BIBLIOGRAPHY
1st Issue 2022

International Humanitarian Law

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

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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.

Access to document

Whenever an article is electronically available in full text, a link allows you to access the document directly. Links followed by a * are restricted to subscribers or otherwise limited to ICRC staff. All documents are available for loan at the ICRC Library. In case your local library cannot provide you with some of the documents, requests for copies or scans (in a reasonable amount) can be sent to library@icrc.org

Chronology

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

Contents

The bibliography lists writings on IHL subjects (e.g. articles, monographs, chapters, reports and working papers) in English and French, with the addition of writings in German and Spanish since 2022.

Sources

The ICRC Library monitors a wide range of sources, including all 90 journals to which the Library subscribes, bibliographical databases, legal databases, legal publishers' catalogues, legal research centres and non-governmental organizations. It also receives suggestions from the ICRC legal advisers.

Disclaimer

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

Subscription and feedback

Please send your request for subscription or feedback to library@icrc.org with the subject heading "IHL bibliography subscription/feedback".

I. General issues

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

Actor legitimacy and the application of IHL : a rejoinder to d'Aspremont

Tom Ruys. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 41-54

Additional Protocol II : elevating the minimum threshold of intensity ?

Martha M. Bradley. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1125-1152
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Global norms governing the protection of civilians, conflict and weapons : formal or informal law-making ?

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La protection de l'environnement en cas de conflit armé dans l'espace extra-atmosphérique

Mathilde Vigné. - In: Droit de l'espace extra-atmosphérique : questions d'actualité. - Toulouse : Presses de l'Université de Toulouse 1 Capitole, 2021. - p. 133-146

Le régime juridique du conflit armé dans l'espace extra-atmosphérique : une consolidation du droit international humanitaire par le droit de l'espace

Louis Perez. - In: Droit de l'espace extra-atmosphérique : questions d'actualité. - Toulouse : Presses de l'Université de Toulouse 1 Capitole, 2021. - p. 113-132

Respecting international humanitarian law and safeguarding humanitarian action in counterterrorism measures : United Nations Security Council resolutions 2462 and 2482 point the way

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La superposition du droit des conflits armés internationaux et non internationaux s'agissant d'un seul et même acte dans le cadre des conflits armés dits transnationaux

Robert Kolb. - In: Panser la guerre, penser la paix : mélanges en l'honneur du Professeur Rahim Kherad. - Paris : Pedone, 2021. - p. 299-306

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III. Armed forces / Non-state armed groups

(Combatant status, compliance with IHL, etc.)

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VI. Protection of persons

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IX. Law of occupation

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X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

Armed escorts to humanitarian convoys : an unexplored framework under international humanitarian law

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XIII. International human rights law

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Chiara Redaelli. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 119-161
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The conflict in Syria and the failure of international law to protect people globally : mass atrocities, enforced disappearances and arbitrary detentions

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Ezequiel Heffes. - Cambridge [etc.] : Cambridge University Press, 2022. - XXIII, 278 p.
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Neve Gordon. - In: Everybody's war : the politics of aid in the Syria crisis. - Oxford : Oxford University Press, 2021. - p. 58-85

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Michiel Hofman. - In: Everybody's war : the politics of aid in the Syria crisis. - Oxford : Oxford University Press, 2021. - p. 185-210

Unravelling unlawful confinement in contemporary armed conflicts : belligerents' detention practices in Afghanistan, Syria and Ukraine

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UNITED STATES

Animating the U.S. War Crimes Act

Beth Van Schaack. In: International law studies, Vol. 97, 2021, p. 1541-1587
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Do unto others in war ? The golden rule in law of armed conflict training

Matthew T. Zommer. In: Journal of military ethics, Vol. 20, no. 3-4, 2021, p. 200-216
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Impact of US anti-terrorism legislation on the obligation of non-state armed groups to provide medical care to the wounded and sick under IHL

Audrey Palama. - In: Health care in contexts of risk, uncertainty, and hybridity. - Cham : Springer, 2022. - p. 49-76

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All with Abstracts

Actor legitimacy and the application of IHL : a rejoinder to d'Aspremont

Tom Ruys. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 41-54

IHL is meant to apply equally to all combatants irrespective of the legitimacy of the nature or origin of the conflict. Yet, this comment demonstrates how legitimacy considerations do influence IHL, especially regarding the applicability of IHL and within the context of the dichotomy between IACs and NIACs. The author depicts how concerns regarding actor legitimacy affect the assessment of both IACs relying on the criteria of statehood under international law, and of NIACs bearing on the intensity of the violence and the degree of organization of the armed group, as these criteria are - contrary to their purpose - not entirely objective and open to interpretation. As far as NIACs are concerned, considerations of actor legitimacy further influence the possibility of allowing criminal prosecution of members of non-state armed groups and denying them belligerent equality, which leads to a worrisome disregard of IHL in NIACs.

Additional Protocol II : elevating the minimum threshold of intensity ?

Martha M. Bradley. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1125-1152

This paper examines the notion of intensity in the context of common Article 3 and Additional Protocol II (AP II) to the Geneva Conventions in order to establish whether AP II demands a different intensity threshold from the minimum threshold of intensity contemplated in common Article 3. The paper considers the question of whether the inclusion of the term “sustained” in the phrase “sustained and concerted military operations” intrinsic to the threshold in Article 1(1) of AP II introduces a temporal requirement in addition to mere protracted armed violence. The paper argues that the inclusion of the term “sustained” in Article 1(1) of AP II potentially demands prolonged protracted armed violence. The research aims to contribute to the existing literature on the notion of intensity demanded by the scope of application inherent in AP II through an interrogation of the phrase “sustained” military operations by employing the rules of treaty interpretation and by examining relevant case law and scholarly debate. In this way, the author hopes to contribute towards filling a lacuna with regard to the minimum threshold for intensity in the context of treaty law concerned with the classification of non-international armed conflicts.

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Animating the U.S. War Crimes Act

Beth Van Schaack. In: International law studies, Vol. 97, 2021, p. 1541-1587

All war crimes are challenging to prosecute. Typical reasons include the technicality of some constitutive elements, the difficulties of amassing sufficient evidence, the vagaries of unreliable or unavailable witnesses, and the often-impenetrable khaki wall of silence. Adding to these challenges, the United States has erected a number of idiosyncratic structural barriers in the way in which it has incorporated the prohibitions against war crimes into its domestic legal frameworks, both military and civilian. This article addresses problems with the U.S. federal war crimes statute and proposes reforms that would (1) better conform to U.S. obligations under the Geneva Conventions and enable the United States to prosecute war crimes committed anywhere in the world regardless of the nationality of the victim or perpetrator, (2) withdraw and repudiate controversial Office of Legal Counsel memoranda advancing a crabbed interpretation of the concept of “protected persons” when it comes to individuals in the custody of a High Contracting Party to the Conventions, (3) restructure the statute to obviate the need to undertake a complicated conflict classification exercise, (4) enact a superior responsibility statute that would apply to war crimes and other international crimes within U.S. jurisdiction, and (5) re-penalize the war crime of “outrages upon personal dignity, in particular humiliating and degrading treatment,” which is prohibited by Common Article 3 but was decriminalized upon the passage of the Military Commissions Act of 2006.

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Aplicación de la figura de crimen de guerra como límite al beneficio de amnistía en la Jurisdicción Especial para la Paz

César Rojas-Orozco. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 163-192

El derecho internacional humanitario prevé tanto la concesión de amnistías al final de un conflicto armado no internacional como su prohibición por crímenes de guerra. Sin embargo, pese a que la figura de crimen de guerra tiene una larga historia en conflictos armados internacionales, su extensión a conflictos no internacionales solo tuvo lugar desde 1995, y aún persisten vacíos sobre su aplicación, particularmente por

tribunales nacionales. Por esto, el mandato de la Jurisdicción Especial para la Paz en Colombia para decidir la concesión de amnistías a través de un trámite judicial, y bajo el marco del derecho internacional, plantea retos y oportunidades para delinear el contenido y alcance de la figura de crimen de guerra como límite a dicho beneficio. Al efecto, este artículo analiza la forma como la Jurisdicción ha entendido y aplicado la categoría de crimen de guerra para excluir el beneficio de amnistía en sus primeros tres años de funcionamiento, dando cuenta de las discusiones que subyacen al tema, los referentes aplicables de la normativa y la jurisprudencia internacional, y los aportes que esta jurisdicción está haciendo al aún incompleto desarrollo de la noción de crimen de guerra en los conflictos armados no internacionales.

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The applicability of the law of occupation to UN administration of foreign territory

Eyal Benvenisti. - In: Strenghtening human rights protections in Geneva, Israel, the West Bank and beyond. - Cambridge : Cambridge University Press, 2021. - p. 103-129

This contribution seeks to critically examine the UN position with respect to the legal status of the administration of territory by UN-authorised actors. The essay first explores whether the law of occupation applies to direct administration of foreign territory by the UN or its authorized organs. It then examines as a case study the practice of the UN administration of Kosovo. The essay argues that unfettered discretion for civil servants, even international civil servants, undermines the functionality of any administration. Embracing the discipline of accountability embedded in the law of occupation to UN-led administration of territories is therefore required. This discussion provides the grounding for the argument that as a matter of both lex lata and lex ferenda any administration of territories without a valid sovereign consent, even when exercised by the UN, qualifies as an occupation, and is hence subject to the requirements of law of occupation.

Armed escorts to humanitarian convoys : an unexplored framework under international humanitarian law

Annabel Bassil. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 559-578

The use of armed escorts to humanitarian convoys delivering humanitarian assistance potentially increases the targeting of these convoys, yet so far this use has not been examined from the perspective of international humanitarian law (IHL). This article attempts to determine whether the resort to armed escorts is in line with the principle of passive precautions under IHL, how the principle of proportionality could apply in cases of attack against the escort, and whether the convoy turns into a military objective when escorted. Finally, the article tackles the limitations of such a framework in order to define the situations it covers.

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Armed groups, IHL and the invisible world : how spiritual beliefs shape warfare

Ana Dols García. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1179-1199

“Secret societies”, “traditional hunters”, “charms” and “mystical weapons” are recurrent terms when analyzing some of the present armed conflicts in the Sub-Saharan region. However, though spiritual beliefs shape armed groups’ behaviour, and such beliefs are integrated into the modus operandi of some armed groups, the role of these beliefs in warfare is largely overlooked. Far from being something anecdotal or incidental, the invisible world plays a role in shaping armed groups’ behaviour and framing warfare dynamics. Spiritual beliefs might influence the respect afforded to international humanitarian law and international human rights law. Such beliefs may also serve various strategic functions, including for legitimation of the group, mobilization of support, control, cohesion, discipline, motivation and protection. Digging further into the matter and understanding how such beliefs impact the internal dynamics of armed groups and their external relations, including with the State, other armed groups and communities, is an essential part of understanding armed conflicts and their aftermath.

https://library.icrc.org/library/docs/DOC/irrc-915-garcia.pdf

Article 36 : review of AI decision-support systems and other emerging technologies of warfare

Klaudia Klonowska. In: Yearbook of international humanitarian law, Vol. 23, 2020, p. 123-153

Artificial intelligence (AI) decision-support systems significantly impact how States make warfare decisions, conduct hostilities, and whether they comply with international humanitarian law. Decision-support

systems, even if they do not autonomously execute targets, can play a critical role in the long chain of human-machine and machine-machine decision-making infrastructure, thus contributing to the co-production of hostilities. Due to a lack of a definition of the treaty terms weapons, means or methods of warfare, it is unclear whether non-weaponized AI decision-support systems should be subjected to a legal review prescribed by Article 36 of the Additional Protocol I. It remains a challenge to determine exactly what should be subjected to review beyond weapons.This chapter suggests that based on the following four criteria it can be determined whether an item should be subjected to a legal review: (i) it poses a challenge to the application of international humanitarian law; (ii) it is integral to military decision-making; (iii) it has a significant impact on military operations; (iv) and it contributes to critical offensive capabilities. These four criteria are derived from a detailed analysis of the conceptualization of the terms weapons, means or methods of warfare by states. If an item meets all four criteria, it should not be deployed without the issue of legality being explored with care. By applying the legal review to AI decision-support systems, States fulfil the duty to observe international humanitarian law in decision-making and mitigate risks to unlawful conduct in warfare. The author further promotes the conceptualization of Article 36 as a review of technologies of warfare.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/55435.pdf *

Automating occupation : international humanitarian and human rights law implications of the deployment of facial recognition technologies in the occupied Palestinian territory

Rohan Talbot. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 823-849

In 2019, media investigations revealed that Israel had added facial recognition technologies (FRTs) to the panoply of security and surveillance technologies deployed in its administration and control of the occupied Palestinian territory (OPT). Despite growing academic and judicial scrutiny of the legal implications of these technologies for privacy and freedom of assembly in domestic contexts, scant attention has been paid to their uses by militaries in contexts where international humanitarian law (IHL) applies. This article seeks to establish the international legal framework governing an Occupying Power's deployment of FRTs, particularly in surveillance, and apply it to Israel's uses in the OPT. It is demonstrated that IHL provides flexible, but incomplete, provisions for balancing an Occupying Power's right to employ surveillance technologies within its measures of control and security against the imprecisely defined humanitarian interests of the population under occupation. The relevant legal framework is completed through the concurrent application of an Occupying Power's international human rights law (IHRL) obligations. What is known of Israel's use of FRTs in surveillance appears prima facie not to satisfy the cumulative IHRL criteria for limitations on the right to privacy – legality, legitimate aims, necessity and proportionality – even where these are broadened by reference to IHL. Consideration is also paid to corollary human rights impacts of these technologies, and the potential that they may entrench an Occupying Power's control while simultaneously rendering this control more invisible, remote and less reliant on the physical presence of troops.

https://library.icrc.org/library/docs/DOC/irrc-914-talbot.pdf

Behind the legal curtain : social, cultural and religious practices and their impact on missing persons and the dead in Colombia

Mayra Nuñez Pastor. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 721-743

This paper examines social, cultural and religious factors that affect the implementation of international humanitarian law concerning dead and missing persons in non-international armed conflicts. To this end, the behaviour of both armed groups and civil society is studied. The argument made in the paper is that in some cases endogenous and exogenous systems of value (social, religious and cultural understandings), operating within the logic of armed non-State actors and within local communities, should be considered by policies concerning the search for missing persons. The Colombian armed conflict is used as case study; the social, cultural and religious practices of the National Liberation Army and the Revolutionary Armed Forces of Colombia – People's Army are analyzed as examples. Likewise, social and cultural values within affected populations can impact on post-conflict mechanisms agreed upon by the parties concerning the search for missing persons, and vice versa. Consequently, customs and traditions such as the “adoption” of unidentified buried people by local communities (social resignification of the dead) and the practices of indigenous communities are reviewed in order to establish a holistic framework.

https://library.icrc.org/library/docs/DOC/irrc-914-pastor.pdf

Better a war criminal or a terrorist ? A comparative study of war crimes and counterterrorism legislation

Kelisiana Thynne. In: International review of the Red Cross, Vol, 103, no. 916-917, 2021, p. 237-266

This article poses the question as to whether and why States overlook the prosecution of people for war crimes rather than terrorist offences, where war crimes would be preferred. It looks at whether a diverse range of States (Afghanistan, Australia, Mali, the Netherlands and the Russian Federation) are able through their domestic legislation to prosecute people for war crimes or for terrorist offences. It considers what the value of prosecutions is theoretically and legally, and what the impact of prosecutions is practically in a State. It proposes that prosecutors, police and judges should ask the question whether an alleged offender should be prosecuted for war crimes and/or terrorist offences with war crimes being the preferred option where there is evidence that they have been committed.

https://library.icrc.org/library/docs/DOC/irrc-916_917-thynne.pdf

Between war and peace : negotiating and implementing legitimate ceasefire agreements

Cindy Wittke. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 335-356

The chapter focuses on contemporary practices of negotiating and implementing ceasefire agreements, which seek to regulate and settle violent intra-state conflicts. Common characteristics are analysed by comparing different ceasefire agreements between state and non-state parties. The chapter addresses mechanisms of inclusion and exclusion of actors, the status, mandate, legitimacy, and accountability of actors involved in the negotiation and implementation of ceasefire agreements, as well as legalized practices and internationalizing effects when negotiating and implementing ceasefire agreements with a focus on a possible accommodation in general international law and on the role of external actors. Ceasefire agreements appear to be hybrid politico-legal sources of law 'floating' in the twilight between domestic and international law without becoming a clear source of international law. Thus, they prove a shift on how and by whom domestic, international (humanitarian) and transitional law can be created and enforced in conflicts between states and non-state parties.

Beyond the state of play : establishing a duty of non-State armed groups to provide reparations

Olivia Herman. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1033-1056

This article examines whether and how non-State armed groups, as distinct entities, might be required to provide reparations for their violations of international humanitarian law. It shows that the possibility of holding armed groups to reparations is marked by uncertainty in international law. This complex question calls for clarification. In building on these observations, the article explores how the duty to provide reparations by armed groups could be operationalized as a matter of lex ferenda. This exercise involves examining how such a duty could be conceptualized and put into practice. From this discussion, a multi-faceted proposal emerges, which draws upon existing approaches in international law and responds to the particular challenges presented by armed groups. The article ends by considering the implications of the proposal.

https://library.icrc.org/library/docs/DOC/irrc-915-herman.pdf

Breaking the silence : advocacy and accountability for attacks on hospitals in armed conflict

Lara Hakki, Eric Stover and Rohini J. Haar. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1201-1226

When hospitals are damaged or destroyed in armed conflict, the loss is far greater than the physical structures: safe spaces are lost, health outcomes worsen and trust in health institutions is undermined. Despite the legal protections afforded to medical units under international humanitarian law (IHL), attacks on hospitals are a recurring problem in armed conflict. In 2019, the Safeguarding Health in Conflict Coalition documented more than 1,203 incidents of violence against medical facilities, transports, personnel and patients in twenty countries. This article examines investigations of four post-Second World War incidents of attacks on hospitals in armed conflicts in Vietnam, Bosnia and Herzegovina, Palestine and Afghanistan, the role public advocacy campaigns played in bringing about these investigations, and how national and international authorities can work together to promote greater accountability for violations of IHL.

https://library.icrc.org/library/docs/DOC/irrc-915-hakki.pdf

Business et droits de l'homme dans les conflits armés

Jelena Aparac, préface de Marina Eudes. - Bruxelles : Bruylant, 2021. - 773 p.

L'objectif premier de cet ouvrage est de proposer une théorie générale de responsabilité internationale pénale des entreprises. À la différence de la responsabilité dite sociale, la théorie de la responsabilité pénale des entreprises ne les distingue pas selon leurs secteurs d'activités. À cet égard, elle s'applique à toute entreprise multinationale soupçonnée d'avoir commis un crime international. Cette étude illustre la théorie de la responsabilité des entreprises à la lumière des conflits armés non internationaux, mais peut être également adaptée à d'autres contextes de conflits armés (occupation, conflit armé international). En outre, l'étude se penche de manière détaillée sur le droit applicable aux entreprises, car la question des obligations internationales qui leur sont opposables n'a été que peu étudiée. La recherche porte aussi sur une analyse approfondie des différentes procédures internationales potentiellement ouvertes à la possibilité d'engager la responsabilité des entreprises, ce qui n'a jamais été fait auparavant. Enfin, l'ouvrage s'achève par une proposition concrète de convention internationale sur la responsabilité des entreprises qui pourrait compléter le Statut de Rome de la Cour pénale internationale (la CPI) et contribuer aux discussions actuelles sur la mise en place d'un instrument international juridiquement contraignant.

La ciberseguridad a la luz del jus ad bellum y del jus in bello

Romualdo Bermejo García, Eugenia López-Jacoiste Díaz. - Pamplona : Ediciones Universidad de Navarra, 2020. - 223 p.

En este libro se analizan las amenazas que el ciberespacio puede presentar a la paz y seguridad internacionales y que exigen a los Estados y a la comunidad internacional nuevas respuestas y estrategias de protección, tanto activas como pasivas, con el fin de poder defenderse de los ciberataques, pero de conformidad con las normas y principios del Derecho internacional vigente. A lo largo de estas páginas se argumenta de forma ordenada y sistemática la tesis de que los ataques cibernéticos pueden considerarse "ataques armados" en el sentido tradicional del término, bajo determinadas circunstancias y a pesar de sus particularidades, por lo que resultarán plenamente aplicables las normas tanto del ius ad bellum como el ius in bello, tal y como se confirma en la práctica y la doctrina internacionales. Según la gravedad de los efectos de un ciberataque, el Estado víctima podrá defenderse legítimamente, incluso con la fuerza armada convencional, si se cumplen las condiciones previstas en el Derecho. Y es que la práctica nos está demostrando que el uso de la cibernética es un método de guerra más en el contexto actual de los conflictos armados, que debe respetar igualmente los principios estructurales del Derecho internacional humanitario.

Closer to home : how national implementation affects State conduct in partnered operations

Alessandro Mario Amoroso. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 515-537

Domestic law, case law and policies play a decisive yet underestimated role in ensuring that partnered operations are carried out in compliance with international law. Research on the legal framework of partnered operations has so far focused on clarifying existing and emerging obligations at the international level. Less attention has been devoted to understanding whether and how domestic legal systems integrate international law into national decision-making which governs the planning, execution and assessment of partnered operations. This article tries to fill the gap by focusing on the practice of selected States (the United States, the United Kingdom, Denmark, Germany and Italy), chosen for their recent or current involvement in partnered operations. By using the International Committee of the Red Cross's "support relationships" framework and based on a comparative analysis of practice, the study seeks to evaluate the effectiveness of national laws, case law and policies according to their ability to prevent or mitigate the risk of humanitarian consequences posed by partnered warfare.

https://library.icrc.org/library/docs/DOC/irrc-914-amoroso.pdf

Collective punishment and human rights law : addressing gaps in international law

Cornelia Klocker. - Abingdon : Routledge, 2020. - VII, 198 p.

This book analyses collective punishment in the context of human rights law. Collective punishment is a concept deriving from the law of armed conflict. It describes the punishment of a group for an act allegedly committed by one of its members and is prohibited in times of armed conflict. Although the imposition of collective punishment has been witnessed in situations outside armed conflict as well, human rights instruments do not explicitly address collective punishment. Consequently, there is a genuine gap in the protection of affected groups in situations outside of or short of armed conflict. Supported by two case studies on collective punishment in the Occupied Palestinian Territories and in Chechnya, the book examines potential options to close this gap in human rights law in a way contributing to the empowerment of affected

groups. This analysis centres on the European Convention on Human Rights due to its relevance to the situation in Chechnya. By questioning whether human rights instruments can encompass a prohibition of collective punishment, the book contributes to the broader academic debate on rights held by collectivities in general and on collective human rights in particular.

Le Comité international de la Croix-Rouge

Julia Grignon. In: Revue québécoise de droit international, hors série, décembre 2021, p. 253-268

Le Comité international de la Croix-Rouge (CICR) est un organisme qui œuvre à la protection des personnes affectées par les conflits armés et qui est le gardien du droit international humanitaire. Dans le panorama des organisations œuvrant à l'international, il occupe une place à part. En effet, il n'est ni une organisation internationale intergouvernementale, ni une organisation non-gouvernementale (ONG). On a donc coutume de dire qu'il s'agit d'une institution hybride, car c'est une association créée en vertu du droit suisse, mais dont les activités se déploient à l'international, ou encore d'une institution sui generis, au sens où elle n'entre dans aucune des catégories qui relèvent de la terminologie du droit international général. Après avoir présenté les attributions du CICR en tant qu'organisation humanitaire, cette contribution abordera la place que cette organisation occupe au sein du système international et le rôle qu'elle joue dans le cadre de la gouvernance mondiale.

https://www.sqdi.org/fr/le-comite-international-de-la-croix-rouge/

Command responsibility in multinational operations

by Arne Willy Dahl. In: Israel yearbook on human rights, Vol. 51, 2021, p. 23-46

The general theme of the present article is the responsibility of commanders for criminal actions committed by their subordinates (command responsibility). The aim is to study one specific situation - the responsibility of commanders in multinational operations where the commander and the immediate perpetrator represent different nationalities. The basis will be the definition of command responsibility in the Rome Statute, although States may have deviating definitions in their respective national legislations. For the sake of simplicity, the implications of such possible national variations will not be studied in the article.

The conflict in Syria and the failure of international law to protect people globally : mass atrocities, enforced disappearances and arbitrary detentions

Jeremy Julian Sarkin. - Abingdon : Routledge, 2022. - XV, 290 p.

This book explores, through the lens of the conflict in Syria, why international law and the United Nations have failed to halt conflict and massive human rights violations in many places around the world which has allowed tens of millions of people to be killed and hundreds of millions more to be harmed.The work presents a critical socio-legal analysis of the failures of international law and the United Nations (UN) to deal with mass atrocities and conflict. It argues that international law, in the way it is set up and operates, falls short in dealing with these issues in many respects. The argument is that international law is state-centred rather than victim-friendly, is, to some extent, outdated, is vague and often difficult to understand and, therefore, at times, hard to apply. While various accountability processes have come to the fore recently, processes do not exist to assist individual victims while the conflict occurs or the abuses are being perpetrated. The book focuses on the problems of international law and the UN and, in the context of the many enforced disappearances and arbitrary detentions in Syria, why nothing has been done to deal with a rogue state that has regularly violated international law. It examines why the responsibility to protect (R2P) has not been applied and why it ought to be used, generally, and in Syria. It uses the Syrian context to evaluate the weaknesses of the system and why reform is needed. It examines the UN institutional mechanisms, the role they play and why a civilian protection system is needed. It examines what mechanism ought to be set up to deal with the possible one million people who have been disappeared and detained in Syria.

Conflict-related sexual violence in Kosovo and lessons to be learned from the International Tribunal for the former Yugoslavia

Remzije Istrefi, Arben Hajrullahu. In: Journal of international humanitarian legal studies, Vol. 12, issue 2, 2021, p. 198-223

This article examines challenges in seeking justice for conflict-related sexual violence (CRSV) survivors in Kosovo. It analyses the roles and responsibilities of international missions and how deficiencies impact the prosecution and adjudication of CRSV by Kosovo's justice system. A key question is why two decades after the 1998–1999 war in Kosovo survivors of CRSV cannot find justice? The end of the international mandates, the large number of war crime cases transferred, unfinished files, and the necessity for specific expertise in handling the gender-based violence are some of the existing challenges which undermine the prosecution and adjudication of crsv in Kosovo. The International Criminal Tribunal for the former Yugoslavia (ICTY) established accountability for sexual violence in armed conflicts. This article seeks to scaffold the ICTY

experience by developing an accurate and comprehensive understanding of the nature of CRSV and by examining its impact on survivors and victims' alike. This paper then explores how a contexualist interpretation of international and domestic criminal law provisions can prioritise the prosecution of CRSV amid other pressing needs in Kosovo.

https://doi.org/10.1163/18781527-bja10038 *

Conflict-related UN sanctions regimes and humanitarian action: a policy research overview

Rebecca Brubaker and Sophie Huvé. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 385-402

This paper offers a brief overview of the potential interplay of United Nations (UN) sanctions regimes applied in contexts of armed conflict and humanitarian action. It traces how this issue has emerged within the counterterrorism (CT) sphere, before examining the possibilities of compatibility and risks for humanitarian action in conflict-related sanctions regimes. The paper lays out research gaps and outlines a new path for policy research focused on UN sanctions regimes imposed in the context of armed conflicts ("conflict-related") yet falling outside the pure CT space. The paper concludes by illuminating why establishing further evidence on this issue is critical to both the legitimacy and the effective use of UN sanctions.

https://library.icrc.org/library/docs/DOC/irrc-916_917-brubaker.pdf

Counterterrorism and the risk of over-classification of situations of violence

Gloria Gaggioli and Pavle Kilibarda. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 203-236

Richard Baxter famously stated that "the first line of defence against international humanitarian law is to deny that it applies at all". While "under-classification" remains an issue today, a parallel trend needs to be acknowledged. This is the tendency to over-classify situations of violence, especially in relation to transnational terrorist organizations such as the so-called Islamic State group or Al-Qaeda. This tendency stems from practical difficulties inherent in the changing operational environment. The last few years have witnessed a proliferation of armed non-State actors that are labelled or designated as terrorists (e.g., in Iraq, Syria, Mali, Nigeria and Yemen). Because international humanitarian law is in many respects less protective than international human rights law, particularly regarding the rules on the use of force and detention, classifying a situation of violence as an armed conflict when the threshold has not been met is a problem that should not be underestimated. In this article, we revisit the criteria of intensity and organization, as well as the related matter of the role of motives in conflict classification, considering conflicts involving armed groups described as terrorists. Our goal is to identify minimum requirements that could diminish the risk of over-classification by various stakeholders.

https://library.icrc.org/library/docs/DOC/irrc-916_917-gaggioli.pdf

Le cyber-espionnage en droit international

Thibault Moulin. - Paris : Pedone, 2021. - 370 p.

L'espionnage per se n'a jamais été expressément interdit ou autorisé par le jus gentium, et les États se sont longtemps contentés d'une régulation indirecte de cette activité, par le prisme de différentes règles : souveraineté territoriale, droit des relations diplomatiques, lois de la guerre. Leur essence et leur raison d'être reposaient, toutefois, sur la présence de l'espion en territoire étranger ou en zone ennemie, et la possibilité de l'appréhender. « Servir et périr » : bien souvent, c'est au risque de sa vie qu'un agent défendait les intérêts de son pays. En cas de capture d'un espion, ce dernier se devait d'assumer le poids de sa condamnation ou de sa déclaration persona non grata ; l'État d'envoi, d'en essuyer l'infamie. Or, le cyber-espionnage bouleverse ce cadre, puisque l'agent peut désormais remplir sa mission à partir de sa propre juridiction. À l'exception du cyber-espionnage mené contre les documents diplomatiques, il s'avère désormais que cette activité échappe en grande partie au droit. En reposant sur un corpus inédit de pratique étatique - élément essentiel à l'interprétation de règles existantes et à l'identification de règles coutumières nouvelles - cet ouvrage démontre que le cyber-espionnage est sujet à un évitement normatif. Cette activité n'est pas interdite - car les États ne commettent aucun acte internationalement illicite lorsqu'ils s'y livrent - mais n'est pas pour autant « permise », « autorisé » ou constitutive d'un « droit », puisqu'ils sont libres également d'adopter des mesures pour prévenir et contrer les activités de cyber-espionnage menées par d'autres États. Or, cet état de la régulation n'a rien de fortuit : les États souhaitent en effet profiter de cette absence d'interdiction, sans pour autant que d'autres aient un droit à mener de telles activités, susceptibles de léser leurs propres intérêts.

De facto independent regimes and overarching human rights duties

Amrei Müller. In: Annuaire de La Haye de droit international = Hague Yearbook of international law, Vol. 32, 2019, p. 31-68

By analysing relevant practice and statements of four de facto independent regimes – the Republic of Abkhazia, the Nagorno-Karabakh Republic, the Pridnestrovian Moldavian Republic, and the Republic of Somaliland – this article first establishes that these regimes are able to comply with overarching human rights obligations as a matter of fact. Overarching human rights obligations are obligations that do not arise from one specific human right protected in regional or global human rights law, but general obligations that enable duty-bearers to implement all other specific human rights obligations, among them obligations related to (democratic) institution building and to reiterative domestic law-making processes. In a second step, the article evaluates this finding. It argues that these and other de facto independent regimes with the same coercive and normative capabilities to comply with these overarching obligations should be recognised as full human rights duty-bearers alongside states, even though this is not the case to date. Discussing the wider legal, practical and normative implications of this submission, it concludes with suggesting that all other de facto independent regimes and other armed non-state actors with influence or control over populations should rather become bound by selected rules of the law of occupation or so-called 'responsibilities for human rights' to close existing regulatory gaps in international humanitarian law (IHL) of non-international armed conflicts (NIACs) in a practice-informed and normatively convincing way.

Derecho internacional humanitario y medio ambiente: hacia mejores estándares de debida consideración

Grace Merry, Julia Macedo. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 19-44

Los conflictos armados impactan negativamente el ecosistema, y es inevitable que la acción de los beligerantes produzca daños al medio ambiente, directos o indirectos. No obstante, el marco legal del derecho internacional humanitario, conforme lo establecido en el Protocolo adicional I de los Convenios de Ginebra, no es suficientemente estricto, y es inadecuado para proteger de manera efectiva la naturaleza. En ese contexto, el estándar de la debida consideración (due regard) parece ser una alternativa preferible al Protocolo, ya que presenta una limitación real a la conducta estatal. El presente artículo busca contribuir a este debate, considerando las recientes Directrices del Comité Internacional de la Cruz Roja y ofreciendo una interpretación alternativa a la protección del medio ambiente en los conflictos armados internacionales.

https://www.doi.org/10.5294/aidih.2021.2.1.2

Destructive trends in contemporary armed conflicts and the overlooked aspect of intangible cultural heritage : a critical comparison of the protection of cultural heritage under IHL and the Islamic law of armed conflict

Victoria Arnal. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 539-558

The destruction of cultural heritage in armed conflicts has gained increasing political momentum and visibility over the last two decades. Syria, Iraq and Mali, among others, have witnessed the intentional destruction of their cultural heritage by non-State armed groups (NSAGs) that have invoked Islamic law and principles to legitimize their actions. The response of the international community has predominantly focused on the material aspect, to the detriment of the significant impact on the associated intangible manifestation of cultural heritage in local communities. This article argues that several Islamic legal rules and principles may, more adequately than international humanitarian law, safeguard the intangible dimension of cultural heritage in certain contemporary armed conflicts in Muslim contexts. It aims to demonstrate the importance of drawing from multiple legal traditions in order to enhance the protection of intangible cultural heritage in armed conflicts and to strengthen engagement with the relevant NSAGs.

https://library.icrc.org/library/docs/DOC/irrc-914-arnal.pdf

La detención de personas en conflictos armados no internacionales: análisis desde la relación entre el derecho internacional humanitario y los derechos humanos

Carmela Sofía García Ganoza, Lorena Denisse Vílchez Marcos. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 45-85

El presente artículo examina la problemática de la detención de personas en conflictos armados no internacionales. En primer lugar, se examina si existe una laguna jurídica en el derecho internacional humanitario respecto a la protección de las personas que se encuentran privadas de libertad en estos contextos. En segundo lugar, se analizan las obligaciones estatales de protección de personas detenidas en conflictos armados no internacionales a partir de la complementariedad entre el derecho internacional humanitario y el derecho internacional de los derechos humanos, y, en particular, de los estándares del sistema interamericano de derechos humanos. En tercer lugar, se señala la posibilidad de que los grupos armados realicen detenciones y si deben respetar obligaciones mínimas de derechos humanos. Finalmente, se concluye que los derechos humanos complementan la protección del derecho internacional humanitario a personas detenidas en conflictos armados no internacionales tanto en el caso de los Estados como de los grupos armados.

https://www.doi.org/10.5294/aidih.2021.2.1.3

Detention by non-state armed groups under international law

Ezequiel Heffes. - Cambridge [etc.] : Cambridge University Press, 2022. - XXIII, 278 p.

During armed conflict, non-State armed groups deprive individuals of their liberty. While this is not a new phenomenon, its pervasiveness is reflected by recent examples in Colombia, Libya, Syria, Ukraine, Mali and the Democratic Republic of the Congo. Yet, examining these activities goes beyond its mere acknowledgment. It involves questions concerning their legality and the non-State armed groups' motivations when depriving individuals of their liberty. Drawing on his personal experiences while working for various humanitarian organizations, Ezequiel Heffes aims at elucidating how international law can be used as a protective tool in relation to individuals placed in detention by non-State armed groups. Based on case studies of selected groups and a normative and doctrinal analysis, he proposes minimum humanitarian principles applicable to those situations. By addressing a contemporary issue that touches upon a number of legal regimes, this study makes a valuable contribution to the law applicable in armed conflict.

https://doi.org/10.1017/9781108862561 *

Detention in the context of counterterrorism and armed conflict : continuities and new challenges

Lawrence Hill-Cawthorne. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 555-579

This article explores recent practices of States in relation to counterterrorism and armed conflict detention. Recent cases in the courts of the UK and US are drawn on to demonstrate the continued defence by those States of their administrative detention practices. Furthermore, the practice of other States in adopting new administrative detention laws as part of their counterterrorism strategies is explored. Finally, two examples of contemporary controversies are then considered to show where much of the debate is likely to be focused in the coming years, namely the use of other administrative measures short of detention, particularly assigned residence, and detentions carried out by armed groups that are supported by foreign States.

https://library.icrc.org/library/docs/DOC/irrc-916_917-cawthorne.pdf

La diplomatie humanitaire et le droit international humanitaire : de l'empirisme à une diplomatie de catalyse ?

Asma Mahai-Batel. - [S.l.] : [s.n.], 2019. - 553 p.

La notion de diplomatie humanitaire, objet d'études théoriques encore peu nombreuses, comporte des périmètres fluctuants, selon qu'on la limite à des négociations accompagnant l'action humanitaire ou que l'on y intègre la diplomatie relative au droit international humanitaire et ses différentes fonctions portées par de multiples acteurs. Confrontée aux défis contemporains du DIH et à la transformation de la conflictualité, la diplomatie humanitaire est désormais caractérisée par l'apparition de nouvelles formes de négociations, émancipées des techniques basées sur la confidentialité, où les prérogatives de l'Etat reculent face à la montée en puissance des ONG. La prolifération des acteurs, mais également la flexibilité des méthodes et objets de négociations révèlent l'enrichissement d'une diplomatie créatrice du DIH par une diplomatie opérationnelle, constitutive d'une « diplomatie de catalyse », susceptible de permettre des adaptations des normes de ce corpus.

https://tel.archives-ouvertes.fr/tel-03491862

Do unto others in war ? The golden rule in law of armed conflict training

Matthew T. Zommer. In: Journal of military ethics, Vol. 20, no. 3-4, 2021, p. 200-216

Training on the Law of armed conflict (LOAC) employs different rationales to motivate soldiers and to induce their compliance with LOAC rules. Of these, none is as controversial, or as potentially contradictory, as the Golden Rule. This article analyzes the role of the Golden Rule in historical and contemporary LOAC training material, including manuals, pamphlets, circulars, and films. Research findings suggest that the Golden Rule message corresponds with changes in military training and doctrine that emerged as a result of Vietnam War violations. Furthermore, the Golden Rule is conceptually dynamic, having both positive and negative formulations that are tied to the larger concept of reciprocity. This article concludes with a discussion of possible contradictory interpretations of the Golden Rule and prospects for future research. Since this is the first systematic examination of the Golden Rule in LOAC training material, the author hopes that it will provide a foundation for further dialogue and research.

https://doi.org/10.1080/15027570.2021.2016041 *

Le droit de la guerre aux prises avec la délimitation juridique de l'espace extra-atmosphérique

Paul Heckler. - In: Droit de l'espace extra-atmosphérique : questions d'actualité. - Toulouse : Presses de l'Université de Toulouse 1 Capitole, 2021. - p. 99-112

La délimitation juridique de l'espace extra-atmosphérique constitue un enjeu classique du droit de l'espace car il n'existe en droit aucune définition acceptée de cette zone. Malgré le fait que l'extension des règles du jus ad bellum et du jus in bello ainsi que le développement de règles spécifiques à certaines activités militaires fournissent un cadre juridique global, le régime résultant reste très incomplet. L'extension pure et simple des règles actuelles laisse d'importants vides que la "lex specialis" ne comble pas. Il en résulte une différence réelle entre le régime applicable à l'expace extra-atmosphérique et ce qui prévaut, notamment, dans l'espace aérien. Ces variations, outre les avantages qu'elles peuvent procurer aux belligérants et l'insécurité juridique qu'elles génèrent nécessairement, impliquent de distinguer, à la fois conceptuellement et en pratique, les deux espaces. Les solutions proposées par la doctrine prennent généralement la forme d'une opposition entre les approches spécialistes et fonctionnalistes. Pris individuellement, ces deux courants peuvent conduire à des solutions divergentes, mais une approche raisonnée combinant certains éléments des deux approches est possible.

Des drones et des tweets : l'affaire de la frappe américaine ayant visé le général iranien Qassem Soleimani le 3 janvier 2020

Laurent Trigeaud. In: Annuaire français de droit international, Vol. 66, 2020, p. 239-269

L'affaire Soleimani est riche d'enseignements, tant pour la compréhension des règles internationales relatives au recours à la force (jus ad bellum) que pour celles relatives à la conduite des hostilités (in bello). D'une certaine manière, elle forme la synthèse des problèmes contemporains éprouvés en ces matières par la pratique internationale : la légitime défense peut-elle être préventive ? Peut-elle réagir à des attaques de basse intensité ? Peut-elle viser individuellement un haut responsable militaire ? Peut-elle s'exercer contre un Etat agresseur mais sur le territoire d'un Etat tiers ? L'opération militaire provoquera-t-elle un conflit armé international avec ce dernier ?

Engaging armed groups at the International Committee of the Red Cross : challenges, opportunities and COVID-19

Irénée Herbet and Jérôme Drevon. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1021-1031

This article examines the presence of 605 armed groups in today's conflict environment by bringing new evidence based on internal research. It looks in particular at the way these non-State entities provide varying degrees of services to the population in the spaces that they control, and how this might impact the way a humanitarian organization like the ICRC engages with them in a dialogue over time. This model of analysis is then used to situate and better explain armed groups' positions on the COVID crisis.

https://library.icrc.org/library/docs/DOC/irrc-915-herbet.pdf

The ethical challenges of providing medical care to civilians during armed conflict

Michael L. Gross. - In: Health care in contexts of risk, uncertainty, and hybridity. - Cham : Springer, 2022. - p. 131-143

During asymmetric war, state armies must care for their local allies, detainees and the civilian population in two contexts: acute care for those wounded during military operations and medical care for the general population as required by the Geneva Conventions. Constrained by scarce resources, state armies face a number of moral dilemmas that affect care on the ground. The author first adresses the first step of triage, noting that the inability to provide high-level care to all creates tensions with local civilians and host country allies. Second, he examines how the requirement to "ensure the medical needs of the civilian populations" by occupying armies is translated into practice. He concludes by looking into the issue of 'medical diplomacy'. Medical care is a long-established tool to win the hearts and minds of the local population. Since the Vietnam War, however, critics have charged that medical diplomacy subverts the purpose of medicine, places medical personnel in the service of war and provides poor medical care.

The ethics of violence : recent literature on the creation of the contemporary regime of law and war

Amanda Alexander. In: Journal of genocide research, 2021, 17 p.

This paper reviews a body of recent literature that interrogates the development and deployment of the contemporary regime of political violence. This literature includes Samuel Moyn's account of the emergence and dominance of the humanitarian paradigm and Francine Hirsch, Giovanni Mantilla and Boyd van Dijk's diplomatic histories of the creation of the central provisions of this paradigm. It also encompasses Dirk Moses, Benjamin Meiches and Sinja Graf's examinations of genocide and universal crime, Neve Gordon and Nicola Perugini's Human Shields, and Yagil Levy's Whose Life is Worth More? This is a diverse literature but, considered together, it traverses the creation of the legal categories, the cultural values and the ethical concerns that shape the current regime. It shows how these laws and values are created through political and cultural negotiations and how they become, themselves, political mechanisms that erase or legitimize certain forms of violence. By doing so, these works reveal the contingency and dangers of the current paradigm of ethical violence. They also, this review argues, show how difficult it is to escape from this paradigm.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/55433.pdf *

The 'Ethiopian Red Terror' trial before the District Court of The Hague : probing the 'context' and 'nexus' elements of war crimes

Kassaye M. Aynalem. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 4, H. 3/4, 2021, p. 161-173

In the aftermath of the 'Ethiopian Red Terror' in the late 1970s, the former provincial governor Eshetu Alemu was tried before the Federal High Court of Ethiopia as well as the District Court of The Hague. While both courts dealt with the same material acts and circumstances, they reached diverging conclusions regarding the 'sufficient nexus' between (armed) conflict in Ethiopia at the time and Alemu's acts. The main objective of this paper is to examine the existence of the 'nexus' necessary for an offence to be qualified as a war crime. In assessing and classifying the conflict situation in Ethiopia at the time and the status of the parties involved in the hostilities, this article finds that a non-international armed conflict only existed between the government and the secessionists, while the hostilities between the government and the 'anti-revolutionists' remained below the thresholds of Common Article 3 of the Geneva Conventions. The article argues that the District Court of The Hague employed an overly broad interpretation in classifying the conflict and in determining the 'nexus' element, an approach which results in an undermining of legal certainty and the very purpose of the 'nexus' requirement.

https://doi.org/10.35998/huv-2021-0010 *

Examining a norm of customary international law that criminalises the intentional use of starvation of the civilian population as a method of warfare

Jolanda Jackelien Andela. In: Yearbook of international humanitarian law, Vol. 23, 2020, p. 63-84

The criminalisation of intentionally using starvation of civilians as a method of warfare has been laid down in the Rome Statute of the International Criminal Court as a matter of treaty law. The application of treaty law, however, is restricted and States in which current emergency situations of starvation are unfolding are often non-party States to the Rome Statute. To allow for accountability in such situations, this research seeks to contribute to the discussion whether the criminalisation of intentionally using starvation of civilians as a method of warfare could qualify as a rule of customary international law. As such, the provisions could apply

to contemporary situations of intentional starvation—not on the basis of the Rome Statute, but on the basis that the content of those Rome Statute provisions have gained the status of customary international law. Ascertaining a rule of customary law conclusively may be hard to do. This chapter intends to offer a valuable contribution, relying on the International Law Commission's draft conclusions on the identification of customary international law, and more particularly the valuable guidance it offers in relation to the identification of both opinio juris and general (State) practice. As such this chapter also aims to take part in the discussion on the identification of customary international law rules generally. In the process, the connection between the customary IHL rule on the prohibition of using starvation of the civilian population on the one hand, and the framework of international criminal law on the other is explored.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/55499.pdf *

Exploring foundational convergence between the Islamic law of armed conflict and modern international humanitarian law : evidence from al-Shaybani's Siyar al-Kabir

Cenap Çakmak and Gökhan Güneysu. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1153-1178

This paper compares and contrasts the Islamic law of armed conflict with the modern international humanitarian law, with the view of identifying foundational similarities between these two separate canons, drawing extensively from al-Siyar al-Kabir. To this end, it raises the question as to whether the Islamic law of armed conflict is compatible with its modern counterpart, and, if it is, to what extent. To address these interlinked questions, the study departs from the premise that in order to identify resemblance, it is necessary to enquire into the foundations (both legal and philosophical) of the Islamic and contemporary approaches vis-à-vis armed conflicts.

https://library.icrc.org/library/docs/DOC/irrc-915-cakmak.pdf

Explosive weapons with wide area effects : a deadly choice in populated areas

drafted by Eirini Giorgou with contributions from Kathleen Lawand and Laurent Gisel. - Geneva : ICRC, January 2022. - 150 p.

The use of explosive weapons with a wide impact in populated areas is one of the main causes of civilian harm in today's armed conflicts. This ICRC report analyses the main issues that the use of such weapons raises, with the aim of inducing a change in policies and practices by parties to armed conflicts, towards better protecting the civilian population against the dangers posed by such use. This report provides a broad evidence-based assessment of the devastating consequences of the use of these weapons; a technical overview of weapons of concern; an analysis of the implications of the use of these weapons under IHL; and a synopsis of relevant policies and practices adopted by parties to armed conflicts. It concludes with detailed 'good practice' recommendations for political authorities and armed forces on measures to be taken in terms of doctrine and policies, as well as training, planning and conduct, to strengthen protection for civilians against the use of heavy explosive weapons in populated areas.

https://library.icrc.org/library/docs/DOC/icrc-4575-002.pdf

"For private or personal use" : the meaning of the special intent requirement in the war of pillage under the Rome Statute of the International Criminal Court

Yulia Nuzban. In: International review of the Red Cross, Vol 102, no. 915, 2020, p. 1249-1272

Legislating for international courts and tribunals is a delicate and complex process, which sometimes results in unintended consequences. Arguably, the inclusion of a special intent requirement, also known as dolus specialis, concerning "private or personal use" in the definition of pillage under the Rome Statute of the International Criminal Court is one such consequence. But this is not the only reason why the war crime of pillage deserves special attention. On closer examination, other questions arise concerning its interpretation and application. What is the meaning of "military necessity" and "necessity" in relation to pillage, and how do they correlate with the special intent requirement? To answer these questions, the article examines the drafting history, law and current practice relating to the crime's ambiguous new element. It then proposes several avenues to address the recurring uncertainty regarding its meaning: conservative, radical and pragmatic.

https://library.icrc.org/library/docs/DOC/irrc-915-nuzban.pdf

For whom the bell of proportionality tolls : three proposals for strengthening proportionality compliance

Won Jang. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 629-657

The State-centric bias in proportionality in international humanitarian law, where non-State armed groups (NSAGs) are expected to adhere to the same rigour of proportionality as States, regardless of how unrealistic that expectation is, has not often been considered in ideas to improve compliance with proportionality. This article puts forth three proposals – a Comprehensive Proportionality Assessment Framework, capacity-building for military actors, and rapid multidisciplinary assessment teams – that aim to reduce State-centric bias and strengthen proportionality compliance not just for States but for all parties to conflict, including NSAGs.

https://library.icrc.org/library/docs/DOC/irrc-914-jang.pdf

Foreign fighters and the tension between counterterrorism and international humanitarian law : a case for cumulative prosecution where possible

Hanne Cuyckens. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 581-603

Contemporary foreign fighters (FFs) often join so-called dual-nature groups, i.e. groups that can at the same time be qualified as a non-State armed group involved in a non-international armed conflict and a terrorist organization. Both international humanitarian law and counterterrorism (CT) legislation may hence be of relevance when assessing the legality of FF conduct. The CT perspective tends to remain predominant, however. This paper argues that, especially in terms of prosecution, due regard must be paid to both legal frameworks where possible. It also argues that national prosecution in the country of origin seems to offer the best prospects for realizing such cumulative prosecution.

https://library.icrc.org/library/docs/DOC/irrc-916_917-cuyckens.pdf

From conflict to complementarity: reconciling international counterterrorism law and international humanitarian law

Ben Saul. In: International review of the Red Cross, Vol. 103, no. 916_917, 2021, p. 157-202

This article clarifies the ongoing confusion in doctrine and practice about both the actual and optimal interaction between international counterterrorism law (CTL) and international humanitarian law (IHL) in armed conflict. It discusses the advantages and disadvantages of the co-application of CTL with IHL, before considering a variety of techniques for mutually accommodating the interests of both regimes, particularly through partial exclusion clauses in counterterrorism instruments or laws. It concludes by identifying the optimal approach to the relationship between CTL and IHL, which recognizes the legitimate interests of both fields of law while minimizing the adverse impacts of each on the other.

https://library.icrc.org/library/docs/DOC/irrc-916_917-saul.pdf

From the Martens clause to the CNN factor : is the impact of media and public opinion on law-making discernible ?

Daniel Joyce. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 404-421

This chapter analyses the impact of media and public opinion on law-making. While the media and the public are configured as objects for protection within conflict, this chapter considers the media question at a different level, in terms of the media's role in generating public concern and attention, and consequently examines their role as actors in law-making itself. It points out historical understandings of this role, as evidenced in the Martens clause and more contemporary debates regarding the CNN effect and the rise of social media. Based on an analysis of the discernibility and quantification of media effects, it critically evaluates the CNN factor and its perceived role in international decision-making. Shifting the focus to the digital media landscape, it questions whether recent developments hold the promise of a revived public in international law.

Gaps in corporate liability : limited investigations of corporate crimes in armed conflicts

Jelena Aparac. In: International community law review, Vol. 23, no. 5, 2021, p. 486-502

Fact-finding is a fundamental step in providing documentation that can be used in domestic and international proceedings. The United Nations establishes commissions of inquiry to investigate

international law violations, often in contexts of armed conflict, under the mandate of the Human Rights Council or other more political organs of the UN. They vary in mandate, as well as in investigative and geographic scope. However, to this day, fact-finding mechanisms or inquiry commissions have only rarely conducted investigations into corporate crimes, even in cases where the UN has explicitly recognized the part played by economic actors in armed conflicts. Because corporations are not subjects of international law, they are presumed not to have any direct obligations under international law. Moreover, the mandates of fact-finding missions de facto exclude corporations from investigations because such mandates are always designed to investigate international law violations. By voluntarily dismissing any investigation of corporate crimes, the UN is significantly limiting prospects for corporate responsibility and impeding the process of transitional justice.

https://doi.org/10.1163/18719732-23050005 *

Global norms governing the protection of civilians, conflict and weapons : formal or informal law-making ?

Denise Garcia. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 56-79

To determine whether a 'turn to informality' has reached IHL, the author investigates under what circumstances states conclude new treaties to regulate armed conflict and when they rather opt for informal means of regulation or try to avoid any regulation at all. The author observes that even though informal mechanisms are concomitantly flourishing in law-making in the area of IHL, one cannot yet maintain that there is a straightforward turn to informality or stagnation. This is mainly because of the unique role of the ICRC in ensuring that IHL persists and evolves. It seems then that the most fruitful area for new law-making - formal and informal - lies at the intersection of IHL and human rights law, which both may, in fact, generate stigmatization effects even before they are internalized in state law and practice.

Governing armed conflicts : the ICRC between hierarchy and networks

Vincent Bernard and Anne Quintin. - In: Global governance in a world of change. - Cambridge : Cambridge University Press, 2021. - p. 265-287

Amid the emergence of modern warfare at the end of the nineteenth century, states agreed on a model to regulate armed conflicts centered on a body of internationally agreed norms known as international humanitarian law (IHL). While states have always been the sole law makers and are ultimately responsible for the implementation of the laws of war, the International Committee of the Red Cross placed itself at the very center of the new model, as the champion of IHL, filling the gaps in terms of sponsoring new rules, promoting the law, and monitoring its application in war zones. This unique model of governance was composed of states and independent humanitarian actors and combines features of a hierarchy and a network. While the model saved countless numbers of lives, it has been perpetually challenged, criticized, and violated. The model stood the test of time nonetheless and survived the conflicts of the twentieth century. It is still enduring today. This chapter analyses the reasons for the longevity of the model, looking at its evolution over time in terms of key moments, efficacy and legitimacy, changing composition, and growing complexity.

https://doi.org/10.1017/9781108915199.010 *

Greener insurgencies ? Engaging non-state armed groups for the protection of the natural environment during non-international armed conflicts

Thibaud de La Bourdonnaye. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 579-605

As belligerent parties, non-State armed groups (NSAGs) contribute to environmental damage in non-international armed conflicts. Drawing from the actual practice and doctrine of NSAGs, this article unpacks the legal and policy framework for engaging them on the protection of the environment. It analyzes the international humanitarian law rules protecting the environment binding on NSAGs. To improve environmental protection, a model of environmental responsibilities under international human rights law and international environmental law based on the NSAG's level of territorial control is suggested, as a matter of policy. This article then explores how to engage NSAGs on the legal and policy framework identified and proposes a model unilateral declaration for the protection of the natural environment.

https://library.icrc.org/library/docs/DOC/irrc-914-bourdonnaye.pdf

Greening the economy of armed conflict : natural resources exploitation by armed groups and their engagement with environmental protection

Daniëlla Dam-de Jong. In: Annuaire de La Haye de droit international = Hague Yearbook of international law, Vol. 32, 2019, p. 175-207

The exploitation of natural resources, and notably extractives, to fund armed conflict has been identified as one of the six principal pathways for direct environmental damage resulting from armed conflict. Armed groups, including those fighting in a non-international armed conflict and de facto independent non-state territorial entities (DFINSTE), are often involved in these practices. Yet, they sometimes also play a valuable role in protecting the environment in territories under their control. This article explores the normative foundations for the vast practice by armed groups with respect to natural resources exploitation and examines the engagement of these actors with the core standards for environmental protection under international law across three different settings. It concludes that a clear legal basis for natural resource exploitation by armed groups is currently lacking, but that recognition of some rights to exploit natural resources is necessary for the purpose of protecting the inhabitants of territories under control of these groups. It further finds that it is essential that the international community clearly sets out its expectations with respect to environmental protection by armed groups more generally and, where possible, engages with these groups to green their practices.

La guerra contra las drogas: desafíos para el derecho internacional humanitario

Chiara Redaelli. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 119-161

Algunos de los episodios de violencia más atroces se cometen en países afectados por el crimen organizado. Los grupos criminales persiguen principalmente objetivos económicos: se benefician de un Estado débil e ineficaz, sin pretender derrocar al gobierno. Por esa razón, no debería sorprendernos que las organizaciones criminales tienden a no ser analizadas desde la perspectiva del derecho internacional humanitario. No obstante, se involucran en actos de violencia armada contra las fuerzas estatales lo que, en la gran mayoría de los casos, genera un impacto dramático en la población. Este artículo examina los desafíos particulares que plantean las organizaciones criminales que son parte en un conflicto armado no internacional desde una perspectiva del derecho internacional humanitario. En primer lugar, la atención se centrará en establecer si los actores económicos, que no persiguen objetivos políticos, pueden ser parte de un conflicto armado no internacional. En segundo lugar, el artículo abordará de manera puntual los desafíos que plantea la estructura altamente horizontal y descentralizada de algunos carteles latinoamericanos dedicados al narcotráfico. Adicionalmente, se analizarán los efectos de la militarización de la guerra contra las drogas. Finalmente, veremos que la estructura peculiar de los carteles de la droga plantea desafíos cruciales para determinar quién es un objetivo legítimo según el derecho internacional humanitario.

https://www.doi.org/10.5294/aidih.2021.2.1.5

"Guilty of having been obedient" : a fresh dissection of the superior orders controversy

Emmanuel Sarpong Owusu. In: Journal of international humanitarian legal studies, Vol. 12, issue 2, 2021, p. 279-313

One of the most debated subjects among academics and experts in the fields of international humanitarian law and international criminal law is the principle of individual criminal responsibility for war crimes. Even more contentious is that aspect of the principle relating to crimes committed under superior orders – a legal strategy employed by many defendants at the Nuremberg war crimes trials. This paper contributes to the debate by establishing the extent to which Article 33 of the Rome Statute, which adopts the conditional liability approach, is justified. The article achieves its objective by critically discussing the subject from a combination of legal, psychological and moral philosophical perspectives. It presents a historical account of the superior orders defence, highlighting how two conflicting liability doctrines, absolute liability and conditional liability, have traditionally been applied by the courts, and taking a stance in favour of the latter. The article, however, underlines some pressing questions that Article 33 raises. It offers a brief exegesis of the emotion of fear to show how it may destroy voluntariness, arguing that as a modifier of voluntariness, grave fear, in certain circumstances, should exculpate perpetrators in claims of crime under superior orders, even where the orders were manifestly unlawful.

https://doi.org/10.1163/18781527-bja10031 *

How counterterrorism throws back wartime medical assistance and care to pre-Solferino time

Françoise Bouchet-Saulnier. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 479-516

Domestic counterterrorism (CT) frameworks have been increasingly employed to criminalize impartial medical care to wounded and sick from non-State armed groups labelled as criminal or terrorist in non-international armed conflicts (NIACs). It has also contributed to legitimize attacks and incidental damage on medical facilities in armed conflicts overlooking the international humanitarian law (IHL) protection afforded to the wounded and sick as well as to medical personnel and facilities. This article compares the treatment of the wounded and sick in both international armed conflicts (IACs) and NIACs in the context of the global war on terrorism. It demonstrates the impacts that CT measures have on the IHL protection of the medical mission while demonstrating the increased acceptance that some incidental damages, such as the downgrading of IHL core protections, are tolerated, by some countries in the global fight against terrorism. The article concludes that States could easily limit the impact of CT on IHL by adding an exemption in their CT framework for humanitarian and medical assistance that is compatible with IHL.

https://library.icrc.org/library/docs/DOC/irrc-916_917-bouchet.pdf

Human dignity in international law

Ginevra Le Moli. - Cambridge : Cambridge University Press, 2021. - LXV, 366 p.

Over the past two centuries, the concept of human dignity has moved from the fringes to the centre of the international legal system. This book is the first detailed historical, theoretical and legal investigation of human dignity as a normative value, the intellectual sources that shaped its legal recognition, and the main legal instruments used to give it expression in international law. Ginevra Le Moli addresses the broad historical and philosophical developments relating to the legal expression of dignity and the doctrinal geography of human dignity in international law, with a focus on international humanitarian law, international human rights law and international criminal law. The book fills a major lacuna in the literature by providing a comprehensive account of dignity within international law that draws on an extensive documentary and archival basis and a vast body of decisions of international judicial and quasi-judicial bodies.

Humanitarian law compliance : the disadvantaged state problem

Roderic Alley. In: Journal of international humanitarian legal studies, Vol. 12, issue 1, 2021, p. 169-197

Ensuring humanitarian law compliance and repression of its violations receives constant reiteration but to mixed effect. While international judicial, jurisprudential and investigatory modalities have advanced, requisite State level competencies exhibit marked variability. This paper devotes most attention to disadvantaged States – those that, for whatever reason, lack the judicial, institutional or administrative capacity to ensure humanitarian law compliance and repression of its violations. Here a profile of 46 States is selected for review, 20 of which are identified as impacted by previous or continuing forms of armed conflict. Data from the World Justice Project's 2020 Rule of Law Index is utilised. Chosen indicators assess individual State legislative, judicial, due process, and criminal investigatory capacities as perceived and recorded by local publics and individual experts. A comparative evaluation of this data reveals differences within profiles of disadvantaged States. They are investigated to better comprehend humanitarian law compliance challenges facing such States. They include international cooperation, utilisation of amnesties, and the conduct of armed non-state actors. The paper's central thesis is that humanitarian law compliance, and repression of its violations, remains inadequate without remediation of the capacity impediments evident in disadvantaged States.

https://doi.org/10.1163/18781527-BJA10032 *

Humanitarian values in a counterterrorism era : opinion note

Naz K. Modirzadeh and Dustin A. Lewis. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 403-413

In this opinion note, we explore ways to understand the contemporary encounters between a growing global counterterrorism architecture and impartial humanitarian activities while critically assessing our own role in shaping responses to those encounters. Humbled by a decade of experience in this area, we aim to explain how counterterrorism concerns have been elevated over the humanitarian imperative and to offer potential avenues to secure greater respect for impartial humanitarian activities.

https://library.icrc.org/library/docs/DOC/irrc-916_917-modirzadeh.pdf

Humanizing siege warfare : applying the principle of proportionality to sieges

Maxime Nijs. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 683-704

Siege warfare and its devastating humanitarian consequences have been one of the defining features of contemporary armed conflicts. While the most apparent restriction of siege warfare appears to be provided by the prohibition against starvation of the civilian population as a method of warfare, the prevailing restrictive interpretation of this prohibition has left civilians remaining in a besieged area unprotected from the hardships they endure. This article demonstrates that shifting the focus from the prohibition against starvation to the rules regulating humanitarian relief operations does not seem helpful due to the ambiguities regarding the requirement of consent and the right of control of the besieging party. In remedying this protection gap, this article examines whether and how the principle of proportionality applies in the context of a siege. After analyzing whether the encirclement and isolation aspect of a siege can be considered an attack in the sense of Article 49(1) of Additional Protocol I (AP I), to which the proportionality principle applies, the article investigates how this principle operates in the context of a siege. It will be demonstrated that Article 57(2)(b) of AP I requires that the proportionality of a siege must be continuously monitored.

https://library.icrc.org/library/docs/DOC/irrc-914-nijs.pdf

The ICRC and communist captives during Vietnam's American War

Marcel Berni. - In: Captivity in war during the twentieth century : the forgotten diplomatic role of transnational actors. - Cham : Palgrave Macmillan, 2021. - p. 137-156

This chapter recounts the involvement of the ICRC as a neutral intermediary in the Vietnam War. By failing to convince the communist forces to abide by the principles of the Geneva Conventions and let delegates visit prisoners of war in North Vietnam, the only mandate given to the ICRC was the inspection of the prisoner regime in South Vietnam. However, the South applied strict restrictions on ICRC visits to prisoner of war camps and mostly forbade the inspections of camps for civilian captives. The Committee's representatives were thus only given the chance to see half of the picture. In this war with weak international oversight, the ICRC was frequently exploited by the belligerents in order to achieve their wider political aims.

IHL and the humanitarian impact of counterterrorism measures and sanctions : unintended ill effects of well-intended measures

Emanuela-Chiara Gillard. - London : Chatham House, September 2021. - 67 p.

In recent decades international and domestic counterterrorism (CT) measures have addressed ever broader forms of support to terrorist acts and groups designated as terrorist. When these measures apply in armed conflict there is a real risk that they can impede the operations of humanitarian organizations. Country-specific sanctions can raise similar problems. Challenges arise as a direct result of the restrictions themselves, their incorporation in funding agreements and their cascading effects, as commercial actors that provide services necessary for humanitarian operations – such as banks, insurers and commodity providers – restrict the services they are willing to provide. Now the UK is setting its own sanctions strategy, it must recognize the relevance of IHL and humanitarian principles as it elaborates sanctions policies and the regulatory framework. This is an opportunity for exploring ways of addressing the adverse impact of sanctions, whether by the introduction of exceptions, or by means of general licences for humanitarian action.

https://www.chathamhouse.org/sites/default/files/2021-09/2021-09-03-ihl-impact-counterterrorism-measures-gillard_0.pdf

The impact of attacks on urban services II : reverberating effects of damage to water and wastewater systems on infectious disease

Michael Talhami and Mark Zeitoun. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1293-1325

This article investigates the effects that attacks during armed conflict which damage water and wastewater services have on the outbreak and transmission of infectious disease. It employs a lens of uncertainty to assess the level of knowledge about the reverberations along this consequential chain and to discuss the relevance to military planning and targeting processes, and to the laws of armed conflict. It draws on data in policy reports and research from a wide variety of contexts, and evidence from protracted armed conflicts in Iraq, Yemen and Gaza. The review finds a strong base of evidence of the impact of attacks on water and wastewater services, and a high level of confidence in information about the transmission of infectious disease. The analysis suggests that the most pragmatic path for military institutions and those involved in targeting operations to take this knowledge into account is through a "precautionary approach" which assumes the existence of the reverberating effects, and works them in to the standard information-gathering and planning processes.

https://library.icrc.org/library/docs/DOC/irrc-915-talhami.pdf

The impact of human rights advocacy : between (mis)stating the law and pursuing humanitarian policies ?

Robert Cryer. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 385-403

There are various participants who seek to identify themselves as authoritative interpreters of humanitarian law. They can be characterized as military lawyers or human rights activists. This chapter argues that the nature of those who seek to determine what the, often difficult, interpretable rules of the law of armed conflict mean need to be understood with an understanding of the people involved, who are personally situated. It does so by discussing the relevant roles and identities that the interpreters have. It is contended, whilst drawing on the work of David Luban and Martti Koskenniemi that their approach is reductionist, insofar that although their work is immensely insightful, seeks to categorize people, when their approach is more complex, and also depends on both self-identification and identification by others. It uses case studies, relating to particular people who are major figures in this context, and how this has played out in practice.

Impact of US anti-terrorism legislation on the obligation of non-state armed groups to provide medical care to the wounded and sick under IHL

Audrey Palama. - In: Health care in contexts of risk, uncertainty, and hybridity. - Cham : Springer, 2022. - p. 49-76

The right of the wounded and sick to be collected and cared for is part of the fundamental principles of international humanitarian law (hereinafter IHL) and, with other provisions of common article 3 to the Geneva Conventions “reflects elementary considerations for humanity” . Yet, anti-terrorism legislations, and in particular the one adopted and implemented by the United States of Americas (hereinafter the US), challenge this fundamental principle. The provision of medical support to or through designated terrorist entities is not strictly excluded from acts criminalized by the US anti-terrorism legislation. Academics and the humanitarian community have in several occasions raised the negative humanitarian impact of the US legislation on civilians trapped in conflicts zones controlled by designated terrorist organisations and the legal risk faced by humanitarian actors operating in these situations. This article studies the indirect effects of US anti-terrorism legislation on the right of the wounded and sick in NIACs to receive medical care by showing how it can limit non-state parties’ ability to provide such care. It identifies inconsistencies of US anti-terrorist legislation with IHL and suggest ways to remedy them.

La incorporación de facto de la policía a las Fuerzas Armadas: estudio sobre la sentencia del 18 de junio de 2020 de la Sección de Apelación del Tribunal para la Paz de la Jurisdicción Especial para la Paz

Aaron Alfredo Acosta, Pablo Gómez Pinilla, Alejandro Jiménez Ospina. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 249-284

El estatus de protección de los integrantes de la Policía Nacional bajo el derecho internacional humanitario (DIH) en el conflicto armado colombiano ha permanecido en una zona gris tanto normativa como jurisprudencial. La sentencia TP-SA-AM 168 de 2020, de la Sección de Apelación del Tribunal para la Paz de la Jurisdicción Especial para la Paz (JEP) postula una definición comprehensiva de la controversia y aclara el alcance de dicha protección. Si bien, en principio, la solución propuesta en la sentencia parece acorde con las normas del derecho internacional humanitario, la utilización de la función continua de combate como criterio para definir la incorporación de facto a las Fuerzas Armadas y las excepciones a dicha incorporación parecen desviarse de lo dispuesto en tal régimen normativo. En este artículo hacemos una explicación de la sentencia, los hechos que la rodearon y la subregla desarrollada por la Sección de Apelación de la JEP, al tiempo que presentamos observaciones frente a los puntos que consideramos problemáticos y que quedaron sin resolver.

https://www.doi.org/10.5294/aidih.2021.2.1.9

Indigenous Australian laws of war : makarrata, milwerangel and junkarti

Samuel White and Ray Kerkhove. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 959-978

Studies in Australian history have lamentably neglected the military traditions of First Australians prior to European contact. This is due largely to a combination of academic and social bigotry, and loss of Indigenous knowledge after settlement. Thankfully, the situation is beginning to change, in no small part due to the growing literature surrounding the Frontier Wars of Australia. All aspects of Indigenous customs and norms are now beginning to receive a balanced analysis. Yet, very little has ever been written on the laws, customs and norms that regulated Indigenous Australian collective armed conflicts. This paper, co-written by a

military legal practitioner and an ethno-historian, uses early accounts to reconstruct ten laws of war evidently recognized across much of pre-settlement Australia. The study is a preliminary one, aiming to stimulate further research and debate in this neglected field, which has only recently been explored in international relations.

https://library.icrc.org/library/docs/DOC/irrc-914-white.pdf

The International Committee of the Red Cross and the International Criminal Court : turning international humanitarian law into a two-headed snake ?

Fernanda García Pinto. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 745-763

The International Committee of the Red Cross and the International Criminal Court are two very different entities that simultaneously apply international humanitarian law but do so after their own perspectives. This article proposes a cautious yet critical approach to some of their divergent interpretations (conflict classification, the difference between direct and active participation in hostilities, intra-party sexual and gender-based violence, and the notion of attack) and examines how the broader legal system copes with these points of divergence. The analysis considers the institutional characteristics of these two organizations and the pluralistic nature of international humanitarian law as well as its dynamic rapport with international criminal law in order to highlight the versatility needed to face the challenges posed by contemporary armed conflicts.

https://library.icrc.org/library/docs/DOC/irrc-914-pinto.pdf

International criminal law in Mexico : national legislation, state practice and effective implementation

Tania Ixchel Atilano. - The Hague : Asser Press, 2021. - XXI, 324 p.

This book puts forward proposals for solutions to the current gaps between the Mexican legal order and the norms and principles of international criminal law. Adequate legislative measures are suggested for compliance with international obligations. The author approaches the book's subject matter by tracing all norms related to the prosecution of core crimes and contextualizing each of the findings with a brief historical and political account. Additionally, state practice is analyzed, identifying patterns and inconsistencies. This approach is new in offering a wide perspective on international criminal law in Mexico. Relevant legal documents are analyzed and annexed in the book, providing the reader with a useful guide to the topics analyzed. Issues including the following are examined: the incorporation of core crimes in the Mexican legal order, military jurisdiction, the war crimes definition under Mexican law, unaddressed atrocities, state practice and future challenges to combat impunity.

International humanitarian law and the criminal justice response to terrorism : from the UN Security Council to the national courts

Agathe Sarfati. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 267-293

Since the adoption of the first United Nations Security Council (UNSC) counterterrorism resolution after the 9/11 attacks, the UNSC has increasingly required the domestic criminalization of “terrorism” acts and ancillary activities. Without the inclusion of an explicit international humanitarian law (IHL) or humanitarian exception, the UNSC has – so far – failed to harmonize the counterterrorism legal framework with IHL, leaving it up to States to define the interaction between the two. In their national legislation and courts, States’ interpretations have varied but counterterrorism legislations have been used to adjudicate conducts in armed conflicts, regardless of their legality under IHL. As the domestication of UNSC offences is ongoing, good practices are highlighted in this paper and recommendations are offered to ensure the development of international customary law in accordance with IHL.

https://library.icrc.org/library/docs/DOC/irrc-916_917-sarfati.pdf

International humanitarian law-making in Latin America : between the international community, humanity, and extreme violence

Alejandro Rodiles. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 277-299

This chapter explains the Latin American approach to international humanitarian law and how it is perceived and conceived by Latin American diplomats, scholars, and judges. Latin America has a long tradition in the making of international humanitarian law, anchored in its own emergence as a subcontinent of independent states. In each of the historical contexts, a particular conception of the law's legitimacy is discernible, which in turn helps to explain the degrees and ways of participation of Latin America in its making. Today,

international humanitarian law is perceived in judiciaries as part of the new law of the region, or ius constitutionale commune latinoamericanum, based on human dignity. At the same time, manifestations of extreme violence entail jurisprudential developments forming part of an emerging 'law of violence', in which the boundaries between the law of peace and the law of war are increasingly difficult to trace.

International humanitarian law, principled humanitarian action, counterterrorism and sanctions : some perspectives on selected issues

Tristan Ferraro. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 109-155

In recent years, the international community has worked to confront the large and growing threat of terrorism, including by introducing new counterterrorism (CT) measures and tightening existing ones. These measures take many forms, including international, regional and domestic sanctions against individuals, groups and other entities. Such efforts pursue the legitimate aims of security and international peace – things that terrorism undermines and goes against – but they have, at the same time, implicated a degree of overlap and confusion between international humanitarian law (IHL), on the one hand, and the law and policy framework underwriting CT measures and sanctions regimes, on the other, particularly as both apply to and affect principled humanitarian action. This article addresses this area of overlap and confusion. First, it examines the applicability of IHL to CT measures and operations. Next, it addresses the co-application of IHL, CT regulations and sanctions regimes, from the mindset of preserving IHL without impeding CT measures and their objectives. The article then examines the legal questions that arise when sanctions regimes and CT measures affect IHL-mandated and IHL-protected activities undertaken by impartial humanitarian organizations. Finally, the article analyzes recent developments and makes proposals aimed at preserving an effective humanitarian space in contexts where IHL, CT legal frameworks and sanctions apply simultaneously.

https://library.icrc.org/library/docs/DOC/irrc-916_917-ferraro.pdf

International law and the problem of change : the challenge of nuclear disarmament

Mika Hayashi. - In: Nuclear non-proliferation in international law. Vol. 6 : nuclear disarmament and security risk : legal challenges in a shifting nuclear world. - The Hague : Asser Press, 2021. - p. 13-35

This chapter examines the outlawing of biological weapons and its possible impact on the discussion of a prohibition of nuclear weapons. Despite the different ways in which weapons of mass destruction are regulated, the examination of biological weapons is useful in considering a few important elements in realising a change in the international regulation of nuclear weapons: stigmatisation of the use of the weapons; the acceptance of the no-first-use rule as a first step to a more comprehensive regulation; disarmament that accompanies the comprehensive prohibition of the use. These milestones that appear to characterise the successful, comprehensive ban of biological weapons contrast with, and serve to highlight, the difficulties for a change in the international regulation of nuclear weapons: the limited stigmatisation; refusal of the no-first-use rule by nuclear-armed States; a divide on how disarmament should be carried forward. In addition, any impact or lesson from the outlawing of biological weapons must be assessed with due regard to the question of international security in the context of nuclear disarmament.

International law and weapons review : emerging military technology under the law of armed conflict

Natalia Jevglevskaja. - Cambridge [etc.] : Cambridge University Press, 2022. - XXXII, 282 p.

International law requires that, before any new weapon is developed, purchased or modified, the legality of its use must be determined. This book offers the first comprehensive and systemic analysis of the law mandating such assessments – Article 36 of the 1977 Additional Protocol I to the Geneva Conventions. Underpinned by empirical research, the book explores the challenges the weapons review authorities are facing when examining emerging military technology, such as autonomous weapons systems and (autonomous) cyber capabilities. It argues that Article 36 is sufficiently broad to cover a wide range of military systems and offers States the necessary flexibility to adopt a process that best suits their organisational demands. While sending a clear signal that law should not simply follow technological developments, but rather steer them, the provision has its limits, however, which are shaped and defined by the interpretative decisions made by States.

https://doi.org/10.1017/9781108946391 *

International law in the transition to peace : protecting civilians under jus post bellum

Carina Lamont. - Abingdon : Routledge, 2022. - XXI, 326 p.

This book proposes a normative framework specifically designed for the complex and legally uncertain time period between armed conflicts and peace. As such, it contributes both to the furthering of a jus post bellum framework, and to enhanced legal clarity in complex and legally uncertain environments. This, in turn, contributes to strengthened protection engagements, and thus to improved prospects of enabling sustainable peace and security in both national and international perspectives. The book offers a novel but persuasive argument for a legal framework specific for transitional environments. Such legal framework, it is argued, is warranted in order to enable legal clarity to contemporary and outstanding legal issues, as well as to furthering peace efforts in complex environments. The legal framework suggested proposes a dividing line between applicable legal frameworks that, it is submitted, enhances both legal clarity on protection engagements and the quest for sustainable peace. The framework proposed is founded on a legal analysis of the protective nature and function of law. It thus provides a rare but important perspective on law that is of value in the quest for sustainable peace and security. The research draws uniquely on both contemporary legal debates, and on peace and conflict research. It does so in order to enable legal analysis that is both legally sound, as well as appropriate and adequate in today's peace and security realities.

International manuals in international humanitarian law : a rejoinder to Wouter G. Werner

Robin Geiß and Anni Pues. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 232-241

This chapter reflects on the role of international manuals in response to Werner's analysis of international manuals as restatement of the law and their unique format. The authors demonstrate that international manuals tread a fine line between progressive norm development and the potential blockade of genuine normative development through established, state-driven law-making processes. International manuals typically suggest that the law is clear and that simplified application is possible. Especially in areas where there is a perceived knowledge gap, such as in the domain of cyberspace, the information contained in manuals is in high demand and quickly finds its way into legal and policy debates as well as law development processes. In that way, a non-binding expert manual can have significant influence on the formation of international law. Therefore, legitimacy and transparency of manual creation processes is critical to ensure that manuals do not forestall but inform necessary broader political debate.

Interpretation and identification of international humanitarian law : responses of the International Law Commission

Georg Nolte. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 242-252

The ILC is not concentrating as much anymore on drafting treaties, but instead produces 'paralegal' output with functions similar to those of manuals or commentaries in the field of IHL. The author focuses on ILC projects which relate to questions of how to interpret treaty law and how to identify customary international law. The outcome of this work provides standards which also permit to assess the authoritativeness of manuals and other 'paralegal' materials. As Heike Krieger and Jonas Püschmann question whether the rise of paralegal methods is a sign of crisis of international law, the author contends that manuals and commentaries are a classical legal technique. As long as no new treaties are concluded, lawyers have to concentrate on what they have done traditionally: to comment on the existing law. They need to nurture existing treaties and elucidate them for our time. This is the function of manuals and commentaries.

The interpretation of IHL treaties : subsequent practice and other salient issues

Jean-Marie Henckaerts and Elvina Pothelet. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 150-169

This chapter aims to share the experience of the International Committee of the Red Cross in applying the treaty interpretation methodology set out in the 1969 Vienna Convention on the Law of Treaties to the interpretation of the Geneva Conventions. It highlights how treaty interpretation rules operate in relation to IHL treaties, with a particular emphasis on the role of 'subsequent practice' and some difficulties associated with the identification of such practice. The chapter first highlights the importance of treaty interpretation, including in the field of IHL, and clarifies the nature of the process and the rules that apply to it. It then explains how treaty interpretation rules have been applied in the updated Commentary on the First Geneva Convention, with a focus on some of the difficulties encountered.

Interpreting the Geneva Conventions : subsequent practice instead of treaty amendments ? : a case study of "non-international armed conflicts" under Common Article 3

Emily Crawford. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 117-140

This chapter discusses issues of treaty intention, interpretation, and longevity by reference to Common Article 3 of the Geneva Conventions and its lack of definition of the term 'non-international armed conflicts'. It questions the role of state practice in the absence of clear treaty rules: what is the relationship between treaties, subsequent practice, and customary international law - do treaties remain products of their time, or are they adaptive instruments? The chapter provides a case study on Common Article 3, its drafting history and its application in practice. It also examines the rules of treaty interpretation, and the recent work of the International Law Commission on treaties over time, to better understand the text and practice of this article, and explore whether state practice in relation to Common Article 3 amounts to an amendment of it, or rather shows the Geneva Conventions to have an evolutive character.

Investigating the Jana Adalat of the 1996-2006 armed conflict in Nepal

Yugichha Sangroula. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 789-806

The Communist Party of Nepal (Maoist) (CPN-M), an organized armed group, engaged in a non-international armed conflict against the Government of Nepal between 1996 and 2006. During the armed conflict, the organized armed group operated a judicial system in the territories under its effective control, called the Jana Adalat (the People's Court). The legitimacy of the Jana Adalat has been a contentious subject matter. This article examines the historical, legal and practical dimensions of the Jana Adalat, especially focusing on the perspectives of the CPN-M.

https://library.icrc.org/library/docs/DOC/irrc-914-sangroula.pdf

Japanese civilian internees in New Caledonia : a gap between the protecting powers and the ICRC

Rowena Ward. - In: Captivity in war during the twentieth century : the forgotten diplomatic role of transnational actors. - Cham : Palgrave Macmillan, 2021. - p. 101-118

During the Second World War, Japan did not appoint a protecting power for its relations with France and no ICRC delegate was appointed to oversee the Free-French-aligned territory of New Caledonia. Upon the outbreak of war in the Pacific, the New Caledonian authorities began arresting local Japanese residents: most were transferred to Australia but a small number remained interned locally. The Japanese sent to Australia had access to both protecting power and ICRC representation whilst those interned locally had no access until an ICRC delegate visited in July 1945. Japan used the range of its protecting powers to complain about the alleged ill-treatment of the internees in New Caledonia but was constrained by the lack of a protecting power covering the territory.

Judicial practice in international criminal law : law-making in disguise ?

Thomas Rauter. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 196-216

This chapter discusses the role of the decisions of international criminal tribunals when determining customary international law. The analysis of the jurisprudence of modern international criminal tribunals shows no common, unified approach to the identification of customary law. The delimitation between a mere application and interpretation of existing legal principles on the one hand and the creation of new law on the other is difficult when judges refer to modern and progressive approaches to customary law. They are criticized for their selectivity and for making generalizations on the basis of a handful of cases. To assess whether such criticism is just or exaggerated, it is indispensable to understand the confusion that surrounds custom as a source of law. The chapter argues that a more conscious approach of using and establishing custom would ensure that judgments are based on well-founded reasoning and would enhance the perceived legitimacy of international criminal justice.

Jus ex bello and international humanitarian law : states' obligations when withdrawing from armed conflict

Paul Strauch and Beatrice Walton. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 923-958

This article considers the international legal obligations relevant to States when withdrawing from situations of armed conflict. While a growing literature has focused on precisely when armed conflicts come to a legal end, as well as obligations triggered by the cessation of active hostilities, comparatively little attention has been paid to the legal implications of withdrawals from armed conflict and the contours of the obligations relevant to States in doing so. Following in the wake of just war scholarship endeavouring to distil jus ex bello principles, this article examines States' obligations when ending their participation in armed conflicts from the perspective of international humanitarian law (IHL). It shows that while it is generally understood that IHL ceases to apply at the end of armed conflict, this is in reality a significant simplification; a number of obligations actually endure. Such rules act as exceptions to the general temporal scope of IHL and continue to govern withdrawing States, in effect straddling the in bello and post bellum phases of armed conflict. The article then develops three key end-of-participation obligations: obligations governing detention and transfer of persons, obligations imposed by Article 1 common to the four Geneva Conventions, and obligations relating to accountability and the consequences of conflict.

https://library.icrc.org/library/docs/DOC/irrc-914-strauch.pdf

Jus in bello, jus ad bellum, and the decline in declarations of war

Tanisha M. Fazal. In: Security studies, Vol. 30, no. 5, 2021, p. 893-904

In this piece Tanisha M. Fazal responds to Katherine Irajpanah and Kenneth A. Schultz's article objecting to her argument that the proliferation of international humanitarian law is related to the decline in declarations of war. She explains her concerns regarding their claim that the rise of the UN system made declarations of war irrelevant and concludes by proposing a path to investigate further the still sparsely charted territory of norm change. Katherine Irajpanah and Kenneth A. Schultz then respond to two of her points, one methodological and the other oriented toward future research.

https://doi.org/10.1080/09636412.2021.2021055 *

Kant and the law of war

Arthur Ripstein. - Oxford : Oxford University Press, 2021. - XIII, 270 p.

The past two decades have seen renewed scholarly and popular interest in the law and morality of war. Positions that originated in the late Middle Ages through the seventeenth century have received more sophisticated philosophical elaboration. Ripstein argues that a special morality governs war because of its distinctive immorality: the wrongfulness of entering or remaining in a condition in which force decides everything provides the standards for evaluating the grounds of initiating war, the ways in which wars are fought, and the results of past wars. Beginning from the difference between governing human affairs through words and through force, Ripstein articulates a Kantian account of the state as a public legal order in which all uses of force are brought under law. Against this background, he provides innovative accounts of the right of national defence, the importance of conducting war in ways that preserve the possibility of a future peace, and the distinctive role of international institutions in bringing force under law.

Know thy enemy : the use of biometrics in military operations and international humanitarian law

Marten Zwanenburg. In: International law studies, vol. 97, 2021, p. 1404-1431

Biometrics is a technology that is increasingly being adopted by armed forces. It is the automated recognition of individuals based on their biological or behavioral characteristics. Important questions in relation to the use of this technology by armed forces concern the legal framework that governs such use. This article discusses the relationship between international humanitarian law (IHL) and biometrics, by focusing on a number of different activities carried out during armed conflict in which biometrics can play a role. It concludes that although IHL contains no rules that expressly regulate the use of biometrics, a number of IHL rules are relevant to such use. Some IHL rules may require the use of biometrics under certain circumstances, while others may limit such use. The application of IHL to biometrics raises a number of questions of interpretation, and thus lack of clarity. It is submitted that a discussion among States is required before determining whether new rules are required to address that lack of clarity, or whether clarification of the law will suffice. A first step could be the drafting of a document with non-binding "best practices."

https://digital-commons.usnwc.edu/ils/vol97/iss1/49/

The Kunduz airstrike before the European Court of Human Rights : a glimmer of hope to expand the Convention to UN military operations, or a tailored jurisdictional link ?

Eugénie Delval. In: Revue de droit militaire et de droit de la guerre = The military law and law of war review, Vol. 59, no. 2, 2021, p. 244-275

On 16 February 2021, the Grand Chamber of the European Court of Human Rights ruled, in Hanan v. Germany, that Germany exercised its extraterritorial jurisdiction for the purpose of its procedural obligation under Article 2 of the European Convention on human rights to investigate the airstrike it carried out in Afghanistan within the framework of a United Nations Security Council resolution. To establish an extraterritorial jurisdictional link, the Court relied on the 'special features' threshold that it has recently introduced in its jurisprudence, along with the threshold of the 'institution of a criminal investigation'. This potentially extends the standards of protection under the ECHR to situations where Contracting States are carrying out massive military operations in armed conflict, such as airstrikes, even within the framework of a UN mandate. Nonetheless, the Court remains cautious not to formulate general theories of jurisdiction and retains a very strict (and casuistic) control over the new jurisdictional thresholds.

https://doi.org/10.4337/mllwr.2021.02.04

The law at hand : paratext in manuals on international humanitarian law

Wouter G. Werner. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 217-231

This chapter analyses four major manuals of IHL (the 1994 and 2006 San Remo Manual, the 2009 Harvard Manual and the 2013 Tallinn Manual) and establishes three combined characteristics: they are international manuals, they take the form of 'restatements' of law, and they want to instruct users on how to apply existing rules. To explore the 'restatement of law', the chapter deals with the questions of how to claim legitimacy in restatements and why international manuals so often repeat basic rules of IHL. Manuals in IHL try to restate valid rules, so their legitimacy is connected to the correctness of the restatement. Furthermore, the technique of repetition is a major aspect: it serves to confirm the rules' authority, while claiming that established rules fit in a new context. IHL manuals also resemble consumer product manuals as they try to instruct the reader on how to read and apply the law.

Law-making participation by non-state armed groups : the prerequisite of law's legitimacy ?

Hyeran Jo. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 357-374

This chapter analyses the role of armed groups in the legitimacy discourse of IHL and argues that participation in law-making is not a prerequisite of legitimacy but recommended under certain conditions. First, there are higher-priority items to enhance IHL's legitimacy, such as compliance by states. Second, the legal and political challenges to the wholesale participation by armed groups are myriad, which might obstruct legitimacy rather than boost it. The claim that armed groups' participation is not a prerequisite does not mean that it does not have an important role in enhancing IHL's legitimacy. For international law to be relevant, the traditional view that states' consent is the main source of rule legitimacy cannot hold. Instead, a more open approach of law-making and recognition of diverse modes of participation are needed to increase rule legitimacy. In this sense, armed group participation is not necessary, but rather an enabling condition for IHL legitimacy.

Law's ends : on algorithmic warfare and humanitarian violence

Sara Kendall. - In: War and algorithm. - London ; New York : Rowman & Littlefield, 2019. - p. 105-125

In this chapter, the author poses that the prospect of algorithmic warfare suggests a limit to the anthropocentrism of human law, evoking a runway creation that cannot be contained by the order that produced it.Turning to the substance of international humanitarian law, the author situates it historically to illustrate that even if it could grasp the phenomenon of algorithmic warfare, the law would only replicate and perpetuate the asymmetries that have accompanied its historical development. Building upon critical accounts of international humanitarian law's origins and practices, the author addresses the distinct temporality of these emerging weapon systems before concluding that enhancing warfare through algorithms and machine learning in the name of humanitarian ends —such as more precise targeting, leading to more proportionate casualties— may in fact hasten the advent of a violence that law is unable to contain.

The laws of yesterday's wars : from Indigenous Australians to the American Civil War

ed. by Samuel White. - Leiden ; Boston : Brill Nijhoff, 2021. - XII, 222 p.

This book offers a culture-by-culture account of various unique restrictions placed on warfare over time, in a bid to demonstrate the underlying humanity often accompanying the horrors of war. It offers the first systematic exploration of Indigenous Australian laws of war, relaying decades of experience in communities. Containing essays by a range of laws of war academics and practitioners, this volume is a starting point in a new debate on the question: how international is international humanitarian law?

The legacy of F.F. Martens and the shadow of colonialism

Lauri Mälksoo. In: Chinese journal of international law, Vol. 21, issue 1, March 2022, p. 55-77

This article explores the colonialist legacy of the Russian international lawyer F.F. Martens (1845-1909) who is well known to contemporary international lawyers in particular thanks to the Martens Clause. The article highlights Martens's activities legitimizing the Congo Free State, his publicist activity at the Revue de droit international et de legislation comparee and his quasi-legislative efforts at the Institut de Droit International, all emanating from his strong support to the distinction between civilized and uncivilized peoples in international law during the colonial era. The main argument in the article is that the colonialist part of the legacy of Martens has been downplayed for the purposes of celebratory myths of origin of international (humanitarian) law, but that this part of his legacy deserves to be remembered as well.

https://doi.org/10.1093/chinesejil/jmab041

A legal obligation under international law to guarantee access to abortion services in contexts of armed conflict ? : an analysis of the case in Colombia

Juliana Laguna Trujillo. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 851-874

This article discusses the existence of an international obligation for the State of Colombia to guarantee access to abortion services for women and girls who are victims of conflict-related sexual violence in the context of the Colombian armed conflict. By examining international humanitarian law rules from an international human rights law lens, it sets out the interdependence between both frameworks from reproductive health and human rights perspectives. Furthermore, the article provides considerations on the recognition and redress of these violations in the transitional justice scenario in Colombia.

https://library.icrc.org/library/docs/DOC/irrc-914-trujillo.pdf

The legal protection of persons living under the control of non-State armed groups

Tilman Rodenhäuser. In: International review of the Red Cross, Vol. 102, no, 915, 2020, p. 991-1020

In recent non-international armed conflicts in countries such as the Central African Republic, Iraq, Libya, Nigeria, South Sudan, Syria, Ukraine and Yemen, various non-State armed groups (NSAGs) have exercised control over territory and people living therein. In many cases, and for a variety of reasons, NSAGs perform some form of governance in these territories, which can include the maintenance of order or the provision of justice, health care, or social services. The significance of such measures became particularly apparent when in 2020 not only governments but also armed groups took steps to halt the spread of the COVID-19 pandemic. This article examines key legal issues that arise in these contexts. First, it analyzes the extent to which international humanitarian law protects the life and dignity of persons living under the control of NSAGs, rebutting doubts as to whether this field of international law has a role in regulating what is sometimes called "rebel governance". Second, it provides a brief overview of aspects of the lives of people in armed group-controlled territory that are addressed by international humanitarian law and aspects that instead fall into the realm of human rights law. Third, the article discusses whether and to what extent human rights law can be said to bind NSAGs as a matter of law and flags issues that need further attention in current and future debates.

https://library.icrc.org/library/docs/DOC/irrc-915-rodenhauser.pdf

La legislación antiterrorista en la jurisprudencia de la Corte Interamericana de Derechos Humanos

Juana María Ibáñez Rivas. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 193-220

En el marco de la competencia de la Corte Interamericana de Derechos Humanos para analizar casos vinculados a conflictos armados, esta ha reconocido la interrelación entre el derecho internacional de los derechos humanos y el derecho internacional humanitario y, en esa medida, ha analizado hechos relacionados a legislación antiterrorista creada y aplicada en tales contextos. El derecho internacional humanitario prohíbe los actos terroristas y, asimismo, establece garantías de protección para las personas sospechosas, acusadas o sentenciadas por delitos de terrorismo en relación con un conflicto armado. De esta manera, en el análisis de los respectivos casos, la Corte Interamericana ha interpretado el principio de legalidad y no retroactividad, las garantías del debido proceso y los derechos a la libertad e integridad personales reconocidos en la Convención Americana sobre Derechos Humanos, a la luz de la interrelación entre ambas ramas del derecho internacional público y, en algunas ocasiones, con reenvío expreso al derecho internacional humanitario. Dicha jurisprudencia ha demostrado que el derecho internacional de los derechos humanos y el derecho internacional humanitario resultan fundamentales en la adopción de medidas de lucha contra el terrorismo y, específicamente, en la implementación del marco normativo para enfrentar ese flagelo.

https://www.doi.org/10.5294/aidih.2021.2.1.7

A legitimacy crisis of international humanitarian law ?

Heike Krieger and Jonas Püschmann. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 429-450

The conclusion reflects upon the fraying consensus underlying IHL and argues that the legal regime is indeed experiencing a deeper legitimacy crisis. Instead of strengthening the legal regime, the multiplication of relevant actors in the law-making discourse of IHL has further contributed to and augmented the already existing ambiguities. While states eventually remain the gate-keepers for any formal change of IHL, discursive practices and interpretative processes by non-state actors shape IHL and gradually shift its underlying balance. There are indications that a process of decoupling between public moral considerations and the moral underlying IHL norms is prompting this shift.

Lethal machines' 'acts' : the use of artificial intelligence and the principles of international law

Nicolò Borgesano. In: Humanitäres Völkerrecht = Journal of international law of peace and armed conflict, Bd. 4, H. 3/4, 2021, p. 174-187

In the most flourishing era in terms of artificial intelligence advancements and achievements, an ever-increasing uncertainty regarding the possibility to ensure human rights protection at war requires in-depth analysis and considerations. Notably, there are three overlapping areas that presuppose the usage of artificial intelligence: physical robotic systems, cyber weapons, and decision-support systems. The article focuses on the employment of robotic systems that use physical force and are considered 'deadly', given their inherent capability of 'acting' and putting human life in peril, thus causing an immediate concern from a humanitarian, legal, and ethical perspective. The article introduces a functional definition of Lethal Autonomous Weapon Systems and examines the existence of international liability in relation to the aggressive 'act' of a machine. After evaluating the 'acts' of those machines under the main principles of international humanitarian law and international human rights law, the article concludes that, even though some problems may be overcome, ethical issues pose the greatest risk and suggest the necessity of a permanent human-centred approach.

https://doi.org/10.35998/huv-2021-0011 *

Liar's war : protecting civilians from disinformation during armed conflict

Eian Katz. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 659-682

Disinformation in armed conflict may pose several distinctive forms of harm to civilians: exposure to retaliatory violence, distortion of information vital to securing human needs, and severe mental suffering. The gravity of these harms, along with the modern nature of wartime disinformation, is out of keeping with the traditional classification of disinformation in international humanitarian law (IHL) as a permissible ruse of war. A patchwork set of protections drawn from IHL, international human rights law and international criminal law may be used to limit disinformation operations during armed conflict, but numerous gaps and ambiguities undermine the force of this legal framework, calling for further scholarly attention and clarification.

https://library.icrc.org/library/docs/DOC/irrc-914-katz.pdf

Litigating lighting : shining a light on gaps in the legal regime and accountability for the law of armed conflict at sea

Brennan Lee. In: Minnesota journal of international law, Vol. 30, issue 2, 2021, p. 359-393

In Part I, this paper explores the background of the rules governing the lighting of ships, attempts to define deceptive lighting, and explains the current rules governing ruses and perfidy in the maritime domain. Part II assesses the implications of criminalizing the act of deceptive lighting and discusses the broader implications of the categorical criminalization of deceptive lighting. This section also concludes that prosecution of deceptive lighting is unlikely in part as a result of the conflicting legal regimes, and that such an act could only meet the definition of a war crime in very particularized scenarios. The paper ultimately concludes that while nonbinding manuals have assisted in the development of the law of armed conflict (LOAC) in non-standard domains, these regimes are governed by particularized scenarios, rules, and histories that require specific treaty provisions to articulate discernable LOAC rules in these environments.

https://minnjil.org/wp-content/uploads/2022/01/Lee_v30_i2_359_393.pdf

Making and shaping the law of armed conflict

Sandesh Sivakumaran. In: Current legal problems vol. 71, no. 1, 2018, p. 119-160

Who makes international humanitarian law? That is the subject of this article. Is it states and only states? Or are other actors also involved? What is the role of international courts and tribunals? And where does the work of the International Committee of the Red Cross fit? Drawing on ideas of communities of practice and interactional international law, this article argues that it is the community of international humanitarian lawyers that makes international humanitarian law through a process of dialogic interaction. This community includes states, international courts and tribunals, the International Committee of the Red Cross, academics, and others. Through interaction in the selection of issues, during the drafting of outputs, and following the publication of the finished product, the community makes and shapes international humanitarian law. States thus play an important role in law-making, particularly insofar as the conclusion of treaties and the formation of customary international law are concerned. However, states have tended not to react to the interpretation, application and identification of the law by other members of the community of international humanitarian lawyers. This relative silence on the part of states has had a number of consequences. Silence has been taken as acquiescence. The response of other members of the community to the publication of an output has taken on a greater significance. And states have been side-lined. The Article concludes by discussing ways in which states can be more active in the making and shaping of international humanitarian law.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/55827.pdf *

Manuals and courts : international humanitarian law, informal law-making and normativity

Dale Stephens. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 253-275

This chapter examines the place and methodological agency of the manual process as well as the impact of court and tribunal decisions on military legal operational planning. It analyses the deliberative processes and methodological approaches adopted when locating and identifying relevant rules and principles of IHL. The rise of international operational law manuals resulted in a developing academic critique regarding their legitimacy and in turn ignited a vigorous defence of the procedural integrity of the manual process. As such manuals do inform operational decision-making in the battlespace and have also been confidently used and invoked by courts, tribunals and quasi-judicial bodies, the role and place of informal sources of authority are becoming well entrenched. The invocation of apparently informal prescriptions in such formal circumstances requires an examination of the integrity that underpins the manual process as well as the impact of court and tribunal decisions on military legal operational planning.

Media, public opinion and humanitarian advocacy

William Boothby. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 422-427

Social media constitute not only a fact of modern life but also of modern warfare, and this is so from a number of perspectives which are presented in this comment. Modern conflicts put civilians at the centre of hostilities as direct participants, victims or in a variety of other capacities. One that has major implications for future warfare is the role of civilians as witnesses. The possibility for events on the battlefield to be recorded by observers and the increasingly widespread connectivity are developments making it more possible to put the

actions of war criminals on record. There are nowadays also numerous legal avenues where the citizen can challenge decisions made in military operations. The citizen who has available to them this broader range of challenge options is the same citizen that has the greater possibility of influencing public appreciations as to the way the war is being fought.

Methodological challenges in ascertaining customary international humanitarian law : can customary international law respond to changing circumstances in warfare ?

Robert Heinsch. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 170-194

This chapter focuses on the question of whether customary international law is able to deal with recent developments, and which methodological challenges it entails. In this context, customary law is crucial for adapting international humanitarian law to new developments in modern warfare since it is quicker than conventional law. It also plays a significant role in developing the law of non-international armed conflicts. On the other hand, a flexible approach to the requirements of state practice and opinio juris is required by the special circumstances on the battlefield. Nevertheless, despite these special circumstances, the core of Article 38 ICJ-Statute cannot be changed: a disregard for state practice would lead back to a 'natural law' approach , including the danger of abuse of the discretion exercised by the appliers. Hence, although other legal personalities play a role on the international plane, it is still the states who set the rules.

Militarized sexual violence and campaigns for redress

Vera Mackie. - In: The Routledge history of human rights. - Abingdon : Routledge, 2020. - p. 523-541

This essay traces how the issue of militarized sexual violence came to be embedded in international legal institutions. Militarized sexual violence was prosecuted in these ad hoc tribunals: the International Criminal Tribunal for Yugoslavia (1993–2017) and the International Criminal Tribunal for Rwanda (1994–2015). At the same time, civil society activists campaigned for the recognition of militarized sexual abuse perpetrated in the Asia-Pacific War, culminating in the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery in Tokyo in 2000. The Rome Statute of the International Criminal Court, adopted in 1998, entered into force in 2002 when the International Criminal Court was formally established in The Hague. It explicitly mentions wartime sexual violence as a crime against humanity. United Nations Security Council Resolution 1325 (October 2000) reinforces recognition of sexual violence and rape as crimes against humanity and strengthens provisions under the earlier Geneva Conventions. United Nations Security Council Resolution 1820 (June 2008), similarly brings together women, peace, and security in the prevention of sexual violence. Sources surveyed in this essay include publications from movements for redress, legal documents, official and unofficial war crimes tribunals, archival sources and firsthand testimonies.

The missing elephant in the room : the jurisdiction of international human rights tribunals over international humanitarian law

Ka Lok Yip. In: Journal of international dispute settlement, Vol. 11, no. 3, September 2020, p. 388-408

Treaty-based tribunals that render binding decisions on states under international human rights law (IHRL) have long engaged with international humanitarian law (IHL) in their judgements but little attention has been given to the basis of their jurisdiction, if any, to do so. By revisiting fundamental questions on the jurisdictional basis of international tribunals, this article presents a methodological challenge to the uncritical engagement with IHL by certain IHRL tribunals. After surveying the jurisdiction of different IHRL tribunals explicitly founded on treaties, the article seeks not only to justify, but also delimit, the inherent jurisdiction of IHRL tribunals to consider IHL for interpretive purpose, in contrast to directly applying it to the dispute. Finally, the article analyses the substantive and practical implications of stricter observance of the jurisdictional limits of IHRL tribunals on the interpretation of IHRL, the determination of 'absent' states' legal interest under IHL and the future of IHL dispute settlement.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/55384.pdf *

The moral norm, the law, and the limits of protection for wartime medical units

Neve Gordon. - In: Everybody's war : the politics of aid in the Syria crisis. - Oxford : Oxford University Press, 2021. - p. 58-85

Based on ninety-nine interviews carried out with health professionals, this chapter briefly describes how the Syrian government transformed medical units into strategic targets. It then turns to discuss the legal advocacy strategy used by human rights and humanitarian organizations, claiming that while the law

provides medical units with a series of protections, it also introduces crucial exceptions, setting out conditions under which warring parties can legally unleash violence against health facilities and staff. Even as accountability for the violation of international humanitarian law has been the primary rallying cry for NGOs seeking justice in Syria, the chapter argues that invoking the law to seek relief from violence is not necessarily the best strategy since the law itself sows doubt on the validity and solidity of the moral injunction to protect medical units.

New war technologies and international law : the legal limits to weaponising nanomaterials

Kobi Leins. - Cambridge [etc.] : Cambridge University Press, 2022. - XVI, 277 p.

The desire for humanity and the desire for security have co-existed as long as humans have been alive. As science has become increasingly sophisticated, so have the methods of self-defence by States. Nanotechnology is already changing warfare by increasing capabilities upon which armed forces are heavily reliant: more efficient energy storage, advanced photovoltaics, and improved military protective equipment to name a few of these developments. Some applications of nanomaterials by the military are both powerful and subtle, and have neurological and biological applications: 'devices that can infiltrate electronics and seize control at crucial moments, artificial "disease" agents that can rest harmlessly in victims' bodies until activated by an external signal,' The advance of the use or contemplation of use of these types of nanoscale applications by the military requires urgent analysis in light of existing international law, particularly in light of their potential effects on humans and on the environment.

https://doi.org/10.1017/9781108891974 *

Naming and shaming the bombers

Michiel Hofman. - In: Everybody's war : the politics of aid in the Syria crisis. - Oxford : Oxford University Press, 2021. - p. 185-210

This chapter recounts how Médecins Sans Frontières (MSF) failed to turn the tide against the attacks on hospitals through its approach of naming and shaming the perpetrators of hospital bombings. It speculates that the failure to stop the attacks was either caused by the way in which the international humanitarian law (IHL) is wired to provide exemption for warring parties or MSF's inability to deliver consistent messages necessary to generate pressure on offending nations. It also mentions the Syrian government's denial of assistance to the population and disrespect to the laws of war that centered the state as both perpetrator and aid responder. The chapter looks at the Syrian government's ability to deny and allow access to services that served to amplify its control and project its sovereignty. It elaborates how the Syrian state centered its own sovereign control by being the focus of diplomatic efforts to ensure humanitarian access.

Non-binding norms in international humanitarian law : efficacy, legitimacy, and legality

Emily Crawford. - Oxford : Oxford University Press, 2021. - XIX, 284 p.

This monograph examines and analyses the phenomenon of non-binding instruments (also known as 'soft law') in the law of armed conflict, or international humanitarian law. In the past 30 years, there have been several non-binding instruments created, designed as either 'best practice' guidelines, or (re)statements of applicable law. These instruments are not treaties, but they nevertheless put themselves forward as authoritative statements of what the law is and, in some instances, what the law should be. Soft law instruments can be dynamic, prompt, and responsive measures to address pressing issues in armed conflicts. By drawing on the skill of a small group of experts, these instruments can be debated and drafted in a timelier manner than if these issues were to be left to the international community of 194 States to resolve. Furthermore, because these instruments do not have to be sent for debate to an international conference of States, it means that the provisions are not subject to the usual revisions, reservations, and dilutions that come with attempting to reach consensus. However, there are potential and actual problems with these instruments and the processes that bring them to fruition, and how they are received in practice by States and other stakeholders. This volume looks at the benefits and drawbacks for States and non-State actors with regards to soft law, whether they are effective additions to the law of armed conflict, analysing the development through the lens of theories of legitimacy and legality in international law.

Non-state actors and enforced disappearances : defining a path forward

Ana Srovin Coralli. - Geneva : Geneva Academy of International Humanitarian Law and Human Rights, September 2021. - 15 p.

This Working Paper discusses the growing phenomenon of disappearances committed by non-state actors and the need to rethink the current definition of enforced disappearance to address this reality, improve the situation of victims and ensure proper accountability of non-state actors. Disappearances committed by non-state actors have intensified throughout the years in all parts of the world. They can take place in the contexts

of human trafficking, migration, and armed conflicts and are notably perpetrated by organized crime groups, street gangs or armed groups. While this phenomenon is on the rise, the working paper underlines that the current international legal framework and definition of enforced disappearances in international human rights law does not allow to properly addressing it. It therefore calls for an expansion of the definition of enforced disappearance to improve the situation of victims in two ways. First, state obligations regarding disappearances committed by non-state actors would be equal to their obligations for enforced disappearances. Second, such expansion would also facilitate holding non-state actors accountable for disappearances.

https://www.geneva-academy.ch/joomlatools-files/docman-files/working-papers/Non-State%20Actors%20and%20Enforced%20Disappearances%20Defining%20a%20Path%20Forward.pdf

Non-state armed groups and international humanitarian law-making - the challenge of legitimacy : a reply to Cindy Wittke and Hyeran Jo

Cedric Ryngaert. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 375-383

This comment engages with legitimacy challenges with which the imposition of international humanitarian law on non-state armed groups is confronted. It argues that Wittke focuses on the imposition of particular (ceasefire) agreements and obligations on both states and non-state actors through international executive action (UNSC intervention), while Jo concentrates on the imposition of general obligations of international humanitarian law on non-state armed groups through conventions addressed to both states and non-state actors. Both contributions raise legitimacy concerns and both accredit non-state armed groups with certain obligations under general international law. The comment critically appraises alternative methods of legitimacy-enhancement that are based on procedural and substantive justice. It argues that securing non-state actor consent is desirable from a legitimacy and eventually effectiveness perspective, but that a failure to secure such consent should not be an argument to cast doubt on the binding character of international humanitarian law for non-state armed groups.

Noncompliance as law-making

Timothy Meyer. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 89-115

This chapter challenges the role of noncompliance as law-making. It argues that a limited role for law-making through noncompliance is necessary for the international legal system to function effectively. Although noncompliance is frequently seen as mere law-breaking, it can have different ends than cheating on a state's obligations. Moreover, classifying an act as (non)compliance is often a matter of interpretation. It is argued that noncompliance to be an effective law-making technique: 1) must be public; 2) must carry with it a credible threat to continue the violation indefinitely; 3) the normative content of the violation must be acceptable to other states as an alternative rule; and 4) the violator's relative costs of law-making through noncompliance are less than they would be through conventional multilateral law-making channels. Thus, channeling noncompliance into law-making can lead to better compliance outcomes over time and to greater effectiveness for international law.

Occupational hazards : gender and the law of occupation in Israel-Palestine

Fionnuala Ní Aoláin. - In: Strenghtening human rights protections in Geneva, Israel, the West Bank and beyond. - Cambridge : Cambridge University Press, 2021. - p. 157-178

One glaring limitation in addressing the experiences of women in situations of armed conflict is the absence of a sustained analysis of the structural limits and capture of the law of occupation. This chapter addresses and bridges the gender gap in the law of occupation by addressing certain aspects of women's and girls' experiences in the Occupied Palestinian Territories. The chapter provides a brief historical contextualisation of the gender dimensions of belligerent occupation, addressing in particular the scope and gaps of the relevant treaty frameworks. It follows with an overview of certain gendered aspects to gendered lives under occupation, particularly focused on freedom of movement, family life, and gendered autonomy in long-term transformative occupations.

Ocupación por proxy y los test de control : un análisis jurisprudencial

Sebastián Alejandro Arrieta Uquillas, Juan Felipe Idrovo Romo. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 87-118

En el caso del Fiscal c. Duško Tadić, el Tribunal Penal Internacional para la ex-Yugoslavia sentó un gran precedente para el Derecho Internacional Humanitario al desarrollar el concepto de la internacionalización de un conflicto armado. Esto permitió que la figura de la ocupación por proxy encuentre cabida en casos

donde un Estado ocupa determinado territorio de otro, por medio de un grupo armado organizado sobre el cual ejerce determinado nivel de control; a la vez, el grupo armado debe ejercer control efectivo sobre el territorio "ocupado" y cumplir con los demás presupuestos de la ocupación. El artículo propone un detallado análisis jurisprudencial y una discusión paralela sobre conceptos interdependientes como la calificación del conflicto y la atribución de responsabilidad estatal, al ser determinantes para que la ocupación por proxy sea aplicable.

https://www.doi.org/10.5294/aidih.2021.2.1.4

Off the menu : post-1945 norms and the end of war declarations

Katherine Irajpanah and Kenneth A. Schultz. In: Security studies, Vol. 30, issue 4, 2021, p. 485-516

Why do states no longer declare war? In a provocative analysis, Tanisha M. Fazal argues that states stopped declaring war to evade the costs of complying with the growing body of international humanitarian laws. We argue instead that post-1945 normative and legal developments that sought to prohibit war changed the meaning of war declarations in a way that made them at best irrelevant and at worst counterproductive. Although war-making did not end, a once routine feature of warfare came to be seen as a signal of extreme aims that could complicate escalation management and coalition building. Moreover, the United Nations (UN) system provided more desirable ways for states to justify military operations, particularly through self-defense claims. We support this argument through a reassessment of the empirical pattern of war declarations, an analysis of self-defense claims made under Article 51 of the UN Charter, and case studies of undeclared wars in the post-1945 period.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/55431.pdf *

On prisoners, family life and collective punishment : the Namnam case

Yaël Ronen. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1273-1292

This article examines the 2019 decision by the Supreme Court of Israel (the Court) in the Namnam case, upholding a ban on family visits to Gaza prisoners incarcerated in Israel and affiliated with Hamas. This article examines the decision of the Court in light of the applicable international law. It considers the Court's decision in terms of the permissible restrictions on the right to family life and draws on the Court's reasoning for an in-depth analysis of various unarticulated aspects of the prohibition on collective punishment. The article concludes that an international human rights law analysis might have led to a different outcome, and that had the Court applied the prohibition on collective punishment properly, it would have had to declare the measure unlawful. The article then places the decision in the broader context of the Court's engagement with international law in disputes relating to Palestinians residing in the West Bank and Gaza.

https://library.icrc.org/library/docs/DOC/irrc-915-ronen.pdf

"Or any other similar criteria" : towards advancing the protection of LGBTQI detainees against discrimination and sexual and gender-based violence during non-international armed conflict

Vaughn Rossouw. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 765-787

Discrimination and sexual and gender-based violence committed against lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) detainees remains one of the most pressing contemporary humanitarian challenges. This article focuses on the interpretation of the phrase "or any other similar criteria" as contained in Article 3 common to the four Geneva Conventions, upon which adverse distinction is prohibited, in order to qualify sexual orientation and gender identity as prohibited grounds of adverse distinction. The interpretation of "or any other similar criteria" will be embarked upon by employing the general rule of treaty interpretation provided for in the Vienna Convention on the Law of Treaties, so as to qualify sexual orientation and gender identity as "any other similar criteria" and ultimately to realize the protection of LGBTQI detainees against discrimination and sexual and gender-based violence during non-international armed conflict.

https://library.icrc.org/library/docs/DOC/irrc-914-rossouw.pdf

Post-international humanitarian law ?

Philip Liste. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 80-88

This chapter focuses on the consideration of IHL's normative ecology. The author argues that an analysis of the development and/or stagnation of international law can benefit from a consideration of the 'social life'

of international norms. The author makes two statements in this regard. First, the relation between humanity and 'international' is dialectical. The two concepts are co-emergent and thus deeply interrelated. Second, IHL has a role to play in the production of space. It has contributed, and arguably continues to contribute, to the production of 'international' space. As a result, post-international humanitarian law could be understood in at least two different ways - first, as post-international humanitarian law as a normative order that has overcome any attempts to legally protect humanity; and second, as post-international humanitarian law as an ongoing attempt to do so, though under the conditions of a new normative constellation.

The potential use of artificial intelligence in a nuclear weapon context and the need to advance a new set of norms

Daniel Mekonnen. - In: Nuclear non-proliferation in international law. Vol. 6 : nuclear disarmament and security risk : legal challenges in a shifting nuclear world. - The Hague : Asser Press, 2021. - p. 305-329

Nations have always endeavoured to advance their offensive and defensive military capabilities by taking advantage of the most up-to-date technological innovations. The desire to do this through the use of artificial intelligence (AI), 'the science and engineering of making intelligent machines' (McCarthy 2007), may be seen as part of the continued and normal human urge towards progress. However, the potential use of AI in certain types of weapons, in particular nuclear weapons, is very problematic, due to the fact that the potential replacement of the role of 'human judgment' by that of 'machines' over decisions related to the use of enormously powerful weapons is fraught with a tremendous amount of risk. There is an apparent lacuna in international security law about the use of AI in a nuclear weapon context. Should this be a reason to start thinking seriously about a new set of international norms? If so, within an increasingly fragile global political order, how can this be achieved in a more effective way that does not erode previously attained achievements in the field of non-proliferation?

Preparing for war : the making of the Geneva Conventions

Boyd van Dijk. - Oxford : Oxford University Press, 2022. - XIV, 376 p.

The 1949 Geneva Conventions are the most important rules for armed conflict ever formulated. To this day they continue to shape contemporary debates about regulating warfare, but their history is often misunderstood. For most observers, the drafters behind these treaties were primarily motivated by liberal humanitarian principles and the shock of the atrocities of the Second World War. This book tells a different story, showing how the final text of the Conventions, far from being an unabashedly liberal blueprint, was the outcome of a series of political struggles among the drafters. It also concerned a great deal more than simply recognizing the shortcomings of international law revealed by the experience of war. To understand the politics and ideas of the Conventions' drafters is to see them less as passive characters responding to past events than as active protagonists trying to shape the future of warfare. In many different ways, they tried to define the contours of future battlefields by deciding who deserved protection and what counted as a legitimate target. Outlawing illegal conduct in wartime did as much to outline the concept of humanized war as to establish the legality of waging war itself. Through extensive archival research and critical legal methodologies, Preparing for War establishes that although they did not seek war, the Conventions' drafters prepared for it by means of weaving a new legal safety net in the event that their worst fear should materialize, a spectre still haunting us today.

Preventing civilian harm in partnered military operations : a commander's handbook

ICRC. - Geneva : ICRC, January 2022. - 53 p.

This handbook is for military commanders and staffs working with other armed forces or non-state armed groups within the framework of partnered military operations (PMOs). Much of the guidance is relevant for policy advisers as well. The handbook offers planning and decision-making considerations for avoiding or lessening adverse humanitarian effects on civilian populations. It presents proactive, pragmatic practices to foster law of armed conflict compliance by partners; to identify, avert, or mitigate potential risks to civilians; to positively influence partner behaviour; and to stimulate awareness in partners' and own force's behaviour and actions that can potentially harm civilians.

https://library.icrc.org/library/docs/DOC/icrc-4554-002.pdf

Prize law redux

by Yoram Dinstein. In: Israel yearbook on human rights, Vol. 51, 2021, p. 1-22

This article looks into the remergence of prize law in relation to recent case law in Israel and debates over the 2004 UK Manual of the Law of Armed Conflict's stance on prize adjudication. It details provisions applicable to the capture of merchant vessels at sea, enemy or neutral, the diversion of such vessels, the

destruction of vessels subject to prize proceedings, cargoes as prize, and the application of prize law to civilian aircraft. The author argues that, like other branches of customary international law, prize law has proved adaptable in nature. As manifested by the 2007 amendment of the UK Manual, prize courts cannot be disregardered even though they have largely hibernated in previous decades.

Protecting the environment during and after armed conflict, the International Law Commission and an overdue due diligence duty for corporations : good in principle ?

Alexandra Wormald. In: Journal of international humanitarian legal studies, Vol. 12, issue 2, 2021, p. 314-343

Recent years have seen a rising global consensus on the need to ensure appropriate protections for the environment during and after armed conflict. In this context, the International Law Commission provisionally adopted 28 draft principles on the protection of the environment in relation to armed conflicts in July 2019. With stakeholder consultation having concluded in June 2021, this article investigates what practical impacts the corporate due diligence and liability provisions in the draft principles are likely to have on the protection of the environment during and after armed conflict, should the principles be implemented as currently drafted.

https://doi.org/10.1163/18781527-bja10037 *

Protecting the global information space in times of armed conflict

Henning Lahmann. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1227-1248

The legal implications of information activities in the context of armed conflict against the background of the digital transformation have so far received only scarce attention. This article aims to fill this gap by exposing some of the legal issues arising in relation to mis- and disinformation tactics during armed conflict in order to provide a starting point for further debate in this respect. Specifically, it explores the existence and content of existing limits imposed by international humanitarian law on (digital) information operations and inquires whether the current framework adequately captures the humanitarian protection needs that arise from such conduct.

https://library.icrc.org/library/docs/DOC/irrc-915-lahmann.pdf

La protection de l'environnement en cas de conflit armé dans l'espace extra-atmosphérique

Mathilde Vigné. - In: Droit de l'espace extra-atmosphérique : questions d'actualité. - Toulouse : Presses de l'Université de Toulouse 1 Capitole, 2021. - p. 133-146

Une préoccupation majeure et pourtant peu explorée à ce jour est la protection de l'environnement en cas de conflit armé spatial. Tel conflit pourrait avoir un impact potentiellement catastrophique sur l'environnement, aussi bien spatial que terrestre. Ce chapire fait état du droit international actuel et de son applicabilité dans le cadre de la protection de l'environnement en cas de conflit armé spatial.

La protection des biens culturels d'intérêt religieux en droit international public et en droit international privé

par José Angelo Estrella Faria. In: Recueil des cours : Académie de droit international de la Haye = Collected courses of the Hague academy of international law, T. 421, 2021, p. 9-333

Le droit international s'occupe de la protection des biens culturels dans divers domaines: le droit des conflits armés, le cadre de la protection du patrimoine culturel mondial, les droits humains, les règles sur la circulation internationale des biens culturels et le droit international privé. Les différentes sources normatives traitent la matière à des degrés variés de détail et de spécificité, depuis leur propre perspective de ce qui constitue l'objet de la "protection", chacune utilisant sa propre notion de "bien culturel". La sous-catégorie de biens culturels qualifiés "d'intérêt religieux" occupe une position particulière et ne constitue pas en elle-même une matière systématisée. Cette étude se propose d'analyser la situation de ces biens depuis les prismes respectifs des différentes sources du droit international public et privé dans la mesure où celles-ci peuvent en affecter la protection.

La protection et l'assistance aux personnes déplacées dans les conflits armés en République centrafricaine

Pathe Bayanga Wilfried Wieelnord Alexandre. - Paris : L'Harmattan, 2021. - 414 p.

L'Etat centrafricain a l'obligation d'assurer la protection des droits des personnes déplacées à l'intérieur du pays sans aucune discrimination. Cet ouvrage donne une analyse du régime juridique de protection des personnes déplacées en République centrafricaine, présente les instruments juridiques qui protègent ces déplacés et analyse la relativité de la protection et de l'assistance aux personnes déplacées en Centrafrique.

Recours à la force et nouveaux enjeux de la conflictualité : réflexions sur l'évolution des liens entre jus ad bellum et jus in bello

Anne-Marie Tournepiche. - In: Panser la guerre, penser la paix : mélanges en l'honneur du Professeur Rahim Kherad. - Paris : Pedone, 2021. - p. 289-298

Le droit de recourir à la force (jus ad bellum) défini par la Charte de l'ONU est historiquement et conceptuellement distinct du droit applicable dans les situations de conflits armés (jus in bello). La nécessaire indépendance entre les deux droits empêche de conditionner l'application du droit international humanitaire à un conflit qui se conformerait aux dispositions de la Charte, et garantit ainsi une applicabilité du DIH et une protection des victimes la plus grande possible, quelle que soit la cause du conflit. Néanmoins, si le droit international humanitaire et le droit international du maintien de la paix ont des objectifs différents, ils se rejoignent sur des valeurs communes fondamentales et les violations répétées de ces deux branches du droit international plaident, sans pour autant remettre en cause la nécessité de leur séparation, pour une cohérence renforcée, afin que leur respect soit mutuellement assuré et que les enjeux contemporains de la conflictualité armés puissent être plus efficacement appréhendés.

The Red Cross and the laws of war, 1863-1949 : international rights activism before human rights

Kimberly A. Lowe. - In: The Routledge history of human rights. - Abingdon : Routledge, 2020. - p. 75-96

This essay uses the history of the Red Cross/Crescent movement to analyze the connection between human rights and international humanitarian law from 1863 to 1949. It argues that until 1921, both the Red Cross/Crescent movement and state signatories to the Geneva and Hague Conventions considered the rights of war victims to be limited to international conflicts between “civilized” states and contingent on the reciprocal behavior of the enemy. Only in 1921, in reaction to a series of crucial developments during World War I, did the international movement become committed to universal rights for war victims. It declared that combatant and noncombatant war victims possessed equal rights; that these applied universally to both international and civil wars; and that these rights were inalienably guaranteed by a moral code that transcended agreements between sovereign states. From 1921 to 1939 many of the efforts to secure these rights failed, due to opposition by established governments and to the non-cooperation of national Red Cross/Crescent societies. In 1949, however, four greatly expanded Geneva Conventions began to incorporate the movement’s 1921 declarations, providing for the first time a legal basis for the rights of both civilians and victims of non-international armed conflicts.

The redirection of attacks by defending forces

Tsvetelina van Benthem. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 875-892

This article examines the redirection of incoming missiles when employed by defending forces to whom obligations to take precautions against the effects of attacks apply. The analysis proceeds in four steps. In the first step, the possibility of redirection is examined from an empirical standpoint. Step two defines the contours of the obligation to take precautions against the effects of attacks. Step three considers one variant of redirection, where a missile is redirected back towards the adversary. It is argued that such acts of redirection would fulfil the definition of attack under the law of armed conflict, and that prima facie conflicts of obligations could be avoided through interpretation of the feasibility standard embedded in the obligation to take precautions against the effects of attacks. Finally, step four analyzes acts of redirection against persons under the control of the redirecting State. Analyzing this scenario calls for an inquiry into the relationship between the relevant obligations under international humanitarian law and human rights law.

https://library.icrc.org/library/docs/DOC/irrc-914-benthem.pdf

Le régime comparé des armes NMBC

David Cumin. - In: Le droit international et le nucléaire. - Bruxelles : Bruylant, 2021. - p. 213-287

Après avoir rappelé l'analyse juridique des armes, la notion de régime juridique et la signification des branches du droit international concernées, l'auteur expose le droit relatif aux armes nucléaires, mésologiques, biologiques et chimiques (NMBC), pour en dégager les similitudes et les différences, et fait un état des lieux sur les armes de destruction massives (ADM) en droit des conflits armés et en droit de la maîtrise des armements.

Le régime juridique du conflit armé dans l'espace extra-atmosphérique : une consolidation du droit international humanitaire par le droit de l'espace

Louis Perez. - In: Droit de l'espace extra-atmosphérique : questions d'actualité. - Toulouse : Presses de l'Université de Toulouse 1 Capitole, 2021. - p. 113-132

Bien que prévisible, la conflictualité par et dans l'espace n'en demeure pas moins inédite d'un point de vue juridique et appelle donc un examen attentif du droit existant applicable. La situation d'un conflit armé spatial mobilise deux corpus juridiques principaux, l'un ayant trait à son emplacement, le droit de l'espace, l'autre à sa nature, le droit international humanitaire (DIH), Ce chevauchement de corpus incite à s'interroger sur les conséquences de leurs interactions au regard du régime juridique applicable au conflit armé dans l'espace et potentiellement affermissant du DIH par le droit de l'espace. En d'autres termes, la mise en oeuvre des principes du DIH dans le contexte spatial peut-elle être renforcée par les dispositions du droit de l'espace.

The relationship between international humanitarian law and asset freeze obligations under United Nations sanctions

Kosuke Onishi. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 363-384

While challenges may persist with respect to the relationship between counterterrorism (CT) and humanitarian action, it is at least understood that CT measures must comply with international humanitarian law (IHL). Clarifying the relationship between this body of law and CT measures is one of the modest but important innovations of United Nations (UN) Security Council Resolution 2462. At a minimum, references to IHL in this resolution leave a pathway for States to take measures to preserve impartial humanitarian action from the effects of CT, and at most, they prescribe that States should take such measures. Progress in clarifying the relationship between UN sanctions obligations and IHL obligations appears to be lacking with respect to non-CT-related UN sanctions. As will be discussed in this paper, this leads to questions regarding the application of the so-called “supremacy clause” contained in Article 103 of the UN Charter vis-à-vis IHL obligations.

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Respecting international humanitarian law and safeguarding humanitarian action in counterterrorism measures : United Nations Security Council resolutions 2462 and 2482 point the way

Nathalie Weizmann. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 325-362

United Nations, regional and domestic counterterrorism measures have generated a cascade of adverse effects for impartial humanitarian activities in areas where designated groups are present. Certain humanitarian activities, diverted supplies and incidental payments can fall foul of broadly worded counterterrorism regulation proscribing or criminalizing financial and other support to designated groups. Donors to humanitarian organizations set strict conditions and financial institutions decline transactions, hampering impartial humanitarian activities in the very instances in which international humanitarian law (IHL) requires that they be allowed. Recognizing this, United Nations Security Council (UNSC) resolutions 2462 and 2482 adopted in 2019 have spelled out more explicitly than ever before the need for counterterrorism measures to comply with IHL and safeguard impartial humanitarian action in line with IHL. This article sets out those IHL obligations that govern humanitarian and medical activities and the types of safeguards that States have put in place to ensure their counterterrorism measures comply with IHL and allow for these activities. The UNSC's latest steer in resolutions 2462 and 2482 provides a foundation for States' exclusion of impartial humanitarian and medical activities from the scope of application of their counterterrorism measures. This can be an effective way of averting adverse consequences for these activities where designated entities are present.

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La responsabilité du fait de la violation du droit international des droits de l'homme dans la conduite des opérations militaires

Rafaâ Ben Achour. - In: Panser la guerre, penser la paix : mélanges en l'honneur du Professeur Rahim Kherad. - Paris : Pedone, 2021. - p. 316-327

Cette contribution traite du problème de la responsabilité encourue pour les violations du droit international des droits de l'homme et du droit international humanitaire lors des opérations militaires au double plan de l'Etat et des individus.

La responsabilité pénale du chef militaire en droit international

par Mamoud Zani. In: L'observateur des Nations Unies, Vol. 51, 2021-2, p. 219-232

La question de la responsibilité pénale individuelle du supérieur hiérarchique est bien ancrée en droit international coutumier et conventionnel. Cet article propose donc d'examiner les règles de droit international humanitaire régissant la matière, ainsi que la jurisprudence des Tribunaux pénaux internationaux ad hoc et de la Cour pénale internationale qui ont largement contribué à clarfier la doctrine du supérieur hiérarchique. Pour ce faire, nous examinerons la responsabilité pénale du chef militaire sous l'angle des deux axes : d'une part, par rapport aux normes du droit international humanitaire ; d'autre part, par rapport aux juridictions pénales internationales.

The responsibility of businesses operating in the settlements in occupied territory

Yaël Ronen. - In: Strenghtening human rights protections in Geneva, Israel, the West Bank and beyond. - Cambridge : Cambridge University Press, 2021. - p. 130-156

This chapter examines standards of conduct applicable to businesses operating in civilian settlements in occupied territory, focusing on the Israeli settlements in the West Bank as a case study. It reviews the legal bodies which govern settlement projects and their applicability to businesses. Noting that businesses are not bound by international law directly, the chapter proceeds to examine the responsibility of businesses involved in settlements under the emerging soft law standards on businesses and human rights, namely the UN's 'Protect, Respect and Remedy' Framework. Some businesses directly contribute to violations of human rights on which the settlement project is inextricably dependent. Businesses operating on a regular basis in settlements benefit from such violations and contribute to their perpetuation. The chapter examines the practical implications of these forms of responsibility in light of the UN Framework and of domestic law.

Restrictions on freedom of movement in the West Bank : a policy of apartheid

Costanza Ferrando. In: The Palestine yearbook of international law, Vol. 22, 2019/2020, p. 141-176

This article undertakes a legal analysis of the policies of movement restriction and delineates the violations of Palestinian rights with regards to IHRL and IHL. It draws upon scholarly articles and reports to reinforce the academic arguments. Section II presents the traditional legal framework concerning the unlawfulness of the restrictions imposed on the West Bank. It identifies and discusses the analytical gaps and the failure of IHL in grasping the motives and implications of the systems of restrictions. Section II suggests the adoption of a new paradigm. After introducing the legal definition of apartheid, it responds to objections to the application of the apartheid paradigm and argues that Israeli restrictive policies amount to inhumane acts and constitute a strategic tool for the implementation of an apartheid regime. Section IV focuses on domination and oppression as core elements of apartheid and main features of the inhumane acts inflicted on the Palestinian people.

The right to know the truth in transitional justice processes : perspectives from international law and European governance

by Natasha Stamenkovikj. - Leiden ; Boston : Brill Nijhoff, 2021. - IX, 401 p.

Dr. Natasha Stamenkovikj offers a comparative analysis of the scope and application of the right to the truth as a fundamental right in public international law, and as a concept in European policies for promoting peace and transitional justice. The book provides a systematized assessment of the conceptualisation of the right to the truth in the enlargement policy of the Council of Europe as applied towards the former Yugoslav societies. By assessing the coherence of the Council's standardization on the right to the truth, Dr. Stamenkovikj addresses the legitimacy of the Council as an exporter of values and creator of norms.

La robotisation du champ de bataille

Aboubacar Sidiki Diomandé. - In: Panser la guerre, penser la paix : mélanges en l'honneur du Professeur Rahim Kherad. - Paris : Pedone, 2021. - p. 307-313

Le présent chapitre s'intéresse aux difficultés juridiques soulevées par le processus de robotisation des armés. La question principale que soulève la robotisation du champ de bataille repose sur des enjeux juridiques, dont deux sont étudiés par l'auteur : le respect des principes sacro-saints du droit international humanitaire et l'établissement de la responsabilité pénale pour violation du droit international humanitaire.

The role of international humanitarian law in the search for peace : lessons from Colombia

César Rojas-Orozco. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 705-720

International humanitarian law (IHL) has traditionally been seen as a legal framework regulating armed hostilities, having little to do with peace. However, recent peacemaking and peacebuilding practice has consistently relied on IHL to frame peace efforts, mainly in non-international armed conflicts. This article explores the relationship between IHL and peace, looking at practice in Colombia, where IHL has been used in a creative way as a means to build trust, facilitate peace negotiations and enforce the resulting peace agreement. Looking at this case, the article offers general insights on how IHL can facilitate the end of conflict and reintegration, frame accountability and reparation, and shield peace deals under a framework in which both State and non-State actors can find a common bargaining zone in their search for peace.

https://library.icrc.org/library/docs/DOC/irrc-914-rojas.pdf

The role of legitimacy in international humanitarian law : a comment

Stefan Kadelbach. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 33-40

The author examines the relationship between the notion of legitimacy and IHL, referencing to the points made by Jean d'Aspremont. In the author's view, the legitimacy of IHL derives from the essential aim of this area of law, which is to protect the fundaments of human existence. After shortly recapitulating the argument made in the preceding chapter, the author addresses the general legitimacy discourse in international law and its specific function in IHL. It becomes apparent that the concept of legitimacy has an ambiguous function to fulfil in IHL: it provides for arguments which reinforce the validity of IHL, but it also serves as a tool to undermine its normativity, even against the best intentions of its defenders. It concludes that the preceding chapter overstated the consequences of legitimist thinking on IHL and questions the utility of a strictly legal formalist point of view.

The roles of legitimacy in international legal discourses : legitimizing law vs legalizing legitimacy

Jean d'Aspremont. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 16-32

This chapter reviews the role of the legitimacy concept in theoretical legal studies. The author discusses how legitimacy is used as an object of inquiry to reinvent and rehabilitate international law. He then turns to the debate on legitimacy in relation to international humanitarian law and shows how technical vocabularies and doctrines are mobilized as the (de-)legitimizing tool for the behaviour of international actors. The contrast between the legitimizing of international law in the former and the legalizing of legitimacy discourses in the latter helps recall the variety of projects and agendas which inform international lawyers' engagement with international law. However, the concept of legitimacy simultaneously lays bare one common attitude among all international lawyers, namely the desire that their discourses are taken seriously and to allow international law to constitute a 'method of practical intervention in the social world'.

Rule of law de jure and/or de facto ? : Shamgar and the international law of belligerent occupation

Yuval Shany. - In: Strenghtening human rights protections in Geneva, Israel, the West Bank and beyond. - Cambridge : Cambridge University Press, 2021. - p. 179-198

The chapter revisits some of the main contributions by Meir Shamgar, who served between 1961 and 1995 as Israel's Military Advocate General, Attorney General, Judge and President of the Supreme Court, to the development of Israeli jurisprudence relating to the interpretation and application of international law in general, and the law of belligerent occupation in particular. Arguably, the legal structures constructed by Shamgar proved to be resilient because they were based on his deep understanding of international law and

commitment to basic legal values. Among the topics discussed are Shamgar's contribution to subjecting Israel's activities in the West Bank and Gaza Strip to rule of law concepts, his nuanced position on the application of the Fourth Geneva Convention, his support for a flexible interpretation of the law of belligerent occupation and the balancing he performed between Israeli security interests and the needs and interests of the Palestinian inhabitants. While this chapter focuses on the work of one exceptional Israeli jurist, it offers broader insights about Israel's approach to international law and the law applicable to the occupied territories, and about the relationship between international law as a constraint upon political power and as a cloak for the exercise of such power.

Russian contributions to international humanitarian law : a contrastive analysis of Russia's historical role and its current practice

Michael Riepl. - Baden-Baden : Nomos, 2022. - 447 p.

Has Russia turned from "Paul to Saul" in international humanitarian law (IHL)? In a first step, the book offers a comprehensive account of the Russian contributions to IHL in the 19th century. Secondly, it analyses Russia's current approach to IHL, drawing on a wide range of legislation, case law, diplomatic records, and military practice. Finally, the author contrasts the past and the present. He embeds his findings in the present context and concludes that Russia has come a long way from advancing the law to evading the law. The book is aimed at international lawyers as well as readers interested in legal history.

https://www.nomos-elibrary.de/10.5771/9783748913214.pdf

Screening of final beneficiaries — a red line in humanitarian operations : an emerging concern in development work

Emanuela-Chiara Gillard, Sangeeta Goswami and Fulco van Deventer. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 517-537

Funding agreements for humanitarian action frequently include restrictions and requirements in their grants that aim to ensure that recipients of the funding comply with counterterrorism measures and sanctions adopted by the donor. These measures can be problematic if they prevent humanitarian actors from operating in accordance with humanitarian principles or are incompatible with international humanitarian law. While attention has focused primarily on requirements in grants for humanitarian action, increasingly donors to development work have also started including sanctions-and counterterrorism-related restrictions in their grants. The present article focuses on one such measure that is currently a live concern: requirements to screen and, thus, potentially exclude final beneficiaries. It explains why these requirements go over and above what sanctions and counterterrorism measures require, and why they are inconsistent with humanitarian principles and international humanitarian law. The article also explores the position in relation to development interventions.

https://library.icrc.org/library/docs/DOC/irrc-916_917-gillard.pdf

Seeking "truth" after devastating, multi-layered conflict : the complex case of transitional justice in South Sudan

Owiso Owiso. In: Journal of international humanitarian legal studies, Vol. 12, issue 2, 2021, p. 251-278

In August 2015, the Government of South Sudan and other parties to the country's civil conflict signed a peace agreement, the Agreement on the Resolution of the Conflict in the Republic of South Sudan, aimed at ending the civil conflict that broke out on 15 December 2013. After this agreement failed to hold, South Sudan descended into a second wave of civil conflict. A recommitment to the agreement was secured through regional efforts on 12 September 2018. Dubbed the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan, the agreement provides a transitional justice architecture which includes a truth commission, a hybrid court and a reparations authority. This paper examines the potential of the proposed Commission for Truth, Reconciliation and Healing to contribute towards sustainable transitional justice solutions in South Sudan, based on contemporary standards and practice of transitional justice. Through historical, descriptive and analytical approaches, the paper grapples with South Sudan's complex truth-seeking journey following years of multi-layered conflict.

https://doi.org/10.1163/18781527-bja10035 *

Siege starvation : a war crime of societal torture

Tom Dannenbaum. In: Chicago journal of international law, Vol. 22, no. 2, Winter 2022, p. 368-442

A recent amendment to the Rome Statute of the International Criminal Court has drawn unprecedented attention to the war crime of starvation of civilians as a method of warfare. It comes at a time when mass

starvation in war is resurgent, devastating populations in Yemen, Ethiopia, Syria, South Sudan, Nigeria, and elsewhere. The practice has also drawn the scrutiny of the United Nations Security Council. And yet, despite this heightened profile and sharpened urgency, what precisely is criminally wrongful about starvation methods remains underspecified. A common way of thinking about the criminal wrong is as a form of killing or harming civilians. Although its differentiating particularities matter, the basic wrongfulness of the crime inheres, on this view, in it being an attack on those who ought not be attacked. For some, this supports a broad interpretation of the starvation ban. However, for others, the graduality of starvation preserves the continuous possibility of the avoidance or minimization of civilian death or harm in a way that direct kinetic attacks do not. In combination with the method's purported military utility, this distinctive incrementalism has underpinned arguments for the permissibility of certain forms of siege and other deprivation and a narrow interpretation of the starvation crime. Drawing on the moral philosophy of torture, this Article offers a different normative theory of the crime. Starvation, like torture, is peculiarly wrongful in its distortion of victims' biological imperatives against their capacities to formulate and act on higher-order desires, political commitments, and even love. This process does not merely raise the cost of fulfilling those commitments. Instead, starvation tears gradually at the very capacity of those affected to prioritize their most fundamental commitments, regardless of whether they would choose to do so under the conditions necessary to evaluate matters with a "contemplative attitude." Rather than palliating, the slowness of starvation methods is at the crux of this torturous wrong. Recognizing this redefines the meaning and place of the crime in the framework of international criminal law.

https://cjil.uchicago.edu/publication/siege-starvation-war-crime-societal-torture

Sovereign equality and law-making : how do states from the Global South shape international humanitarian law ? : a comment to Alejandro Rodiles and Balingene Kahombo

Michael Bothe. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 324-334

One of the conflict lines which characterize the current international order still is that between what, for the sake of abbreviation or simplification, is called the Global South and the Global North. The question is whether and to what extent different historic positions of economic development and society determine the participation of the states belonging to the Global South in shaping the international legal order. To demonstrate the attitude of the Global South towards IHL law-making, this comment elaborates on three issues: did these countries have an autonomous development of IHL and human rights before their entry in the club and/or after that entry? What is the position of the states of the Global South, after their entry into the club, in respect of global or universal law-making? Have the autonomous concepts and specific interests of the Global South had an impact on the global development of IHL?

Sovereign equality and law-making : how do states from the Global South shape international humanitarian law ? : an African perspective

Balingene Kahombo. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 300-323

This chapter focuses on the law-making efforts reflecting the regionalization of the law of armed conflicts in Africa. African states can establish IHL either by incorporation of pre-existing humanitarian norms into African legal instruments, or by codification of new rules particular to the continent. In doing so, African states contribute to the development of IHL in several ways: first, the classic categorization of armed conflicts - international, non-international and new conflicts - tends to decline in African treaties. Second, the law of armed conflicts is adapted to current armed conflicts within the region. This results in a clarification of the law for states and non-state actors with regard to their obligations and in an extended application of IHL in different situations. Finally, by leading in law-making at the regional level, African states can induce legal reforms and advance the law at the universal level.

State responsibility for community defence groups gone rogue

Jemma Arman. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1099-1123

In situations of national crisis, it is not uncommon to see community members join together to provide security services to their communities, gap-filling or supplementing the security services of the State. While many community defence groups perform an important service for their community, some have been accused of serious human rights abuses or even war crimes. This article examines the circumstances in which a State might be responsible in relation to wrongful acts of community defence groups operating within their territory.It does so by examining the potential attribution of acts of the community defence group to the State, applying secondary rules of State responsibility. In addition, it also considers the potential responsibilities of the State under primary rules of international law, namely international humanitarian law

and international human rights law, in circumstances where the primary wrongful act is not attributable to the State.

https://library.icrc.org/library/docs/DOC/irrc-915-arman.pdf

State responsibility for the misconduct of partners in international military operations : general and specific rules of international law

Cornelius Wiesener and Astrid Kjeldgaard-Pedersen. - Copenhagen : Djøf : The Centre for Military Studies, 2021. - 104 p.

The aim of the present report is to provide Danish decision-makers with a comprehensive overview of the international legal framework underlying Denmark's participation in international military operations with various kinds of partners. Moreover, the report offers an update on the international debate regarding the most central issues of particular relevance to international lawyers working in the field. Part I of the report deals with the general international legal rules concerning state responsibility for wrongful conduct of partners in international military operations, whereas Part II addresses rules emanating from specialised regimes of international law that are relevant in the same scenarios. As a common feature, both Parts I and II centre on a number of specific examples of mission scenarios which either have been or may become relevant when Danish armed forces contribute to international military operations. Above all, the report exposes a highly complex and to some extent controversial international legal landscape governing state responsibility for the misconduct of military partners. Against the background of the identified challenges, the authors recommend that Danish forces further develop risk assessment procedures to be incorporated as a central part of their collaboration with partners. Moreover, as a corollary to such risk assessment procedures, it is necessary to adopt adequate procedures for mitigating measures that may be employed vis-à-vis specific partners, such as, for example, training in applicable legal standards under international humanitarian law and international human rights law.

https://static-curis.ku.dk/portal/files/279216722/ebook_State_Responsibility_for_the_Misconduct_of_Partners_in_International_Military_Operations.pdf

Stigmatisation as a road to denuclearisation : the stigmatising effect of the TPNW

Clea Strydom. - In: Nuclear non-proliferation in international law. Vol. 6 : nuclear disarmament and security risk : legal challenges in a shifting nuclear world. - The Hague : Asser Press, 2021. - p. 453-478

The purpose of this chapter is to consider the Treaty on the Prohibition of Nuclear Weapons (TPNW) as an international instrument that stigmatises nuclear weapons in various ways, and to analyse whether this endeavour will be successful and lead to global denuclearisation. The global nuclear order was established by the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), but the issue has recently been reframed as a humanitarian one. The non-nuclear-weapon States have always outnumbered the nuclear-armed States, but they had never used their majority strategically. Fortunately, they were able to find common ground by reframing nuclear weapons as a humanitarian issue. This led to the forging of a coherent anti-nuclear-weapons coalition to counter the nuclear-armed States—the Humanitarian Impact Initiative—that ultimately led to the conclusion of the TPNW. The reframing of the nuclear issue and the TPNW stigmatise nuclear weapons as inhumane and abhorrent and thereby establishes an international norm which nuclear-armed States will find increasingly difficult to ignore. The road to stigma recognition can take place through international and domestic pressure that also depends on power dynamics. Nuclear-armed States can also manage the stigmatisation through stigma rejection and counter-stigmatisation, which they often do through reliance on the nuclear deterrence argument. The current security environment should not be taken as an argument in favour of nuclear deterrence but rather as an impetus for denuclearisation, and towards increased cooperation and peaceful negotiation.

Stripping foreign fighters of their citizenship : international human rights and humanitarian law considerations

Christophe Paulussen. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 605-618

This article will briefly present a number of international human rights law considerations related to the topic of citizenship stripping of foreign fighters, before focusing on considerations in the context of international humanitarian law, which have been less frequently the subject of academic debate. This contribution concludes that citizenship stripping is not only highly problematic under international human rights law, but also from the perspective of international humanitarian law. The measure violates Article 3 Common to the four Geneva Conventions, undermines accountability for international humanitarian law violations already committed and can engender new violations through the non-removal of the suspect from the conflict zone. The author concludes that international humanitarian law provides a welcome – albeit

temporary – safety net of decent treatment for people who have become victims of countries' refusal to take responsibility for their own citizens.

https://library.icrc.org/library/docs/DOC/irrc-916_917-paulussen.pdf

A subtle yet significant influence : judicial decisions and the development of international humanitarian law

Shane Darcy. - In: Law-making and legitimacy in international humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2021. - p. 141-149

This comment refers to the contributions of Crawford and Meyer: both authors consider how international treaties and the rules of customary international humanitarian law are being or might be developed, with each highlighting either implicitly or explicitly the limits of the treaty-making process. In the course of their analyses of the methodologies of law-making, both also have occasional recourse to judicial decisions as an important but formally subsidiary source of international humanitarian law. This comment, first, analyses Crawford's point of view in regard to the influence of judicial bodies on the development of international humanitarian law. Then it refers to Meyer's claim that the Court acknowledged 'the law-making role of noncompliance in theory' and the consequences evolving. It argues that judicial bodies have played an important role in interpreting, applying and occasionally developing the content of humanitarian law, even if its treaty content is primarily decided upon by states.

La superposition du droit des conflits armés internationaux et non internationaux s'agissant d'un seul et même acte dans le cadre des conflits armés dits transnationaux

Robert Kolb. - In: Panser la guerre, penser la paix : mélanges en l'honneur du Professeur Rahim Kherad. - Paris : Pedone, 2021. - p. 299-306

Dans l'écheveau complexe de la qualification des conflits armés, a paru ces dernières années un problème nouveau lié aux conflits armés transnationaux de plus en plus nombreux qui s'ébranlent et s'épanchent dans notre monde tourmenté. Le droit des conflits armés ne connaît, à ce jour, que des conflits armés internationaux et des conflits armés non internationaux, auxquels s'appliquent des règles partiellement différentes. L'auteur s'intéresse à la superposition du droit des conflits armés internationaux et non internationaux s'agissant d'un seul et même acte dans le cadre des conflits armés dits transnationaux à travers deux hypothèses : l'applicabilité en même temps de règles potentiellement différentes au même acte belligérant, et la mise en œuvre concrète de la doctrine de la simultanéité ou de la double qualification.

Systemic economic harm in occupied Palestine and the social connections model

Shahd Hammouri. In: The Palestine yearbook of international law, Vol. 22, 2019/2020, p. 112-140

This article tackles the context of the Israeli occupation of Palestine to ask whether the existing framework of international law applied in situations of occupation captures and adequately addresses situations of systemic economic harm. Acknowledging the limitations of international law, it ventures to explore the remedial potentialities of different frameworks which escape traditional limitations of national legal systems. How is responsibility for systemic economic harm imagined? What are the avenues of redress available to address systemic economic harm in situations of occupation? Part one attempts to empirically and normatively identify such systemic economic harm. The second part investigates possible remedial paths for such systemic economic harm via international responsibility mechanisms for corporate actors involved in the occupation's economic apparatus, as well as states interacting with it.

https://kar.kent.ac.uk/id/eprint/92371

Taking care against the computer : precautions against military operations on digital infrastructure

Simon McKenzie, Eve Massingham. In: Journal of international humanitarian legal studies, Vol. 12, issue 2, 2021, p. 224-250

The obligations of international humanitarian law are not limited to the attacker; the defender is also required to take steps to protect civilians from harm. The requirement to take precautions against the effects of attack requires the defender to minimize the risk that civilians and civilian objects will be harmed by enemy military operations. At its most basic, it obliges defenders to locate military installations away from civilians. Furthermore, where appropriate, the status of objects should be clearly marked. It is – somewhat counterintuitively – about making it easier for the attacker to select lawful targets by making visible the distinction between civilian objects and military objectives. The increasing importance of digital infrastructure to modern life may make complying with these precautionary obligations more complicated.

Maintaining separation between military and civilian networks is challenging as both operate using at least some of the same infrastructure, relying on the same cables, systems, and electromagnetic spectrum. In addition, the speed at which operations against digital infrastructure can occur increases the difficulty of complying with the obligation – particularly if such operations involve a degree of automation or the use of artificial intelligence. This paper sets out the source and extent of the obligation to take precautions against hostile military operations and considers how they might apply to digital infrastructure. As well as clarifying the extent of the obligation, it applies the obligation to take precautions against hostile military operations to digital infrastructure, giving examples of where systems designers are taking these obligations into account, and other examples of where they must.

https://doi.org/10.1163/18781527-bja10036 *

Taking into account the potential effects of counterterrorism measures on humanitarian and medical activities : elements of an analytical framework for States grounded in respect for international law

Dustin A. Lewis and Naz K. Modirzadeh. - [Cambridge] : Harvard Law School Program on International Law and Armed Conflict, May 2021. - III, 43 p.

For at least a decade, States, humanitarian bodies, and civil-society actors have raised concerns about how certain counterterrorism measures can prevent or impede humanitarian and medical activities in armed conflicts. In 2019, the issue drew the attention of the world's preeminent body charged with maintaining or restoring international peace and security: the United Nations Security Council. In two resolutions — Resolution 2462 (2019) and Resolution 2482 (2019) — adopted that year, the Security Council urged States to take into account the potential effects of certain counterterrorism measures on exclusively humanitarian activities, including medi- cal activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law (IHL). By implicitly recognizing that measures adopted to achieve one policy objective (countering terrorism) can impair or prevent another policy objective (safeguarding humanitarian and medical activities), the Security Council elevated taking into account the potential effects of certain counterterrorism measures on exclusively humanitarian activities to an issue implicating international peace and security. In this legal briefing, we aim to support the development of an analytical framework through which a State may seek to devise and administer a system to take into account the potential effects of counterterrorism measures on humanitarian and medical activities. Our primary intended audience includes the people in- volved in creating or administering a "take into account" system and in developing relevant laws and policies. Our analysis zooms in on Resolution 2462 (2019) and Resolution 2482 (2019) and focuses on grounding the framework in respect for international law, notably the U.N. Charter and IHL.

https://doi.org/10.54813/QBOT8406

La teneur humanitaire du Traité sur l'interdiction des armes nucléaires à la lumière des commentaires du Comité international de la Croix-Rouge (CICR) : les remparts du droit international humanitaire et l'expérience du CICR en faveur d'une interdiction mondiale des armes nucléaires "en vue d'une élimination complète"

Caroline Cornella. - In: Le droit international et le nucléaire. - Bruxelles : Bruylant, 2021. - p. 189-212

La présente contribution invite à comprendre le rôle du CICR dans l'initiative en faveur d'un monde sans arme nucléaire tout en saisissant l'importance du choix des mots dans un traité se voulant juridiquement contraignant. Traduction d'une nouvelle tendance juridique, les considérations proposées par le Comité viennent étayer la nécessité de véhiculer une teneur davantage humaine aux traités visant à l'interdiction ou la maîtrise des armes. Par son expertise, les précisions du CICR ont le mérite d'attirer l'attention du lecteur sur des problématiques humanitaires tant récurrentes qu'actuelles ayant trait au DIH et, de manière plus générale, aux conflits armées contemporains.

Terrorist offences and international humanitarian law : the armed conflict exclusion clause

Thomas Van Poecke, Frank Verbruggen and Ward Yperman. In: International review of the Red Cross, Vol. 103, no. 916-917, 2021, p. 295-324

While armed conflicts are principally governed by international humanitarian law (IHL), activities of members of non-State armed groups and their affiliates may also qualify as terrorist offences. After explaining why the concurrent application of IHL and criminal law instruments on terrorism causes friction, this article analyzes the chief mechanism for dissipating this friction: a clause excluding activities governed by IHL from the scope of criminal law instruments on terrorism. Such armed conflict exclusion clauses exist

at the international, regional and national level. This article explains how an exclusion clause can best avoid friction between IHL and criminal law instruments on terrorism.

https://library.icrc.org/library/docs/DOC/irrc-916_917-poecke.pdf

Three pathways to secure greater respect for international law concerning war algorithms

Dustin A. Lewis. - [Cambridge] : Harvard Law School Program on International Law and Armed Conflict, 2020. - V, 24 p.

This commentary argues that international actors ought to systematically identify and address the diverse array of all armed-conflict-related activities and decisions implicated by socio-technical systems reliant upon war algorithms and data, including but extending beyond weapons. Further, in doing so, international actors ought to assess whether existing measures aimed at securing respect for the law concerning this range of activities and decisions are up to the task. To help inform those considerations, the commentary outlines three pathways that international actors — including States, international organizations, non-state parties to armed conflicts, and others — may take to secure greater respect for international law in this area: forming and publicly expressing positions on key legal issues, taking measures relative to their own conduct, and taking steps relative to the behavior of others.

https://nrs.harvard.edu/URN-3:HUL.INSTREPOS:37367712

Toma de rehenes y otras privaciones graves de la libertad: avances y retos pendientes del Caso 001 en la Jurisdicción Especial para la Paz a la luz del derecho internacional

Juana I. Acosta-López, Ana Idárraga, Cindy Espitia M.. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 285-321

La Jurisdicción Especial para la Paz es un mecanismo de justicia transicional que busca contribuir a la construcción de paz y satisfacer el derecho de las víctimas a la justicia. Con este fin, se priorizó el macrocaso 001 sobre la "toma de rehenes y otras privaciones graves de la libertad cometidas por las Farc-EP", asunto sobre el cual la Sala de Reconocimiento de Verdad y Responsabilidad profirió el Auto 019 de Determinación de Hechos y Conductas. En este marco, los avances de esta Jurisdicción no solo traen respuestas, sino que acarrean diversos retos jurídicos relacionados con: i) la calificación jurídica de las conductas, ii) las formas de atribución de responsabilidad penal individual, iii) la aplicación de las garantías penales, y iv) el procedimiento transicional. Así, para contribuir a la discusión en esta materia, en el presente texto se realizó un análisis documental, a la luz del derecho internacional, del Auto 019 de 2021, de la respuesta de los comparecientes a este auto y, en general, del macrocaso 001.

https://www.doi.org/10.5294/aidih.2021.2.1.10

The treatment of western prisoners of war in Nazi Germany : rethinking reciprocity and asymmetry

Raffael Scheck. In: War in history, Vol. 28, issue 3, 2021, p. 635-655

Given that the Geneva Convention of 1929 placed prisoners of war under the laws of the detaining state, Nazi courts martial could sentence prisoners of war for offences that did not exist in the western democracies, such as insults to the Führer, or severely punish them for acts leading only to mild disciplinary sanctions in Britain or America. Moreover, convicted prisoners of war had to experience the singularly brutal German prison system. These asymmetries, which influenced the Geneva Convention on prisoners of war of 1949, challenge the paradigm of reciprocity and symmetry in prisoner of war regimes between Germany and the western countries in World War II.

https://library.ext.icrc.org/library/docs/RESTRICTEDACCESS/55428.pdf *

Twelve issues for 2022 : what states can do to improve respect for international humanitarian law

ICRC. - Geneva : ICRC, March 2022. - [25] p.

This document provides a snapshot of 12 key issues arising in relation to the IHL applicable in today's armed conflicts and outlines five initiatives aimed at building a global culture of respect for the law.

https://library.icrc.org/library/docs/DOC/icrc-4610-002.pdf

Der Ukraine-Konflikt aus völkerrechtlicher Sicht

von Carolin Gornig. - Berlin : Duncker and Humblot, 2020. - 533 p.

Die Ukraine-Krise bewegt seit vielen Jahren die Weltpolitik und der Konflikt ist stets Inhalt neuer Nachrichten. Die vorliegende Untersuchung bewertet den Ukraine-Konflikt umfassend. Die häufig vernachlässigte ukrainische Geschichte wird geschildert, um so die gespaltene Haltung der ukrainischen Bürger besser nachvollziehen zu können. Der Fokus der Arbeit richtet sich aber auf die Sezessionsbestrebungen der Krim, der Regionen Donezk und Luhansk sowie den Anschluss der Halbinsel Krim an die Russländische Föderation. Ferner werden die Anwendbarkeit des humanitären Völkerrechts sowie die internationalen Reaktionen im Kontext der Wirtschaftssanktionen erörtert. Faktisch hat Russland zwar die Herrschaft über die Krim inne, rechtlich gesehen ist die Halbinsel aber immer noch Teil der Ukraine. Auch der de iure Zustand der Gebiete von Donezk und Luhansk hat sich nicht geändert.

Umweltschutz durch humanitäres Völkerrecht im nichtinternationalen bewaffneten Konflikt

von Sophia Henrich. - Berlin : Duncker und Humblot, 2021. - 559 p.

Selbst während nichtinternationaler bewaffneter Konflikte stehen Individuen und Bevölkerungen unter dem Schutz des auf humanitären Grundentscheidungen basierenden Kriegsrechts. Inwieweit auch der Erhalt der natürlichen Umwelt durch geltendes humanitäres Völkerrecht gefördert wird, ist Gegenstand dieser Untersuchung, die sowohl an die derzeitige Debatte um die Hinlänglichkeit des durch Völkerrecht allgemein bewirkten Umweltschutzes als auch an Überlegungen zu denkbaren Fortentwicklungen des Rechts nichtinternationaler bewaffneter Konflikte unter Beteiligung nichtstaatlicher Akteure anknüpft. Ausgehend von dem Fehlen unmittelbar umweltschützender Vertragsnormen befasst sich die Untersuchung insbesondere mit den Möglichkeiten eines funktionsbasierten Umweltschutzes, mit der tatsächlichen Verankerung proklamierter Gewohnheitsrechtssätze im positiven Recht sowie der denkbaren Einflussnahme des Umweltvölkerrechts auf die Auslegung des humanitären Völkerrechts.

Unbound in war? : international law in Canada and Britain's participation in the Korean War and Afghanistan conflict

Sean Richmond. - London [etc.] : University of Toronto press, 2021. - IX, 274 p.

In Unbound in War?, Sean Richmond examines the influence and interpretation of international law in the use of force by two important but understudied countries, Canada and Britain, during two of the most significant conflicts since 1945, namely the Korean War and the Afghanistan Conflict. Through innovative application of sociological theories in International Relations (IR) and International Law (IL), and rigorous qualitative analysis of declassified documents and original interviews, the book advances a two-pronged argument. First, contrary to what some dominant IR perspectives might predict, international law can play four underappreciated roles when states use force. It helps constitute identity, regulate behaviour, legitimate certain actions, and structure the development of new rules. However, contrary to what many IL approaches might predict, it is unclear whether these effects are ultimately attributable to an obligatory quality in law. This ground-breaking argument promises to advance interdisciplinary debates and policy discussions in both IR and IL.

An uneasy balance : international relief efforts in the Chaco War

Robert Niebuhr. - In: Captivity in war during the twentieth century : the forgotten diplomatic role of transnational actors. - Cham : Palgrave Macmillan, 2021. - p. 73-99

War over the Chaco Boreal, a desolate region claimed by both Bolivia and Paraguay, caused disproportionately high loss of life and treasure for both sides. Neither state could afford to prosecute a war on its own, despite recent modernization programs that drew attention from outsiders. International interest included prewar calls for refugee resettlement via the League of Nations—but once fighting did break out, there was significant and increasing intervention and involvement by international relief organizations and diplomats. This chapter’s focus on the involvement of foreign actors in the Chaco War unveils important trends in the history of war-making in the twentieth century, which places this South American conflict closer to the World Wars that served as the conflict’s bookends.

Die "UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflicts" und militärische Handbücher

Vincent Widdig. - In: Kulturgüterschutz im System der Vereinten Nationen : eine interdisziplinäre Analyse. - Baden-Baden : Nomos, 2021. - p. 175-193

Losgelöst von der Frage der immer stärker in den Vordergrund rückenden Verantwortlichkeit nichtstaatlicher Akteure und organisierter bewaffneter Gruppen, bleibt die zentrale Frage nach staatlicher

Verantwortlich keit für die Zerstörung von Kulturgütern sowie die Kritik der vermeintlichen Folgenlosigkeit der Auslöschung bedeutsamster Kulturgüter im System des völkerrechtlichen Kulturgüterschutzes. Zum einen mangele es an einem effektiven Durchsetzungsinstrument, zum anderen sei auch das geltende materielle nationale Recht und Völkerrecht eher durchsetzungsschwach und eher auf einer „policy“ Ebene zu verorten. Der vorliegende Beitrag möchte sich mit den Streitkräften einem zentralen potentiellen Akteur in diesem System der Bedrohung widmen und analysieren, ob und inwieweit diese Kritik tatsächlich zu greifen vermag. Hierfür soll betrachtet werden, welche Rolle militärische Handbücher zur Umsetzung oder Entwicklung völkerrechtlicher Verpflichtungen im System des internationalen Schutzes von Kulturgütern in bewaffneten Konflikten spielen.

Unfolding the case of returnees : how the European Union and its member States are addressing the return of foreign fighters and their families

Carlota Rigotti and Júlia Zomignani Barboza. In: International review of the Red Cross, Vol. 104, no. 916-917, 2021, p. 681-703

The return of foreign fighters and their families to the European Union has mostly been considered a security threat by member States, which consequently adopt repressive measures aimed at providing an immediate, short-term response to this perceived threat. In addition to this strong-arm approach, reintegration strategies have also been used to prevent returnees from falling back into terrorism and to break down barriers of hostility between citizens in the long term. Amidst these different strategies, this paper seeks to identify which methods are most desirable for handling returnees.

https://library.icrc.org/library/docs/DOC/irrc-916_917-rigotti.pdf

The United Nations Security Council's role in protecting cultural heritage during armed conflicts

Paul Fabel and Ruth Lecher. - In: Kulturgüterschutz im System der Vereinten Nationen : eine interdisziplinäre Analyse. - Baden-Baden : Nomos, 2021. - p. 139-173

This contribution examines chronologically how the protection of both cultural heritage and cultural property has developed over the years: from indirect protection and culminating in a thematic resolution entirely dedicated to the protection of cultural heritage. As a result, a chronological discussion of conflicts is presented while analyzing both preambulatory and operative paragraphs of relevant Security Council resolutions. A special focus is placed on the selected wording; how paragraphs are positioned within the text; and, lastly, the concrete measures taken. The relevant Security Council resolutions is analyzed. Results of its policies and the international community are discussed. A summary and outlook conclude this study.

Unravelling unlawful confinement in contemporary armed conflicts : belligerents' detention practices in Afghanistan, Syria and Ukraine

by Jelena Plamenac. - Leiden : M. Nijhoff, 2022. - XV, 279 p.

This book explores how States and armed groups deprive us of liberty in armed conflict. Intriguing insights into original field records of internal laws and first-hand testimonies by fighters and humanitarians reveal hidden patterns of belligerents' controversial behaviours in relation to three complex aspects of security detention in non-international armed conflict that remain unsettled in international law – permissible grounds, procedural guarantees, and transfer standards. The author explains where the boundary of unlawful confinement lies between local and international law and why we need a new international legal framework to protect us from arbitrariness in the warring parties' decision to detain.

https://doi.org/10.1163/9789004470552 *

The use of AI in military contexts : opportunities and regulatory challenges

Robin Geiss, Henning Lahmann. In: The military law and law of war review = Revue de droit militaire et de droit de la guerre, Vol. 59, no. 2, 2021, p. 165-195

While the use of artificial intelligence (AI) and machine-learning algorithms in the context of armed conflicts has been subject to scholarly and political debate for at least the past half-decade, to date discussions have focused on the possible development and deployment of lethal autonomous weapon systems. Going beyond this narrow perspective, the article draws attention to other military uses of AI that are conceivable or in fact already exist, for example for the purpose of detention, force protection, equipment maintenance, or reconnaissance. It critically examines these different applications from a legal and ethical perspective, exposing some of the challenges inherent in the technology such as algorithmic bias or predictability. On the basis of existing and emerging approaches to the regulation of 'civilian' AI, the article concludes by proposing a granular, tiered way to future regulation of military AI that proceeds from the criticality of each particular application.

https://doi.org/10.4337/mllwr.2021.02.02 *

Using the master's tools to dismantle the master's house : international law and Palestinian liberation

Ralph Wilde. In: The Palestine yearbook of international law, Vol. 22, 2019/2020. p. 3-74

This article aims to provide a critical evaluation of what is at stake when international law is invoked in the context of the Palestinian struggle. It first identifies a predominant, and at times exclusive, focus on IHL, including occupation law, when international advocates address the Palestinian struggle. The author argues that the exclusive invocation of occupation law ignores entirely, because of the narrow scope of the law, the question of the existential legitimacy of the occupation itself. The article then discusses the two areas of international law that address this existential legitimacy - the law on the use of force and the law of self-determination - and how they interface with the law on title to territory when it comes to annexation.Throughout the article, the discussion makes comparative references to other relevant situations of occupation/denial of self-determination/illegal annexation.

https://doi.org/10.1163/22116141_022010_002

Las vertientes del derecho internacional humanitario en la jurisprudencia constitucional colombiana: a treinta años de la Constitución Política de 1991

José David Palencio Osorio. In: Anuario iberoamericano sobre derecho internacional humanitario, Vol. 2, 2021, p. 221-248

En el marco de los treinta años de la promulgación de la Constitución Política de Colombia de 1991, el artículo se sirve de las vertientes tradicionales sobre las cuales se desarrolló el derecho internacional humanitario, con el denominado derecho de Ginebra para protección de las personas, y del denominado derecho de La Haya, sobre conducción de hostilidades, para analizar algunas disposiciones jurisprudenciales de la Corte Constitucional, con ocasión del control de constitucionalidad a instrumentos internacionales de derecho internacional humanitario o que contienen elementos de este, en el marco del proceso de perfeccionamiento y adecuación en el ordenamiento interno. En su desarrollo jurisprudencial, la Corte Constitucional se adentra en un debate sobre el carácter imperativo de las disposiciones del derecho internacional humanitario en el que aborda temas como la supra constitucionalidad, la equivalencia normativa y el bloque de constitucionalidad, en el que se presentan nociones como el monismo-dualismo, consideraciones sobre la fuerza vinculante del derecho internacional humanitario y su interacción con el derecho internacional de los derechos humanos, y la vigencia de la Cláusula Martens como piedra fundamental en el desarrollo del derecho internacional humanitario.

https://www.doi.org/10.5294/aidih.2021.2.1.8

Violence and repair : the practice and challenges of non-State armed groups engaging in reparations

Luke Moffett. In: International review of the Red Cross, Vol. 102, no. 915, 2020, p. 1057-1085

Atrocities by non-State armed groups (NSAGs) often capture international attention, but efforts to repair the harm they have caused are often overlooked. This article traces out some of the practices and tensions in NSAGs making reparations during wartime and in post-conflict transitions. It argues that engaging in reparations for acts committed by NSAGs can not only encourage greater compliance with international humanitarian law but also build support amongst civilian populations during armed conflict and facilitate ex-fighter reintegration at the end of hostilities. Drawing from interviews with a number of armed groups, the article also suggests that engaging with the armed group's organization rather than just individuals themselves can be an effective way to collectively mobilize a group's motivation and capacity to deliver on reparations, including recovery of disappeared persons, restitution of property and apologies. As such, this article seeks to contribute to a deeper understanding of reparation practices by NSAGs in order to see how reparations can be mediated and a hierarchy of reparation obligations developed.

https://library.icrc.org/library/docs/DOC/irrc-915-moffett.pdf

War by algorithm : the end of law?

Gregor Noll. - In: War and algorithm. - London ; New York : Rowman & Littlefield, 2019. - p. 75-103

Is it possible to subject algorithmic forms of warfare to the rule of law? This is the question posed in this chapter. Here, the author argues that problems with existing laws cannot be overcome by new legislation. Since the advent of monotheism, central to the law itself has been its study by humans. Algorithmic warfare reconfigures this process in such a way that human study only begins once the system has already made a decision. This creates nothing less than an epochal rift, and our traditional understanding of law—indeed, the only understanding of law we currently have—is simply unfit to bridge it.

War in the air from Spain to Yemen : the challenges in examining the conduct of air bombardment

Mateusz Piątkowski. In: Journal of conflict and security law, Vol. 26, no. 3, Winter 2021, p. 493-524

Air power is a dominant factor in both past and modern battlespace. Yet, despite its undisputed importance in warfare, its legal framework did not correspond with the significance of the air military operations, especially before the adoption of the Additional Protocol I to the Geneva Conventions of 1977. Even after this date, not all the particulars of air warfare are regulated by the positive rules, as the law is scattered in norms of customary character. Even more challenging process than reconstruction of the legal architecture of the air warfare is the evaluation of the specific incidents containing the elements of military aviation activity. The aim of the article is to present possible challenges arising from very complex normative and operational background of the air warfare and air bombardments in particular. The pivotal point in considerations is the forgotten inquiry conducted by the military experts operating within the established by the League of Nations commission reviewing the conduct of air bombardment during the Civil War in Spain. The adopted methodology of the commission could be considered as a reasonable and balanced approach of analyzing the cases including the involvement of the air power and a relevant reference in contemporary investigations.

https://doi.org/10.1093/jcsl/krab017

When the war came : the Child Rights Convention and the conflation of human rights and the laws of war

Linde Lindkvist. - In: The Routledge history of human rights. - Abingdon : Routledge, 2020. - p. 183-200

The UN Convention on the Rights of the Child (1989) remains the most widely ratified international treaty on human rights. Since its completion in 1989, it has come to be seen as an authoritative statement on the human rights of children. Yet historians of human rights have so far paid little attention to the making of this document. This essay argues that the child rights convention – much like other treaties on the rights of specific groups – is of interest to historians, and not just because it recognized children as subjects of human rights. Many of the convention's articles also challenged traditional boundaries between human rights and other areas of international law and policy. The essay examines in depth the debates surrounding the child rights convention's Article 38 on children in armed conflict, a clause that has been widely discussed among human rights and child rights scholars because it failed to offer a strict age limit of 18 years for military recruitment and participation. What is rarely noted, however, is that Article 38 also marked the first time that a human rights treaty made a direct reference to humanitarian law, which in effect threw into question the conventional view that human rights law should not regulate the conduct of warfare. This essay illuminates in new ways the relationship between human rights and international humanitarian law.

Who is a civilian in Afghanistan ?

Ioanna Voudouri. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 893-922

Despite the existence of a definition of civilian status in international humanitarian law (IHL), differences in the application of this definition – both in theory and in practice – continue to be observed. One of the contexts where these differences remain palpable (and do so for various fighting parties) is Afghanistan, a country where civilian harm has remained high for several years. This article explores the legal concepts of civilian and civilian population, including how they have been formed and interpreted and, ultimately, what protection they afford to persons who belong in these categories. The second part of the article brings these questions into the Afghan context, one that is complex and where cultural and religious implications should not be overlooked. Public statements, reports and codes of fighting parties in the country which touch upon civilian status are presented, followed by the civilian experience in Afghanistan, particularly focusing on the reported harm. Ultimately, it is proposed that despite the factual and contextual confusion, the existing legal rules and interpretations, when applied in good faith, suffice to ensure both that those who are civilians under IHL are protected and that the threats which some civilians' behaviour might pose can be effectively addressed without a status change.

https://library.icrc.org/library/docs/DOC/irrc-914-voudouri.pdf

Whose perception of justice ? Real and perceived challenges to military investigations in armed conflict

Claire Simmons. In: International review of the Red Cross, Vol. 102, no. 914, 2020, p. 807-822

States must investigate possible violations of international humanitarian law in armed conflict, and many States use military procedures for all or part of the investigation process. Particular tensions can arise with regard to the perception of justice in the context of military judicial procedures, especially surrounding questions of independence and impartiality. This article lays out the international legal framework which should be used to solve these challenges, arguing that a State must address both the specificities of military institutions and the need for a perception of justice by the affected communities in considering the proper administration of justice in armed conflict.

https://library.icrc.org/library/docs/DOC/irrc-914-simmons.pdf

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