

# BIBLIOGRAPHY

## 3rd Trimester 2013

### International Humanitarian Law

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



**ICRC**



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# Introduction

## The International Committee of the Red Cross Library

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

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

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

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

## Origin and purpose of the IHL bibliography

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

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

It quickly emerged that the bibliography was also helpful to other researchers, students and legal professionals working in the field of IHL. The Library therefore decided to produce a compilation of this quarterly electronic tool as an official annual publication.

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

## How to use the IHL Bibliography

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

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

### Part II: All entries 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. Some links only work from within ICRC HQ premises such as the library. All documents are available for loan at the ICRC Library. At the end of the bibliographic heading, "Cote xxx/xxx" refers to the ICRC library call number. In case your local library cannot provide you with some of the documents, requests for copies or scans (in a reasonable amount) can be sent to [library@icrc.org](mailto:library@icrc.org)

### Chronology

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

### Contents

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

### Sources

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

### Disclaimer

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

## Subscription and feedback

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

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

# I. General issues

(General catch-all category, Customary Law)

## Exploring humanitarian law : education modules for young people

ICRC. - Geneva : ICRC, April 2012. - Cote 345.2/790 (2012 ENG Br.)

<http://www.cid.icrc.org/library/docs/DOC/icrc-002-0934.pdf>

## And yet it exists : in defence of the "equality of belligerents" principle

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

Only from ICRC headquarters: <http://tinyurl.com/nwgdhfg>

## Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald

Mariëlle Matthee, Brigit Toebes, Marcel Brus ed.. - The Hague : T.M.C. Asser Press, 2013. - 378 p. - Cote 345.2/936

## Armed conflict and law enforcement : is there a legal divide ?

Charles Garraway. - The Hague : T.M.C. Asser Press, 2013. - p. 259-283. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

## Chivalry : a principle of the law of armed conflict ?

Terry Gill. - The Hague : T.M.C. Asser Press, 2013. - p. 33-51. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

## Droit international des droits de l'homme, droit international humanitaire et droit international pénal, vers la confusion des branches ?

Hélène Tigroudja. - Bruxelles : Bruylant, 2013. - p. 1465-1487. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Cote 345/635

## Droit international humanitaire : un régime spécial de droit international ?

sous la dir. de Raphaël van Steenberghe ; préf. de Bruno Simma. - Bruxelles : Bruylant, 2013. - 352 p. - Cote 345.2/941

## Ethics and the laws of war : the moral justification of legal norms

Antony Lamb. - London ; New York : Routledge, 2013. - 158 p. - Cote 345.2/929

## L'étude sur le droit international coutumier : les voies d'une normativité en action

Sandra Szurek. - Bruxelles : Bruylant, 2013. - p.1447-1464. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Cote 345/635

## Fighting by the principles : principles as a source of international humanitarian law

Jeroen C. van den Boogaard. - The Hague : T.M.C. Asser Press, 2013. - p. 3-31. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36700.pdf>

### **Future war, future law**

Eric Talbot Jensen. In: Minnesota journal of international law Vol. 22, Summer 2013, p. 282-323 : tabl.. - Cote 345.2/935 (Br.)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2214205&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214205&download=yes)

### **Humanitarian assistance to protect human rights and international humanitarian law**

Roberto Giuffrida. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 294-319. - In: Research handbook on human rights and humanitarian law. – Cote 345.2/913

### **International law and armed conflict : fundamental principles and contemporary challenges in the law of war**

Laurie R. Blank, Gregory P. Noone. - New York : Wolters Kluwer, 2013. - 690 p. - Cote 345.2/940

### **Jus ad/contra bellum**

Vaios Koutroulis. - Bruxelles : Bruylant, 2013. - p. 157-194. - In: Droit international humanitaire : un régime spécial de droit international ?. - Cote 345.2/941

### **The law of war**

Ingrid Detter. - Farnham ; Burlington : Ashgate, 2013. - 534 p. – Cote 345.2/528 (2013)

### **Methodology of law-making : customary international law and new military technologies**

Robert Heinsch. - Leiden ; Boston : M. Nijhoff, 2013. - p. 17-41. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36690.pdf>

### **Milestones in the development of international humanitarian law**

Daniel Thürer. - Leiden ; Boston : M. Nijhoff, 2011. - p. 3-14. - In: Making peoples heard : essays on human rights in honour of Gudmundur Alfredsson. - Cote 345.2/930 (Br.)

### **Military necessity and the cultures of military law**

David Luban. In: Leiden journal of international law Vol. 26, no. 2, June 2013, p. 315-349

Only from ICRC Headquarters: <http://tinyurl.com/nph68lw>

### **Principles of international humanitarian law**

Jonathan Crowe, Kylie Weston-Scheuber. - Cheltenham ; Northampton : E. Elgar, 2013. - 198 p. - Cote 345.2/933

### **Responsabilité internationale**

Pierre d'Argent. - Bruxelles : Bruylant, 2013. - p.103-149. - In: Droit international humanitaire : un régime spécial de droit international ?. - Cote 345.2/941

### **Should international law ensure the moral acceptability of war ?**

Janina Dill. In: Leiden journal of international law Vol. 26, no. 2, June 2013, p. 253-270

Only from ICRC headquarters: <http://tinyurl.com/qjkodl9>

### Specificities of human rights law and international humanitarian law regarding state responsibility

Christian Tomuschat. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 198-222. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

### Théorie des sources

Jean d'Aspermont. - Bruxelles : Bruylant, 2013. - p. 73-101. - In: Droit international humanitaire : un régime spécial de droit international ?. - Cote 345.2/941

### Théorie des sujets

Raphaël van Steenberghe. - Bruxelles : Bruylant, 2013. - p. 15-71. - In: Droit international humanitaire : un régime spécial de droit international ?. - Cote 345.2/941

## II. Types of conflicts

(Qualification of conflict, international and non-international armed conflict)

### L'application du droit international humanitaire dans la guerre urbaine : de Guernica à Gaza

par Michel Veuthey. - Nancy : Le Polémarque, 2013. - p. 109-144. - In: Conflits en zone urbaine. - Cote 355/1000

### Armed conflict and terrorist organizations

Charles Garraway. - Cambridge : Cambridge University Press, 2013. - p. 425-453. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cote 303.6/222

### Can insurgent courts be legitimate within international humanitarian law ?

Parth S. Gejji. In: Texas law review Vol. 91, no. 6, 2013, p. 1525-1559 : tabl.. - Cote 345.27/127 (Br.)

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### The current relevance of the recognition of belligerency

Sasha Radin. - The Hague : T.M.C. Asser Press, 2013. - p. 115-152. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

### Cyber war and the concept of "attack" in international humanitarian law

David Turns. - Leiden ; Boston : M. Nijhoff, 2013. - p. 209-227. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

### Cyberwar and unmanned aerial vehicles : using new technologies, from espionage to action

Jessica A. Feil. In: Case Western Reserve journal of international law Vol. 45, Issues 1 and 2, Fall 2012, p. 513-544. - Cote 345.25/273 (Br.)

<http://law.case.edu/journals/JIL/Documents/45CaseWRResJIntlL1&2.25.Note.Feil.pdf>

### Direct participation in cyber hostilities : terms of reference for like-minded states ?

Jody M. Prescott. - Tallinn : NATO CCD COE, 2012. - p. 251-266. - In: 2012 4th International conference on cyber conflict : proceedings. - Cote 345.25/272 (Br.)



**Droit de la guerre et conflits informatiques : quelle alliance ?**

Arnaud Garrigues. - Sceaux : L'esprit du livre, 2011. - p. 81-95 : tabl.. - In: Stratégies dans le cyberspace. - Cote 345.25/278 (Br.)

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**Human rights in non-international armed conflicts : a counter-terrorism issue ?**

Hans J. Giessmann. In: S+F : Sicherheit und Frieden Jg. 31, Nr. 2, 2013, p. 59-64. - Cote 345.27/129 (Br.)

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**International humanitarian law and human rights rules in agreements regulating or terminating an internal armed conflict**

Luisa Vierucci. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 416-438. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

**Losing the forest for the trees : Syria, law, and the pragmatics of conflict recognition**

Laurie R. Blank, Geoffrey S. Corn. In: Vanderbilt journal of transnational law Vol. 46, no. 3, May 2013, p. 693-746. - Cote 345.27/126 (Br.)

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**Participants in conflict : cyber warriors, patriotic hackers and the laws of war**

Heather A. Harrison Dinniss. - Leiden ; Boston : M. Nijhoff, 2013. - p. 251-278. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

**The path to less lethal and destructive war ? : technological and doctrinal developments and international humanitarian law after Iraq and Afghanistan**

David P. Fidler. - Leiden ; Boston : M. Nijhoff, 2013. - p. 315-336. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

**Proportionality and precautions in cyber attacks**

Michael A. Newton. - Leiden ; Boston : M. Nijhoff, 2013. - p. 229-249. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

**The relationship between economic, social and cultural rights and international humanitarian law : an analysis of health-related issues in non-international armed conflicts**

by Amrei Müller. - Leiden ; Boston : M. Nijhoff, 2013. - p.335 - Cote 345.27/130

**Virtual battlegrounds : direct participation in cyber warfare**

Emily Crawford. In: I/S : a journal of law and policy for the information society Vol. 9, no. 1, Spring 2013, p. 1-19. - Cote 345.25/282 (Br.)

**Why a war without a name may need one : policy-based application of international humanitarian law in the Algerian war**

Katherine Draper. In: Texas international law journal Vol. 48, no. 3, 2013, p. 575-603. - Cote 345.27/128 (Br.)

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

(Combatant status, compliance with IHL, etc.)

#### The application of superior responsibility in an era of unlimited information

Charles Garraway. - Leiden ; Boston : M. Nijhoff, 2013. - p. 187-206. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

#### Armed conflict and terrorist organizations

Charles Garraway. - Cambridge : Cambridge University Press, 2013. - p. 425-453. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cote 303.6/222

#### Doctors in arms : exploring the legal and ethical position of military medical personnel in armed conflicts

Brigit Toebes. - The Hague : T.M.C. Asser Press, 2013. - p. 169-194. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

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#### A "global war on piracy ?" : international law and the use of force against sea pirates

Eric A. Heinze. - London ; New York : Routledge, 2013. - p. 47-70. - In: Maritime piracy and the construction of global governance. - Cote 345.29/191 (Br.)

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#### Human rights in non-international armed conflicts : a counter-terrorism issue ?

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#### Human rights obligations of non-state armed groups : a possible contribution from customary international law ?

Jean-Marie Henckaerts and Cornelius Wiesener. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 146-169. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

#### International humanitarian law and human rights rules in agreements regulating or terminating an internal armed conflict

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#### The legal regime governing the use of lethal force in the fight against terrorism

David Kretzmer. - Cambridge : Cambridge University Press, 2013. - p. 559-588. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cote 303.6/222

#### Participants in conflict : cyber warriors, patriotic hackers and the laws of war

Heather A. Harrison Dinniss. - Leiden ; Boston : M. Nijhoff, 2013. - p. 251-278. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

#### Les règles d'engagement, un objet juridique ?

Guilhem Brouard, Antonin Tisseron. In: Revue défense nationale No 730, mai 2013, p. 35-41. - Cote 345.29/190 (Br.)

## IV. Multinational forces

### Human rights law and international humanitarian law as limits for Security Council action

Michael Bothe. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 371-390. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

### Sacrificing the law of armed conflict in the name of peace : a problem of politics

Matthew E. Dunham. In: The Air force law review Vol. 69, 2013, p. 155-197. - Cote 345.29/193 (Br.)

### Some reflections on self-defence as an element in rules of engagement

Frits Kalshoven and Thyla Fontein. - The Hague : T.M.C. Asser Press, 2013. - p. 97-113. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

### UN territorial administrations : between international humanitarian law and human rights law

Ivan Ingravallo. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 391-415. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

## V. Private entities

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

Mathew Kincade. In: Global studies law review Vol. 12, no. 1, 2013, p. 205-226. - Cote 345.29/192 (Br.)

[http://law.wustl.edu/WUGSLR/Issues/Volume12\\_1/wugslr12\\_2013\\_issue1\\_205\\_226.pdf](http://law.wustl.edu/WUGSLR/Issues/Volume12_1/wugslr12_2013_issue1_205_226.pdf)

### A tour de horizon of issues on the agenda of the mercenaries working group

Gabor Rona. In: Minnesota journal of international law Vol. 22, Summer 2013, p. 324-346. - Cote 345.29/194 (Br.)

Only from ICRC headquarters:

<http://heinonline.org/HOL/Page?handle=hein.journals/mjgt22&collection=journals&index=journals/mjgt&id=340>

## VI. Protection of persons

### Child soldiers as super-privileged combatants

G. Alex Sinha. In: The international journal of human rights Vol. 17, no. 4, 2013, p. 584-603. - Cote 362.7/378 (Br.)

### Doctors in arms : exploring the legal and ethical position of military medical personnel in armed conflicts

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ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36721.pdf>

### Humanitarian assistance and the conundrum of consent : a legal perspective

Cedric Ryngaert. In: Amsterdam law forum Vol. 5, no. 2, 2013, p. 5-19. - Cote 361/600 (Br.)

<http://ojs.uvu.vu.nl/alf/article/view/298/483>

**The kids before Khadr : Haitian refugee children on Guantanamo : a comment on Richard J. Wilson's Omar Khadr : domestic and international litigation strategies for a child in armed conflict held at Guantanamo**

Kate Jastram. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 81-98. - Cote 362.7/117 (Br.)

<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1109&context=scujil>

**Military chaplaincy in contention : chaplains, churches and the morality of conflict**

ed. by Andrew Todd. - Farnham ; Burlington : Ashgate, 2013. - 183 p. - Cote 284/33

**NATO gender mainstreaming and the feminist critique of the law of armed conflict**

Jody M. Prescott. In: The Georgetown journal of gender and the law Vol. 14, no. 1, Winter 2013, p. 83-131. - Cote 362.8/193 (Br.)

**Omar Khadr : domestic and international litigation strategies for a child in armed conflict held at Guantanamo**

Richard J. Wilson. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 29-79. - Cote 362.7/379 (Br.)

<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1108&context=scujil>

**Positive obligations in human rights law during armed conflicts**

Sandra Krähenmann. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 170-187. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

**The prohibition of enforced disappearances : a meaningful example of a partial merger between human rights law and international humanitarian law**

Gloria Gaggioli. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 320-342. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

**Résolution 1738 : la consécration par le Conseil de sécurité de la protection des journalistes et des médias en période de conflit armé**

Alexandre Balguy-Gallois. - Bruxelles : Bruylant, 2013. - p. 1149-1169. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Cote 345/635

**Security Council resolution 1973 : a new interpretation of the notion of protection of civilians ?**

Mohamed A. E. Youssef. - Leiden ; Boston : M. Nijhoff, 2013. - p. 145-167. - In: The Arab spring : new patterns for democracy and international law. - Cote 323.15/29

**Targeting and prosecuting "under-aged" child soldiers in international armed conflicts, in light of the international humanitarian law prohibition against civilian direct participation in hostilities**

Shannon Bosch. In: Comparative and international law journal of Southern Africa Vol. 45, no. 3, 2012, p. 324-364. - Cote 362.7/380 (Br.)

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36749.pdf>

## VII. Protection of objects

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

### **Advancing the legal protection of the environment in relation to armed conflict : Protocol I's threshold of impermissible environmental damage and alternatives**

Carson Thomas. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 83-101. - Cote 363.7/148

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36760.pdf>

### **Droit international de l'environnement**

Mara Tignino. - Bruxelles : Bruylant, 2013. - p. 267-299. - In: Droit international humanitaire : un régime spécial de droit international ?. - Cote 345.2/941

### **Environmental protection in armed conflict : filling the gaps with sustainable development**

Onita Das. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 103-128. - Cote 363.7/148

### **From engines for conflict into engines for sustainable development : the potential of international law to address predatory exploitation of natural resources in situations of internal armed conflict**

Daniëlla Dam-de Jong. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 155-177. - Cote 363.7/148

### **The principle of ambiguity and the prohibition against excessive collateral damage to the environment during armed conflict**

Erik V. Koppe. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 53-82. - Cote 363.7/148

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36759.pdf>

### **Protection of environment during armed conflict : is a new frame of laws necessary ?**

A. P. Singh. In: Journal of the Indian law institute Vol. 52, no. 3-4, 2010, p. 453-466. - Cote 363.7/146 (Br.)

Full text: <https://ext.icrc.org/library/docs/ArticlesPDF/36653.pdf>

### **The protection of the environment in armed conflict : legal obligations in the absence of specific rules**

Dieter Fleck. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 7-20. - Cote 363.7/148

### **The protection of the natural environment in armed conflict : existing rules and need for further legal protection**

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### **The role of multilateral environmental agreements in armed conflict : "green-keeping" in Virunga Park : applying the UNESCO World Heritage Convention in the armed conflict of the Democratic Republic of the Congo**

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

**The Copenhagen principles, international military operations and detentions**

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**Extraterritorial application of the rights to life and personal liberty, including habeas corpus, during situations of armed conflict**

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### **Omar Khadr : domestic and international litigation strategies for a child in armed conflict held at Guantanamo**

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## **IX. Law of occupation**

### **The law of occupation and human rights law : some selected issues**

Tristan Ferraro. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 273-293. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

### **State-building, occupation and international law : friends of foes ?**

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### **UN territorial administrations : between international humanitarian law and human rights law**

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## X. Conduct of hostilities

(Distinction, proportionality, precautions, prohibited methods)

### America's drone wars

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### Autonomy in the battlespace : independently operating weapon systems and the law of armed conflict

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### The illegality of offensive lethal autonomy

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### Legitimate target : a criteria-based approach to targeted killing

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## XII. Implementation

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

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### **The international humanitarian fact-finding commission and the law of human rights**

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## XIII. International human rights law

(Focus on situations of armed conflict and other situations of violence, relations with IHL)

### All necessary measures ? : reconciling international legal regimes governing peace and security, and the protection of persons, in the realm of counter-terrorism

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### **Interactions between international humanitarian law and international human rights law for the protection of economic, social and cultural rights = Interacción entre el derecho internacional humanitario y el derecho internacional de los derechos humanos para la protección de los derechos económicos, sociales y culturales**

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Eric David. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 570-574. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

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### **The prohibition of enforced disappearances : a meaningful example of a partial merger between human rights law and international humanitarian law**

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### **Rapports entre le droit international humanitaire et le droit international des droits de l'homme**

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**The relationship between economic, social and cultural rights and international humanitarian law : an analysis of health-related issues in non-international armed conflicts**

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**The relationship between international human rights and humanitarian law : an overview**

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**Theories on the relationship between international humanitarian law and human rights law**

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**UN territorial administrations : between international humanitarian law and human rights law**

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**Unexpected challenges : the increasingly evident disadvantage of considering international humanitarian law in isolation**

Louise Doswald-Beck. In: Santa Clara journal of international law Vol. 11, issue 1, 2012, p. 1-27. - Cote 345.2/934 (Br.)

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## **XIV. International criminal law**

**The application of superior responsibility in an era of unlimited information**

Charles Garraway. - Leiden ; Boston : M. Nijhoff, 2013. - p. 187-206. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275



**Combat strategies and the law of war in the age of terrorism : the evolving jurisprudence of the crime of rape in international criminal law**

Phillip Weiner. In: Boston College international and comparative law review Vol. 36, May 2013, p. 1207 - 1236. - Cote 344/605 (Br.)

**La Cour européenne des droits de l'homme face à la répression pénale nationale des crimes de droit international**

Isabelle Moulier. - Bruxelles : Bruylant, 2013. - p.1365-1396. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Cote 345/635

**Discrepancies between international humanitarian law on the battlefield and in the courtroom : the challenges of applying international humanitarian law during international criminal trials**

Rogier Bartels. - The Hague : T.M.C. Asser Press, 2013. - p. 339-378. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

**Droit international des droits de l'homme, droit international humanitaire et droit international pénal, vers la confusion des branches ?**

Hélène Tigroudja. - Bruxelles : Bruylant, 2013. - p. 1465-1487. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Cote 345/635

**Droit international pénal**

Damien Scalia. - Bruxelles : Bruylant, 2013. - p. 195-224. - In: Droit international humanitaire : un régime spécial de droit international ?. - Cote 345.2/941

**Ethnic cleansing : a legal qualification**

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**Friend or foe ? : on the protective reach of the law of armed conflict : a note on the SCSL Trial Chamber's judgment in the case of Prosecutor v. Sesay, Kallon and Gbao**

Jann K. Kleffner. - The Hague : T.M.C. Asser Press, 2013. - p. 285-302. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

**Human rights in the context of international criminal law: respecting them and ensuring respect for them**

Damien Scalia. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 575-589. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

**The prohibition of enforced disappearances : a meaningful example of a partial merger between human rights law and international humanitarian law**

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**La responsabilité pénale des autorités politiques pour des crimes de droit international humanitair[e] (DIH)**

Eric David. - The Hague : T.M.C. Asser Press, 2013. - p. 327-338. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

## Some Asian States' opposition to the concept of war crimes in non-international armed conflicts and its legal implications

Zhu Lijiang. In: Asian yearbook of international law Vol. 14 (2008), p. 71-99. - Cote 344/601 (Br.)

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# XV. Contemporary challenges

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

## All necessary measures ? : reconciling international legal regimes governing peace and security, and the protection of persons, in the realm of counter-terrorism

Karima Bennoune. - Cambridge : Cambridge University Press, 2013. - p. 667-705. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cote 303.6/222

## America's drone wars

Leila Nadya Sadat. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 215-234. - Cote 345.25/281 (Br.)

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## Armed conflict and terrorist organizations

Charles Garraway. - Cambridge : Cambridge University Press, 2013. - p. 425-453. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cote 303.6/222

## Autonomy in the battlespace : independently operating weapon systems and the law of armed conflict

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## The Copenhagen principles, international military operations and detentions

Bruce "Ossie" Oswald. In: Journal of international peacekeeping Vol. 17, no. 1-2, 2013, p. 116-147. - Cote 400/140 (Br.)

## Cyber war and the concept of "attack" in international humanitarian law

David Turns. - Leiden ; Boston : M. Nijhoff, 2013. - p. 209-227. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

## Cyberwar and unmanned aerial vehicles : using new technologies, from espionage to action

Jessica A. Feil. In: Case Western Reserve journal of international law Vol. 45, Issues 1 and 2, Fall 2012, p. 513-544. - Cote 345.25/273 (Br.)

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## Direct participation in cyber hostilities : terms of reference for like-minded states ?

Jody M. Prescott. - Tallinn : NATO CCD COE, 2012. - p. 251-266. - In: 2012 4th International conference on cyber conflict : proceedings. - Cote 345.25/272 (Br.)

**Droit de la guerre et conflits informatiques : quelle alliance ?**

Arnaud Garrigues. - Sceaux : L'esprit du livre, 2011. - p. 81-95 : tabl.. - In: Stratégies dans le cyberspace. - Cote 345.25/278 (Br.)

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**The duty to capture**

Jens David Ohlin. In: Minnesota Law Review Vol. 97, no. 4, 2013, p. 1268-1342. - Cote 345.25/144 (Br.)

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**Future war, future law**

Eric Talbot Jensen. In: Minnesota journal of international law Vol. 22, Summer 2013, p. 282-323. - Cote 345.2/935 (Br.)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2214205&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214205&download=yes)

**Harmony of conflict ? : the interplay between human rights and humanitarian law in the fight against terrorism**

Helen Duffy. - Cambridge : Cambridge University Press, 2013. - p. 482-526. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cote 303.6/222

**How far will the law allow unmanned targeting to go ?**

Bill Boothby. - Leiden ; Boston : M. Nijhoff, 2013. - p. 45-63. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

**Human rights implications of the usage of drones and unmanned robots in warfare**

Nils Melzer. - Brussels : European parliament, 2013. - 53 p. – Cote 345.25/280

<http://www.europarl.europa.eu/delegations/fr/studiesdownload.html?languageDocument=EN&file=92953>

**International humanitarian law and the changing technology of war**

ed. by Dan Saxon. - Leiden ; Boston : M. Nijhoff, 2013. - 357 p. - Cote 345.25/275

**International law and armed conflict : fundamental principles and contemporary challenges in the law of war**

Laurie R. Blank, Gregory P. Noone. - New York : Wolters Kluwer, 2013. - 690 p. - Cote 345.2/940

**Law and ethics for autonomous weapon systems : why a ban won't work and how the laws of war can**

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David Kretzmer. - Cambridge : Cambridge University Press, 2013. - p. 559-588. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cote 303.6/222

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Amos N. Guiora. - Oxford [etc.] : Oxford University Press, 2013. - 107 p. - Cote 345.25/276

### **Lethal robotic technologies : the implications for human rights and international humanitarian law**

comment by Philip Alston. In: Journal of law, information and science Vol. 21, no. 2, 2011/2012, p. 35-60. - Cote 341.67/730 (Br.)

### **Maximising compliance with IHL and the utility of data in an age of unlimited information : operational issues**

Darren Stewart. - Leiden ; Boston : M. Nijhoff, 2013. - p. 171-186. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

### **Methodology of law-making : customary international law and new military technologies**

Robert Heinsch. - Leiden ; Boston : M. Nijhoff, 2013. - p. 17-41. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

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### **Military robots and the principle of humanity : distorting the human face of the law ?**

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### **"Out of the loop" : autonomous weapon systems and the law of armed conflict**

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### **Participants in conflict : cyber warriors, patriotic hackers and the laws of war**

Heather A. Harrison Dinniss. - Leiden ; Boston : M. Nijhoff, 2013. - p. 251-278. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

### **Proportionality and precautions in cyber attacks**

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### **Regulating the use of unmanned combat vehicles : are general principles of international humanitarian law sufficient ?**

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### **A tour de horizon of issues on the agenda of the mercenaries working group**

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### Unexpected challenges : the increasingly evident disadvantage of considering international humanitarian law in isolation

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## XVI. Countries/Regions

### Afghanistan

#### The path to less lethal and destructive war ? : technological and doctrinal developments and international humanitarian law after Iraq and Afghanistan

David P. Fidler. - Leiden ; Boston : M. Nijhoff, 2013. - p. 315-336. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

#### Some reflections on self-defence as an element in rules of engagement

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### Africa

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

Mathew Kincade. In: Global studies law review Vol. 12, no. 1, 2013, p. 205-226. - Cote 345.29/192 (Br.)

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#### The African Union and international humanitarian law

Djacoba Liva Tehindrazanarivelo. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 503-530. - In: Research handbook on human rights and humanitarian law. - Cote 345.2/913

### Algeria

#### Why a war without a name may need one : policy-based application of international humanitarian law in the Algerian war

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### Asia

#### Some Asian States' opposition to the concept of war crimes in non-international armed conflicts and its legal implications

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## Congo (Democratic Republic of)

**The role of multilateral environmental agreements in armed conflict : "green-keeping" in Virunga Park : applying the UNESCO World Heritage Convention in the armed conflict of the Democratic Republic of the Congo**

Britta Sjöstedt. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 129-153. - Cote 363.7/148

## Ethiopia – Eritrea

**Litigating war : arbitration of civil injury by the Eritrea-Ethiopia claims commission**

Sean D. Murphy, Won Kidane, Thomas R. Snider. - Oxford [etc.] : Oxford University Press, 2013. - 1038 p. - Cote 345.22/216

## Haiti

**The kids before Khadr : Haitian refugee children on Guantanamo : a comment on Richard J. Wilson's Omar Khadr : domestic and international litigation strategies for a child in armed conflict held at Guantanamo**

Kate Jastram. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 81-98. - Cote 362.7/117 (Br.)

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## Irak

**The path to less lethal and destructive war ? : technological and doctrinal developments and international humanitarian law after Iraq and Afghanistan**

David P. Fidler. - Leiden ; Boston : M. Nijhoff, 2013. - p. 315-336. - In: International humanitarian law and the changing technology of war. - Cote 345.25/275

## Israel - Palestine

**In search of a human face in the Middle East : addressing Israeli impunity for war crimes**

Jeff Handmaker. - The Hague : T.M.C. Asser Press, 2013. - p. 155-168. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

## Libya

**Saving the past, present and future : thoughts on mobilising international protection for cultural property during armed conflict**

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**Security Council resolution 1973 : a new interpretation of the notion of protection of civilians ?**

Mohamed A. E. Youssef. - Leiden ; Boston : M. Nijhoff, 2013. - p. 145-167. - In: The Arab spring : new patterns for democracy and international law. - Cote 323.15/29

## Palestine

### UNESCO, Palestine and archaeology in conflict

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## Rwanda

### Combat strategies and the law of war in the age of terrorism : the evolving jurisprudence of the crime of rape in international criminal law

Phillip Weiner. In: Boston College international and comparative law review Vol. 36, May 2013, p. 1207 - 1236. - Cote 344/605 (Br.)

### La responsabilité pénale des autorités politiques pour des crimes de droit international humanitair[e] (DIH)

Eric David. - The Hague : T.M.C. Asser Press, 2013. - p. 327-338. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

## Sierra Leone

### Friend or foe ? : on the protective reach of the law of armed conflict : a note on the SCSL Trial Chamber's judgment in the case of Prosecutor v. Sesay, Kallon and Gbao

Jann K. Kleffner. - The Hague : T.M.C. Asser Press, 2013. - p. 285-302. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - Cote 345.2/936

## Somalia

### A "global war on piracy ?" : international law and the use of force against sea pirates

Eric A. Heinze. - London ; New York : Routledge, 2013. - p. 47-70. - In: Maritime piracy and the construction of global governance. - Cote 345.29/191 (Br.)

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## Syria

### Humanitarian assistance and the conundrum of consent : a legal perspective

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## Turkey

### Imprescriptibilité des crimes de guerre : réflexions à partir d'un cas concernant la Turquie

Melike Batur Yamaner ; Emre Öktem. - Bruxelles : Bruylant, 2013. - p. 1171-1184. -  
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Paul Tavernier. - Cote 345/635

## United States

### America's drone wars

Leila Nadya Sadat. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 215-234. - Cote 345.25/281 (Br.)

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### The duty to capture

Jens David Ohlin. In: Minnesota Law Review Vol. 97, no. 4, 2013, p. 1268-1342. -  
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### The kids before Khadr : Haitian refugee children on Guantanamo : a comment on Richard J. Wilson's Omar Khadr : domestic and international litigation strategies for a child in armed conflict held at Guantanamo

Kate Jastram. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 81-98. - Cote 362.7/117 (Br.)

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### Omar Khadr : domestic and international litigation strategies for a child in armed conflict held at Guantanamo

Richard J. Wilson. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 29-79. - Cote 362.7/379 (Br.)

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### Rightly dividing the domestic jihadist from the enemy combatant in the "war against al-Qaeda" : why it matters in rendition and targeted killings

Jeffrey F. Addicott. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 259-302. - Cote 303.6/221 (Br.)

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## Yugoslavia

### Combat strategies and the law of war in the age of terrorism : the evolving jurisprudence of the crime of rape in international criminal law

Phillip Weiner. In: Boston College international and comparative law review Vol. 36, May 2013, p. 1207 - 1236. - Cote 344/605 (Br.)



## All with Abstracts

### Advancing the legal protection of the environment in relation to armed conflict : Protocol I's threshold of impermissible environmental damage and alternatives

Carson Thomas. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 83-101. - Cote 363.7/148

This article presents both legal and strategic arguments for increasing the level of environmental protection in wartime within the legal context created by Articles 35 and 55 of Additional Protocol I. These provisions bifurcate the legal protection of the environment in armed conflict. Above the threshold, environmental damage is prohibited. Beneath the threshold, other international humanitarian law instruments and customary principles apply and may offer environmental protection, usually by balancing environmental damage against military necessity. The objective of this article is to propose legal and strategic frameworks to be addressed to military decision-makers considering environmentally harmful actions. It argues that the principle of military necessity, including strategic considerations, can be found compatible with enhanced environmental protections.

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36760.pdf>

### The African Union and international humanitarian law

Djacobá Liva Tehindrazanarivelo. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 503-530. - Cote 345.2/913

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

### All necessary measures ? : reconciling international legal regimes governing peace and security, and the protection of persons, in the realm of counter-terrorism

Karima Bennoune. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 667-705. - Cote 303.6/222

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

### America's drone wars

Leila Nadya Sadat. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 215-234. - Cote 345.25/281 (Br.)

The U.S. practice of targeted killing by remotely-piloted unmanned vehicles in Afghanistan, Pakistan, Yemen, Libya, Iraq and Somalia - popularly referred to as "America's drone wars" - raises the question of the application of humanitarian law principles to the conduct of America's longest - running war. Yet, it not only presents complex issues of international law but difficult moral and ethical questions. Administration officials and some academics and commentators have praised targeted killing as effective and lawful.

Others have criticized it as immoral, illegal, and unproductive. This article concludes that conducting targeted killing operations outside areas of active hostilities violates international law. In addition, even in areas in which targeted killings may be lawful, particular uses of drones may violate international humanitarian law if insufficient attention is paid to principles of proportionality and distinction in their use, particularly as regards decisions of whom, how, and when to target an individual for death.

<http://law.case.edu/journals/JIL/Documents/45CaseWResJIntL1&2.12.Article.Sadat.pdf>

### And yet it exists : in defence of the "equality of belligerents" principle

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

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

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### L'application du droit international humanitaire dans la guerre urbaine : de Guernica à Gaza

par Michel Veuthey. - In: Conflits en zone urbaine. - Nancy : Le Polémarque, 2013. - p. 109-144. - Cote 355/1000

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

### The application of superior responsibility in an era of unlimited information

Charles Garraway. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 187-206. - Cote 345.25/275

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

### Application simultanée du droit international des droits de l'homme : les victimes de violations en quête d'un forum

Jean-Marie Henckaerts. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1297-1332. - Cote 345/635

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

## **Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald**

Mariëlle Matthee, Brigit Toebes, Marcel Brus ed.. - The Hague : T.M.C. Asser Press, 2013. - Cote 345.2/936

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

## **Armed conflict and law enforcement : is there a legal divide ?**

Charles Garraway. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 259-283. - Cote 345.2/936

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

## **Armed conflict and terrorist organizations**

Charles Garraway. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 425-453. - Cote 303.6/222

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

## **Autonomy in the battlespace : independently operating weapon systems and the law of armed conflict**

Markus Wagner. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 99-122. - Cote 345.25/275

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

## **Can insurgent courts be legitimate within international humanitarian law ?**

Parth S. Gejji. In: Texas law review Vol. 91, no. 6, 2013, p. 1525-1559. - Cote 345.27/127 (Br.)

As armed groups have increasingly resorted to establishing courts and conducting trials, however, other scholars have highlighted a growing need to account for insurgent courts within IHL. This project to account for insurgent courts within IHL leads to three questions: First, is there any interpretation of IHL that would recognize the legitimacy of courts of armed groups? Second, assuming that insurgent courts could be legitimate within IHL, which fair trial guarantees does IHL require of such courts? Third, even if the first two questions can be answered, what types of trials should IHL recognize as an appropriate

exercise by an armed group? This Note responds to this discussion of insurgent courts by highlighting some previously ignored interpretive difficulties and argues that any interpretation of IHL that seeks to legitimize insurgent courts leads to problematic solutions.

<http://www.texasrev.com/wp-content/uploads/Gejji.pdf>

### **Child soldiers as super-privileged combatants**

**G. Alex Sinha.** In: The international journal of human rights Vol. 17, no. 4, 2013, p. 584-603. - Cote 362.7/378 (Br.)

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

### **Chivalry : a principle of the law of armed conflict ?**

**Terry Gill.** - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 33-51. - Cote 345.2/936

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

### **Combat strategies and the law of war in the age of terrorism : the evolving jurisprudence of the crime of rape in international criminal law**

**Phillip Weiner.** In: Boston College international and comparative law review Vol. 36, May 2013, p. 1207 - 1236. - Cote 344/605 (Br.)

For centuries, rape has served as a weapon of war, despite criminal prohibitions forbidding its use. Nevertheless, only in recent decades has international law made significant strides in defining and prosecuting rape as a war crime and crime against humanity. International criminal tribunals prosecuting crimes of sexual violence in prior conflict zones such as Rwanda, Sierra Leone, and the former Yugoslavia have struggled to develop a coherent definition of the elements of rape. This is largely due to the unique aspects of consent and coercion that are inherent within a surrounding context of armed conflict. This article begins by exploring the elements of rape as defined by the major international criminal tribunals existing today, and subsequently examines the manner in which each court considers proof of consent and coercion. It then surveys some of the recent and more progressive developments in rape law jurisprudence both domestically and internationally. Finally, this article recommends several specific steps that international criminal tribunals could employ to more effectively and equitably prosecute rape as a war crime and crime against humanity.

### **The Copenhagen principles, international military operations and detentions**

**Bruce "Ossie" Oswald.** In: Journal of international peacekeeping Vol. 17, no. 1-2, 2013, p. 116-147. - Cote 400/140 (Br.)

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

## La Cour européenne des droits de l'homme et le droit international humanitaire

Eric David. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1227-1248. - Cote 345/635

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

## La Cour européenne des droits de l'homme et le droit international humanitaire : de la réticence à l'utilisation assumée

Marina Eudes. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1249-1254. - Cote 345/635

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

## La Cour européenne des droits de l'homme face à la répression pénale nationale des crimes de droit international

Isabelle Moulier. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p.1365-1396. - Cote 345/635

Compte tenu de l'accroissement récent des procédures nationales visant à réprimer les auteurs de crimes de droit international, il était prévisible que la Cour européenne des droits de l'homme aurait ainsi à connaître de violations de la Convention européenne des droits de l'homme, alléguées tant par les victimes de crimes de droit international que par les individus ayant fait l'objet de poursuites judiciaires au titre de ces crimes devant les tribunaux d'un Etat partie à la Convention. C'est dans ce cadre que s'inscrit la confrontation entre le droit pénal international - qui exige que les auteurs de crimes internationaux ne restent pas impunis - et les droits de l'homme, envisagés tant sous l'angle du droit à la justice des victimes que sous celui du droit des accusés à bénéficier de procédures équitables. La question se pose de savoir de quelle manière la Cour parvient à concilier ces deux impératifs de valeur égale et quel équilibre il est possible d'établir entre le droit des victimes à la justice et le respect des droits de l'accusé, criminel de droit international, en matière pénale. Ce chapitre analyse ainsi la jurisprudence de la Cour relative à la répression pénale nationale des crimes de droit international en vue de mesurer, in fine, le degré général d'ouverture de la Cour à l'égard du mouvement de lutte contre l'impunité.

## The current relevance of the recognition of belligerency

Sasha Radin. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 115-152. - Cote 345.2/936

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

## Cyber war and the concept of "attack" in international humanitarian law

David Turns. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 209-227. - Cote 345.25/275

This chapter first consider the types of actions which constitute so-called "cyber attacks", before analysing in detail the requirements of the concept of an "attack" generally under the existing law of armed conflict,

based on the definition provided in Additional Protocol I of 1977. Those requirements will then be "mapped" to the salient features of "cyber attack" already identified, with a view to identifying the characteristics of "cyber attack" that render them "attacks" under IHL. State practice as to the use of such "cyber attack" in situations of armed conflict is almost non-existent, the sole known example being that of the Russia-Georgia conflict in 2008. Reported examples of "cyber attacks" from that conflict will be considered, as a concluding case study, to illustrate the operation of these principles in practice.

### **Cyberwar and unmanned aerial vehicles : using new technologies, from espionage to action**

Jessica A. Feil. In: Case Western Reserve journal of international law Vol. 45, Issues 1 and 2, Fall 2012, p. 513-544. - Cote 345.25/273 (Br.)

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

<http://law.case.edu/journals/JIL/Documents/45CaseWResJIntL1&2.25.Note.Feil.pdf>

### **Direct participation in cyber hostilities : terms of reference for like-minded states ?**

Jody M. Prescott. - In: 2012 4th International conference on cyber conflict : proceedings. - Tallinn : NATO CCD COE, 2012. - p. 251-266. - Cote 345.25/272 (Br.)

According to its recently published cyber strategy, the U.S. seeks to develop international consensus on how traditional law of armed conflict (LOAC) norms and understandings are modified and applied in cyberspace to help secure this global commons. Although the International Committee of the Red Cross's Interpretive Guidance on Direct Participation in hostilities and the recent U.S. cyber strategy documents and policy statements are very different in many ways, examination of the relationships between their different aspects could be very useful in setting terms of reference framing the discussions which must occur to develop consensus on how LOAC rules and understandings regarding direct participation in hostilities could be adapted for use in cyberspace. This requires identification of their respective strengths and weaknesses, and potential areas of common ground between them. To be useful, this examination must include consideration of the significance of rules of engagement, formulations of hostile intent, and the proper inferences to be drawn from intelligence analyses as well as the legal standards by which direct participation in hostilities is determined.

### **Discrepancies between international humanitarian law on the battlefield and in the courtroom : the challenges of applying international humanitarian law during international criminal trials**

Rogier Bartels. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 339-378. - Cote 345.2/936

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

## Doctors in arms : exploring the legal and ethical position of military medical personnel in armed conflicts

Brigit Toebes. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 169-194. - Cote 345.2/936

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

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## Droit de la guerre et conflits informatiques : quelle alliance ?

Arnaud Garrigues. - In: Stratégies dans le cyberspace. - Sceaux : L'esprit du livre, 2011. - p. 81-95. - Cote 345.25/278 (Br.)

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

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## Droit de la mer

Philippe Gautier. - In: Droit international humanitaire : un régime spécial de droit international ?. - Bruxelles : Bruylant, 2013. - p. 301-319. - Cote 345.2/941

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

## Droit international de l'environnement

Mara Tignino. - In: Droit international humanitaire : un régime spécial de droit international ?. - Bruxelles : Bruylant, 2013. - p. 267-299. - Cote 345.2/941

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

## **Droit international des droits de l'homme, droit international humanitaire et droit international pénal, vers la confusion des branches ?**

Hélène Tigroudja. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1465-1487. - Cote 345/635

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

## **Droit international humanitaire : un régime spécial de droit international ?**

sous la dir. de Raphaël van Steenberghe ; préf. de Bruno Simma. - Bruxelles : Bruylant, 2013. - Cote 345.2/941

Dans le cadre de ses travaux relatifs à la fragmentation du droit international et, en particulier, à l'existence de régimes juridiques « autonomes » ou « spéciaux », la Commission du droit international a identifié le droit international humanitaire comme l'un des exemples de régime qui se distinguerait en droit international par sa spécificité fonctionnelle. L'objectif du présent ouvrage est notamment de fournir des éclaircissements sur la signification de cette qualification. Après avoir circonscrit les contours de la notion de régime spécial en droit international, l'ouvrage s'interroge sur les éventuelles spécificités du droit international humanitaire tant par rapport au « système général », c'est-à-dire aux règles secondaires du droit international général, que par rapport à d'autres « sous-systèmes », tels que le droit international pénal, les droits de l'homme ou le droit international de l'environnement. Cette analyse entend cerner au mieux les rapports existant entre le droit international humanitaire et les autres systèmes – général ou spéciaux – de droit international et se prononcer ainsi sur la question sous-jacente de l'« autonomisation » de ce droit. Elle montre que, loin de produire une « cacophonie » au sein de l'ordre juridique international, cet enchevêtrement de différents systèmes relevant de cet ordre s'apparente le plus souvent à une « polyphonie » harmonieuse.

## **Droit international pénal**

Damien Scalia. - In: Droit international humanitaire : un régime spécial de droit international ?. - Bruxelles : Bruylant, 2013. - p. 195-224. - Cote 345.2/941

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

## **Droits de l'homme**

Yasmin Naqvi. - In: Droit international humanitaire : un régime spécial de droit humanitaire ?. - Bruxelles : Bruylant, 2013. - p. 225-266. - Cote 345.2/941

Ce chapitre analyse les approches "traditionnelles" relatives à l'applicabilité concomitante du droit humanitaire et des droits de l'homme, à savoir les approches de la "lex specialis", de la "lex posterior", de la complémentarité et la méthode de convergence. Il démontre au travers de la jurisprudence internationale, des décisions des organes de contrôles et des rapports des experts nommés par les Nations unies que ces méthodes ne sont en réalité utilisées que dans un seul et même sens, celui de l'interprétation systémique et "harmonisée" des deux corps de règles. Des cas de jurisprudence spécifiques éclairent d'avantage le sens de ce principe d'harmonisation. L'auteur soutient que l'application du principe d'harmonisation a pour résultat non seulement d'"humaniser" le droit humanitaire, mais également d'"humanitariser" les droits de l'homme, y compris en temps de paix et que cette méthode a la capacité d'établir une certaine cohésion et profondeur au sein d'un système juridique "fragmentable".



## Le drone, l'éthique et le droit

Philippe Lagrange. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1333-1353. - Cote 345/635

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

## The duty to capture

Jens David Ohlin. In: Minnesota Law Review Vol. 97, no. 4, 2013, p. 1268-1342. - Cote 345.25/144 (Br.)

The article examines the duty to capture and the divergent approaches that each legal regime takes to this normative requirement, and evaluates internal debates within these regimes over when a duty to capture might apply. Part I begins by examining the scope of international humanitarian law (IHL); concludes that its application is often unduly constrained; and offers a new analysis of the classification of armed conflicts, the level of organization required before a non-state actor can be a party to an armed conflict, and the legal geography of armed conflict. Part II examines the concept of necessity and concludes that military necessity is fundamentally incompatible with human-rights law and its understanding of necessity as the least-restrictive means. Finally, Part III concludes that the IHL regime, and its permissive notion of military necessity, should apply when the state is acting as a belligerent against other co-equal belligerents, but that human-rights law, and its more restrictive notion of necessity, should apply when the state acts as a sovereign over its own subjects. However, being a U.S. citizen does not automatically make an individual a "subject" under a sovereign, as opposed to a belligerent. Rather, this article concludes that belligerency is always a relationship between collectives, and that the relevant question is whether the United States stands in a relationship of belligerency to a non-state organization of which the individual is a member.

[http://www.minnesotalawreview.org/wp-content/uploads/2013/04/Ohlin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2013/04/Ohlin_MLR.pdf)

## The emergence and early demise of codified racial segregation of prisoners of war under the Geneva Conventions of 1929 and 1949

Timothy L. Schroer. In: Journal of the history of international law Vol. 15, 2013, p. 53-76. - Cote 400.2/134 (Br.)

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

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36657.pdf>

## Environmental protection in armed conflict : filling the gaps with sustainable development

Onita Das. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 103-128. - Cote 363.7/148

Recent years have witnessed growing concern over the ever more increasing urgent and pervasive global environmental problems. Environmental problems and challenges in relation to armed conflict are amongst them. Such environmental pressures can cause violent or armed conflict which in turn can cause devastating damage and destruction to the environment. This article explores the possibility of utilising the overarching concept of sustainable development and its relevant substantive principles to fill the gaps of environmental protection provided by international humanitarian law. The concept of sustainable development generally refers to development or the process of improving the quality of life of the present generation without compromising the future generations. This article thus reviews the limits of the protection of the environment during armed conflict within the current legal framework and suggests setting out a new, more comprehensive set of Environmental Rules based on the "Berlin Rules" approach. It is argued that these proposed Rules, by comprehensively and clearly prescribing rights and duties in

respect of the ecological impact of armed conflict including the integration of the concept of sustainable development, could not only mitigate the impact of conflict-related environmental damage on both the environment and the human population, it could further contribute to the development of international law and conflict-related environmental protection specifically.

### **Ethics and the laws of war : the moral justification of legal norms**

Antony Lamb. - London ; New York : Routledge, 2013. - 158 p. - Cote 345.2/929

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

### **Ethnic cleansing : a legal qualification**

Clotilde Pégorier. - London ; New York : Routledge, 2013. - 173 p. - Cote 344/602

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

### **L'étude sur le droit international coutumier : les voies d'une normativité en action**

Sandra Szurek. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p.1447-1464. - Cote 345/635

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

### **The European court of human rights and international humanitarian law**

Lindsay Moir. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 480-502. - Cote 345.2/913

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

## Extraterritorial application of the rights to life and personal liberty, including habeas corpus, during situations of armed conflict

Robert K. Goldman. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 454-481. - Cote 303.6/222

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

## Fighting by the principles : principles as a source of international humanitarian law

Jeroen C. van den Boogaard. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 3-31. - Cote 345.2/936

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

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## Friend or foe ? : on the protective reach of the law of armed conflict : a note on the SCSL Trial Chamber's judgment in the case of Prosecutor v. Sesay, Kallon and Gbao

Jann K. Kleffner. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 285-302. - Cote 345.2/936

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

## From engines for conflict into engines for sustainable development : the potential of international law to address predatory exploitation of natural resources in situations of internal armed conflict

Daniëlla Dam-de Jong. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 155-177. - Cote 363.7/148

Since the end of the Cold War, natural resources have proven an adequate replacement for external funding of armed conflicts. The prospects for parties to an armed conflict to gain 'easy' profits from resource exploitation encourage these parties to engage in predatory practices that are highly detrimental to environmental conservation. The environmental degradation caused by predatory resource exploitation by parties to an armed conflict also severely hampers efforts towards the post-conflict reconstruction of a State. Environmental degradation of land may spark new tensions in the fragile phase of post-conflict reconstruction. In addition, natural resources are an important engine to restart the economy of a war-torn

State after the conflict has come to an end. If the resources are severely degraded or even exhausted as a consequence of their exploitation during armed conflict, it becomes even more difficult to kick-start the economy of a State emerging from conflict. This article argues that current international law is not sufficiently equipped to deal with these challenges. The existing regulatory framework is fragmented and imprecise. It is only through case specific responses under Security Council sanctions regimes that the challenges are currently addressed.

### **From start to finish : a historical review of nuclear arms control treaties and starting over with the new START**

Lisa M. Schenck and Robert A. Youmans. In: *Cardozo Journal of international and comparative law* Vol. 20, no. 2, Winter 2012, p. 399-435. - Cote 341.67/170 (Br.)

Collective arms control responses from 1925 to 1991 evolved into three types of agreements, which focused on : (1) non-armament; (2) confidence-building measures; and (3) arms limitations. After 1991, the focus became arms reduction. This article describes the global efforts to regulate nuclear weapons, how each approach differed and was built on previous experience, the impact of world events on negotiations and the resultant pressure on the parties to achieve agreement, and what we can expect in the future of nuclear arms control.

[http://www.cjicl.com/uploads/2/9/5/9/2959791/cjicl\\_20.2\\_schenck\\_youmans\\_article.pdf](http://www.cjicl.com/uploads/2/9/5/9/2959791/cjicl_20.2_schenck_youmans_article.pdf)

### **Future war, future law**

Eric Talbot Jensen. In: *Minnesota journal of international law* Vol. 22, Summer 2013, p. 282-323. - Cote 345.2/935 (Br.)

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

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2214205&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214205&download=yes)

### **A "global war on piracy ?" : international law and the use of force against sea pirates**

Eric A. Heinze. - In: *Maritime piracy and the construction of global governance*. - London ; New York : Routledge, 2013. - p. 47-70. - Cote 345.29/191 (Br.)

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

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36656.pdf>

### **Great resources mean great responsibility : a framework of analysis for assessing compliance with API obligations in the information age**

Kimberly Trapp. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 153-170. - Cote 345.25/275

This chapter explores the standard of diligence which should apply in evaluating compliance with the obligations to take precautionary measures, in light of new information technologies, bearing in mind the necessity of a context sensitive appreciation of the capacity of state parties to an armed conflict. While states with the most advanced technological capabilities involved in long term armed conflicts will be the

focus of this chapter (utilising the American experience as a case study), the framework of analysis set out in this chapter also responds to the particular circumstances of less developed states.

### **Les groupes armés non étatiques comme destinataires des sanctions n'impliquant pas l'emploi de la force**

Rafael A. Prieto Sanjuán. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 315-329. - Cote 345/635

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

### **Harmony of conflict ? : the interplay between human rights and humanitarian law in the fight against terrorism**

Helen Duffy. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 482-526. - Cote 303.6/222

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

### **How far will the law allow unmanned targeting to go ?**

Bill Boothby. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 45-63. - Cote 345.25/275

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

### **Human rights implications of the usage of drones and unmanned robots in warfare**

Nils Melzer. - Brussels : European parliament, 2013. - 53 p. - Cote 345.25/280

In recent years, the use of drones and other unmanned robots in warfare and other situations of violence has increased exponentially, and States continue to invest significantly into increasing the operational autonomy of such systems. While most unmanned robots are unarmed and fulfil functions that do not give rise to particular legal concerns, the use of weaponized robots, including armed drones, has important legal and policy implications. Given that such unmanned weapon systems involve the application of armed force, the international lawfulness of their use is governed primarily by human rights law and, in situations of armed conflict, by international humanitarian law. When the use of armed robots interferes with the territorial sovereignty of other States, it may also raise issues of legality under the UN Charter.

<http://www.europarl.europa.eu/delegations/fr/studiesdownload.html?languageDocument=EN&file=92953>

## Human rights in non-international armed conflicts : a counter-terrorism issue ?

Hans J. Giessmann. In: S+F : Sicherheit und Frieden Jg. 31, Nr. 2, 2013, p. 59-64. - Cote 345.27/129 (Br.)

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

[http://www.sicherheit-und-frieden.nomos.de/fileadmin/suf/doc/Aufsatz\\_SuF\\_13\\_02.pdf](http://www.sicherheit-und-frieden.nomos.de/fileadmin/suf/doc/Aufsatz_SuF_13_02.pdf)

## Human rights in the context of international criminal law: respecting them and ensuring respect for them

Damien Scalia. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 575-589. - Cote 345.2/913

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

## Human rights law and international humanitarian law as limits for Security Council action

Michael Bothe. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 371-390. - Cote 345.2/913

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

## Human rights law and international humanitarian law between 1945 and the aftermath of the Teheran Conference of 1968

Robert Kolb. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 35-52. - Cote 345.2/913

This chapter looks into the past and informs about the reasons why international humanitarian law (IHL) and international human rights law (IHRL) started with separatism and why they progressively converged.

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

### **Human rights obligations of non-state armed groups : a possible contribution from customary international law ?**

Jean-Marie Henckaerts and Cornelius Wiesener. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 146-169. - Cote 345.2/913

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

### **Human rights obligations of territorial non-state actors**

Yaël Ronen. In: Cornell international law journal Vol. 46, no. 1, Winter 2013, p. 21-50. - Cote 345.1/609 (Br.)

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

<http://www.lawschool.cornell.edu/research/ILJ/upload/Ronen-final.pdf>

### **Humanitarian assistance and the conundrum of consent : a legal perspective**

Cedric Ryngaert. In: Amsterdam law forum Vol. 5, no. 2, 2013, p. 5-19. - Cote 361/600 (Br.)

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

<http://ojs.ubvu.vu.nl/alf/article/view/298/483>

### **Humanitarian assistance to protect human rights and international humanitarian law**

Roberto Giuffrida. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 294-319. - Cote 345.2/913

Humanitarian assistance plays a crucial role in the International Community and a strong debate currently revolves around many of its facets: funding sources, adequacy of means, and the solutions adopted to grant universal access to victims. In case of humanitarian emergency, contrasts among the States often arise, as well as conflicts among, or inside, the main International Organizations. Public opinion plays a key role too, by facilitating the achievement of the defined goals as well as by monitoring the development of humanitarian activities to make sure they follow clear and transparent procedures. The search for this transparency is assigned to the media, which are frequently accused of arbitrarily putting forward some emergencies while ignoring others. Or, also, of creating the illusion of a prompt response from the International Community even when this is lacking. The aforementioned debate is amplified by natural

disasters and armed conflicts, particularly asymmetric conflicts, where, unfortunately, we witness an increase in civil victims and the killing of humanitarian operators. In situations of conflict, the presence of humanitarian assistance operations are nowadays considered to be not only an important condition for the calling of a truce, but a necessary element to reach, in the words of the UN Secretary General, 'Global Peace', which requires the solution of social, economic, cultural and humanitarian problems. Therefore, any obstacle to the delivery of aid is correctly considered as a danger to international peace and security. But this integrated approach is often criticized as it would interfere with the independence of humanitarian operations.

### "Humanitarian rights" : how to ensure respect for human rights and humanitarian law in armed conflicts

Dan Kuwali. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 343-370. - Cote 345.2/913

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

### The illegality of offensive lethal autonomy

David Akerson. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 65-98. - Cote 345.25/275

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

### Imprescriptibilité des crimes de guerre : réflexions à partir d'un cas concernant la Turquie

Melike Batur Yamaner ; Emre Öktem. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1171-1184. - Cote 345/635

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



### **In search of a human face in the Middle East : addressing Israeli impunity for war crimes**

Jeff Handmaker. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 155-168. - Cote 345.2/936

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

### **The inter-American court of human rights and international humanitarian law**

Hélène Tigroudja. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 466-479. - Cote 345.2/913

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

### **Interactions between international humanitarian law and international human rights law for the protection of economic, social and cultural rights = Interacción entre el derecho internacional humanitario y el derecho internacional de los derechos humanos para la protección de los derechos económicos, sociales y culturales**

Koldo Casla. In: Revista electrónica de estudios internacionales Núm. 23, junio 2012, 17 p.. - Cote 345.1/610 (Br.)

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

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36680.pdf>

### **The International Committee of the Red Cross and human rights law**

Godofredo Torreblanca. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 540-569. - Cote 345.2/913

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

## The international humanitarian fact-finding commission and the law of human rights

Eric David. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 570-574. - Cote 345.2/913

After some 20 years of existence, the International Humanitarian Fact-finding Commission (IHFFC) has never received any request for investigation. This 'technical unemployment' of IHFFC is surprising because, if among the 72 States that have recognized the competence of the Commission, few are, or were confronted with armed conflicts, such conflicts have not disappeared since 1991, and nothing precludes a third State or an international organization to request a fact-finding mission from the Commission. The object of this short note is to describe whether the Commission could deal with human rights violations. Given the lack of practice of the Commission, the following developments remain purely theoretical. The question of the jurisdiction of the Commission with respect to human rights may arise for two reasons: as part of an agreement between two parties to lodge a request with the Commission for an investigation outside the context of an armed conflict; and as part of an armed conflict when an allegation of human rights violation is submitted to the Commission. This chapter contends that the Commission can exercise its jurisdiction in the second case but not in the first one.

## International humanitarian law and human rights rules in agreements regulating or terminating an internal armed conflict

Luisa Vierucci. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 416-438. - Cote 345.2/913

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

## International humanitarian law and the changing technology of war

ed. by Dan Saxon. - Leiden ; Boston : M. Nijhoff, 2013. - 357 p. - Cote 345.25/275

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

## International law and armed conflict : fundamental principles and contemporary challenges in the law of war

Laurie R. Blank, Gregory P. Noone. - New York : Wolters Kluwer, 2013. - 690 p. - Cote 345.2/940

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

## Is there a need for new international humanitarian law implementation mechanisms ?

Paolo Benvenuti and Giulio Bartolini. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 590-627. - Cote 345.2/913

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

## Jus ad bellum, jus in bello et droits de l'homme

William A. Schabas. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1417-1427. - Cote 345/635

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

## Jus ad/contra bellum

Vaios Koutroulis. - In: Droit international humanitaire : un régime spécial de droit international ? - Bruxelles : Bruylant, 2013. - p. 157-194. - Cote 345.2/941

Ce chapitre traite de la question des relations entre le jus contra bellum et le jus in bello afin de déterminer si ces deux branches du droit international sont complètement indépendantes l'une de l'autre ou si, au contraire, elles s'influencent réciproquement et, le cas échéant, si cette influence aboutit à leur (con)fusion comme l'affirmation de manière récurrente certaines théories. La première section est consacrée à l'étude de la relation d'indépendance existant entre le jus contra bellum et le jus in bello, qui constitue la caractéristique principale des rapports entre les deux corps de règles. La deuxième section confronte les champs d'application ratione materiae respectifs du jus contra bellum et du jus in bello afin d'identifier leur liens éventuels. La section trois étudie en profondeur les notions de nécessité et de proportionnalité qui sont souvent présentées comme formant des "ponts" permettant une certaine interaction entre ces deux corps de règles. Cette double étude des points de contact permettra de déterminer s'il convient de remettre en question la séparation entre le jus contra bellum et le jus in bello.

## The kids before Khadr : Haitian refugee children on Guantanamo : a comment on Richard J. Wilson's Omar Khadr : domestic and international litigation strategies for a child in armed conflict held at Guantanamo

Kate Jastram. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 81-98. - Cote 362.7/117 (Br.)

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

This Comment focuses on the kids before Khadr, the Haitian children whose dangerous escape by sea from their violent, impoverished homeland ended in military custody on Guantanamo. While other Guantanamo narratives have examined the important constitutional and law of war precedents such as Johnson v. Eisentrager, it was the Haitian refugees' legal struggles in the 1990s that set the stage for the post-9/11 litigation over what rights, if any, could be claimed by Khadr and other non-U.S. citizens held there.

<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1109&context=scujil>

## Law and ethics for autonomous weapon systems : why a ban won't work and how the laws of war can

Kenneth Anderson, Matthew C. Waxman. In: Washington College of law research paper No. 11, 2013, 32 p. - Cote 341.67/731 (Br.)

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

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2250126&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250126&download=yes)

## The law of occupation and human rights law : some selected issues

Tristan Ferraro. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 273-293. - Cote 345.2/913

This contribution addresses the issue of the co-application of human rights law and the law of occupation through the lens of three specific themes. First it asks the question whether the implementation of human rights law can be used as a justification for the occupying power's "transformative" agenda. Second, it analyzes the role of human rights law in situations of prolonged occupation as an extension of the occupying power's authority in occupied territory. Finally it addresses the issue of human rights and the use of force in occupied territory.

## The law of the possible in armed conflict : a comment on unprivileged belligerents, preventive detention, and fundamental fairness

Deborah Pearlstein. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 181-187. - Cote 400.2/136 (Br.)

While it might once have been possible to imagine that international humanitarian law (IHL) simply supplanted human rights law (HRL) during armed conflict, acting as the exclusive body of law governing the conduct of warring parties and occupying forces, the rapid development of HRL after World War II, coupled with the proliferation of non-traditional armed conflicts, have helped drive the development of a consensus view that both bodies of law matter in times of armed conflict. But the consensus on how they matter is far from specific. How do the laws interact ? When they can be read as complimentary ? In particular, which law should prevail in the event specific rules in application conflict ? All of these questions remain the subject of much scholarship and dispute.

<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1112&context=scujil>

## The law of war

Ingrid Detter. - Farnham ; Burlington : Ashgate, 2013. - 534 p. - Cote 345.2/528 (2013)

This work explores the changing legal context of modern warfare in light of events over the last decade. The author reviews the status of non-state actors, as individuals and groups become more prominent in international society. Covering post 9/11 events and the resulting changes in the ethos of war, she analyses the role of military companies and examines what their legitimacy means for international society. It also discusses certain "intrinsic" rules in the law of war, such as rules giving individuals the right to be spared genocide, torture, slavery and apartheid and assure them basic democratic rights. The author questions the right of "illegal" combatants to be treated as prisoners of war and suggests that a minimum standard must be afforded to all, whether captured dictators or detainees suspected of terrorism. In the modern world, the individual (the soldier, the civilian, the dictator, the terrorist or the pirate) can no longer behave as they wish. Further new topics include "target killings", the "right to protect" ("R2P" - claimed to be a new form of intervention), the use of unregulated weapons such as drones and robots, the war scenario in outer space and cyber crimes. There is also a discussion of new developments in the field of war crimes including severe criticism of the novel concept "joint criminal enterprise" (JCE), which, in the opinion of the author, undermines the rule of law.

### **The legal regime governing the use of lethal force in the fight against terrorism**

David Kretzmer. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 559-588. - Cote 303.6/222

The case study that forms the starting point for this analysis involves use of lethal force by one State (A) against a non-state actor who is currently in the territory of another State (B). State A claims that the said non-state actor is involved in terrorist activities directed against it or its citizens, and that State B has failed to take action to apprehend him and put an end to his terrorist activities, because it is either unwilling or incapable of doing so. The question for discussion is which regime of international law applies to the action of State A. In analysing this question it is important to distinguish between two separate, though connected, issues: (1) legality of using force in the territory of another state; (2) the right to life of the individual concerned.

### **The legal regime governing transfer of persons in the fight against terrorism**

Margaret L. Satterthwaite. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 589-638. - Cote 303.6/222

Crimes of terrorism are frequently committed by individuals and groups in countries other than those they target. Even when "home-grown" terrorists are responsible for violent acts, they often flee across borders to evade justice. States seeking to punish acts of terrorism therefore regularly need to obtain custody of individuals accused of committing such acts. They may do so by requesting the extradition or deportation of a suspect from a state where the individual is found. States also directly apprehend suspected terrorists in other countries and deliver them to justice before their own or third states' courts through "rendition to justice". Finally, when terrorism occurs in the context of armed conflict, states may move suspects from one state to another through wartime processes such as the transfer of prisoners of war. Because they are carried out in a wide variety of settings, a careful examination of relevant rules of international human rights and humanitarian law is needed. This chapter examines the legal norms governing such transfers and sets out a minimum standard that must be upheld in all settings. This standard is most relevant for informal transfers, since they are almost always accomplished without regard to the full set of protections due to the individual being transferred, therefore this chapter focuses mainly on the minimum rules required when states transfer individuals outside of deportation or extradition proceedings.

### **The legal regime governing treatment and procedural guarantees for persons detained in the fight against terrorism**

Jelena Pejic and Cordula Droege. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 527-558. - Cote 303.6/222

The term "terrorist" has been marked by inverted commas not to downplay the extremely serious nature of terrorist acts, but to indicate that the designation has become almost legally meaningless. It is habitually used to cover both violent attacks directed against the general population in peacetime, which are prohibited by several bodies of law, as well as the use of force against legitimate military objectives in armed conflict, which are not prohibited under international humanitarian law (even though they remain prohibited under the domestic law of the detaining state). Thus, any attempt to examine the legal framework governing the response to conduct colloquially labelled "terrorist" must take into account the context in which it took place: peacetime or armed conflict? This chapter attempts to briefly outline the rules governing the treatment of persons detained and their procedural rights based on this contextual distinction, with situation of armed conflict, i.e. international humanitarian law, serving as the starting point. As will be shown, in some cases the rules are the same regardless of the situation at hand, whereas in others they differ. The analysis focuses on (1) the rules governing treatment; and (2) procedural safeguards applicable in detention, in particular security detention.

### **Legitimate target : a criteria-based approach to targeted killing**

Amos N. Guiora. - Oxford [etc.] : Oxford University Press, 2013. - 107 p. - Cote 345.25/276

In Legitimate target, a criteria-based approach to targeted killing, Amos Guiora proposes that targeted killing decisions must reflect consideration of four distinct elements : law, policy, morality, and operational details, thus ensuring that it complies with principles of domestic international laws. The author, writing from personal experience and an academic perspective, offers important criticism and insight into the policy as presently implemented, highlighting the need for a criteria-based decision making process in defining and identifying a legitimate target. Legitimate target, a criteria-based approach to targeted killing

blends concrete examples with a nuanced study of the current targeted killing paradigm with an emphasis on the dilemmas of morality and the law.

### **Lethal robotic technologies : the implications for human rights and international humanitarian law**

comment by Philip Alston. In: Journal of law, information and science Vol. 21, no. 2, 2011/2012, p. 35-60. - Cote 341.67/730 (Br.)

This analysis is predicated on three principal assumptions. The first is that the new robotic technologies are developing very rapidly and that the unmanned, lethal weapons carrying vehicles that are currently in operation will, before very long, be operating on an autonomous basis in relation to many and perhaps most of their key functions, including in particular the decision to actually deploy lethal force in a given situation. The second is that these technologies have very important ramifications for human rights in general and for the right to life in particular, and that they raise issues that need to be addressed urgently, before it is too late. The third is that, although a large part of the research and technological innovation currently being undertaken is driven by military and related concerns, there is no inherent reason why human rights and humanitarian law considerations cannot be proactively factored into the design and operationalisation of the new technologies.

### **A lex favorabilis ? : resolving norm conflicts between human rights law and humanitarian law**

Anne-Laurence Graf-Brugère. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 251-270. - Cote 345.2/913

This chapter seeks to answer the question of whether the conflicts of norms between international humanitarian law (IHL) and human rights law (HRL) can (or must) be solved in the way that is the most favourable to the individual. The principle of "the most favourable" is however still generally considered to be a rule of norm conflict confined to HRL. Accordingly, even though there is a debate in doctrine as to which norm prevails when HRL and IHL are applied simultaneously (that is, in time of armed conflict), the principle is largely ignored in his respect. This article first examines the purpose of the principle in HRL then it addresses the question of whether such a principle exists in IHL. The article finally considers the extent to which the principle could be taken as a rule of norm conflict (as far as states are concerned) between HRL and IHL norms. The answer differs depending on whether HRL and IHL are considered as two distinct bodies of law or as one body of law designed to serve human beings.

### **Litigating war : arbitration of civil injury by the Eritrea-Ethiopia claims commission**

Sean D. Murphy, Won Kidane, Thomas R. Snider. - Oxford [etc.] : Oxford University Press, 2013. - 1038 p. - Cote 345.22/216

This book offers an in-depth examination of the law and procedure of the Eritrea-Ethiopia Claims Commission, which was tasked with deciding, through binding arbitration, claims for losses, damages, and injuries resulting from the 1998-2000 Eritrean-Ethiopian war. After providing an overview of the war, the authors describe how the Commission was established, its jurisdiction, the sources of law it applied, its treatment of nationality and evidentiary issues, and the relief it rendered. Separate chapters then address particular topics, such as the initiation of the war, battlefield conduct, belligerent occupation, aerial bombardment, prisoners of war, enemy aliens and their property, diplomats and diplomatic property, and general economic loss. A final chapter examines the lessons that might be learned from the experience of the Claims Commission, especially with an eye to the establishment of such commissions in the future. The volume also reproduces all the key documents relating to the Commission: the bilateral agreement establishing the Commission; its rules of procedure; and its numerous decisions and arbitral awards.

### **Losing the forest for the trees : Syria, law, and the pragmatics of conflict recognition**

Laurie R. Blank, Geoffrey S. Corn. In: Vanderbilt journal of transnational law Vol. 46, no. 3, May 2013, p. 693-746. - Cote 345.27/126 (Br.)

The international community's year-long reluctance to characterize the situation in Syria as an armed conflict highlights a clear disparity between the object and purpose of the LOAC and the increasingly formalistic interpretation of the law's triggering provisions. Focusing on Syria, this article critiques the overly technical approach to the definition of non-international conflict currently in vogue—based on Prosecutor v. Tadic's framework of intensity and organization—and how this approach undermines the original objectives of common article 3 of the Geneva Conventions. This overly legalistic focus on an elements test, rather than the totality of the circumstances, means that the world has witnessed a

retrograde of international humanitarian efficacy: Syria appears to be a lawless conflict like those that inspired common article 3—the regime employs its full combat capability to shell entire cities, block humanitarian assistance, and target journalists and medical personnel directly. The LOAC is specifically designed to address exactly this type of conduct, and yet the discourse on Syria highlights the dangers of allowing over-legalization to override—and undermine—logic, resulting in a deleterious impact on human life.

<http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Corn-FINAL.pdf>

### **Maximising compliance with IHL and the utility of data in an age of unlimited information : operational issues**

Darren Stewart. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 171-186. - Cote 345.25/275

This chapter considers whether in an age of unlimited information, access to vast volumes of data is truly useful in maximising compliance with LOAC by considering three aspects: the military context in which data contributes to decision-making, which may have an impact on the application of the law; mechanisms by which enhanced levels of data flow may allow for the integration of legal principles in order to enhance LOAC compliance; and whether access to such enhanced levels of information actually contributes to enhancing LOAC compliance.

### **Methodology of law-making : customary international law and new military technologies**

Robert Heinsch. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 17-41. - Cote 345.25/275

Dr. Robert Heinsch explores the role that customary international law might play in addressing the rapid technological changes in warfare over the last decades. It is a study of the method of formation of rules in this area and does not venture into the substance of new customary law. In particular, this chapter discusses the appropriate standards and test for the formation of new customary international law as the methods of warfare, and matters of "state practice", evolve so dramatically, at least for those states and non-state actors that can access the new technologies.

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36690.pdf>

### **Milestones in the development of international humanitarian law**

Daniel Thürer. - In: Making peoples heard : essays on human rights in honour of Gudmundur Alfredsson. - Leiden ; Boston : M. Nijhoff, 2011. - p. 3-14. - Cote 345.2/930 (Br.)

The author reviews the milestone in the development of international humanitarian law starting from how the Red Cross came about, then the Geneva Conventions and their Additional Protocols of 2005. He then turns to two problems to which humanitarian law has been confronted in recent years: the "global war on terror" and "asymmetrical warfare" which appears to be a problem more acute than ever. He finally moves to the prospects of humanitarian law regarding weapons of mass destruction, arms trafficking and international criminal justice and accountability.

### **Military chaplaincy in contention : chaplains, churches and the morality of conflict**

ed. by Andrew Todd. - Farnham ; Burlington : Ashgate, 2013. - 183 p. - Cote 284/33

Chaplaincy highlights the need for faith and society to re-engage with vital moral questions. Military chaplains continue to operate within the dynamic tension between faith communities, the armed services and society, offering a distinct moral presence and contribution. Drawing the reader into the world of the military chaplain, this book explores insights into the complex moral issues that arise in combat (especially in Afghanistan), and in everyday military life. These include the increasing significance of the Law of Armed Conflict and the moral significance of drones. Through the unique chaplain's eye view of the significance of their experience for understanding the ethics of war, this book offers clearer understanding of chaplaincy in the context of the changing nature of international conflict (shaped around insurgency and non-state forces) and explores the response of faith communities to the role of the armed services. It makes the case for relocating understandings of just war within a theological framework and for a clear understanding of the relationship between the mission of chaplaincy and that of the military.

## Military necessity and the cultures of military law

David Luban. In: *Leiden journal of international law* Vol. 26, no. 2, June 2013, p. 315-349

Military and humanitarian lawyers approach the laws of war in different ways. For military lawyers, the starting point is military necessity, and the reigning assumption is that legal regulation of war must accommodate military necessity. For humanitarian lawyers, the starting point is human dignity and human rights. The result is two interpretive communities that systematically disagree not only over the meaning of particular law-of-war norms, but also over the sources and methods of law that could be used to resolve the disagreements. That raises the question whether military lawyers' advice should acknowledge any validity to the contrary views of the 'humanitarian' community. The article offers a systematic analysis of the concept of military necessity, showing that civilian interests must figure in assessing military necessity itself. Even on its own terms, the military version of the law of war should seek to accommodate the civilian perspectives featured in the humanitarian version.

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## Military robots and the principle of humanity : distorting the human face of the law ?

Hanna Brollowski. - In: *Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald*. - The Hague : T.M.C. Asser Press, 2013. - p. 53-96. - Cote 345.2/936

This article aims to raise awareness of the potential challenges involved in sending (autonomous) robots to war. Drawing on multiple disciplines, the author finds that the advantages and disadvantages of using robotic soldiers may well allow one to argue either way. However, taking into consideration the principle of humanity as a cornerstone of international humanitarian law, particularly strong concerns arise. Since robots are not able to conceive of ethical and moral concerns in addition to lacking analytical skills, it is held that they are not able to act in accordance with the rules which are applicable during armed conflict. An urgent need is recognised for the international (legal) community to take ownership of the process to regulate the deployment of robots in war situations.

## NATO gender mainstreaming and the feminist critique of the law of armed conflict

Jody M. Prescott. In: *The Georgetown journal of gender and the law* Vol. 14, no. 1, Winter 2013, p. 83-131. - Cote 362.8/193 (Br.)

To establish the proper context within which the feminist critique of law of armed conflict (LOAC) should be understood, this article first sets out the scope and nature of armed conflict's impacts upon women and girls. After noting different general feminist concepts which are applicable to the assessment of NATO's efforts, this article will then detail the feminist critique of LOAC by examining both LOAC treaty law and customary LOAC. Next, the U.S., Swedish, UN and EU programs will be briefly discussed, so that positive and negative trends and practices may be identified. The article then explores in detail NATO's gender mainstreaming efforts in the areas of infrastructure, doctrine, training and education, and plans and operations ; and assesses them against the deficiencies identified by the feminist critique of LOAC. The article concludes that these efforts do not effectively address these deficiencies at the moment, but that trends suggest they might begin to in the near term, and will probably, within certain boundaries, address them meaningfully in the future.

## New weapons : legal and policy issues associated with weapons described as "non-lethal"

Neil Davison. - In: *International humanitarian law and the changing technology of war*. - Leiden ; Boston : M. Nijhoff, 2013. - p. 281-313. - Cote 345.25/275

This chapter outlines the approach taken by the International Committee of the Red Cross with respect to any new weapon introduced by the military. At its core this requires that any new weapon technology, prior to its deployment, be subject to proper legal review to assess its compatibility with IHL. Furthermore, it explores two common assumptions made about "non-lethal" weapons: first, that a class of weapons exists that truly may be characterised as "non-lethal", and second whether there is significant military utility for these "non-lethal" weapons across a wide range of military operations ranging from law enforcement through peacekeeping to counterinsurgency combat.



## **A new World court of human rights : a role for international humanitarian law ?**

Manfred Nowak. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 531-539. - Cote 345.2/913

On the occasion of the 60th anniversary of the Universal Declaration of Human Rights, the Swiss Government presented an 'Agenda for Human Rights'. The Swiss Agenda includes an institutional proposal of a World Court of Human Rights established by a multilateral treaty under the auspices of the United Nations. This chapter discusses a consolidated draft statute for the World court submitted by the author of this piece, Julia Kozma and Martin Scheinin. It first recalls the rationale behind the future World court of human rights. It then asks, since legally speaking, it is up to the drafters of the Statute of the World court to decide which treaties shall be subject to the jurisdiction of the Court, if there is a role for international humanitarian law in the course of developing such Statute.

## **Omar Khadr : domestic and international litigation strategies for a child in armed conflict held at Guantanamo**

Richard J. Wilson. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 29-79. - Cote 362.7/379 (Br.)

The author will first examine, in Part I, the broad context of the Khadr case. That context includes the Khadr family background, the relevant law relating to children in armed conflict, the overall situation of juvenile detainees at Guantanamo Bay and elsewhere, and a bit of history on the prosecution of children in armed conflict. In Part II, he will document the efforts to put the issue of Omar's youth before the Washington federal court in habeas corpus proceedings, including some effort to develop the facts relating to Omar's capture and subsequent detention in Afghanistan and Guantanamo. In Part III, the author will examine the ways in which the question of juvenile status affected military commission proceedings, both before and after the Hamdan decision. In Part IV, the role of the Canadian courts in this complex array of litigation will be explored through the lens of Omar's age. He will examine the ways in which the issue of Omar's youth was addressed in proceedings before the Inter-American Commission on Human Rights in Part V, and Part VI will discuss the outcome of the Khadr case. It will also offer his own conclusions and reflections on the ways in which the international law of armed conflict and human rights interacted in these proceedings.

<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1108&context=scujil>

## **"Out of the loop" : autonomous weapon systems and the law of armed conflict**

Michael N. Schmitt and Jeffrey S. Thurnher. In: Harvard national security journal vol. 4, issue 2, 2013, p. 231-281. - Cote 341.67/385 (Br.)

The introduction of autonomous weapon systems into the "battlespace" will profoundly influence the nature of future warfare. This reality has begun to draw the attention of the international legal community, with increasing calls for an outright ban on the use of autonomous weapons systems in armed conflict. This article is intended to help infuse granularity and precision into the legal debates surrounding such weapon systems and their future uses. It suggests that whereas some conceivable autonomous weapon systems might be prohibited as a matter of law, the use of others will be unlawful only when employed in a manner that runs contrary to the law of armed conflict's prescriptive norms governing the "conduct of hostilities." This article concludes that an outright ban of autonomous weapon systems is insupportable as a matter of law, policy, and operational good sense. Indeed, proponents of a ban underestimate the extent to which the law of armed conflict, including its customary law aspect, will control autonomous weapon system operations. Some autonomous weapon systems that might be developed would already be unlawful per se under existing customary law, irrespective of any treaty ban. The use of certain others would be severely limited by that law.

<http://harvardnsj.org/wp-content/uploads/2013/05/Vol.4-Schmitt-Final.pdf>

## **Participants in conflict : cyber warriors, patriotic hackers and the laws of war**

Heather A. Harrison Dinniss. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 251-278. - Cote 345.25/275

The purpose of this chapter is to examine the role of those participants who are involved in cyber operations whether as part of a State's armed forces or as civilians directly participating in the hostilities. The requirements for lawful combatancy are reviewed with the aim of exploring how they translate into a medium where anonymity is the norm and distance and proximity are largely irrelevant. Secondly, the specialist nature of new technologies and the downsizing of military forces have resulted in increased civilianisation of State armed forces; thus care must be taken in deciding what roles may be outsourced to civilian contractors without jeopardising their legal protections under international conventions. Likewise,

increasing numbers of non-State actors, including so-called "patriotic hackers" are becoming involved in conflicts and may be used as proxies by States keen to benefit from the associated advantage of plausible deniability. In light of these developments, and the ongoing debate in international legal circles regarding the concept of direct participation in hostilities, the second half of the chapter reviews the criteria that were the subject of general agreement in the ICRC expert process to provide guidance on the notion of direct participation and examines how they might apply to participants in cyber operations.

### **The path to less lethal and destructive war ? : technological and doctrinal developments and international humanitarian law after Iraq and Afghanistan**

David P. Fidler. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 315-336. - Cote 345.25/275

This chapter examines the use of "non-lethal" weapons in the context of the counterinsurgency (COIN) campaigns in Iraq and Afghanistan. In a COIN environment, it is essential that military commanders use appropriate and measured levels of force and apply that force precisely so that it accomplishes the mission without unnecessary loss of life or suffering. The author applies some of the lessons learned in Iraq and Afghanistan to the more recent conflicts in Libya and Syria. He explores whether the impact of the COIN doctrine influences military thinking concerning new technologies, in particular "non-lethal" and "less-lethal" technologies, and how this new thinking may affect compliance with IHL.

### **Positive obligations in human rights law during armed conflicts**

Sandra Krähenmann. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 170-187. - Cote 345.2/913

This chapter proposes to focus on a series of obligations that are particularly relevant in the context of armed conflicts. First, states have to take measures to protect individuals from the effects of hostilities. Second, states have a duty to account for the fate of persons during times of armed conflicts. Third, states have to take measures to protect individuals against both rebels and paramilitary forces.

### **The principle of ambiguity and the prohibition against excessive collateral damage to the environment during armed conflict**

Erik V. Koppe. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 53-82. - Cote 363.7/148

This article aims to clarify the legal basis of the protection of the environment during armed conflict in general, and of the prohibition against excessive collateral damage to the environment in particular. It is submitted that the legal basis for the conventional and customary rules which protect the (intrinsic value of the) environment during armed conflict cannot be deduced from the four fundamental principles of the law of armed conflict: the principles of military necessity, distinction, proportionality and humanity. Rather, the specific obligations relating to environmental protection in times of armed conflict flow from the fundamental principle of ambiguity. Similar to the principle of humanity, the principle of ambiguity, which qualifies as a general principle of law in the sense of Article 38(1)(c) ICJ Statute, provides for an absolute limitation to the necessities of war. As such the principle of ambiguity may be used to interpret existing conventional or customary rules of international law during armed conflict, to supplement, or under exceptional circumstances to modify or set aside these rules. With regard to the prohibition against excessive collateral damage to the environment during armed conflict, it is submitted that this prohibition flows from a customary rule which emerged in the 1990s, rather than from Articles 51 and 52 of Additional Protocol I, and which complements Articles 35 and 55 AP I (i.e. for States Parties to AP I). This article argues that any military action which causes collateral damage to the environment must first be assessed under this relatively new customary prohibition; and subsequently, if no breach can be established and if applicable, by reference to Articles 35(3) and 55 AP I. In order to enhance the scope of this prohibition and provide better protection for the environment against collateral damage it is suggested that further investigations should be conducted into the consequences of warfare on the environment.

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36759.pdf>

### **Principles of international humanitarian law**

Jonathan Crowe, Kylie Weston-Scheuber. - Cheltenham ; Northampton : E. Elgar, 2013. - 198 p. - Cote 345.2/933

This book provides a clear and concise explanation of the central principles of international humanitarian law (or the law of armed conflict) while situating them in a broader philosophical, ethical and legal context. The authors consider a range of wider issues relevant to international humanitarian law, including its ethical foundations, relationship to other bodies of international law and contemporary modes of enforcement. This helps to develop a richer context for understanding the law of war and a sound basis for

examining the changing nature of contemporary armed conflict. The book also discusses important recent decisions by international courts and tribunals, tracks the historical development of humanitarian principles in warfare and considers the legal position of states, individuals and non-state groups.

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

Mathew Kincade. In: Global studies law review Vol. 12, no. 1, 2013, p. 205-226. - Cote 345.29/192 (Br.)

The article discusses that the international humanitarian laws has been designed to control state armies and to protect human rights during armed conflict. It addresses that three major issues discussed in Geneva Convention regarding a major role of Private Military Companies (PMC), a private armed security service, in Africa. It expresses four penalty options for PMC regulation with uniform legislative approach regarding mercenary conduct and completely bans PMC use.

[http://law.wustl.edu/WUGSLR/Issues/Volume12\\_1/wugsIrv12\\_2013\\_issue1\\_205\\_226.pdf](http://law.wustl.edu/WUGSLR/Issues/Volume12_1/wugsIrv12_2013_issue1_205_226.pdf)

### **The prohibition of enforced disappearances : a meaningful example of a partial merger between human rights law and international humanitarian law**

Gloria Gaggioli. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 320-342. - Cote 345.2/913

This chapter presents successively how international humanitarian law, human rights law and international criminal law contributed, in their own way, to the prohibition and criminalization of enforced disappearances. It shows that these bodies of law are complementary and that their mutual influence allowed a progressive enhancement of the legal protection of persons against enforced disappearances. Finally, it show how the merger of the rules belonging to these different bodies of law into the Convention against enforced disappearances contributed to strengthen the prohibition of enforced disappearances in international law.

### **Proportionality and precautions in cyber attacks**

Michael A. Newton. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 229-249. - Cote 345.25/275

This chapter first describes the conceptual roots of the proportionality principle, particularly insofar as the jus ad bellum and jus in bello usages provide a useful contradistinction in the context of cyber operations. It then summarizes the normative contours of the modern lex lata related to proportionality, which is the necessary predicate for the application of its modern formulations to cyber attacks. This chapter concludes that the current formulations of proportionality provide sufficient granularity and flexibility to be well applied to cyberspace. Phrased another way, there is sufficient law to provide operational guidance for the conduct of robust cyber operations without wholly abandoning the humanizing influences that provide the existential foundations of the laws and customs of warfare.

### **Protection of environment during armed conflict : is a new frame of laws necessary ?**

A. P. Singh. In: Journal of the Indian law institute Vol. 52, no. 3-4, 2010, p. 453-466. - Cote 363.7/146 (Br.)

There is a growing realization at the national and international levels that personal growth and happiness which has come to be recognized as fundamental human rights cannot be achieved in a severely damaged environment. The right to a healthy natural environment is thus gaining increasingly wide acceptance as a fundamental human right. It is expressly provided for in various international treaties, other legal texts and the constitutions of many States. And, therefore, despite the current prescriptive framework regarding protection of the environment during armed conflict being weak, the current trend towards general acceptance of environmental protection as vital for the survival of humanity raises a certain hope about the practical usefulness and effectiveness of current normative guidance. This paper intends to argue a point that instead of blaming the current frame of law and laxity in implementation and arguing for a possibly unproductive codification process, a special effort should be made to ensure that the existing rules are adopted by as many States as possible. The paper also, seeks to articulate some suggestions to strengthen existing regime of protection of environment during armed conflict,

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36653.pdf>

## The protection of the environment in armed conflict : legal obligations in the absence of specific rules

Dieter Fleck. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 7-20. - Cote 363.7/148

While a general rule of "eco-protection" in armed conflict may be derived from the basic principles of distinction, proportionality, avoidance of unnecessary suffering and humanity, international humanitarian law provides little by way of more specific rules for the protection of the natural environment except for in extreme situations that can rarely be expected to occur. Nevertheless, *opinio juris* has changed since the adoption of pertinent instruments in 1977. This development needs to be balanced against a still prevailing general reluctance to accept specific ecological obligations and procedures in military operations. Thus a detailed evaluation of planning and decision-making processes appears necessary. Revisiting the San Remo Manual on International Law Applicable to Armed Conflicts at Sea and the ICRC Study on Customary International Humanitarian Law, this article argues that certain qualifications made in these documents relating to requirements of "imperative military necessity" are to be assessed in the light of their specific implications and should be used with caution. Furthermore, it is suggested that pertinent consequences of the International Law Commission's Draft Articles on the Effects of Armed Conflicts on Treaties deserve further study. To this end, interdisciplinary case studies should be conducted to support fact-oriented evaluations of military requirements, ecological assessments and political effects post-conflict, rather than insisting on thresholds for legal regulation that already appeared to be escapist decades ago and which may prove counter-productive in the years to come. New activities aimed at protecting the natural environment in armed conflict should focus on a reaffirmation of existing rules and their effective implementation.

## The protection of the natural environment in armed conflict : existing rules and need for further legal protection

Cordula Droege, Marie-Louise Tougas. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 21-52. - Cote 363.7/148

Considerable research has been conducted, particularly since the Iraq-Kuwait war of 1991, on the legal protection of the environment in armed conflicts. Much of this research has focused either on the specific protections provided in international humanitarian law (IHL), or on the applicability of international environmental law to situations of armed conflict. Rather than focusing on these specific provisions, this article seeks to examine the general protections under IHL, in particular the characterisation of the natural environment as a civilian object and the legal protection flowing from this characterisation – namely the general rules on the conduct of hostilities. After addressing these general rules, it briefly recalls some other relevant provisions of IHL before turning to possible avenues to strengthen the legal protection of the environment in armed conflict by clarifying or further developing IHL in this respect, taking into account the protection provided by international human rights law and international environmental law.

## The quest for a non-conflictual coexistence of international human rights law and humanitarian law : which role for the *lex specialis* principle ?

Jean d' Aspremont. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 223-250. - Cote 345.2/913

This chapter seeks to appraise the tools to which international lawyers and judges have resorted to alleviate the frictions between international humanitarian law (IHL) and human rights law (HRL). After making the argument that the relationship between IHL and HRL should not be seen in terms of conflict but rather in terms of competition, the chapter provides some critical views on the principle *lex specialis non derogat generali*, which is so commonly used by international lawyers and judges when confronted with possible frictions between IHL and HRL and then reevaluates its relevance in situations of competition of rules short of any real conflict.

## Rapports entre le droit international humanitaire et le droit international des droits de l'homme

Pavel Sturma. - In: L'homme dans la société internationale en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1430-1446. - Cote 345/635

Les règles du droit international humanitaire (DIH) et du droit international des droits de l'homme (DIDH) présentent des traits différents qui concernent leurs sources, leurs sujets, leur portée d'application, ainsi que leurs objets et leurs buts. Cette contribution s'attarde sur l'applicabilité *ratione temporis* de qui appartient aux critères de différenciation des règles du DIH et du DIDH. Si des dérogations permettent à l'Etat de suspendre quelques dispositions des traités internationaux des droits de l'homme, certains droits de l'homme sont indérogeables et s'appliquent donc en toute circonstances, se chevauchant ainsi avec des

règles du DIH. Il y a cependant des situations où certains droits de l'homme sont suspendus alors que les règles de DIH ne sont pas encore applicables, il s'agit des troubles intérieurs et des tensions internes pour lesquels l'auteur explique en quoi consiste la lacune en droit. Il analyse ensuite l'apport de la justice internationale dans des cas concernant les droits de l'homme dans les conflits armés.

### **Les règles d'engagement, un objet juridique ?**

**Guilhem Brouard, Antonin Tisseron.** In: Revue défense nationale No 730, mai 2013, p. 35-41. - Cote 345.29/190 (Br.)

Le 4 septembre 2009, près de Kunduz en Afghanistan, un avion américain guidé par un contrôleur aérien avancé allemand détruit un camion-citerne aux mains des insurgés, occasionnant la mort de plus d'une centaine de civils. Un mois plus tard, du fait des répercussions de ce bombardement dans l'opinion publique allemande, le chef d'état-major de la Bundeswehr et un secrétaire d'Etat à la Défense démissionnent. Faut-il en conclure que l'action militaire doit être soumise à un contrôle plus stricte, au risque de renoncer au combat ? Faut-il au contraire libérer l'usage de la force en prenant le risque de dommages collatéraux, scandaleux aussi bien pour l'opinion publique afghane qu'occidentale ? Alors que les règles d'engagement sont au cœur de cette contradiction qu'elles visent à résoudre, elles sont pourtant bien souvent perçues comme une limite à l'efficacité des forces armées, réveillant une tension ancienne entre l'objectif final, qui impose la retenue dans l'usage de la force, et la nécessaire efficacité de l'action militaire contre un adversaire agressif et aguerri. À la croisée de l'opérationnel, du juridique et du politique, elles sont devenues essentielles à l'action militaire. Et pourtant, l'actualité de ces objets "introuvables" voire "rejetés" impose de mieux les cerner, dans leur dimension juridique, mais aussi militaire et politique.

### **Regulating the use of unmanned combat vehicles : are general principles of international humanitarian law sufficient ?**

**comment by Meredith Hagger and Tim McCormack.** In: Journal of law, information and science Vol. 21, no. 2, 2011/2012, p. 74-99. - Cote 341.67/729 (Br.)

Some weapons are prohibited by a specific multilateral treaty regime and others by customary law. Neither source of prohibition applies to unmanned combat vehicles (UCVs). In the absence of a specific legal prohibition, UCVs can lawfully be deployed in armed conflict provided their use is consistent with so-called general principles of international humanitarian law (IHL). These general principles limit or restrict the circumstances in which UCVs can lawfully be deployed. In combat operations militaries utilising UCV technology are closely scrutinised and generally do try to ensure compliance with IHL. The real concerns lie with dubious usage of UCVs in covert operations where the IHL framework seems to provide a conveniently permissive legal regime, there is an apparent absence of any effective review of compliance with IHL and no accountability for alleged violations of the law. In some circumstances it is highly questionable whether IHL is the applicable legal framework.

### **The relationship between economic, social and cultural rights and international humanitarian law : an analysis of health-related issues in non-international armed conflicts**

**by Amrei Müller.** - Leiden ; Boston : M. Nijhoff, 2013. - Cote 345.27/130

In *The Relationship between Economic, Social and Cultural Rights and International Humanitarian Law*, Amrei Müller offers a detailed analysis of the legal consequences of the parallel application of economic, social and cultural (ESC) rights and international humanitarian law (IHL) to non-international armed conflicts. With a focus on health related issues, the book covers important topics like the scope of limitations to and derogations from ESC rights, questions related to the integration of the right to health in military-target decisions, states' obligations to mitigate the adverse public health impact of armed conflicts and obligations relating to the provision of humanitarian assistance. It moves the discussion about the parallel application of IHL and human rights to a new level, highlighting its potential to enhance the protection of people affected by armed conflicts but also the difficulties involved.

### **The relationship between international human rights and humanitarian law : an overview**

**Vera Gowlland-Debbas and Gloria Gaggioli.** - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 77-103. - Cote 345.2/913

This chapter addresses some of the legal reasons and developments in the international legal system and environment that have led to a convergence between human rights law and international humanitarian law (IHL). It addresses the difficult and important issue of the interplay between human rights law and IHL at

the level of norm conflicts as well as regarding cross-fertilization through the case law of human rights bodies. Finally, it explores the response of human rights bodies to violations committed in situations of armed conflict in order to assess the contribution of these bodies for providing remedies to victims of armed conflicts.

### Reparation for individual victims of armed conflict

Elke Schwager. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 628-659. - Cote 345.2/913

A right for individuals to claim reparation under international law is increasingly recognised. However, there is no standard procedure available for the enforcement of such a right, and, based on different reasons like waiver, immunity or non-justiciability, state practice and jurisprudence have often denied an individual holder the enforcement of his or her right. This chapter examines the origin of an individual right under international law. Less in the focus of international lawyers is the fact that violation of human rights or international humanitarian law might give rise to a right to reparation under domestic law as well. Finally, the different possibilities for enforcing a right to reparation along with potential obstacles to the enforcement is outlined.

### Résolution 1738 : la consécration par le Conseil de sécurité de la protection des journalistes et des médias en période de conflit armé

Alexandre Balguy-Gallois. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1149-1169. - Cote 345/635

En partie rédacteur de la Résolution 1738 sur la protection des journalistes en période de conflit armé adoptée à l'unanimité par le Conseil de sécurité le 23 décembre 2006, l'auteur commente cet instrument - le premier sur cette question - en présentant tout d'abord les circonstances dans lesquelles la résolution vit le jour, son contenu et les perspectives de développement du droit international humanitaire applicable aux journalistes.

### La responsabilité pénale des autorités politiques pour des crimes de droit international humanitair[e] (DIH)

Eric David. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 327-338. - Cote 345.2/936

Certains jugements du Tribunal pénal international pour le Rwanda (TPIR) ont acquitté des personnes qui occupaient des hautes fonctions politiques dans le gouvernement et l'administration d'un pays – le Rwanda – qui a couvert un génocide (avril-juillet 1994). De tels acquittements sont critiquables car le droit positif permettait d'établir la responsabilité pénale des personnes acquittées ainsi que le montre le présent article.

### Responsabilité internationale

Pierre d'Argent. - In: Droit international humanitaire : un régime spécial de droit international ?. - Bruxelles : Bruylant, 2013. - p.103-149. - Cote 345.2/941

La question posée dans ce chapitre est celle de savoir si, ou dans quelle mesure, les violations du droit humanitaire emportent l'application de règles de responsabilité particulières par rapport aux règles habituelles du droit de la responsabilité internationale, entendu comme régime secondaire dont l'application est déclenchée par la violation, par un Etat, de normes primaires. L'objectif de cette question est de mettre en lumière, sous l'angle du droit général de la responsabilité - et à l'exclusion donc également de la responsabilité pénale individuelle -, une éventuelle spécificité du droit humanitaire qui permettrait d'en affirmer le caractère spécial en tant que sous-système au sein de l'ordre juridique international ou, au contraire, de conclure à une absence de particularité à cet égard. Cette contribution s'articule autour de quatre développements: l'origine de l'affirmation de la responsabilité internationale de l'Etat pour violation du droit humanitaire, la particularité de ce droit en matière d'attribution du fait de l'Etat, l'émergence du droit des victimes des violations du droit humanitaire à obtenir réparation et l'affirmation de formes particulières de réparation.

## Retour sur le "traitement humain" des personnes tombées au pouvoir de l'ennemi

Abdelwahab Biad. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1186-1202. - Cote 345/635

Le droit des droits de l'homme comme le droit international humanitaire convergent sur l'exigence du "traitement humain". Ce chapitre développe un double constat relatif à l'exigence du "traitement humain". D'une part, en dépit de son caractère générique, l'exigence de "traiter avec humanité" toutes les personnes tombées en leur pouvoir - sans exception - constitue pour les parties au conflit armé une prescription indérogeable, un "noyau dur" qui inspire des règles plus précises, indiquant ce qui est ou n'est pas un "traitement humain". Cette prescription est si fondamentale qu'elle conditionne l'ensemble des systèmes de "protection fonctionnelle" du combattant hors de combat comme du non-combattant, dont la mise en œuvre s'avère souvent problématique, comme l'illustrent les cas du statut du prisonnier de guerre et du régime d'occupation.

## Rightly dividing the domestic jihadist from the enemy combatant in the "war against al-Qaeda" : why it matters in rendition and targeted killings

Jeffrey F. Addicott. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 259-302. - Cote 303.6/221 (Br.)

The confusion associated with comprehending fundamental legal concepts associated with how America conducts the "war on terror" centers around the unwillingness of the U.S. government to properly distinguish al-Qaeda unlawful enemy combatants from domestic jihadi terrorists. If the American government cannot properly differentiate between an enemy combatant and a domestic criminal, it is little wonder that attendant legal positions associated with investigation techniques, targeted killing, arrest, detention, rendition, trial, and interrogation are subject to never-ending debate. While all al-Qaeda unlawful enemy combatants can be labelled as violent jihadists, not all violent jihadists are unlawful enemy combatants. Without a significant about-face in leadership that is willing to discern the basic difference between an unlawful enemy combatant and a domestic criminal, America's reputation will remain under a cloud of suspicion and confusion regarding the legality of our actions associated with two significant areas of critique : rendition and targeted killing vis-à-vis unlawful enemy combatants in the war on terror.

<http://law.case.edu/journals/JIL/Documents/45CaseWResJIntL1&2.14.Article.Addicott.pdf>

## The role of multilateral environmental agreements in armed conflict : "green-keeping" in Virunga Park : applying the UNESCO World Heritage Convention in the armed conflict of the Democratic Republic of the Congo

Britta Sjöstedt. In: Nordic journal of international law Vol. 82, no. 1, 2013, p. 129-153. - Cote 363.7/148

This article analyses the application of the 1972 United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Convention (the WHC) in the context of the armed conflicts that have taken place in the Virunga National Park (the Park), a natural world heritage site in the Democratic Republic of the Congo (the DRC). Instead of addressing wartime environmental damage under the law of armed conflict, this article seeks to establish how such damage can be addressed using multilateral environmental agreements (MEAs). MEAs often consist of general principles and vague obligations and their relevance or applicability during situations of armed conflict may be questioned. However, a number of MEAs, including the WHC, authorise their convention bodies to develop detailed and substantive obligations applicable to their parties. Thus, the decisions and recommendations adopted by the World Heritage Committee, a body established under the WHC, provide substantive content to the provisions of the WHC. These decisions and recommendations may, however, run counter to the requirements of military necessity thereby affecting the application of the law of armed conflict. While the position adopted by the World Heritage Committee does not inevitably imply a clash between the obligations in the WHC and the law of armed conflict, it does raise the question of whether the outstanding values of world heritage should trump the rules of military necessity and other pressing concerns during armed conflict. On an informal basis, the World Heritage Committee and the UN peacekeeping forces deployed in the DRC have agreed to perform operations that jointly address the interconnected concerns of security and conservation of natural resources in the region of the Park. This cooperative 'green-keeping' operation represents a useful approach to regime interaction and the harmonisation of obligations set out in different legal regimes that are applicable to the same subject matter.

### **Sacrificing the law of armed conflict in the name of peace : a problem of politics**

Matthew E. Dunham. In: The Air force law review Vol. 69, 2013, p. 155-197. - Cote 345.29/193 (Br.)

Peace operations are the United Nation's (UN's) core business and its most visible activity. Between 1948 and 2012, the UN Department of Peacekeeping Operations (DPKO) conducted sixty-seven peace operations with the general purpose of ending violence. The worldwide presence of peace operation forces is even larger when one adds operations carried out by states under unified command. When conducting peace operations, the DPKO maintains that successful operations are based in the rule of law. This principle clearly follows from one of the major purposes of the UN to "maintain international peace and security... in conformity with the principles of justice and international law." Nevertheless, to sustain political support for some peace operations, the UN and its member states intentionally ignore the applicability of the law of armed conflict (LOAC) by refusing to classify hostilities as an armed conflict and by wrongly denying that peace operation forces have become belligerents in armed conflict.

### **Saving the past, present and future : thoughts on mobilising international protection for cultural property during armed conflict**

Pita J. C. Schimmelpenninck van der Oije. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 195-230. - Cote 345.2/936

In this chapter, contemporary threats to cultural property during armed conflict as well as the obstacles hindering protection are discussed. Throughout the text, examples are taken from Libya where the so-called "Arab Spring" revolt of 2011 developed into an armed conflict. The focus is on the control system of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict because it offers warring parties, as well as states parties to the Convention, the option of mobilising protection during armed conflict. In practice, it has mainly been UNESCO that has undertaken cultural initiatives during armed conflict but the organisation is better suited for peacetime action. The 1999 Second Protocol to the 1954 Convention raised hopes that a supplemented control system would be more effective. In the case of Libya, however, neither the states parties nor the newly set up Intergovernmental Committee opted for combined protection efforts even though Libya hosts a wealth of cultural property and is a state party to the Second Protocol. UNESCO did undertake various protection activities and was joined by other actors in the cultural heritage field, such as the Blue Shield network. It is to be hoped that the Blue Shield network can raise its profile and resources, and combine flexibility of action with humanitarian professionalism. New developments in the area of information technology can also help in strengthening international protection efforts. The fact that a 'Red Cross for cultural property' is still urgently needed is an important lesson from the case of Libya. Whatever form future protection efforts will take, they should be based on the current framework offered by international humanitarian law. This will enhance transparency, uniformity of action and increase security for cultural property protectors during armed conflict.

### **Security Council resolution 1973 : a new interpretation of the notion of protection of civilians ?**

Mohamed A. E. Youssef. - In: The Arab spring : new patterns for democracy and international law. - Leiden ; Boston : M. Nijhoff, 2013. - p. 145-167. - Cote 323.15/29

This chapter questions whether it was legitimate of the Security Council to treat the National Transitional Council in Libya as a civilian rather than an armed opposition group. It also draws attention to the consequences of not qualifying the situation in Libya as an internal armed conflict, unlike previous military interventions in non-international armed conflict. The core critique of Resolution 1973 lies in the fact that the Security Council took two self-contradictory positions; on one hand it protected civilians in accordance with its general purposes under the UN Charter and its "responsibility to protect" and on the other it offered protection to those groups who might, at other times or by other people, be classified as an armed opposition group.

### **Seeking justice and accountability : the dilemmas of humanitarian law and human rights NGOs**

Mahmood Monshipouri. - In: Trials and tribulations of international prosecution. - Lanham [etc.] : Lexington Books, 2013. - p. 75-89. - Cote 345.2/937 (Br.)

This chapter addresses dilemmas of securing justice and accountability, as well as protecting victims of inter/intrastate conflicts. Despite conceptual and legal differences between human rights NGOs and IHL, the latter provides a useful framework and valuable tool for the former in their mutual attempt to safeguard human rights. After examining the dilemmas of seeking justice and accountability for victims of



armed conflicts, this chapter outlines a forward-looking approach toward preventing deadly conflicts and egregious human rights violations.

ICRC Access: <https://ext.icrc.org/library/docs/ArticlesPDF/36739.pdf>

### Seeking the truth about serious international human rights and humanitarian law violations : the various facets of a cardinal notion of transitional justice

Théo Boutruche. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 303-325. - Cote 345.2/936

The notion of truth and the search for it constitute central tenets of transitional justice processes and mechanisms in societies recovering from an armed conflict or from a period of large-scale human rights abuses. Truth lies at the heart of human nature, when victims of international human rights and humanitarian law violations want to know what happened. However, to date, the concept of truth seems to have suffered from the many assumptions that shape the emerging field of transitional justice. The most common of those is that truth should necessarily bring about reconciliation. Similarly the notion of truth would be a straightforward and simple concept. It is only recently that experts and scholars have begun to question such assumptions. Against this backdrop, this chapter therefore intends to go beyond the often oversimplified notion of truth in transitional justice. It seeks to explore some of the various and complex dimensions of the truth to better understand tensions that may exist when, for example, efforts favour the collective dimension of truth for a whole society over the needs of victims as individuals. This chapter then reviews to what extent some of the transitional justice mechanisms contribute to ascertaining the truth in its full complexity. Ultimately in as much as transitional justice requires a combination of mechanisms and processes to achieve its goals, this chapter will show that considering the many facets of the truth about past abuses is critical to ensure victims' rights are respected.

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### Should international law ensure the moral acceptability of war ?

Janina Dill. In: Leiden journal of international law Vol. 26, no. 2, June 2013, p. 253-270

Jeff McMahan's challenge to conventional just-war theory is an attempt to apply to the use of force between states a moral standard whose pertinence to international relations (IR) is decreasingly contestable and the regulation of which international law (IL) is, therefore, under pressure to afford: the preservation of individual rights. This compelling endeavour is at an impasse given the admission of many ethicists that it is currently impossible for international humanitarian law (IHL) to regulate killing in war in accordance with individuals' liability. IHL's failure to consistently protect individual rights, specifically its shortfall compared to human rights law, has raised questions about IHL's adequacy also among international lawyers. This paper identifies the features of war that ground the inability of IL to regulate it to a level of moral acceptability and characterizes the quintessential war as presenting what I call an 'epistemically cloaked forced choice' regarding the preservation of individual rights. Commitment to the above moral standard, then, means that IL should not prejudge the outcome of wars and must, somewhat paradoxically, diverge from morality when making prescriptions about the conduct of hostilities. In showing that many confrontations between states inevitably take the form of such epistemically cloaked forced choices, the paper contests the argument by revisionist just-war theorists like McMahan that the failure of IL to track morality in war is merely a function of contingent institutional desiderata. IHL, with its moral limitations, has a continuing role to play in IR.

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### Some Asian States' opposition to the concept of war crimes in non-international armed conflicts and its legal implications

Zhu Lijiang. In: Asian yearbook of international law Vol. 14 (2008), p. 71-99. - Cote 344/601 (Br.)

The concept of war crimes in non-international armed conflicts is a relatively recent rule in contemporary international law. Although it has been confirmed by the two ad hoc UN international criminal tribunals, provided in conventional international law and the domestic criminal laws of quite a few States, as well as endorsed by the majority of international law scholars, it is not completely impossible to challenge its status as customary international law. Its greatest problem lies in the absence of sufficient State practices. In the author's opinion, it is at most an emerging rule in customary international law. The oppositions to the concept by some Asian States, namely China, India and Pakistan, could be accommodated as persistent objectors in international law.

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## Some reflections on self-defence as an element in rules of engagement

Frits Kalshoven and Thyla Fontein. - In: Armed conflict and international law : in search of the human face : liber amicorum in memory of Avril McDonald. - The Hague : T.M.C. Asser Press, 2013. - p. 97-113. - Cote 345.2/936

From 16 to 20 June 2007, the International Security Assistance Force (ISAF) and the Taliban were engaged in a fierce battle over Chora, Afghanistan, resulting in many civilian casualties in and around that capital city. ISAF is a coalition of states established to contribute to the maintenance of security, but which through their frequent engagement in actual warfare have become parties to the armed conflict in Afghanistan. As a result, their actions are governed by international humanitarian law. This includes the prohibition of indiscriminate attacks, i.e. attacks expected to cause civilian casualties at a level excessive in relation to the military advantage anticipated. The hostilities in and around Chora have given rise to the question whether they might have violated this prohibition (a question ultimately answered in the negative). In this debate, self-defence was among the arguments raised in justification. Self-defence usually figures as a standard clause in the rules of engagement. These are texts which, established by commanders, permit or limit the use of force by their armed forces. The chapter briefly discusses the character of these instruments and of the clauses they contain. The focus is in particular on the self-defence clause. Self-defence may be individual or collective, and it may arise on three different levels: as national self-defence, unit self-defence or individual self-defence. In the closing chapter, the chapter focuses on the relevant Dutch legal system, because the troops involved in the battle over Chora were Dutch forces and collective unit self-defence might have been at issue as an exculpatory argument in that case.

## Specificities of human rights law and international humanitarian law regarding state responsibility

Christian Tomuschat. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 198-222. - Cote 345.2/913

Both international humanitarian law (IHL) and human rights law (HRL) are constituent elements of present-day international law. Thus, one might assume that they are naturally governed by the general principles and rules which make up the conceptual framework of the system of international law as a whole. Yet, regarding the secondary rules that come into play if and when a primary rule of conduct has been breached, it turns out that the modern extension of international law, both *ratione personae* and *ratione materiae*, cannot easily be accommodated. All of a sudden, it becomes apparent that international law grew up as inter-State law and that its mechanisms of enforcement were originally framed – or evolved – with a view to accommodating States. Consequently, not only are adjustments necessary; in some instances, the inference cannot be escaped that some of the classic rules are entirely inappropriate in the fields of IHL and HRL. International responsibility is a case in point. Traditionally, it was understood as inter-State responsibility. Accordingly, the rules drawn up by the International Law Commission on Responsibility of States for internationally wrongful acts, taken note of by General Assembly resolution 56/83 of 12 December 2001, dealt exclusively with the international responsibility which a State incurs through unlawful conduct. At that time, a decade ago, it was already a matter of common knowledge that International Organizations may also become liable to make reparation if they violate their obligations under international law.

## State-building, occupation and international law : friends of foes ?

Jan Wouters, Kenneth Chan. In: Leuven centre for global governance studies working paper No. 87, March 2012, 16 p. - Cote 345.28/103 (Br.)

What role does the law of occupation play in the process of state-building ? Whilst the law of occupation presupposes that an occupying power will not restructure the operation and function of a state, but rather, will hold the status quo and ensure that the peoples of occupied territories are not subjected to further chaos, the contemporary practice of occupying powers today - particularly after the 2003 invasion of Iraq - seems to defy the non-transformational doctrines of international humanitarian law. So, to what extent does it still have relevance in the administration of post-conflict societies ? This chapter addresses the aptness of the law of occupation within contemporary understandings of state-building - and broadly considers question "is the law of occupation state-building".

[http://ghum.kuleuven.be/ggs/publications/working\\_papers/new\\_series/wp81-90/wp87.pdf](http://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp81-90/wp87.pdf)

## Targeted killing : when proportionality gets all out of proportion

Amos N. Guiora. In: Case Western Reserve journal of international law Vol. 45, no. 1-2, Fall 2012, p. 235-257 . - Cote 345.25/279 (Br.)

Targeted killing sits at the intersection of law, morality, strategy, and policy. For the very reasons that lawful and effective targeted killing enables the state to engage in its core function of self-defense and

defense of its nationals, the author is a proponent of targeted killing. However, his support for targeted killing is conditioned upon it being subject to rigorous standards, criteria, and guidelines. At present, new conceptions of threat and new technological capabilities are drastically affecting the implementation of targeted killing and the application of core legal and moral principles. High-level decision makers have begun to seemingly place a disproportionate level of importance on tactical and strategic gain over respect for a narrow definition of criteria-based legal and moral framework. Nonetheless, an effective targeted killing provides the state with significant advantages in the context of counterterrorism. Rather than relying on the executive branch making decisions in a "closed world" devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information's admissibility. The process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur.

<http://law.case.edu/journals/JIL/Documents/45CaseWResJIntIL1&2.13.Article.Guiora.pdf>

### Targeting and prosecuting "under-aged" child soldiers in international armed conflicts, in light of the international humanitarian law prohibition against civilian direct participation in hostilities

Shannon Bosch. In: Comparative and international law journal of Southern Africa Vol. 45, no. 3, 2012, p. 324-364. - Cote 362.7/380 (Br.)

Military commanders involved in international armed conflicts are faced daily with the dilemma of making defensible targeting decisions when they encounter under-aged child combatants. This problem is particularly acute in conflicts involving non-state-armed groups, who are notorious for forcibly abducting child soldiers to swell their ranks. Existing international law prohibits the recruitment of children under fifteen years of age into any armed forces. In some instances, international law sets the minimum age for recruitment at eighteen years of age, and there are growing calls for this standard to replace the fifteen-year age limit which has achieved customary international law status. Until such time as this eighteen-year limit has achieved customary international law status, these child soldiers are bound by the existing IHL regime, which affords combatant status (and immunity from prosecution) based on an ability to show membership of an armed force. It is argued that the requirements for full combatant status are probably beyond the reach of the average under-aged child soldier. As a result, they remain classified as civilians, albeit participating directly in hostilities without authorisation. As unlawful participants, these civilians are not only legitimate targets in hostilities (for so long as they participate or engage in the continuous combat function), but they also face the possibility of being criminally prosecuted for their actions once they are captured.

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### Terrorism as a crime in international and domestic law : open issues

Claudia Martin. - In: Counter-terrorism strategies in a fragmented international legal order : meeting the challenges. - Cambridge : Cambridge University Press, 2013. - p. 639-666. - Cote 303.6/222

The existing anti-terrorist conventions, the negotiations on Draft Terrorism convention to combat international terrorism and the Resolutions adopted by the UN Security Council in the aftermath of September 11 have created a patchwork of norms that lack a cohesive approach in articulating acts that constitute terrorism in current international law. The goal of this chapter is to explore two issues that remain unresolved as a result of the lack of definition of terrorism in international law and that have become either an obstacle for combating this crime or have adversely impacted the respect of other rules of international law, especially human rights and humanitarian law principles. The first of these issues involves the blurring between the notion of terrorism and armed conflict. The second aspect explores the impact that the failure to articulate a definition of terrorism coupled with the obligations arising out of UN Security Council Resolutions and other anti-terrorist treaties have had on the protection of human rights in the domestic jurisdiction of states. Consideration is also made on the impact that the lack of a definition of terrorism has on the international judicial cooperation of states for purposes of prosecuting alleged terrorists.

### Théorie des sources

Jean d'Aspermont. - In: Droit international humanitaire : un régime spécial de droit international ?. - Bruxelles : Bruylant, 2013. - p. 73-101. - Cote 345.2/941

La méthode d'établissement du droit international coutumier a été l'objet d'importantes controverses et ce sont les difficultés méthodologiques liées à la l'établissement des règles coutumières qui sont analysées ici, en ce qu'elles illustrent les raisons, les manifestations et les enjeux de l'autonomisation du droit humanitaire. Après quelques observations générales sur la théorie des sources du droit international, ce chapitre formule certaines remarques sur les enjeux théoriques et pratiques de la détermination des règles

du droit humanitaire qui revêtent un caractère coutumier. Il s'attarde ensuite sur les difficultés qui ont entouré la détermination du droit humanitaire coutumier, notamment dans la jurisprudence des tribunaux ad hoc ou à l'occasion de l'étude du CICR avant de formuler quelques considérations critiques sur la question de l'autonomie du régime des sources du droit humanitaire - et la fragmentation corrélative de la théorie générale.

### **Théorie des sujets**

Raphaël van Steenberghe. - In: Droit international humanitaire : un régime spécial de droit international ?. - Bruxelles : Bruylant, 2013. - p. 15-71. - Cote 345.2/941

D'aucuns sont enclins à considérer certains acteurs intervenant dans les situations de conflit armés (le CICR, les mouvements de libération nationale, les individus et les groupes armés) comme revêtant une personnalité juridique internationale et jouissant de certaines capacités liées à cette personnalité. Il convient de se demander si une telle position est conciliable avec la théorie générale des sujets, c'est-à-dire les règles générales du droit international fixant les conditions d'octroi de la personnalité juridique et de capacités internationales et si, dans la négative, on doit admettre l'existence d'une théorie spéciale des sujets, c'est-à-dire de règles spécifiques en cette matière, prévues par et pour le droit humanitaire. L'auteur distingue trois catégories d'acteurs. La première regroupe le CICR et les mouvements de libération nationale pour lesquels la qualité de sujet de droit international, largement reconnue dans le chef de ces deux acteurs, peut s'expliquer à l'aune de la théorie générale des sujets. La deuxième catégorie comprend les individus. L'auteur montre que les individus ne peuvent se voir reconnaître un tel statut que sur la base de théories souples, voire "élémentaires", des sujets. Enfin la troisième catégorie composée des groupes armés semble rendre une théorie spéciale des sujets difficilement contournable pour justifier dans le chef de ces acteurs la reconnaissance d'une personnalité juridique internationale.

### **Theories on the relationship between international humanitarian law and human rights law**

Hans-Joachim Heintze. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 53-64. - Cote 345.2/913

This chapter reviews the different dominating theories on the relationship between international humanitarian law and human rights law. The first one is the separation theory according to which there is a clear separation between the law of peace and the law of war. Depending on the state of international relations, either the corpus juris of the law of peace or that of the law of war is applied. The second theory is the complementary theory: When examining which duties are incumbent on a State in times of armed conflict, it is not possible to avoid taking international human right law into consideration. Even if one accepts that both branches have different roots and approaches as well as functions they can complete each other on specific points. The third one is the integration theory best represented by the Convention on the Rights of the Child, a human rights treaty normally applicable in peacetime but containing provisions that are not only applicable in armed conflict, but are also enshrined in the law regulating armed conflicts.

### **A tour de horizon of issues on the agenda of the mercenaries working group**

Gabor Rona. In: Minnesota journal of international law Vol. 22, Summer 2013, p. 324-346. - Cote 345.29/194 (Br.)

Review of the work and actions taken by the Working Group established by the Commission on Human Rights on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. First regarding recent activities of mercenaries in Côte d'Ivoire and Libya. Second, regarding the lack of broad adherence to the Mercenary Conventions (the Montreux document on private military and security companies, the International Code of Conduct for Private Security Service Providers of November 2010 developed by private military and security industry with the support of the Government of Switzerland, and the draft Charter of the Oversight Mechanism for the Code). Third, regarding its efforts to collect information on national legislation. Fourth, regarding the content and reasons for promotion of a new international convention.

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### **UN territorial administrations : between international humanitarian law and human rights law**

Ivan Ingravallo. - In: Research handbook on human rights and humanitarian law. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 391-415. - Cote 345.2/913

The international administration of territories is the performance by an international organization of government functions in a territory, both when it involves all the sectors that comprise the State

government (executive, legislative, judicial) and when it involves only a part of them. The key element is given by the fact that the 'last word' is up to the international organization rather than to the sovereign territorial or local government institutions, if any. As a result, an international territorial administration is not realized when an international organization does not exercise powers of government over a territory, but has only the tasks of supervision, assistance or support to the functioning of public institutions of a State or territory. The international administration of territories had gained new momentum at the end of the 1990s, when the United Nations (UN) created some operations with such a mandate. The exercise of governmental powers by the territorial administrations is limited by the mandate received, and by the rules of international law. The purpose of this study is precisely to determine whether the rules of IHL and those of HRL are applicable in respect of the territorial administrations. Hence it will be necessary to consider also if the control mechanisms included in some international agreements on human rights protection are able to operate with respect to violations that have been carried out within the territorial administrations.

### UNESCO, Palestine and archaeology in conflict

David Keane and Valentina Azarov. In: *Denver journal of international law and policy* Vol. 41, 2013, p. 309-343. - Cote 363.8/78 (Br.)

"The Palestinian Ministry of Tourism and Antiquities and Israeli sources estimate that between 1967 and 1992 about 200'000 artefacts were removed from the occupied Palestinian territory annually," with approximately 120'000 removed each year since 1995. This haemorrhaging of Palestinian cultural property is occurring in a context where archaeology has been used by Israel "as a pretext to gain territorial control" and exercise sovereign rights "over Palestinian lands [in order] to further its settlement enterprise" and exploit natural resources. Section II traces the history of archaeological laws and practices in Palestine, from the Ottoman era to contemporary Israeli military orders. Section III examines the rules governing the protection of cultural property during military occupation under the aegis of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and the consequences of future Palestinian ratification of the Convention and its 1999 Second Protocol. Section IV tracks the illicit trade in antiquities from Palestine, and the potential effects that ratification of two instruments would have on regulation and restitution – particularly, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Section V focuses on the underwater cultural heritage off the coast of Gaza and the maritime zones of legal control granted by the 2001 Convention on the Protection of the Underwater Cultural Heritage, the first international treaty that Palestine has ratified. Finally, Section VI assesses the consequences of UNESCO membership, including whether membership of a U.N. agency means that Palestine can ratify instruments outside of UNESCO's competence.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2297291](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2297291)

### Unexpected challenges : the increasingly evident disadvantage of considering international humanitarian law in isolation

Louise Doswald-Beck. In: *Santa Clara journal of international law* Vol. 11, issue 1, 2012, p. 1-27. - Cote 345.2/934 (Br.)

In this article the author addresses what she considers are the most pressing challenges facing international humanitarian law. The first issue is the trend of IHL being misused to justify killings which are of dubious legality under the law relating to the use of inter-State force. The second issue is the fact that recent findings by human rights procedures have illustrated that a culture of human rights violations leads to serious humanitarian law violations. The two topics have one point in common: the non-respect of other branches of international law can, and increasingly does, have a direct negative effect on a genuine respect for the purpose and spirit of IHL.

<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1107&context=scujil>

### Universal human rights bodies and international humanitarian law

Walter Kälin. - In: *Research handbook on human rights and humanitarian law*. - Cheltenham ; Northampton : E. Elgar, 2013. - p. 441-465. - Cote 345.2/913

Unlike human rights law (HRL), international humanitarian law (IHL) does not provide for standing mechanisms monitoring the implementation of its provisions by States parties. Since the end of the Cold War, the UN human rights bodies have started to deal regularly, albeit not systematically, with violations of IHL even though their mandate is focused on HRL, and they have developed several approaches in this regard. This contribution looks at how the UN human rights bodies, in particular the treaty bodies as expert committees monitoring the implementation of the UN human rights conventions, the Human Rights Council as principal intergovernmental body dealing with human rights, and its Special Procedures as independent experts reporting to the Council, presently address IHL and its relationship to HRL. To what extent are the UN human rights bodies ready to explicitly invoke IHL and monitor its

implementation? Which are the key IHL issues raised by these bodies? How do they see the relationship between IHL and human rights law? And how can we assess their overall contribution to the monitoring of compliance with IHL?

### **Unmanned naval vehicles at sea : USVs, UUVs, and the adequacy of the law**

comment by Rob McLaughlin. In: Journal of law, information and science Vol. 21, no. 2, 2011/2012, p. 100-115. - Cote 347.799/146 (Br.)

In this short contribution to the debate, the author focuses briefly on two discrete issues cast up by unmanned vehicle (UV) technology and its use in the maritime domain : one related to definition ; and one related to a specific operational issue the poise and positioning of maritime forces.

### **Unprivileged belligerents, preventive detention, and fundamental fairness : rethinking the review tribunal representation model**

Geoffrey S. Corn, Peter A. Chickris. In: Santa Clara journal of international law Vol. 11, no. 1, 2012, p. 99-167. - Cote 400.2/135 (Br.)

This article will question whether denying captured terrorist in preventive detention legal representation is justified in light of the interests at stake in the detention review process, and ultimately assert that this is no longer a defensible model. In so doing, it will consider the fundamental balance between the risks and consequences of error and the feasibility of providing such assistance implicated by the preventive detention process, and how this balance influences the ongoing conclusion that lay representation by a military office is justified by the nature of the preventive detention process. While acknowledging that wartime preventive detentions fall outside the scope of precedents like Powell and Gideon, the article will draw from underlying principles reflected in these decisions to question whether the lay representation by military officers is sufficient to effectively advance the interests implicated in this non-punitive preventive detention process. Finally, the article will consider the probable objections to providing legal representation to detainees to include the feasibility of doing so.

<http://digitalcommons.law.scu.edu/scujil/vol11/iss1/4/>

### **The use of autonomous weapons and the role of the legal advisor**

Alexander Bolt. - In: International humanitarian law and the changing technology of war. - Leiden ; Boston : M. Nijhoff, 2013. - p. 123-150. - Cote 345.25/275

The first part argues that there is no obvious definition of "autonomous weapons", and therefore general statements about them, including those respecting the role of the legal advisor in their use, must reference a clear definition of the term. The second part of the chapter addresses the question itself : what role will a legal advisor play in the use of autonomous weapons ? The attempt at an answer starts with a brief discussion of the contents of the legal advice. It then moves to the broader discussion - the discussion at the heart of this chapter - of the framework under which such legal advice might be provided. The chapter then approaches the question of legal advice framework from another angle. If autonomous weapons are comparable to existing means and methods of combat, then legal advice frameworks for those means and methods might be applicable. After considering three such "analogues" the author argues that, indeed, many of the weapons across the autonomous weapons spectrum are comparable to existing means and methods of combat that are currently the subject of legal advice.

### **Vers un droit des victimes des conflits armés à la réparation pour les violations du droit international humanitaire ?**

Veronika Bílková. - In: L'homme dans la société internationale : mélanges en hommage au professeur Paul Tavernier. - Bruxelles : Bruylant, 2013. - p. 1203-1225. - Cote 345/635

Cet article s'efforce de démontrer qu'un droit justiciable des victimes des conflits armés à la réparation pour violation du droit international humanitaire est en train de se former graduellement sur le plan international. Le processus de cette formation, reflétant les tendances plus générales de l'individualisation et l'humanisation du droit international, est pourtant assez compliqué. L'existence d'un droit individuel à la réparation peut difficilement être induite des sources traditionnelles, conventionnelles ou coutumières du DIH qui sont, dans le meilleur cas, ambivalentes à cet égard. Les partisans de ce droit, qui se recrutent surtout dans les milieux académiques et les ONG humanitaires, sont ainsi obligés d'avoir recours à un raisonnement largement déductif, fondant l'existence du droit individuel à la réparation sur les principes généraux du droit international. La pratique internationale n'accepte et ne suit cette approche que progressivement et avec une certaine hésitation, causée non seulement par un volontarisme juridique excessif ou la crainte de conséquences politiques et économiques, mais plutôt aussi par des incertitudes liées aux paramètres de la nouvelle règle.

### **Virtual battlegrounds : direct participation in cyber warfare**

Emily Crawford. In: *I/S : a journal of law and policy for the information society* Vol. 9, no. 1, Spring 2013, p. 1-19. - Cote 345.25/282 (Br.)

The paper examines the history and development of the concept of direct participation in hostilities by civilians, which serves as an exception to the principle of civilian or non-combatant immunity. In charting the development of the concept, this paper looks at landmark attempts to legally define the concept of direct participation, including the Israeli Targeted Killings case, and the International Committee of the Red Cross (ICRC) study into direct participation. Using this legal background, this paper then analogises direct participation in the context of cyber hostilities, and critically examines the ways in which civilians may be deemed to be directly participating in cyber hostilities. The paper also posits some solutions to potentially problematic situations raised by civilian participation in cyber warfare.

### **War and the environment : international law and the protection of the environment in relation to armed conflict**

guest ed. : Rosemary Rayfuse. In: *Nordic journal of international law* Vol. 82, no. 1, 2013, p. 1-177. - Cote 363.7/148

The articles in this issue have their origins in the workshop on protection of the environment in relation to armed conflict that was held on 16 and 17 February 2012 at the Faculty of Law, Lund University. The workshop gathered together experts from Europe, the United States and Australia, including leading academics as well as representatives from the International Committee of the Red Cross, the Swedish, Norwegian and Danish Red Cross Societies and the Swedish and Norwegian governments to examine the relevance and adequacy of the existing regime for environmental protection during armed conflict as well as the ability of other international legal mechanisms to contribute to the amelioration of damage to the environment arising as a result of or in relation to armed conflict.

### **Why a war without a name may need one : policy-based application of international humanitarian law in the Algerian war**

Katherine Draper. In: *Texas international law journal* Vol. 48, no. 3, 2013, p. 575-603. - Cote 345.27/128 (Br.)

This note will present analysis of the debate about applicable international law during the Algerian war and will also shed light on some of the concrete consequences that resulted from France's reluctance to recognize the applicability of the various provisions of the Geneva Conventions. The author begins in part I by laying out relevant historical background to the conflict. In part II, she then analyzes the debate concerning applicable IHL - both the lower threshold of Common Article 3 between internal disturbance and armed conflict not of an international character, as well as the debate about whether the conflict eventually constituted an international armed conflict. This note illustrates that as one of the first major test cases for the applicability of either Common Article 3 or the full corpus of the Geneva Conventions, the Algerian war began a legacy of policy-based application of IHL that continues in the post-9/11 world.

<http://www.tilj.org/content/journal/48/num3/Draper575.pdf>

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