessing each in turn. We take issue with recent scholarship that restricts its applicability in various ways that deny its status as a separate and distinct legal principle of direct and independent applicability to organized atrocities against civilians. We also dispute the view that this Clause is best interpreted as an aide to judicial interpretation, rather than as an independent source of international criminal law, by showing that this interpretation is inconsistent with a number of important cases whose authority appears to be well established and unobjectionable. Furthermore, the moral imperatives that clearly shape the language of the Clause and have been realized in many of its accumulated judicial applications, positively require this measure to be interpreted and applied as a freestanding legal norm—albeit one that has to operate as supplement for, rather than alternative to, other more specific legal rules and principles.

LA RELATION AMBIGUË DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME AVEC LE DROIT INTERNATIONAL HUMANITAIRE

Yves Sandoz. - In: *Scrutinizing internal and external dimensions of European law = Les dimensions internes et externes du droit européen à l'épreuve : liber amicorum Paul Demaret*. - Bruxelles [etc.] : P. Lang, 2013. - p. 109-129

Cette contribution examine les principaux points qui peuvent faire problème dans la relation sur un plan général, entre le droit international humanitaire et le droit international des droits de l'homme. Elle examine ensuite les liens du droit international humanitaire avec la Convention européenne des droits de l'homme et la manière donc celui-ci est traité par la Cour européenne des droits de l'homme. Elle tente de tirer les principales lignes de force des nombreux arrêts qui touchent à ces liens.

THE RELATIONSHIP BETWEEN A STATE AND AN ORGANISED ARMED GROUP AND ITS IMPACT ON THE CLASSIFICATION OF ARMED CONFLICT

Keiichiro Okimoto. In: *Amsterdam law forum* Vol. 5, issue 3, Summer 2013, p. 33-51

When an organised armed group is engaged in an armed conflict with government forces, this is normally classified as a non-international armed conflict under international humanitarian law (IHL). However, the nature and degree of the relationship which the armed group has with a third state become crucial in ascertaining whether the armed conflict is, in fact, an international armed conflict. The standard in the law of state responsibility is often applied to define the nature and degree of the relationship. This article critically analyses the application of the standard in the law of state responsibility and suggests that IHL provides sufficient guidance to define the nature and degree of the relationship between an organised armed group and a third state for the purpose of clarifying the type of armed conflict in which the armed group is engaged.

THE RELATIONSHIP BETWEEN ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND INTERNATIONAL HUMANITARIAN LAW : AN ANALYSIS OF HEALTH-RELATED ISSUES IN NON-INTERNATIONAL ARMED CONFLICTS

by Amrei Müller. - Leiden ; Boston : M. Nijhoff, 2013. - XXVIII, 335 p.

In *The Relationship between Economic, Social and Cultural Rights and International Humanitarian Law*, Amrei Müller offers a detailed analysis of the legal consequences of the parallel application of economic, social and cultural (ESC) rights and international humanitarian law (IHL) to non-international armed conflicts. With a focus on health related issues, the book covers important topics like the scope of limitations to and derogations from ESC rights, questions related to the integration of the right to health in military-target decisions, states' obligations to mitigate the adverse public health impact of armed conflicts and obligations relating to the provision of humanitarian assistance. It moves the discussion about the parallel application of IHL and human rights to a new level, highlighting its potential to enhance the protection of people affected by armed conflicts but also the difficulties involved.

THE RELATIONSHIP BETWEEN INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW : AN OVERVIEW

Vera Gowlland-Debbas and Gloria Gaggioli. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 77-103

This chapter addresses some of the legal reasons and developments in the international legal system and environment that have led to a convergence between human rights law and international humanitarian law (IHL). It addresses the difficult and important issue of the interplay between human rights law and IHL at the level of norm conflicts as well as regarding cross-fertilization through the case law of human rights bodies. Finally, it explores the response of human rights bodies to violations committed in situations of armed conflict in order to assess the contribution of these bodies for providing remedies to victims of armed conflicts.

THE RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN SITUATIONS OF ARMED CONFLICT

Daniel Bethlehem. In: Cambridge journal of international and comparative law Vol. 2, no. 2, 2013, p. 180-195

Following some framing remarks to place in wider context the discussion that follows on the relationship between international humanitarian law (IHL) and international human rights law (HRL), and the application of the latter in armed conflict, this paper addresses the following : (a) the systemic relationship between IHL and HRL ; (b) whether key HRL provisions are amenable to reasonable application in armed conflict, and, if so, whether there are policy considerations that suggest their application as a matter of discretion, even if they are not applicable *de jure* ; (c) assuming that HRL provisions apply in armed conflict *de jure*, or ought to be applied as a matter of discretion, the relationship between relevant IHL and HRL provisions. The paper does not address issues concerning the *de jure* application of HRL in armed conflict.

THE RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND RESPONSIBILITY TO PROTECT : FROM SOLFERINO TO SREBRENICA

Helen Durham and Phoebe Wynn-Pope. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Paris [etc.] : United Nations University Press, 2012. - p. 175-196

The chapter will begin with a discussion on the origins of IHL and responsibility to protect (R2P) and how they both emerged from direct experience of outrages of the treatment of soldiers (IHL) and civilians (R2P) during times of armed conflict and extreme violence. It will then look at how IHL has developed since the early days in the nineteenth century to provide a framework for the conduct of hostilities. In contrast, the principle of R2P emerged only ten years ago, but has developed into a principle which has become widely accepted as a political concept. In conclusion, the chapter will draw IHL and R2P together by looking at their points of similarity and difference, and where each regime is able to support and lend strength to the other.

REPARATION AND COMPENSATION

Natalino Ronzitti. - In: Research handbook on international conflict and security law : *jus ad bellum*, *jus in*

bello and *jus post bellum*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 638-659

This article provides an overview of the state of international law on reparations since World War I. The author argues reparations and compensation for violations of *jus ad bellum* have moved away from a basis in victor/loser relations, where war indemnities were imposed, to one based on legal standards, where war reparations as compensation for violations of international law are imposed. This transition is evidenced by the Versailles Peace Treaty of 1919, under which Germany was punished for illegally using force. The process of reparations as compensation has been repeated in subsequent peace treaties, in various ICJ cases and in the operations of the UN including Security Council Resolution 687 and the UN Compensation Commission. The author also argues that war reparations have evolved to be respectful of the human rights. The article then examines reparations and compensation for violations of *jus in bello*. It notes recent developments such as the International Law Association's declaration concerning the ability for individuals to seek remedies for serious violations of the laws of war, despite individuals having no *locus standi* to enforce State responsibility, and the successful incorporation of reparations processes into the work of truth and reconciliation commissions. The author uses these examples as evidence of a possible departure from viewing the violations of the rules of armed conflict as solely a matter for inter-state enforcement. However, the issue of state immunity still remains an obstacle to action by victims before domestic courts. Moreover, the author points to the limitation of poor state compliance with the decisions of international bodies and the paucity of post bellum reparation practice. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

REPARATION FOR INDIVIDUAL VICTIMS OF ARMED CONFLICT

Elke Schwager. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 628-659

A right for individuals to claim reparation under international law is increasingly recognised. However, there is no standard procedure available for the enforcement of such a right, and, based on different reasons like waiver, immunity or non-justiciability, state practice and jurisprudence have often denied an individual holder the enforcement of his or her right. This chapter examines the origin of an individual right under international law. Less in the focus of international lawyers is the fact that violation of human rights or international humanitarian law might give rise to a right to reparation under domestic law as well. Finally, the different possibilities for enforcing a right to reparation along with potential obstacles to the enforcement is outlined.

RESEARCH HANDBOOK ON HUMAN RIGHTS AND HUMANITARIAN LAW

ed. by Robert Kolb, Gloria Gaggioli. - Cheltenham ; Northampton : E. Elgar, 2013. - XIII, 684 p.

This fascinating handbook explores the interplay between international human rights law and international humanitarian law, offering expert analysis on the increasingly complex issues surrounding their application in armed conflicts across the world. Contributors to this volume provide a comprehensive treatment of the ongoing relationship between human rights law and humani-

tarian law, from the historical background and origins of the two bodies of law to their various applications today. Divided into four parts – Historical Background, Common Issues, The Need for a Combined Approach, and Monitoring Mechanisms – the Handbook presents a rich and varied spectrum of original research and thought from some of the brightest minds in the field.

RÉSOLUTION 1738 : LA CONSÉCRATION PAR LE CONSEIL DE SÉCURITÉ DE LA PROTECTION DES JOURNALISTES ET DES MÉDIAS EN PÉRIODE DE CONFLIT ARMÉ

Alexandre Balguy-Gallois. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1149-1169

En partie rédacteur de la Résolution 1738 sur la protection des journalistes en période de conflit armé adoptée à l'unanimité par le Conseil de sécurité le 23 décembre 2006, l'auteur commente cet instrument - le premier sur cette question - en présentant tout d'abord les circonstances dans lesquelles la résolution vit le jour, son contenu et les perspectives de développement du droit international humanitaire applicable aux journalistes.

RESPONSABILITÉ INTERNATIONALE

Pierre d'Argent. - In: Droit international humanitaire : un régime spécial de droit international ?. - Bruxelles : Bruylant, 2013. - p.103-149

La question posée dans ce chapitre est celle de savoir si, ou dans quelle mesure, les violations du droit humanitaire emportent l'application de règles de responsabilité particulières par rapport aux règles habituelles du droit de la responsabilité internationale, entendu comme régime secondaire dont l'application est déclenchée par la violation, par un Etat, de normes primaires. L'objectif de cette question est de mettre en lumière, sous l'angle du droit général de la responsabilité - et à l'exclusion donc également de la responsabilité pénale individuelle -, une éventuelle spécificité du droit humanitaire qui permettrait d'en affirmer le caractère spécial en tant que sous-système au sein de l'ordre juridique international ou, au contraire, de conclure à une absence de particularité à cet égard. Cette contribution s'articule autour de quatre développements: l'origine de l'affirmation de la responsabilité internationale de l'Etat pour violation du droit humanitaire, la particularité de ce droit en matière d'attribution du fait de l'Etat, l'émergence du droit des victimes des violations du droit humanitaire à obtenir réparation et l'affirmation de formes particulières de réparation.

LA RESPONSABILITÉ PÉNALE DES AUTORITÉS POLITIQUES POUR DES CRIMES DE DROIT INTERNATIONAL HUMANITAIRE (DIH)

Eric David. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 327-338

Certains jugements du Tribunal pénal international pour le Rwanda (TPIR) ont acquitté des personnes qui occupaient des hautes fonctions politiques dans le gouvernement et l'administration d'un pays – le Rwanda – qui a couvert un génocide (avril-juillet 1994). De tels acquittements sont critiquables car le droit positif permettait d'établir la responsabilité pénale des personnes acquittées ainsi que le montre le présent article.

THE RESPONSIBILITY TO PROTECT AND THE PROTECTION OF CIVILIANS IN ARMED CONFLICT : OVERLAP AND CONTRAST

Hugh Breakey. - In: Norms of protection : responsibility to protect, protection of civilians and their interaction. - Paris [etc.] : United Nations University Press, 2012. - p. 62-81

This chapter investigates the overlap and contrast between the responsibility to protect (R2P) and the protection of civilians (POC), keeping in mind the different versions of these principles detailed in the preceding two chapters : the three pillars of R2P and the four POC concepts.

'RESTATING THE LAW "AS IT IS" : ON THE TALLINN MANUAL AND THE USE OF FORCE IN CYBERSPACE

Lianne J. M. Boer. In: Amsterdam law forum Vol. 5, issue 3, Summer 2013, p. 4-18

The recently published 'Tallinn Manual on the International Law Applicable to Cyber Warfare' arguably constitutes the concluding piece of a debate on the (in)applicability of the prohibition on the use of force in cyberspace. It acknowledges a framework developed by Michael Schmitt, who suggested the use of particular criteria to assess whether force has been used. This article concludes that the foundations for the suggested solutions are unsure and that, contrary to the Manual's stated goal, it adds to the existing ambiguity rather than clarifies the law on cyberattacks.

RETOUR SUR LE "TRAITEMENT HUMAIN" DES PERSONNES TOMBÉES AU POUVOIR DE L'ENNEMI

Abdelwahab Biad. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1186-1202

Le droit des droits de l'homme comme le droit international humanitaire convergent sur l'exigence du "traitement humain". Ce chapitre développe un double constat relatif à l'exigence du "traitement humain". D'une part, en dépit de son caractère générique, l'exigence de "traiter avec humanité" toutes les personnes tombées en leur pouvoir - sans exception - constitue pour les parties au conflit armé une prescription indérogeable, un "noyau dur" qui inspire des règles plus précises, indiquant ce qui est ou n'est pas un "traitement humain". Cette prescription est si fondamentale qu'elle conditionne l'ensemble des systèmes de "protection fonctionnelle" du combattant hors de combat comme du non-combattant, dont la mise en œuvre s'avère souvent problématique, comme l'illustrent les cas du statut du prisonnier de guerre et du régime d'occupation.

RIGHTLY DIVIDING THE DOMESTIC JIHADIST FROM THE ENEMY COMBATANT IN THE "WAR AGAINST AL-QAEDA" : WHY IT MATTERS IN RENDITION AND TARGETED KILLINGS

Jeffrey F. Addicott. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 259-302

The confusion associated with comprehending fundamental legal concepts associated with how America conducts the "war on terror" centers around the unwillingness of the U.S. government to properly distinguish al-Qaeda unlawful enemy combatants from domestic jihadist terrorists. If the American government cannot properly differentiate between an enemy combatant and a domestic criminal, it is little wonder that attendant legal positions associated with investigation techniques, tar-

geted killing, arrest, detention, rendition, trial, and interrogation are subject to never-ending debate. While all al-Qaeda unlawful enemy combatants can be labelled as violent jihadists, not all violent jihadists are unlawful enemy combatants. Without a significant about-face in leadership that is willing to discern the basic difference between an unlawful enemy combatant and a domestic criminal, America's reputation will remain under a cloud of suspicion and confusion regarding the legality of our actions associated with two significant areas of critique : rendition and targeted killing vis-à-vis unlawful enemy combatants in the war on terror.

ROAD TO NOWHERE ? : THE FUTURE FOR A DECLARATION ON FUNDAMENTAL STANDARDS OF HUMANITY

Emily Crawford. In: *Journal of international humanitarian legal studies* Vol. 3, no. 1, 2012, p. 43-72

In the years following the adoption of the Additional Protocols to the Geneva Conventions in 1977, debate emerged regarding the extant lacunae in the international rules relating to armed conflict. It was argued that there were gaps in international humanitarian law (IHL) and international human rights law with regards to so-called 'grey-zone conflicts' – armed conflicts that did not reach the minimum threshold of either Protocol II or Common Article 3. Therefore, it was proposed that a declaration outlining the minimum humanitarian standards applicable in all situations of violence and conflict be adopted. By 1990, this debate had crystallised around the Turku Declaration on Minimum Humanitarian Standards. However, progress on the declaration quickly stalled once discussion was moved to the United Nations. Since 1995, there have been nine reports by the Secretary-General on the question of fundamental standards of humanity to use the current terminology. Over the years, the scope and content the fundamental standards of humanity has become clearer, yet the adoption of a document on these fundamental standards is no more imminent than when the issue first moved to the United Nations. This article will therefore examine why and how this apparently vital piece of international policy has stalled.

THE ROLE OF MULTILATERAL ENVIRONMENTAL AGREEMENTS IN ARMED CONFLICT : "GREEN-KEEPING" IN VIRUNGA PARK : APPLYING THE UNESCO WORLD HERITAGE CONVENTION IN THE ARMED CONFLICT OF THE DEMOCRATIC REPUBLIC OF THE CONGO

Britta Sjöstedt. In: *Nordic journal of international law* Vol. 82, no. 1, 2013, p. 129-153

This article analyses the application of the 1972 United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Convention (the WHC) in the context of the armed conflicts that have taken place in the Virunga National Park (the Park), a natural world heritage site in the Democratic Republic of the Congo (the DRC). Instead of addressing wartime environmental damage under the law of armed conflict, this article seeks to establish how such damage can be addressed using multilateral environmental agreements (MEAs). MEAs often consist of general principles and vague obligations and their relevance or applicability during situations of armed conflict may be questioned. However, a number of MEAs, including the WHC, authorise their convention bodies to develop detailed and substantive obligations applicable to their parties. Thus, the decisions and recommendations adopted by the

World Heritage Committee, a body established under the WHC, provide substantive content to the provisions of the WHC. These decisions and recommendations may, however, run counter to the requirements of military necessity thereby affecting the application of the law of armed conflict. While the position adopted by the World Heritage Committee does not inevitably imply a clash between the obligations in the WHC and the law of armed conflict, it does raise the question of whether the outstanding values of world heritage should trump the rules of military necessity and other pressing concerns during armed conflict. On an informal basis, the World Heritage Committee and the UN peacekeeping forces deployed in the DRC have agreed to perform operations that jointly address the interconnected concerns of security and conservation of natural resources in the region of the Park. This cooperative 'green-keeping' operation represents a useful approach to regime interaction and the harmonisation of obligations set out in different legal regimes that are applicable to the same subject matter.

THE ROLE OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN THE ISRAELI-PALESTINIAN CONFLICT : SHOULD ISRAEL'S OBLIGATIONS UNDER THE COVENANT EXTEND TO GAZA AND THE OTHER OCCUPIED PALESTINIAN TERRITORIES ?

David Mennie. In: *Transnational law and contemporary problems* Vol. 21, issue 2, Summer 2012, p. 511

This Note addresses whether and to what degree the International Covenant on Civil and Political Rights (ICCPR) creates obligations for Israel with respect to the individuals residing in Gaza as well as the other Occupied Palestinian Territories ("OPTs"). It shows that, according to the norms of customary international law, the ICCPR does not create obligations for Israel with respect to those individuals residing in either Gaza or the OPTs. However, the Israeli Supreme Court has created some binding obligations for the Israeli government under the ICCPR with regard to individuals in the OPTs and, perhaps, in Gaza as well. It will conclude that these obligations have negatively impacted the individuals residing in Gaza and the other OPTs.

THE ROLES OF CIVIL SOCIETY IN THE DEVELOPMENT OF STANDARDS AROUND NEW WEAPONS AND OTHER TECHNOLOGIES OF WARFARE

Brian Rappert... [et al.]. In: *International review of the Red Cross* Vol. 94, no. 886, Summer 2012, p. 765-785

This article considers the role of civil society in the development of new standards around weapons. The broad but informal roles that civil society has undertaken are contrasted with the relatively narrow review mechanisms adopted by states in fulfilment of their legal obligations. Such review mechanisms are also considered in the context of wider thinking about processes by which society considers new technologies that may be adopted into the public sphere. The article concludes that formalized review mechanisms, such as those undertaken in terms of Article 36 of Additional Protocol I (1977) of the Geneva Conventions of 1949, should be a focus of civil society attention in their own right as part of efforts to strengthen standard setting in relation to emerging military technologies.

SACRIFICING THE LAW OF ARMED CONFLICT IN THE NAME OF PEACE : A PROBLEM OF POLITICS

Matthew E. Dunham. In: *The Air force law review* Vol. 69, 2013, p. 155-197

Peace operations are the United Nation's (UN's) core business and its most visible activity. Between 1948 and 2012, the UN Department of Peacekeeping Operations (DPKO) conducted sixty-seven peace operations with the general purpose of ending violence. The worldwide presence of peace operation forces is even larger when one adds operations carried out by states under unified command. When conducting peace operations, the DPKO maintains that successful operations are based in the rule of law. This principle clearly follows from one of the major purposes of the UN to "maintain international peace and security... in conformity with the principles of justice and international law." Nevertheless, to sustain political support for some peace operations, the UN and its member states intentionally ignore the applicability of the law of armed conflict (LOAC) by refusing to classify hostilities as an armed conflict and by wrongly denying that peace operation forces have become belligerents in armed conflict.

SAILING CLOSE TO THE WIND : HUMAN RIGHTS COUNCIL FACT-FINDING IN SITUATIONS OF ARMED CONFLICT : THE CASE OF SYRIA

Thilo Marauhn. In: *California western international law journal* Vol. 43, issue 2, Spring 2013, p. 401-459

The article evaluates the facts regarding the involvement of the United Nations Human Rights Council and the probability of development of an armed conflict due to Syria March 2011 event. It informs that the chaotic event started when youngsters wrote anti-government graffiti on the wall of their school in Dara'a, Syria. It informs that the Security Council reacted lately to the situation and without identifying rules of international law convicted human rights violations.

SAVING THE PAST, PRESENT AND FUTURE : THOUGHTS ON MOBILISING INTERNATIONAL PROTECTION FOR CULTURAL PROPERTY DURING ARMED CONFLICT

Pita J. C. Schimmelpenninck van der Oije. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald*. - The Hague : T.M.C. Asser Press, 2013. - p. 195-230

In this chapter, contemporary threats to cultural property during armed conflict as well as the obstacles hindering protection are discussed. Throughout the text, examples are taken from Libya where the so-called "Arab Spring" revolt of 2011 developed into an armed conflict. The focus is on the control system of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict because it offers warring parties, as well as states parties to the Convention, the option of mobilising protection during armed conflict. In practice, it has mainly been UNESCO that has undertaken cultural initiatives during armed conflict but the organisation is better suited for peacetime action. The 1999 Second Protocol to the 1954 Convention raised hopes that a supplemented control system would be more effective. In the case of Libya, however, neither the states parties nor the newly set up Intergovernmental Committee opted for combined protection efforts even though Libya hosts a wealth of cultural property and is a state party to the Second Protocol. UNESCO did undertake various

protection activities and was joined by other actors in the cultural heritage field, such as the Blue Shield network. It is to be hoped that the Blue Shield network can raise its profile and resources, and combine flexibility of action with humanitarian professionalism. New developments in the area of information technology can also help in strengthening international protection efforts. The fact that a 'Red Cross for cultural property' is still urgently needed is an important lesson from the case of Libya. Whatever form future protection efforts will take, they should be based on the current framework offered by international humanitarian law. This will enhance transparency, uniformity of action and increase security for cultural property protectors during armed conflict.

THE SCOPE AND APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW

ed. by Michael N. Schmitt, Wolff Heintschel von Heinegg. - Farnham ; Burlington : Ashgate, 2012. - XXVI, 508 p.

This book brings together the most significant articles in the field of humanitarian law published in the last century. The selected essays include classics of humanitarian law, lesser-known pieces and articles which have become influential as this body of law develops in the 21st century.

SCOPE OF APPLICATION OF INTERNATIONAL HUMANITARIAN LAW

Jann K. Kleffner. - In: *The handbook of international humanitarian law*. - Oxford : Oxford University Press, 2013. - p. 43-78

Material, personal, geographical and temporal scope of application of IHL.

SEARCHING FOR A "PRINCIPLE OF HUMANITY" IN INTERNATIONAL HUMANITARIAN LAW

ed. Kjetil Mujezinovic Larsen, Camilla Guldahl Cooper and Gro Nystuen. - Cambridge [etc.] : Cambridge University Press, 2013. - XII, 365 p.

Content notament : The main epochs of modern international humanitarian law since 1864 and their related dominant legal constructions / Robert Kolb. - The principle of proportionality / Yoram Dinstein. - The Geneva Conventions and the dichotomy between international and non-international armed conflict : curse or blessing for the "principle of humanity"? / Cecilie Hellevest. - A 'principle of humanity' or a 'principle of human-rightism'? / Kjetil Mujezinovic Larsen. - The principle of humanity in the development of "special protection" for children in armed conflict : 60 years beyond the Geneva Conventions and 20 years beyond the Convention on the rights of the child / Katarina Mansson. - Multinational peace operations forces involved in armed conflict : who are the parties? / Ola Engdahl. - Security detention in UN peace operations / Peter Vedel Kessing

SEARCHING FOR INTERNATIONAL RULES APPLICABLE TO CYBER WARFARE : A CRITICAL FIRST ASSESSMENT OF THE NEW TALLINN MANUAL

Dieter Fleck. In: *Journal of conflict and security law* Vol. 18, no. 2, Summer 2013, p. 331-351

The new Tallinn Manual on International Law Applicable to Cyber Warfare represents an important professional achievement which is, however, less than comprehensive. The Manual deliberately focuses on (international

and non-international) armed conflict, whereas the prohibition of intervention below the threshold of armed attack is not discussed in detail. Dealing with a phenomenon that may arise in future but has hardly occurred so far in the practice of states and non-state actors, the Manual refrains from addressing legal problems of cyber security outside armed conflicts in a systematic manner. It does so even at the risk of misunderstandings for users who may tend to military action in situations where such action would be unlawful, whereas law enforcement and political cooperation would be required. Relevant issues including state sovereignty and sovereign immunity, accountability for cyber operations, effects of armed conflicts on rules applicable in peacetime and criminal jurisdiction are of practical significance in the context of cyber operations and need to be further elaborated. As far as the *jus in bello* is concerned, the Manual explains important principles and rules as applicable to cyber warfare, but it also takes some controversial positions and thus challenges further efforts to develop best practice standards for the conduct of military operations, solve interoperability problems and address policy issues in a convincing manner. Efforts to improve cyber security in international cooperation deserve to be continued.

SECURITY COUNCIL RESOLUTION 1973 : A NEW INTERPRETATION OF THE NOTION OF PROTECTION OF CIVILIANS ?

Mohamed A. E. Youssef. - In: *The Arab spring : new patterns for democracy and international law.* - Leiden ; Boston : M. Nijhoff, 2013. - p. 145-167

This chapter questions whether it was legitimate of the Security Council to treat the National Transitional Council in Libya as a civilian rather than an armed opposition group. It also draws attention to the consequences of not qualifying the situation in Libya as an internal armed conflict, unlike previous military interventions in non-international armed conflict. The core critique of Resolution 1973 lies in the fact that the Security Council took two self-contradictory positions; on one hand it protected civilians in accordance with its general purposes under the UN Charter and its "responsibility to protect" and on the other it offered protection to those groups who might, at other times or by other people, be classified as an armed opposition group.

SECURITY DETENTION IN UN PEACE OPERATIONS

Peter Vedel Kessing. - In: *Searching for a "principle of humanity" in international humanitarian law.* - Cambridge [etc.] : Cambridge University Press, 2013. - p. 272-303

This chapter addresses the competence of UN forces to detain individuals for security reasons during peace-keeping operations. The author describes the legal uncertainties that exist, and attempts to identify minimum detention standards that are applicable in all types of operations. An important premise in the identification of such standards is the humanitarian mandate of UN forces and the corresponding need for a clear legal regime to secure the human rights of detainees.

SEEKING JUSTICE AND ACCOUNTABILITY : THE DILEMMAS OF HUMANITARIAN LAW AND HUMAN RIGHTS NGOS

Mahmood Monshipouri. - In: *Trials and tribulations of international prosecution.* - Lanham [etc.] : Lexington Books, 2013. - p. 75-89

This chapter addresses dilemmas of securing justice and accountability, as well as protecting victims of inter/intrastate conflicts. Despite conceptual and legal differences between human rights NGOs and IHL, the latter provides a useful framework and valuable tool for the former in their mutual attempt to safeguard human rights. After examining the dilemmas of seeking justice and accountability for victims of armed conflicts, this chapter outlines a forward-looking approach toward preventing deadly conflicts and egregious human rights violations.

SEEKING THE TRUTH ABOUT SERIOUS INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW VIOLATIONS : THE VARIOUS FACETS OF A CARDINAL NOTION OF TRANSITIONAL JUSTICE

Théo Boutruche. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald.* - The Hague : T.M.C. Asser Press, 2013. - p. 303-325

The notion of truth and the search for it constitute central tenets of transitional justice processes and mechanisms in societies recovering from an armed conflict or from a period of large-scale human rights abuses. Truth lies at the heart of human nature, when victims of international human rights and humanitarian law violations want to know what happened. However, to date, the concept of truth seems to have suffered from the many assumptions that shape the emerging field of transitional justice. The most common of those is that truth should necessarily bring about reconciliation. Similarly the notion of truth would be a straightforward and simple concept. It is only recently that experts and scholars have begun to question such assumptions. Against this backdrop, this chapter therefore intends to go beyond the often oversimplified notion of truth in transitional justice. It seeks to explore some of the various and complex dimensions of the truth to better understand tensions that may exist when, for example, efforts favour the collective dimension of truth for a whole society over the needs of victims as individuals. This chapter then reviews to what extent some of the transitional justice mechanisms contribute to ascertaining the truth in its full complexity. Ultimately in as much as transitional justice requires a combination of mechanisms and processes to achieve its goals, this chapter will show that considering the many facets of the truth about past abuses is critical to ensure victims' rights are respected.

SELECTING AND APPLYING LEGAL LENSES IN MONITORING, REPORTING, AND FACT-FINDING MISSIONS

by Théo Boutruche. - [Cambridge (MA)] : Program on humanitarian policy and conflict research Harvard university, October 2013. - 36 p.

While the existence of monitoring, reporting and fact-finding (MRF) bodies in the international realm is not a new phenomenon, the recent proliferation of such institutions raises a number of policy and legal issues. One issue is that, as MRF bodies are increasingly called to make legal determinations and interpret existing unsettled rules or concepts of international law, these mechanisms' role and practice in this regard attract more legal scrutiny. As a result, the way that MRF missions apply the law — as much as the methodology used to establish facts — can affect the mission's credibility. This paper addresses this issue by focusing on the selection and application of legal lenses in MRF mechanisms. The

paper aims at describing and analyzing the current practice to identify strengths, gaps, and challenges, with a view to presenting options to improve the ways that MRF practitioners articulate and apply legal frameworks.

SELF-DEFENSE TARGETING : BLURRING THE LINE BETWEEN THE JUS AD BELLUM AND THE JUS IN BELLO

Geoffrey S. Corn. In: *International law studies* Vol. 88, 2012, p. 57-92

This essay will argue that the concept of self-defense targeting does not and cannot provide a substitute for resolving the debate about in bello applicability to transnational counterterror military operations. The reasons for this are multifaceted. First, the jus ad bellum has never been understood as a source of operational or tactical regulation nor a substitute for the law providing that regulation. Indeed, one of the central tenets of the jus belli has always been the invalidity of reliance on the jus ad bellum to define jus in bello obligations. Instead, the de facto nature of tactical execution is the principal factor for assessing applicability of the jus in bello. Second, because the jus ad bellum has never been conceived as a tactical regulatory framework, using it as a substitute for the jus in bello injects unacceptable confusion into the planning and execution of combat operations. Finally, while the principles of necessity and proportionality are central to both branches of the jus belli, the meaning of these principles is not identical in each branch but, in fact, disparate. As a result, the scope of lawful authority to employ force during mission execution will be subtly but unquestionably degraded if ad bellum principles are utilized as a substitute for in bello regulation.

SELLING THE PASS : HABEAS CORPUS, DIPLOMATIC RELATIONS AND THE PROTECTION OF LIBERTY AND SECURITY OF PERSONS DETAINED ABROAD

Tatyana Eatwell. In: *International and comparative law quarterly* Vol. 62, part 3, July 2013, p. 727-739

On 31 October 2012 the Supreme Court of England and Wales handed down its judgment in *Rahmatullah v Secretary of State for Foreign Affairs and Secretary of State for Defence*. The case concerns an application for habeas corpus brought by a citizen of Pakistan originally detained by the United Kingdom in Iraq before being transferred into the custody of the United States. Rahmatullah addresses important issues concerning the extraterritorial reach of habeas corpus under English law in respect of persons held in the custody of a foreign State, as well as the international rule of law. The case may be considered a legal victory for persons detained without trial by the US in facilities thought to be beyond the reach of the courts. However, in reality any strength in the arm of the law is drained by the priority given to the conduct of foreign affairs, 'forbidden territory' for the courts, over the Court's ruling and the UK's obligations under international law. The case is examined in the light of similar jurisprudence from US and Australian courts.

SHELTERING THE DISPLACED : THE PROTECTED STATUS OF INTERNALLY DISPLACED PERSONS (IDPs) UNDER INTERNATIONAL HUMANITARIAN LAW

Louise Sarsfield Collins. In: *Asia-Pacific yearbook of international humanitarian law* Vol. 4, 2008-2011, p. 183-209

With cognizance of the definition contained in the United Nations Guiding Principles on Internal Displacement (herein Guiding Principles), this paper aims to focus on displacement in situations of armed conflict. It also seeks to examine the legal framework on the protection of civilians, looking not only at the prohibition of forced displacement but also at the scope of protection for IDPs at the end of an armed conflict regardless of the lawfulness of their displacement. Several bodies of law are of some relevance, namely international human rights law, international refugee law, and ius in bello. However, as this paper will concentrate on IDPs caught up in situations of armed conflict where many human rights laws may be derogated from and refugee law is not applicable, the primary focus will be on the protection afforded by IHL. It concludes that there is somewhat a lacuna regarding the right of return to their place of habitual residence for those IDPs who are victims of unlawful displacement.

SHOULD INTERNATIONAL LAW ENSURE THE MORAL ACCEPTABILITY OF WAR ?

Janina Dill. In: *Leiden journal of international law* Vol. 26, no. 2, June 2013, p. 253-270

Jeff McMahan's challenge to conventional just-war theory is an attempt to apply to the use of force between states a moral standard whose pertinence to international relations (IR) is decreasingly contestable and the regulation of which international law (IL) is, therefore, under pressure to afford: the preservation of individual rights. This compelling endeavour is at an impasse given the admission of many ethicists that it is currently impossible for international humanitarian law (IHL) to regulate killing in war in accordance with individuals' liability. IHL's failure to consistently protect individual rights, specifically its shortfall compared to human rights law, has raised questions about IHL's adequacy also among international lawyers. This paper identifies the features of war that ground the inability of IL to regulate it to a level of moral acceptability and characterizes the quintessential war as presenting what I call an 'epistemically cloaked forced choice' regarding the preservation of individual rights. Commitment to the above moral standard, then, means that IL should not prejudge the outcome of wars and must, somewhat paradoxically, diverge from morality when making prescriptions about the conduct of hostilities. In showing that many confrontations between states inevitably take the form of such epistemically cloaked forced choices, the paper contests the argument by revisionist just-war theorists like McMahan that the failure of IL to track morality in war is merely a function of contingent institutional desiderata. IHL, with its moral limitations, has a continuing role to play in IR.

SILENT ENIM LEGES INTER ARMA - BUT BEWARE THE BACKGROUND NOISE : DOMESTIC COURTS AS AGENTS OF DEVELOPMENT OF THE LAW ON THE CONDUCT OF HOSTILITIES

Yaël Ronen. In: *Leiden journal of international law* Vol. 26, no. 3, 2013, p. 599-614

This article highlights the challenges to the operation of domestic courts as agents of development of the laws of armed conflict and particularly of the law on the conduct of hostilities. The first part of the article concerns the spillover from various branches of the laws of armed conflict to the law regarding the conduct of hostilities.

The second part of the article addresses the structural constraints on domestic courts in deciding issues relating to the laws of armed conflict, focusing on the conflict between their role as guardians of national interests and their judicial commitment to protecting the individual. The cumulative effect of these characteristics of domestic litigation suggests that the laws of armed conflict, and particularly the law on the conduct of hostilities, are not necessarily well served by development through domestic jurisprudence.

SIXTY YEARS IN THE MAKING, BETTER LATE THAN NEVER ? : THE IMPLEMENTATION OF THE GENEVA CONVENTIONS ACT

Christopher Gevers, Alan Wallis and Max du Plessis. In: African yearbook on international humanitarian law 2012, p. 185-200

South Africa adopted the implementation of the Geneva Conventions Act 8 of 2012 sixty years after South Africa acceded to the 1949 Geneva Conventions, and after the Geneva Conventions' "grave breaches" regime has already been "domesticated" through South Africa's implementing legislation in respect of the 1998 Rome Statute of the International Criminal Court. In addition, the relevant portions of the 1949 Conventions - and most of the 1977 Protocols - now form part of customary international law and therefore, are already part of South Africa's law. This raises the question: is the Geneva Conventions Act mere legislative surplusage? After providing an overview of the provisions relating to criminal prosecution, and pointing out where the Act might have gone further in light of comparative foreign legislation, the argument is made that although the Geneva Conventions Act does replicate much of what is already covered in the implementation of the Rome Statute, it adds progressively to South Africa's international criminal law in one key respect: it opens up the possibility of prosecuting war crimes that took place before 2002.

LES SOINS DE SANTÉ EN DANGER : LES RESPONSABILITÉS DES PERSONNELS DE SANTÉ À L'OEUVRE DANS DES CONFLITS ARMÉS ET D'AUTRES SITUATIONS D'URGENCE

CICR. - Genève : CICR, décembre 2012. - 111 p.

Ce document d'orientation à l'intention des personnels de santé, explique dans un langage clair et simple quels sont leurs droits et leurs responsabilités pendant un conflit armé ou d'autres situations de violence. Comme le dit un chirurgien qui a relu le document : « C'est ce que j'aurais aimé avoir sur moi la première fois que je suis allé travailler sur le terrain en tant que chirurgien avec le CICR ». Il explique les responsabilités et les droits des personnels de santé au regard du droit international humanitaire, des droits de l'homme et de la déontologie médicale. Le document contient une série de conseils pratiques sur différents aspects : - La protection des personnels de santé, ainsi que des personnes malades et blessées - Les normes de soins appropriées - Les besoins de santé des personnes particulièrement vulnérables - Les dossiers de santé et la transmission des dossiers médicaux - Les soins de santé « importés » (dont les soins de santé militaires) - La collecte des données et les violations du droit international dont les personnels de santé sont témoins - Les relations avec les médias.

SOME ASIAN STATES' OPPOSITION TO THE CONCEPT OF WAR CRIMES IN NON-INTERNATIONAL ARMED CONFLICTS AND ITS LEGAL IMPLICATIONS

Zhu Lijiang. In: Asian yearbook of international law Vol. 14 (2008), p. 71-99

The concept of war crimes in non-international armed conflicts is a relatively recent rule in contemporary international law. Although it has been confirmed by the two ad hoc UN international criminal tribunals, provided in conventional international law and the domestic criminal laws of quite a few States, as well as endorsed by the majority of international law scholars, it is not completely impossible to challenge its status as customary international law. Its greatest problem lies in the absence of sufficient State practices. In the author's opinion, it is at most an emerging rule in customary international law. The oppositions to the concept by some Asian States, namely China, India and Pakistan, could be accommodated as persistent objectors in international law.

SOME LEGAL CHALLENGES POSED BY REMOTE ATTACK

William Boothby. In: International review of the Red Cross Vol. 94, no. 886, Summer 2012, p. 579-595

Attacking from a distance is nothing new, but with the advent of certain new technologies, attacks can be undertaken in which the attacker remains very remote from the scene where force will be employed. This article analyses the legal issues raised by attacks employing, respectively, remotely piloted vehicles, autonomous attack technologies, and cyber capabilities. It considers targeting law principles and rules, including distinction, discrimination, proportionality, and the precautions rules, observes that they all apply to remote attack and proceeds to explore the challenges that arise from implementing the legal requirements. Due note is taken of states' legal obligation to review new weapons, methods and means of warfare, an obligation that reinforces the view that existing law will provide the prism through which these new attack technologies must be evaluated by states. The article then discusses how notions of liability apply in relation to remote attack, and considers whether it is depersonalization rather than remoteness in attack that is the critical legal issue.

SOME REFLECTIONS ON SELF-DEFENCE AS AN ELEMENT IN RULES OF ENGAGEMENT

Frits Kalshoven and Thyla Fontein. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 97-113

From 16 to 20 June 2007, the International Security Assistance Force (ISAF) and the Taliban were engaged in a fierce battle over Chora, Afghanistan, resulting in many civilian casualties in and around that capital city. ISAF is a coalition of states established to contribute to the maintenance of security, but which through their frequent engagement in actual warfare have become parties to the armed conflict in Afghanistan. As a result, their actions are governed by international humanitarian law. This includes the prohibition of indiscriminate attacks, i.e. attacks expected to cause civilian casualties at a level excessive in relation to the military advantage anticipated. The hostilities in and around Chora have given rise to the question whether they might have violated this prohibition (a question ultimately answered in the negative). In this debate, self-defence was among

the arguments raised in justification. Self-defence usually figures as a standard clause in the rules of engagement. These are texts which, established by commanders, permit or limit the use of force by their armed forces. The chapter briefly discusses the character of these instruments and of the clauses they contain. The focus is in particular on the self-defence clause. Self-defence may be individual or collective, and it may arise on three different levels: as national self-defence, unit self-defence or individual self-defence. In the closing chapter, the chapter focuses on the relevant Dutch legal system, because the troops involved in the battle over Chora were Dutch forces and collective unit self-defence might have been at issue as an exculpatory argument in that case.

LA SOUS-TRAITANCE D'ACTIVITÉS MILITAIRES PAR L'ÉTAT AU SECTEUR PRIVÉ : UNE ENTORSE AUX RÈGLES DU DROIT INTERNATIONAL HUMANITAIRE ?

Anne-Marie Burns. - [S.l.] : [s.n.], 2011. - X, 163 p.

Depuis la fin des années 1990, les États confient à des entreprises privées des activités militaires autrefois exercées par l'armée, amenant ces dernières à intervenir dans des conflits armés. Les règles du droit international humanitaire régissant les conflits armés internationaux n'ayant pas été conçues pour ce type d'intervenants, leur application n'est pas sans poser certains problèmes, notamment lorsqu'il s'agit de déterminer quel est le statut des employés d'entreprises militaires privées au regard des Conventions de Genève. Eu égard à la confusion que l'implication d'acteurs au statut incertain ou difficilement déterminable engendre sur l'application du droit international humanitaire, ce travail de recherche vise à déterminer si les États respectent l'ensemble de leurs obligations lorsqu'ils soustraient des activités militaires à des entreprises privées. En d'autres termes, il s'agit de déterminer si le respect du principe de distinction entre combattants et personnes civiles ne poserait pas certaines limites à une telle pratique.

SPATIAL CONCEPTIONS OF THE LAW OF ARMED CONFLICT

Louise Arimatsu. - In: *The liberal way of war : legal perspectives*. - Farnham ; Burlington : Ashgate, 2013. - p. 167-188

This chapter opens with an overview of the two distinct views that have emerged over the last two decades in response to the changing nature of warfare. Common to both is the anxiety that the modern state is ill-prepared to respond to the spatial reconceptualisation of the global order. In particular, this chapter explores how the law of armed conflict's spatial preconceptions have been radically challenged through state practice and the decisions of courts. It suggests that this reconstitution of space has engendered an angst that is as much about the pace of change as it is about the outcome produced. The second part of this chapter considers the legal debates surrounding the use of unmanned aircraft systems, or drones, as a tactic in responding to transnational terrorism and suggests that the discomfort that many feel about this technology is symptomatic of a deep set of concerns related to the extended spatial, and temporal, reach of the law of armed conflict. This chapter interrogates whether this reconfiguration of space is disrupting the divide between war and crime and between *jus in bello* and *jus ad bellum*. The final part of this chapter reflects upon whether the extended spatial

scope of the law of armed conflict is to be welcomed or resisted.

SPECIFIC REPARATION FOR SPECIFIC VICTIMIZATION : A CASE FOR SUITABLE REPARATION STRATEGIES FOR WAR CRIMES VICTIMS IN THE DRC

Amissi M. Manirabona and Jo-Anne Wemmers. In: *International criminal law review* Vol. 13, issue 5, 2013, p. 977-1012

The vast number of victims as well as their tremendous needs have to be taken into consideration by the International Criminal Court (ICC) that is dealing with some of the war criminals from the DRC. However, while many international instruments provide war victims with rights to reparation, the ICC is limited in terms of who it considers a victim and what it can offer in terms of reparation. The Trust Fund for victims, however, does not suffer these same limitations. Nevertheless, the Trust Fund is grossly underfunded. Thus, it should be supplemented by a national compensation fund for war victims financed by the international community, the DRC as well as States involved in Congolese armed conflict. As we will see later on, although this research is focused to victims of the DRC armed conflict, many of its lessons might have broader implications and apply to other situations involving war-induced victimization.

SPECIFICITIES OF HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW REGARDING STATE RESPONSIBILITY

Christian Tomuschat. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 198-222

Both international humanitarian law (IHL) and human rights law (HRL) are constituent elements of present-day international law. Thus, one might assume that they are naturally governed by the general principles and rules which make up the conceptual framework of the system of international law as a whole. Yet, regarding the secondary rules that come into play if and when a primary rule of conduct has been breached, it turns out that the modern extension of international law, both *ratione personae* and *ratione materiae*, cannot easily be accommodated. All of a sudden, it becomes apparent that international law grew up as inter-State law and that its mechanisms of enforcement were originally framed – or evolved – with a view to accommodating States. Consequently, not only are adjustments necessary; in some instances, the inference cannot be escaped that some of the classic rules are entirely inappropriate in the fields of IHL and HRL. International responsibility is a case in point. Traditionally, it was understood as inter-State responsibility. Accordingly, the rules drawn up by the International Law Commission on Responsibility of States for internationally wrongful acts, taken note of by General Assembly resolution 56/83 of 12 December 2001, dealt exclusively with the international responsibility which a State incurs through unlawful conduct. At that time, a decade ago, it was already a matter of common knowledge that International Organizations may also become liable to make reparation if they violate their obligations under international law.

STATE-BUILDING, OCCUPATION AND INTERNATIONAL LAW : FRIENDS OF FOES ?

Jan Wouters, Kenneth Chan. In: *Leuven centre for global governance studies working paper* No. 87, March 2012, 16 p.

What role does the law of occupation play in the process of state-building ? Whilst the law of occupation presupposes that an occupying power will not restructure the operation and function of a state, but rather, will hold the status quo and ensure that the peoples of occupied territories are not subjected to further chaos, the contemporary practice of occupying powers today - particularly after the 2003 invasion of Iraq - seems to defy the non-transformational doctrines of international humanitarian law. So, to what extent does it still have relevance in the administration of post-conflict societies ? This chapter addresses the aptness of the law of occupation within contemporary understandings of state-building - and broadly considers question "is the law of occupation state-building".

THE STATUS OF OPPOSITION FIGHTERS IN A NON-INTERNATIONAL ARMED CONFLICT

Michael N. Schmitt. In: *International law studies* Vol. 88, 2012, p. 119-144

The treaty law applicable to the classification of participants in a non international conflict is limited to Common Article 3 to the 1949 Geneva Conventions and the 1977 Additional Protocol II. Taking the two treaties together, and in light of Common Article 3's customary status, it can be concluded that two broad categories of non-international armed conflict participants lie in juxtaposition: civilians and organized armed groups. The former can be subdivided into those who directly participate in hostilities and those who do not. Organized armed groups consist of a State's armed forces, dissident armed forces or "other" organized armed groups. This chapter examines the three types of "opposition fighters" - dissident armed forces, other organized armed groups and civilians directly participating in hostilities. Assuming a non-international armed conflict (whatever form it takes), it asks how opposition force participants in the conflict are to be classified. The key consequences of classification lie in the law of targeting, for classification determines whether LOAC prohibits an attack on an individual during a non international armed conflict. To the extent no prohibition exists on attacking persons with a particular classification, harm to an individual within that group plays no role in proportionality calculations (except as military advantage) and need not be considered when determining the precautions that attackers are required to take during attacks to avoid harming civilians. As will become apparent, the targetability of the various categories of opposition fighters is a matter of some contention in LOAC circles.

LE STATUT DE COMBATTANT DANS LES CONFLITS ARMÉS NON INTERNATIONAUX : ÉTUDE CRITIQUE DE DROIT INTERNATIONAL HUMANITAIRE

Gérard Aivo ; préf. de Stéphane Doumbé-Billé et de Robert Kolb. - Bruxelles : Bruylant, 2013. - 512 p.

Avant les Conventions de Genève de 1949, seuls les conflits armés internationaux étaient réglementés par le droit de la guerre. Ce dernier ne pouvait s'appliquer dans les guerres civiles qu'après la reconnaissance des forces rebelles comme partie belligérante. Or, depuis la Seconde guerre mondiale, on a assisté à une multiplication des conflits armés non internationaux. Mais les Conventions de Genève de 1949 leur ont consacré seulement l'article 3 commun ; puis le protocole II additionnel de 1977 est venu le compléter. Ces deux textes comportent de nombreuses lacunes, notamment l'ab-

sence de définition des "combattants" et des "civils", rendant ainsi difficile le respect du principe de distinction pourtant essentiel à la protection des populations civiles. Ces dispositions ne réglementent pas non plus les moyens et méthodes de guerre. Outre les lacunes normatives, il y a des problèmes matériels qui compliquent la mise en oeuvre efficace des règles pertinentes. Il s'agit notamment de la participation des populations civiles aux hostilités, y compris les enfants-soldats et les mercenaires. L'absence du statut de combattant dans les conflits armés non internationaux apparaît comme le problème principal compromettant l'efficacité du droit international humanitaire. Celle-ci ne contribue-t-elle pas au non respect de ce droit par les groupes armés ? Faudrait-il conférer ce statut à ces derniers en vue de les amener à appliquer le droit international humanitaire ou envisager d'autres moyens ? Toutes ces questions sont traitées.

STUDY GROUP ON THE CONDUCT OF HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW IN THE 21ST CENTURY : WORKING SESSION, 30 AUGUST 2012

Patricia Conlan... [et al.]. In: Report of the [...] Conference [International law association] 75, 2012, p. 1037-1045

Report of the working session of 30 August 2012 of the International Law Association study group on the conduct of hostilities under IHL in the 21st Century. Although the law of armed conflict has arguably already adapted in a certain way by providing special rules for non-international armed conflicts, one needs to keep in mind that especially the Hague Law dealing with the means and methods of warfare was mainly designed to deal with interstate wars. Even though some of these rules are nowadays held to be equally applicable to non-international armed conflicts, they were originally not drafted to cover the situation of these kinds of conflicts, and thus the fit is not always appropriate. What is more, in modern asymmetric conflict constellations the conduct of hostilities increasingly seems to intersect/coincide with law enforcement operations. Thus, the International Law Association study group was set up to examine whether the IHL rules governing the conduct of hostilities are still adequate to deal with current conflicts, or whether it needs revision or amendment.

SUICIDE ATTACKS : MARTYRDOM OPERATIONS OR ACTS OF PERFDY ?

Muhammad Munir. - In: *Islam and international law : engaging self-centrism from a plurality of perspectives.* - Leiden ; Boston : M. Nijhoff, 2013. - p. 99-123

This work focuses on the use of suicide attacks by Muslims from the perspective Islamic jus in bello. It addresses the following questions: what is the position of Islamic law vis-à-vis suicide attacks? Are they martyrdom operations or perfidious acts? Are there any circumstances imaginable in which such attacks are allowed? Can the heroism of the companions of the Prophet and Imam Husayn on battlefields be considered as equivalent to suicide attacks? Who can carry out such attacks and against whom can they be carried out? Can women, children, and civilians be the target of such attacks? Are suicide attacks allowed by the Layha for the mujahidin in Afghanistan which they claim is based on Islamic law?

SUSTAINABLE DEVELOPMENT AND THE PROTECTION OF THE ENVIRONMENT DURING TIMES OF ARMED CONFLICT

Onita Das. - In: Environmental protection, security and armed conflict : a sustainable development perspective. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 120-182

This chapter [...] begins by presenting in Section 2, the laws of armed conflict applicable to the protection of the environment during armed conflict (particularly those pertinent to the case-studies); Section 3 explores the First Gulf War ; Section 4 reviews the Kosovo conflict ; and Section 5 briefly considers recommendations for reform. The relevant IHL rules and principles in relations to their scope in protecting the environment during armed conflict are considered from a sustainable development perspective.

TAKING HUMANS OUT OF THE LOOP : IMPLICATIONS FOR INTERNATIONAL HUMANITARIAN LAW

Comment by Markus Wagner. In: Journal of law, information and science Vol. 21, issue 2, 2011/2012, p. 155-165

The current generation of unmanned vehicles (UVs) is remotely operated, sometimes from a close distance, sometimes over long distances. And while the use of fully autonomous weapons is still a decade or more away, there has been considerable discussion as to when this goal is to be reached. Until a few years ago, it was commonplace for defense officials to consider retaining humans in the loop as an essential component of warfare even in the future. However, a US Department of Defense (DoD) report in 2009, predicted that the technological challenges regarding fully autonomous systems will be overcome by the middle of the century. Technological development has been particularly rapid regarding unmanned aerial vehicles, followed by a vigorous and concomitant public debate. Focusing largely on the legality of targeted killing, this debate has also brought to light the increasing extent to which UAVs have been used in prosecuting armed conflict in Afghanistan and Pakistan, as well as Iraq. This comment first addresses the difference between the current weapon systems and the next generation of truly autonomous weaponry (Part 2), followed by an overview of the applicable rules of armed conflict (Part 3) before offering some concluding remarks (Part 4).

THE TALIBAN LAYEHA FOR MUJAHIDIN AND THE LAW OF ARMED CONFLICT

Niaz A. Shah. In: Journal of international humanitarian legal studies Vol. 3, issue 1, 2012, p. 192-229

In 2010 the Taliban issued a third edition of their Layeha. The Layeha contains Rules and Regulations of Jihad for Mujahidin. This article first details the short history of the Layeha published by the Taliban. Subsequently its content is analysed and compared with the international law of armed conflict that applies in conflicts of an international and non-international character. The author demonstrates that, whilst some rules are incompatible or ambiguous, most rules of the Layeha are compatible with the international law of armed conflict. Compliance with the rules that are compatible could help to achieve the objectives of the law of armed conflict: to minimise unnecessary suffering in armed conflict. The author submits that considering that the Taliban are engaged in fighting in Afghanistan and that they have control of or

influence in parts Afghanistan, it is encouraging that they have produced such a self-imposed code. Any minimum restraint, whether self-imposed or imposed by municipal or international law, is better than no restraint at all.

TALLINN MANUAL ON THE INTERNATIONAL LAW APPLICABLE TO CYBER WARFARE : PREPARED BY THE INTERNATIONAL GROUP OF EXPERTS AT THE INVITATION OF THE NATO COOPERATIVE CYBER DEFENSE CENTRE OF EXCELLENCE

general ed. Michael N. Schmitt. - Cambridge [etc.] : Cambridge University Press, 2013. - XIX, 282 p.

The product of a three-year project by twenty renowned international law scholars and practitioners, the Tallinn manual identifies the international law applicable to cyber warfare and sets out ninety-five black-letter rules governing such conflicts. It addresses topics including sovereignty, State responsibility, the jus ad bellum, international humanitarian law, and the law of neutrality. An extensive commentary accompanies each rule, which sets forth each rule's basis in treaty and customary law, explains how the Group of Experts interpreted applicable norms in the cyber context, and outlines any disagreements within the group as to each rule's application.

TARGETED KILLING : WHEN PROPORTIONALITY GETS ALL OUT OF PROPORTION

Amos N. Guiora. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 235-257

Targeted killing sits at the intersection of law, morality, strategy, and policy. For the very reasons that lawful and effective targeted killing enables the state to engage in its core function of self-defense and defense of its nationals, the author is a proponent of targeted killing. However, his support for targeted killing is conditioned upon it being subject to rigorous standards, criteria, and guidelines. At present, new conceptions of threat and new technological capabilities are drastically affecting the implementation of targeted killing and the application of core legal and moral principles. High-level decision makers have begun to seemingly place a disproportionate level of importance on tactical and strategic gain over respect for a narrow definition of criteria-based legal and moral framework. Nonetheless, an effective targeted killing provides the state with significant advantages in the context of counterterrorism. Rather than relying on the executive branch making decisions in a "closed world" devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information's admissibility. The process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur.

TARGETED KILLINGS AND PROPORTIONALITY IN LAW : TWO MODELS

Larry May. In: Journal of international criminal justice Vol. 11, no. 1, March 2013, p. 47-63

The author explores three problems. First, how can targeted killings understood on the domestic law enforcement model be conducted without violating due process concerns? If the targeting is based on the conduct or behaviour of the person targeted, then it seems that a judicial determination of the facts is required. And

in any event, the killing, rather than the arrest, of the person targeted would rarely be justified on a domestic law enforcement model. Secondly, on the international humanitarian law model, are targeted killings no different from other 'battlefield' killings in war or armed conflict? One of the salient issues here is how to satisfy proportionality, which seems to require that the least lethal means be used consistent with military necessity. Thirdly, under what conditions, if any, would targeted killings be subject to international criminal prosecution? If targeted killings fail to be proportionate, are those who perpetrate them prosecutable under the International Criminal Court's understanding of disproportionate attack?

TARGETED KILLINGS : CONTEMPORARY CHALLENGES, RISKS AND OPPORTUNITIES

Sascha-Dominik Bachmann. In: *Journal of conflict and security law* Vol. 18, no. 2, Summer 2013, p. 259-288

The use of drones and other forms of targeted killings are being increasingly criticized at the international and domestic level. Before the backdrop of the most recent news that the United Nations has launched an inquiry into the overall legality of such a method of warfare and counterterrorism and its associated loss of civilian life, this article aims to give an overview on targeted killings as a means of warfare. The article asks what constitutes targeted killing and what distinguishes it from assassinations. It reflects on the safeguards, which are necessary to ensure the legality of the targeting process. This article further introduces the reader to an updated account of the use of Unmanned Combat Aircraft Systems, or 'drones', in targeted killings, employed as a means of warfare by the USA in its 'War on Terror'. The US drone campaign in Pakistan also raises questions in respect to State Sovereignty and potential violations of this central tenet of International Law. The article will also touch upon another field of global security, so called 'Hybrid Threats', where the use of targeted killing may have an operational military benefit as part of a holistic counter-strategy. It concludes with a sobering warning that while targeted killing operations may be an effective means of achieving short-term tactical goals within the scope of a wider operational objective, the unregulated and increased use of targeting killings by the USA in the 'War on Terror' would be both immoral as well as illegal in the long run.

TARGETING AND PROSECUTING "UNDER-AGED" CHILD SOLDIERS IN INTERNATIONAL ARMED CONFLICTS, IN LIGHT OF THE INTERNATIONAL HUMANITARIAN LAW PROHIBITION AGAINST CIVILIAN DIRECT PARTICIPATION IN HOSTILITIES

Shannon Bosch. In: *Comparative and international law journal of Southern Africa* Vol. 45, no. 3, 2012, p. 324-364

Military commanders involved in international armed conflicts are faced daily with the dilemma of making defensible targeting decisions when they encounter under-aged child combatants. This problem is particularly acute in conflicts involving non-state-armed groups, who are notorious for forcibly abducting child soldiers to swell their ranks. Existing international law prohibits the recruitment of children under fifteen years of age into any armed forces. In some instances, international law sets the minimum age for recruitment at eighteen years of age, and there are growing calls for this standard to replace the fifteen-year age limit which has achieved

customary international law status. Until such time as this eighteen-year limit has achieved customary international law status, these child soldiers are bound by the existing IHL regime, which affords combatant status (and immunity from prosecution) based on an ability to show membership of an armed force. It is argued that the requirements for full combatant status are probably beyond the reach of the average under-aged child soldier. As a result, they remain classified as civilians, albeit participating directly in hostilities without authorisation. As unlawful participants, these civilians are not only legitimate targets in hostilities (for so long as they participate or engage in the continuous combat function), but they also face the possibility of being criminally prosecuted for their actions once they are captured.

TARGETING WITH DRONE TECHNOLOGY : HUMANITARIAN LAW IMPLICATIONS

by Nils Melzer... [et al.] ; introd. remarks by Naureen Shah. In: *Proceedings of the 105th annual meeting [of the] American Society of International Law 2011*, p. 233-252

Panel on drone technology and humanitarian law implications starting with the presentation by students of Columbia Law School's Human Rights Institute of the research paper "Targeting operations with drone technology : humanitarian law implications". The presentation is followed by a discussion with lead discussants, Nils Melzer and Chris Jenks. Issues discussed include: the scope of armed conflict, the rule of law, clarity of IHL, military necessity, ...

TARGETS

David Turns. - In: *Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 342-374

This article examines the rules of international humanitarian law in governing targeting. Specifically, information concerning the military operations of the UK army and NATO forces is analysed. The four principles relevant to determining the legality of an attack as set out in the Additional Protocol I (API) of 1977—military necessity, humanity, distinction and proportionality—are analyzed. Distinctions between different types of targets, people versus objects and civilian versus military are discussed, as well as how the rules on targeting have changed from the mid-17th century onwards as the methods of conducting war have changed. It is argued that the interaction and balancing of the four principles helps to determine if an attack is legal under the modern law of targeting. Also addressed are controversies surrounding who is a direct participant in hostilities, how to deal with voluntary human shields, how to define military objectives, and how to measure proportionality and collateral damage. It is noted that many nations, including some of those that have been in armed conflicts since the 1980s such as the USA, Israel, India and Pakistan, have not yet ratified the API or agreed to the rules on targeting. Finally, the author explores how the laws of targeting affect NATO, British and American practices. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

A TAXONOMY OF ARMED CONFLICT

Marko Milanovic and Vidan Hadzi-Vidanovic. - In: *Research handbook on international conflict and security*

law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 256-314

In this article the authors investigate issues related to the definitions of International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC). By doing so, they hope to show why these two definitions remain the clearest method of categorizing armed conflict. The authors explore several definitional issues related to international conflicts, including: when a conflict should be regarded as an IAC despite the participation of non-universally recognized state-actors; why participation by international organizations like NATO should only complicate IAC qualification if the involved forces cannot be attributed to the contributing state; and when an IAC ought to transition to a NIAC in the event of a defeated regime. Turning to NIAC issues, the authors argue that while most armed conflicts today are non-international, a comprehensive NIAC definition remains elusive. The basic definition is found in Common Article 3 of the Geneva Convention, but NIACs are defined differently under various treaty regimes. After surveying the definitional elements in existing treaties, the authors then investigate how a conflict may remain a NIAC even when crossing international borders, or involving foreign interventions. Finally, the authors argue that when facing 'mixed conflicts' that involve both state and non-state actors, improved compliance with international humanitarian law will result from defining a network of individual IAC and NIAC relationships amongst the actors. They recommend against adding a broad third category like 'Transnational Armed Conflicts' to the existing categories of armed conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

TEACHING INTERNATIONAL LAW, A THREAT TO NATIONAL SECURITY ? : THE US SUPREME COURT'S HOLDER V. HUMANITARIAN LAW PROJECT DECISION

Daniel Wisehart. In: *Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict* Vol. 25, 4/2012, p. 210-212

The Holder decision of the US Supreme Court exemplifies the tendency of criminalising humanitarian aid when fighting international terrorism. This article shows the incompatibility of the judgment with regard to principles of international humanitarian law and humanitarian aid. The judgment has aroused passionate debates in the American academia, but was barely recognised on the other side of the Atlantic. The present article aims to fill up this gap. The provisions discussed here can be of interest for anyone engaged in the field of humanitarian aid world-wide, since their extraterritorial application is provided for.

TERRORISM AND THE LAWS OF MULTIDIMENSIONAL WARFARE

Boaz Ganor. - In: *Counterinsurgency law : new directions in asymmetric warfare*. - Oxford [etc.] : Oxford University Press, 2013. - p. 141-161

Revisiting the international humanitarian law (IHL) problems that accompany conflicts with nonstate actors, this chapter points out that the protections for civilians under IHL are exploited by insurgents and terrorist, where military commanders may thus be compromised in conducting their operations. In response, the author proposes a new international legal framework, "multidimensional warfare", where he defines four categories of

actors involved in warfare, each of which has a different status in the conflict.

TERRORISM AS A CRIME IN INTERNATIONAL AND DOMESTIC LAW : OPEN ISSUES

Claudia Martin. - In: *Counter-terrorism strategies in a fragmented international legal order : meeting the challenges*. - Cambridge : Cambridge University Press, 2013. - p. 639-666

The existing anti-terrorist conventions, the negotiations on Draft Terrorism convention to combat international terrorism and the Resolutions adopted by the UN Security Council in the aftermath of September 11 have created a patchwork of norms that lack a cohesive approach in articulating acts that constitute terrorism in current international law. The goal of this chapter is to explore two issues that remain unresolved as a result of the lack of definition of terrorism in international law and that have become either an obstacle for combating this crime or have adversely impacted the respect of other rules of international law, especially human rights and humanitarian law principles. The first of these issues involves the blurring between the notion of terrorism and armed conflict. The second aspect explores the impact that the failure to articulate a definition of terrorism coupled with the obligations arising out of UN Security Council Resolutions and other anti-terrorist treaties have had on the protection of human rights in the domestic jurisdiction of states. Consideration is also made on the impact that the lack of a definition of terrorism has on the international judicial cooperation of states for purposes of prosecuting alleged terrorists.

THE COMBATANT STATUS OF "UNDER-AGED" CHILD SOLDIERS RECRUITED BY IRREGULAR ARMED GROUPS IN INTERNATIONAL ARMED CONFLICTS

Shannon Bosch. In: *African yearbook on international humanitarian law* 2012, p. 1-39

This article examines the status of child soldiers recruited by irregular armed groups engaging in international armed conflict. First, the author considers the existing international legal frameworks governing the recruitment of children by irregular armed groups. Second, she explores the criteria for the designation of combatant status under IHL to child soldiers in irregular armed groups. Difficulties arise when, by participating directly in hostilities, children's presumptive civilian status is compromised and they are considered legitimate targets for the duration of their participation. Considering the dire consequences of being denied combatant or prisoner of war status the author examines the way in which IHL applies to children participating in hostilities as part of an armed force legally defined versus those in irregular armed groups. Moreover, the author examines how the relevant legal standards differ for children who were involuntarily recruited. The author concludes that although children in 'armed forces' are given POW and combatant status privileges, those in irregular groups are considered unlawful participants. Though those in this latter group are liable to prosecution, they are protected by the special benefits extended pursuant to API 77(3) to all children under age fifteen participating in hostilities. Additionally, the author observes that even where recruitment is unlawful or involuntary, child soldiers are still required to distinguish themselves from civilians to avoid forfeiture of POW status. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

THE USE OF FORCE FOR HUMANITARIAN PURPOSES

Christine Gray. - In: *Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 229-255

This article discusses the evolution of unilateral humanitarian intervention —specifically, whether governments have a legal right to use military force to stop humanitarian tragedies abroad. The United Nations Charter allows intervention only when authorized by the Security Council under Chapter VII of the Charter. The author analyzes several notable circumstances where countries have nevertheless intervened without this authorization. The US, UK and France justified their unilateral no-fly zones over Iraq in 1991-2003, and over Kosovo in 1999, with rationales including extreme humanitarian need, implied Security Council consent, regional stability, and furtherance of the aims of the international community. These ideas were challenged by non-aligned states led by Russia and China, accusing such missions of violating sovereignty and the UN Charter. The author proceeds to discuss the emerging idea of 'Responsibility to Protect' (R2P). The interventions in Libya and Côte d'Ivoire in 2011 do not show any shift towards endorsing unilateral action under R2P, as the Security Council authorized both missions, and discussed R2P as a responsibility applying only to the domestic government. The Council's failure to authorize intervention in Syria in 2011, and the subsequent absence of unilateral intervention, also question the strength of R2P. Today deep suspicions exist between Western and non-aligned governments over the motives behind ostensibly humanitarian intervention, undermining progress and clarity in this issue. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

THÉORIE DES SOURCES

Jean d'Aspermont. - In: *Droit international humanitaire : un régime spécial de droit international ?*. - Bruxelles : Bruylant, 2013. - p. 73-101

La méthode d'établissement du droit international coutumier a été l'objet d'importantes controverses et ce sont les difficultés méthodologiques liées à la l'établissement des règles coutumières qui sont analysées ici, en ce qu'elles illustrent les raisons, les manifestations et les enjeux de l'autonomisation du droit humanitaire. Après quelques observations générales sur la théorie des sources du droit international, ce chapitre formule certaines remarques sur les enjeux théoriques et pratiques de la détermination des règles du droit humanitaire qui revêtent un caractère coutumier. Il s'attarde ensuite sur les difficultés qui ont entouré la détermination du droit humanitaire coutumier, notamment dans la jurisprudence des tribunaux ad hoc ou à l'occasion de l'étude du CICR avant de formuler quelques considérations critiques sur la question de l'autonomie du régime des sources du droit humanitaire - et la fragmentation corrélative de la théorie générale.

THÉORIE DES SUJETS

Raphaël van Steenberghe. - In: *Droit international humanitaire : un régime spécial de droit international ?*. - Bruxelles : Bruylant, 2013. - p. 15-71

D'aucuns sont enclins à considérer certains acteurs intervenant dans les situations de conflit armés (le CICR, les mouvements de libération nationale, les individus et

les groupes armés) comme revêtant une personnalité juridique internationale et jouissant de certaines capacités liées à cette personnalité. Il convient de se demander si une telle position est conciliable avec la théorie générale des sujets, c'est-à-dire les règles générales du droit international fixant les conditions d'octroi de la personnalité juridique et de capacités internationales et si, dans la négative, on doit admettre l'existence d'une théorie spéciale des sujets, c'est-à-dire de règles spécifiques en cette matière, prévues par et pour le droit humanitaire. L'auteur distingue trois catégories d'acteurs. La première regroupe le CICR et les mouvements de libération nationale pour lesquels la qualité de sujet de droit international, largement reconnue dans le chef de ces deux acteurs, peut s'expliquer à l'aune de la théorie générale des sujets. La deuxième catégorie comprend les individus. L'auteur montre que les individus ne peuvent se voir reconnaître un tel statut que sur la base de théories souples, voire "élémentaires", des sujets. Enfin la troisième catégorie composée des groupes armés semble rendre une théorie spéciale des sujets difficilement contournable pour justifier dans le chef de ces acteurs la reconnaissance d'une personnalité juridique internationale.

THEORIES ON THE RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

Hans-Joachim Heintze. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 53-64

This chapter reviews the different dominating theories on the relationship between international humanitarian law and human rights law. The first one is the separation theory according to which there is a clear separation between the law of peace and the law of war. Depending on the state of international relations, either the *corpus juris* of the law of peace or that of the law of war is applied. The second theory is the complementary theory: When examining which duties are incumbent on a State in times of armed conflict, it is not possible to avoid taking international human right law into consideration. Even if one accepts that both branches have different roots and approaches as well as functions they can complete each other on specific points. The third one is the integration theory best represented by the Convention on the Rights of the Child, a human rights treaty normally applicable in peacetime but containing provisions that are not only applicable in armed conflict, but are also enshrined in the law regulating armed conflicts.

A TOUR DE HORIZON OF ISSUES ON THE AGENDA OF THE MERCENARIES WORKING GROUP

Gabor Rona. In: *Minnesota journal of international law* Vol. 22, Summer 2013, p. 324-346

Against the backdrop of the role of mercenaries in the recent conflicts in Côte d'Ivoire and the Libyan Arab Jamahiriya, the author examines the concerns raised by the Mercenaries Working Group (established by UN Human Rights Council to study the use of mercenaries as a means of violating both human rights and self-determination.) regarding the risk private military security contractors (PMSCs) pose for the protection of human rights. Unlike mercenaries, PMSCs generally do not engage in combat operations. However, the author notes that there is no international prohibition against such engagement. The Working Group has stated that,

while current international humanitarian and human rights law has attempted to deal with mercenaries, it does not sufficiently address the problem of PMSCs, even when they engage in mercenary-like activities. The author speaks to this issue by describing and addressing the shortcomings of various national and industry PMSC regulation initiatives. The existing solutions—at the national and industry level—fail to secure human rights globally, because they are unable to ensure compliance beyond the countries that voluntarily adopt such standards. The Working Group posits that a comprehensive, legally binding, international convention (comparable to the Convention of 1989 dealing with mercenaries) is the only regulatory tool that can guarantee adherence to human rights obligations by PMSCs. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

TOWARD A LIMITED CONSENSUS ON THE LOSS OF CIVILIAN IMMUNITY IN NON-INTERNATIONAL ARMED CONFLICT : MAKING PROGRESS THROUGH PRACTICE

Stephen Pomper. In: *International law studies* Vol. 88, 2012, p. 181-193

This article will touch briefly on the ways in which the conversation about when an individual loses protection from attack through membership in an organized armed group (and related questions of what it means to take direct part in hostilities) have developed in the course of the last several years. In so doing, it will underscore that the development of the law in this area remains for the time being largely in the hands of States, and, in particular, their executive branches. It will also give a sense of where like-minded States with which the U.S. government works particularly closely have reached consensus in this area, as well as identify some areas where there remains a range of views. To keep the scope of this exercise manageable, the paper will keep a narrow focus on the threshold for membership in organized armed groups and direct participation in hostilities on the non-State side of a NIAC. It will not address a number of important related questions that also have a bearing on the question of when individuals lose immunity from being made the object of attack in non-international armed conflict, including questions about the point at which armed violence can be deemed an armed conflict, the level of cohesion that is required in order to deem an organization an "organized armed group," the circumstances under which an organized armed group can be said to be engaged in armed conflict, the geographic scope of armed conflict and the circumstances in which legal rules outside the law of armed conflict may be relevant.

TOWARDS A SYNTHESIS BETWEEN ISLAMIC AND WESTERN JUS IN BELLO

Jacob Turner. In: *Journal of transnational law and policy* Vol. 21, no. 1, 2011-2012, p. 165-206

International Humanitarian Law (IHL) has lagged behind modern warfare. This article deals with the difficulties in distinguishing civilians from combatants in an age where most conflicts are fought between irregular combatants and full-time armies. The recent killing of Osama Bin Laden, as well as the increasing use of armed aerial 'drones' has provided publicity to these debates. It has also become apparent that many Islamist participants in warfare do not consider themselves primarily bound by traditional Western IHL sources, such as the Geneva

Conventions, instead preferring religious sources. It is imperative that new provisions of IHL be developed to accommodate the dynamics of modern warfare. In order that these provisions attain the requisite level of moral force to bind both state and non-state actors, a new element of legitimacy must also be secured. This article takes the novel approach of suggesting that Islamic as well as Western sources of law should be taken into account in re-designing the law. The article concludes by demonstrating how such a synthesis may be achieved in practice, particularly in relation to the distinction between civilians and combatants.

TOWARDS AN INTERNATIONAL LAW OF BRIGANDAGE : INTERPRETATIVE ENGINEERING FOR THE REGULATION OF NATURAL RESOURCES EXPLOITATION

Jean d'Aspremont. In: *Asian journal of international law* Vol. 3, no. 1, 2013, p. 1-24

The exploitation of natural resources in times of conflict has been the object of a prolific literature due to the extremely laconic character of the standards of conduct prescribed by the Hague and Geneva Conventions. Such laconicism has led scholars to be creative in ensuring that this central aspect of modern conflicts falls within the scope of existing legal instruments. This article starts by depicting the rich argumentative creativity developed by scholars and experts to ensure a more comprehensive regulation of what has often been perceived as a form of international brigandage. Subsequently it reflects on the biases of the professional community that has dedicated its efforts to the elaboration of a fairer framework of natural resources exploitation in times of conflict. In particular, it formulates some critical remark on the "just world business" that has dictated the methodology behind most of the interpretative engineering to be found.

TRADITIONS OF BELLIGERENT RECOGNITION : THE LIBYAN INTERVENTION IN HISTORICAL AND THEORETICAL CONTEXT

Sam Foster Halabi. In: *American university international law review* Vol. 27, no. 2, 2012, p. 321-389

This article argues that, far from "crazy", these states' decisions to recognize the opposition were largely consistent with historical patterns in the recognition of civil war and how it will be managed by third-party states. While states might extend equal rights to the parties to a civil war before ultimately recognizing a victorious authority, they are just as likely to abruptly switch recognition or otherwise categorize the conflict in a way that advances their interests. [...] This article therefore posits a second thesis : while the customary international law that developed to manage civil wars did not, in fact, effectively regulate state behavior, it did reflect an underlying tendency for states to balance both individual and collective interests in the creation of new states of the change of regime in existing ones.

TRANSFORMATIVE OCCUPATION AND THE UNILATERALIST IMPULSE

Gregory H. Fox. In: *International review of the Red Cross* Vol. 94, no. 885, Spring 2012, p. 237-266

The 2003 occupation of Iraq ignited an important debate among scholars over the merits of transformative occupation. An occupier has traditionally been precluded from making substantial changes in the legal or political infrastructure of the state it controls. But the Iraq experi-

ence led some to claim that this 'conservationist principle' had been largely ignored in practice. Moreover, transformation was said to accord with a variety of important trends in contemporary international law, including the rebuilding of post-conflict states along liberal democratic lines, the extra-territorial application of human rights treaty obligations, and the decline of abstract conceptions of territorial sovereignty. This article argues that these claims are substantially overstated. The practice of Occupying Powers does not support the view that liberal democratic transformations are widespread. Human rights treaties have never been held to require states parties to legislate in the territories of other states. More importantly, the conservationist principle serves the critical function of limiting occupiers' unilateral appropriation of the subordinate state's legislative powers. Postconflict transformation has indeed been a common feature of post-Cold War legal order, but it has been accomplished collectively, most often via Chapter VII of the UN Charter. To grant occupiers authority to reverse this trend by disclaiming any need for collective approval of 'reforms' in occupied states would be to validate an anachronistic unilateralism. It would run contrary to the multilateralization of all aspects of armed conflict, evident in areas well beyond post-conflict reconstruction.

THE TREATMENT OF OCCUPATION LEGISLATION BY COURTS IN LIBERATED TERRITORIES

Eyal Benvenisti and Michal Saliternik. - In: *International law in domestic courts : rule of law reform in post-conflict states*. - Cambridge [etc.] : Intersentia, 2012. - p. 269-289

This chapter focuses on the jurisprudence of courts in liberated territories concerning the laws and administrative acts that were promulgated and applied by the occupying power. An analysis of a varied range of case law shows that, by tendency, national courts in the aftermath of an occupation prioritize the transitional needs of their societies - at least, in cases of conflict - over addressing questions of international legality. The "transitional bias" produced by post-occupation courts is examined by reference to case studies originating from several jurisdictions, under occupation during World War I, the Namibian Supreme Court's ruling in the *Cultura 2000* case, the imposition of capital punishment on Saddam Hussein by the Iraqi High Criminal Tribunal, and cases from East Timor and Kosovo in which prescriptive measures of UN territorial administrations were scrutinized by national courts. Inferring from the case studies, the chapter offers insight into the various forms of "transitional bias", ranging from post-occupation justice and struggle for reputation to the institutional aspects of post-conflict situations. The chapter concludes by suggesting that, given the countervailing concerns, it would be preferable to distinguish between *ex ante* and *ex post* consideration, and it criticizes the courts for invoking the laws of occupation as the basis for their *ex post* findings, thereby contributing to distorting this law.

TREATMENT OF SEXUAL VIOLENCE IN ARMED CONFLICTS : A HISTORICAL PERSPECTIVE AND THE WAY FORWARD

Kelly Askin. - In: *Sexual violence as an international crime : interdisciplinary approaches*. - Cambridge, [etc.] : Intersentia, 2012. - p. 19-55

Before looking at major recent developments in international criminal law and procedure, one should not overlook the developments in criminalizing and prosecuting

sexual violence prior to the 1990s. Although these developments were not always far-reaching or the prohibitions on sexual violence non-existent or vaguely worded, they did lay the groundwork for recognition of these crimes in the 1990s. This chapter elaborates on these developments up to WWII, while also looking already to the challenges ahead.

TWENTY-FIRST-CENTURY CHALLENGES : THE USE OF MILITARY FORCES TO COMBAT CRIMINAL THREATS

Juan Carlos Gomez. In: *International law studies* Vol. 88, 2012, p. 279-291

The use of military forces by democratic States in the fight against globalized criminal threats (terrorism, illegal trade in drugs, arms, intellectual property,...) is viable and necessary. However, it is important to know when and how military forces may be used legitimately. To do so, it is necessary to understand the transformation of the threat - armed groups, which once challenged governments over ideology, now seek financial gain for themselves. While allegedly espousing ideological politics at both ends of the political spectrum (extreme left and right), these groups have created sinister alliances that ignore geographic and political boundaries. This transformation challenges State security and puts the institutional structures of democratic States at risk. Military forces must develop an understanding of the law that will apply when combating these criminal/terrorist groups. That law will come from human rights law and international humanitarian law. The determination of when each will apply presents new challenges for military forces that have traditionally focused on the law applicable to international armed conflict. This article will explore these issues from a Colombian perspective, a country which has been engaged for decades in an armed struggle with insurgent groups and now also with criminal groups using terrorist tactics for economic gain through the drug trade.

A U.N. CONVENTION TO REGULATE PMSCs ?

José L. Gómez del Prado. In: *Criminal justice ethics* Vol. 31, no. 3, December 2012, p. 262-286

In the last 20 years the ruthless competition for natural resources, political instability, armed conflicts, and the terrorist attacks of 9/11 have paved the way for private military and security companies (PMSCs) to operate in areas which were until recently the preserve of the state. PMSCs, less regulated than the toy industry, commit grave human rights violations with impunity. The United Nations has elaborated an international binding instrument to regulate their activities but the opposition of the U.S., U.K., and other Western governments—and from PMSCs, which prefer self-regulation—have prevented any advancement.

THE U.S. v. THE RED CROSS : CUSTOMARY INTERNATIONAL HUMANITARIAN LAW AND UNIVERSAL JURISDICTION

Noura Erakat. In: *Denver journal of international law and policy* Vol. 41, no. 2, Winter 2013, p. 225-272

This article seeks to assess the accuracy of the US's critique of the ICRC's approach to establishing customary law. In doing so, it both develops an argument about the appropriate methodology for establishing customary law as well as examines one case study, on universal jurisdiction, in close detail. Narrowly, the question it seeks to answer is whether, and to what extent, the US

Government's response to the ICRC's study is valid in light of proper approaches to the formation of customary international law? The modern approach to custom is more appropriate as concerns human rights and humanitarian law because of the unreliability of operational state practice, as well as the fact that the community of nations is not an aggregate of its many parts but rather a collective whole. However, this does not discount the tangible and heavy-handed impact of the behavior of powerful states upon the formation of custom. The article concludes that whereas the International Court of Justice in the North Sea found that custom cannot be established in the face of protest by a specially affected state in regard to a specific right, it is argued that global superpower, by virtue of its status, is always specially affected by a supranational law.

UN SECURITY COUNCIL RESOLUTIONS CONCERNING CHILDREN AFFECTED BY ARMED CONFLICT : IN WHOSE "BEST INTEREST" ?

Sarah M. Field. In: *The international journal of children's rights* Vol. 21, no. 1, 2013, p.127-161

The agreement by the Security Council to adopt thematic resolutions on children is a powerful expression of our collective commitment to children and their rights: specifically to ensuring children's right to protection from serious violations of international law. Still history is replete with examples of protectionism by powerful decision-makers; not all follow a rights-based approach as entrenched within international human rights law. The objective of this paper is to investigate the decision-making processes and related outcomes of the Security Council from the perspective of international law. At the core of this investigation is an analysis of two interconnected dynamics: first the extent to which the Council is bound – under the Charter of the United Nations – by the Convention on the Rights of the Child (CRC); and second the extent to which the Council is in compliance with these obligations. This includes de-constructing the resolutions from the perspective of the procedural right of the best interests of the child and also assessing the outcomes with reference to the Council's primary responsibility – the maintenance of peace and security. Attentive to the normative power of the Security Council's decisions and recommendations, the paper cuts deeper to investigate: (i) the legal effects of the resolutions for the development international law relating to children and (ii) the consequences for children's right to protection from serious violations of international law – present and future.

UN TERRITORIAL ADMINISTRATIONS : BETWEEN INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

Ivan Ingravallo. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 391-415

The international administration of territories is the performance by an international organization of government functions in a territory, both when it involves all the sectors that comprise the State government (executive, legislative, judicial) and when it involves only a part of them. The key element is given by the fact that the 'last word' is up to the international organization rather than to the sovereign territorial or local government institutions, if any. As a result, an international territorial administration is not realized when an international organi-

zation does not exercise powers of government over a territory, but has only the tasks of supervision, assistance or support to the functioning of public institutions of a State or territory. The international administration of territories had gained new momentum at the end of the 1990s, when the United Nations (UN) created some operations with such a mandate. The exercise of governmental powers by the territorial administrations is limited by the mandate received, and by the rules of international law. The purpose of this study is precisely to determine whether the rules of IHL and those of HRL are applicable in respect of the territorial administrations. Hence it will be necessary to consider also if the control mechanisms included in some international agreements on human rights protection are able to operate with respect to violations that have been carried out within the territorial administrations.

UNACCOUNTABLE : THE CURRENT STATE OF PRIVATE MILITARY AND SECURITY COMPANIES

Marcus Hedahl. In: *Criminal justice ethics* Vol. 31, no. 3, December 2012, p. 175-192

The current accountability system for private military and security contractors (PMSCs) is woefully inadequate, and mere enhancements in oversight cannot hope to remedy that failing. The article contends that once we recognize the kind of accountability required of PMSCs, we will realize that radical changes in the foundational relationship between PMSCs and the state are required. More specifically, in order to be appropriately accountable, members of PMSCs must become a part of or, at the very least, directly responsible to the legitimate authoritative military or police structures, and there must be a clear and precise delineation of responsibility among public officials for holding individual members of PMSCs criminally liable.

UNESCO AND THE PROTECTION OF CULTURAL PROPERTY DURING ARMED CONFLICT

Sigrid Van der Auwera. In: *International journal of cultural policy* Vol. 19, no. 1, January 2013, p. 1-19

Since the establishment of UNESCO, the organization has engaged in the protection of cultural property during armed conflict. Recently, however, an increased incidence of intentional cultural property destruction and looting has been observed during such conflicts. This article, therefore, evaluates UNESCO activities relating to the protection of cultural property during armed conflicts. It finds that the ineffectiveness of the measures employed is largely due to a lack of adjustment to the nature of contemporary conflicts and to changes in the profiles and motives of the perpetrators. Further problems, such as the slow operation and implementation procedures of the organization and its lack of preventive actions, are also addressed.

UNESCO, PALESTINE AND ARCHAEOLOGY IN CONFLICT

David Keane and Valentina Azarov. In: *Denver journal of international law and policy* Vol. 41, 2013, p. 309-343

"The Palestinian Ministry of Tourism and Antiquities and Israeli sources estimate that between 1967 and 1992 about 200'000 artefacts were removed from the occupied Palestinian territory annually," with approximately 120'000 removed each year since 1995. This haemorrhaging of Palestinian cultural property is occurring in a context where archaeology has been used by Israel "as

a pretext to gain territorial control" and exercise sovereign rights "over Palestinian lands [in order] to further its settlement enterprise" and exploit natural resources. Section II traces the history of archaeological laws and practices in Palestine, from the Ottoman era to contemporary Israeli military orders. Section III examines the rules governing the protection of cultural property during military occupation under the aegis of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and the consequences of future Palestinian ratification of the Convention and its 1999 Second Protocol. Section IV tracks the illicit trade in antiquities from Palestine, and the potential effects that ratification of two instruments would have on regulation and restitution – particularly, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Section V focuses on the underwater cultural heritage off the coast of Gaza and the maritime zones of legal control granted by the 2001 Convention on the Protection of the Underwater Cultural Heritage, the first international treaty that Palestine has ratified. Finally, Section VI assesses the consequences of UNESCO membership, including whether membership of a U.N. agency means that Palestine can ratify instruments outside of UNESCO's competence.

UNEXPECTED CHALLENGES : THE INCREASINGLY EVIDENT DISADVANTAGE OF CONSIDERING INTERNATIONAL HUMANITARIAN LAW IN ISOLATION

Louise Doswald-Beck. In: Santa Clara journal of international law Vol. 11, issue 1, 2012, p. 1-27

In this article the author addresses what she considers are the most pressing challenges facing international humanitarian law. The first issue is the trend of IHL being misused to justify killings which are of dubious legality under the law relating to the use of inter-State force. The second issue is the fact that recent findings by human rights procedures have illustrated that a culture of human rights violations leads to serious humanitarian law violations. The two topics have one point in common: the non-respect of other branches of international law can, and increasingly does, have a direct negative effect on a genuine respect for the purpose and spirit of IHL.

UNITED NATIONS PEACEKEEPING AND THE MEANING OF ARMED CONFLICT

Mary Ellen O'Connell and Ania Kritvus. - In: What is war ? : an investigation in the wake of 9/11. - Leiden ; Boston : M. Nijhoff, 2012. - p. 109-118

This paper begins by tracing the evolution of UN peacekeeping and applicable international law. The second part of the paper looks at several national decisions on the application of IHL to wrongdoing by peacekeepers in Bosnia, Somalia and Rwanda.

UNIVERSAL HUMAN RIGHTS BODIES AND INTERNATIONAL HUMANITARIAN LAW

Walter Kälin. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 441-465

Unlike human rights law (HRL), international humanitarian law (IHL) does not provide for standing mechanisms

monitoring the implementation of its provisions by States parties. Since the end of the Cold War, the UN human rights bodies have started to deal regularly, albeit not systematically, with violations of IHL even though their mandate is focused on HRL, and they have developed several approaches in this regard. This contribution looks at how the UN human rights bodies, in particular the treaty bodies as expert committees monitoring the implementation of the UN human rights conventions, the Human Rights Council as principal intergovernmental body dealing with human rights, and its Special Procedures as independent experts reporting to the Council, presently address IHL and its relationship to HRL. To what extent are the UN human rights bodies ready to explicitly invoke IHL and monitor its implementation? Which are the key IHL issues raised by these bodies? How do they see the relationship between IHL and human rights law? And how can we assess their overall contribution to the monitoring of compliance with IHL?

UNMANNED AERIAL VEHICLES AND THE SCOPE OF THE "COMBAT ZONE" : SOME THOUGHTS ON THE GEOGRAPHICAL SCOPE OF APPLICATION OF INTERNATIONAL HUMANITARIAN LAW

Robert Heinsch. In: Humanitäres Völkerrecht : Informationsschriften = Journal of international law of peace and armed conflict Vol. 25, 4/2012, p. 184-192

The fight against international terrorism, but also the development of new weapons technologies has led in recent years to the phenomenon that the way hostilities are conducted has changed significantly. The times where wars were fought as a man-to-man battle on a clearly defined battleground with the object to obtain territory seem to be over, especially since nowadays more and more fighting activities take place by using remote controlled drones and other comparable weapons systems. As a result, we now witness an increasing distance between the initiator and the target of an attack, e.g. the targeted killing of potential terrorists in the mountains of Pakistan by US drones which are controlled from an operation centre located in Texas. The questions that arise for international humanitarian law are whether these scenarios have to be seen within the scope of international humanitarian law, and if so, whether the existing rules are still able to deal with this type of weapons, or whether we need a reform of the current international humanitarian law regime. This paper will focus primarily on the first question, and examines whether we have to think about expanding the concept of the "combat zone" or the geographical scope of international humanitarian law. In addition, we will look briefly on how this issue is related to the application of international human rights, especially in cases of so-called "targeted killings".

UNMANNED NAVAL VEHICLES AT SEA : USVs, UUVs, AND THE ADEQUACY OF THE LAW

comment by Rob McLaughlin. In: Journal of law, information and science Vol. 21, no. 2, 2011/2012, p. 100-115

In this short contribution to the debate, the author focuses briefly on two discrete issues cast up by unmanned vehicle (UV) technology and its use in the maritime domain : one related to definition ; and one related to a specific operational issue the poise and positioning of maritime forces.

**UNMANNED WARFARE DEVICES AND THE LAWS OF WAR :
THE CHALLENGE OF REGULATION**

Andrea Bianchi and Delphine Hayim. In: S+F : Sicherheit und Frieden Issue 2, 2013, p. 93-98

Unmanned warfare devices may change the way wars are fought and perceived. Conflicts may no longer be man-to-man battles but become more and more robotized. The current trend toward developing technology in the field of robotic warfare will undoubtedly continue. As of today, there is no specific international treaty or conventional provision prohibiting or regulating the use of unmanned means and methods of war. Without a rapid evolution of the legal framework, there will be a real hiatus between the laws and the reality of conflicts. This article examines the core regulatory challenges triggered by the emergence of new types of autonomous or semi-autonomous warfare devices. Robots present some unquestionable advantages, but also entail great risks regarding their potential capacity to create collateral damages among civilian populations. Besides the crucial question whether robots will be able to respect the IHL principles of distinction and proportionality, the issue of accountability and responsibility for breaches of the laws of war must also be a priority for lawmakers and regulators. The increasing dehumanization of war, coupled with the uncertainty on the ethical and legal limits applicable to the design, development, acquisition, transfer and deployment of military robots, makes regulation of unmanned warfare devices a compelling necessity.

**UNPRIVILEGED BELLIGERENTS, PREVENTIVE DETENTION,
AND FUNDAMENTAL FAIRNESS : RETHINKING THE REVIEW
TRIBUNAL REPRESENTATION MODEL**

Geoffrey S. Corn, Peter A. Chickris. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 99-167

This article will question whether denying captured terrorist in preventive detention legal representation is justified in light of the interests at stake in the detention review process, and ultimately assert that this is no longer a defensible model. In so doing, it will consider the fundamental balance between the risks and consequences of error and the feasibility of providing such assistance implicated by the preventive detention process, and how this balance influences the ongoing conclusion that lay representation by a military office is justified by the nature of the preventive detention process. While acknowledging that wartime preventive detentions fall outside the scope of precedents like Powell and Gideon, the article will draw from underlying principles reflected in these decisions to question whether the lay representation by military officers is sufficient to effectively advance the interests implicated in this non-punitive preventive detention process. Finally, the article will consider the probable objections to providing legal representation to detainees to include the feasibility of doing so.

**THE USE OF AUTONOMOUS WEAPONS AND THE ROLE OF
THE LEGAL ADVISOR**

Alexander Bolt. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 123-150

The first part argues that there is no obvious definition of "autonomous weapons", and therefore general state-

ments about them, including those respecting the role of the legal advisor in their use, must reference a clear definition of the term. The second part of the chapter addresses the question itself : what role will a legal advisor play in the use of autonomous weapons ? The attempt at an answer starts with a brief discussion of the contents of the legal advice. It then moves to the broader discussion - the discussion at the heart of this chapter - of the framework under which such legal advice might be provided. The chapter then approaches the question of legal advice framework from another angle. If autonomous weapons are comparable to existing means and methods of combat, then legal advice frameworks for those means and methods might be applicable. After considering three such "analogues" the author argues that, indeed, many of the weapons across the autonomous weapons spectrum are comparable to existing means and methods of combat that are currently the subject of legal advice.

**USE OF FORCE DURING OCCUPATION : LAW ENFORCEMENT
AND CONDUCT OF HOSTILITIES**

Kenneth Watkin. In: International review of the Red Cross Vol. 94, no. 885, Spring 2012, p. 267-315

This article explores the law governing the maintenance of public order and safety during belligerent occupation. Given the potential for widespread violence associated with international armed conflict, such as occurred in 2003–2004 in Iraq, it is inevitable that military and police forces will be engaged in activities that interface and overlap. Human-rights-based norms governing law enforcement, such as the right to life, are found in humanitarian law, permitting an application of both law enforcement and conduct of hostilities norms under that body of law. This results in the simultaneous application of these norms through both humanitarian and human rights law, which ultimately enhances the protection of inhabitants of the occupied territory.

THE USE OF FORCE UNDER ISLAMIC LAW

Niaz A. Shah. In: European journal of international law = Journal européen de droit international Vol. 24, no. 1, February 2013, p. 343-365

This article focuses on the use of force under Islamic law, i.e., *jus ad bellum*. Islamic law allows the use of force in self-defence and in defence of those who are oppressed and unable to defend themselves. In contrast, the offensive theory of jihad is untenable. Muslim states follow the defensive theory of jihad. Islamic law also allows, under certain conditions, anticipatory self-defence. Only the head of a Muslim state (a ruler or caliph) is allowed to declare jihad. Most of the current so-called declarations of jihad have been issued by non-state actors, e.g. Al-Qaeda, who have no authority to declare jihad. These declarations thus have no validity under Islamic law and, indeed, Muslim states are fighting these armed groups. Islamic law imposes certain restrictions on the use of force in self-defence, i.e., military necessity, distinction, and proportionality. Accepting an offer of peace and humanity are also relevant conditions.

**USING THE ARMY TO POLICE ORGANIZED CRIME IN MEXICO :
WHAT IS ITS IMPACT ?**

Marcos Pablo Moloeznik. - In: Policing global movement : tourism, migration, human trafficking, and terrorism. - Boca Raton [etc.] : CRC Press, 2012. - p. 57-74

The first section describes the differences between the military and the law enforcement agencies on fundamental matters like mandate, training, and capacity, indicating the kind of problems that must be solved for both agencies to work effectively in fighting organized crime. The second section describes the structural problems of using the armed forces in activities outside their jurisdiction and for which they are not prepared ; it also provides examples of practical issues, such as the use of checkpoints, military operations in civilian areas, and human rights violations generated by the incursion of the armed forces in activities concerning public security. Finally, the chapter concludes that the state needs to rethink its current strategy in the fight against organized crime.

VALOR'S VICIES : AGAINST A STATE DUTY TO RISK FORCES IN ARMED CONFLICT

Peter Margulies. - In: *Counterinsurgency law : new directions in asymmetric warfare*. - Oxford [etc.] : Oxford University Press, 2013. - p. 87-107

Suppose that state forces have entered an urban area effectively controlled by a terrorist group with a history of civilian attack and cross-border shelling. State forces have entered for the purpose of stopping these attacks. During this incursion, members of the non-state armed group have shot at state soldiers from within an apartment dwelling overlooking a key thoroughfare. The state has previously warned civilian residents of the dwelling to evacuate. Receiving new fire from inside the dwelling and not wishing to be pinned down, the commander calls in air support. That stops the hostile fire, but also kills civilians who remain inside. Some scholars have argued that military ethics should subject the state to further duties when it uses air power to minimize the risk to its own troops. Under the "duty to risk", the state has a categorical duty to risk its own forces and in this example, it would have an affirmative obligation to mount a ground assault on the apartment dwelling, even when IHL would not require this decision. The author argues that this theory misconceives both IHL and military ethics.

VERS UN DROIT DES VICTIMES DES CONFLITS ARMÉS À LA RÉPARATION POUR LES VIOLATIONS DU DROIT INTERNATIONAL HUMANITAIRE ?

Veronika Bílková. - In: *L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier*. - Bruxelles : Bruylant, 2013. - p. 1203-1225

Cet article s'efforce de démontrer qu'un droit justiciable des victimes des conflits armés à la réparation pour violation du droit international humanitaire est en train de se former graduellement sur le plan international. Le processus de cette formation, reflétant les tendances plus générales de l'individualisation et l'humanisation du droit international, est pourtant assez compliqué. L'existence d'un droit individuel à la réparation peut difficilement être induite des sources traditionnelles, conventionnelles ou coutumières du DIH qui sont, dans le meilleur cas, ambivalentes à cet égard. Les partisans de ce droit, qui se recrutent surtout dans les milieux académiques et les ONG humanitaires, sont ainsi obligés d'avoir recours à un raisonnement largement déductif, fondant l'existence du droit individuel à la réparation sur les principes généraux du droit international. La pratique internationale n'accepte et ne suit cette approche que progressivement et avec une certaine hésitation, causée non seulement par un volontarisme juridique excessif ou

la crainte de conséquences politiques et économiques, mais plutôt aussi par des incertitudes liées aux paramètres de la nouvelle règle.

VERS UNE ÉGALITÉ CONCRÈTE EN DROIT INTERNATIONAL HUMANITAIRE : RÉPONSE AUX ARGUMENTS DE MARCO SASSÒLI ET YUVAL SHANY

René Provost. In: *Revue internationale de la Croix-Rouge : sélection française* Vol. 93, 2011/2, p. 134-139

Pour ce premier débat, la Revue a demandé à deux membres de son Comité de rédaction, les professeurs Marco Sassòli et Yuval Shany, de débattre sur le thème de l'égalité des États et des groupes armés en droit international humanitaire. Les commentaires du professeur René Provost apportent un troisième éclairage à ces échanges. La question cruciale est de savoir s'il est réaliste d'appliquer aux groupes armés non étatiques le régime juridique en vigueur. Comment les groupes armés, qui ont des moyens parfois très limités et une organisation rudimentaire, pourraient-ils s'acquitter des mêmes obligations que les États ? Qu'est-ce qui inciterait les groupes armés à respecter les règles établies par leurs adversaires ? Pourquoi devraient-ils respecter des règles quand le fait même de prendre les armes contre l'État fait déjà d'eux des 'hors-la-loi' ? Les participants à cette discussion aspirent tous à assurer une meilleure protection juridique à toutes les personnes touchées par les conflits armés non internationaux. Les professeurs Sassòli et Shany ont convenu de présenter deux positions 'radicalement' opposées, le professeur Sassòli soulignant la nécessité de reconsidérer l'égalité et de la remplacer par une gradation des obligations, et le professeur Shany réfutant ce point de vue. Le professeur Provost propose ensuite une réflexion sur les positions exposées par les deux intervenants et nous invite à revisiter la notion même d'égalité des belligérants. Par souci de clarté et de concision, les débatteurs ont simplifié la complexité de leur raisonnement juridique. Les lecteurs de la Revue garderont à l'esprit que les positions des intervenants sur ce point de droit sont en réalité plus nuancées que ne le laisse apparaître ce débat.

VIRTUAL BATTLEFIELDS : DIRECT PARTICIPATION IN CYBER WARFARE

Emily Crawford. In: *I/S : a journal of law and policy for the information society* Vol. 9, no. 1, Spring 2013, p. 1-19

The paper examines the history and development of the concept of direct participation in hostilities by civilians, which serves as an exception to the principle of civilian or non-combatant immunity. In charting the development of the concept, this paper looks at landmark attempts to legally define the concept of direct participation, including the Israeli Targeted Killings case, and the International Committee of the Red Cross (ICRC) study into direct participation. Using this legal background, this paper then analogises direct participation in the context of cyber hostilities, and critically examines the ways in which civilians may be deemed to be directly participating in cyber hostilities. The paper also posits some solutions to potentially problematic situations raised by civilian participation in cyber warfare.

WAR AND PEACE : WHERE IS THE DIVIDE ?

Charles Garraway. In: *International law studies* Vol. 88, 2012, p. 93-115

In recent years, the initial threshold of armed conflict has again become relevant. This has been caused to some extent by the success of those who have sought, for humanitarian reasons, to merge the rules relating to international and non-international armed conflict, but also by politicians, who have sought to take advantage of the greater freedom of action normally granted to States in time of war by seeking to apply the laws of war in areas beyond their traditional field. The tensions have led to a debate that has suffered from a seeming inability by different sides to understand where others are coming from. It has become multifaceted and in some cases issues have been lost in confusion over vocabulary. This article will seek to look at how the problems have arisen and whether there is still room for a comprehensive approach that will accommodate to some extent all the competing factions.

WAR AND THE ENVIRONMENT : INTERNATIONAL LAW AND THE PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICT

guest ed. : Rosemary Rayfuse. In: *Nordic journal of international law* Vol. 82, no. 1, 2013, p. 1-177

The articles in this issue have their origins in the workshop on protection of the environment in relation to armed conflict that was held on 16 and 17 February 2012 at the Faculty of Law, Lund University. The workshop gathered together experts from Europe, the United States and Australia, including leading academics as well as representatives from the International Committee of the Red Cross, the Swedish, Norwegian and Danish Red Cross Societies and the Swedish and Norwegian governments to examine the relevance and adequacy of the existing regime for environmental protection during armed conflict as well as the ability of other international legal mechanisms to contribute to the amelioration of damage to the environment arising as a result of or in relation to armed conflict.

WAR AND WAR CRIMES : THE MILITARY, LEGITIMACY AND SUCCESS IN ARMED CONFLICT

James Gow. - London : Hurst, 2013. - IX, 211 p.

The laws of war have always been concerned with issues of necessity and proportionality, but how are these principles applied in modern warfare? What are the pressures on practitioners where an increasing emphasis on legality is the norm? Where do such boundaries lie in the contexts, means and methods of contemporary war? What is wrong, or right, in the view of military-political practitioners, in how those concepts relate to today's means and methods of war? These are among the issues addressed by James Gow in his compelling analysis of war and war crimes, which draws upon research conducted over many years with defence professionals from all over the world. Today more than ever, military strategy has to embrace justice and law, with both being deemed essential prerequisites for achieving success on the battlefield. And in a context where legitimacy defines success in warfare, but is a fragile and contested concept, no group has a greater interest in responding to these pressures and changes positively than the military. It is they who have the greatest need and desire to foster legitimacy in war by getting the politics-law-strategy nexus right, as well as developing a clear understanding of the relationship between war and war crimes, and calibrating where war becomes a war crime.

WAR CRIMES

Robert Cryer. - In: *Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 467-498

Cryer's chapter traces the conceptual evolution of the law concerning war crimes from its earlier existence as an internationally sanctioned form of domestic criminal law through to its contemporary form as a subset of the international law of armed conflict. Now, international tribunals are empowered to prosecute and punish individual transgressors. Cryer points to significant developments that have informed the evolution of the law governing war crimes, including the 1968 Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the Nuremberg International Military Tribunal, international treaties, and customary international law. Cryer also discusses the substantive norms that compose the law concerning war crimes. He begins by analyzing the relationship between the law concerning war crimes and the law of armed conflict and concludes that while very similar, they are subject to different interpretive principles. He then goes on to specify that in order for conduct to constitute a war crime, it must have a nexus to armed conflict. In addressing the material content of the law concerning war crimes, Cryer observes that it is made up of international treaties and customary international law. He concludes that the prosecution of war crimes is one mechanism that can lead to compliance with the law of armed conflict, but argues that in order to truly achieve compliance and deterrence, a more effective legal system is necessary. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

WAR CRIMES AND GENOCIDE IN INTERNATIONAL LAW

Hoxha Rinor, Shveika Kateryna, Koldzo Nizama. - [S.l.] : [s.n.], [2012]. - 37 p.

The concept of war crimes and genocide, historical aspects, the definitions, written sources and institutions are analyzed in this working paper. Apart from this analysis, brief presentation and comparisons of historical events of bloody conflicts that happened in Rwanda 1994 and Yugoslavia during the nineties are made. Furthermore, the establishment, role, composition, etc of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) are presented.

WAR CRIMES AND THE REQUIREMENT OF A NEXUS WITH AN ARMED CONFLICT

Harmen van der Wilt. In: *Journal of international criminal justice* Vol. 10, no. 5, December 2012, p. 1113-1128

In order to qualify as a war crime, an offence must have a nexus with an armed conflict. This contextual element serves to distinguish war crimes from both ordinary crimes and other international crimes such as crimes against humanity and genocide. The case law of the international criminal tribunals reveals that this nexus requirement is an open concept, resulting in diverging interpretations by both international and domestic criminal courts. Starting from the assumption that such strong divergences are problematic from the perspective of legal certainty, this article seeks to define the nexus requirement more precisely. Those general theories that predicate the right of intervention by the international

community upon the default by a state on its primary obligation to provide a certain basic level of security, offer a sound conceptual framework to identify international crimes. However, such theories are less suitable to define war crimes as a separate category within the realm of international crimes. Instead, the author proposes to reflect upon the quintessential nature of war crimes as serious violations of the laws and customs of war. By considering war crimes as perversions of accepted and legitimate conduct in warfare, it is possible to reconstruct the content and meaning of the nexus requirement.

WAR CRIMES BEFORE THE NORWEGIAN SUPREME COURT : THE OBLIGATION TO PROSECUTE AND THE PRINCIPLE OF LEGALITY : AN INCUMBRANCE OR OPPORTUNITY ?

Simon O'Connor. - Oxford : Oxford Institute for Ethics, Law and Armed Conflict, February 2013. - 36 p.

In proceedings in 2010 and 2011 the Norwegian Supreme Court dismissed a war crimes conviction under the relatively recently passed international crimes provisions of the Norwegian Penal Code. The Court held that the conviction was unconstitutional as it applied those provisions retroactively. This essay challenges that conclusion. The argument that this paper presents is that the Supreme Court's decision is arguably untenable, inconsistent with the acknowledged obligations the state of Norway has long recognized it had (and are recognized under international law) to prosecute such acts as the international crimes they are and that in fact to do so is consistent rather than in contradiction any other than an absolutist originalist reading of the Norwegian Constitution. The precedential consequences of their decision are already being felt. On the 14 February 2013 a trial court convicted an accused for complicity in the Rwandan genocide. His conviction and the indictment were on the charge of murder, not genocide. Whilst there are different arguments with respect to other international crimes than those constituting grave breaches of the Geneva Conventions this paper argues that the rationale and conclusions reached by the Norwegian Supreme Court need to be revisited.

WAR CRIMES CHAMBER OF THE COURT OF BOSNIA AND HERZEGOVINA : SEEDING "INTERNATIONAL STANDARDS OF JUSTICE" ?

Katerina Uhlířová. - In: International law in domestic courts : rule of law reform in post-conflict states. - Cambridge [etc.] : Intersentia, 2012. - p. 195-220

In this chapter the author examines the process of rebuilding the rule of law in Bosnia and Herzegovina. Building on the efforts of the international community and its major role during the process of reconstruction, the contribution concentrates on the question whether such rule of law efforts were and could have been successful, springing not from local linkage but rather from an external imposition. The chapter especially examines two aspects or goals of the rule of law: providing efficient and impartial justice, and upholding human rights. As international law plays a major role in that regard, both the process of empowering domestic institutions to apply international law as well as the actual application of international law are analyzed.

WAR CRIMES IN THE AMERICAN REVOLUTION : EXAMINING THE CONDUCT OF LT. COL. BANASTRE TARLETON AND THE BRITISH LEGION DURING THE SOUTHERN CAMPAIGNS OF 1780-1781

John Loran Kiel. In: Military law review Vol. 213, Fall 2012, p. 29-64

The genesis for this article comes from a blog in which a historian recently wrote of Banastre Tarleton: "Although a skilled cavalryman, he occasionally acted in a manner unbecoming an officer. In other words, he butchered soldiers and treated civilians cruelly. In another century, Banastre Tarleton would have been a war criminal." The purpose of this article is to examine whether this supposition is true in light of the British and American Articles of War in effect at the time of the Revolutionary War and customary law that had developed prior to the late 18th Century. The article concludes that under both the British and American Articles of War and under customary "Law of Nations," Banastre Tarleton personally committed war crimes and was culpable under the principle of command responsibility for some of the war crimes his dragoons committed while serving under his command.

WAR CRIMES PROSECUTION IN A POST-CONFLICT ERA AND A PLURALISM OF JURISDICTIONS : THE EXPERIENCE OF THE BELGRADE WAR CRIMES CHAMBER

Sharon Weill and Ivan Jovanovic. - In: International law in domestic courts : rule of law reform in post-conflict states. - Cambridge [etc.] : Intersentia, 2012. - p. 241-268

This chapter on war crimes prosecution in the former Yugoslavia examines the function of the Serbian War Crimes Chamber (WCC) in Serbia. Remarkably, the Chamber - being established within the District Court of Belgrade - constitutes one of the very few courts in the world that, shortly after the ending of a conflict, is prosecuting its own nationals on a systematic scale. The first part of the contribution examines the background of the WCC as another establishment constituting an alternative to the ICTY. The second part provides a critical analysis of the first decisions issued by the Chamber during its first six years of operation, evaluating the WCC's approach to applying international law in practice and its importance as an international player in the wider context of the international rule of law. As the latter is dependent on the Chamber's objective ability to apply international law - which, in practice, seems especially parochial as to the application of international humanitarian law - and its subjective political willingness to do so, the former represents one of its essential elements.

WEAPONS

Karen Hulme. - In: Research handbook on international conflict and security law : jus ad bellum, jus in bello and jus post bellum. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 315-341

The author discusses international law in regards to weapons and to what extent the law is capable of regulating modern weaponry. The author focuses on jus in bello, the central body of law for the regulation of weapons in armed combat. She provides a guiding definition for weapons and the rationale behind regulating weapons in the first place. She then examines three principles governing the legality of weapons: the rules of distinction and proportionality, the prohibition of weapons

causing unnecessary suffering, and the rules relating to environmental protection. The author finds that these rules are not always effective in practice and that multi-lateral arms control measures have proven more effective. She then examines those measures, acknowledging their success in dealing with chemical, biological, and nuclear weapons. Despite the success in these areas, she claims that the law as a whole fails to keep pace with weapons development. She supports this claim with an analysis of modern weapons law as it relates to five weapons of contemporary relevance. These include cluster munitions, improvised explosive devices, white phosphorus, drones and robots, and finally, cyber warfare. Prohibition attempts have been ineffective with some of these weapons, such as the chemical white phosphorus which continues to be used in controversial ways. The author concludes by stressing that the role of civil society in pushing for weapons regulation is the key to achieving successful weapons control. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

WHAT HAVE WOMEN GOT TO DO WITH PEACE ? : A GENDER ANALYSIS OF THE LAWS OF WAR AND PEACEMAKING

Benedetta Faedi Duramy. - In: *Law and outsiders : norms, processes and "othering" in the twenty-first century.* - Oxford ; Portland : Hart, 2011. - p. 209-232

This chapter offers an engaged analysis of the impact that armed conflicts have on women and the diverse roles women might conceivably play in peacemaking. Recalling the original theories of international law, the first part recounts how historical chronicles and modern authors have depicted women in wartime. Primarily portrayed as victims of brutalisation and sexual violence, women were confined to the private realm and, thus, excluded from the decision-making processes of war and peace. The second part of this chapter examines the international humanitarian law provisions dealing with women in armed conflict. Commencing with the outrages perpetrated during the two world wars, the analysis follows the evolution of international law pertaining to women in wartime. The third part of this chapter recounts the mass rape and sexual violence atrocities committed against women during the Yugoslavian and Rwandan conflicts in the 1990s. The fourth part reflects the fact that, despite these achievements, women remain in war, as in peace, secluded from decision-making processes. Specifically it recounts the struggle of women for peace in Liberia and Sierra Leone. Finally, the last part suggests lessons that may be drawn from previous women's struggles and experiences in conflict.

WHAT IS WAR ? : AN INVESTIGATION IN THE WAKE OF 9/11

ed. by Mary Ellen O'Connell. - Leiden ; Boston : M. Nijhoff, 2012. - XXIV, 495 p.

International law has lacked a widely-accepted definition of armed conflict despite the essential human rights and other rules that depend on such a definition. During armed conflict, government forces have "combatant immunity" to kill without warning. They may detain enemy forces until the end of the conflict without the requirement to provide a speedy and fair trial. Governments may have asylum obligations or neutrality obligations based on the existence of armed conflict. To fill this gap in our knowledge of the law, the International Law Association's Committee on the Use of Force produced a report on the meaning of armed conflict. This book

contains the report and papers delivered at an interdisciplinary conference designed to inform the committee from a variety of perspectives.

WHEN BONOBOS MEET GUERRILLAS : PRESERVING BIODIVERSITY ON THE BATTLEFIELD

Brendan Kearns. In: *Georgetown international environmental law review* Vol. 24, issue 2, Winter 2012, p. 123-168

This article analyzes the present capacity of international humanitarian law to address the threats to biodiversity emanating from armed conflict and proposes ways to enhance the protections of endangered species such as the bonobo. Section II describes the current plight of *Pan paniscus*, an ape whose population has been decimated by armed hostilities. Section III discusses the existing international framework in the laws of war protecting the natural environment through an analysis of Additional Protocol I to the Geneva Conventions and the Rome Statute, and argues that international humanitarian law presently includes provisions prohibiting any military conduct that gravely threatens the surrounding biodiversity. Section IV examines several theories of compliance with international commitments. While offering distinct explanations for state compliance, these disparate models converge in important and illuminating ways that highlight fundamental shortcomings in the present legal regime addressing wartime threats to the natural environment. The international community must enhance the existing protections of the natural environment through an additional protocol to the Geneva Conventions establishing an organization that facilitates state compliance with the prohibition of military conduct that threatens "widespread, long-term and severe damage to the natural environment." Section V discusses the design and operation of this proposed organization, particularly the establishment of mechanisms that provide technical and scientific expertise, facilitate financial transfers from donors to recipient nations, and monitor and publicize compliance with the existing norms.

WHICH LAW GOVERNS DURING ARMED CONFLICT ? : THE RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND A HUMAN RIGHTS LAW

Oona A. Hathaway... [et al.]. In: *Minnesota law review* Vol. 96, no. 6, June 2012, p. 1883-1943

This Article draws on jurisprudence, state practice, and recent scholarship to describe three possible approaches to applying human rights or humanitarian law to armed conflict: The Displacement Model, the Complementarity Model, and the Conflict Resolution Model. Of the three, the Conflict Resolution Model offers the best approach. Under that Model, human rights law and humanitarian law are both applied together when possible. If the two bodies of law are in direct conflict, however, the Model offers three possible decision rules for resolving that conflict. Of these three, the Article endorses the specificity decision rule, under which the law more specific to the operation, situation, or encounter governs. This approach recognizes that both bodies of law can productively inform each other when they do not squarely conflict, yet it allows for highly nuanced determinations as to when conduct is governed best by each body of law when conflict between the two is irreconcilable. To illuminate the stakes of the debate, the Article examines situations of armed conflict in which human rights law comes into direct conflict with humanitarian law—

including those that raise issues of the right to life; detention and the right to trial; women's rights; and the rights to freedom of expression, association, and movement—and shows how the specificity variation of the Conflict Resolution Model effectively resolves the conflict. This approach to deciding which law governs during armed conflict accomplishes the fundamental goal common to both human rights law and humanitarian law: to effectively protect human dignity.

WHO IS A MEMBER ? : TARGETED KILLINGS AGAINST MEMBERS OF ORGANIZED ARMED GROUPS

David McBride. In: Australian yearbook of international law Vol. 30, 2013, p. 47-91

This paper argues that the most practical and legally correct definition is somewhere between the extreme views of the ICRC on the one hand, and Brigadier General Watkin on the other. It is submitted, to be properly categorized as a 'member of organized armed group' a person does not have to directly inflict harm in one causal step on a recurrent basis. However, neither should 'a cook' be properly considered a 'member of an organized armed group'. A more accurate reflection of who is a legitimately targetable member of an organized armed group is based not on the harm the individual causes, but simply on conduct that shows they intentionally enable the operational activities of the group. Accordingly, this paper submits that a more satisfactory way of defining them will come from simply considering whether they form part of the 'armed force', in a not dissimilar way one might recognise a State Armed force, without recourse to formal membership, or indicia such as uniforms. This is quite a different test to one used to decide whether a civilian has lost his protection from attack, and this article submits it produces a more logical representation of an armed group than a test that is based on an individual's proximity to the causing of harm, let alone one based on the causing of harm in a single causal step.

WHY A WAR WITHOUT A NAME MAY NEED ONE : POLICY-BASED APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN THE ALGERIAN WAR

Katherine Draper. In: Texas international law journal Vol. 48, no. 3, 2013, p. 575-603

This note will present analysis of the debate about applicable international law during the Algerian war and will also shed light on some of the concrete consequences that resulted from France's reluctance to recognize the applicability of the various provisions of the Geneva Conventions. The author begins in part I by laying out relevant historical background to the conflict. In part II, she then analyzes the debate concerning applicable IHL - both the lower threshold of Common Article 3 between internal disturbance and armed conflict not of an international character, as well as the debate about whether the conflict eventually constituted an international armed conflict. This note illustrates that as one of the first major test cases for the applicability of either Common Article 3 or the full corpus of the Geneva Conventions, the Algerian war began a legacy of policy-based application of IHL that continues in the post-9/11 world.

WILL-O'-THE-WISP ? : THE SEARCH FOR LAW IN NON-INTERNATIONAL ARMED CONFLICTS

John F. Murphy. In: International law studies Vol. 88, 2012, p. 15-39

A more precise way to describe the current situation is as a struggle for law in non-international armed conflicts. Some third-party actors (domestic courts, foreign governments and courts, international organizations and tribunals, humanitarian NGOs, and domestic and global civil society) are promoting an agenda that, if adopted as law, could severely restrict the military capacity of the armed forces of States to deal effectively with Al-Qaeda and other non-State actors employing various strategies to negate the military superiority of the States they are fighting against. At least to some extent, these third-party actors have been able to be influential because of the inability of States to reform and develop the law applicable to noninternational armed conflicts through the conclusion of global treaties that would update the law in such a way as to resolve the tension between humanitarian considerations and the need for military efficiency.

WOUND, CAPTURE, OR KILL : A REPLY TO RYAN GOODMAN'S "THE POWER TO KILL OR CAPTURE ENEMY COMBATANTS"

Michael N. Schmitt. In: European journal of international law = Journal européen de droit international Vol. 24, no. 3, August 2013, p. 855-861

This article examines two issues raised by Professor Goodman's article published in this volume of EJIL: (1) a purported obligation under international humanitarian law (IHL) to minimize harm to enemy fighters; and (2) a purported IHL duty to capture rather than kill when doing so is feasible in the circumstances. It notes that situations in which it is possible to wound rather than kill enemy fighters are rare on the battlefield. However, even when such circumstances do present themselves, there is no obligation under the extant IHL to do so. Similarly, there is no duty to capture rather than kill under the existing law. Nevertheless, the article offers an analysis that would extend hors de combat status to enemy fighters who have been effectively captured, thereby shielding them from attack. Accordingly, the approach would often arrive at the same conclusion as that proposed by Professor Goodman, albeit through a different legal lens. The article concludes by noting that although there is no 'capture-kill' rule in IHL, for operational and policy reasons, capture is usually preferred.

THE XM25 INDIVIDUAL AIRBURST WEAPON SYSTEM : A "GAME CHANGER" FOR THE (LAW ON THE) BATTLEFIELD ? : REVISITING THE LEGALITY OF EXPLOSIVE PROJECTILES UNDER THE LAW OF ARMED CONFLICT

Tom Ruys. In: Israel law review Vol. 45, no. 3, 2012, p. 401-429

In the summer of 2010, the US Army began the field-testing of a new weapon, the XM25 'Individual Semi-Automatic Airburst System', which fires 'airburst' anti-personnel rounds that can be programmed to detonate at a certain distance. While the XM25 has been heralded as a 'game changer' for modern warfare, the question nonetheless remains to what extent it is compatible with the law of armed conflict (LOAC). Against this background, this article aims to examine the legality of the XM25, in particular having regard to the customary

prohibition on certain explosive projectiles and the general prohibition on causing superfluous injury and unnecessary suffering.

ZERO DARK THIRTY : A CRITICAL EVALUATION OF THE LEGALITY OF THE KILLING OF OSAMA BIN LADEN UNDER INTERNATIONAL HUMANITARIAN LAW

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Using the framework of international humanitarian law, this essay critically evaluates the legality of one particular targeted killing : the operation in which Osama bin

Laden was killed. By determining whether the US was participating in an international or non-international conflict against Al-Qaeda; whether bin Laden was a legitimate military target; and whether the operation itself was conducted within the parameters of international humanitarian law, that is whether it satisfied the requirements of distinction, proportionality and (arguably) necessity, this essay reveals the operation was most likely illegal under international humanitarian law. The essay concludes by discussing the inadequacy of international humanitarian law as it applies to targeted killing, and offers some general lessons to be learned from the operation.

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