

IHL BIBLIOGRAPHY

Special Issue 2021

10 years of scholarship on the Syrian conflict

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



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Introduction

To mark the tenth anniversary of the beginning of the Syrian conflict, the ICRC Library is publishing a special issue of the IHL bibliography covering 10 years of international humanitarian law scholarship on the conflict. Unsurprisingly, the issue of accountability for violations of IHL features heavily in these publications. The diversity of issues covered, from foreign fighters to chemical weapons and cultural heritage, gives us a somewhat clinical picture of the Syrian tragedy. For an overview of the effects of the conflict on the Syrian people, we invite you to read the ICRC's recently released report, [*A Decade of Loss: Syria's Youth after 10 years of crisis*](#), as well as an earlier report entitled "[*I saw my city die" : voices from the front lines of urban conflict in Iraq, Syria and Yemen*](#)". Our [audiovisual archives portal](#) also documents the ICRC's work in Syria and the devastation brought by 10 years of conflict.

The International Committee of the Red Cross Library

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

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

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

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

Origin and purpose of the IHL bibliography

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

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

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

How to use the IHL Bibliography

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

This special issue includes an adapted version of the habitual 15 categories of the bibliography. Each article, book and chapter is classified under every relevant category. This enables readers to swiftly identify references of interest without trawling through the whole bibliography. To avoid making the document too long, this first part only provides bibliographic references. For the abstract, please refer to the second part of the bibliography

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

Rather than going through the first part and coming across repeated references, readers can skip to the second part where all the documents are listed alphabetically (by title), together with an abstract. The abstract is either that produced by the author or the publisher, where provided, or is drawn up by the IHL reference librarian responsible for the bibliography.

Access to document

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

Chronology

This bibliography is based on the acquisitions made by the ICRC Library over the past ten years.

Contents

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

Sources

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

Disclaimer

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

Subscription and feedback

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

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VI. Conduct of hostilities

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Of arms, funding and "non-lethal assistance" : issues surrounding third-state intervention in the Syrian civil war

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Syria and the semantics of intervention, aggression and punishment : on "red lines" and "blurred lines"

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Armed opposition groups' (and foreign fighters') abidance by international human rights law : the issue of compliance in Syria and Iraq

Daniele Amoroso. - In: Foreign fighters under international law and beyond. - The Hague : Asser Press ; Berlin : Springer, 2016. - p. 205-226

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Accountability for Syria : is the International Criminal Court now a realistic option ?

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Conrad Nyamutata. In: Journal of conflict and security law, Vol. 25, no. 2, Summer 2020, p. 237-261

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All with Abstracts

Access to medicines in times of conflict : overlapping compliance and accountability frame

Brianne McGonigle Leyh and Marie Elske Gispén. In: *Health and human rights* Vol. 20, no. 1, June 2018, p. 237-250

Syria is currently experiencing the world's largest humanitarian crisis since World War II, and access to medicines for emergency care, pain control, and palliative care remains shockingly restricted in the country. Addressing the dire need for improved access to medicines in Syria from an international law compliance and accountability perspective, this article highlights four complementary legal frameworks: international human rights law, international drug control law, international humanitarian law, and international criminal law. It arrives at two central conclusions. First, all four bodies of law hold clear potential in terms of regulatory—hence compliance—and accountability mechanisms for improving access to medicines in times of conflict, but they are too weak on their own account. Second, the potential for on-the-ground change lies in the mutual reinforcement of these four legal frameworks. This reinforcement, however, remains rhetorical and far from practical. Finally, within this complex picture of complementary international legal frameworks, the article proposes concrete recommendations for a more integrated and mutually reinforcing interpretation and implementation of these areas of law to foster better access to medicines in Syria and elsewhere.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6039728/>

Accountability for Syria : is the International Criminal Court now a realistic option ?

Caroline Sweeney. In: *Journal of international criminal justice*, Vol. 17, no. 5, December 2019, p. 1083-1115

To date, apart from a few prosecutions in European states, there has been widespread impunity for international crimes committed in Syria since March 2011. The International Criminal Court (ICC) is arguably the most suitable forum for prosecuting alleged perpetrators. However, thus far no accused has appeared before the Court. Indeed, the Prosecutor has yet to even open an investigation due primarily to the inability to establish a precondition for the exercise of jurisdiction. This article examines if this situation is now likely to change in light of a number of recent and controversial decisions of the Court. The decisions discussed in the article generated rigorous and at times divisive debate amongst academic commentators. Accordingly, the article also incorporates a cross-cutting theoretical analysis of the extent to which the differing responses to these decisions reflects the historic fault-line between realists and liberals.

<https://doi.org/10.1093/jicj/mqz049> *

Afghanistan and Syria : nonstate actors and their negative impact on human security

Mario Laborie. - In: *Public international law and human rights violations by private military and security companies.* - Cham : Springer, 2017. - p. 7-29

This chapter offers an in-depth look at the presence of nonstate actors in Afghanistan and Syria and shows how their direct participation in hostilities negatively impacts all aspects of human security, making them one of the main threats to peace and stability. In the case of Afghanistan, it highlights the presence of progovernment groups, including (a) militias, paramilitary groups, and auxiliary police forces and (b) PMSCs and the Afghan Public Protection Force (APPF). In addition to these groups, there are the insurgents: the Taliban; Al-Qaeda and its Uzbek affiliates, the Islamic Movement of Uzbekistan and the Islamic Jihad Union; the Haqqani Network; Hezb-e-Islami Gulbuddin; and Daesh. The conflict in Syria also features numerous nonstate armed actors (NSAAs), including (1) militias, (2) mercenaries and PMSCs (in particular, Russian private security contractors), and (3) foreign combatants and terrorists.

https://doi.org/10.1007/978-3-319-66098-1_2 *

All the red lines : the Syrian conflict and its assault on international humanitarian law

Sareta Ashraph. - In: *The Syrian war : between justice and political reality.* - Cambridge : Cambridge University Press, 2020. - p. 79-106

The Syrian war's most fundamental characteristic is the systematic disregard for the most basic rule of international law - and notably international humanitarian law - displayed by its belligerents. The result has been unparalleled human suffering, the scale, complexity, and severity of which are yet to be fully understood. International humanitarian law was established to protect civilians and those participating in hostilities from unnecessary suffering. In Syria, however, inflicting suffering on civilians and hors de combat fighters has been consistently documented as a deliberate strategy of various warring parties to punish individuals and communities for their refusal to submit. This chapter looks briefly at the unrest that preceded the conflict before focusing on those violations of international humanitarian law which quickly became hallmarks of the Syrian war. It will give particular focus to the use of chemical weapons on the battlefield and the investigations to determine the perpetrator(s). Finally, it asks whether the Syrian conflict represents a nadir in the international community's response to a war where international humanitarian law is breached with impunity and, if so, whether the value of the law of wars is being eroded.

The Arab Spring : a testing time for the application of international humanitarian law

Claire Breen. In: *New Zealand yearbook of international law*, Vol. 11, 2013, p. 159-173

This brief note begins with the basics of international humanitarian law (IHL) - its *raison d'être* and when it applies. It then considers the violence in Libya and Syria respectively. It notes that the violence in Libya quickly passed the threshold for the application of the humanitarian rules governing non-international armed conflict and almost as quickly evolved to include an international armed conflict with the commencement of the United Nations authorised North Atlantic Treaty Organisation military intervention. In contrast, determinations that the violence in Syria comprised a non-international armed conflict were slow and the ongoing high level of civilian casualties suggests the relevant rules of IHL are notable more for their breach than any observance. This notes concludes with some comments on the residual utility of IHL rules as a means to hold alleged violators (both States and individuals) to account.

<http://www.nzlii.org/nz/journals/NZYbkIntLaw/2013/6.html>

The armed conflict(s) against the Islamic State

Noam Zamir. In: *Yearbook of international humanitarian law*, Vol. 18, 2015, p. 91-121

International humanitarian law in general and the classification of armed conflicts in particular have been the subjects of a vast amount of scholarly writing, international jurisprudence, states' reports and international reports of IGOs and NGOs. Nevertheless, as exemplified by the armed conflicts with the Islamic State, important questions regarding various aspects of conflict classification remain. Since conflict classification has important practical ramifications, by analysing the armed conflicts with the Islamic State from the perspective of conflict classification, this article aims to frame these open questions and address them. As conflict classification is contingent on the status of the different actors in the battlefield, the article, *inter alia*, examines the following: whether the Islamic State can be regarded as a national liberation movement for the purposes of conflict classification; how international humanitarian law determines whether a group can be deemed as the Government of a given state; the effect of consent of the territorial state for intervention on the conflict classification; and, in cases where there is invitation of the territorial state for intervention, whether the foreign armed intervention should be considered separately or conjunctively with the ongoing non-international armed conflict of the territorial state.

http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1290691&site=ehost-live&ebv=EB&ppid=pp_C3_BE_C3_BF01 *

Armed opposition groups' (and foreign fighters') abidance by international human rights law : the issue of compliance in Syria and Iraq

Daniele Amoroso. - In: Foreign fighters under international law and beyond. - The Hague : Asser Press ; Berlin : Springer, 2016. - p. 205-226

This chapter examines the extent to which International Human Rights Law (IHRL) regulates the activities of foreign fighters. Its starting point is that IHRL does not address foreign fighters as individual natural persons, but binds them in their quality as members of one of the parties to an internal strife. Their breaches of IHRL, therefore, may trigger the international responsibility of the entity which they are part of. On this assumption, the present investigation aims at providing an answer to the following issues: (i) to what extent IHRL binds the parties to an internal conflict; (ii) under which conditions human rights violations committed by foreign fighters are attributable to them; and (iii) what legal consequences ensue from such violations. At variance with the general approach adopted in this volume, this chapter will focus solely on foreign fighters siding with armed opposition groups, since in relation to foreign elements fighting with governmental forces these issues are relatively uncontroversial and do not need further discussion. The analysis is carried out by taking as case studies the internal conflicts ongoing in Syria and Iraq.

https://doi.org/10.1007/978-94-6265-099-2_12 *

Armed opposition groups and the right to exercise control over public natural resources : a legal analysis of the cases of Libya and Syria

Daniëlla Dam-de Jong. In: Netherlands international law review, Vol. 62, issue 1, April 2015, p. 3-24

This article examines whether international law provides a legal basis for the exploitation of natural resources by armed opposition groups. This issue is particularly pertinent in light of the ongoing armed conflict in Syria – and the 2011 armed conflict in Libya, where third states are looking for ways to provide non-military support to the opposition movement, including by allowing it to export oil. This article examines three potential legal bases for a right for armed opposition groups to exploit natural resources: international humanitarian law, the recognition of the armed opposition group as the representative of the state and its recognition as the representative of the people. While this article concludes that current international law does not allow armed opposition groups to exploit natural resources, it argues in favour of applying the concept of usufruct from international occupation law to internal armed conflicts. On the basis of this concept, highly organised armed opposition groups would be granted a right to exploit the natural resources situated within the territory under their control for the purpose of establishing and maintaining a civilian administration.

<http://link.springer.com/content/pdf/10.1007%2Fs40802-015-0007-0.pdf>

Arms transfers to the Syrian Arab Republic : practice and legality

Mélanie De Groof. - Bruxelles : GRIP, 2013. - 55 p.

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

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

Background to the crisis in Syria and perspectives on human rights & humanitarian law violations

Yana Ballod. - Oisterwijk : Wolf legal publishers, 2015. - 142 p.

Since the beginning of the crisis in Syria, in mid-March 2011, the context in which it is regarded has been constantly changing. Four years later, the escalating violent armed conflict, fired from the “Arab Spring” movement has led to the rise of terrorist groups and a huge wave of refugees fleeing from the country. The present publication addresses the developments before 2011, as well as between mid-March 2011 and July 2015. It provides the factual background to the crisis and its analysis within the scope of humanitarian and human rights law. This volume is useful for understanding the roots of the crisis and its circumstances before summer 2015. A detailed research on what has happened and is happening in Syria brings up numerous unsolved issues within the international community. International law provides several possibilities for conflict resolution and stabilizing crises: timely and effective response of international community represented by United Nations and its agencies, in particular United Nations Security Council; enforcement of the responsibility to protect; imposing sanctions; bringing to international justice and internationally addressing elements of the crisis, e. g. terrorism. However, with the involvement of different international actors, the implementation of international law depends on the particular behaviour of each of them. This way even erga omnes norms become voluntary. In the case of Syria, the application of international law instruments has been accompanied by hesitation. Cross-regional, regional and internal tensions prevented international community from shaping a coherent and decisive response to mass atrocities taking place in Syria. Thus, this research questions the existing system of leverages and sets an ambitious goal of finding out how to change it.

Beyond the pale ? : engaging the Islamic State on international humanitarian law

Annyssa Bellal. In: Yearbook of international humanitarian law, Vol. 18, 2015, p. 123-152

This article discusses the possibility and desirability of engaging with a non-state armed group, such as the Islamic State (IS), on the topic of international humanitarian law (IHL). It first describes the structure and ideology of IS, and then, it proceeds to analyse the law applicable to armed groups as well as the challenges encountered when engaging these actors. In particular, it considers when such groups reject IHL as a common normative framework regulating armed conflicts. The last section of this article examines direct and indirect ways humanitarian actors have engaged armed groups, such as IS.

http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1290691&site=ehost-live&ebv=EB&ppid=pp_C3_BE_C3_BF123 *

Challenges on the implementation of Chemical Weapons Convention with special reference to Syrian crisis

B.C. Nirmal. In: ISIL yearbook of international humanitarian and refugee law, Vol. 12-13, 2012-2013, p. 44-85

Chemical weapons disarmament is on track. However, the alleged use of chemical weapons in Syria has added a new sense of urgency to it. The use of such weapons despite a global ban has not only exposed the normative and institutional deficits in the Chemical Weapons Convention (CWC), but has also underlined the need to make it a truly universal regime and to overcome the new challenges associated with the rapid growth of chemical industry worldwide. This article begins with a statement of the problem and then traces the evolution and development of the chemical weapons regime in historical perspective. It is followed by a discussion of States' obligations under the CWC. It then proceeds to give an account of the Organization of the Prohibition of Chemical Weapons as the implementing body of the CWC. The last section of the article is devoted to challenges related to the elimination of chemical weapons in Syria.

Chemical weapons and other atrocities : contrasting responses to the Syrian crisis

Tim McCormack. In: *International law studies*, Vol. 92, 2016, p. 512-544

Why has the use of chemical weapons in Syria engendered such a substantive multilateral response in stark contrast to almost every other egregious international law violation perpetrated against the civilian population? Various theories have been offered but the explanation has little to do with humanitarian concerns for Syrian victims and is more readily explicable by unusual (in the Syrian context) alignment of U.S. and Russian national interests. Bashar al-Assad was convinced to accede to the Chemical Weapons Convention, to surrender his stockpiles of chemical weapons and to co-operate with international investigators deployed under UN Security Council auspices amid a cacophony of demands for accountability. In contrast, virtually all other egregious war crimes have been met with nothing more than verbal indignation. As with chemical weapons, there have been repeated demands for accountability but successive attempts to secure UN Security Council referral of the Syrian situation to the Prosecutor of the International Criminal Court have been vetoed by Russia and China. First appearances may prove misleading. For all the efforts to respond to alleged use of chemical weapons in Syria, the international community is no closer to holding any responsible individuals accountable than is the case for any other of the lamentable myriad of war crimes. In the face of appalling carnage unfolding before our very eyes, the complexities of the crisis expose the impotence of the international community to protect the benighted population of Syria.

<https://digital-commons.usnwc.edu/ils/vol92/iss1/16/>

The Chemical Weapons Convention : hollow idealism or capable mechanism ? : the Syrian intervention as a test case

David Martin. In: *Loyola of Los Angeles international and comparative law review*, Vol. 37, no. 1, 2015, p. 31-66

Section I of this article analyzes the background of chemical weapons use and regulation, highlighting why universal disarmament is vital to regional and universal stability. Section II discusses the legal framework of the Chemical Weapons Convention (CWC), pointing out the unique features that make it an effective mechanism for chemical disarmament as compared to existing disarmament frameworks (particularly the Nuclear Non-Proliferation Treaty and the Biological Weapons Convention). Section III discusses the events leading up to the decision to enforce the CWC in response to Syria's chemical weapons violations in 2013. Section IV analyzes the aspects of the CWC framework that have made implementation in Syria a success and those that could pose future challenges. Section V concludes that the CWC framework, which enabled the peaceful cooperation in the disarming of Syria, should not only serve as a model for re-solving chemical weapons violations, but also for international disarmament agreements in general.

<http://digitalcommons.lmu.edu/ilr/vol37/iss1/2>

Children and armed conflict : pitfalls of a "one size fits all" approach

Solange Mouthaan. - In: *Gender and war : international and transitional justice perspectives*. - Cambridge [etc.] : Intersentia, 2019. - p. 119-143

This chapters highlights the importance of recognising difference while also advocating a more child-centered approach in its legal protections of children affected by armed conflict : one that acknowledges the intersections between childhood and other characteristics such as age and gender, while also providing agency to children in determining how their needs are addressed.

Civil war in Syria and the "new wars" debate

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

The last two decades saw a plethora of contributions to the academic debate on the shifting character of contemporary warfare. Some scholars praised the notion of unique features in the nature of contemporary violent conflicts and thereby coined new terms and approaches, such as 'new wars', 'postmodern wars', 'wars of the third kind', 'peoples' wars', 'privatized wars' or 'hybrid wars'; some, on the contrary, questioned the rationality of such distinctions, believing that these not-so-unique characteristics were long-present in the history of humankind. The most

prominent – and hence the most commonly addressed by fellow scholars – among the aforementioned ideas was the one put forward by Mary Kaldor in her profound book “New & Old Wars. Organized Violence in a Global Era”. This is why it will become the framework of the following reflection, which is not meant to take sides in the debate but only to offer a brief attempt to review the main arguments of the dispute¹ and look into its applicability in the context of the unfolding civil war in Syria.

<http://ojs.ubvu.vu.nl/alf/article/view/320/496>

Classifying the conflict in Syria

Terry D. Gill. In: *International law studies*, Vol. 92, 2016, p. 353-380

This article examines the classification of the current armed conflict in Syria under international humanitarian law. The article first sets out the factual background identifying the principal parties and their alignments and motivations. It then proceeds to examine the question of classification of conflict under international humanitarian law and discusses the contentious issue of the effect of lack of consent by the government of a State in relation to foreign intervention in an ongoing non-international armed conflict when such intervention is directed against one or more armed groups operating from within that State's territory. It then proceeds to apply these factual and legal considerations to the complicated situation in Syria and identifies the parallel armed conflicts underway in Syria and their classification and sets out arguments as to why classification matters.

<https://digital-commons.usnwc.edu/ils/vol92/iss1/11/>

Des combattants qui n'en sont pas vraiment : les Européens partis se battre en Syrie et en Irak vu par le droit international humanitaire

Christophe Deprez et Isaline Wittorski. - In: *Les combattants européens en Syrie.* - Paris : L'Harmattan, 2015. - p. 43-84

Cette contribution approche la problématique dite des "combattants européens" au Moyen-Orient sous le prisme du droit international humanitaire (DIH). À cette fin, les auteurs commencent par effleurer les paradigmes propres au DIH, en insistant à la fois sur les spécificités et sur les liens dont témoigne cette branche du droit par rapport aux sphères répressives et anti-terroristes. Ils entrent ensuite au cœur du droit humanitaire et tentent de cerner le statut juridique que ce dernier reconnaît aux Européens partis combattre sur les territoires syrien et irakien. Sont alors envisagés les effets qu'emporte concrètement un tel statut, non seulement en DIH mais également, dans une perspective plus globale, au niveau de la répression nationale et internationale des infractions. Les auteurs proposent enfin quelques observations conclusives.

The concept of state crimes in the context of the Syrian crisis

Nina H. B. Jorgensen. In: *The Palestine yearbook of international law*, Vol. 18, 2015, p. 173-202

Bringing together the facts relating to the internal aspects of the conflict in Syria and the serious breaches regime of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, this article argues that the Ghoutta attack, which to date has not clearly been attributed to the Syrian government by the United Nations, did not represent a turning point in international law terms, separately justifying the proposed unilateral military action. Rather, it constituted part of a broader picture of war crimes and crimes against humanity that continues to call for a coordinated international response, whether or not through forceful means. However, the use by some states of the language of crime and punishment refocused attention on the appropriate consequences for states found to be responsible for the most serious internationally wrongful acts. Against this background, the concept of state crimes may be seen to retain a relevance in international affairs that goes deeper than political rhetoric.

Conducting unconventional warfare in compliance with the law of armed conflict

Jim Slesman. In: *Military law review*, Vol. 224, issue 4, 2016, p. 1101-1149

This article aims to comprehensively review the legality of unconventional warfare campaigns under modern international law. It demonstrates that while unconventional warfare remains viable under modern international law, the law creates both legal risks and opportunities, both of which

must be understood in order to wage an effective campaign. The article highlights those risks and opportunities as they apply to the unconventional warfare campaigns the United States is currently conducting in Syria. The article begins by describing the Syrian conflict and outlining the basics of unconventional warfare. The article then turns to the two main bodies of international law governing unconventional warfare : jus ad bellum and jus in bello.

http://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/224-issue4-2016.pdf

The conflict with Islamic State : a critical review of international legal issues

Antonio Coco and Jean-Baptiste Maillart. - In: *The war report : armed conflict in 2014.* - Oxford : Oxford University Press, 2015. - p. 388-419

This chapter has two main functions. First, it provides an assessment of the legality of the U.S.-led missions against the Islamic State (IS) in Iraq and Syria. In Iraq, the intervention is found to be compatible with international law based on the intervention by invitation principle. In Syria, legality of the mission is doubtful, as the authors suggest the collective self-defence rationale is unconvincing and the intervention by invitation justification has been undermined by the actions of the U.S. and Syria. Second, the chapter discusses State responsibility for IS actions. The authors hold that it is unlikely that direct responsibility for violations of international law by IS would be attributed to Syria or Iraq, as both States are engaged in combat to defeat IS. However, the failure on the part of both States to take measures to protect people in their territory under IS's effective control could lead to their responsibility being engaged. Furthermore, direct responsibility is unlikely to be borne by third States, as their provision of external assistance to IS does not result in effective control or decisive influence over IS. Instead, third States could be found to be in violation of their international obligation to ensure respect for international humanitarian law under Article 1 common to the 1949 Geneva Conventions or to prevent and punish genocide under Article 1 of the Genocide Convention. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

Consent to humanitarian access : an obligation triggered by territorial control, not States' rights

Françoise Bouchet-Saulnier. In: *International review of the Red Cross*, Vol. 96, no. 893, Spring 2014, p. 207-217

The debate about the legality of cross-border relief operations has been revived in the wake of the failures experienced by international humanitarian organizations in their response to humanitarian needs in Syria.

<https://library.icrc.org/library/docs/DOC/irrc-893-bouchet-saulnier.pdf>

Crossing the red line : the use of chemical weapons in Syria and what should happen now

Yasmin Naqvi. In: *International review of the Red Cross*, Vol. 99, no. 906, 2017, p. 959-993

The use of chemical weapons in the armed conflict in Syria has attracted universal and widespread condemnation and has led to unified responses by various international bodies. This article examines the international community's responses to chemical weapons use in Syria from the perspective of international law. It also analyzes the potential options for accountability that are available for chemical weapons-related crimes.

<https://library.icrc.org/library/docs/DOC/irrc-906-naqvi.pdf>

The current state of customary international law with regard to the use of chemical weapons in non-international armed conflicts

Anne Lorenzat. In: *Revue de droit militaire et de droit de la guerre = The military law and law of war review*, Vol. 56, no. 2, 2017-2018, p. 349-409

Against the backdrop of the resurgence in the use of chemical weapons – particularly nerve, blister and lung agents – in recent years, as observed in the armed conflict in the Syrian Arab Republic, and the increasing volatility of international agreements, as demonstrated by the announcement of several African States to withdraw from the ICC Statute in 2016, a thorough analysis to determine the current state of customary international law with regard to the use of chemical

weapons in non-international armed conflicts is in order. The paper first contextualizes the issue in relation to recent events involving chemical weapons before giving an overview of the ICRC Customary International Law Study's approach taken toward these means of warfare. Thereafter, a short chapter sets the tone for the analysis by giving an account of the theory of customary international law. The actual analysis of the state of customary international law comprises an examination of incidents of confirmed use of chemical weapons in non-international armed conflicts. In addition, relevant resolutions of the UN General Assembly and Security Council are thoroughly scrutinized. Finally, relevant multilateral treaties are examined closely before final conclusions on the issue in question are drawn.

<http://www.ismllw.org/REVIEW/2017-2018%20ART%20Lorenzat.php>

Deceased persons as protected persons within the meaning of international humanitarian law : German Federal Supreme Court judgement of 27 July 2017

Kai Ambos. In: *Journal of international criminal justice*, Vol. 16, no. 5, December 2018, p. 1105-1116

The defendant, a German national, travelled to Syria in March 2014 to participate in the 'armed Jihad' against the Assad regime. The case at hand refers to an incident where the defendant, with other members of his group, detained two Syrian soldiers, beheaded them and impaled the severed heads on metal poles to publicly expose and ridicule them. After returning to Germany the defendant was arrested and sentenced to two years' imprisonment by the Frankfurt Higher Regional Court [Oberlandesgericht, OLG] on 12 July 2016 for the war crime of treating a protected person in a gravely humiliating and degrading manner pursuant to § 8(1) no. 9 of the German Code of Crimes against International Law [Völkerstrafgesetzbuch, VStGB]. The conviction and sentence was upheld by the German Federal Supreme Court [Bundesgerichtshof, BGH] on 27 July 2017 for the reasons described below (see Section 2.B). The key issue of the case was whether a person to be protected under international humanitarian law (IHL) within the meaning of § 8(1) no. 9 VStGB also includes a deceased person. Both the OLG and the BGH answered this question in the affirmative but this view fails to convince since the concept of person in the VStGB and the underlying IHL is limited to living human beings. Thus, to interpret 'person' broadly would violate the prohibition of analogy (*lex stricta*) to be understood strictly under German law.

<https://doi.org/10.1093/jicj/mqy061> *

The destruction of cultural property in the Syrian conflict : legal implications and obligations

Emma Cunliffe, Nibal Muhesen, Marina Lostal. In: *International journal of cultural property*, Vol. 23, issue 1, February 2016, p. 1-31 : fotogr.

This article comes as the conflict in Syria has entered its fifth year, bringing with it loss of life and the displacement of the Syrian people as well as extensive damage to, and destruction of, the country's cultural heritage. This article will first provide an overview and explanation of the national and international legal framework for protecting cultural property in conflict as it applies to the Syrian state and the non-state actors involved, using examples from the whole conflict, including the recent actions of Da'esh. Second, the authors demonstrate that the destruction of all types of cultural property, regardless of its importance, can be considered a prosecutable violation of these laws, and The authors examine the possibilities for prosecution. Following from this discussion, they question whether the existing framework can be considered effective and consider the role of the international heritage community can play.

Ethical and legal perspectives on cross-border humanitarian operations

Hugo Slim and Emanuela-Chiara Gillard. In: *Humanitarian exchange : the magazine of the Humanitarian Practice Network*, No. 59, November 2013, p. 6-9

This article looks briefly at three main types of cross-border operations in humanitarian history, and then addresses two main questions: can cross-border operations be pursued legally?; and what constitutes ethical crossborder operations? The legality of cross-border humanitarian operations turns mainly on the two issues of the consent of the affected state and the exclusively humanitarian character of any crossborder aid. Under international humanitarian law (IHL), the consent of the state in whose territory operations are to be implemented is required. So too is the consent of the neighbouring state from which any cross-border operation is to be mounted. In

practice, consent is also required from any non-state armed actor in effective control of territory through which the relief goods must transit or for whose civilians they are intended. If the law allows cross-border humanitarian operations in certain situations, what are the main ethical considerations in the decision to pursue such operations? Like most humanitarian decision-making, these turn on issues of need, context and capability, and issues of principle around impartiality, neutrality and independence.

<http://odihpn.org/magazine/ethical-and-legal-perspectives-on-cross-border-humanitarian-operations/>

The fight against the Islamic State and jus in bello

Vaios Koutroulis. In: *Leiden journal of international law*, Vol. 29, no. 3, September 2016, p. 827-852

This article examines several questions relating to international humanitarian law (jus in bello) with respect to the conflicts against the Islamic State. The first question explored is the classification of conflicts against the Islamic State and the relevant applicable law. The situation in Iraq is a rather classic non-international armed conflict between a state and a non-state actor with third states intervening alongside governmental forces. The situation in Syria is more controversial, especially with respect to the coalition's airstrikes against the Islamic State on Syrian territory. If the Syrian government is considered as not having consented to the coalition's operations, then, according to this author's view, the coalition is involved in two distinct armed conflicts: an international armed conflict with the Syrian government and a non-international armed conflict with the Islamic State. The second question analyzed in the article bears on the geographical scope of application of international humanitarian law. In this context, the article examines whether humanitarian law applies: in the entire territory of the state in whose territory the hostilities take place, in the territories of the intervening states, and in the territory of a third state.

<https://doi.org/10.1017/S0922156516000339> *

Foreign fighters and international law

Sandra Krähenmann. - In: *The war report : armed conflict in 2013.* - Oxford : Oxford University Press, 2014. - p. 317-340

The presence of foreign fighters often transforms the nature of a conflict from a popular insurgency into another battlefield of jihad, as happened in 2013 with the armed conflict in Syria. The term "foreign fighter" is instinctively identified nowadays with "Muslims", "Islamists", or "jihadist" fighters. Positioned as an "intermediate actor category, lost between local rebels, on the one hand, and international terrorists, on the other", foreign fighters have become a distinct phenomenon characterized by a series of mostly untested assumptions as insurgents and as a potential terrorist threat. This chapter reviews the phenomenon of foreign fighters in NIAC and the relevance of nationality under applicable international law.

Foreign fighters under international law

Sandra Krähenmann. - [Geneva] : Geneva Academy of International Humanitarian law and Human Rights, October 2014. - 64 p.

This Academy Briefing addresses the status and regulation under international law of so-called "foreign fighters", non-nationals who are involved in armed violence outside their habitual country of residence, including in armed conflict as defined under international humanitarian law. IHL regulates armed conflict, including the status of individuals who are affected by or participate in it. The involvement of foreign fighters raises the question of their status under IHL, which in turn makes it necessary to analyse the extent to which nationality is a salient factor.

https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Foreign%20Fighters_2015_WEB.pdf

Foreign terrorist fighters in Syria : challenges of the "sending" state

Marten Zwanenburg. In: *International law studies*, Vol. 92, 2016, p. 204-234

This article discusses domestic measures taken by the Netherlands to combat the phenomenon of foreign terrorist fighters, predominantly in the context of the Syrian conflict. It discusses criminal

prosecution, asset freezes, deprivation of nationality and revocation of travel documents. The author concludes that in each of these fields, there is a close relationship between international law and national law.

<https://digital-commons.usnwc.edu/ils/vol92/iss1/6/>

The future of international criminal evidence in new wars ? : the evolution of the Commission for International Justice and Accountability (CIJA)

Melinda Rankin. In: *Journal of genocide research*, Vol. 20, no. 3, 2018, p. 392-411

This article explores the intellectual formation of the Commission for International Justice and Accountability (CIJA). It illuminates how the development of the CIJA was an attempt by state and non-state actors to affect the course of international criminal justice in Syria and Iraq. First, this article argues that the CIJA was the result of four factors: the UK Foreign Office's desire to support human rights activists in Syria; lessons learned from previous international criminal tribunals; attempts by non-state legal practitioners to invent new ways to overcome the gaps and limitations of the international criminal justice system; and the willingness of Syrian civil society to risk their lives and use the law to hold those responsible for mass atrocities to account. Second, the article argues that as non-state actors with a focus on evidence management, the CIJA may represent an innovative approach to investigating mass atrocities, particularly for activists and civil society actors who wish to play a role in evidence management in new wars. Lastly, it shows how the CIJA may work in parallel with international mechanisms, such as the International Criminal Court (ICC) and other inter-state actors, to collect evidence of war crimes, crimes against humanity, and genocide in new wars, particularly when the ICC is unable to do so. This study combines qualitative research with empirical analysis and draws on a range of primary and secondary sources, including a number of interviews conducted with CIJA personnel, former ICC practitioners, and other practitioners in international criminal law.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/45704.pdf> *

The hostilities-occupation dichotomy and cultural property in non-international armed conflicts

Anne-Marie Carstens. In: *Stanford journal of international law*, Vol. 52, issue 1, Winter 2016, p. 1-50

The protracted civil war in Syria and the recent onslaught of the Islamic State have devastated the rich cultural heritage of Syria and Iraq, among their many tragedies. In the wake of this devastation, much public discourse has predictably focused on the destruction and looting as war crimes that violate the well-entrenched prohibitions on unnecessary destruction and seizure, which apply in international and non-international conflicts alike. The stature of these prohibitions as the central pillar of cultural property protection has diminished in recent decades, however, particularly in non-international conflicts that are motivated by racial, religious, or ethnic animus and that increasingly feature prevalent attacks on cultural property. The survival of cultural property instead increasingly rests on affirmative obligations to protect cultural property – which this article terms "protection-plus" obligations because they complement and supplement prohibitions on unnecessary destruction and seizure – which would require participating belligerents with both access and means to take positive steps to secure cultural property from harm. Protection-plus obligations to protect cultural property already exist in some form in international armed conflicts. Unfortunately, the persistent hostilities-occupation dichotomy prevents their unequivocal application during non-international armed conflicts because many such obligations are understood to attach only during occupation, which by definition occurs only in international – and not in non-international – conflicts. The promise and limitations of protection-plus obligations are exposed by considering how such obligations might attach in the overlapping conflicts in Syria and Iraq. This article argues that the enduring preservation of the "cultural heritage of mankind" depends on recognizing a new norm that would incrementally whittle down the hostilities-occupation dichotomy to provide for the application of protection-plus obligations in non-international armed conflicts, and it suggests likely vehicles for doing so.

<https://heinonline.org/HOL/P?h=hein.journals/stanit52&i=9> *

Human rights obligations of non-state armed groups in other situations of violence : the Syria example

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

In February 2012, the Independent International Commission of Inquiry on the Syrian Arab Republic found that opposition groups fighting against the Assad regime are bound by human rights obligations constituting peremptory norms of international law. This finding is innovative for two reasons. First, human rights obligations apply generally to the vertical relation between States and their subjects. Second, whereas it seems accepted that non-state armed groups can have human rights obligations when they control territory, the Commission of Inquiry was unable to confirm that Syrian opposition forces exercised such control over territory. This article examines whether the finding that non-state armed groups are bound by peremptory human rights norms is supported by contemporary international law. Moreover, recent trends in the practice of the United Nations with regard to human rights obligations of non-state actors will be analysed. Even though this article argues that non-state armed groups can have human rights obligations in other situations of violence, it points out particular challenges to their practical application.

<https://doi.org/10.1163/18781527-00302005> *

Humanitarian access in international humanitarian law : the case of Syria and Security Council Resolution 2139 (2014)

Phoebe Wynn-Pop. - In: *Accountability for violations of international humanitarian law : essays in honour of Tim McCormack.* - New York ; London : Routledge, 2016. - p. 117-135

Phoebe Wynn-Pope examines the concept of humanitarian assistance in the context of the ongoing Syrian conflict. This chapter draws attention to the poignancy of this conflict in which approximately 100,000 civilians have been killed since hostilities began in 2011, and which resulted in humanitarian disaster of catastrophic proportions, leaving more than 9,5 million people in need of assistance, and creating more than 2,5 million refugees and more than 6,5 million internally displaced people. Wynn-Pope considers the obligations on parties to a conflict to provide for the need of the civilian population and to allow access to humanitarian agencies providing assistance. She contends that the international community has been ineffective in the face of severe human suffering in Syria where humanitarian access has been particularly restricted. She also reviews and considers the impact of the United Nations Security Council Resolution 2139 of 22 February 2014 demanding humanitarian access and explores the question of whether the denial of humanitarian assistance is justiciable at the ICC.

<https://www.taylorfrancis.com/books/e/9781315769554/chapters/10.4324/9781315769554-13> *

Humanitarian access through agency law in non-international armed conflicts

David Matyas. In: *International and comparative law quarterly*, Vol. 69, part 2, April 2020, p. 451-475

In many conflicts, aid organisations have to navigate the international humanitarian law requirement that parties to the conflict must consent to assistance. In non-international armed conflicts this often frustrates efforts to provide relief, as States refuse to grant consent in order to uphold their claims to sovereignty. Looking at the Syrian Civil War, this article suggests that the law of agency can offer a fresh perspective on the challenges posed by the requirement of consent to humanitarian assistance. It suggests that agency law can provide a legal explanation of seemingly political decisions and a *de lege ferenda* justification for assistance in instances where consent is either absent or provided by a non-State armed group.

<https://doi.org/10.1017/S0020589320000020> *

Humanitarian assistance and the conundrum of consent : a legal perspective

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

Syria's refusal to allow humanitarian actors to provide assistance to the Syrian population in need, at least on a number of occasions, has again drawn attention to the continued validity of the requirement of state consent with regard to the outside provision of humanitarian assistance. This

refusal to give consent has again foregrounded such questions as to whether a state's denial of access is an entirely discretionary decision and whether humanitarian actors can provide assistance without obtaining consent to operate.

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

Forcible displacement as a weapon of war in the Syrian conflict : lessons and developments

Yasmine Nahlawi. - In: *Armed conflict and forcible displacement : individual rights under international law.* - London ; New York : Routledge, 2018. - p. 191-220

This chapter analyses relevant developments in Syria pertaining to forcible displacement with reference to existing international legal norms, including international humanitarian law and international human rights law, as well as international case law. It evaluates relevant State practice and *opinio juris* arising from the Syrian conflict to assess the emergence or reinforcement, if any, of customary norms pertaining to forcible displacement and the rights of the forcibly displaced.

<https://www.taylorfrancis.com/books/e/9781315629391/chapters/10.4324/9781315629391-7> *

Imagining justice for Syria

Beth Van Schaack. - Oxford : Oxford University Press, 2020. - XV, 476 p.

This book situates the war in Syria within the actual and imagined system of international criminal justice. It explores the legal impediments and diplomatic challenges that have led to the fatal trinity affecting Syria: the massive commission of international crimes that are subject to detailed investigations and documentation but whose perpetrators have enjoyed virtually complete impunity. Given this tragic state of affairs, the book tracks a number of accountability solutions being explored within multilateral initiatives and by civil society actors, including innovations of institutional design; the renewed utility of a range of domestic jurisdictional principles (including the revival of universal jurisdiction in Europe); the emergence of creative investigative and documentation techniques, technologies, and organizations; and the rejection of state consent as a precondition for the exercise of jurisdiction. Engaging both law and policy around international justice, the text offers a set of justice blueprints, within and without the International Criminal Court. It also considers the utility, propriety, and practicality of pursuing a transitional justice program without a genuine political transition. All told, the book attempts to capture results of the creative energy radiating from members of the international community intent on advancing the accountability norm in Syria even in the face of geopolitical blockages within the U.N. Security Council. In so doing, it presents the range of juridical measures—both criminal and civil—that would be available to the international community to respond to the crisis, if only the political will existed.

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

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

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

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

International legal obligations of armed opposition groups in Syria

Tilman Rodenhäuser. In: *International review of law*, Vol. 2015, issue 1, January 2015, 16 p.

This article focuses on international legal obligations of armed opposition groups in the course of the Syria crisis. Such obligations are clearly contained in international humanitarian law, and arguably also in international human rights law. In order to determine the applicable law, the classification of the situation as either an armed conflict or one of internal tensions and disturbances is fundamental but controversial. This article examines at what stage of the crisis international human rights obligations and international humanitarian law obligations of non-state armed groups became pertinent, and provides reasons why this is the case. It shall be argued that even before the Syria crisis turned into a non-international armed conflict, opposition groups were bound by fundamental rules of international human rights law. In addition to these rules, all parties to the armed conflict became bound by international humanitarian law once the situation reached a sufficient degree of violence, and the non-state groups a sufficient degree of organization. By examining the Syria crisis, this article shall show what these abstract criteria mean in practice.

<http://dx.doi.org/10.5339/irl.2015.2> *

ISIS and the violations of human rights of sexual minorities : is the international community responding adequately ?

Silvia Venier and Denise Venturi. In: *The Asian yearbook of human rights and humanitarian law*, Vol. 1, 2017, p. 109-134

As part of the atrocities committed in Syria since the outbreak of the civil war, the attention of the international community has been attracted by the violence targeting a particularly vulnerable group, i.e. individuals pertaining to ‘sexual minorities’, or Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI). This article aims at providing an overview of the human rights abuses committed against LGBTI individuals in the territories controlled by ISIS in Syria and Iraq, and at discussing the extent to which the international community is aware of the problem and is addressing it adequately. The article then seeks to examine the legal implications triggered by the abuses committed by ISIS militants against LGBTI individuals and to discuss further avenues that might be available at the international level to ensure accountability, focusing on the challenges in applying international humanitarian law, international human rights law and international criminal law provisions to these contexts.

ISIS, Boko Haram, and the human right to freedom from slavery under islamic law

Bernard K. Freamon. In: *Fordham international law journal*, Vol. 39, no. 2, 2015, p. 245-306

There is now a worldwide consensus on the firm existence of a human right to freedom from slavery. This consensus gives rise to what was thought to be an irrefutable argument that the right to be free from slavery is a jurisprudential universal, with no competent legal system or government able to deny its existence or permit derogation from its tenets. This argument is now being tested by the ideologies, policies, and actions of Muslim insurgencies in Iraq, Syria, and Nigeria, each claiming that the enslavement of non-believing combatants and war captives and slave trading in such persons is permitted under Islamic law. This article considers the implications of these claims for the future of Islamic law and for its relationship with the world’s legal systems, particularly international humanitarian law.

<http://ir.lawnet.fordham.edu/ilj/vol39/iss2/2/>

Islamic law, international law, and non-international armed conflict in Syria

Patrick B. Grant. In: *Boston university international law journal*, Vol. 35, issue 1, spring 2017, p. 1-37

Although the law governing non-international armed conflicts (“NIAC”) has expanded, it may not always be enough to address the atrocities associated with such conflicts. Islamic law may serve as common ground for parties to a NIAC to apply greater protections than those provided by international law alone. Applying Islamic and international law to the Syrian conflict demonstrates that the doctrines have different triggering thresholds and varying degrees of

similar protections. The doctrines are compatible, however, because use of one doctrine does not preclude use of the other. Islamic law can therefore supplement international law among states that have diverse acceptance of international treaties. It is also a viable option for Islamic law to supplement international law because most Muslim states are either influenced by or directly apply Islamic law. These states' desire to either apply or accept Islamic law evidences probable concurrence to agreements that use Islamic law to supplement international law to provide greater protections in a NIAC.

<https://www.bu.edu/ilj/files/2017/04/35-BU-ILJ-Grant.pdf>

An issue of monumental proportions : the necessary changes to be made before international cultural heritage laws will protect immoveable cultural property

by Matthew Smart. In: Chicago-Kent law review, Vol. 91, issue 2, 2016, p. 759-802

This Note offers multiple suggestions to improve the protection of immoveable cultural heritage property during conflicts. The destruction of moveable cultural heritage property, while an important issue, is largely outside the scope of this Note. To begin, Part I offers a more precise definition of cultural heritage. Part II explores the current conflict in Syria that is resulting in the destruction of a significant amount of the country's immoveable cultural property. Part III examines the historical evolution of international laws aimed at the protection of immoveable cultural property during conflicts and its applicability to Syria. Finally, Part IV advances necessary changes to the current regime of international treaties to increase the protection to cultural heritage property. In addition, Part IV argues for the creation of a military force dedicated to protecting immoveable cultural heritage property.

<https://scholarship.kentlaw.iit.edu/cklawreview/vol91/iss2/16/>

Le jugement du Tribunal correctionnel d'Anvers dans l'affaire dite "Sharia 4 Belgium" et l'article 141bis du Code pénal belge

Vaios Koutroulis. - In: Les combattants européens en Syrie. - Paris : L'Harmattan, 2015. - p. 85-103

En rendant son jugement dans l'affaire Sharia4Belgium, le Tribunal correctionnel d'Anvers a refusé d'admettre que l'article 141bis du Code pénal belge – qui exclut du champ d'application des infractions terroristes les activités des forces armées en période de conflit armé – était applicable en l'espèce. Ce refus est étayé par une analyse détaillée des notions de « conflit armé » et de « forces armées » mentionnées dans l'article. Dans ce chapitre, l'auteur compare l'interprétation des notions de « conflit armé » et de « forces armées » avancée par le Tribunal à celle majoritairement acceptée en droit international humanitaire afin de jeter un certain éclairage sur la portée de la clause d'exclusion contenue dans l'article 141bis et de démontrer le caractère trop restrictif de l'approche suivie par le juge belge.

The legal classification of the armed conflicts in Syria, Yemen and Libya

Louise Arimatsu, Mohbuba Choudhury. - London : Chatham house, 2014. - 43 p.

On 13–14 March 2013 a two-day workshop was held at Chatham House to consider what law applied to the situations of violence in respect of Syria, Yemen and Libya during the period 2010–2013. These three case studies were chosen because each appeared to raise specific legal questions meriting examination. This paper is based on the discussions at the workshop, and consequently the commentary reflects events at that time. This paper first outlines the legal framework that informed the trajectory and content of questions put by the lawyers to the country experts. This is followed by summaries of the respective sessions based on the experts' presentations, the exchanges that followed and the content of the briefing packs provided by the organizers. The final section sets out the main legal questions that emerged during the workshop which merit further work.

<https://www.chathamhouse.org/publications/papers/view/198023>

Legal classification of the conflict(s) in Syria

Tom Gal. - In: *The Syrian war : between justice and political reality.* - Cambridge : Cambridge University Press, 2020. - p. 29-55

International law distinguishes between two types of violence: armed conflicts and mere civil disturbances or demonstrations. Armed conflicts are further divided into two types: international armed conflicts (IACs) and non-international armed conflicts (NIACs). This chapter identifies and classifies the different legal types of conflicts or violence that occurred in the territory of Syria since March 2011. Adopting the fragmentation approach, this chapter argues that both of these types of conflicts coexisted in Syria and analyses them according to the legal classifications. It first presents and discusses shortly the legal definitions of IAC and NIAC and addresses the importance of the distinction between them. After delineating the geographical and temporal scope of his argumentation, the author applies this theoretical framework to an analysis of the conflicts that took place in Syria - international and non-international respectively.

Legal implications surrounding operation "inherent resolve" in Iraq and Syria

by Chris De Cock. In: *Israel yearbook on human rights*, Vol. 47, 2017, p. 69-138

The aim of this article is to analyze the conflict in Iraq and Syria under both the *jus ad bellum* and the *jus in bello*, primarily through the lens of the United States-led coalition. The author argues that coalition operations against Daesh in Syria are based on the right of self-defence and do not violate the provisions of the UN Charter. He then examines various issues pertaining to the classification of the conflict. He also considers the legality of targeting oil production facilities and enemy banking systems. Regarding the use of explosive weapons in populated areas, he argues that a clear distinction should be made between direct attacks on civilians, indiscriminate attacks and the lawful use of explosive weapons.

<https://doi.org/10.1163/9789004341951> *

A legal "red line" ? : Syria and the use of chemical weapons in civil conflict

Jillian Blake and Aqsa Mahmud. In: *UCLA law review discourse*, Vol. 61, 2013, p. 244-260

This essay analyzes the prohibition on the use of chemical weapons in civil conflicts and applies its findings to the Syrian civil war. International humanitarian law and international criminal law provide a clear ban on the use of chemical weapons in international armed conflict. This prohibition is less clear in noninternational armed conflict, suggesting the need for legal reforms to firmly ban the use of chemical weapons in all armed conflicts. Furthermore, the use of chemical weapons in Syria does not, by itself, cross a legal red line justifying military intervention. Instead, the use of chemical weapons is one factor in determining the existence of a humanitarian crisis requiring strong international action.

<http://www.uclalawreview.org/pdf/discourse/61-16.pdf>

The legal status of Hezbollah in the Syrian conflict : an international humanitarian law perspective

Mohamad Ghazi Janaby. In: *Arizona journal of international and comparative law*, Vol. 33, no. 2, 2016, p. 383-422

The involvement of foreign fighters in the conflict is one of its distinguishing characteristics. This article explores the involvement of Hezbollah, a group of fighters based in Lebanon engaging in the conflict. It studies Hezbollah's legal status as it fights alongside the Syrian government, in the context of international humanitarian law. The article argues that Hezbollah's participation does not change the nature of the conflict because it is an intervention by an armed group supporting government forces. Two classifications of Hezbollah can be adopted based on the level of control exercised by Syria on it. It is either a *de facto* armed group of the Syrian forces, or an armed group fighting in a non-international armed conflict. The article finds that the Syrian government may be held responsible for any potential violation committed by Hezbollah fighters during their participation in the conflict. In addition, such violations may lead to these fighters being found criminally responsible.

<http://arizonajournal.org/archive/vol-33-no-2/>

Localised armed conflict : a factual reality, a legal misnomer

Mutsa Mangezi. In: African yearbook on international humanitarian law, 2012, p. 79-97

Between May and July 2012, a number of statements from individuals within the ICRC suggested that the conflict in Syria could be classified as a non-international armed conflict in certain parts of Syria but not throughout the territory. This article uses the Syrian conflict as the starting point for a discussion of the concept of 'localised armed conflict'. The author explores the consequences of the adoption of this concept in our current international legal framework, focusing specifically on international humanitarian law. The author argues that although it is important to recognize localised armed conflict as a factual reality, as a legal concept it is a misnomer. After giving a brief overview of the traditional approach to the application of international humanitarian law, the author provides reasons for rejecting localised armed conflict as a legal concept. The author argues that the utilization of the concept could significantly undermine the power of international humanitarian law. Specifically, he asserts that the concept is not supported by any of the Geneva Conventions or their Additional Protocols and that its application could undermine the protective purpose of international humanitarian law, complicate military strategy, and create operational difficulties in the application of international humanitarian law. The author concludes that the traditional application of international humanitarian law should be maintained, whereby it is applied throughout an entire state, even if hostilities are localised. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

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

Laurie R. Blank, Geoffrey S. Corn. In: Vanderbilt journal of transnational law, Vol. 46, no. 3, May 2013, p. 693-746

The international community's year-long reluctance to characterize the situation in Syria as an armed conflict highlights a clear disparity between the object and purpose of the LOAC and the increasingly formalistic interpretation of the law's triggering provisions. Focusing on Syria, this article critiques the overly technical approach to the definition of non-international conflict currently in vogue—based on Prosecutor v. Tadic's framework of intensity and organization—and how this approach undermines the original objectives of common article 3 of the Geneva Conventions. This overly legalistic focus on an elements test, rather than the totality of the circumstances, means that the world has witnessed a retrograde of international humanitarian efficacy: Syria appears to be a lawless conflict like those that inspired common article 3—the regime employs its full combat capability to shell entire cities, block humanitarian assistance, and target journalists and medical personnel directly. The LOAC is specifically designed to address exactly this type of conduct, and yet the discourse on Syria highlights the dangers of allowing over-legalization to override—and undermine—logic, resulting in a deleterious impact on human life.

<https://library.ext.icrc.org/library/docs/ArticlesPDF/36564> *

Mapping war crimes in Syria

Beth Van Schaack. In: International law studies, Vol. 92, 2016, p. 282-339

This article maps the range of war crimes being committed in Syria with reference to the applicable treaty and customary international law and prospects for prosecution. It begins by presenting the international legal framework employed to determine when an armed conflict began in Syria, how this conflict is classified under international law and which multilateral treaties and customary rules are operative. This framework underlies the determination of which war crimes can be prosecuted, which tribunals might have jurisdiction and which perpetrators may be made subject to indictment. The article next focuses on some open legal and factual issues around certain war crimes that are particularly salient in the Syrian conflict but that have been under-theorized and rarely prosecuted. Along the way, it demonstrates that many of these war crimes could not be easily prosecuted before the ICC or under any domestic war crimes statutes that hew closely to the law of war treaties given the stark divergence between treaty law and customary international law when it comes to non-international armed conflicts in general and to the prosecutability of war crimes in such conflicts in particular. These observations offer support for proposals to develop an ad hoc tribunal dedicated to the Syrian conflict, as sketched out in the final section. All told, the article demonstrates the continued utility of customary

international law to ensure that courts can enforce evolutions in the law notwithstanding the tendency of treaties toward normative ossification.

<https://digital-commons.usnwc.edu/ils/vol92/iss1/9/>

The non-combatant casualty cut-off value : assessment of a novel targeting technique in Operation Inherent Resolve

Scott Graham. In: *International criminal law review*, Vol. 18, issue 4, 2018, p. 655-685 : carte

A tension exists between treaty protections afforded to civilians in non-international armed conflicts from becoming objects of attacks and the International Criminal Court's jurisdiction to punish commanders who recklessly cause such casualties. Yet, media and human rights organizations' criticism that the non-combatant casualty cut-off value (NCV) constitutes a war crime cannot survive rational examination of the mens rea requirement in the Rome Statute. Coalition commanders and targeteers must ensure the NCV is neither presumptively nor conclusively applied in target engagement, whilst taking constant care to focus proportionality assessments to spare civilians.

<https://doi.org/10.1163/15718123-01804002> *

Of arms, funding and "non-lethal assistance" : issues surrounding third-state intervention in the Syrian civil war

Tom Ruys. In: *Chinese journal of international law*, Vol. 13, issue 1, p. 13-53

In spite of legal objections, the European Union (EU) in May 2013 gave the conditional green light for the transfer of arms to the Syrian Opposition Council. The EU's decision is not a solitary move. Several other States, including Russia, the United States, Qatar and Saudi Arabia, have provided arms, funding and/or "non-lethal assistance" either to the Syrian government or to rebel forces combatting the Assad regime. The present contribution aims to shed light on the legality of such assistance. On the one hand, it assesses legal objections related to the fact that third-State assistance is used for the commission of widespread war crimes and human rights violations. On the other hand, it examines the compatibility of such assistance with the non-intervention principle and, in so doing, examines to what extent the latter principle discriminates between de jure governments and non-State armed groups in the context of a civil war.

<http://dx.doi.org/10.1093/chinesejil/jmu003> *

Only [] can judge : analyzing which courts have jurisdiction over ISIS

Andrew Solis. In: *Southern Illinois University law journal*, Vol. 40, no. 1, Fall 2015, p. 69-89

While many world leaders are developing plans to defeat ISIS, some thought should be given to what structures will be in place to manage the aftermath. Defeating ISIS will likely require international cooperation and there will be a need for a judicial structure to try ISIS war criminals that is acceptable to the international community. In preparing for future judicial structures, leaders should consider cost, efficiency, legitimacy, and scope of the desired judicial structure. Past and present international courts provide important case studies for which type of court system would best try ISIS war criminals. Some courts, like the International Criminal Court, have secure international support but very limited practical application. On the other hand, national courts and military tribunals can operate efficiently but require physical control to establish legitimacy and are subject to domestic political control. This comment argues the best option would be an ad hoc international court that operates with strong international support but allows for efficient and neutral prosecution of crimes.

<https://law.siu.edu/common/documents/law-journal/articles-2015/fall2015/9%20-%20Solis%20Comment%20Proof%203%20FINAL%20-%20sm.pdf>

"Worse" than child soldiers ? : a critical analysis of foreign children in the ranks of ISIL

Francesca Capone. In: *International criminal law review*, Vol. 17, issue 1, 2017, p. 161-185

Even though many problems connected to child soldiering have been eventually explored and unpacked, it is undeniable that new issues keep surfacing in each context affected by this phenomenon. The current armed conflicts in Syria and Iraq appear to be shocking for several

reasons, including the unprecedented presence of foreigners and the widespread recruitment and use of children by terrorist groups, in particular the Islamic State of Iraq and the Levant (ISIL). This article argues that whereas child soldiers affiliated with armed forces or groups are ‘traditionally’ seen as victims rather than perpetrators, foreign children in the ranks of terrorist groups like ISIL are first and foremost regarded as a threat to national and international security. This article will provide a critical overview of the most relevant aspects encompassing the existing legal framework, ISIL’s recruitment and use of foreign child soldiers, and the challenges connected to the design and implementation of meaningful reintegration processes.

<https://doi.org/10.1163/15718123-01701003> *

Protecting ancient heritage in armed conflict : new rules for targeting cultural property during conflict with ISIS

Hannah G. He. In: Maryland journal of international law, Vol. 30, issue 1, 2015, p. 168-190

This paper explores the protection offered to historic sites by international law and recommends new rules of engagement to protect these sites for future generations. The first part of the paper presents a brief overview of the development of the international customary law protecting property of cultural significance. Part II identifies the current threats to such sites, the motivations behind these threats, and how the international community has responded. Part III proposes ways to combat these types of threats.

<http://digitalcommons.law.umaryland.edu/mjil/vol30/iss1/12>

Protecting cultural property in non-international armed conflicts : Syria and Iraq

Louise Arimatsu and Mohbuba Choudhury. In: International law studies, Vol. 91, 2015, p. 641-698

The deliberate destruction by ISIS of religious and cultural property in both Syria and Iraq sparked widespread international condemnation and was described by UNESCO’s Director-General as constituting war crimes. Regrettably, the damage to and destruction of such property has become an all too common feature of the conflicts that have engulfed both States. The authors examine the legal obligations that apply to the parties in non-international armed conflict and the consequences of non-compliance. In light of the scale of the human suffering engendered by the conflicts, the authors first ask why international law protects such property in armed conflict.

<https://digital-commons.usnwc.edu/ils/vol91/iss1/19/>

Protecting cultural property in Syria : new opportunities for States to enhance compliance with international law ?

Polina Levina Mahnad. In: International review of the Red Cross, Vol. 99, no. 906, 2017, p. 1037-1074

The war in Syria has lasted for six years and has led to massive destruction and loss of life. Stymieing international peace efforts from the outset, there is increasing doubt that the conflict will reach a resolution or political settlement in the near future. This frustration has triggered an appetite among States, civil society and the international community for finite and concrete measures that can contribute to greater protection and compliance with international law. A recent constellation of events around the protection of cultural property appears to herald a shift in the response of the international community toward prescribing practical and actionable measures for third-party States. Drawing on the responsibility of third States “to respect and ensure respect for” international humanitarian law, this article examines the legal framework protecting cultural property and recent innovative protection responses that contribute to ensuring compliance with international law in Syria, short of military assistance and intervention.

<https://library.icrc.org/library/docs/DOC/irrc-906-mahnad.pdf>

Punir ensemble : les réactions militaires du 14 avril 2018 à l'emploi d'armes chimiques à Douma (Syrie)

Pierre d'Argent. In: *Annuaire français de droit international*, 64 (2018), p. 191-211

En réaction à l'emploi allégué d'armes chimiques à Douma en avril 2018, les Etats-Unis, la France et le Royaume-Uni ont mené un raid aérien visant à punir le gouvernement syrien et à le dissuader de recommencer. Cet article revient sur les éléments factuels relatifs à l'emploi allégué d'armes chimiques et son attribution au gouvernement syrien, ainsi que sur le débat concernant la licéité des frappes aériennes au regard du droit international et la configuration de l'éventuelle responsabilité internationale en découlant.

The responsibility to protect, and Syria

Alex Conte. - In: *The war report : armed conflict in 2013.* - Oxford : Oxford University Press, 2014. - p. 429-453

This chapter considers the United Nations principle of the "responsibility to protect" (R2P). It adopts a thematic and contextual approach, offering first an overview of the UN principle on R2P, including the UN Strategy on the implementation of the R2P. The UN principle is then examined in the context of protection in armed conflict, critiquing its restrictive approach to the "threshold crimes" that trigger the UN's conceptualization of R2P, and examining the boundaries of the principle's international dimensions. The final part of the chapter provides context by considering the applicability of R2P to the conflict in Syria, including both the failure of the Syrian government to fulfil its responsibilities and the inadequacy of the action by the international community to assuage the conflict or effectively discharge its commitments under the UN principle.

Russian mercenaries, state responsibility, and conflict in Syria : examining the Wagner group under international law

Michael A. Rizzotti. In: *Wisconsin international law journal*, Vol. 37, no. 3, p. 569-614

This article uses the involvement of the Wagner Group in the Syrian conflict as a case study to examine certain issues of legal significance raised by the use of Private Military Security Companies (PMSCs) in armed conflict, namely mercenarism under international humanitarian law and attribution under the law of state responsibility.

<https://repository.law.wisc.edu/s/uwlaw/media/304633>

Sailing close to the wind : human rights council fact-finding in situations of armed conflict : the case of Syria

Thilo Marauhn. In: *California Western international law journal*, Vol. 43, issue 2, Spring 2013, p. 401-459

The article evaluates the facts regarding the involvement of the United Nations Human Rights Council and the probability of development of an armed conflict due to Syria March 2011 event. It informs that the chaotic event started when youngsters wrote anti-government graffiti on the wall of their school in Dara'a, Syria. It informs that the Security Council reacted lately to the situation and without identifying rules of international law convicted human rights violations.

<https://scholarlycommons.law.cwsl.edu/cwilj/vol43/iss2/4>

Scorched earth in Syria : between crimes against humanity and genocide

Hilly Moodrick-Even Khen and Yael Siman. - In: *The Syrian war : between justice and political reality.* - Cambridge : Cambridge University Press, 2020. - p. 107-139

After eight devastating years, the armed conflict in Syria seems to be nearing its end, yet the humanitarian crisis is still ongoing. This is due to the enormous scale of international crimes, including war crimes, crimes against humanity, and genocide, characterising the conflict and committed by different parties to the conflict. This chapter discusses the commission of crimes against humanity and genocide since the beginning of the uprisings and focuses on a legal analysis of some of those crimes. The discussion of crimes against humanity in this chapter focuses on specific conduct and the two crimes most documented by the Commission of Inquiry on the

Syrian Arab Republic and by Human Rights Watch and Amnesty International: torture and extermination of prisoners in detention facilities of the Syrian government. Regarding genocide, this chapter surveys the evidence for the commission of genocide of the Yazidis by ISIS and focuses on the CoI Syria's factual and legal analysis.

Seeking international criminal justice in Syria

Annika Jones. In: *International law studies*, Vol. 89, 2013, p. 802-816

In light of the many and serious offences that have taken place during recent hostilities in Syria, the author concludes that prosecuting war crimes and crimes against humanity will require the use of both domestic and international courts. She contends that Syria's domestic courts have potential for greater impact within the Syrian population but could suffer from a lack of capacity and allegations of bias. The International Criminal Court (ICC) is suited for prosecuting high-profile perpetrators who may be more politically charged. However, since Syria is not a party to the Rome Statute there would be difficulties in bringing a Syrian case to the ICC. A UN Security Council referral is one solution, but some permanent members have expressed a lack of support for such a referral. An ad hoc international criminal justice tribunal, like that established for Yugoslavia or Rwanda, is a less attractive option than using the ICC, since it would still require a UN Security Council agreement, and would be less economically efficient. Finally, since war crimes and crimes against humanity are subject to universal jurisdiction, third-party State courts, could act, but they would likely encounter evidentiary difficulties. The author concludes that not only do both international and domestic courts seem necessary to ensure justice, but an involvement of international courts would also likely benefit Syria's domestic courts through the exchange of experience. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<https://digital-commons.usnwc.edu/ils/vol89/iss1/26/>

Siege warfare in Syria : prosecuting the starvation of civilians

Susan Power. In: *Amsterdam law forum*, Vol. 8, no. 2, Summer 2016, p. 1-22

This article examines the law governing siege warfare and its application to sieges enforced by parties to the Syrian conflict. In doing so, the article considers the classification of the conflict and questions whether the conflict has crystallized into an international armed conflict. It critically applies the laws of armed conflict to the ongoing sieges and examines the obligations of parties to the conflict in relation to humanitarian assistance and evacuation of civilians in sieged areas. Where humanitarian assistance is denied it explores the criminalization of the resulting starvation of civilians as war crimes, crimes against humanity and genocide.

<http://amsterdamlawforum.org/article/view/368>

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

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

Despite overwhelming evidence offered by States and other members of the international community, Russia has continued to deny the Syrian government's responsibility for numerous attacks on civilians. The author asserts that Russia is in violation of international law under the theory of State complicity, based on its repeated denial of the Syrian government's wrongdoing and its implicit encouragement of the regime's human rights atrocities. He then considers the legal consequences of finding Russia responsible under international law, as well as the prospects for holding Russia accountable.

https://harvardnsj.org/wp-content/uploads/sites/13/2018/01/5_Lawless_StateofComplicity-1.pdf

A step towards justice : current accountability options for crimes under international law committed in Syria

Mark Lattimer, Shabnam Mojtahedi and Lee Anna Tucker. - London : Ceasefire Centre for Civilian Rights : Syria justice and accountability centre, April 2015. - 33 p.

As the war in Syria enters its fifth year with no end in sight, the need to establish some form of accountability to address allegations of mass atrocities committed by both government forces and

armed opposition groups remains pressing. This is the first report to offer a detailed examination of the mechanisms available to deliver justice to the Syrian people while the conflict goes on. Drawing on comprehensive legal analysis, the joint report by the Ceasefire Centre for Civilian Rights and the Syria Justice and Accountability Centre (SJAC) evaluates the potential avenues towards securing accountability for war crimes and crimes against humanity in Syria, including massacres of civilians, indiscriminate aerial bombardment, enforced disappearances, systematic torture, rape, and the use of children in hostilities. While there are constraints on the current feasibility of the most prominent mechanisms, including domestic courts and the International Criminal Court, as well as alternative mechanisms such as hybrid tribunals, the use of foreign national courts remains open.

<https://syriaaccountability.org/library/a-step-towards-justice/>

Syria and the semantics of intervention, aggression and punishment : on "red lines" and "blurred lines"

Carsten Stahn. In: *Journal of international criminal justice*, Vol. 11, no. 5, December 2013, p. 955-977

The Syria crisis marked one of the greatest turns in the history of intervention. In late August and September 2013, military strikes were contemplated in response to the use of chemical weapons on 21 August 2013 against civilians near Damascus. Use of force was averted through an unexpected shift in diplomacy, i.e. Syria's agreement on the destruction of its chemical weapons and the adoption of a framework for disarmament, compliance and political settlement under Security Council Resolution 2118 (2013). In the discourse on intervention in Syria, it has been argued that the threat of the use of force constitutes a legitimate means to sanction violations of the ban on chemical weapons. This article challenges this assumption. The Syria debate folded criminal justifications into the rhetoric of intervention. Intervention was regarded as a threat and a potential means to achieve rationales of retribution. The author examines justifications invoked in relation to (i) regime accountability (Responsibility to Protect, 'humanitarian intervention', 'protection of civilians'); (ii) the 'punitive' and deterrence-based justification of intervention; and (iii) the semantics of 'aggression' and (iv) accountability strategies under Resolution 2118 (2013) to argue that use of force cannot and should not serve as a short cut to international justice or as a means of punishment. A new 'red line' regarding chemical weapons under Resolution 2118 (2013) should not detract from the need to address other categories of crimes in the Syrian conflict.

<http://jicj.oxfordjournals.org/content/11/5/955.full.pdf>

The Syrian armed conflict and its singular characteristics

by Yoram Dinstein. In: *Israel yearbook on human rights*, Vol. 46, 2016, p. 261-279

This article analyses the Syrian conflict from an IHL point of view. The author argues that while the situation is fluctuating from one week to another, a central element has not changed in more than five years: the armed conflict in Syria is and remains a non-international armed conflict (NIAC), notwithstanding the fact that the complex foreign interventions have occasionally presented a clear and present danger of its eventual transformation into an international armed conflict. Particular attention is given to the phenomenon of the so-called "Islamic State", which, according to the author, is the most peculiar attribute of the Syrian NIAC.

<https://doi.org/10.1163/9789004331181>

The Syrian civil war and the Achilles' heel of the law of non-international armed conflict

Tom Ruys. In: *Stanford journal of international law*, Vol. 50, issue 2, Summer 2014, p. 247-280

The insistence of the Assad regime on treating members of non-state armed groups as terrorists that may receive grave sentences, and even the death penalty, upon capture may go some way in explaining the endemic disregard for the laws of war by all parties in the Syrian civil war. It is broadly recognized that the threat of the death penalty for mere participation in hostilities greatly reduces the incentives for rebel groups to comply with the law of armed conflict. The central thesis of the present contribution is that, under certain conditions, non-state armed groups must be

granted combatant-like status without this being conditioned on the ad hoc consent of the de jure government. Clearly this position raises a host of questions, several of which were also raised during the 1949 Geneva Conference. If they were ultimately left unanswered at that time, the excesses of recent conflicts, such as that of Syria, stand as proof that the time is ripe to review.

<https://heinonline.org/HOL/Page?handle=hein.journals/stanit50&id=263> *

The Syrian conflict and the use of cultural property for military purposes

Jadranka Petrovic and Rebecca Hughes. - In: *Accountability for violations of international humanitarian law : essays in honour of Tim McCormack.* - New York ; London : Routledge, 2016. - p. 136-176

Jadranka Petrovic and Rebecca Hughes examine the normative implications of the belligerent use of the World Heritage List sites and other immovable cultural property for military purpose in the present day Syria. They highlight the magnitude of the Syrian cultural disaster, caused, inter alia, by the use of the ancient sites by the military on all side to the conflict and argue that despite the universal value of cultural property, relevant instruments of neither IHL nor ICL adequately address the question of the use of cultural property for military purposes, which in the Syrian context may result in allowing those in control of cultural property, and whose expose it to destruction or damage, to walk away with impunity. Since cultural property is precious, not just locally, but also across borders and across generations, Petrovic and Hughes urge that its protection must be a matter of high priority for the international community and call for the criminalisation of any use of cultural property for military purposes.

<https://www.taylorfrancis.com/books/e/9781315769554/chapters/10.4324/9781315769554-14> *

The Syrian crisis and the principle of non-refoulement

Mike Sanderson. In: *International law studies*, Vol. 89, 2013, p. 776-801

The author advocates for a comprehensive right of non-refoulement for Syrians escaping from a violent civil war to surrounding states. Non-refoulement is the right not to be forcibly returned to a territory where one's freedom is threatened. This right is endorsed by the 1951 Refugee Convention and the 1967 Protocol to the Convention, which are the two basic legal instruments for the protection of refugees. Unfortunately, only two of the five States currently receiving Syrian refugees are parties to these instruments and neither has implemented them comprehensively. However, the author explains that the available protection regime can be enhanced by virtue of the fact that non-refoulement is guaranteed by the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT). All five receiving States are parties to both conventions. The author also argues that the right of non-refoulement has attained the status of preemptory public international law and is a supervening international norm that must be adhered to by all receiving States as well as any others choosing to involve themselves in the Syrian conflict. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]

<https://digital-commons.usnwc.edu/ils/vol89/iss1/27/>

The Syrian war : between justice and political reality

Hilly Moodrick-Even Khen, Nir T. Boms and Sareta Ashraph. - Cambridge : Cambridge University Press, 2020. - XX, 315 p.

Starting as a civil uprising calling for liberal reforms in March 2011, the unrest in Syria rapidly deteriorated into a proxy-led armed conflict involving multiple state-sponsored and non-state actors, including foreign militias and local armed groups. The current state of affairs in Syria, and the uncertainty regarding its future, raise numerous questions for scholars and practitioners of both international law and politics about justice within the context of a changing political reality in Syria. This book contributes to the scholarship on the Syrian war, raising voices from the Middle East and beyond not often heard within this research context. The volume is divided into three sections: Part I sets the factual and legal framework for the Syrian conflict; Part II focuses on the implications of the conflict for the Syrian neighbourhood; and Part III analyses possible post-conflict scenarios. Together, they address the key themes and questions of the conflicts.

Syria's world cultural heritage and individual criminal responsibility

Marina Lostal. In: *International review of law*, Vol. 2015, issue 1, January 2015, 17 p.

Recent reports have confirmed damage to five of the six Syrian world heritage sites during the current armed conflict as well as extensive looting of several of its archaeological sites on the Syrian Tentative List of world heritage. This article examines the role and fate of Syrian world cultural heritage from the beginning of the conflict, maps out the different cultural property obligations applicable to Syria while illustrating, where possible, how they may have been violated. Then, it assesses if and how those responsible for these acts can be prosecuted and punished. The analysis reveals an accountability gap concerning crimes against Syrian world cultural heritage. As such, the article proposes to reinstate the debate over crimes against common cultural heritage which once arose in the context of the Buddhas of Bamiyan.

<http://dx.doi.org/10.5339/irl.2015.3>

Targeting "Islamic State" oil facilities

Kenneth Watkin. In: *International law studies*, Vol. 90, 2014, p. 499-513

In September 2014 the United States and Coalition partners conducted aerial attacks against several Islamic State-operated modular oil refineries in Syria. The Pentagon's rationale is that the refineries provided fuel for Islamic State operations, money to finance continued attacks and constituted an economic asset to support future operations. Attacking the oil production facilities to stop the sale of smuggled oil, the proceeds of which "fuel" Islamic State activities is potentially controversial. Additional Protocol I limits attacks to those objects that "make an effective contribution to military action." The U.S. position is that "war-sustaining objects" may also be lawfully targeted, thus including a much broader justification for the use of force. The article examines the issue of where to draw the line between objects being struck and the military activity of the Islamic State, as well as a number of other targeting issues.

<https://digital-commons.usnwc.edu/ils/vol90/iss1/16/>

Trying to make sense of the senseless : classifying the Syrian war under the law of armed conflict

David Wallace, Amy McCarthy, and Shane R. Reeves. In: *Michigan State international law review*, Vol. 25, no. 3, 2017, p. 555-594

This article examines the issue of the classification of the conflict taking place in Syria. The article begins with a brief historical background section. Sections on the various state and non-state actors battling within Syria as well as a general overview of how conflicts are classified under international law follow. The article concludes with a classification determination for the Syrian hostilities and a reminder that all parties to the conflict are obligated to comply with the law of armed conflict.

<https://digitalcommons.law.msu.edu/ilr/vol25/iss3/2>

Understanding and preventing attacks on health facilities during armed conflict in Syria

Abdulaziz Omar. In: *Risk management and healthcare policy*, No. 13, 2020, p. 191-203

Despite healthcare facilities being deemed untouchable in times of conflict, the war in Syria has seen its government as well as opposition forces, target their people and infrastructure as a strategy of war. Violations of medical neutrality and international humanitarian law has led to the loss of countless medical personnel, civilians and health care facilities; setting the country back to health levels last seen thirty years ago. It is evident through the strategy of the Syrian and Russian government that healthcare facilities are being deliberately targeted with humanitarian organizations condemning all parties involved for violating the Geneva Conventions. The report examines the impact of the conflict in Syria on its health facilities and looks at the reasons why these services are under attack and the international response to the conflict. The report concludes by looking into plans currently implemented to protect our healthcare infrastructure during times of war whilst comparing it to past strategies.

<https://doi.org/10.2147/RMHP.S237256>

Use of chemical weapons in the Syrian conflicts and under international law

Stuart Casey-Maslen and Marina Mattiolo. - In: *The war report : armed conflict in 2013.* - Oxford : Oxford University Press, 2014. - p. 297-316

After a quick review of chemical warfare in history, this chapter addresses the use of chemical weapons in Syria, looking at the status and content of international legal norms governing chemical warfare, particularly in non-international armed conflict (NIAC).

What if Goliath killed David ? : the coalition to counter ISIS and the status and responsibility of ISIS' child soldiers

Samantha Bradley. In: *American university international law review*, Vol. 33, no. 3, 2018, p. 571-604

A coalition of international states is currently engaged in military operations against the Islamic State in Iraq and Syria (ISIS). ISIS employs child combatants as it does adult combatants, with an estimated 1500 persons under eighteen years old serving as of late 2016. This raises two significant legal questions, under three areas of law— International Humanitarian Law (IHL); International Human Rights Law (IHRL); and, International Criminal Law (ICL), the enforceability mechanism of IHL, customary law, and specific international criminal law instruments. The first question raised is this: what is the status of ISIS' more than 1500 child soldiers, and how should coalition forces legally regard them? The second question is one of speculative post-conflict transitional justice. ISIS has published propaganda footage of its child soldiers committing executions and bombings. Post-conflict, what will be the culpability of ISIS' former child soldiers under international law?

http://auilr.org/wp-content/uploads/2018/09/auilr_33n3_issue_low.pdf

Young terrorists or child soldiers ? : ISIS children, international law and victimhood

Conrad Nyamutata. In: *Journal of conflict and security law*, Vol. 25, no. 2, Summer 2020, p. 237-261

Since the Syrian conflict broke out, a significant number of Western citizens travelled to the warzone to join the Islamic State of Iraq and Syria (ISIS). By common definitions, some of the persons travelled as 'children'. However, since the defeat of ISIS, Western countries are facing a conundrum on how to treat these young former fighters. The status of these children has been contentious. Among the Western countries, there does not seem to be a clear position or consistent approach on how such children should be treated. It would appear that the approaches towards the dilemma on these young persons have, predominantly, been dictated by the political whims of individual states. Generally, the children have been regarded as young 'terrorists' likely to pose danger to Western societies if repatriated back. However, the perceptions and actions towards these minors seem to depart from the normative approaches to children associated with armed conflict. The widely reported case of British teenager Shamima Begum shone the spotlight on the predicaments of children formerly associated with ISIS. This article makes a case for the treatment of ISIS-associated children to be considered as child soldiers. When analysed closely, these children deserve protections accorded to all children recruited for purposes of warfare. Recent case law seems to imply that such protection does not cease even after the age of 18 years. All considered, the denial of repatriation appears inimical to normative standards on children associated with armed conflict. Furthermore, the approaches of some of the Western countries could be vulnerable to criticism for violation of the rule of law. The arbitrary revocation of citizenship and barring of returns appear starkly in conflict with norms of natural justice. With this in mind, this article asserts that a consistent approach would require the Western approaches to treat ISIS-associated children as victims first and accord them protections recognised in international law.

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