

# BIBLIOGRAPHY

## 3rd Issue 2019

### International Humanitarian Law

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



**ICRC**

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# Introduction

## The International Committee of the Red Cross Library

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

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

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

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

## Origin and purpose of the IHL bibliography

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

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

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

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

## How to use the IHL Bibliography

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

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

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

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

### **Access to document**

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

### **Chronology**

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

### **Contents**

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

### **Sources**

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

### **Disclaimer**

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

## **Subscription and feedback**

Please send your request for subscription or feedback to [library@icrc.org](mailto:library@icrc.org) with the subject heading “IHL bibliography subscription/feedback”.

# I. General issues

(General catch-all category, Customary Law, Religion, Development of law, Scope, Multiple subjects monographies)

## **The 1949 Geneva Conventions after seventy years : the fate of charity in turbulent times**

David P. Forsythe. In: Global governance : a review of multilateralism and international organizations, Vol. 25, no. 3, p. 359-369

<https://library.icrc.org/library/docs/ArticlesPDF/48242.pdf>

## **Asia-Pacific perspectives on international humanitarian law**

ed. by Suzannah Linton, Tim McCormack [and] Sandesh Sivakumaran. - Cambridge : Cambridge University Press, 2020. - XLII, 889 p.

<https://doi.org/10.1017/9781108667203>

## **Back in the game : international humanitarian lawmaking by states**

Yahli Shereshevsky. In: Berkeley journal of international law, Vol. 37, no. 1, 2019, 63 p.

<http://dx.doi.org/10.15779/Z38WS8HM4H>

## **The Geneva Conventions at seventy**

Peter Maurer. In: Global governance : a review of multilateralism and international organizations, Vol. 25, no. 3, 2019, p. 351-358

<https://library.icrc.org/library/docs/ArticlesPDF/48241.pdf>

## **IHL and islamic law in contemporary armed conflicts : experts' workshop : Geneva, 29-30 October 2018**

report prep. and ed. by Ahmed Al-Dawoody. - Geneva : ICRC, November 2019. - 84 p.

<https://library.icrc.org/library/docs/DOC/icrc-4386-002.pdf>

## **The impact of emerging technologies on the law of armed conflict**

[Ed. by] Eric Talbot Jensen and Ronald T.P. Alcalá. - Oxford : Oxford University Press, 2019. - XVIII, 389 p.

<https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322>

## **International humanitarian law and the challenges of contemporary armed conflicts : recommitting to protection in armed conflict on the 70th anniversary of the Geneva Conventions**

ICRC. - Geneva : ICRC, October 2019. - 80 p.

<https://library.icrc.org/library/docs/DOC/icrc-4427-002.pdf>

## **Ordinances and articles of war before the Lieber code, 866-1863 : the long pre-history of international humanitarian law**

Beatrice Heuser. In: Yearbook of international humanitarian law, Vol. 21, 2018, p. 139-164

[http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2285461&site=ehost-live&ebv=EB&ppid=pp\\_C3\\_BE\\_C3\\_BF139](http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2285461&site=ehost-live&ebv=EB&ppid=pp_C3_BE_C3_BF139)

## **Participation of non-state armed groups in the formation of customary international humanitarian law : arising challenges and possible solutions**

by Lizaveta Tarasevich. - Geneva : Geneva Academy of international humanitarian law and human rights, August 2019. - 29 p.

<http://www.prix-henry-dunant.org/wp-content/uploads/Research-2019-paper-TARASEVICH-Sassoli.pdf>

**The protagonism of the USSR and Socialist states in the revision of international humanitarian law**

Giovanni Mantilla. In: Journal of the history of international law, vol. 21, 2019, p. 181-211

<https://library.icrc.org/library/docs/ArticlesPDF/46969.pdf>

**The protection of foreign investment in times of armed conflict**

Jure Zrilic. - Oxford : Oxford University Press. - XLII, 268 p.

**Reflections on the development of the Movement and international humanitarian law through the lens of the ICRC Library's heritage collection**

Ismaël Raboud, Matthieu Niederhauser and Charlotte Mohr. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 143-163

<https://library.icrc.org/library/docs/DOC/irrc-909-raboud.pdf>

**War by agreement : a contractarian ethics of war**

Yitzhak Benbaji and Daniel Statman. - Oxford : Oxford University Press, 2019. - XIII, 215 p.

**Will the war on terror ever end ?**

Rebecca Mignot-Mahdavi. In: La Revue des droits de l'homme, Mars 2019, 8 p.

<https://doi.org/10.4000/revdh.6269>

## II. Types of conflicts

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

**Computer network attacks under the jus ad bellum and the jus in bello : "armed"-effects and consequences**

Elaine Korzak and James Gow. - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 65-75

**Computer network attacks under the jus ad bellum and the jus in bello : Distinction, proportionality, ambiguity and attribution**

Elaine Korzak and James Gow. - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 76-87

**Critical perspectives on environmental protection in non-international armed conflict : developing the principles of distinction, proportionality and necessity**

Tara Smith. In: Leiden journal of international law, Vol. 32, no. 4, December 2019, p. 759-779

<https://doi.org/10.1017/S0922156519000372>

**Cyber civilians as combatants**

by Christopher E. Bailey. In: Creighton international and comparative law journal, Vol. 8, issue no.1, December 2016, p. 4-22

<https://dspace2.creighton.edu/xmlui/bitstream/handle/10504/108324/CREIGHTON%20INTERNATIONAL%20AND%20COMPARATIVE%20LAW%20JOURNAL%20Vol.%208%20Issue%201.pdf#page=4>

**Cyber operations and the Second Geneva Convention**

Jeffrey Biller. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 165-183

<https://library.icrc.org/library/docs/DOC/irrc-909-biller.pdf>

**The digital Geneva Convention ? : a critical appraisal of Microsoft's proposal**

Valentin Jeutner. In: Journal of international humanitarian legal studies, Vol. 10, no. 1, 2019, p. 158-170

<https://doi.org/10.1163/18781527-01001009>

**Droit et pratique de l'action humanitaire**

sous la dir. de Sandra Szurek, Marina Eudes et Philippe Ryfman. - Paris : Librairie générale de droit et de jurisprudence, 2019. - 970 p.

**From knives to kites : developments and dilemmas around the use of force in the Israeli-Palestinian conflict since 'protective edge'**

Hilly Moodrick-Even Khen. In: Journal of international humanitarian legal studies, Vol. 10, issue 2, 2019, p. 303-336

<https://doi.org/10.1163/18781527-01002006>

**From munitions to malware : a comparative analysis of civilian targetability in cyber conflict**

Colton Matheson. In: Journal of law and cyber warfare, Vol. 7, no. 2, 2019, p. 30-66

**Inked or not : maras and their participation in El Salvador's recent armed conflict**

Ximena Galvez Lima. In: Journal of international humanitarian legal studies, Vol. 10, issue 2, 2019, p. 265-302

<https://doi.org/10.1163/18781527-01002002>

**International humanitarian law and cyber operations during armed conflicts**

ICRC. - [Geneva] : ICRC, November 2019. - 9 p.

[https://library.icrc.org/library/docs/DOC/WEB\\_006.pdf](https://library.icrc.org/library/docs/DOC/WEB_006.pdf)

**International humanitarian law and non-state practice in armed conflict : combatant's privilege and Kurdish fighters in Syria**

Ilana Rothkopf. In: Journal of conflict and security law, Vol. 24, no 2, Summer 2019, p. 271-296

<https://doi.org/10.1093/jcsl/krz008>

**Les interventions militaires étrangères récentes contre le terrorisme international. Seconde partie : droit applicable (jus in bello)**

Raphaël van Steenberghe. In: Annuaire français de droit international, 63, 2017, p. 37-91

**Participation of non-state armed groups in the formation of customary international humanitarian law : arising challenges and possible solutions**

by Lizaveta Tarasevich. - Geneva : Geneva Academy of international humanitarian law and human rights, August 2019. - 29 p.

<http://www.prix-henry-dunant.org/wp-content/uploads/Research-2019-paper-TARASEVICH-Sassoli.pdf>

**Proportionality in cyber targeting**

Marco Roscini. - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 88-100



### **Report on the Swiss proposal to amend the Rome Statute to include the war crime of starvation in non-international armed conflicts**

War crimes Committee of the International Bar Association. - London : International Bar Association, November 2019. - 18 p.

<https://www.ibanet.org/Document/Default.aspx?DocumentUid=6EDDC2FA-E7DA-4682-A360-185FA1140AE7>

### **Returning foreign fighters : the case of Denmark**

Helene Højfeldt Jakobsen. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 315-336

<https://library.icrc.org/library/docs/DOC/irrc-909-jakobsen.pdf>

### **Returning the 'fallen terrorist' for burial in non-international armed conflicts : the rights of the deceased, the obligations of the State, and the problem of collective punishment**

Frédéric Mégret ; Chloe Swinden. In: Journal of international humanitarian legal studies, Vol. 10, issue 2, 2019, p. 337-370

<https://doi.org/10.1163/18781527-01002003>

### **The sovereign right to kill : a critical appraisal of Israel's shoot-to-kill policy in Gaza**

Noura Erakat. In: International criminal law review, Vol. 19, no. 5, 2019, p. 783-818

<https://doi.org/10.1163/15718123-01905002>

### **Who is a civilian ? : perceptions of "civilianness" in the Central African Republic**

Rebecca Sutton. - [Fiesole] : European University Institute, [July 2019]. - 13 p.

<https://iow.eui.eu/wp-content/uploads/sites/20/2019/07/IOW-Policy-Brief-Sutton-Full-Brief-070719.pdf>

### **Will the war on terror ever end ?**

Rebecca Mignot-Mahdavi. In: La Revue des droits de l'homme, Mars 2019, 8 p.

<https://doi.org/10.4000/revdh.6269>

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

(Combatant status, compliance with IHL, etc.)

### **Back in the game : international humanitarian lawmaking by states**

Yahli Shereshevsky. In: Berkeley journal of international law, Vol. 37, no. 1, 2019, 63 p.

<http://dx.doi.org/10.15779/Z38WS8HM4H>

### **Cybernetic enhancement of soldiers : conserving hors de combat protections for combatants under the Third Geneva Convention**

Amanda McAllister. In: Journal of law and cyber warfare, Vol. 7, no. 2, Fall 2019, p. 67-99

### **Exploring the 'continuous combat function' concept in armed conflicts : time for an extended application ?**

Sabrina Henry. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 267-285

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**From munitions to malware : a comparative analysis of civilian targetability in cyber conflict**

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<https://doi.org/10.1163/18781527-01002002>

**International humanitarian law and non-state practice in armed conflict : combatant's privilege and Kurdish fighters in Syria**

Ilana Rothkopf. In: Journal of conflict and security law, Vol. 24, no 2, Summer 2019, p. 271-296

<https://doi.org/10.1093/jcsl/krz008>

**The military commander's necessity : the law of armed conflict and its limits**

Sigrid Redse Johansen. - Cambridge [etc.] : Cambridge University Press, 2019. - 428 p.

<https://doi.org/10.1017/9781108637060>

**Non-state courts : illegal or conditional ? : the case of Da'esh courts**

Pouria Askary ; Katayoun Hosseinejad. In: Journal of international humanitarian legal studies, Vol. 10, issue 2, 2019, p. 240-264

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<http://www.prix-henry-dunant.org/wp-content/uploads/Research-2019-paper-TARASEVICH-Sassoli.pdf>

**Research handbook on child soldiers**

ed. by Mark A. Drumbl [and] Jastine C. Barrett. - Cheltenham ; Northampton : E. Elgar, 2019. - XIX, 542 p.

**Revolutionary law abidance : Kachin rebel governance and the adoption of IHL in resistance to Myanmar state violence**

Alicia de la Cour Venning. In: International criminal law review, Vol. 19, no. 5, 2019, p. 872-904

<https://doi.org/10.1163/15718123-01906003>

**The role of reciprocity in international humanitarian law training : examples from historical and contemporary US practice**

Matthew T. Zommer. In: Journal of political and military sociology, Vol. 46, no. 1, 2019, p. 27-51

<http://journals.upress.ufl.edu/jpms/article/view/978/1083>

**Roots of restraint in war : the capacities and limits of law and the critical role of social agency in ameliorating violence in armed conflict**

Dale Stephens. In: Journal of international humanitarian legal studies, Vol. 10, no. 1, 2019, p. 58-75

<https://doi.org/10.1163/18781527-01001005>

### **State responsibility for complicity in the internationally wrongful acts of non-state armed groups**

Richard Mackenzie-Gray Scott. In: Journal of conflict and security law, Vol. 24, no. 2, Summer 2019, p. 373-407

<https://doi.org/10.1093/jcsl/krz002>

## **IV. Multinational forces**

### **La formation des casques bleus à la protection des biens culturels au Mali, une révolution ?**

Mathilde Leloup. In: Cahiers d'histoire. Revue d'histoire critique, No. 142, 2019, p. 61-75

<https://journals.openedition.org/chrhc/10624>

### **Protection of civilians and individual accountability : obligations and responsibilities of military commanders in United Nations peacekeeping operations**

Lenneke Sprik. - London ; New York : Routledge, 2019. - XX,166 p.

## **V. Private entities**

N/A

## **VI. Protection of persons**

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

### **"All the regard due to their sex" : women in the Geneva Conventions of 1949**

Anna Crowe. - [S.l.] : Human rights program, Harvard Law school, December 2016. - 18 p.

[https://hrp.law.harvard.edu/wp-content/uploads/2016/12/Anna-Crowe\\_HRP-16\\_001.pdf](https://hrp.law.harvard.edu/wp-content/uploads/2016/12/Anna-Crowe_HRP-16_001.pdf)

### **The criminalisation of intra-party offences in light of some recent ICC decisions on children in armed conflict**

Marco Longobardo. In: International criminal law review, Vol. 19, issue 4, 2019, p. 600-634

<https://doi.org/10.1163/15718123-01904004>

### **Disability and armed conflict**

Alice Priddy. - Geneva : The Geneva Academy of International Humanitarian Law and Human Rights, April 2019. - 98 p.

<https://www.geneva-academy.ch/joomlafiles/docman-files/Academy%20Briefing%2014- interactif.pdf>

**Distinction, necessity, and proportionality : Afghan civilians' attitudes toward wartime harm**

Janina Dill. In: Ethics and international affairs Vol. 33, issue 3, Fall 2019, p. 315-342  
<https://library.icrc.org/library/docs/ArticlesPDF/46943.pdf>

**Droit et pratique de l'action humanitaire**

sous la dir. de Sandra Szurek, Marina Eudes et Philippe Ryfman. - Paris : Librairie générale de droit et de jurisprudence, 2019. - 970 p.

**An environment conducive to mistakes ? : lessons learnt from the attack on the Médecins Sans Frontières hospital in Kunduz, Afghanistan**

Françoise Bouchet-Saulnier and Jonathan Whittall. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 337-372  
<https://library.icrc.org/library/docs/DOC/irrc-909-bouchet-saulnier.pdf>

**The International Review of the Red Cross and the protection of civilians, c. 1919-1939**

Ben Holmes. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 115-141  
<https://library.icrc.org/library/docs/DOC/irrc-909-holmes.pdf>

**Political violence and its discontents : a critique of refugee status as purely civilian and humanitarian**

Ergun Cakal. In: Journal of international humanitarian legal studies, Vol. 10, no. 1, 2019, p. 7-40  
<https://doi.org/10.1163/18781527-01001002>

**Protecting children from sexual violence in armed conflict under international humanitarian law : discrepancies between conventions and practice of international criminal courts and tribunals**

Elina Almila. In: Journal of international humanitarian legal studies, Vol. 10, issue 2, 2019, p. 217-239  
<https://doi.org/10.1163/18781527-01002008>

**Report on the Swiss proposal to amend the Rome Statute to include the war crime of starvation in non-international armed conflicts**

War crimes Committee of the International Bar Association. - London : International Bar Association, November 2019. - 18 p.  
<https://www.ibanet.org/Document/Default.aspx?DocumentUid=6EDDC2FA-E7DA-4682-A360-185FA1140AE7>

**Research handbook on child soldiers**

ed. by Mark A. Drumbl [and] Jastine C. Barrett. - Cheltenham ; Northampton : E. Elgar, 2019. - XIX, 542 p.

**The "robots don't rape" controversy**

Maziar Homayounnejad and Richard E. Overill. - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 169-181

**The sovereign right to kill : a critical appraisal of Israel's shoot-to-kill policy in Gaza**

Noura Erakat. In: International criminal law review, Vol. 19, no. 5, 2019, p. 783-818  
<https://doi.org/10.1163/15718123-01905002>

**Still a blind spot : the protection of LGBT persons during armed conflict and other situations of violence**

Alon Margalit. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 237-265

<https://library.icrc.org/library/docs/DOC/irrc-909-margalit.pdf>

**Substantive technicalities : understanding the legal framework of humanitarian assistance in armed conflicts through the prescription of technical arrangements**

Major Tzvi Mintz. In: Military law review, Vol. 227, 2019, issue 3, p. 275-319

[https://www.loc.gov/rr/frd/Military\\_Law/Military\\_Law\\_Review/pdf-files/227-issue3-2019.pdf](https://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/227-issue3-2019.pdf)

**To serve the enemy : informers, collaborators, and the laws of armed conflict**

Shane Darcy. - Oxford : Oxford University Press, 2019. - 236 p.

**Who is a civilian ? : perceptions of "civilianness" in the Central African Republic**

Rebecca Sutton. - [Fiesole] : European University Institute, [July 2019]. - 13 p.

<https://iow.eui.eu/wp-content/uploads/sites/20/2019/07/IOW-Policy-Brief-1-Sutton-Full-Brief-070719.pdf>

## VII. Protection of objects

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

**Critical perspectives on environmental protection in non-international armed conflict : developing the principles of distinction, proportionality and necessity**

Tara Smith. In: Leiden journal of international law, Vol. 32, no. 4, December 2019, p. 759-779

<https://doi.org/10.1017/S0922156519000372>

**An environment conducive to mistakes ? : lessons learnt from the attack on the Médecins Sans Frontières hospital in Kunduz, Afghanistan**

Françoise Bouchet-Saulnier and Jonathan Whittall. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 337-372

<https://library.icrc.org/library/docs/DOC/irrc-909-bouchet-saulnier.pdf>

**La formation des casques bleus à la protection des biens culturels au Mali, une révolution ?**

Mathilde Leloup. In: Cahiers d'histoire. Revue d'histoire critique, No. 142, 2019, p. 61-75

<https://journals.openedition.org/chrhc/10624>

**From ecocide to voluntary remediation projects : legal responses to "environmental warfare" in Vietnam and the spectre of colonialism**

Eliana Cusato. In: Melbourne journal of international law, Vol. 19, issue 2, 2018, 27 p.

<https://law.unimelb.edu.au/mjil/issues/issue-archive/192>

**Water and the law of armed conflict**

Haley Freking. In: Natural resources and environment, no. 40, Fall 2016, 6 p.

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

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(Distinction, proportionality, precautions, prohibited methods)

**Applying the U.S. and ICRC standards for direct participation in hostilities to civilian support of U.S. military operations**

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**Synthetic biology and the categorical ban on bioweapons**

Filippa Lentzos and Cecilie Hellestveit. - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 215-236

**Weapons law, weapon reviews and new technologies**

Bill Boothby. - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 22-40

## XII. Implementation

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

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Jonathan A. Chu. In: Journal of conflict resolution, Vol. 63, no. 5, 2019, p. 1140-1164  
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### **From ecocide to voluntary remediation projects : legal responses to "environmental warfare" in Vietnam and the spectre of colonialism**

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### **International humanitarian law and the challenges of contemporary armed conflicts : recommitting to protection in armed conflict on the 70th anniversary of the Geneva Conventions**

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## XIII. International human rights law

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

### **Implementing international humanitarian law through human rights mechanisms : opportunity or utopia ?**

Emilie Max. - [Geneva] : Geneva Academy of International Humanitarian Law and Human Rights, October 2019. - 22 p.

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**XV. Contemporary challenges**

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

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**The protagonism of the USSR and Socialist states in the revision of international humanitarian law**

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## All with Abstracts

### **The 1949 Geneva Conventions after seventy years : the fate of charity in turbulent times**

**David P. Forsythe.** In: Global governance : a review of multilateralism and international organizations, Vol. 25, no. 3, p. 359-369

Every ten years, essays appear marking another anniversary of the 1949 Geneva Conventions. Many of these essays note the importance of the four landmark treaties that comprise the cornerstone of modern international humanitarian law (IHL)—aka the law of armed conflict or the laws of war. The essays usually observe the considerable development of norms in this part of international law, then move on to emphasize the lamentable lack of proper application. There is a predictable pattern to this commentary. Not surprisingly, the pattern is similar to evaluating international human rights law: normative development, maybe even a normative revolution, but lax enforcement. These two international legal firewalls against barbarianism, human rights and humanitarian law, show the same general characteristics. But then both bodies of law are made by states, which usually have other priorities especially when it comes to application. Moreover, both bodies of law are affected by important nonstate actors, armed and unarmed. What could possibly be said that is new on this hoary subject? From a political perspective there are some developments which, if not entirely new, still merit a new commentary. Many of these factors are negative, but a few are at least partly positive. Some may turn out to be positive, but are indeterminate at the moment. That framework is in itself new, and a broad approach gives insights.

<https://library.icrc.org/library/docs/ArticlesPDF/48242.pdf>

### **"All the regard due to their sex" : women in the Geneva Conventions of 1949**

**Anna Crowe.** - [S.l.] : Human rights program, Harvard Law school, December 2016. - 18 p.

This working paper focuses on the gendered concepts of women that emerge from the texts of the Geneva Conventions of 1949, especially the concept of “honor and modesty.” Through analysis of historical materials, the paper describes the background to Article 27 of the Fourth Geneva Convention, which refers to the protection of women from rape and enforced prostitution. In particular, the paper examines the question of why the Conventions’ drafters did not include rape in the list of acts that constitute grave breaches of the Conventions, worthy of special condemnation.

[https://hrp.law.harvard.edu/wp-content/uploads/2016/12/Anna-Crowe\\_HRP-16\\_001.pdf](https://hrp.law.harvard.edu/wp-content/uploads/2016/12/Anna-Crowe_HRP-16_001.pdf)

### **Applying the U.S. and ICRC standards for direct participation in hostilities to civilian support of U.S. military operations**

**Jay C. Jackson.** In: The Air Force law review, Vol. 79, 2018, p. 54-120. - 2018

This article applies the ICRC and U.S. interpretations of direct participation in hostilities to various acts undertaken every day by civilians in support of U.S. military operations. Part II reviews the foundations of international humanitarian law protecting civilians in armed conflict. Part III introduces the concept of direct participation in hostilities, and sets forth both the ICRC and DoD interpretations of that phrase. In Part IV, these standards are applied to various activities performed by civilians in support of U.S. military activities including (1) operators of remotely-piloted aircraft, (2) civilians engaged in military operations in cyberspace, and (3) civilians providing various “combat support services” to the U.S. military. Part IV then examines differences in the ICRC and DoD standards and explores how the nature and timing of the acts, as well as their geographic proximity to the battlefield, may cause civilians to lose their protection from being attacked as a military target.

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**Asia-Pacific perspectives on international humanitarian law**

ed. by Suzannah Linton, Tim McCormack [and] Sandesh Sivakumaran. - Cambridge : Cambridge University Press, 2020. - XLII, 889 p.

Place is inextricably linked to history by way of culture, language, philosophy, faith and the development of worldviews. The richness and depth of experience of the Asia-Pacific region has been under-studied, over-simplified and under-appreciated. This book addresses that lacuna in the subject area of international humanitarian law. Drawing on authoritative perspectives and interviews with experts in and on this topic, including four of the region's most distinguished international judges, forty-one chapters thematically examine the development of international humanitarian law; practice and application of international humanitarian law; implementation and enforcement of international humanitarian law; and looking to the future and enhancing compliance with international humanitarian law. The expert contributors draw out unique features, providing fresh insights to scholarship. Contributions on and from the area also grapple with the regional commitments to humanitarianism generally, illuminating how and why international humanitarian law might be more readily accepted or ignored in armed conflicts in the region.

<https://doi.org/10.1017/9781108667203>

**Back in the game : international humanitarian lawmaking by states**

Yahli Shereshevsky. In: Berkeley journal of international law, Vol. 37, no. 1, 2019, 63 p.

This article is the first to identify and analyze the recent tendency of states to use unilateral, non-binding, lawmaking initiatives in the context of international humanitarian law (IHL), also known as the Law of Armed Conflict (LOAC). While there was minimal direct state involvement in IHL-making initiatives in the first decade of the 21st century, in recent years states have taken an active part in IHL making. This article analyzes the policies of two states that stand in the middle of this debate – the U.S. and Israel – to provide a detailed account of contemporary state-led IHL-making. It argues that these new initiatives are an attempt by states to regain their influence over IHL from non-state actors. This suggests three broad implications for international lawmaking. First, unilateral lawmaking documents might be adopted more often as an alternative to traditional lawmaking and soft law initiatives when contracting costs are high. Second, the new lawmaking initiatives tend to adopt non-state actors' strategies to influence the debate, as an expression of states' internalization of the horizontal nature of contemporary international lawmaking. Third, states often cooperate with non-state actors that share their interpretive positions in the international lawmaking process.

<http://dx.doi.org/10.15779/Z38WS8HM4H>

**Between consented and un-contested occupation**

Kyo Arai. In: Israel law review, Vol. 51, no. 3, November 2018, p. 365-388

It has long been recognised that 'non-consent' is a fundamental element of the law of occupation. Under modern international humanitarian law (IHL), the consensual presence of foreign military forces is generally not seen as belligerent occupation. However, if we accept the principle that the application of IHL should rely on the objective situation on the ground and not on the subjective judgment of the situation of parties to the conflict, it may be natural to diminish the significance of consent by the territorial states in relation to the application of the law of occupation. It may be somewhat harmful to deny such protection based solely on the existence of the territorial states' consent without considering the relationship, in reality, between the occupier and the population in the occupied area. According to a teleological interpretation of IHL, especially when it is obvious that the latter has no allegiance to the former, the tense relationship between them should be regulated by the law of occupation. This article discusses whether and how state consent could be a humanitarian ground to negate the legal protection for its own people, and highlights situations where the local population needs protection by the law of occupation (or comparable rules) in consensual military occupations.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/47090.pdf>

### **Can the law regulate the humanitarian effects of technologies ?**

**Brian Rappert.** - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 50-62

This chapter focuses on the central tenets of international humanitarian law (IHL). In the context of armed conflict, moral and humanitarian concerns are often raised about the means and methods of war. Historically, where weapon types have already been developed and widely deployed, it has taken a considerable effort over many years to put in place humanitarian-inspired controls. In asking how the possible humanitarian effects of technologies can factor into their governance, this chapter explains to contrast the logic of balancing military necessity and humanity central to IHL against the rationales associated with some past and ongoing efforts to restrict certain weapons. Instead of making a binary split, the purpose is to draw out certain distinctions in order to sharpen the awareness of the choices possible in thinking about the humanitarian effects and how account can be taken in the governance of technology.

### **A clash of norms ? How reciprocity and international humanitarian law affect American opinion on the treatment of POWs**

**Jonathan A. Chu.** In: Journal of conflict resolution, Vol. 63, no. 5, 2019, p. 1140-1164

Reciprocity is one of the oldest principles of warfare, but humanitarian norms embedded in international humanitarian law (IHL) prohibit reciprocity over various wartime acts. When it comes to the treatment of prisoners of war (POWs), how do these conflicting norms shape public opinion? One perspective is that citizens who learn about IHL acquire an unconditional aversion to abusing POWs. Alternatively, people may understand IHL as a conditional commitment that instead strengthens their approval for reciprocal conduct. Survey experiments fielded in the United States support the latter view: people's preferences depend on the enemy's behavior, and this "reciprocity effect" is largest among those who believe that the United States is legally committed to treating POWs humanely. Puzzlingly, prior studies do not find a reciprocity effect, but this is due to their use of a no-information experimental control group, which led to a lack of control over the subjects' assumptions about the survey.

<https://library.icrc.org/library/docs/ArticlesPDF/47066.pdf>

### **Computer network attacks under the jus ad bellum and the jus in bello : "armed"-effects and consequences**

**Elaine Korzak and James Gow.** - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 65-75

This chapter explores the challenges that cyber warfare present to both bodies of law relating to warfare. Computer Network Attacks (CNA) – cyber warfare – present major challenges regarding both the jus in bello and the jus ad bellum – the two branches of international law concerned with warfare. CNA present fundamental questions for both of the bodies of law relating to war. The activities of numerous states and their efforts to incorporate computer network capabilities into their force structures in one way or another shows that CNAs are seen as weapons or forms of warfare. CNA conducted on their own without any accompanying traditional or physical force, then, challenge both international law and the notions of weapons and armed action on which prevailing interpretations of that law depend. Thus, CNA need to be assessed sui generis and cannot per se be categorised.

### **Computer network attacks under the jus ad bellum and the jus in bello : Distinction, proportionality, ambiguity and attribution**

**Elaine Korzak and James Gow.** - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 76-87

The emergence of computer network attacks (CNA) raises a number of issues in the application of two fundamental principles of international humanitarian law: distinction and proportionality. Applying the principle in the context of CNA does not change the requirements. Obviously, military command, control and communication networks, as well as military air defence networks would equally qualify. Ninety-eight percent of United States government communications, for example, travel through civilian-owned, or civilian-operated, networks. At a minimum, given the



interconnectedness of computer networks and the dual-use character of information systems, proportionality plays an even more significant role in the protection of civilians than the principle of distinction. CNA that do not result in violent consequences could be employed regardless of distinction and proportionality – or, perhaps better, because the prevailing interpretations of these principles would render such attacks legitimate.

### **Contests of legitimacy and value : the treaty on the prohibition of nuclear weapons and the logic of prohibition**

**Laura Considine.** In: *International affairs*, Vol. 95, no. 5, September 2019, p. 1075-1092

The recently adopted Treaty on the Prohibition of Nuclear Weapons (TPNW) has caused much debate and controversy in global nuclear politics. Given that the stated goal of the TPNW supporters (states and NGOs alike) is to embed the treaty in the structures of nuclear governance and to strengthen its normative power, how likely is the TPNW to achieve these objectives? The article argues that the unique structures of legitimacy and value within which nuclear weapons are enmeshed place particular complications on the normative force of the TPNW as compared to previous humanitarian arms control initiatives, which has implications for the way in which the TPNW can function to consolidate a prohibitory norm on nuclear weapons possession. The article uses the framing of legitimacy to analyse the complex structures within which the TPNW was adopted and within which it will enter into force, particularly focusing on the TPNW's relationship to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The article concludes that consolidation may require a further challenge to the existing structures of nuclear order than state actors have, so far, been willing to make.

<https://doi.org/10.1093/ia/iiz103>

### **The criminalisation of intra-party offences in light of some recent ICC decisions on children in armed conflict**

**Marco Longobardo.** In: *International criminal law review*, Vol. 19, issue 4, 2019, p. 600-634

Traditionally, international humanitarian law is considered to be applicable only to the relationship between different parties of an armed conflict, while domestic law and international human rights law address situations of intra-party conduct, i.e., conduct involving members of the same party only. In the recent case law of the International Criminal Court, however, intra-party offences against children used as child soldiers have been treated as war crimes. Various Chambers have offered different arguments on this inclusion, which touches upon fundamental issues related to the scope of application of international humanitarian law. This article explores whether the criminalisation of intra-party offences as war crimes is in line with contemporary international humanitarian law, arguing that a positive answer must be based on the correct interpretation of international humanitarian law rules.

<https://doi.org/10.1163/15718123-01904004>

### **Critical perspectives on environmental protection in non-international armed conflict : developing the principles of distinction, proportionality and necessity**

**Tara Smith.** In: *Leiden journal of international law*, Vol. 32, no. 4, December 2019, p. 759-779

This article presents a timely and relevant critical examination of the customary international law principles of distinction and proportionality, and the doctrine of military necessity and the extent to which they can be better interpreted to protect the environment during the conduct of hostilities in non-international armed conflict. In so doing, this article contributes new perspectives to the ongoing debate on how environmental protection ought to be enhanced during non-international armed conflict. The article also suggests ways in which the International Law Commission (ILC) might approach the development of draft principles based on these customary principles as part of their current programme of work.

<https://doi.org/10.1017/S0922156519000372>

**Cyber civilians as combatants**

by **Christopher E. Bailey**. In: *Creighton international and comparative law journal*, Vol. 8, issue no.1, December 2016, p. 4-22

Cyber operations are an emerging and revolutionary area of State practice; the belligerents in a future armed conflict are unlikely to forsake its advantages. Cyber operations offer technologically advanced belligerents a means to bring about favorable outcomes short of costly, labor and resource intensive, conventional military operations. Moreover, during an armed conflict, cyber operations offer a valuable complement to broader on-going conventional operations, especially in making such operations more efficient and effective. Even so, with the complex, interconnected and dual-use nature of the Internet in a technologically advanced country, it means that cyber attackers will have to spend increased time and resources in the planning and conduct of operations. Indeed, cyber practitioners must consider not only the direct effects of a proposed attack, but also the so-called “knock-on”—the second and third order— effects of an attack. A cyber practitioner must, therefore, conduct a sophisticated reconnaissance and analysis of a proposed target to ensure that the target is properly identified, and that injury to civilians and damage to civilian objects is minimized over a broad period. This leads to issues regarding the permissible range of cyber operations that may be conducted by civilian cyber practitioners. In other words, when does a civilian practitioner become a cyber-combatant and what kinds of things can that person do without violating international law?

<https://dspace2.creighton.edu/xmlui/bitstream/handle/10504/108324/CREIGHTON%20INTERNATIONAL%20AND%20COMPARATIVE%20LAW%20JOURNAL%20Vol.%208%20Issue%201.pdf#page=4>

**Cyber operations and the Second Geneva Convention**

**Jeffrey Biller**. In: *International review of the Red Cross*, Vol. 100, no. 907/908/909, 2018, p. 165-183

The recently released updated ICRC Commentary on the Second Geneva Convention (GC II) recognizes significant changes in both the conduct of naval conflicts and interpretations of the governing law. One such significant change is the addition of cyber operations to the conduct of naval operations. Modern vessels increasingly utilize computer networks to control critical ship systems, but discussions of how potential cyber operations should be viewed under GC II are understandably limited. This article aids in addressing that gap by analyzing how cyber operations could have implications for certain provisions of GC II.

<https://library.icrc.org/library/docs/DOC/irrc-909-biller.pdf>

**Cybernetic enhancement of soldiers : conserving hors de combat protections for combatants under the Third Geneva Convention**

**Amanda McAllister**. In: *Journal of law and cyber warfare*, Vol. 7, no. 2, Fall 2019, p. 67-99

This article argues that the cybernetic enhancement of soldiers will pierce serious legal lacunae through the mask of hors de combat statuses under LOAC and GCIII, and that an additional Geneva Convention is necessary to address the incoming revolution in military affairs. Part I begins with the development of LOAC and elaborates on POW protections under the GCIII and hors de combat status determinations. Part II and III look at examples of cybernetic enhancements of combatants, such as brain-computer interfaces. The author argues that these enhancements will erode rather than bolster protections and lead to denials of POW status under the GCIII for captured or surrendering combatants. Last, part IV proposes plans for an additional Geneva Convention to address technology, including cybernetic enhancement, as a revolution in military affairs.

**A defence technologist's view of international humanitarian law**

**Tony Gillespie**. - In: *Routledge handbook of war, law and technology*. - New York : Routledge, 2019. - p. 41-49

This chapter discusses Article 36 reviews from a technologist’s point of view, identifies important milestones, and proposes the types of technical evidence required at key points. It presents the view that the use of a weapon cannot be separated from the surrounding system. The chapter identifies several points in technology development programmes that are suitable for Article 36



reviews. An extra level of complexity comes when the system, with or without emergent behaviours, interacts with external systems with non-linear or random outputs. These can be other technical systems or human operators. Producing a complex human/machine system at an affordable cost which has completely predictable properties is beyond the capability of modern engineering.

### **The demands of future operations and the promise of non- or less-lethal weapons**

**Mirko Sossai.** In: Yearbook of international humanitarian law, Vol. 21, 2018, p. 3-22

Non-lethal technology continues to attract the interest of States, individually and in the context of regional and universal organisations. Peace operations deployed in asymmetric threat environments are in need of equipment more suited to the requirements of such operations: non- or less-lethal weapons might offer a valuable alternative to firearms in certain scenarios, particularly when armed forces are involved in the protection of the civilian population as well as in law enforcement activities. It is important to distinguish between conduct of hostilities and law enforcement scenarios, as different legal paradigms apply with regard to the use of armed force. Moreover, whereas under the latter, there is at least an implicit obligation under human rights law to equip State officials with less-lethal weapons, the prevalent view is that no such duty exists under the former. What characterises the most recent developments in the field of the regulation of non- or less-lethal weapons is the effort to offer practical guidance as concerns testing, procurement, training and monitoring, on the assumption that, in a law-enforcement situation, the cumulative principles of legality, necessity, proportionality and precaution govern the use of force by State agents.

[http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2285461&site=ehost-live&ebv=EB&ppid=pp\\_C3\\_BE\\_C3\\_BF3](http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2285461&site=ehost-live&ebv=EB&ppid=pp_C3_BE_C3_BF3)

### **The digital Geneva Convention ? : a critical appraisal of Microsoft's proposal**

**Valentin Jeutner.** In: Journal of international humanitarian legal studies, Vol. 10, no. 1, 2019, p. 158-170

Microsoft's 2017 call for a Digital Geneva Convention is a welcome contribution to the debate on how the global technology sector and the international civil society should respond to increased State-led cyberattacks. However, Microsoft's portrayal of cyberspace as a space devoid of regulation is inaccurate, especially in light of the rules contained in the Tallinn Manual 2.0. Microsoft's call for the establishment of an international attribution organization overlooks existing international legal mechanisms. The characterization of global technology firms as 'first responders' providing services akin to those provided by the Red Cross societies is imperfect since technology companies are, compared to the Red Cross, non-neutral and profit-making enterprises.

<https://doi.org/10.1163/18781527-01001009>

### **Disability and armed conflict**

**Alice Priddy.** - Geneva : The Geneva Academy of International Humanitarian Law and Human Rights, April 2019. - 98 p.

This Academy Briefing explores the complementarity between the UN Convention on the Rights of Persons with Disabilities (CRPD) and IHL and considers how, in specific situations within armed conflict (concerning the conduct of hostilities and the treatment of detained persons), a selected sample of IHL provisions (concerning humane treatment and adverse distinction) should be applied and evaluated in a disability inclusive manner.

<https://www.geneva-academy.ch/joomlatools-files/docman-files/Academy%20Briefing%2014- interactif.pdf>

## **Distinction, necessity, and proportionality : Afghan civilians' attitudes toward wartime harm**

**Janina Dill.** In: *Ethics and international affairs* Vol. 33, issue 3, Fall 2019, p. 315-342

How do civilians react to being harmed in war? Existing studies argue that civilian casualties are strategically costly because civilian populations punish a belligerent who kills civilians and support the latter's opponent. Relying on eighty-seven semi-structured interviews with victims of coalition attacks in Afghanistan, this article shows that moral principles inform civilians' attitudes toward their own harming. Their attitudes may therefore vary with the perceived circumstances of an attack. Civilians' perception of harm as unintended and necessary, in accordance with the moral principles of distinction and necessity, was associated with narratives that cast an attack as relatively more legitimate and with a partial or full release of the coalition from blame. The principle of proportionality, which requires that civilian casualties are caused in pursuit of a legitimate war aim, informed their abstract attitudes toward civilian casualties in Afghanistan. Two rules of international law, which accord with the moral principles of distinction and necessity, were reflected in the civilians' attitudes. The legal rule of proportionality, which diverges from the namesake moral principle, failed to resonate with the civilians. The article explores whether compliance with the legal rules of distinction and necessity can contribute to mitigating the strategic costs of civilian casualties.

<https://library.icrc.org/library/docs/ArticlesPDF/46943.pdf>

## **Droit et pratique de l'action humanitaire**

**sous la dir. de Sandra Szurek, Marina Eudes et Philippe Ryfman.** - Paris : Librairie générale de droit et de jurisprudence, 2019. - 970 p.

Comptant parmi les principales politiques publiques internationales, déployée de façon permanente sur tous les continents, l'action humanitaire vient aujourd'hui au secours de quelque 200 millions de bénéficiaires. Le premier Sommet humanitaire mondial, sous l'égide des Nations Unies, en 2016, a mis en évidence les défis auxquels elle est confrontée, comme en témoignent la dimension prise par le Mouvement Croix-Rouge/Croissant-Rouge, le foisonnement des ONG humanitaires, l'affirmation de l'humanitaire d'État et l'implication des organisations internationales. L'action humanitaire se caractérise aussi par la pluralité, la diversité et la dispersion des normes sur lesquelles elle repose, ou qu'elle-même produit, notamment comme ordre professionnel et social spécifique, avec son éthique, son langage et comme véritable économie globalisée. Ainsi, son intérêt scientifique propre justifie d'appréhender l'action humanitaire comme objet autonome d'analyse, à partir d'une vision globale incluant l'ensemble des circonstances dans lesquelles elle se déploie. L'ambition de cet ouvrage - inédite dans la production scientifique et universitaire francophone - est d'en présenter le panorama le plus large et le plus complet possible en combinant - ce qui est sa seconde originalité - les ressources du droit avec celles d'autres disciplines et en associant universitaires, chercheurs et praticiens de renom. Ainsi l'ouvrage espère-t-il offrir aussi matière à réflexion sur ce qu'est l'« écosystème humanitaire », les interrogations que soulèvent ses choix et ses finalités - entre secours d'urgence et développement durable.

## **Droit international humanitaire et législation belge antiterroriste : l'article 141bis du Code pénal dans les dossiers syriens et kurdes**

**Raphaël Van Steenberghe.** In: *Revue belge de droit international = Belgian review of international law = Belgisch tijdschrift voor internationaal recht*, Vol. 51, 2018/1, p. 269-293

Les juridictions pénales belges ont récemment été amenées à traiter de questions de droit international humanitaire dans différentes affaires liées au terrorisme international. Il s'agissait plus particulièrement d'affaires dans lesquelles des personnes suspectées d'avoir rejoint des groupes terroristes, principalement en Syrie, étaient poursuivies pour infractions terroristes selon la législation belge. Un article du Code pénal belge, l'article 141bis, a été invoqué devant les juridictions afin que les préventions d'infractions terroristes ne soient pas retenues à l'encontre des personnes poursuivies, au motif que ces personnes étaient membres de forces armées, parties à un conflit armé au sens du droit international humanitaire et que leurs actes étaient régis exclusivement par ce droit. L'article 141bis constitue ce que d'aucuns qualifient de clause d'"exclusion" des infractions terroristes ou de "sauvegarde" du droit international humanitaire.

Une telle clause vise à éviter le chevauchement de deux régimes juridiques en temps de conflit armé, en excluant l'application de la législation antiterroriste à tous les actes des forces armées régis par le droit international humanitaire. L'article 141 bis n'a généralement pas reçu un accueil favorable de la part des juridictions pénales belges. Celles-ci en ont écarté l'application dans les nombreuses décisions rendues dans les dossiers syriens.

### **Eighth periodic report on the implementation of international humanitarian law at the level of Arab states, 2015-2018**

**Omar Mekky... [et al.] ; [foreword by Ronald Ofteringer].** - Geneva : ICRC, November 2019. - 137 p.

This eighth periodic report on the national implementation of international humanitarian law (IHL) at the level of Arab states (2015-2018) covers the work of the Arab governments in the field of dissemination and integration of IHL. It is the outcome of the eleventh Arab governmental IHL expert meeting that took place in September 2018 in Cairo. Its first section provides an overview on the ratification and national implementation of IHL treaties that were adopted during this 11th expert meeting. The third part consists of reports on the ongoing efforts of individual states in the domain of IHL implementation. With these elements, the report is not only a documentation of past and present efforts, but also a major impetus for all to intensify efforts for better respect of the rules of IHL.

[https://library.icrc.org/library/docs/DOC/WEB\\_005.pdf](https://library.icrc.org/library/docs/DOC/WEB_005.pdf)

### **An environment conducive to mistakes ? : lessons learnt from the attack on the Médecins Sans Frontières hospital in Kunduz, Afghanistan**

**Françoise Bouchet-Saulnier and Jonathan Whittall.** In: *International review of the Red Cross*, Vol. 100, no. 907/908/909, 2018, p. 337-372

On 3 October 2015, the Médecins Sans Frontières (MSF) Trauma Centre in Kunduz, Afghanistan was bombed during a US–Afghan joint military operation to retake the city. Even before that night, attacks on health-care facilities in war zones were already a worrying trend and a major concern for humanitarian organizations. Such attacks have led both MSF and the International Committee of the Red Cross (ICRC) to launch campaigns<sup>1</sup> addressing the need for greater protection of the medical mission in situations of armed conflict. Nonetheless, the scale and specific context of the attack on the Kunduz Trauma Centre have given rise to various specific investigations<sup>2</sup> and provoked many more questions that this article will explore. The article will delve into the “many mistakes” scenario that has been presented by the US investigation in order to critically analyze whether these mistakes may originate from either incorrect or biased interpretations or implementation of international humanitarian law.

<https://library.icrc.org/library/docs/DOC/irrc-909-bouchet-saulnier.pdf>

### **The expansion of DPH regarding emerging technological weapons**

**Morgan Luedtke.** In: *Oregon review of international law*, Vol. 20, no. 2, 2019, p. 503-530

This article proposes that the United States's definition of direct participation in hostilities (DPH) should be expanded based upon the use of emerging technological weapons. Part I explains the distinct view of the ICRC and the United States concerning DPH and explains the laws surrounding the targeting of objects. Part II combines the theory put forth by Ryan Goodman concerning the expansion of the targeting of objects and the theory of DPH expansion related to the emerging technologies. Part III analyzes how and why the emerging technologies should be treated differently with respect to civilians who come into contact with the emerging technologies. Finally, Part IV describes the limiting principles that are associated with DPH currently and the author's theory of the application of the limiting principles to DPHing related to emerging technological weapons.

<https://scholarsbank.uoregon.edu/xmlui/handle/1794/24673>

### **Exploring the 'continuous combat function' concept in armed conflicts : time for an extended application ?**

**Sabrina Henry.** In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 267-285

This paper focuses on the “continuous combat function” concept and proposes to extend its application. First, the article will demonstrate that the continuous combat function concept should be extended to certain members of organized armed groups in cases where those groups do not belong to any of the parties to an international armed conflict and whose actions do not reach the level of intensity required for a separate non-international armed conflict (NIAC) to exist. Secondly, the paper will look at the extension of this concept in order to determine individual membership in State armed forces in the context of a NIAC, while arguing that the notion of “armed forces” should be interpreted differently depending of the nature of the conflict, be it international or non-international.

<https://library.icrc.org/library/docs/DOC/irrc-909-henry.pdf>

### **La formation des casques bleus à la protection des biens culturels au Mali, une révolution ?**

**Mathilde Leloup.** In: Cahiers d'histoire. Revue d'histoire critique, No. 142, 2019, p. 61-75

La Convention de 1954 est à ce jour le seul texte juridique portant exclusivement sur la protection des biens culturels en cas de conflit armé. Adoptée au lendemain de la Seconde Guerre mondiale, elle a été complétée par un deuxième protocole en 1999, afin de s'adapter au changement de nature des conflits armés, désormais plus intra qu'interétatiques, ainsi qu'à celui des atteintes au patrimoine culturel, qui ne sont plus seulement collatérales mais également intentionnelles. En dépit de ces transformations, le rôle des casques bleus est demeuré ambigu vis-à-vis de la Convention de 1954, de ses deux protocoles (1954 et 1999) et de ses deux principaux articles portant sur la « sauvegarde » et le « respect » des biens culturels, mais aussi plus généralement vis-à-vis du droit international humanitaire. Le Conseil de sécurité semble avoir résolu cette ambiguïté en adoptant la résolution 2100 le 25 avril 2013. Pour la première fois dans l'histoire du maintien de la paix, l'opération MINUSMA a été chargée de « protéger les sites culturels et historiques » du Mali. S'il semble encore prématuré de conclure à la création d'un précédent, force est de constater que cette opération a permis une véritable prise de conscience de la part de la communauté internationale quant à la nécessité de former les armées nationales ainsi que les contingents des opérations multilatérales à la protection des biens culturels.

<https://journals.openedition.org/chrhc/10624>

### **From ecocide to voluntary remediation projects : legal responses to "environmental warfare" in Vietnam and the spectre of colonialism**

**Eliana Cusato.** In: Melbourne journal of international law, Vol. 19, issue 2, 2018, 27 p.

This article examines legal responses to the pervasive legacy of ‘environmental warfare’ during the Vietnam War, most notably the use of Agent Orange and other chemical herbicides. It engages in a historical analysis of the different efforts to establish American accountability under international law, including within the United Nations General Assembly and before American courts, until the more recent United States-funded environmental remediation projects in dioxin contaminated areas and assistance to persons with disabilities. In doing so, the article draws attention to the unaccomplished quest for justice of the Vietnamese people and to some problematic dimensions of legal debates surrounding the environmental and human consequences of the Vietnam conflict. Borrowing insights from the postcolonial critique of international law, it suggests that the ‘dynamics of exclusion’ embedded in the laws of armed conflict may help to explain not only the way in which the war was fought in Vietnam, but also the reaction of the US and legal institutions to its deleterious impacts on humans and ecosystems. Revisiting past and current initiatives to address the effects of ‘environmental warfare’ in Vietnam raises hard questions on the role of international law and remedies vis-a-vis environmental degradation associated with contemporary conflicts in the Global South. It invites also to reflect on unintended consequences of proposals for law reforms that seek to reinforce environmental protection in war-torn countries, while reproducing injustices and discrimination.

<https://law.unimelb.edu.au/mjil/issues/issue-archive/192>

### **From knives to kites : developments and dilemmas around the use of force in the Israeli-Palestinian conflict since 'protective edge'**

**Hilly Moodrick-Even Khen.** In: *Journal of international humanitarian legal studies*, Vol. 10, issue 2, 2019, p. 303-336

This article analyses the legal regulation of the use of force in international law in the context of three emerging Palestinian forms of struggle against Israeli occupation: the Knife Intifada, the disturbances at the border, and the launching of incendiary kites. It discusses what legal paradigms or concepts should regulate the type and level of force used in each situation – a question that is complicated by various dilemmas – and finally, appraises the Israel Defence Forces policies tailored in response. The article evaluates the applicability of two legal paradigms regulating the use of force in military operations – (i) the conduct of hostilities and (ii) law enforcement – as well as the concept of personal self-defence in international law and the escalation of force procedure. While the Knife Intifada clearly falls under the law enforcement paradigm, the disturbances at the border and the launching of incendiary kites raise more difficult legal questions. Categorising them under a paradigm of law enforcement is less straightforward, and may have undesirable ramifications for safeguarding humanitarian interests. The article argues that the use of force in the disturbances at the border and the incendiary kites cases should be regulated by the concept of self-defence and escalation of force procedure, and that the application of the self-defence concept should be adapted, *mutatis mutandis*, to situations of law enforcement and to situations of hostilities.

<https://doi.org/10.1163/18781527-01002006>

### **From munitions to malware : a comparative analysis of civilian targetability in cyber conflict**

**Colton Matheson.** In: *Journal of law and cyber warfare*, Vol. 7, no. 2, 2019, p. 30-66

Warfare is no longer limited to the bounds of physical space. Modern conflict now takes place not only on land, in air, or at sea, but also in cyberspace. While the international community has established widely accepted conventions governing armed conflict, including those designed to protect civilians, these conventions primarily apply to and envision scenarios embracing conventional warfare. The application of such conventions to conflicts in cyberspace raises novel questions, particularly questions regarding the targetability of civilians directly participating in cyber hostilities. This article proceeds to examine and compare the proposed standards for direct civilian participation in cyber hostilities as promulgated by the ICRC's Interpretive Guidance and the Tallinn Manual 2.0. Specifically, this article addresses the course of conduct that a civilian must undertake before he or she is considered a direct participant in a cyber hostility. Upon laying this groundwork, the article then addresses the issue of duration—the time in which a civilian is considered a direct participant in hostilities and thus, targetable by his or her adversary. In applying the standards of both the ICRC's Interpretive Guidance and the Tallinn Manual 2.0 to hypothetical scenarios involving the direct participation of civilians in cyber hostilities, the article aligns itself with a position advocated by the Tallinn Manual experts—that addressing the duration of direct civilian participation in cyber hostilities is superior because it properly considers the realities of modern conflict and effectively balances military necessity with humanitarian considerations.

### **From the autonomy framework towards networks and systems approaches for 'autonomous' weapons systems**

**Hin-Yan Liu.** In: *Journal of international humanitarian legal studies*, Vol. 10, no. 1, 2019, p. 89-110

The legal debate surrounding the development and deployment of autonomous weapons systems (AWS) has stagnated in recent years, having arguably hit the hard limits of legal doctrine. At the heart of this impasse lies the focus upon autonomy as both the innovative and defining feature of AWS. Thus, the autonomy of the weapons system places it in a legally liminal zone between agent and object, revealing a set of legal problems that revolve around issues of control, influence, responsibility and liability, and questions of legal compliance that follow from the prospect of autonomous lethal decision-making. This paper seeks to explore alternative framings to the same underlying technology as a means of escaping the limits imposed by the autonomy framework



that has dominated the debate to date, and to examine the consequences that flow from pursuing these approaches from legal and regulatory perspectives. In particular, emphasis is placed upon the networks approach, and the systems approach, which this paper sets out and differentiates from the orthodox emphasis upon autonomy. These alternative approaches suggest that the legal problems arising from the autonomy framing are the easiest set of issues to address, insofar as these frame legal problems, while the networks and systems approaches seem to touch upon legal mysteries to which no ready legal or regulatory responses can be made. Rather than dismiss the network and systems approaches, however, this paper suggests that appropriate, adequate and robust legal and regulatory responses must consider the insights and challenges that these approaches pose, and that pursuing these approaches will lead to powerful converging arguments supporting a moratorium on the deployment of AWS.

<https://doi.org/10.1163/18781527-01001010>

### **Gaining traction : measuring the impact of IHL training**

**Jessica Lees and Kate Sutton.** - [Melbourne] : Humanitarian Advisory Group, October 2019. - 31 p.

Prepared for the Australian Red Cross, the report looks at the impact of training humanitarian practitioners in IHL and humanitarian principles. The research builds an evidence base for how IHL and humanitarian principles training translates to humanitarian outcomes. Through five key findings and targeted recommendations, the report encourages a conversation about how to improve humanitarian outcomes through strengthened approaches to IHL and humanitarian principles capacity building. Based on interviews and surveys, the research found that: - IHL training can be linked to improved humanitarian outcomes; - training in IHL is only one step in a learning process; - the application of IHL and humanitarian principles is supported if there is a critical mass of actors in the context that understand and support the principles; - training for field practitioners needs to be practical and contextualised; and - awareness of IHL and humanitarian principles mitigates individual and operational risks in the field.

[https://www.redcross.org.au/getmedia/5259c47b-a5e2-44fo-b64f-aaa8021e3de3/gaining-traction-final-report\\_1.aspx](https://www.redcross.org.au/getmedia/5259c47b-a5e2-44fo-b64f-aaa8021e3de3/gaining-traction-final-report_1.aspx)

### **The Geneva Conventions at seventy**

**Peter Maurer.** In: Global governance : a review of multilateralism and international organizations, Vol. 25, no. 3, 2019, p. 351-358

The Geneva Conventions aim to preserve the core of our common humanity, at the worst of times. In this document, the ICRC president points out that the 70th anniversary of the Geneva Conventions is an appeal to do more, to do better, in order to live up to this powerful call.

<https://library.icrc.org/library/docs/ArticlesPDF/48241.pdf>

### **Humanity and lethal robots : an engineering perspective**

**Tony Gillespie.** - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 182-198

This chapter examines highly automated and autonomous weapon systems from an engineering standpoint, covering technology evolution, defence engineering processes, and economic pressures. It shows that a system engineering approach with functional partitioning and specifications offers a way to assess the lawfulness of a chain of decisions for an autonomous system in the same way as is carried out for human operators. The chapter suggests that the increased level of automation for peaceful purposes. The defence engineering community addressed the problem of differentiating between automation and autonomy by developing the concept of autonomy levels. Interpretation of the automation spectrum as a continuum of weapon control systems does not follow; the spectrum is for the individual control subsystems which together make up the whole weapon control system. Life extension programmes include processing upgrades and increased levels of automation to enable the military user to operate in an increasingly complex environment.

**IHL and islamic law in contemporary armed conflicts : experts' workshop : Geneva, 29-30 October 2018**

report prep. and ed. by Ahmed Al-Dawoody. - Geneva : ICRC, November 2019. - 84 p.

This report is the result of a two-day workshop for experts on international humanitarian law (IHL) and Islamic law that was held in Geneva, at the headquarters of the International Committee of the Red Cross (ICRC), on 29 and 30 October 2018. Experts from 23 countries took part in the workshop, where they discussed five subjects of contemporary concern: the conduct of hostilities; protection for health-care personnel and facilities; detention during armed conflict; special protection for children; and the proper handling of dead bodies. The overall objectives of the workshop were to strengthen cooperation between experts in IHL and Islamic law, and to give Islamic scholars an opportunity to discuss the operational and legal challenges confronting the ICRC in Muslim contexts. The report provides an account of the discussions that took place during the workshop. Participants considered the subjects mentioned above from the perspectives of IHL, Islamic law, and operational expertise.

<https://library.icrc.org/library/docs/DOC/icrc-4386-002.pdf>

**The impact of emerging technologies on the law of armed conflict**

[Ed. by] Eric Talbot Jensen and Ronald T.P. Alcalá. - Oxford : Oxford University Press, 2019. - XVIII, 389 p.

Emerging technologies have always played an important role in armed conflict. From the crossbow to cyber capabilities, technology that could be weaponized to create an advantage over an adversary has inevitably found its way into military arsenals for use in armed conflict. The weaponization of emerging technologies, however, raises challenging legal issues with respect to the law of armed conflict. As States continue to develop and exploit new technologies, how will the law of armed conflict address the use of these technologies on the battlefield? Is existing law sufficient to regulate new technologies, such as cyber capabilities, autonomous weapons systems, and artificial intelligence? Have emerging technologies fundamentally altered the way we should understand concepts such as law-of-war precautions and the principle of distinction? How can we ensure compliance and accountability in light of technological advancement? This volume of the Lieber Studies explores these critical questions while highlighting the legal challenges—and opportunities—presented by the use of emerging technologies on the battlefield.

<https://opil.ouplaw.com/view/10.1093/law/9780190915322.001.0001/law-9780190915322>

**Implementing international humanitarian law through human rights mechanisms : opportunity or utopia ?**

Emilie Max. - [Geneva] : Geneva Academy of International Humanitarian Law and Human Rights, October 2019. - 22 p.

Beyond the International Committee of the Red Cross (ICRC), international humanitarian law (IHL) currently lacks mechanisms to ensure effectively its own compliance. Such structural flaw has left victims of violations 'in search of a forum' and thus prompted a frequent recourse to the more-developed human rights machinery, even if the opportuneness of this tendency has long been – and remains – debated in both intergovernmental and scholarly forums. This working paper provides an overview of this trend, derives provisional lessons-learned on the opportuneness of human rights bodies dealing with IHL and examines issues that would deserve further academic and/or practical examination. After a reminder on mechanisms established by the Geneva Conventions of 1949 and their additional Protocols of 1977, the paper summarily frames the relationship between IHL and international human rights law and assess the competence and practice of political mechanisms emanating from the Charter of the United Nations, as well as of universal and regional treaty-based mechanisms.

<https://www.geneva-academy.ch/joomlatools-files/docman-files/Implementing%20International%20Humanitarian%20Law%20Through%20Human%20Righ.pdf>

**Inked or not : maras and their participation in El Salvador's recent armed conflict**

**Ximena Galvez Lima.** In: *Journal of international humanitarian legal studies*, Vol. 10, issue 2, 2019, p. 265-302

El Salvador remains one of the most violent countries in the world undergoing a murder epidemic. The blatant rise in social violence is driven mainly by gangs of the Northern Triangle countries (Guatemala, Honduras and El Salvador), which frequently clash with governmental security forces. The situation legally blurred the lines between the law enforcement and armed conflict regimes. An insufficient amount of time has been dedicated to identifying the applicable international legal framework to El Salvador's extreme gang violence and its repression. Consequently, the country's categorization of violence has not been addressed. For this purpose, a contextual background narration of the politics of violence in the country followed by a detailed analysis of the constituent elements of El Salvador's urban violence were examined. The assessment of facts and their juxtaposition to international jurisprudential criteria and doctrinal contributions on conflict classification suggest the situation reached international humanitarian law's armed conflict brink.

<https://doi.org/10.1163/18781527-01002002>

**Innovation-proof global governance for military artificial intelligence ? : how I learned to stop worrying, and love the bot**

**Matthijs M. Maas.** In: *Journal of international humanitarian legal studies*, Vol. 10, no. 1, 2019, p. 129-157

Amidst fears over artificial intelligence 'arms races', much of the international debate on governing military uses of AI is still focused on preventing the use of lethal autonomous weapons systems (LAWS). Yet 'killer robots' hardly exhaust the potentially problematic capabilities that innovation in military AI (MAI) is set to unlock. Governance initiatives narrowly focused on preserving 'meaningful human control' over laws therefore risk being bypassed by the technological state-of-the-art. This paper departs from the question: how can we formulate 'innovation-proof governance' approaches that are resilient or adaptive to future developments in military AI? The author develops a typology for the ways in which mai innovation can disrupt existing international legal frameworks. This includes 'direct' disruption – as new types of MAI capabilities elude categorization under existing regimes – as well as 'indirect' disruption, where new capabilities shift the risk landscape of military AI, or change the incentives or values of the states developing them. After discussing two potential objections to 'innovation-proof governance', the author explores the advantages and shortcomings of three possible approaches to innovation-proof governance for military AI. While no definitive blueprint is offered, he suggests key considerations for governance strategies that seek to ensure that military AI remains lawful, ethical, stabilizing, and safe.

<https://doi.org/10.1163/18781527-01001006>

**International conference : the Convention on Certain Conventional Weapons**

**co-hosted by the ICRC and the Indian Society of International Law.** - New Delhi : The Indian society of international law ; ICRC, July 2018. - 76 p.

The International Conference on the Convention on Certain Conventional Weapons (CCW) was co-hosted by the International Committee of the Red Cross (ICRC) and the Indian Society of International Law (ISIL), with support from the Ministry of External Affairs (MEA), Government of India, from 5 to 6 December 2017 in New Delhi, India. The goal of the conference was to further understanding of the scope and content of the convention and its protocols as well as to discuss current issues on the CCW's agenda. The conference aimed to facilitate increased adherence to the Convention, the full implementation of its provisions and participation in future CCW meetings.

<https://library.icrc.org/library/docs/DOC/icrc-4267-002.pdf>



**International humanitarian law and cyber operations during armed conflicts**

ICRC. - [Geneva] : ICRC, November 2019. - 9 p.

In this position paper, the ICRC presents its views on cyber operations and international humanitarian law (IHL). The use of cyber operations during armed conflicts is a reality. While only a few States have publicly acknowledged using such operations, an increasing number of States are developing military cyber capabilities, and their use is likely to increase in future. In recent years, cyber operations have shown that they can seriously affect civilian infrastructure and might result in human harm. This position paper focusses on: the potential human cost of cyber operations, the application of IHL to cyber operations during armed conflicts, the protection afforded by existing IHL, the need to discuss how IHL applies and attribution of conduct in cyberspace for the purposes of State responsibility.

[https://library.icrc.org/library/docs/DOC/WEB\\_006.pdf](https://library.icrc.org/library/docs/DOC/WEB_006.pdf)

**International humanitarian law and non-state practice in armed conflict : combatant's privilege and Kurdish fighters in Syria**

Ilana Rothkopf. In: Journal of conflict and security law, Vol. 24, no 2, Summer 2019, p. 271-296

Do fighters associated with non-state armed groups have the combatant's privilege in armed conflict? Non-state armed groups are commonplace in contemporary armed conflicts. However, international humanitarian law (IHL), particularly the law that pertains to combatant's privilege and prisoner of war status, was designed with state actors in mind. This article assesses the conditions under which the members of non-state armed groups have combatant's privilege. Throughout, it uses the case of Kurdish fighters in Syria as an example of the timeliness of this question and its ramifications for conflict actors. This article notes, with support from the Geneva Conventions, Additional Protocols, and other sources of IHL, that IHL does not foresee a combatant's privilege for armed groups in a non-international armed conflict. It contends, however, that the international community should agree to a generalisable rule for the treatment of fighters as combatants regardless of conflict type, if these fighters demonstrate the capability and willingness to adhere to IHL. Such a rule would reduce the need to assess both conflict type and the status of individual fighters should they be captured, and more importantly, it would incentivise continued compliance with IHL.

<https://doi.org/10.1093/jcsl/krz008>

**International humanitarian law and the challenges of contemporary armed conflicts : recommitting to protection in armed conflict on the 70th anniversary of the Geneva Conventions**

ICRC. - Geneva : ICRC, October 2019. - 80 p.

In this report on international humanitarian law (IHL) and the challenges of contemporary armed conflicts, the International Committee of the Red Cross (ICRC) sets out its views on a number of pressing humanitarian and legal issues. The ICRC has submitted a report like this one – the Challenges Report – to every International Conference of the Red Cross and Red Crescent since 2003. The Challenges Report provides an overview of some of the challenges for IHL posed by contemporary armed conflicts, and outlines current or prospective ICRC action, positions, and areas of interest. One of its main aims is to stimulate reflection on all these matters. The 2019 Challenges Report focuses on the following topics: - urbanization of warfare - new technologies of warfare - the needs of civilians in increasingly long conflicts - IHL and non-State armed groups - terrorism, counterterrorism measures, and IHL - climate, armed conflict, and the natural environment - enhancing respect for IHL.

<https://library.icrc.org/library/docs/DOC/icrc-4427-002.pdf>

## **The International Review of the Red Cross and the protection of civilians, c. 1919-1939**

**Ben Holmes.** In: *International review of the Red Cross*, Vol. 100, no. 907/908/909, 2018, p. 115-141

This article uses past issues of the *International Review of the Red Cross* to examine how the International Red Cross and Red Crescent Movement (the Movement) has engaged with the issue of civilian protection over the course of its history. Although founded to organize humanitarian relief and legal protection for wounded and sick combatants, the International Committee of the Red Cross and the wider Movement have increasingly incorporated civilian war victims into their remit since their establishment. Yet, as this article highlights, this process has not been straightforward. Focusing on the critical period between the two World Wars, the article uses the *Review* to illustrate why the Red Cross began engaging with the “civilianization” of conflicts in response to the threat of new technologies like gas and aerial bombardment. Using articles from the *Review* to highlight the key challenges faced by the Movement in protecting civilians over this period, it also considers the gaps in the Red Cross's initial conceptions of who “the civilian” was, why belligerents attacked them, and what was the best means of protecting them.

<https://library.icrc.org/library/docs/DOC/irrc-909-holmes.pdf>

## **Les interventions militaires étrangères récentes contre le terrorisme international. Seconde partie : droit applicable (jus in bello)**

**Raphaël van Steenberghe.** In: *Annuaire français de droit international*, 63, 2017, p. 37-91

Les interventions militaires étrangères récentes contre le terrorisme international soulèvent de nombreuses questions au regard du droit international humanitaire. Nombre d'entre elles concernent la qualification des hostilités opposant les Etats intervenants aux groupes terroristes ainsi que la détermination des règles de droit humanitaire applicables à ces hostilités. D'autres ont trait au champ d'application géographique de ces règles et à la nature des poursuites pénales susceptibles d'être exercées à l'encontre des personnes impliquées dans les activités des groupes terroristes à l'étranger. Diverses solutions sont certainement envisageables pour répondre à ces questions. Les approches en l'occurrence proposées se veulent cohérentes et reposent ainsi essentiellement sur des considérations d'ordre logique. Certaines d'entre elles envisagent une extension mesurée du droit international humanitaire, en particulier du droit des conflits armés non internationaux, tandis que d'autres écartent l'applicabilité de certaines réglementations jugées inappropriées.

## **Justice for some : law and the question of Palestine**

**Noura Erakat.** - Stanford : Stanford University Press, 2019. - XIII, 331 p.

Justice in the Question of Palestine is often framed as a question of law. Yet none of the Israel-Palestinian conflict's most vexing challenges have been resolved by judicial intervention. Occupation law has failed to stem Israel's settlement enterprise. Laws of war have permitted killing and destruction during Israel's military offensives in the Gaza Strip. The Oslo Accord's two-state solution is now dead letter. Justice for Some offers a new approach to understanding the Palestinian struggle for freedom, told through the power and control of international law. Focusing on key junctures—from the Balfour Declaration in 1917 to present-day wars in Gaza—Noura Erakat shows how the strategic deployment of law has shaped current conditions. Over the past century, the law has done more to advance Israel's interests than the Palestinians'. But, Erakat argues, this outcome was never inevitable. Law is politics, and its meaning and application depend on the political intervention of states and people alike. Within the law, change is possible. International law can serve the cause of freedom when it is mobilized in support of a political movement. Presenting the promise and risk of international law, Justice for Some calls for renewed action and attention to the Question of Palestine.

## **The law of armed conflict issues created by programming automatic target recognition systems using deep learning methods**

**Joshua G. Hughes.** In: Yearbook of international humanitarian law, Vol. 21, 2018, p. 99-135

Deep learning is a method of machine learning which has advanced several headline-grabbing technologies, from self-driving cars to systems recognising mental health issues in medical data. Due to these successes, its capabilities in image and target recognition is currently being researched for use in armed conflicts. However, this programming method contains inherent limitations, including an inability for the resultant algorithms to comprehend context and the near impossibility for humans to understand the decision-making process of the algorithms. This can lead to the appearance that the algorithms are functioning as intended even when they are not. This chapter examines these problems, amongst others, with regard to the potential use of deep learning to programme automatic target recognition systems, which may be used in an autonomous weapon system during an armed conflict. This chapter evaluates how the limitations of deep learning affect the ability of these systems to perform target recognition in compliance with the law of armed conflict. Ultimately, this chapter concludes that whilst there are some very narrow circumstances where these algorithms could be used in compliance with targeting rules, there are significant risks of unlawful targets being selected. Further, these algorithms impair the exercise of legal duties by autonomous weapon system operators, commanders, and weapons reviewers. As such, this chapter concludes that deep learning-generated algorithms should not be used for target recognition by fully-autonomous weapon systems in armed conflicts, unless they can be made in such a way as to understand the context of targeting decisions and be explainable.

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## **Leaking like a sieve ? : transfer restraints on small arms, light weapons and ammunition**

**Roderic Alley.** In: Journal of conflict and security law, Vol. 24, no. 2, Summer 2019, p. 325-342

Compared to nuclear weapons, chemical and biological weapons or advanced conventional weapons systems, such as missiles, small arms and light weapons (SALW) and the ammunition required to render them lethal, have received less attention from arms control analysts. Accordingly the focus of this commentary is upon two particular inadequacies identified within the existing SALW restraint repertoire. They include, first, a failure to have SALW ammunition designated as an objective deserving explicit restraint designation and, secondly, persisting and largely unresolved state differences over controlling supplies of this weaponry to armed non-state actors. Both concerns illustrate how a use of consensus procedures within relevant rule formulation has favoured the interests of major SALW suppliers. The two deficiencies identified are considered destabilising given their continued capacity to degrade restraints designed to restrict deployments of this long-lasting weaponry—particularly within locations exhibiting limited forms of state capacity. The scope for existing legal mechanisms to remedy these deficiencies is examined, as is their potential to induce enhanced compliance and implementation.

<https://doi.org/10.1093/jcsl/krz007>

## **Legal-policy challenges of armed drones and autonomous weapon systems**

**Kenneth Anderson and Matthew C. Waxman.** - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 154-168

This chapter addresses legal-policy challenges associated with armed unmanned aerial vehicles (UAV). It also addresses such challenges associated with autonomous weapon systems. The chapter argues that the United States and its closest allies can and should adapt the law of armed conflict to deal with these emergent technologies, but doing so effectively will probably require higher levels of public transparency about weapon systems than they are accustomed to. UAVs piloted from afar are already a significant component of the United States' arsenal, and they are proliferating rapidly worldwide. Armed UAV technology, on this view, specially enables the extension of uses of force lawful only in so-called active zones of hostilities to many other places far from the 'battlefield.' The issues of target discrimination and accountability really go to the

way UAVs are used and the policies and protocols governing targeting decisions, rather than to the technologies themselves.

### **Legal review of new weapons : origins of article 36 of AP I**

**Natalia Jevglevskaia.** In: Finnish yearbook of international law, Vol. 25, 2014-2015, p. 109-140

This article examines the origins of the requirement placed on states by Article 36 of Additional Protocol I ('AP I') to the Geneva Conventions to review the legality of a new weapon, means or method of warfare. It does so by first testing the possibility that Article 36 represents either a restatement or a revised version of some similar provision found elsewhere in the law of armed conflict. To that end, it explores 13 international instruments which regulate the use of weapons in war and were adopted prior to the 1974–1977 Diplomatic Conference where Article 36 was negotiated. The article argues that Article 36 is not a product of continuous historical evolution of states' views on how particular prohibitions or restraints on the weapons use should be put into effect at the domestic level. In fact, none of the pre-existing international mechanisms resemble the AP I weapons review provision. The article then examines the drafting materials. Whilst no unequivocal evidence on the motives for adopting a provision on weapons review can be found in the Official Records of the 1974–1977 Diplomatic Conference, there is enough evidence to conclude that the key states behind Article 36 were Germany and the UK. The General Legal Provisions relating to the Conduct of Hostilities and War on Land, operative in Germany since 1961 and mandating that weapons be developed in accordance with the requirements of the existing legal regulations, might well be a predecessor to Article 36.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/48234.pdf>

### **Lethal autonomous weapon systems and their compatibility with international humanitarian law : a primer on the debate**

**Matthias Brenneke.** In: Yearbook of international humanitarian law, Vol. 21, 2018, p. 59-98

Lethal autonomous weapon systems (LAWS) are platforms that can perform military tasks and take decisions relating thereto on their own—using artificial intelligence. While such technology has not yet been developed, research is headed this way. Are these systems capable of complying with current rules under international humanitarian law (IHL)? Which factors of substantive legal provisions pose particular challenges and what parameters would LAWS have to meet in order to act lawfully? Core principles of IHL under treaties and custom are identified, explained and applied. As regards distinction, it is argued that research here offers the most promising advancements. However, the rule rests upon subjective determinations and ever-present doubt. One may also differentiate when examining proportionality: expected collateral damage is relatively objective and can already be calculated by software. In contrast, military advantage anticipated proves too complex and subjective. Furthermore, the open wording of this rule and its dependence on moral standards leads makes adherence to IHL currently impossible. It is suggested that extralegal issues should also be given sufficient consideration; details are however beyond the scope here. It is finally concluded that for the time being as well as the foreseeable future, LAWS are incompatible with IHL. Thus, humans must stay in or on the loop and retain (meaningful human) control in order to ensure observance of the law of armed conflict. Any technological achievement may nevertheless enhance the human-machine interface in the sense that humans and systems are partnered; thereby allowing for utilizing progress while securing lawful conduct at the same time.

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### **The military commander's necessity : the law of armed conflict and its limits**

**Sigrid Redse Johansen.** - Cambridge [etc.] : Cambridge University Press, 2019. - 428 p.

The idea of military necessity lies at the centre of the law of armed conflict and yet it is less than fully understood. This book analyses which legal limits govern the commander's assessment of military necessity, and argues that military necessity itself is not a limitation. Military necessity calls for a highly discretionary exercise: the assessment. Yet, there is little guidance as to how this discretionary process should be exercised, apart from the notions of 'a reasonable military

commander'. A reasonable assessment of 'excessive' civilian losses are presumed to be almost intuitive. Objective standards for determining excessive civilian losses are difficult to identify, particularly when that 'excessiveness' will be understood in relative terms. The perpetual question arises: are civilian losses acceptable if the war can be won? The result is a heavy burden of assessment placed on the shoulders of the military commander.

<https://doi.org/10.1017/9781108637060>

### **New histories and new laws : crimes against humanity at the International Criminal Tribunal for Rwanda**

**Amanda Alexander.** In: *Leiden journal of international law*, Vol. 32, no. 4, December 2019, p. 801-818

This article looks at the development of the concept of crimes against humanity at the International Criminal Tribunal for Rwanda (ICTR). It contends that the ICTR's interpretation of crimes against humanity is generally seen by international lawyers as a commendable, but unsurprising, step in the historical development of this category. In much the same way, the ICTR's historical account is considered to be a standard attempt by a war crimes court to relate a liberal history of crimes against humanity in a way that upholds civilized values. Yet, although the historical and legal work of the ICTR appear unexceptional, this article will argue that they do demonstrate a particular conceptual approach towards warfare, history, humanity, and the nature of international law. Moreover, this is a conceptual approach that is quite different to that taken by the International Military Tribunal at Nuremberg. The article suggests that these differences, and the invisibility of the change, are due to the ICTR's reliance on familiar narrative tropes. These narratives were established through poststructuralist theory but could be expressed in a variety of more or (often) less theoretical forms. By exploring the influence of these narratives on the Tribunal, it is possible to examine some of the ways in which conceptual change is facilitated and knowledge is created in international law. In particular, it shows how theories that are often considered marginal to international law have had a significant impact on some of the central provisions of international humanitarian law.

<https://doi.org/10.1017/S092215651900044X>

### **Non-state courts : illegal or conditional ? : the case of Da'esh courts**

**Pouria Askary ; Katayoun Hosseinnejad.** In: *Journal of international humanitarian legal studies*, Vol. 10, issue 2, 2019, p. 240-264

The Islamic State of Iraq and Levant (Da'esh) has put in place a governance system encompassing judicial structures to justify its grotesque violence. This paper seeks to evaluate the legitimacy of these courts under two complementary perspectives. Whereas establishing courts by an insurgent group during armed conflict should meet the requirements of international humanitarian law (ihl), because Da'esh claims to ground its laws on Islam, these courts should also follow the requirements of Islam as its constituting law. The paper starts with analysing whether international law entitles armed groups to establish their courts. It argues that although such courts are not prohibited at first glance under international law, they should meet the requirements of being regularly constituted while respecting minimum judicial guarantees. Since Da'esh has sought to found its legitimacy on Islam, the paper argues that Da'esh's interpretation of Islam is not compatible with any major schools of Islamic thought.

<https://doi.org/10.1163/18781527-01002001>

### **Ordinances and articles of war before the Lieber code, 866-1863 : the long pre-history of international humanitarian law**

**Beatrice Heuser.** In: *Yearbook of international humanitarian law*, Vol. 21, 2018, p. 139-164

Key textbooks and reference works on international humanitarian law treat it as though it had not existed before the American Lieber Code, a set of ordinances for conduct in war, was adopted unilaterally in 1863. The Lieber Code, however, was only one in a series of such ordinances which can be traced back in Europe at least to the ninth century. These were indeed established norms and traditions, as the application of the four criteria listed in Article 38(1) of the Statute of the International Court of Justice show: they were applied by (here: military) tribunals and other law



courts; they were treated as customary law (defined in in the Statute of the International Court of Justice as “international custom, as evidence of a general practice accepted as law”); they were seen as “general principles of law recognized by civilized nations”; and finally, they were discussed in “judicial decisions and [in] the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.” International humanitarian law, thus, has its roots in Europe, and has a far longer pedigree than is generally assumed.

[http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2285461&site=ehost-live&bv=EB&ppid=pp\\_C3\\_BE\\_C3\\_BF139](http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2285461&site=ehost-live&bv=EB&ppid=pp_C3_BE_C3_BF139)

### **Participation of non-state armed groups in the formation of customary international humanitarian law : arising challenges and possible solutions**

by **Lizaveta Tarasevich**. - Geneva : Geneva Academy of international humanitarian law and human rights, August 2019. - 29 p.

Most conflicts of our times are of a non-international character. The treaty regulations for these conflicts remains weak. Customary law, in contrast, can be a useful tool to fill the gaps. As of now, only the practice of states is considered for the purpose of identifying customary rules of IHL. However, the rules are considered binding on both, states and armed groups. This leads to two major problems: first, the rules are often unrealistic for armed groups as their peculiarities played no role in their formation. Second, the armed groups lack a “sense of ownership” of these rules and thus often reject them. These problems could be addressed by considering armed groups’ practice as well. However, such an approach would also pose numerous challenges which this paper seeks to identify and discuss potential solutions for. The paper seeks to make the inclusion of armed groups’ practice possible, with a view to enhancing the compliance of non-state armed groups with the rules of IHL. The first section provides a framework by setting out the state of the art regarding the formation of customary international law in general, as well as the perception concerning the participation of armed groups in this process. It as well outlines positive and negative implications of admitting armed groups to the formation of CIHL, in order to make an effective search for solutions which is aware of potential negative implications. The second section is devoted to the discussion of six problems that might potentially bar the participation of armed groups in the customary law-making. Among such problems are those related to the selection of armed groups, the identification of what constitutes law for them, the acceptance of armed groups explicitly refusing to comply with any IHL rules, the difficulties arising of armed groups’ temporary character and their heterogeneity as armed groups. The section also suggests legal solutions or at least possible leads to solutions.

<http://www.prix-henry-dunant.org/wp-content/uploads/Research-2019-paper-TARASEVICH-Sassoli.pdf>

### **The persistence of reciprocity in international humanitarian law**

**Bryan Peeler**. - Cambridge : Cambridge University Press, 2019. - XIII, 212 p.

The expectation of reciprocity continues to be an important factor when states consider their legal obligations in armed conflicts. In this monograph, Bryan Peeler looks at the text and negotiations around the 1949 Geneva Conventions and the Protocols Additional to the Geneva Conventions from 1977 to demonstrate the many place where international humanitarian law maintains expectations of reciprocity. This complements an examination of US policy regarding its Prisoners of War obligations in both the Vietnam War and the Global War on Terror, demonstrating how states make us of the expectation of reciprocity found in international humanitarian law to respond to continued non-compliance by an enemy.

<https://doi.org/10.1017/9781108761970>

### **Political violence and its discontents : a critique of refugee status as purely civilian and humanitarian**

**Ergun Cakal**. In: Journal of international humanitarian legal studies, Vol. 10, no. 1, 2019, p. 7-40

The line that refugee status is of a purely ‘civilian and humanitarian’ character cannot be strictly maintained. It has become commonplace to point out the dangers posed to the general refugee population due to the presence of combatants in or within the proximity of a refugee camp, where a separation of civilian and non-civilian elements may indeed be deemed necessary. Forgoing the

scholarship pertaining to the context of the refugee camp, which has absorbed most of the attention in this area, this paper will focus on the de jure legitimacy of a combatant seeking asylum, particularly away from the conflict zone. In light of this, there is a firm need to redraw the distinctions in this area and to account for the lack of dependence to and deference of international refugee law towards humanitarian law. There remain definitional and interpretative complexities that prevent a clear implementation of rules, particularly in non-international armed conflict. While the concern in not tarnishing asylum regimes is a legitimate one, it must be admitted that losing sight of the individuality and diversity of combatants and their motive, as occurs in the current discourse, is also erosive of protection needs and political rights, primarily the right to self-determination.

<https://doi.org/10.1163/18781527-01001002>

### **Proportionality in cyber targeting**

**Marco Roscini.** - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 88-100

The proportionality calculation in a cyber operation that shuts down a dual-use power station, will have to factor in both the loss of the civilian function performed by the installation, with consequent negative repercussions on its civilian users, and the fact that the malware might infect other computer systems. Cyber operations present both opportunities and dangers for the principle of proportionality in attack. On the one hand, their potentially less damaging character might offer a better means to minimise incidental damage to civilians and civilian property, which can be seen in the context of the trend towards effects-based warfare. On the other hand, the interconnectivity of military and civilian networks raises the question of the uncontrolled spreading of malware to other computers and networks, which might be difficult to predict and therefore to avoid or minimise.

### **Proportionality in international humanitarian law : principle, rule and practice**

**Jeroen van den Boogaard.** - [Amsterdam] : [s.n.], 2019. - 473 p.

This study examines the principle of proportionality as it applies in international humanitarian law (IHL). The study first examines international law to determine the category of legal norms in which the IHL principle of proportionality must be placed. Subsequently, the notion of proportionality is analysed in a number of branches of international law. The interrelationship of these notions is clarified in light of the theory concerning principles of international law. The study then turns to an in-depth analysis of the IHL proportionality rule and how this rule must be applied in practice and on different levels of decision-making. The final conclusion of this study is that in IHL, proportionality is understood both as a general principle permeating the interpretation and application of all IHL rules, as well as an important rule of IHL. In its practical application, the IHL proportionality rule is an inherently imprecise and flexible yardstick that nonetheless helps in protecting the civilian population. This study suggests that the balance of the proportionality assessment should in close cases tilt more towards protecting the civilian population than the wording of the rule may suggest.

### **The protagonism of the USSR and Socialist states in the revision of international humanitarian law**

**Giovanni Mantilla.** In: Journal of the history of international law, vol. 21, 2019, p. 181-211

The USSR and Socialist states played a crucial and still largely underappreciated role in the re-negotiation of international humanitarian law (IHL) in 1949 and 1977. Drawing on new multi-archival research, the author demonstrates that the support of the Soviet Union and Socialist Bloc states was essential to the negotiation of key legal achievements with regard to non-traditional conflict forms and actors, including rules on internal conflicts, national liberation war, and irregular fighters. They exerted influence chiefly through concerted action to create or side with majority coalitions alongside neutral Western or Third World countries, forcing their principal Western foes to accept rules they found undesirable. Yet Soviet-Western interactions in the re-making of IHL were not simply confrontational. In the 1970s, as Cold War hostilities cooled, East and West engaged in partial backdoor cooperativeness, leading to critical features of the Additional Protocols I and II, including rules for the protection of civilians and IHL oversight.

<https://library.icrc.org/library/docs/ArticlesPDF/46969.pdf>

**Protecting children from sexual violence in armed conflict under international humanitarian law : discrepancies between conventions and practice of international criminal courts and tribunals**

Elina Almila. In: Journal of international humanitarian legal studies, Vol. 10, issue 2, 2019, p. 217-239

Children enjoy special protection from the harms of armed conflict under international humanitarian law. While the protection of children in armed conflict has been widely researched with regard to recruitment and use of children in armed conflict, the research on protection of children from sexual violence has received less attention. In this paper I look at the protection of children in relation to sexual violence under international humanitarian law and its actualisation in the practise of international criminal courts and tribunals. I consider first how the protection of children from sexual violence under international humanitarian law made its way to Conventions. Second, I explore the case law of sexual violence as a war crime in international courts and tribunals and how the special protection of children is reflected in the case law. I argue that despite a gradual improvement, the provisions of the Conventions have not been recognised particularly well. While there have been cases in which more attention has been paid to sexual violence against children, the practice is mostly incoherent and sporadic: there exists a discrepancy between the Conventions, and the practice of international criminal courts and tribunals.

<https://doi.org/10.1163/18781527-01002008>

**Protection of civilians and individual accountability : obligations and responsibilities of military commanders in United Nations peacekeeping operations**

Lenneke Sprik. - London ; New York : Routledge, 2019. - XX,166 p.

This book explores the question of whether peacekeeping commanders can be held accountable for a failure to protect the civilian population in the mission area. This requires an assessment of whether peacekeeping commanders have an obligation to act against such serious crimes being committed under domestic and international law. The work uses the cases of the Dutch and Belgian peacekeeping commanders in Srebrenica and Kigali as examples, but it also places the analysis into the context of contemporary peacekeeping operations. It unfolds two main arguments. First, it provides a critical note to the contextual interpretation given to international law in relation to peacekeeping. It is argued that establishing a specific paradigm for peacekeeping operations with clear rules of interpretation and benchmark criteria would benefit peacekeeping and international law by making the contextual interpretation of international law redundant. Second, it is held that alternative options to the existing forms of criminal responsibility for military commanders should be considered, possibly focusing more clearly on failing to fulfil a norm of protection that is specific to peacekeeping and distinct from protective obligations under international human rights law and international humanitarian law.

**The protection of foreign investment in times of armed conflict**

Jure Zrilic. - Oxford : Oxford University Press. - XLII, 268 p.

This book explores how foreign investment is protected in times of armed conflict under the investment treaty regime. While the protections have evolved over time, with the investment treaty regime providing the strongest legal framework for protecting investors yet, there has been an apparent shift in treaty practice towards safeguarding a state's security interests. Jure Zrilic identifies and analyses the flaws in the existent normative framework, but also highlights the potential that investment treaties have for minimising the devastating effects of armed conflict. The book offers an analytical framework for assessing the investment treaty regime in times of armed conflict, distinguishing between different paradigms and different types of conflicts. Crucially, he argues that a new approach is needed to appropriately balance the competing interests of host states and investors when it comes to investment protection in armed conflicts.



## **Reflections on the development of the Movement and international humanitarian law through the lens of the ICRC Library's heritage collection**

**Ismaël Raboud, Matthieu Niederhauser and Charlotte Mohr.** In: *International review of the Red Cross*, Vol. 100, no. 907/908/909, 2018, p. 143-163

The International Committee of the Red Cross (ICRC) Library was first created at the initiative of the ICRC's co-founder and president, Gustave Moynier. By the end of the nineteenth century, it had become a specialized documentation centre with comprehensive collections on the International Red Cross and Red Crescent Movement, international humanitarian law (IHL) and relief to war victims, keeping track of the latest legal debates and technological innovations in the fields related to the ICRC's activities. The publications collected by the Library until the end of the First World War form a rich collection of almost 4,000 documents now known as the *ancien fonds*, the Library's Heritage Collection. Direct witness to the birth of an international humanitarian movement and of IHL, the Heritage Collection contains the era's most important publications related to the development of humanitarian action for war victims, from the first edition of Henry Dunant's groundbreaking *Un souvenir de Solferino* to the first mission reports of ICRC delegates and the handwritten minutes of the Diplomatic Conference that led to the adoption of the 1864 Geneva Convention. This article looks at the way this unique collection of documents retraces the history of the ICRC during its first decades of existence and documents its original preoccupations and operations, highlighting the most noteworthy items of the Collection along the way.

<https://library.icrc.org/library/docs/DOC/irrc-909-raboud.pdf>

## **Regulation of white phosphorus weapons in international law**

**Stian Nordengen Christensen.** - Brussels : Torkel Opsahl Academic EPublisher, 2016. - 53 p.

Despite widespread criticism, white phosphorus ('WP') weapons have been in use for over a century. The substance WP has a number of military applications, including as an obscurant, a marker of military targets, or an incendiary. Upon contact with human skin, WP can cause severe chemical and thermal burns, and can lead to multiple organ dysfunction syndrome. Such burns are associated with acute pain and significant morbidity. Since World War I, there have at various intervals been calls for an international ban on WP weapons. This has led individual countries to discontinue their own use of such weapons, but no international initiative has to date succeeded in gathering momentum for a clear and restrictive codification of rules for WP weapons. This paper discusses existing international regulation of WP weapons, particularly with reference to the Chemical Weapons Convention, the Convention on Certain Conventional Weapons, and customary international humanitarian law. It then proceeds to discuss if more restrictive regulation is needed, and finally how such regulation may be achieved.

<http://www.toaep.org/ops-pdf/6-christensen>

## **Report on the Swiss proposal to amend the Rome Statute to include the war crime of starvation in non-international armed conflicts**

**War crimes Committee of the International Bar Association.** - London : International Bar Association, November 2019. - 18 p.

This IBA War Crimes Committee report addresses the Swiss government's proposal for the amendment of Article 8 of the Rome Statute, which seeks to extend the crime of intentionally starving civilians to situations of non-international armed conflict. The report reviews the basis in international humanitarian law for the Swiss proposal. It highlights that the prohibition of intentionally starving civilians during non-international armed conflict is established as a substantive matter in Article 14 of Additional Protocol II to the Geneva Conventions, which has been ratified by 168 states. It notes that many states have enacted legislation or provisions in their military manuals prohibiting starvation in all types of armed conflict, which led the International Committee of the Red Cross to conclude that the prohibition of the starvation of civilians has attained the status of customary international law. The report assesses the physical and mental elements of the crime of intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including: the meaning of 'starvation', 'depriving', 'objects indispensable to the survival of the civilian population', 'intentionally', 'as a method of warfare', and 'wilfully impeding relief supplies'. The report sets out major policy

implications of the Swiss proposal, including the strengthening of accountability for starving civilians, the alignment of the Rome Statute with customary international law and other instruments, the broadening of Article 8 of the Rome Statute, and the risks of fragmentation arising from the piecemeal adoption of amendments to Article 8 war crimes.

<https://www.ibanet.org/Document/Default.aspx?DocumentUid=6EDDC2FA-E7DA-4682-A360-185FA1140AE7>

### **Research handbook on child soldiers**

ed. by Mark A. Drumbl [and] Jastine C. Barrett. - Cheltenham ; Northampton : E. Elgar, 2019. - XIX, 542 p.

Child soldiers remain poorly understood and inadequately protected, despite significant media attention and many policy initiatives. This Research Handbook aims to redress this troubling gap. It offers a reflective, fresh and nuanced review of the complex issue of child soldiering. The Handbook brings together scholars from six continents, diverse experiences, and a broad range of disciplines. Along the way, it unpacks the life-cycle of youth and militarization: from recruitment to demobilization to return to civilian life. The overarching aim of the Handbook is to render the invisible visible – the contributions map the unmapped and chart new directions. Challenging prevailing assumptions and conceptions, the Research Handbook on Child Soldiers focuses on adversity but also capacity: emphasising the resilience, humanity, and potentiality of children affected (rather than ‘afflicted’) by armed conflict.

### **Returning foreign fighters : the case of Denmark**

Helene Højfeldt Jakobsen. In: International review of the Red Cross, Vol. 100, no. 907/908/909, 2018, p. 315-336

This article considers which legal regimes apply in cases where a Danish citizen and/or resident returns from Syria or Iraq after having taken part in the armed conflict on behalf of the group known as Islamic State, and continues his/her affiliation with the armed group. The article argues that international humanitarian law currently applies to the Danish territory and that a Danish foreign fighter may continue to be considered as taking a direct part in hostilities after having returned from Iraq or Syria. The article then considers the application of Danish criminal law to returned foreign fighters and argues that Danish counterterrorism laws do not apply to members of the armed forces of an armed group that is party to an armed conflict with Denmark.

<https://library.icrc.org/library/docs/DOC/irrc-909-jakobsen.pdf>

### **Returning the ‘fallen terrorist’ for burial in non-international armed conflicts : the rights of the deceased, the obligations of the State, and the problem of collective punishment**

Frédéric Mégret ; Chloe Swinden. In: Journal of international humanitarian legal studies, Vol. 10, issue 2, 2019, p. 337-370

Although the regime applicable to the return of remains of combatants in international armed conflict is well known, the regime applicable in non-international armed conflicts is less clear. This is particularly the case when the members of armed groups are deemed to be ‘terrorists’ by the State which then refuses to return them to their families. The article examines how a Russian law to that effect has been examined and found wanting by the European Court of Human Rights. It suggests that the return of remains following non-international armed conflicts raises characteristic issues for the debate on the simultaneous and competing applicability of international humanitarian and international human rights law.

<https://doi.org/10.1163/18781527-01002003>

## **Revise your syllabi : Israeli Supreme Court upholds authorization for torture and ill-treatment**

**Smadar Ben-Natan.** In: *Journal of international humanitarian legal studies*, Vol. 10, no. 1, 2019, p. 41-57

This paper reviews the recent decision of the Israeli Supreme Court in the case of *Tbeish v Attorney General*, in light of the 1999 landmark *Public Committee against Torture in Israel (PCATI)* case, which prohibited torture and ill-treatment of detainees, but acknowledged necessity as a possible criminal defence for interrogators. *Tbeish* is not framed as a break from the past, or even as a change in the law, but the author argues that it provides a new authorization for torture and ill-treatment. The Court upheld internal guidelines of the Israeli Security Agency (ISA) that establish a ‘necessity procedure’ for the application of ‘special interrogation means’. The Court’s specific construction of the guidelines circumvents the unambiguous prohibition in *PCATI* on general rules setting criteria for using special interrogation means, by turning the process into a supposedly ad hoc decision on each individual case without preexisting rules. Nevertheless, this paper argues, the decision approves a system of prior authorization for the use of violent means of interrogations. Creating a framework for an organizational decision, the guidelines relieve interrogators of personal responsibility for potentially unlawful acts by shifting the meaning and function of necessity from a criminal defence to a principle of governmental action. As such, they provide bureaucratic authorization and justification for acts which violate the prohibition against torture.

<https://doi.org/10.1163/18781527-01001008>

## **Revolutionary law abidance : Kachin rebel governance and the adoption of IHL in resistance to Myanmar state violence**

**Alicia de la Cour Venning.** In: *International criminal law review*, Vol. 19, no. 5, 2019, p. 872-904

Although armed opposition actors are increasingly prevalent within contemporary conflicts, ethnographies seeking to understand and explain their relationship with international law are scarce. While scholars highlight the state-centric nature of international law, discussing at length how it privileges state over non-state actors, few examine the way rebels perceive and relate to the international legal system. Drawing on seven months of field research among Kachin civil society and the Kachin Independence Organisation / Army (kio/A), this article demonstrates how the kio/A’s nascent engagement with international law is being strategically pursued as part of a broader rebel governance project. Ethnographic research exposes the oft neglected rebel perspective. It reveals how rebels interact with international humanitarian norms as a means to facilitate and mediate relations with both local and international actors, in an attempt to promote nation building aspirations and thereby strengthen resistance to state violence.

<https://doi.org/10.1163/15718123-01906003>

## **The "robots don't rape" controversy**

**Maziar Homayounnejad and Richard E. Overill.** - In: *Routledge handbook of war, law and technology*. - New York : Routledge, 2019. - p. 169-181

The idea that ‘robots don’t rape’, whereas human soldiers might, has been a formally acknowledged by a Special Rapporteur in the United Nations (UN) Human Rights Council and adduced by various experts at the UN’s Meetings of Experts on lethal autonomous weapon systems. The argument is distinctly pro-autonomous weapons systems, and should be seen as part of the broader narrative on the apparent virtues of robotic warfare. In this chapter, the controversy is explored and technical and legal aspects are discussed. The first section covers the details of the debate. The subsequent sections tackle three limitations that make the application of conventional wartime rape and torture law to the use of autonomous weapons systems problematic: the question of distance, design-led safeguards; and the introduction of “kill switch” technology.

### **The role of nonstate entities in developping and promoting international humanitarian law**

**Knut Dörmann.** In: Vanderbilt journal of transnational law, Vol. 51, 2018, p. 713-726

In recent years, both states and nonstate entities, the number of which has increased, have found ways to stimulate debate about how to interpret, apply, and clarify international humanitarian law (IHL). The development, interpretation and clarification of IHL have largely occurred not so much through treaty making, but through other, non-legally binding avenues. There is a spectrum of such activity, ranging from state-driven processes aimed at producing non-legally binding outcomes, to hybrid processes involving states, independent experts, and various bodies. The International Committee of the Red Cross (ICRC) serves as a prominent actor in this regard, initiating ICRC-specific initiatives, expert processes, and academic writing.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/47294.pdf>

### **The role of reciprocity in international humanitarian law training : examples from historical and contemporary US practice**

**Matthew T. Zommer.** In: Journal of political and military sociology, Vol. 46, no. 1, 2019, p. 27-51

While scholars assert that reciprocity is a force that influences international humanitarian law, the literature has yet to include a detailed analysis of its role in military training. This presents two limitations. First, a substantial quantity of primary source material pertaining to state practice goes underutilized. Second, the methods by which international humanitarian law are promulgated and disseminated to soldiers during training are overlooked. Thus, a potentially important factor in adherence remains under-examined. This article analyzes historical and contemporary military training material including manuals, pamphlets, circulars, and films. Research results suggest that reciprocity impacts international humanitarian law training in varied, nuanced, and dynamic ways. In particular, an emphasis on reciprocity remains a consistent message in post-Vietnam War training. Furthermore, positive reciprocity in the form of a golden rule rationale is often used to justify adherence and remains prevalent in post-9/11 training material.

<http://journals.upress.ufl.edu/jpms/article/view/978/1083>

### **Roots of restraint in war : the capacities and limits of law and the critical role of social agency in ameliorating violence in armed conflict**

**Dale Stephens.** In: Journal of international humanitarian legal studies, Vol. 10, no. 1, 2019, p. 58-75

International humanitarian law (ihl) primarily applies to govern the conduct of individuals in the most desperate time of human endeavour, namely armed conflict, in order to ameliorate violence. However, understanding how ihl is disseminated, trained and actually applied in the battlespace is, remarkably, a relatively underexplored area. There are countless volumes dedicated to analyzing and parsing the myriad of words and formulas that comprise this burgeoning body of law. However, there is very little empirical analysis undertaken on effective training strategies and even less on tracking nuanced compliance and decision-making processes in actual armed conflict. Against this background, the 2018 ICRC study ‘The Roots of Restraint in War’ offers an insightful account of how to best frame training strategies and how to optimize compliance in the battlespace. It consciously adopts an inter-disciplinary approach. It accepts fully the role of social, ethical and moral factors that can orientate decision making in a manner that combines with the applicable law. The goal is restraint in war, of a type that comes not from clinical compliance with complex legal formulas and interpretative rectitude but is derived from a deeper sense of professional self-identity. It acknowledges the risks inherent in its approach and yet, compellingly, offers a blueprint for melding principles of ihl with a sense of personal commitment. Such an approach is to be celebrated for the audacity and courage that it exhibits.

<https://doi.org/10.1163/18781527-01001005>

## **Security, rights and law : the Israeli High Court of Justice and Israeli settlements in the occupied West Bank**

**Rouba Al-Salem.** - London ; New York : Routledge, 2019. - XVI, 260 p.

This book examines how the Israeli High Court of Justice (HCJ) has interpreted and applied international law principles in adjudicating petitions filed by Palestinians. The research focuses on HCJ judgments that have been rendered since the outbreak of the Second Intifada (2000) in relation to petitions challenging the legality of measures implemented by various Israeli governments and military authorities for the professed need of enhancing the security of Israeli settlements and settlers in the occupied West Bank. It discusses to what extent the HCJ provides a venue for an effective domestic remedy for alleged violations of the Palestinians' internationally protected rights. It further analyses the judgments of the Court seeking to demonstrate why it appears to show a preference for invoking principles of Israeli administrative and constitutional law, thereby promoting the domestic rather than international Rule of Law. Although the jurisprudence of the HCJ has often been hailed as that of an 'activist' court, the analysis of petitions adjudicated by the Court between 2000 and 2014 illustrates why its approach is ill-suited to a situation of prolonged military occupation. Finally, the book evaluates what impact the Court's adjudication, reasoning and interpretation has on the normative coherence of the international law of belligerent occupation.

## **Shifting from autonomous weapons to military networks**

**Léonard Van Rompaey.** In: *Journal of international humanitarian legal studies*, Vol. 10, no. 1, 2019, p. 111-128

The persistent anthropomorphism of lethal autonomous weapons systems (LAWS) as the replacement for human soldiers creates irrelevant expectations of physical embodiment and cognitive individualization. This anthropomorphism taints the analysis and discussions on the adaptation of international humanitarian law (IHL) by excluding relevant technologies from the scope of discussions. Shifting from LAWS to a network-centric sociotechnical systems perspective allows to remedy the under inclusiveness of the LAWS perspective by shifting away from the salient features of LAWS, in favour of a focus on the interactions with, and influence that the technology has on human decision-making in warfare. By criticizing the relevance of the technological focus of the current diplomatic process, the paper argues that the network-centric perspective is not only more accurate, but also more helpful and practical in adapting IHL to the armed conflicts of the twenty-first century.

<https://doi.org/10.1163/18781527-01001011>

## **The sovereign right to kill : a critical appraisal of Israel's shoot-to-kill policy in Gaza**

**Noura Erakat.** In: *International criminal law review*, Vol. 19, no. 5, 2019, p. 783-818

In the Gaza Strip, Israel's military used lethal force against civilian protestors engaged in the 'Great Return March' of 2018. In its late May 2018 ruling, the Israeli Supreme Court held this use of force as legitimate self-defense. This article challenges Israel's security response to these protests in an attempt to both unsettle a warfare discourse and to urge for a distinct ontological approach. The article argues that an ongoing settler-colonial project has racialised the Palestinian body as a security threat, and historicises Israel's shoot-to-kill policy as merely one contemporary mode of dispossessing the native body. This includes a novel framework of armed conflict that has diminished the category of the civilian and expanded the scope of legitimate targets permitting the killing of greater numbers of Palestinians in the language of law; the article calls this legal technology the 'shrinking civilian'.

<https://doi.org/10.1163/15718123-01905002>

## **A state of complicity : how Russia's persistent and public denial of Syrian battlefield atrocities violates international law**

**Robert Lawless.** In: *Harvard national security journal*, Vol. 9, issue 1, 2018, p. 180-226

Despite overwhelming evidence offered by States and other members of the international community, Russia has continued to deny the Syrian government's responsibility for numerous



attacks on civilians. The author asserts that Russia is in violation of international law under the theory of State complicity, based on its repeated denial of the Syrian government's wrongdoing and its implicit encouragement of the regime's human rights atrocities. He then considers the legal consequences of finding Russia responsible under international law, as well as the prospects for holding Russia accountable.

[https://harvardnsj.org/wp-content/uploads/sites/13/2018/01/5\\_Lawless\\_StateofComplicity-1.pdf](https://harvardnsj.org/wp-content/uploads/sites/13/2018/01/5_Lawless_StateofComplicity-1.pdf)

### **State responsibility for complicity in the internationally wrongful acts of non-state armed groups**

**Richard Mackenzie-Gray Scott.** In: *Journal of conflict and security law*, Vol. 24, no. 2, Summer 2019, p. 373-407

Determining the responsibility of a state for complicity in the internationally wrongful act of a non-state armed group is an issue that requires analysis from a general international law standpoint. There are numerous ongoing conflicts throughout the world, which are fought by states and non-state armed groups. In the course of such violence, rules of international humanitarian law and international human rights law are breached. There is abundant practice of states rendering aid or assistance to non-state armed groups in their undertakings, whether through the provision of weapons, financial aid, logistical support, intelligence sharing, and/or otherwise. Therefore, when non-state armed groups commit internationally wrongful acts that have been helped by states through such avenues, complicity becomes a pertinent issue. This article addresses and answers the following question: how can the responsibility of a state be established for complicity in the unlawful act(s) of a non-state armed group?

<https://doi.org/10.1093/jcsl/krz002>

### **The status of nuclear deterrence under international law in light of the Treaty on the prohibition of nuclear weapons**

**Stuart Casey-Maslen.** In: *Yearbook of international humanitarian law*, Vol. 21, 2018, p. 23-57

Nuclear deterrence is not illegal under international law but is being delegitimised, in part as a result of the adoption of the United Nations Treaty on the Prohibition of Nuclear Weapons. The Treaty prohibits not only possession, control over, threat of use, and use of nuclear weapons or other nuclear explosive devices; it also precludes a state party from encouraging and assisting anyone to engage in such prohibited activities. Moreover, artificial intelligence, offensive cyber operations, and enhanced non-nuclear weapons with strategic impact are combining to render nuclear deterrents ineffective while greatly increasing the risks of unintended or accidental use. Conflict in February 2019 between two nuclear-armed states, India and Pakistan, has shown the dangers and frailties of nuclear deterrence. Nonetheless, nuclear-armed states are engaging in major nuclear weapon modernisation programmes, resulting in a new nuclear arms race. This new race is characterised by the development and deployment of hypersonic missiles containing multiple independently targetable warheads as well as by variable-yield nuclear weapons. Nuclear disarmament, which was negotiated by statesmen at the height of the Cold War, is urgently needed.

[http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2285461&site=ehost-live&ebv=EB&ppid=pp\\_C3\\_BE\\_C3\\_BF23](http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2285461&site=ehost-live&ebv=EB&ppid=pp_C3_BE_C3_BF23)

### **Still a blind spot : the protection of LGBT persons during armed conflict and other situations of violence**

**Alon Margalit.** In: *International review of the Red Cross*, Vol. 100, no. 907/908/909, 2018, p. 237-265

This article draws attention to the situation of LGBT persons during armed conflict. Subjected to violence and discrimination outside the context of armed conflict, the latter aggravates their vulnerability and exposure to various abuses. Despite important progress made with respect to their protection under human rights law, a similar effort is largely absent from the international humanitarian law discourse. This article accordingly highlights some of the norms and challenges pertaining to the protection of LGBT persons in time of war.

<https://library.icrc.org/library/docs/DOC/irrc-909-margalit.pdf>

### **Substantive technicalities : understanding the legal framework of humanitarian assistance in armed conflicts through the prescription of technical arrangements**

Major Tzvi Mintz. In: *Military law review*, Vol. 227, 2019, issue 3, p. 275-319

This article focuses on the prescription of technical arrangements for humanitarian assistance in the law of armed conflict (LOAC). It argues that there exists a series of legitimate reasons for prescribing such arrangements, notably preventing interference with military operations and protecting the consignments, the beneficiaries or other concerned. Part II of the article reviews the key elements of the norms regulating humanitarian assistance in LOAC, attempting to both frame the issue of technical arrangement and point out gaps in the current legal understanding of the issue of as whole. Part III provides a detailed examination of considerations that can be lawfully addressed by prescribing technical arrangements. Part IV analyzes the balancing act required to examine the influence of the technical arrangements on the humanitarian assistance. Finally, part V demonstrates the theoretical and practical benefits of examining the entirety of the issue of humanitarian assistance in armed conflict through the prescription of technical arrangements.

[https://www.loc.gov/rr/frd/Military\\_Law/Military\\_Law\\_Review/pdf-files/227-issue3-2019.pdf](https://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/227-issue3-2019.pdf)

### **Symposium : beyond killer robots : networked artificial intelligence systems disrupting the battlefield**

Hin-Yan Liu, Léonard Van Rompaey and Matthijs M Maas. In: *Journal of international humanitarian legal studies*, Vol. 10, no. 1, 2019, p. 77-202

Includes: From the autonomy framework towards networks and systems approaches for "autonomous" weapons systems / H.-Y. Liu. - Shifting from autonomous weapons to military networks / L. Van Rompaey. - Innovation-proof global governance for military artificial intelligence ? / M. M. Maas. - The Digital Geneva Convention / V. Jeutner. - Blurred lines : multi-use dynamics for satellite remote sensing / N. E. Clark. - Controlling the autonomous warrior : institutional and agent-based approaches to future air power / G. Schaub Jr.

<https://doi.org/10.1163/18781527-01001007>

### **Synthetic biology and the categorical ban on bioweapons**

Filippa Lentzos and Cecilie Hellestveit. - In: *Routledge handbook of war, law and technology*. - New York : Routledge, 2019. - p. 215-236

This chapter analyses the security threat posed by efforts to engineer biology by placing the threat in its technical, historical, social, political, and legal contexts. It deals with a short introduction to the scientific developments that are putting synthetic pathogens within reach at a rapid pace. The chapter discusses the interests and capabilities of non-state and state actors in applying synthetic biology to bioterrorism and biological weapons attacks. It argues that while the potential for state use is very low, this is where the most significant security threat from synthetic biology is originating – and not from non-state actors, which receive the vast amount of attention in policy discussions. The chapter explores the interest and capabilities of non-state and state actors in applying synthetic biology to bioterrorism and biological weapons attacks. Bioweapons might not have military utility in all contemporary conflicts, but they might well have utility in a small subset.

### **To serve the enemy : informers, collaborators, and the laws of armed conflict**

Shane Darcy. - Oxford : Oxford University Press, 2019. - 236 p.

A constant yet oftentimes concealed practice in war has been the use of informers and collaborators by parties to an armed conflict. Despite the prevalence of such activity, and the serious and at times fatal consequences that befall those who collaborate with an enemy, international law applicable in times of armed conflict does not squarely address the phenomenon. The recruitment, use and treatment of informers and other collaborators is addressed only partially and at times indirectly by international humanitarian law. In this book, Shane Darcy examines the development and application of the relevant rules and principles of the laws of armed conflict in relation to collaboration. With a primary focus on international



humanitarian law as may be applicable to various forms of collaboration, the book also offers an assessment of the relevance of international human rights law.

### **Training surrogate forces in international humanitarian law : lessons from Peru, Colombia, El Salvador, and Iraq**

**Patrick Paterson.** - MacDill, FL : Joint Special Operations University Press, 2016. - 118 p.

Patrick Paterson's monograph, *Training Surrogate Forces in International Humanitarian Law: Lessons from Peru, Colombia, El Salvador, and Iraq*, leverages the author's vast experience in Latin American history to examine how U.S. Special Operations Forces (USSOF) train surrogate forces. He argues that it is necessary to employ United States Special Operations Command's (USSOCOM) indirect approach to grow and build partnership capacity through foreign internal defense (FID) and to find a balance with international humanitarian law (IHL). Paterson also examines the legal issues and restrictions on training and equipping foreign forces and the impact of these exchanges with our partners. His research methodology includes extensive interviews and incorporates a historical case study approach, examining FID efforts in Peru, Colombia, and El Salvador for lessons learned, and then compares and contrasts USSOF train-and-equip efforts in Iraq.

[https://jsou.libguides.com/ld.php?content\\_id=24773901](https://jsou.libguides.com/ld.php?content_id=24773901)

### **Unearthing the problematic terrain of prolonged occupation**

**Yutaka Arai-Takahashi.** In: *Israel law review*, Vol. 52, no. 2, 2019, p. 125-167

This article explores the travaux préparatoires of the key legal instruments on the laws of war and international humanitarian law (IHL) with a view to obtaining crucial insight into the 'original' understandings of their drafters as to the provisional nature and the temporal length of occupation. The findings of the travaux show the general premise of the framers of the 'classic' instruments on the laws of war that the legal regime of occupation should be provisional. In the concurrent doctrinal discourses this premise was endorsed by most scholars. Examination of the records of the negotiations on the drafting of the Fourth Geneva Convention of 1949 reveals that even the proponents of 'transformative occupation' did not seem to envisage occupation that would endure for decades. Nevertheless, by the time the 1977 Additional Protocol I was drafted, several instances of protracted occupation already existed, which seems to have led to a decisive shift in the argumentative structure. There is no disputing the applicability of IHL to any occupied territory, irrespective of the length of the occupation. Yet the suggestion that nothing under IHL would forestall an occupying power from engaging in protracted occupation departs from the traditional premise that occupation ought to be provisional. This also seems to be paradoxical in historical perspectives.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/47081.pdf>

### **The United States and the Coalition Provisional Authority – occupation by proxy ?**

**Amy Elizabeth Chinnappa.** In: *Leiden journal of international law*, Vol. 32, no. 3, September 2019, p. 415-436

The Coalition Provisional Authority (CPA) governed Iraq from 2003 following Resolution 1483 of the UN Security Council. This Resolution affirmed that Iraq was in a state of occupation and that there were occupying powers. The Resolution referred to the United States of America and the United Kingdom as 'occupying powers under the unified command of the "Authority"', the 'Authority' being the CPA. However, the legal status of the CPA and its relationship to the US (the focus of this article) is not entirely clear, both under US domestic law and international law. This lack of clarity could have significant implications for the US's responsibility for the CPA's conduct. As with private military companies, a CPA-style administration of territory could become a tool for states to quarantine their risk under the law of occupation. This article contends that the theory of occupation by proxy may help clarify the legal status of the CPA and its relationship to the US and could assist in closing the identified gap in responsibility. To support this argument, this article establishes a legal framework for the theory of occupation by proxy which is then applied to the CPA and US.

<https://doi.org/10.1017/S0922156519000219>

**Unsettled : a global study of settlements in occupied territories**

Eugene Kontorovich. In: Journal of legal analysis, Vol. 9, no. 2, Winter 2018, p. 285-350

This article provides the first comprehensive examination of international practice bearing on Article 49(6) of the Fourth Geneva Convention. This provision is the basis for legal criticism of Israeli settlement policy. This article closely examines the international community's treatment of settlers in all situations governed by the Geneva Conventions, to test the broad view of 49(6) advanced in the Israeli context against state practice regarding the rest of the world. It finds that the growth of settler populations is a ubiquitous feature of long-term occupations of contiguous territory, but one that is not characterized as violating the Geneva Convention.

<https://doi.org/10.1093/jla/lax004>

**War by agreement : a contractarian ethics of war**

Yitzhak Benbaji and Daniel Statman. - Oxford : Oxford University Press, 2019. - XIII, 215 p.

*War by agreement* presents a new theory on the ethics of war. It shows that wars can be morally justified at both the *ad bellum* level (the political decision to go to war) and the *in bello* level (its actual conduct by the military) by accepting a contractarian account of the rules governing war. According to this account, the rules of war are anchored in a mutually beneficial and fair agreement between the relevant players - the purpose of which is to promote peace and to reduce the horrors of war. The book relies on the long social contract tradition and illustrates its fruitfulness in understanding and developing the morality and the law of war.

**Water and the law of armed conflict**

Haley Freking. In: Natural resources and environment, no. 40, Fall 2016, 6 p.

The law of armed conflict (LOAC) aims to minimize the damage to civilian populations during periods of armed conflict. It also seeks to protect the natural environment that people rely on in order to survive. This article examines how the LOAC pertains to water, a resource of particular concern in recent years. Specific issues covered include how international treaties affect state protection of water during times of armed conflict; when the four core principles of the international law of armed conflict allow water to be used as a lawful military objective; when a state can target water installations; and what protections are afforded to those who work to maintain a clean water supply for civilians during armed conflicts.

**Weapons law, weapon reviews and new technologies**

Bill Boothby. - In: Routledge handbook of war, law and technology. - New York : Routledge, 2019. - p. 22-40

This chapter discusses the principles and rules of the law of weaponry and the obligation legally placed on all States to review new weapons. It considers the normal weapons law criteria. The Biological Weapons, Chemical Weapons, Ottawa, and Cluster Munitions Conventions apply to all classes of conflict, as do the customary law on superfluous injury/unnecessary suffering and indiscriminate weapons principles and the customary rules of weapons law, such as the prohibition of poisons or poisoned weapons. The law is not prescriptive as to the form that a weapon review must take, does not lay down any required procedure, and does not oblige states to disclose the contents of their reviews. The weapon reviewer is concerned with the law applicable to the weapon system as such and not with the legality of a particular attack. The weapon reviewer should then consider whether the automated or autonomous weapon system is capable of being used in accordance with the targeting rules.

**What is a war crime ?**

Oona A. Hathaway, Paul K. Strauch, Beatrice A. Walton, Zoe A. Y. Weinberg. In: The Yale journal of international law, Vol. 44, issue 1, 2019, p. 53-113

What is a war crime? The question appears to have a simple answer: a war crime is a violation of the law of war. But do all violations of the law of war qualify as war crimes? And are all war crimes violations of the law of war? These questions are not new. In 1942, Hersch Lauterpacht, a leading international lawyer who assisted the prosecution of the Nazis for war crimes at the International

Military Tribunal (IMT) in Nuremberg, wrote a memo in which he asked, “Is there a definition of war crimes?” More than seven decades later, the answer to his question remains unsettled.

<https://digitalcommons.law.yale.edu/yjil/vol44/iss1/3>

### **Who is a civilian ? : perceptions of "civilianness" in the Central African Republic**

**Rebecca Sutton.** - [Fiesole] : European University Institute, [July 2019]. - 13 p.

Rebecca Sutton, a post-doctoral researcher on the Individualization of War project, has authored a policy brief following a research trip to the Central African Republic in April 2019. The brief addresses questions of who is civilian in CAR, exploring the perceptions of international humanitarian actors, MINUSCA staff, IDPs and local conflict actors. The brief also considers the relevance of international (humanitarian) law in CAR, from the perspective of international humanitarian and peacekeeping actors.

<https://iow.eu.eu/wp-content/uploads/sites/20/2019/07/IOW-Policy-Brief-1-Sutton-Full-Brief-070719.pdf>

### **Will the war on terror ever end ?**

**Rebecca Mignot-Mahdavi.** In: *La Revue des droits de l'homme*, Mars 2019, 8 p.

The announcement of President Trump on 19 December 2018 that the US would withdraw its troops from Syria and following reactions provide evidence of the uncertainties on the end of armed conflicts, a factual, strategic and legal matter. The question of the temporal scope of application of international humanitarian law (IHL) is one of the most unsettled issue of IHL, while it may be the most problematic in the context of contemporary endless wars. In the aftermaths of Trump’s announcement, French Defence minister Florence Parly acknowledged that the group had been significantly weakened, but said the battle was not over because the "Islamic State has not been wiped from the map, nor have its roots. The last pockets of this terrorist organization must be defeated militarily once and for all." This declaration, while not explicitly declaring commitment to a legal theory on the end of conflicts, deserves special attention as it reminds the language of the “no-reasonable-risk-of-resumption theory” according to which non-international armed conflicts end (and IHL ceases to apply in relation to it) where there is no reasonable risk of hostilities resuming. This theory, if the threshold to assess the absence of reasonable risk is set high – achieved once all members of the enemy group are annihilated – is the object of the present analysis. The goal of this paper, thereby, is not to attribute a legal theory to France that it has not explicitly adopted, but to investigate what doing so would entail.

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