

**Click on "CHAPTER BIBLIOGRAPHY" or "SPECIFIC BIBLIOGRAPHY" to see content**

## ^ CHAPTER BIBLIOGRAPHY

- ICRC, *Integrating the Law*, Geneva, ICRC, May 2007, 43 pp.
- ICRC, *The Domestic Implementation of IHL, A Manual*, ICRC, Geneva, 2015, 534 pp.
- KALSHOVEN Frits, "Part 5, Compliance and Enforcement", in KALSHOVEN Frits, *Reflections on The Law of War: Collected Essays*, Leiden, Boston, Brill, Nijhoff, 2007, pp. 593-737.
- SCHMITT Michael N. & HEINTSCHEL VON HEINEGG Wolff, *The Implementation and Enforcement of International Humanitarian Law*, London, New-York, Routledge, 2012, 530 pp.
- VOENEKY Silja, "Implementation and Enforcement of International Humanitarian Law", in FLECK Dieter (ed.), *The Handbook of International Humanitarian Law*, 4<sup>th</sup> ed. (forthcoming), Oxford, OUP, 2020, 117 pp.

## Introduction

### ^ CASES AND DOCUMENTS

- UN, Resolutions and Conference on Respect for the Fourth Convention [Part G.II.3]

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- DRAPER Gerald I.A.D., "The Implementation and Enforcement of the Geneva Conventions of 1949 and of the Two Additional Protocols of 1977", in *Collected Courses of the Hague academy of international law*, Vol. 164, 1979, pp. 5-54.
- European commission humanitarian office, *Law in Humanitarian Crises, Volume 1: How Can International Humanitarian Law Be Made Effective in Armed Conflicts?*, Luxembourg, Office for Official Publications of the European Communities, 1995, 384 pp.
- SANDOZ Yves, *Implementing International Humanitarian Law*, Geneva, Henry-Dunant Institute, 1995, 28 pp.

- WEISSBRODT David & HICKS Peggy, “Implementation of Human Rights and Humanitarian Law in Situations of Armed Conflicts”, in *IRRC*, No. 293, March-April 1993, pp. 120-138.

#### Further reading:

- AKANDE Dapo & GILLARD Emanuela-Chiara, “Promoting compliance with the rules regulating humanitarian relief operations in armed conflict: some challenges”, in *Israel Law Review*, Vol. 50, No. 2, 2017, pp. 119-137.
- APUULI Kasajja Phillip, “The International Conference on the Great Lakes Region (ICGLR) and the Implementation of International Humanitarian law (IHL) in the Great Lakes Region”, in *Uganda’s Paper Series on International Humanitarian Law*, Vol. 1, No. 1, 2013, pp. 49-70.
- BACHMANN Sascha-Dominik, BOWRING Bill & HANKEL Gerd, “Implementation of International Humanitarian Law”, in QUENIVET Noëlle & SHAH-DAVIS Shilan, *International law and armed conflict: Challenges in the 21<sup>st</sup> century*, The Hague, TMC Asser Press, 2010, pp. 287-315.
- CAMERON Lindsey, DEMEYERE Bruno, HENCKAERTS Jean-Marie, LA HAYE Eve & NIEBERGALL-LACKNER Heike, “The updated Commentary on the First Geneva Convention – a new tool for generating respect for international humanitarian law”, in *IRRC*, Vol. 97, No. 900, 2016, 1209-1226.
- DOSWALD-BECK Louise, “Implementation of International Humanitarian Law in Future Wars”, in *International Law Studies, US Naval War College*, Vol. 71, 1998, pp. 39-75.
- EVANGELISTA Matthew & TANNENWALD Gina, *Do the Geneva Conventions Matter?*, Oxford, OUP, 2017, 376 pp.
- FLECK Dieter, “Law Enforcement and the Conduct of Hostilities: Two Supplementing or Mutually Excluding Legal Paradigms?”, in *Frieden in Freiheit = Peace in Liberty = Paix en liberté : Festschrift für Michael Bothe zum 70 Geburtstag*, Baden-Baden, Nomos; Zürich, Dike, 2008, pp. 391-407.
- GRIGNON Julia, “Les commentaires des Conventions de Genève rédigés sous la direction de Jean Pictet”, in GRIGNON Julia (dir.), *Hommage à Jean Pictet*, Zürich, Cowansville, Schulthess, Yvons Blais, 2016, pp. 127-152.
- HENCKAERTS Jean-Marie, “Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict”, in *IRRC*, Vol. 87, No. 855, 2005, pp. 171-212.
- KALSHOVEN Frits & SANDOZ Yves (eds), *Implementation of International Humanitarian Law Research Papers by Participants in the 1986 Session of the Centre for Studies and Research in International Law and International Relations of the Hague Academy of International Law*, Dordrecht, London, M. Nijhoff, 1989, 472 pp.
- GREEN Leslie C., “Enforcement of the Law in International and Non-International Conflicts – The Way Ahead”, in *Denver Journal of International Law and Policy*, Vol. 24, 1996, pp. 285-320.
- KELISIANA Thynne, “Implementation of International Humanitarian Law in Southeast Asia: Challenges in the Prevention of Violations”, in LINTON Suzannah, McCORMACK Tim McCormack & SIVAKUMARAN Sandesh, *Asia-Pacific Perspectives on International Humanitarian Law*, Cambridge, Cambridge University Press, 2019, pp. 688-702.

- PETROVIC Jadranka (ed.), *Accountability for Violations of International Humanitarian Law, Essays in Honour of Tim McCormack*, Routledge, 2017, 344 pp.
- ROBERTS Adam, “The Laws of War: Problems of Implementation in Contemporary Conflicts”, in *Law in Humanitarian Crises: How Can International Humanitarian Law Be Made Effective in Armed Conflicts?*, Luxembourg, Office for Official Publications of the European Communities, 1995, pp. 13-82.
- SASSÒLI Marco, “The Implementation of International Humanitarian Law: Current and Inherent Challenges”, in *YIHL*, Vol. 10, 2009, pp. 45-73.
- STEWART Darren, “Maximising Compliance with IHL and the Utility of Data in an Age of Unlimited Information: Operational Issues”, in SAXON Dan (ed.), *International Humanitarian Law and the Changing Technology of War*, Leiden, Boston, Brill, Nijhoff, 2013, pp. 171-186.

## I. Problems in the implementation of international law in general and international humanitarian law specifically

### Introductory text

The general mechanisms of international law to ensure respect and to sanction violations are even less satisfactory and efficient regarding International Humanitarian Law (IHL) than they are for the implementation of other branches of international law. In armed conflicts, they are inherently insufficient and in some cases even counter-productive.

In a society made up of sovereign States, enforcement is traditionally decentralized, which therefore gives an essential role to the State that has been or may be the victim of a violation. Other States may choose to support the injured State, according to their interests – which should include the general interest of every member of that society to have its legal system respected.

This decentralized structure of implementation is particularly inappropriate for the IHL applicable to armed conflicts, for the following reasons. First, it would be truly astonishing if disputes arising out of violations of IHL were to be settled peacefully, at least in international armed conflicts. Indeed, IHL applies between two States because they are engaged in an armed conflict, which proves that they are unable to settle their disputes peacefully.

Second, a State can be directly injured by a violation of IHL committed by another State only in international armed conflicts.<sup>[1]</sup> In such conflicts the injured State has the most unfriendly relationship imaginable with the violating State: armed conflict. It therefore lacks the many means of preventing or reacting to a violation of international law that usually ensure that international law is respected. In traditional international law, the use of force was the most extreme reaction available to the injured State. Today it is basically outlawed except in reaction to a prohibited use of force. In addition, a State injured by a violation of IHL logically no longer has the option to react by using force because such a violation can occur only in an armed conflict, namely, where the two States are already using force. The only reaction still available to the injured State

within the traditional structure of law enforcement in international society would be an additional use of force consisting of a violation of IHL itself. While such reciprocity or fear of such reprisals may contribute to respect for IHL, reprisals have themselves been largely outlawed because they lead to a vicious circle, a “competition of barbarism”, and hurt the innocent, precisely those whom IHL wants to protect.

Third, in the face of an armed conflict between two States, third States may have two reactions. They can take sides for reasons which are either purely political or, if related to international law, derive from *jus ad bellum*. They will therefore help the victim of the aggression, independently of who violates the *jus in bello*. Other third States may choose not to take sides. As neutrals they can help ensure respect for IHL, but they will always take care to ensure that their engagement for respect for IHL will not affect their basic choice not to take sides.

This traditional decentralized method of implementing international law is today supplemented – and tends to be partially superseded – by the more centralized enforcement mechanisms provided for in the UN Charter. The UN enforcement mechanisms can be criticized as frail and politicized, but come closest to what one could wish to have as an international law enforcement system. However, besides being weak, driven by power more than by the rule of law and frequently applying double standards, this system is inherently inappropriate for the implementation of IHL. One of its supreme goals is to maintain or restore peace, that is, to stop armed conflicts, while IHL applies to armed conflicts. Hence, the UN has an obligation to give precedence to respect for *jus ad bellum* over respect for *jus in bello*. It cannot possibly respect the principle of equality of the belligerents before *jus in bello*. It cannot apply IHL impartially. Furthermore, the most extreme enforcement measure of the UN system, namely the use of force, is itself an armed conflict to which IHL must apply. Similarly, economic sanctions, which constitute the next strongest measure under the UN Charter, should be considered with care when used as a measure to ensure respect for IHL, as they often provoke indiscriminate human suffering.

Given the shortcomings of the general enforcement mechanisms, IHL had to provide many specific mechanisms of its own and adapt general mechanisms to the specific needs of victims of armed conflicts. Far earlier than other branches of international law, it had to overcome one of the axioms of the traditional international society and provide enforcement measures directed against the individuals violating it, and not only against the State responsible for those violations. For this reason, and also in order to take advantage of the relatively more efficient and organized national law enforcement systems, IHL had to make sure that its rules were known and integrated into national legislation. It recognized that the International Committee of the Red Cross, an external independent and impartial body that had already promoted its codification, had a particular role to play in its implementation. IHL also adapts the traditional mechanism of good offices through the codification of the Protecting Power system. Lastly, it specifies that the obligations it sets forth are obligations *erga omnes* by obliging every State Party to ensure respect by other States Parties – without specifying what that means.

The specific mechanisms established by IHL nevertheless remain embedded in the general mechanisms. They can only be understood within the general framework as developments or correctives of the general mechanisms. IHL is certainly not a self-contained system.[2] General mechanisms remain available alongside specific ones, for instance the methods for the peaceful settlement of disputes and the measures provided by the law of State responsibility – except those specifically excluded by IHL,[3] those incompatible with its purpose and aim and those general international law permits only as a reaction to certain kinds of violations.[4]

However, even the general and the specific mechanisms taken together cannot guarantee a minimum of respect for the individual in a situation of armed conflict. This can only be achieved through education, when everyone understands that in armed conflicts, even one's worst enemy is a human being who deserves respect.

## FOOTNOTES

- [1] Legally, however, for the purpose of triggering the rules of State responsibility and taking the counter-measures it foresees, every other State party to the treaties of International Humanitarian Law might be considered as injured by its violations. This may be seen as resulting from the specific provision in Art. 1 common to the Conventions and Protocol I. See however the much more limited concept of injured State adopted by the International Law Commission in Art. 42 of the Draft Articles on State Responsibility [See International Law Commission, *Articles on State Responsibility* [Part A., Arts 42 and 48]].
- [2] As are, according to the International Court of Justice, the rules on diplomatic and consular relations (See Case on United States Diplomatic and Consular Staff in Tehran, Judgement of 24 May 1980, ICJ Reports 1980, pp. 4 ff., paras 83-87).
- [3] Thus, International Humanitarian Law prohibits reprisals against protected persons.
- [4] Thus the use of force is under the UN Charter a lawful reaction, in the form of individual or collective self-defence, only to an armed aggression and not to any other violation of international law.

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BENVENUTI Paolo & BARTOLINI Giulio, "Is there a need for new international humanitarian law implementation mechanisms?", in KOLB Robert & GAGGIOLI Gloria, *Research Handbook on Human Rights and Humanitarian Law*, Cheltenham, Northampton, Edward Elgar, 2013, pp. 590-627.
- GARRAWAY Charles, "Armed Conflict and Law Enforcement: Is There a Legal Divide?", in MATTHEE Marielle, TOEBES Brigit & BRUS Marcel (eds.), *Armed Conflict and International Law: In Search of the Human Face. Liber Amicorum in Memory of Avril McDonald*, The Hague, TMC

### Further reading:

- SASSÒLI Marco & GRIGNON Julia, “Les limites du droit international pénal et de la justice pénale internationale dans la mise en œuvre du droit international humanitaire”, in BIAD Abdelwahab & TAVERNIER Paul, *Le droit international humanitaire face aux défis du XXIe Siècle*, Brussels, Bruylant, 2012, pp. 133-154.

## II. Measures to be taken in peacetime

### Introductory text

Just as the preparations for the military and economic aspects of a possible armed conflict are made in peacetime, so must the groundwork for the humanitarian aspects, in particular respect for IHL, be laid before war breaks out. Soldiers – whatever their rank or responsibilities – need to be properly instructed in peacetime, i.e. not only by informing them of and explaining the rules but also by integrating the latter into routine training and manoeuvres in order to instil automatic reflexes. Without such training, the often very detailed rules of IHL regulating the various problems appearing in armed conflicts – and their delicate interplay with International Human Rights Law – will never be respected in armed conflicts.

Similarly, the whole population must have a basic understanding of IHL in order to realize that even in armed conflicts, certain rules apply independently of who is right and who is wrong, protecting even the worst enemy. Once an armed conflict, with all the hatred it feeds on and stirs, has broken out, it is often too late to teach this message. Thus, police forces, civil servants, politicians, diplomats, judges, lawyers, journalists, students who will fulfil those tasks in the future, and the public at large must know the limits constraining everyone's actions in armed conflicts, the rights everyone may claim in armed conflicts, and how international and national news about armed conflicts has to be written, read and treated from a humanitarian perspective.

[5]

Preparatory measures also include translating IHL instruments into national languages. Furthermore, if a constitutional system requires rules of international treaties to be transformed by national legislation into the law of the land for those rules to be applicable, such legislation must obviously already be adopted in peacetime.

In every constitutional system, moreover, implementing legislation is necessary to enable the national law enforcement system to apply the many non-self-executing rules of IHL. Owing not only to the length of any legislative process and the other priorities pressing upon a parliament when a war breaks out but also because courts have to be able to sanction war crimes in foreign conflicts and the misuses of the emblem in peacetime, such legislation must be adopted as soon as the State becomes a party to the relevant

instrument.[6]

Finally, certain practical measures must be taken by States for them to be able to respect IHL. Qualified personnel and legal advisors have to be trained in peacetime so as to be operational in wartime.[7]

Combatants and certain other persons need identity cards or tags to be identifiable,[8] and these can obviously not be produced only when a conflict breaks out. Military objectives have to be separated, as far as possible, from protected objects and persons.[9] It is evident that a hospital, for example, cannot be whisked away from army barracks or a weapons factory when an armed conflict breaks out.

## ^ CASES AND DOCUMENTS

- ICRC, Advisory Services on International Humanitarian Law
- ICRC, Protection of War Victims [Para. 2.2]
- Ivory Coast, National Interministerial Commission
- Switzerland, Voluntary Report on Implementation of IHL

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BOTHE Michael, MACALISTER-SMITH Peter & KURZIDEM Thomas (eds), *National Implementation of International Humanitarian Law*, Dordrecht/Boston/London, M. Nijhoff, 1990, 286 pp.
- DJIBRIL Ly, “La mise en œuvre du droit international humanitaire: les obligations étatiques”, in *Études internationales*, Vol. 72/3, 1999, pp. 113-130.
- ICRC, *Enhancing Protection in Armed Conflict through Domestic Law and Policy*, Fourth Universal Meeting of National Committees of IHL, Conference overview, ICRC, Geneva, 2017, 84 pp.

### Further reading:

- DRAPER Gerald I.A.D., “The Implementation and Enforcement of the Geneva Conventions of 1949 and of the Two Additional Protocols of 1977”, in *Collected Courses*, Vol. 164/3, 1979, pp. 1-54.
- DUTLI Maria Teresa, “Implementation of International Humanitarian Law – National Measures”, in *IRRC*, No. 302, September-October 1994, pp. 464-518.
- FLECK Dieter, “Implementing International Humanitarian Law: Problems and Priorities”, in *IRRC*, No. 281, March-April 1991, 13 pp.
- ICRC & League of Arab States, *Eighth periodic report on the implementation of international humanitarian law at the level of Arab States 2015 – 2018*, Geneva, ICRC, 2019, 138 pp.
- KÜNTZIGER Isabelle, “Le droit international humanitaire au plan national : impact et rôle des Commissions nationales”, in *IRRC*, No. 846, June 2002, pp. 489-494.
- OFFERMANS Marc, “The Belgian Interdepartmental Commission for Humanitarian Law”, in *IRRC*,

No. 281, March-April 1991, pp. 154-166.

- PELLANDINI Cristina (ed.), *Committees or other National Bodies for International Humanitarian Law: Report of the Meeting of Experts: Geneva, 23-25 October 1996*, Geneva, ICRC, March 1997, 130 pp.
- SPOERRI Philip, "From Dissemination towards Integration – An ICRC Perspective", in *The Military Law and the Law of War Review*, Vol. 52, No. 1, 2013, pp. 113-123.
- UK Foreign and Commonwealth Office, *Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level*, London, United Kingdom Government, 2019, 51 pp.

## 1. Dissemination

GC I-IV, Arts 47/48/127/144 respectively; P I, Arts 83, 87(2) and 89; P II, Art. 19

### ^ CASES AND DOCUMENTS

- Romania, Voluntary Report
- ICRC, Protection of War Victims [Para. 2.3]
- ICRC, Disintegration of State Structures

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- BERNARD Vincent & NIKOLOVA Mariya, "Generating respect for the law: the need for persistence and imagination", in *Tribute to Jean Pictet*, Editions Yvon Blais, 2016
- HARROFF-TAVEL Marion, "Promoting Norms to Limit Violence in Crisis Situations: Challenges, Strategies and Alliances", in *IRRC*, No. 322, March 1998, pp. 5-20.
- IRRC, "Dissemination: spreading knowledge of humanitarian rules", in *IRRC*, Vol. 37, No. 319, 1997, pp. 353-464.

- a. **instruction to the armed forces** [CIHL, Rule 142] aa) military manuals bb) integration into rules of engagement cc) practice-oriented instruction: integration of IHL into manoeuvres dd) integration into regular training, by the military hierarchy ee) integration of International Human Rights Law (in particular on law enforcement, as armed forces are increasingly used in law enforcement operations and as it becomes increasingly difficult to distinguish law enforcement operations from the conduct of hostilities)

### ^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- China, Military Writings of Mao Tse-Tung



- Nigeria, Operational Code of Conduct
- Israel, Report of the Winograd Commission [Paras 20, 21 and 52]
- Sri Lanka, Conflict in the Vanni [Para. 10]
- Afghanistan, Assessment of ISAF Strategy
- ECHR, Isayeva v. Russia [Paras 97 and 166]

## ^ READINGS

### Suggested reading:

- CARSWELL Andrew, "Converting treaties into tactics on military operations", in *IRRC*, Vol. 96, No. 895/896, 2015, pp. 919-942.
- HAMPSON Françoise, "Fighting by the Rules: Instructing the Armed Forces in Humanitarian Principles", in *IRRC*, No. 269, March-April 1989, pp. 111-124.
- ICRC, *Handbook on International Rules Governing Military Operations*, Geneva, ICRC, 2013, 464 pp.
- MULINEN Frédéric de, *Handbook on the Law of War for Armed Forces*, Geneva, ICRC, 1989, 232 pp.

### Further reading:

- BESSON DE VEZAC Marie-Pierre, "La diffusion du droit international humanitaire au sein des forces armées françaises", in *RDMDG*, Vol. 36/3-4, 1997, pp. 43-72.
- DINSTEIN Yoram, "Comments on the UK Manual of the Law of Armed Conflict", in *Frieden in Freiheit = Peace in Liberty = Paix en liberté: Festschrift für Michael Bothe zum 70 Geburtstag*, Baden-Baden, Nomos; Zürich, Dike, 2008, pp. 375-390.
- HOFFMAN Michael H., "Can Military Manuals Improve the Law of War? The San Remo Manual on the Law of Non-International Armed Conflict Considered in Relation to Historical and Contemporary Trends", in *IYHR*, Vol. 37, 2007, pp. 241-258.
- PRESCOTT Jody M., "Training in the Law of Armed Conflict: a NATO Perspective", in *Journal of Military Ethics*, Vol. 7, No. 1, 2008, pp. 66-75.
- ROBERTS David L., "Training the Armed Forces to Respect International Humanitarian Law: The Perspective of the ICRC Delegate to the Armed and Security Forces in South Asia", in *IRRC*, No. 319, July-August 1997, pp. 433-446.

### a. training of police forces

## ^ READINGS

### Suggested reading:

- ROVER Cees de, revised and updated by BIENERT Anja, *To Serve and to Protect: Human rights and humanitarian law for police and security forces*, 2<sup>nd</sup> ed., Geneva, ICRC, 2017, 440 pp.

#### Further reading:

- BAM Narendra, SHRESTHA Raju & MAHARJAN Ram Krishna, “Importance of International Humanitarian Law (IHL) Training in Armed Police Force, Nepal”, in *Journal of APF Command and Staff College*, Vol. 3, No. 1, 2020, pp. 116-119.
- OHCHR, *United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement*, Geneva Academy, Geneva, 2019, 33 pp.

#### a. university teaching (See also Some Remarks on Teaching International Humanitarian Law)

### ▸ READINGS

#### Suggested reading:

- BOUVIER Antoine, “Diffusing and Teaching International Humanitarian Law”, in *Refugee Survey Quarterly*, Vol. 21/3, 2002, pp. 175-180.
- HAMPSON Françoise, “Teaching the Law of Armed Conflict”, in *Essex Human Rights Review*, Vol. 5, No. 1, July 2008.
- KUSTER Etienne, “Promoting the Teaching of IHL in Universities: Overview, Successes and Challenges of the ICRC’s Approach”, in Dražan Djukić and Niccolò Pons (Eds.), *The Companion to International Humanitarian Law, International Humanitarian Law Series*, Vol. 55, Brill, 2018, pp. 3-38.
- QUINTIN Anne (Mod.), SASSÒLI Marco, CLAPHAM Andrew, VIAS GVIRTZMAN Yael & BRENNINKMEIJER Olivier, *Creating and teaching IHL courses*, ICRC, 2018.

#### Further reading:

- BOUVIER Antoine A. & SAMS Katie, “Teaching International Humanitarian Law in Universities: the Contribution of the International Committee of the Red Cross”, in *YIHL*, Vol. 5, 2002, pp. 381-393.
- DEYRA Michel & LANORD Christophe, “Quelques aspects de l’impact du Concours Jean-Pictet”, in GRIGNON Julia (dir.), *Hommage à Jean Pictet*, Zürich, Cowansville, Schulthess, Yvons Blais, 2016, pp. 3-16.
- HEINSH Robert & CHEVALIER Lotte, “The educational value of international humanitarian law clinics: the examples of Leiden and Bochum”, in *Humanitäres Völkerrecht = Journal of international law of peace and armed conflict*, Vol. 1, No. 3-4, 2018, pp. 225-240.
- KRAFFT Mathias-Charles, “Le Concours Jean-Pictet 1999 – ou les pièges d’une ‘Conférence internationale pour la protection des victimes des conflits armés’”, in *IRRC*, No. 838, June 2000, pp. 501-506.
- LANORD Christophe & DEYRA Michel, “Dissemination in Academic Circles: The Jean Pictet

Competition”, in *IRRC*, No. 306, May-June 1995, pp. 341-346.

a. **dissemination in civil society** [CIHL, Rule 143]

## ^ CASES AND DOCUMENTS

- ICRC/Geneva Call, Dissemination of IHL using I.T

## ^ READINGS

### Suggested reading:

- BAERISWYL Edith, “Teaching Young People to Respect Human Dignity – Contribution of the International Red Cross and Red Crescent Movement”, in *IRRC*, No. 319, July-August 1997, pp. 357-371.
- TAWIL Sobhi, “International Humanitarian Law and Basic Education”, in *IRRC*, No. 839, September 2000, pp. 581-600.

### Further reading:

- CASTILLO Frida, *Playing by the Rules: Applying International Humanitarian Law to Video and Computer Games*, Geneva, Zürich, TRIAL, Pro Juventute, 2009, 46 pp.
- FARELL Norman, “Dissemination in Bosnia-Herzegovina: Lessons Learned”, in *IRRC*, No. 319, July-August 1997, pp. 409-420.
- ICRC, *Exploring Humanitarian Law: IHL Guide: A Legal Manual for EHL Teachers*, Geneva, ICRC, January 2009, 26 pp.
- ROSENZWEIG Ido, “Promoting respect for IHL by NGOs: The case of ALMA – Association for the Promotion of IHL”, in *IRRC*, Vol. 96, No. 895/896, 2014, pp. 1029-1042.

## 2. Translation (if necessary)

## 3. Transformation (if necessary) into domestic legislation

## ^ CASES AND DOCUMENTS

- Canada, Crimes Against Humanity and War Crimes Act
- United Kingdom, Interpreting the Act of Implementation
- India, Rev. Mons. Monteiro v. State of Goa
- Israel, Cases Concerning Deportation Orders
- Chile, Prosecution of Osvaldo Romo Mena [Paras 9 and 10]

- South Africa, AZAPO v. Republic of South Africa [Paras 26 and 27]
- Russia, Constitutionality of Decrees on Chechnya

## ^ READINGS

### Suggested reading:

- BERGSMO Morten, HARLEM Mads & HAYASHI Nobuo (eds), *Importing Core International Crimes into National Criminal Law*, Oslo, International Peace Research Institute, 2007, 84 pp.

### Further reading:

- HARLAND Christopher B., "Domestic Reception of International Humanitarian Law: UK and Canadian Implementing Legislation", in WATERS Christopher P. M., *British and Canadian Perspectives on International Law*, Leiden, Boston, M. Nijhoff, 2006, pp. 29-51.
- MEYER Michael A. & ROWE Peter, "The Geneva Conventions (Amendments) Act 1995: A Generally Minimalist Approach", in *ICLQ*, Vol. 45/2, 1996, pp. 476-484.

## 4. Legislation for application

### Introductory text

In monist constitutional systems (most countries with the exception of those with an English constitutional tradition, Germany and Italy), IHL treaty rules are immediately applicable by judges and the administration. Specific national implementing legislation is thus not necessary. In all constitutional systems this is also the case for customary rules. However, this direct application is only possible for "self-executing" provisions of international treaties, i.e. rules that are sufficiently precise to provide a remedy in a given case. For all other IHL rules, and in dualist constitutional systems, national legislation must be adopted to make the rules operational.[10]

Even in countries in which the description of grave breaches in IHL instruments is considered to be sufficiently precise, no one can be punished for such behaviour by national courts unless the penalties have been stipulated in national legislation – otherwise the principle *nulla poena sine lege* would be violated. Furthermore, only national legislation can integrate those rules into the very different traditions of penal law concerning, for example, the elements of crime, defences, and inchoate or group criminality. Only national legislation determines which courts, military or civil, are competent to try violations and which national prosecutor and judge can effectively enforce the State's obligation to apply universal jurisdiction over war criminals, to extradite them or to provide mutual assistance in such criminal matters, including to international tribunals.[11]

IHL prescribes who may use the emblem of the red cross, the red crescent or the red crystal in peacetime

and in wartime, on which objects and in which circumstances, with the permission and under the control of the competent authority. Only national legislation can prescribe who this competent authority is and provide the necessary details.[12]

More generally, where IHL prescribes an obligation for the State to act, only national legislation can clarify who in the State, in a federal State or within a central administration, has to act. Without such a clarification, the international obligation will remain a dead letter – and will therefore be violated when it becomes applicable. National legislation is therefore the cornerstone of implementation of IHL.

## ^ CASES AND DOCUMENTS

- United States, Use of medical helicopter to target protesters
- Germany, International Criminal Code
- Canada, Crimes Against Humanity and War Crimes Act
- United Kingdom, Interpreting the Act of Implementation
- United States, The US Plan to Mitigate Civilian Harm in Armed Conflicts

## ^ READINGS

### Suggested reading:

- BOTHE Michael, “The Role of National Law in the Implementation of International Humanitarian Law”, in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, Geneva, ICRC, The Hague, M. Nijhoff, 1984, pp. 301-312.
- ICRC & IPU, *International Humanitarian Law - Handbook for Parliamentarians*, Geneva, IPU, ICRC, 2016, 132 pp.

### Further reading:

- BERMAN Paul, “The ICRC’s Advisory Service on International Humanitarian Law: The Challenge of National Implementation”, in *IRRC*, No. 312, May-June 1996, pp. 338-347.
- MEYER Michael A. & ROWE Peter, “The Geneva Conventions (Amendments) Act 1995: A Generally Minimalist Approach”, in *ICLQ*, Vol. 45/2, 1996, pp. 476-484.
- MEYER Michael A. & ROWE Peter, “Ratification by the United Kingdom of the 1977 Protocols Additional to the Geneva Conventions of 1949: Selected Problems of Implementation”, in *Netherlands International Law Quarterly*, Vol. 45/4, 1994, pp. 343-363.

### a. self-executing and non-self-executing norms of IHL

## ^ CASES AND DOCUMENTS

- United Kingdom, Interpreting the Act of Implementation
- India, Rev. Mons. Monteiro v. State of Goa
- Chile, Prosecution of Osvaldo Romo Mena
- United States, United States v. Noriega [Part B.II.C]
- France, Radio Mille Collines
- United States, Hamdan v. Rumsfeld

a. **particular fields to be covered** aa) penal sanctions GC I-IV, Arts 49/50/129/146 respectively

## ^ CASES AND DOCUMENTS

- Romania, Voluntary Report
- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- ICRC, Model Law Concerning the Emblem [Arts 10-12]
- Switzerland, Military Penal Code
- Germany, International Criminal Code
- Canada, Crimes Against Humanity and War Crimes Act
- Belgium, Law on Universal Jurisdiction
- United States, War Crimes Act
- United States, Trial of Lieutenant General Harukei Isayama and Others
- Colombia, Constitutionality of IHL Implementing Legislation

## ^ READINGS

### Suggested reading:

- CASSESE Antonio & DELMAS-MARTY Mireille (eds), *Juridictions nationales et crimes internationaux*, Paris, PUF, 2002, 673 pp.
- DÖRMANN Knut & GEISS Robin, "The Implementation of Grave Breaches into Domestic Legal Orders", in *Journal of International Criminal Justice*, Vol. 7, No. 4, September 2009, pp. 703-722.

### Further reading:

- BACIO TERRACINO Julio, "National Implementation of ICC Crimes: Impact on National Jurisdictions and the ICC", in *Journal of International Criminal Justice*, Vol. 5, No. 2, May 2007, pp. 421-440.
- LA ROSA Anne-Marie & CHAVEZ-TAFUR Gabriel, "Implementing International Humanitarian Law through the Rome Statute", in BELLELLI Roberto (ed.), *International Criminal Justice: Law and Practice from the Rome Statute to its Review*, Farnham, Ashgate, July 2010, pp. 473-488.
- VAN ELST Richard, "Implementing Universal Jurisdiction over Grave Breaches of the Geneva Conventions", in *Leiden Journal of international Law*, Vol. 15, 2000, pp. 815-854.

bb)use of the emblem GC I, Arts 44 and 54; P III, Art. 6(1) [CIHL, Rule 141]

## ^ CASES AND DOCUMENTS

- ICRC, Model Law Concerning the Emblem
- Cameroon, Law on the Protection of the Emblem and the Name “Red Cross”
- Ghana, National Legislation Concerning the Emblem
- United Kingdom, Misuse of the Emblem
- Burkina Faso, Law on the Use and Protection of the Red Cross and Red Crescent Emblems in Burkina Faso, 2003

## ^ READINGS

### Suggested reading:

- BOTHE Michael & JANSSEN Karin, “The Implementation of International Humanitarian Law at the National Level: Issues in the Protection of the Wounded and Sick”, in *IRRC*, No. 253, July 1986, pp. 189-199.
- ICRC, “The Implementation of Rules Protecting the Provision of Health Care in Armed Conflict and Other Emergencies: A Guidance Tool”, in ICRC, *The Domestic Implementation of IHL, A Manual*, ICRC, Geneva, 2015, pp. 347-376.
- LAVOYER Jean-Philippe, “National Legislation on the Use and Protection of the Emblem of the Red Cross and Red Crescent”, in *IRRC*, No. 313, July-August 1996, pp. 482-485.

cc) composition of armed forces

## 5. Training of qualified personnel

P I, Arts 6 and 82 [CIHL, Rule 141]

## ^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- Israel, Report of the Winograd Commission [Paras 26-33]
- Afghanistan, Assessment of ISAF Strategy

## ^ READINGS

### Suggested reading:

- CAYCI Sadi, “Legal Advisor in the Armed Forces: How to Practice as a Good Legal Advisor”, in *RDMDG*, Vol. 38/1-4, 1999, pp. 333-340.
- DRAPER Gerald I.A.D, “Role of Legal Advisers in Armed Forces”, in *IRRC*, No. 202, January 1978, pp. 6-17.
- DUTLI Maria Teresa, “Implementation of International Humanitarian Law: Activities of Qualified Personnel in Peacetime”, in *IRRC*, No. 292, May 1996, 7 pp.
- FLECK Dieter, “The Employment of Legal Advisors and Teachers of Law in the Armed Forces”, in *IRRC*, No. 145, April 1973, pp. 173-180.
- YBEMA Seerp B., “Between Conscience and Obedience: The role of the Legal Adviser in the Political Decision-Making Process with Regard to Military Operations”, in *Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck*, Berlin, Berliner Wissenschafts-Verlag, 2004, pp. 711-718.

### Further reading:

- FLAVELLE MARTIN Andrew, “Legal Ethics and Canada’s Military Lawyer”, in *Can Bar Rev*, Vol. 97, No. 1, 2019, pp. 727-755.

## 6. Practical measures

### ^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- UN, Guidelines on the Right to a Remedy and Reparation for Violations of International Humanitarian Law and Human Rights Law

### ^ READINGS

### Suggested reading:

- DUTLI Maria Teresa, “Implementation of International Humanitarian Law: Activities of Qualified Personnel in Peacetime”, in *IRRC*, No. 292, May 1996, 7 pp.
- PFANNER Toni, “Various Mechanisms and Approaches for Implementing International Humanitarian Law and Protecting and Assisting War Victims”, in *IRRC*, Vol. 91, No. 874, June 2009, pp. 279-328.
- SASSÒLI Marco, “The National Information Bureau in Aid of the Victims of Armed Conflicts”, in *IRRC*, No. 256, January 1987, pp. 6-24.

### Further reading:



- OFFERMANS Marc, “The Belgian Interdepartmental Commission for Humanitarian Law”, in *IRRC*, No. 281, March-April 1991, pp. 154-166.

## Footnotes

- [5] The obligation to disseminate IHL is prescribed in GC I-IV, Arts 47/48/127/144; P I, Arts 83 and 87(2); P II, Art. 19
- [6] See *infra*, Introductory Text, II. Measures to be taken in peacetime, 4. Legislation for application
- [7] See P I, Arts 6 and 82
- [8] See GC I, Arts 16, 17(1), 27, 40, and 41; GC II, Arts 19, 20, and 42; GC III, Arts 4(A) (4) and 17(3); GC IV, Arts 20(3) and 24(3); P I, Arts 18 and 79(3)
- [9] See GC I, Art. 19(2); GC IV, Art. 18(5); P I, Arts 12(4), 56(5) and 58(a) and (b)
- [10] P I, Art. 80(1). GC I-IV, Arts 48/49/128/145 respectively and P I, Art. 84 prescribe that such legislation must be communicated to the other parties.
- [11] The adoption of national legislation to repress war crimes and to establish universal jurisdiction over them is prescribed by GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146 and P I, Art. 85.
- [12] Such legislation [See ICRC, Model Law Concerning the Emblem] is prescribed by GC I, Arts 42, 44, 53 and 54 and by GC II, Arts 44 and 45

## III. Respect by the Parties to the Conflict

### 1. Respect

[CIHL, Rule 139]

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- LANZ Matthias, MAX Emilie & HOEHNE Oliver, “The Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014 and the Duty to Ensure Respect for International Humanitarian Law”, in *IRRC*, Vol. 96, No. 895/896, Autumn/Winter 2014, pp. 1115-1133.
- ICRC, “Protection of Victims of Armed Conflict through respect of International Humanitarian Law”, in *27th International Conference of the Red Cross and Red Crescent, Geneva, 31 October to 6 November 1999*, Geneva, Reference Document, 1999.
- SASSÒLI Marco, “The Respect of IHL”, in SASSÒLI Marco, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar, Cheltenham, 2019, 720 pp.
- ZYCH Tomasz, “The Scope of the Obligation to Respect and to Ensure Respect for International Humanitarian Law”, in *Canadian Perspectives on International Humanitarian Law*, Vol. 27, No. 2,

## 2. Supervision of their agents

[CIHL, Rule 139]

### ^ CASES AND DOCUMENTS

- Democratic Republic of the Congo, Conflict in the Kivus [Part III, paras 54-60]
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo [Paras 246-250]
- Autonomous Weapon Systems

## 3. Role of domestic courts

National courts largely contribute to defining IHL concepts. In order to apply IHL to a particular situation, they may indeed need to interpret its relevant concepts, insofar as the latter are not sufficiently self-explanatory. As the nature of armed conflicts and the situations that the courts have to handle evolve over time, it has become increasingly necessary to clarify or adapt IHL norms and rules. The clarifications developed in national case law also serve foreign courts confronted with similar situations. Likewise, however, they may lead to undesirable interpretations spreading around the world. Nevertheless, domestic courts can, in interpreting IHL norms, ensure that the national authorities respect IHL: they may declare government legislation or policies to be in contradiction with IHL and hence repeal them or ask that they be repealed. In many constitutional systems this presupposes that the IHL rules are first integrated into domestic legislation.

### ^ CASES AND DOCUMENTS

- Romania, Voluntary Report
- Israel, Ayub v. Minister of Defence
- Israel, Al Nawar v. Minister of Defence
- Israel, Cheikh Obeid et al. v. Ministry of Security
- Israel, Cases Concerning Deportation Orders
- Israel, Ajuri v. IDF Commander
- Israel, Evacuation of Bodies in Jenin
- Israel, The Rafah Case
- Israel, The Targeted Killings Case
- Israel, Power Cuts in Gaza
- Israel, Detention of Unlawful Combatants
- South Africa, AZAPO v. Republic of South Africa
- The Netherlands, Responsibility of International Organizations

- United States, Habeas Corpus for Guantanamo Detainees
- United States, Public curiosity
- United States of America, Holder v. Humanitarian Law Project
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare
- Colombia, Special Jurisdiction for Peace, Crimes against the Environment in Cauca

Part I – Chapter 13 13

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BLANK R. Laurie, “Understanding when and how Domestic Courts Apply IHL”, in *Case Western Reserve Journal of International Law*, Vol. 44, No. 1, 2011, pp. 205-224.
- JINKS Derek, MAOGOTO Jackson N. & SOLOMON Solon (Eds.), *Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies, International and Domestic Aspects*, Cambridge, Asser Press, 2014, 506 pp.
- WEILL Sharon, *The Role of National Courts in Applying International Humanitarian Law*, Oxford, Oxford University Press, 2014, 240 pp.

## 4. Enquiries (spontaneously or following complaints)

### ^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- Switzerland Acting as Protecting Power in World War II
- United Kingdom/Germany, Sinking of the Tübingen in the Adriatic
- Israel, The Targeted Killings Case [Para. 40]
- Israel, Human Rights Committee’s Report on Beit Hanoun [Paras 67-75]
- Israel, Report of the Winograd Commission [Para. 46]
- ECHR, Isayeva v. Russia [Paras 30-98, 168, 182]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 140-148]
- Somalia: Deeply Flawed Rape Inquiry
- ECHR, Al-Skeini et al. v. UK
- Afghanistan, Attack on Kunduz Trauma Centre
- Libya, NATO Intervention 2011
- United States, The US Plan to Mitigate Civilian Harm in Armed Conflicts

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- LUBELL Noam, PEJIC Jelena & SIMMONS Claire, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice*, ICRC, The Geneva Academy of International Humanitarian Law and Human Rights, 2019, 67 pp.
- ML TAN Amy, "The Duty to Investigate Alleged Violations of International Humanitarian Law: Outdated Deference to an International Accountability Problem", in *International Law and Politics*, Vol. 49, 2016, pp. 181-238.

### Further reading:

- INGADOTTIR Thordis, "The Role of the International Court of Justice in the Enforcement of the Obligation of States to Investigate and Prosecute Serious Crimes at the National Level", in *Israel Law Review*, Vol. 47, No. 2, 2014, pp. 285-302.

## 5. Appointment of Protecting Powers

GC I-IV, Arts 8/8/8/9 respectively; P I, Art. 5

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- VÖNEKI Silja, "Protecting Power and their substitutes", in DIETER Fleck, *The Handbook of International Humanitarian Law*, 3d ed., Oxford, OUP, 2014, pp. 1420-1421.

## IV. Scrutiny by Protecting Powers and the ICRC

### 1. The Protecting Power

#### Introductory text

Under international law, foreigners enjoy diplomatic protection by their home country. When such diplomatic protection is not possible because there are no diplomatic relations between the country of residence and the home country, the latter may appoint another State – a protecting power – to protect its interests and those of its nationals in the third State. This appointment is only valid if the three States concerned agree. IHL has taken advantage of this traditional institution of the law of diplomatic relations,[13] it has clarified and added to it for the purpose of implementing its rules, by prescribing that IHL "shall be applied with the co-operation and under the scrutiny of the Protecting Powers".[14] In an armed conflict such Protecting Powers must obviously be chosen from among neutral States or other States not parties to the conflict.

The Protecting Powers are mentioned in more than 80 provisions of the Conventions and Protocol I, in connection with the following tasks: visits to protected persons, consent for certain extraordinary measures concerning protected persons, the provision of information about certain other measures, supervision of relief missions and evacuations, reception of applications by protected persons, assistance in judicial proceedings against protected persons, transmission of information, documents and relief goods, and the offering of good offices. Most of these tasks are parallel to those of the ICRC. This duplication is intended, as it should lead to increased supervision of respect for IHL.

IHL obliges parties to international armed conflicts to designate Protecting Powers.[15] However, in practice, such designation is the main problem. Basically, all three States concerned must agree with the designation. According to the Conventions, if no Protecting Powers can thus be appointed, a detaining or occupying power can ask a third State bilaterally to act as a substitute Protecting Power. If even this does not work, the offer of a humanitarian organization such as the ICRC to act as a humanitarian substitute for a Protecting Power must be accepted. Protocol I has fleshed out the appointment procedure.[16] Nevertheless, in conformity with the cooperation-oriented approach needed for the implementation of IHL, no Protecting Power can act efficiently – and a neutral State will in any case be unwilling to act – without the consent of both belligerents.

Although Protocol I clarifies that the designation and acceptance of Protecting Powers do not affect the legal status of the parties or of any territory[17] and that the maintenance of diplomatic relations is no obstacle to the designation of Protecting Powers,[18] Protecting Powers have been designated in only five of the numerous armed conflicts that have broken out since World War II.[19] Even there, they played a limited role. In an international legal order marked by the idea – or at least the ideal – of collective security, where at least one side in an armed conflict is considered (or at least labelled) an outlaw, neutrality becomes an increasingly obsolete concept and neutral States willing and likely to be designated as Protecting Powers increasingly rare.

The ICRC, for its part, has no interest in acting as a substitute Protecting Power, as it can fulfil most of the latter's functions in its own right, without giving the impression that it represents only one State and not all the victims. For one of the rare functions which IHL confers only upon the Protecting Powers and not also upon the ICRC, that of being notified of and providing assistance in judicial proceedings against protected persons, the ICRC has managed to be recognized as a de facto substitute when there is no Protecting Power.

## ^ CASES AND DOCUMENTS

- Switzerland Acting as Protecting Power in World War II

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- COULIBALY H., “Le rôle des puissances protectrices au regard du droit diplomatique, du droit de Genève et du droit de La Haye”, in KALSHOVEN Frits & SANDOZ Yves (eds), *Implementation of International Humanitarian Law*, Dordrecht, M. Nijhoff, 1989, pp. 69-78.
- KOLB Robert, “Protecting Powers”, in CLAPHAM Andrew, GAETA Paola Gaeta & SASSÒLI Marco (eds), *The 1949 Geneva Conventions. A Commentary*, Oxford, OUP, 2015, pp. 549-560.
- WYLIE Neville, “Protecting Powers in a Changing World”, in *Politorbis, revue de politique étrangère*, No. 40, 2006, pp. 6-14.

### Further reading:

- DOMINICÉ Christian & PATRNOGIC Jovica, “Les Protocoles additionnels aux Conventions de Genève et le système des puissances protectrices”, in *Annales de Droit International Médical*, No. 28, 1979, pp. 24-50.
- JANNER Antonino, *La Puissance protectrice en droit international, d’après les expériences faites par la Suisse pendant la Seconde Guerre Mondiale*, Basel, Helbing und Lichtenhahn, 1948, 2nd ed., 1972, 79 pp.
- FRANKLIN William McHenry, *Protection of Foreign Interests: A Study in Diplomatic and Consular Practice*, Washington, United States Government Printing Office, Department of State Publication, No. 2693, 1946, 328 pp.
- KUSSBACH Erich, “Le Protocole Additionnel I et les États neutres”, in *IRRC*, No. 725, September 1980, pp. 82-95.

#### a. the concept of Protecting Powers P I, Art. 2(c)

### ▲ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- DJUKIC Dražan & PONS Niccolò, “Protecting Powers”, in DJUKIC Dražan & PONS Niccolò (Eds.), *The Companion to International Humanitarian Law*, Brill Nijhoff, Boston, Leiden, pp. 585-587.

#### b. the system for appointing Protecting Powers P I, Art. 5(1) and (2)

### ▲ CASES AND DOCUMENTS

- United States Military Tribunal at Nuremberg, The Ministries Case
- ICRC, Iran/Iraq Memoranda

- a. **the possible substitute for the Protecting Power** GC I-IV, Arts 10/10/10/11 respectively; P I, Art. 5(3)-(7)
- b. **the tasks of the Protecting Power** GC III, Arts 126(1); GC IV, Arts 76 and 143 GC III, Arts 71(1) and 72(3) GC III, Arts 65(2) and 73(3); GC IV, Arts 23(3), 55(4), 59(4) and 61; P I, Arts 11(6) and 70(3) P I, Art. 78 GC III, Arts 78(2); GC IV, Arts 30, 52 and 102 GC III, Arts 105(2); GC IV, Arts 42, 71, 72, 74; P I, Art. 45 GC IV, Arts 39 and 98 GC I, Arts 16 and 48; GC II, Arts 19 and 49; GC III, Arts 23(3), 62(1), 63(3), 66(1), 68(1), 69, 75(1), 77(1), 120(1), 122(3) and 128; GC IV, Arts 83 and 137; P I, Arts 33, 45 and 60 GC III, Arts 56(3), 60(4), 79(4), 81(6), 96(5), 100(1), 101, 104(1) and 107(1); GC IV, Arts 35, 42, 49(4), 71, 72, 74, 75, 96, 98, 105, 108, 111, 123(5), 129 and 145 GC I-III, common Art. 11; GC IV, Art. 12 GC I, Art. 23; GC IV, Art. 14

## ^ CASES AND DOCUMENTS

- Switzerland Acting as Protecting Power in World War II
- United Kingdom/Germany, Sinking of the Tübingen in the Adriatic
- United States Military Tribunal at Nuremberg, The Ministries Case
- ICRC, Iran/Iraq Memoranda

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- LEVIE Howard S., "Prisoners of War and the Protective Powers", in *The American Journal of International Law*, Vol. 55, No. 2, 1961, pp. 374-397.

- aa) visits to protected persons
- bb) reception of applications by protected persons

## ^ CASES AND DOCUMENTS

- British Policy Towards German Shipwrecked

- cc) transmission of information and objects
- dd) assistance in judicial proceedings

## ^ CASES AND DOCUMENTS

- Malaysia, Osman v. Prosecutor
- South Africa, S. v. Petane

## 2. The International Committee of the Red Cross (ICRC)

(See *infra*, The International Committee of the Red Cross (ICRC) and the Law)

### Footnotes

- [13] Now codified in Art. 45 and 46 of the Vienna Convention on Diplomatic Relations of 1961.
- [14] See GC I-III, common Art. 8; GC IV, Art. 9. P I, Art. 5 has developed this system.
- [15] See P I, Art. 5(1)
- [16] See P I, Art. 5(2)-(4)
- [17] See P I, Art. 5(5)
- [18] See P I, Art. 5(6)
- [19] The Suez Crisis pitting Egypt against France and the United Kingdom in 1956; the conflict in Bizerte between France and Tunisia in 1961; the crisis in Goa between India and Portugal in 1961; the conflict between India and Pakistan in 1971; and the Falkland/Malvinas war between the United Kingdom and Argentina in 1982.

## V. The obligation to ensure respect (Common Article 1)

### Introductory text

Under Article 1 common to the Conventions and Protocol I, States undertake not only to respect (this is the principle *pacta sunt servanda*), but also to ensure respect for IHL. The International Court of Justice has recognized that this principle is part of customary international law and applies also to the law of non-international armed conflicts.[20] Under this principle, not only is the State directly affected by a violation concerned by and entitled to take measures to stop it, all other States not only may, but must take measures.

[21] The obligations under IHL are therefore certainly obligations *erga omnes*.

The question is, however, which measures each State thus entitled and obliged may take under the law of State responsibility. The rules adopted on this question by the International Law Commission (ILC) recall that in case of a breach of an obligation owed to the whole international community, all States have the right to demand its cessation and, if necessary, guarantees of non-repetition, as well as reparation in the interest of the beneficiaries of the obligation breached.[22] As for counter-measures by these States, the ILC estimates that their lawfulness remains “uncertain”, [23] and it simply allows for “lawful” measures against the responsible State, without concluding when these measures are lawful.[24] Can each State take individually all the measures it would have the right to take as an injured State in the case of a “bilateral” violation? Can we even consider, under the special rule of Art. 1 common to the Conventions, [25] each State as injured by each violation of IHL? Or is there a need for coordination among the States entitled to take measures by



common Art. 1? Even Art. 89 of Protocol I provides no clear answer when it stipulates that in the face of violations States have “to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter”.

Arguably, under common Art. 1, a State injured by a violation[26] can take all measures to ensure respect afforded under general international law, so long as they are compatible with general international law (which excludes the use of force based on IHL)[27] and not excluded by IHL (such as reprisals against protected persons).[28] Even without admitting such counter-measures, it is clear that a State can – and therefore must – react to all breaches of IHL by retaliatory measures that do not violate its international obligations. No State is obliged to receive representations from another State, to conclude treaties with it, to support a State within an international organization or to purchase weapons from it. State practice is unfortunately not rich enough to determine the upper limits of how a State may or must “ensure respect”. As for the lower threshold, it is only certain that a State violates common Art. 1 if it encourages or promotes violations by another State[29] or dissident forces. The rules on State responsibility for internationally wrongful acts provide that a State must not recognize as legal a situation created by a grave breach of an imperative norm such as IHL, nor provide aid or assistance to maintain the situation.[30] Although absolute indifference also clearly violates the text of the provision, unfortunately it is common practice. Considering the number of States concerned by common Art. 1, and the number of cases to which it applies, we can say that it is the most frequently violated provision of IHL.

In conclusion, common Art. 1 indicates in legal terms the moral idea formulated by the states in Dostoyevsky’s *Brothers Karamazov* that “every single one of us is [...] responsible for all without exception in this world”, that we are “responsible to all men, for all and everything, for all human transgressions – both of the world at large and of individuals”;<sup>[31]</sup> in IHL, this means that it is the shared responsibility of all States and of all human beings to grant a minimum of humanity to victims of armed conflicts.

## ^ CASES AND DOCUMENTS

- European Union Guidelines on Promoting Compliance with International Humanitarian Law
- ICRC, Protection of War Victims
- UN, Guidelines on the Right to a Remedy and Reparation for Violations of International Humanitarian Law and Human Rights Law
- ICRC Appeals on the Near East [Part C., paras 10-11]
- UN, Resolutions and Conference on Respect for the Fourth Convention
- ICRC/Lebanon, Sabra and Chatila
- ICRC, Iran/Iraq Memoranda
- United States, The Schlesinger Report
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo [Paras 246-250]

- ICRC, *International Humanitarian Law and the challenges of contemporary armed conflicts* in 2015 [paras 122-124]

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ROBSON Verity, “The Common Approach to Article 1: The Scope of Each State’s Obligation to Ensure Respect for the Geneva Conventions”, *Journal of Conflict and Security Law*, Volume 25, Issue 1, Spring 2020, Pages 101–115
- BOISSON DE CHAZOURNES Laurence & CONDORELLI Luigi, “Common Article 1 of the Geneva Conventions Revisited: Protecting Collective Interests”, in *IRRC*, No. 837, March 2000, pp. 67-87.
- CONDORELLI Luigi & BOISSON DE CHAZOURNES Laurence, “Quelques remarques à propos de l’obligation des États de ‘respecter et faire respecter’ le droit international humanitaire en toutes circonstances”, in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, Geneva, ICRC, The Hague, M. Nijhoff, 1984, pp. 17-35.
- DÖRMANN Knut and SERRALVO Jose, “Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations”, in *IRRC*, Vol. 96, No. 895/896, Autumn/Winter 2014, pp. 707-736.
- FOCARELLI Carlo, “Common Article 1 of the 1949 Geneva Conventions: A Soap Bubble?”, in *EJIL*, Vol. 21, No. 1, February 2010, pp. 125-171.
- GEIß Robin, “The Obligation to Respect and Ensure Respect for the Conventions”, in CLAPHAM Andrew, GAETA Paola & SASSÒLI Marco (eds), *The 1949 Geneva Conventions, a Commentary*, Oxford, OUP, 2015, pp. 111-134.
- KALSHOVEN Frits, “The Undertaking to Respect and Ensure Respect in All Circumstances: From Tiny Seed to Ripening Fruit”, in *Yearbook of International Humanitarian Law*, Vol. 2, 1999, pp. 3-61.
- LEVRAT Nicolas, “Les conséquences de l’engagement pris par les Hautes Parties contractantes de ‘faire respecter’ les conventions humanitaires”, in KALSHOVEN Frits & SANDOZ Yves (eds), *Implementation of International Humanitarian Law*, Dordrecht, M. Nijhoff, 1989, pp. 263-296.
- McCORMACK Timothy, “The Importance of Effective Multilateral Enforcement of International Humanitarian Law”, in LIJNZAAD Liesbeth, VAN SAMBEEK Johanna & TAHZIB-LIE Bahia (eds), *Making the Voice of Humanity Heard*, Leiden/Boston, M. Nijhoff, 2004, pp 319-338.
- SACHARIEW Kamen, “State’s Entitlement to Take Action to Enforce International Humanitarian Law”, in *IRRC*, No. 270, May-June 1989, pp. 177-195.

### Further reading:

- BENVENUTI Paulo, “Ensuring Observance of International Humanitarian Law: Function, Extent and Limits of the Obligations of Third States to Ensure Respect of IHL”, in *Yearbook of the International Institute of Humanitarian Law*, 1989–90 (1992), pp. 27-55.
- CORTEN Olivier & KOUTROULIS Vaivos, “The Illegality of Military Support to Rebels in the Libyan

War: Aspects of Jus Contra Bellum and Jus in Bello”, in *Journal of conflict and Security Law*, Vol. 18, No. 1, Spring 2013, p. 59- 93.

- FLECK Dieter, “International Accountability for Violations of the Jus in Bello: the Impact of the ICRC Study on Customary International Humanitarian Law”, in *Journal of Conflict and Security Law*, Vol. 11, No. 2, 2006, pp. 179-199.
- HAPPOLD Matthew, “Comment: Obligations of States Contributing to UN Peacekeeping Missions under Common Article 1 of the Geneva Conventions”, in KRIEGER Heike (ed.), *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*, Cambridge, Cambridge University Press, 2015, pp. 382-398.
- HATHAWAY Oona A., CHERTOFF Emily, DOMÍNGUEZ Lara, MANFREDI Zachary & TZENG Peter, “Ensuring Responsibility: Common Article 1 and State Responsibility for Non-State Actors”, in *Texas Law Review*, Vol. 95, Issue 3, pp. 539-590.
- KESSLER Birgit, *Die Durchsetzung der Genfer Abkommen von 1949 in nicht-internationalen bewaffneten Konflikten auf Grundlage ihres gemeinsamen Art. 1*, Duncker & Humblot, Berlin, 2001, 281 pp.
- SANDOZ Yves, “L’appel du Comité international de la Croix-Rouge dans le cadre du conflit entre l’Irak et l’Iran”, in *AFDI*, Vol. 29, 1983, pp. 161-173.
- TONKIN Hannah, “Common Article I: A Minimum Yardstick for Regulating Private Military and Security Companies”, in *Leiden Journal of International Law*, Vol. 22, No. 4, 2009, pp. 279-299.

## 1. Scope

### ^ CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 158]
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 274, 278, 285]

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- GEISS Robin, “Common Article 1 of the Geneva Conventions Scope and Content of the Obligation to ‘Ensure Respect’: ‘Narrow but Deep’ or ‘Wide and Shallow’?”, in KRIEGER Heike (ed.), *Inducing Compliance with International Humanitarian Law : Lessons from the African Great Lakes Region*, Cambridge, Cambridge University Press, 2015, pp.417-440.

#### Further reading:

- KOLB Robert, “L’article 1 commun des Conventions de Genève de 1949 sur le droit humanitaire s’applique-t-il seulement au conflit armé international ?”, in *Schweizerische Zeitschrift für*

*internationales und europäisches Recht* =Swiss Review of International and European Law, Vol. 28, No. 4, 2018, pp. 461-464.

- ZIEGLER Reuven, “Non-Refoulement Between “Common Article 1” and “Common Article 3””, in CANTOR David & DURIEUX Jean-François (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law*, Leiden, Boston, Brill Nijhoff, 2014, pp. 386-408.

## 2. Aim

## 3. Obligations of non-belligerents

### ^ CASES AND DOCUMENTS

- European Union Guidelines on Promoting Compliance with International Humanitarian Law
- ICRC, The Challenges of Contemporary Armed Conflicts [Part A.]
- International Law Commission, Articles on State Responsibility [Part A., Arts 16, 40, 41, 48 and 55]
- ICJ, Nicaragua v. United States [Paras 116, 255 and 256]
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [para. 276]

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- GASSER Hans-Peter, “Ensuring Respect for the Geneva Conventions and Protocols: The Role of Third States and the United Nations”, in FOX Hazel & MEYER Michael A. (eds), *Armed Conflict and the New Law, Vol. II, Effecting Compliance*, London, The British Institute of International and Comparative Law, 1993, pp. 15-49.
- KOLB Robert, “Commentaires iconoclastes sur l'obligation de faire respecter le droit international humanitaire selon l'article 1 commun des Conventions de Genève de 1949”, in *Revue belge de droit international = Belgian Review of International Law = Belgisch tijdschrift voor internationaal recht*, Vol. 46, No. 2, 2013, pp. 513-520.

#### Further reading:

- BROLLOWSKI Hanna, “The Responsibility to Protect and Common Article 1 of the 1949 Geneva Conventions and Obligations of Third States”, in HOFFMAN Julia & NOLLKAEMPER André (eds), *Responsibility to Protect: From Principle to Practice*, Amsterdam, Amsterdam University Press, 2012, pp. 93-110.
- HATHAWAY Oona A., “Yemen: is the US Breaking the Law?”, in *Harvard National Security Journal*, Vol. 10, Issue 1, 2018, pp. 1-64.
- MOULIER Isabelle, “Les implications des obligations de non-reconnaissance et de non-assistance

au maintien de la situation illicite issue de la politique de colonisation d'Israël pour les États tiers”, in *Revue belge de droit international = Belgian Review of International Law = Belgisch Tijdschrift voor Internationaal Recht*, Vol. 46, No. 2, 2013, pp. 490-512.

## 4. Means to be employed

[CIHL, Rule 144]

### ^ CASES AND DOCUMENTS

- European Union Guidelines on Promoting Compliance with International Humanitarian Law
- ICRC, Protection of War Victims [Para. 3.1.3]
- International Law Commission, Articles on State Responsibility [Part A., Arts 41(2), 50(1) and commentaries of Arts 50 and 54]
- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 159]
- UN, Resolutions and Conference on Respect for the Fourth Convention [Part I., paras 4 and 11, Part J.]
- ICRC, Iran/Iraq Memoranda
- Case Study, Armed Conflicts in the former Yugoslavia, [25]
- Case Study, Armed Conflicts in the Great Lakes Region [Part I., B. and C. and Part III. D.]
- Germany, Law on Cooperation with the ICTR [Para. 1.B.]
- Germany, Government Reply on Chechnya

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- PALWANKAR Umesh, “Measures Available to States for Fulfilling their Obligation to Ensure Respect for International Humanitarian Law”, in *IRRC*, No. 298, January-February 1994, pp. 9-25.

#### Further reading:

- CANAL-FORGUES Éric, “La surveillance de l’application de l’arrangement du 26 avril 1996 (Israël-Liban) : une tentative originale de mise en œuvre de l’obligation de respect du droit international humanitaire”, in *RGDIP*, Vol. 3, 1998, pp. 723-746.
- GREEN Leslie C., “Enforcement of International Humanitarian Law and Threats to National Sovereignty”, in *Journal of Conflict and Security Law*, Vol. 8/1, April 2003, pp. 101-131.
- MAHNAD Polina Levina, “Protecting Cultural Property in Syria: New Opportunities for States to Enhance Compliance with International Law?”, in *IRRC*, Vol. 99, No. 906, 2017, pp. 1037-1074.
- WALDMAN Adir (ed.), *Arbitrating Armed Conflict, Decisions of the Israel-Lebanon Monitoring Group*,

## 5. Meetings of the States Parties

### a. on general problems

#### ▾ CASES AND DOCUMENTS

- ICRC, Protection of War Victims
- First Periodical Meeting, Chairman's Report

#### ▾ SPECIFIC BIBLIOGRAPHY

##### Suggested reading:

- LANZ Matthias, MAX Emilie & HOEHNE Oliver, "The Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014 and the Duty to Ensure Respect for International Humanitarian Law", in *IRRC*, Vol. 96, No. 895/896, Autumn/Winter 2014, pp. 1115-1133.

### a. on specific contexts of violations

#### ▾ CASES AND DOCUMENTS

- ICRC Appeals on the Near East [Part C.]
- UN, Resolutions and Conference on Respect for the Fourth Convention

#### ▾ SPECIFIC BIBLIOGRAPHY

##### Suggested reading:

- FUX Pierre-Yves & ZAMBELLI Mirko, "Mise en œuvre de la Quatrième Convention de Genève dans les territoires palestiniens occupés : historique d'un processus multilatéral (1997-2001)", in *IRRC*, No. 847, September 2002, pp. 661-695.

## Footnotes

- [20] See ICJ, *Nicaragua v. United States* [Paras 115, 216, 255, and 256]
- [21] ICJ/*Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory* [Part A., paras 158 and 159]
- [22] See Art. 48 of the Articles on State Responsibility and its commentary

- [23] Ibid, Commentary of Art. 54
- [24] Ibid, Art. 54
- [25] Ibid, Art. 55, “lex specialis”
- [26] Ibid, Arts 28-41
- [27] Ibid, Art. 50(1)(a)
- [28] Ibid, Art. 50(1)(c)
- [29] See ICJ, *Nicaragua v. United States* [Paras 115, 216, 255, and 256]
- [30] See International Law Commission, *Articles on State Responsibility* [Part A., Arts 40 and 41]
- [31] See DOSTOYEVSKY Fyodor, *The Brothers Karamazov*, Translated by Julius Katzer, Progress Publishers, vol. 1, 1980, p. 250

## VI. Role of National Red Cross or Red Crescent Societies

### Introductory text

The implementation of IHL is one of the key objectives of the International Red Cross and Red Crescent Movement. National Societies are particularly well placed to promote implementation within their own countries. The Movement’s Statutes recognize their role in cooperating with their governments to ensure respect for IHL and to protect the red cross, red crescent and red crystal emblems. National Societies’ contacts with national authorities and other interested bodies, and, in many cases, their own expertise on national and international law give them a key part to play in this field.

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- HAUMER Stefanie, GEISS Robin & ZIMMERMANN Andreas (eds), “Introduction: The International Red Cross and Red Crescent Movement and the Development of International Humanitarian Law”, in *Humanizing the Laws of War: The Red Cross and the Development of International Humanitarian Law*, Cambridge, Cambridge University Press, 2017. pp. 1-24.
- ICRC, “The International Committee of the Red Cross’s (ICRC’s) confidential approach Specific means employed by the ICRC to ensure respect for the law by State and non-State authorities Policy document. December 2012”, in *IRRC*, Vol. 94, No. 887, 2012, pp. 1135-1144.
- MEYER Michael A., “The Role of National Society in the Implementation of International Humanitarian Law - Taking Up the Challenge!”, in *IRRC*, Vol. 37, No. 317, 1997, pp. 203-207.

#### Further reading:

- BERNARD Vincent and ZHOU Wen, “Interview with Mr Ma Qiang: Former Executive Vice-President of the Shanghai Branch of the Chinese Red Cross”, in *IRRC*, Vol. 97, No. 897/8, Spring/Summer 2015, pp. 29-44.
- ICRC & British Red Cross, “Promotion of International Humanitarian Law Within the Commonwealth”,

in *Commonwealth Law Bulletin*, Vol. 34, No. 3, 2008, pp. 663-669.

- IFRC, *A Guide for Parliamentarians to the International Red Cross and Red Crescent Movement*, IFRC, Geneva, 2012, 20 pp.
- KYAZZE Amelia B., “Walking the Walk: Evidence of Principles in Action from Red Cross and Red Crescent National Societies”, in *IRRC*, Vol.97, No. 897/8, Spring/Summer 2015, pp. 211-233.
- SASSÒLI Marco, “The National Information Bureau in Aid of the Victims of Armed Conflicts”, in *IRRC*, No. 256, January 1987, pp. 6-24.
- STUTZ Marcel, BLAZEYBY Leonard & GOUSSAC Netta, “Strengthening Compliance with International Humanitarian Law: The Work of the ICRC and the Swiss Government”, in *University of Western Australia Law Review*, Vol. 39, No. 1, 2015, pp. 51-67.
- SPIEKER Heike, “Rights and Obligations of Foreign National Red Cross and Red Crescent Societies”, FLECK Dieter, *The Handbook of the Law of Visiting Forces*, Oxford, Oxford University Press, 2018, pp. 558-573.

## Action by National Societies

National Societies can take a range of measures contributing to the implementation of IHL. These include:

### 1. Adherence to IHL instruments

Discussing adherence to IHL treaties with national authorities.

### 2. National legislation

Making national authorities aware of the need for IHL implementing legislation. Drafting national legislation and/or commenting on the national authorities' draft legislation.

### 3. Protection of the emblem

Promoting legislation to protect the emblem. Monitoring use of the emblem.

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ICRC, *Study on the Use of the Emblems: Operational and Commercial and Other Non-Operational Issues*, Geneva, ICRC, 2011, 331 pp.

### 4. Dissemination of IHL

The Society's own dissemination activities. Reminding national authorities of their obligation to spread knowledge of IHL. Providing national authorities with advice and materials on dissemination.

## ▲ SPECIFIC BIBLIOGRAPHY



### Suggested reading:

- McCONNACHIE Annabel, “Preventing Breaches of IHL Through Dissemination: The Role of National Societies”, in *University of Western Australia Law Review*, Vol. 39, No. 1, June 2015, pp. 68-82.
- MEYER Michael A., “Public Advocacy – Why the Red Cross and Red Crescent Should Look before it Leaps”, in *IRRC*, No. 315, November-December 1996, pp. 614-626.

### Further reading:

- MCCORMACK Tim, “Australian Red Cross Leadership in the Promotion of International Humanitarian Law”, in *IRRC*, Vol. 96, No. 895/896, Autumn/Winter 2014, pp. 969-986.

## 5. Armed forces legal advisors and qualified personnel

Contributing to the training of advisors and personnel.

## 6. Medical assistance for conflict victims

In times of armed conflict, whether international or non-international, National Societies can play an important role in the implementation of IHL. As auxiliaries to the military medical services,[32] National Societies contribute significantly to the care of the wounded and sick. National Societies of neutral countries[33] also play a role in this field, either when they render assistance to a party to the conflict or when they serve under the auspices of the ICRC.

## ^ CASES AND DOCUMENTS

- Romania, Voluntary Report
- Statutes of the International Red Cross and Red Crescent Movement [Arts 4 and 5]
- ICRC, Model Law Concerning the Emblem [Art. 3]
- Ivory Coast, National Interministerial Commission [Arts 3 and 4]
- United Kingdom, Labour Party Campaign – Misuse of the Emblem
- Cuba, Status of Captured “Guerrillas”
- ICRC/Lebanon, Sabra and Chatila
- Ethiopia/Somalia, Prisoners of War of the Ogaden Conflict
- United Kingdom, Misuse of the Emblem

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ICRC, *Safer Access: A Guide for All National Societies*, Geneva, ICRC, 2013, 88 pp.

## Footnotes

- [32] See GC I, Art. 26; See also Wounded and Sick
- [33] See GC I, Art. 27

# VII. Role of Non-Governmental Organizations (NGOs)

## ^ CASES AND DOCUMENTS

- ICRC/Geneva Call, Dissemination of IHL using I.T.

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BARRAT Claudie (ed.), *Status of NGOs in International Humanitarian Law*, Leiden, Boston, Brill Nijhoff, 2014, 384 pp.
- BRETT Rachel, “Non-Governmental Human Rights Organizations and International Humanitarian Law”, in *IRRC*, No. 324, September 1998, pp. 531-536.
- ICRC, *National committees and similar entities on international humanitarian law : guidelines for success : towards respecting and implementing international humanitarian law*, Geneva, ICRC, 2018, 81 pp.
- RUBIO François & RYFMAN Philippe, “Les ONG, nouvelles gardiennes des Conventions de Genève ?”, in *Humanitaire : enjeux, pratiques, débats* 23, November 2009, pp. 12-59.
- RYFMAN Philippe, “Non-Governmental Organizations: An Indispensable Player of Humanitarian Aid”, in *IRRC*, Vol. 89, No. 865, March 2007, pp. 21-45.

### Further reading:

- BONARD Paul, *Modes of Action Used by Humanitarian Players: Criteria for Operational Complementarity*, Geneva, ICRC, September 1998, 65 pp.
- HOFMANN Claudia, *Reasoning with Rebels: International NGOs' Approaches to Engaging Armed Groups*, Berlin, Stiftung Wissenschaft und Politik (SWP), 2012, 28 pp.

## 1. Humanitarian assistance for conflict victims

## ^ CASES AND DOCUMENTS

- UN, Secretary-General's Reports on the Protection of Civilians in Armed Conflict [Part A., paras 53-56]

## a. rights and obligations of NGOs under IHL

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- DONNELLY Elizabeth Rose, “Towards Greater Legal Protection for Medical-Humanitarian NGOs in Situations of Armed Conflict”, in *Cambridge Law Review*, No. 3, 2018, pp. 144-173.
- LINDBLOM Anna-Karin, “Rights and Obligations”, in LINDBLOM Anna-Karin, *Non-Governmental Organizations in International Law*, Cambridge, CUP, 2006, pp. 121-217.
- SPHERE, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response - 2018 Edition*, Geneva, Sphere, 2018, 458 pp.

### ^ CASES AND DOCUMENTS

- First Periodical Meeting, Chairman’s Report [Part II.1]

#### aa) impartiality of humanitarian action

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- SCHENKENBERG VAN MIEROP Ed, “Coming Clean on Neutrality and Independence: The Need to Assess the Application of Humanitarian Principles”, in *IRRC*, Vol. 97, No. 897/8, Spring/Summer 2015, pp. 295-318.

#### bb) access to victims in need (*See supra*, Conduct of Hostilities, IV. IHL and Humanitarian Assistance)

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- International Federation of Medical Students’ Associations, *Ensuring Access to Medical and Humanitarian Aid*, Amsterdam, Netherlands, 2017, 7 pp.
- KOFI ABIEW Francis, “Humanitarian Action under Fire: Reflections on the Role of NGOs in Conflict and Post-Conflict Situations”, in *International Peacekeeping*, Vol. 19, Issue 2, 2012, pp. 203-206.
- LABONTE Melissa T. & EDGERTON Anne C., “Towards a Typology of Humanitarian Access Denial”, in *Third World Quarterly*, Vol. 34, Issue 1, 2013, pp. 39-57.

- SCHWENDIMANN Felix, “The Legal Framework of Humanitarian Access in Armed Conflict”, in *IRRC*, Vol. 93, No. 884, December 2011, pp. 993-1008.

cc) dilemmas involved

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- MONSHIPOURI Mahmood, “Seeking Justice and Accountability: The Dilemmas of Humanitarian Law and Human Rights NGOs”, in CAREY Henri F. & MITCHELL M. Stacey, *Trials and Tribulations of International Prosecution*, Lanham, Lexington Books, 2015, pp. 75-89.
- WOOD Reed M. & SULLIVAN Christopher, “Doing Harm by Doing Good? The Negative Externalities of Humanitarian Aid Provision during Civil Conflict”, in *The Journal of Politics*, Vol. 77, No. 3, July 2015, pp. 736-748.

### Further reading:

- ABU-SADA Caroline (ed.), *Dilemmas, Challenges, and Ethics of Humanitarian Action: Reflections on Médecins Sans Frontières' Perception Project*, Montreal, McGill-Queen's University Press, 2012, 138 pp.

## ^ CASES AND DOCUMENTS

- Case Study, Armed Conflicts in the former Yugoslavia [10-12, 18 and 20]
- Afghanistan, Separate Hospital Treatment for Men and Women

a. use of the emblem by NGOs

## ^ CASES AND DOCUMENTS

- United Kingdom, Misuse of the Emblem

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BOUVIER Antoine, “Special Aspects of the Use of the Red Cross or Red Crescent Emblem”, in *IRRC*, No. 272, September-October 1989, pp. 438-458.

### Further reading:

- MEYER Michael, “Protecting the Emblems in Peacetime: The Experiences of the British Red Cross”, in *IRRC*, No. 272, September-October 1989, pp. 459-464.

## 2. Monitoring, reporting and mobilization of public opinion

### ^ CASES AND DOCUMENTS

- Amnesty International, Breach of the Principle of Distinction
- United States/United Kingdom, Conduct of the 2003 War in Iraq
- Iraq, Use of Force by United States Forces in Occupied Iraq
- Federal Republic of Yugoslavia, NATO Intervention [Part A.]
- Case Study, Armed Conflicts in the Great Lakes Region [Part I. F.1 and 2.B.]
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part I.]
- Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 2.A. and 2.D.]
- Russian Federation, Chechnya, Operation Samashki
- The Conflict in Western Sahara [Parts A. and B.]
- Georgia/Russia, Human Rights Watch’s Report on the Conflict in South Ossetia

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- MURDIE Amanda & PEKSEN Dursun, “The Impact of Human Rights INGO Shaming on Humanitarian Interventions”, in *The Journal of Politics*, Vol. 76, No. 1, January 2014, pp. 215-228.
- STEINBERG Gerald & HERZBERG Anne, “NGO Fact-Finding for IHL Reinforcement: In Search of a New Model”, in *Israel Law Review*, Vol. 51, No. 2, 2018, pp. 261-299.

#### Further reading:

- FEHRENBACH Heide & RODOGNO Davide, ““A Horrific Photo of a Drowned Syrian Child”: Humanitarian Photography and NGO Media Strategies in Historical Perspective”, in *IRRC*, Vol. 97, No. 900, Winter 2015, pp. 1121-1155.

## 3. Advocacy for the development of IHL

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- NANDA Ved, “Non-Governmental Organizations and International Humanitarian Law”, in *International Law Studies, US Naval War College*, Vol. 71, 1998, pp. 337-358.

#### Further reading:

- PETROVA Margarita H., “Proportionality and Restraint on the Use of Force: The Role of Nongovernmental Organizations”, in EVANGELISTA Matthew & SHUE Henry (eds), *The American Way of Bombing: Changing Ethical and Legal Norms, from Flying Fortresses to Drones*, Ithaca, London, Cornell University Press, 2014, pp. 175-190.
- ROSENZWEIG Ido, “Promoting Respect for IHL by NGOs: The Case of ALMA - Association for the Promotion of IHL”, in *IRRC*, Vol. 96, No. 895/896, Autumn/Winter 2014, pp. 1029-1042.
- VON FLUE Carlo & LAVOYER Jean-Philippe, “How Can NGOs Help Promote International Humanitarian Law?”, in *Relief and Rehabilitation Network, Newsletter*, London, Overseas Development Institute, 1997, pp. 3-4.

## VIII. The United Nations

### Introductory text

The primary objective of the United Nations (UN) being to prevent war, not to regulate the conduct of hostilities, IHL would appear to be of little relevance. To fulfil this objective, however, the UN Charter allows the Security Council, for instance, to authorize the use of force;<sup>[34]</sup> in such situations IHL applies. The establishment of the ad hoc tribunals for the former Yugoslavia and Rwanda demonstrates that the UN Security Council in fact regards violations of IHL as breaches of or threats to international peace and security.

Under the Charter, the main aim of the UN in the face of an armed conflict should be to stop it and to resolve the underlying dispute. To do this, it has to take sides, for example against the aggressor; this seriously hampers its ability to contribute to the enforcement of IHL and, at least theoretically, to provide humanitarian assistance, as the former has to be enforced independently of any consideration of jus ad bellum and the latter has to be provided according to the needs of the victims and independently of the causes of the conflict.

Moreover, the UN's principal judicial organ, the International Court of Justice (ICJ), can be called on to interpret IHL. Indeed, the ICJ has dealt with some contentious or advisory cases raising IHL issues. IHL issues have been assessed in the ICJ's Advisory Opinions on the legality of the threat or use of nuclear weapons and on the legal consequences of the construction of a wall in the occupied Palestinian Territory. The famous Nicaragua and Congo v. Uganda cases also consider questions of IHL in depth. Another example is the judgement in the Arrest Warrant case between the Democratic Republic of the Congo and Belgium, which considers the scope of universal jurisdiction in the prosecution of war criminals.

The Conventions do not refer to the UN.[35] Likewise, the UN Charter makes no mention of IHL: UN purposes and principles[36] are expressed in human rights terms.[37] By tradition, the UN referred to IHL as “human rights in armed conflict”. [38]

Conceptually, the UN cannot be considered a “party” to a conflict or a “Power” as understood by the Conventions.[39] In practice, however, peacekeeping and peace-enforcement operations can be involved, with or against the will of the UN, in hostilities with the same characteristics and humanitarian problems to be solved by IHL as traditional armed conflicts. Still, many issues remain controversial: does IHL apply to such operations and, if so, what degree of intensity of hostilities triggers its applicability? When is it the law of international and when the law of non-international armed conflicts that applies? Is IHL binding on the UN or on the contributing States?

In keeping with the right to humanitarian assistance during periods of armed conflict enshrined in the Conventions,[40] many UN organizations engaged in humanitarian work, such as UNHCR, UNICEF and WHO, try to distance themselves from the UN’s political undertaking to maintain international peace and security. These organizations are nevertheless ruled by their Member States, which are not and should not be neutral and impartial in armed conflicts.

Despite those limitations, the unique structure of the UN system provides it with the opportunity to play a significant role in implementing IHL – as codifier, executor and subject. Today, the UN Security Council, the UN General Assembly, and the UN Human Rights Council increasingly refer in detail to IHL in their discussions and resolutions. The UN Secretary-General publishes regular reports on the protection of civilians in armed conflicts and his Special Representative on Children and Armed Conflict reports on violations falling within his/her mandate.

## ^ CASES AND DOCUMENTS

- ICRC, Protection of War Victims [Para. 3.1.3]
- Secretary-General’s Reports on the Protection of Civilians in Armed Conflict
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BENCHIKH Madjid (ed.), *Les organisations internationales et les conflits armés*, Paris, L’Harmattan, 2001, 308 pp.
- CONDORELLI Luigi, LA ROSA Anne-Marie & SCHERRER Sylvie (eds), *The United Nations and International Humanitarian Law*, Actes du Colloque International, À l’occasion du cinquantième

anniversaire de l'ONU(Genève – 19, 20 et 21 octobre 1995), Paris, Pedone, 1996, 506 pp.

- PETIT Yves (ed.), *Droit international du maintien de la paix*, Paris, LGDJ, 2000, 216 pp.

#### Further reading:

- BOURLOYANNIS Christiane, “The Security Council of the United Nations and the Implementation of International Humanitarian Law”, in *Denver Journal of International Law and Policy*, Vol. 20, 1992, pp. 335-355.
- BOUTRUCHE Théo, “The Role of United Nations Commissions of Inquiry in the Implementation of IHL: Potential and Challenges”, in DJUKIĆ Dražan & PONSNiccolò (eds), *The Companion to International Humanitarian Law*, Leiden, Boston, M. Nijhoff, 2018, pp. 98-114.
- BORRIE John & CAUGHLEY Tim (eds), *An Illusion of Safety: Challenges of Nuclear Weapon Detonations for United Nations Humanitarian Coordination and Response*, New York, Geneva, United Nations, 2014, 88 pp.
- CHETAIL Vincent, “The Contribution of the International Court of Justice to International Humanitarian Law”, in *IRRC*, No. 850, June 2003, pp. 235-268.
- DAILLIER Patrick, “Les opérations multinationales consécutives à des conflits armés en vue du rétablissement de la paix”, in *Recueil des cours [de l'] Académie de droit international*, Vol. 314, 2005 pp. 424-431.
- FEIGHERY Timothy J., GIBSON Christopher S. & RAJAH Trevor M. (eds), *War Reparations and the UN Compensation Commission: Designing Compensation After Conflict*, Oxford, Oxford University Press, 2015, 448 pp.
- FIELD Sarah M., “UN Security Council Resolutions Concerning Children Affected by Armed Conflict: In Whose “Best Interest”?”, in *The International Journal of Children's Rights*, Vol. 21, No. 1, 2013, pp. 127-161.
- FORTIN Katharine, “Complementarity Between the ICRC and the United Nations and International Humanitarian Law and International Human Rights Law, 1948-1968”, in *IRRC*, Vol. 94, No. 888, Winter 2012, pp. 1433-1454.
- GASSER Hans-Peter, “Ensuring Respect for the Geneva Conventions and Protocols: The Role of Third States and the United Nations”, in FOX Hazel & MEYER Michael A (eds), *Armed Conflict and the New Law, Vol. II, Effecting Compliance*, London, The British Institute of International and Comparative Law, 1993, pp. 15-49.
- NYAMUTATA Conrad, “Engaging or Shaming? An Analysis of UN’s Naming and Shaming of Child Abusers in Armed Conflict”, in *Journal of International Humanitarian Legal Studies*, Vol. 4, Issue 1, 2013, p. 151-173.
- ROSCINI Marco, “The United Nations Security Council and the Enforcement of International Humanitarian Law”, in *Israel Law Review*, Vol. 43, No. 2, 2010, pp. 330-359.
- ROSKAM Hilde D., “Crime-Based Targeted Sanctions: Promoting Respect for International Humanitarian Law by the Security Council” in *Yearbook of International Humanitarian Law*, Vol. 19, 2016, p. 89-117.
- SANDOZ Yves, “Réflexions sur la mise en œuvre du droit international humanitaire et sur le rôle du



Comité international de la Croix-Rouge en ex-Yougoslavie”, in *Revue Suisse de Droit International et de Droit Européen*, No. 4, 1993, pp. 461-490.

- SCHWEBEL Stephen M., “The Roles of the Security Council and the International Court of Justice in the Application of International Humanitarian Law”, in *JILP*, 1995, pp. 731-759.
- VAN DER AUWERA Sigrid, “UNESCO and the Protection of Cultural Property During Armed Conflict”, in *International Journal of Cultural Policy*, Vol. 19, No. 1, January 2013, pp. 1-19.
- WATSON Geoffrey R., “Agora: ICJ Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory”, in *AJIL*, Vol. 99/1, January 2005, pp. 1-141.
- WATTS Sean, “Under Siege: International Humanitarian Law and Security Council Practice Concerning Urban Siege Operations”, in *Harvard Law School*, May 2014, 22 pp.
- WEISSBRODT David, “The Committee on the Elimination of Racial Discrimination and International Humanitarian Law”, in HESTERMEYER Holger P., KÖNIG Doris, MATZ-LUCK Nele, RÖBEN Volker, SEIBERT-FOHR Anja, STOLL Peter-Tobias & VÖNEKY Silja (eds), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum*, Leiden, Boston, M. Nijhoff, 2012, pp. 633-654.
- ZEMACH Ariel, “Indeterminacy in the Law of War: The Need for an International Advisory Regime”, in *Brooklyn Journal of International Law*, Vol. 43, Issue 1, 2017, pp. 1-74.
- ZIMMERMANN Andreas, “The Security Council and the Obligation to Prevent Genocide and War Crimes”, in *Polish Yearbook of International Law*, Vol. 32, 2012, pp. 307-314.

## 1. IHL applicable in situations threatening international peace and security

### ^ CASES AND DOCUMENTS

- Iran/Iraq, UN Security Council Assessing Violations of International Humanitarian Law
- UN Security Council, Sanctions Imposed Upon Iraq
- UK, Serdar Mohammed v. Ministry of Defence [paras 158-222]
- ECHR, Al-Jedda v. UK

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- IRMAKKESEN Öykü, “The Notion of Armed Attack Under the UN Charter and the Notion of International Armed Conflict: Interrelated or Distinct?”, in *Geneva Academy of International Humanitarian Law and Human Rights*, LL.M. Paper, August 2014, 29 pp.
- GEISS Robin, “Armed Violence in Fragile States: Low-Intensity Conflicts, Spillover Conflicts, and Sporadic Law Enforcement Operations by Third Parties”, in *IRRC*, Vol. 91, No. 873, 2009, pp. 127-142.

## 2. Violations of IHL as a threat to international peace and security

---

## ^ CASES AND DOCUMENTS

- ICRC, Protection of War Victims [Para. 3.1.2]
- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 160]
- Sudan, Report of the UN Commission of Enquiry on Darfur
- Iran/Iraq, UN Security Council Assessing Violations of International Humanitarian Law
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 17]
- UN, Statute of the ICTY [Part A.]
- UN, Statute of the ICTR [Part A.]
- UN, Report of the Secretary-General for the World Humanitarian Summit
- UN, Security Council Resolution 2286 on Attacks on Hospitals

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- SASSÒLI Marco, "The Concept of Security in International Law Relating to Armed Conflicts", in BAILLIET Cécilia M., *Security: a Multidisciplinary Normative Approach*, Leiden, Boston, M. Nijhoff, 2009, pp. 7-23.

### Further reading:

- PICKARD Daniel B., "When Does Crime Become a Threat to International Peace and Security?", in *Florida Journal of International Law*, Vol. 12/1, 1998, pp. 1-21.

- including in non-international armed conflicts

## ^ CASES AND DOCUMENTS

- Sudan, Arrest Warrant for Omar Al-Bashir [Part A.]
- UN, Security Council Resolution 688 on Northern Iraq
- Case Study, Armed Conflicts in the Great Lakes Region [Part I. B., C.1 and Part III. D.]
- UN, A Multinational Force to Facilitate Humanitarian Aid

### 3. IHL as human rights in armed conflicts

## ^ CASES AND DOCUMENTS

- Israel/Gaza, Operation Cast Lead
- Israel/Lebanon/Hezbollah, Conflict in 2006

- Case Study, Armed Conflicts in the Great Lakes Region [Part III. A.2, C.1 and D.]
- Libya, NATO Intervention 2011
- Libya, Report of the Office of the UN High Commissioner for Human Rights (2014/15)
- Yemen, Potential Existence and Effects of Naval Blockade

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- HAMPSON Françoise, “Les droits de l’homme et le droit humanitaire international : deux médailles ou les deux faces de la même médaille ?”, in *Bulletin des droits de l’homme*, No. 91/1, September 1992, pp. 51-60.
- MAX Emilie, *Implementing international humanitarian law through human rights mechanisms: opportunity or utopia?*, Geneva, Geneva Academy of Humanitarian Law and Human Rights, 2019, 20 pp.
- OHCHR, *International Legal Protection of Human Rights in Armed Conflict*, New York, Geneva, United Nations, 2011, 119 pp.
- SHRAGA Daphna, “The Interplay Between Human Rights and International Humanitarian Law in UN Operations”, in DE WET Erika & KLEFFNER Jann (eds), *Convergence and Conflicts of Human Rights and International Humanitarian Law in Military Operations*, Pretoria, Pretoria University Law Press, 2014, pp. 211-225.
- SIATITSA Ilia Maria & TITBERIDZE Maia, “Human Rights in Armed Conflict: Ten Years of Affirmative State Practice Within United Nations Resolutions”, in *Journal of international Humanitarian Legal Studies*, Vol. 3, Issue 2, 2012, pp. 233-262.
- KÄLIN Walter, “Universal Human Rights Bodies and International Humanitarian Law”, in KOLB Robert & GAGGIOLI Gloria (eds), *Research Handbook on Human Rights and Humanitarian Law*, Cheltenham/Northampton, Edward Elgar, 2013, pp. 441-465.

### Further reading:

- BARTOLINI Giulio, “Armed Forces and The International Court of Justice: The Relevance of International Humanitarian Law and Human Rights Law to the Conduct of Military Operations”, in ODELLO Marco & SEATZU Francesco (eds), *Armed Forces and International Jurisdictions*, Cambridge, Intersentia, 2013, pp. 51-89.
- BELLAL Annyssa, “Building Respect for the Rule of Law in Violent Contexts: the Office of the High Commissioner for Human Rights' Experience and Approach”, in *IRRC*, Vol. 96, No. 895/896, Autumn/Winter 2014, pp. 881-900.
- BYRON Christine, “A Blurring of the Boundaries: The Application of International Humanitarian Law by Human Rights Bodies”, in *Virginia Journal of International Law*, Vol. 47, No. 4, 2007, pp. 839-896.
- DECAUX Emmanuel & AKTYPIS Spyridon, “Le droit des conflits armés devant les organes de contrôle des traités relatifs aux droits de l’homme”, in CHETAIL Vincent, *Permanence et mutation du*

*droit des conflits armés*, Bruxelles, Bruylant, 2013, pp. 529-572.

- O'DONNELL Daniel, "Trends in the Application of International Humanitarian Law by United Nations Human Rights Mechanisms", in *IRRC*, No. 324, September 1998, pp. 481-503.
- RICHEMOND-BARAK Daphné, "The Human Rights Council and the Convergence of Humanitarian Law and Human Rights Law", in BANKS William C. (ed.), *Counterinsurgency Law: New Directions in Asymmetric Warfare*, Oxford, Oxford University Press, 2013, pp. 3-23.
- TODESCHINI Vito, "The ICCPR in Armed Conflict: An Appraisal of the Human Rights Committee's Engagement with International Humanitarian Law", in *Nordic Journal of Human Rights*, Vol. 35, No. 3, 2017, pp. 203-219.
- VAN DEN ERIK Larissa & DUFFY Helen, "Human Rights Bodies and International Humanitarian Law: Common but Differentiated Approaches", in BUCKLEY Carla M., DONALD Alice & LEACH Philipp, *Towards convergence in international human rights law : approaches of regional and International systems*, Leiden, Brill, Nijhoff, 2016, pp. 366-406.
- ZHU Lijiang, "International Humanitarian Law in the Universal Periodic Review of the UN Human Rights Council", in *Journal of International Humanitarian Law Studies*, Vol. 5, No. 1-2, 2014, pp. 186-212.

## 4. The activities of humanitarian organizations of the UN system

### ^ CASES AND DOCUMENTS

- ICRC, Protection of War Victims [Para. 3.2]
- UN Security Council, Sanctions Imposed Upon Iraq [Part C.]
- Case Study, Armed Conflicts in the Great Lakes Region [Part I. D.]
- Engaging Non-state Armed Groups on the Protection of Children
- Libya, Report of the Office of the UN High Commissioner for Human Rights (2014/15)

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- BARTHOLOMEUSZ Lance, "The Legal Framework for Protection of United Nations Humanitarian Premises During Armed Conflict", in *Max Planck Yearbook of United Nations Law*, Vol. 18, Issue 1, 2014, pp. 68-108.
- BLANK Laurie R., "The Limits of Inviolability: The Parameters for Protection of United Nations Facilities During Armed Conflict", in *International Law Studies*, Vol. 93, 2017, pp. 45-101.
- ZIMMERMANN Andreas, "Humanitarian Assistance and the Security Council", in *Israel Law Review*, Vol. 50, Issue 1, March 2017, pp. 3-23.

#### Further reading:

- MUNTARBHORN Vitit, “Protection and Assistance for Refugees in Armed Conflicts and Internal Disturbances: Reflections on the Mandates of the International Red Cross and Red Crescent Movement and the Office of the United Nations High Commissioner for Refugees”, in *IRRC*, No. 265, July-August 1988, pp. 351-366.

## 5. UN military forces and IHL

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- EMANUELLI Claude (ed.), *Les actions militaires de l'ONU et le droit international humanitaire*, Montréal, Wilson & Lafleur Itée, 1995, 112 pp.
- GREENWOOD Christopher, “International Humanitarian Law and United Nations Military Operations”, in *YIHL*, Vol. 1, 1998, pp. 3-34.

#### Further reading:

- BERNARD Vincent & NIKOLOVA Mariya, “Entretien avec le Général Babacar Gaye, conseiller militaire de l'ONU pour les opérations de maintien de la paix”, in *Revue Internationale de la Croix-Rouge : Sélection française*, Vol. 95, No. 3/4, 2013, pp. 15-23.
- CHO Sihyun, “International Humanitarian Law and United Nations Operations in an Internal Armed Conflict”, in *Korean Journal of International and Comparative Law*, Vol. 26, 1998, pp. 85-111.
- International Institute of Humanitarian Law, *International Humanitarian Law, Human Rights and Peace Operations: 31st Round Table on Current Problems of International Humanitarian Law*, Sanremo, 4-6 September 2008, Sanremo, International Institute of Humanitarian Law, 2009, 352 pp.
- OKIMOTO Keiichiro, “Protection of Civilians in International Humanitarian Law and by the Use of Force Under Chapter VII of the Charter of the United Nations”, in *Asia-Pacific Yearbook of International Humanitarian Law*, Vol. 4, 2008-2011, p. 1-102.
- URBINA Julio Jorge (ed.), *Protección de la víctimas de los conflictos armados, Naciones Unidas y derecho internacional humanitario: desarrollo y aplicación del principio de distinción entre objetivos militares y bienes de carácter civil*, Valencia, Tirant Monografías, 2000, 439 pp.
- WILLS Siobhán (ed.), *Protecting Civilians: The Obligation of Peacekeepers*, Oxford, OUP, 2009, 296 pp.

#### a. UN forces as addressees of and protected by IHL

##### Introductory text

Since the inception of UN peace-keeping operations, whether, when and which part of IHL applies to such operations has been a point of debate. Classic peace-keeping operations were based on the consent of the parties and were independent and impartial. As from the early 1990s, some peace-keeping operations were given the power to use force beyond self-defence, for example in defence of their mandate. Many recent

peace operations have been authorized under Chapter VII of the UN Charter and have a broad mandate to use force. The applicability of IHL to such operations has therefore gained increasing importance.

The UN may be bound by IHL either because its internal law says so, because it has undertaken to be so bound, or because customary law applies equally to States and international organizations. Respect for human rights is one of the UN's purposes, and IHL can be seen as guaranteeing these rights in armed conflicts. The question is whether the rules of the UN Charter on respect for human rights are equally addressed to the organization itself. In addition, the relevant provisions in the Charter are vague. As for IHL, the UN Secretary-General's Bulletin on Observance by United Nations Forces of IHL includes and summarizes many – but not all – rules of IHL and requests that UN forces comply with them when engaged as combatants in armed conflicts.[41] Are the missing rules (inter alia those on combatant status and treatment of protected persons in occupied territories) never binding on UN forces? When are UN forces engaged in an armed conflict as combatants? These two questions remain subject to controversy.

The UN is not able to become a party to IHL treaties and there are a good number of rules which could not be respected by an international organization but only by a State having a territory, laws and tribunals. When it comes to customary law, the majority view is that the UN is a subject of international law and as such is bound by the same rules as States if it engages in the same activities as States. The real question is, however, whether it is bound by precisely the same customary obligations as States. The UN long insisted that it was bound only by the "principles and spirit" of IHL. This formulation has changed over time to become the "principles and rules" of IHL, but as the UN denies that it is bound by many of the detailed rules of IHL, doubt has been expressed whether it is bound by customary IHL, which flows from the behaviour and *opinio juris* of its subjects.

Even if and insofar as the UN is not bound by IHL, those who actually act for it may be bound as individuals (by criminalized rules of IHL) or because they are organs of (contributing) States which are bound. States contributing troops are parties to IHL treaties, but they would certainly not like to be parties to an armed conflict and it is doubtful whether and when an operation can also be attributed to them if the UN has command and control. If the operation cannot be attributed to contributing States, under IHL they are still bound to "ensure respect" for IHL obligations.[42] UN member States have the same obligation and are in addition responsible for activities they entrusted their organization to perform, if such delegation circumvented their own obligations in respect of those activities.[43] If the UN authorized an operation to use force, the additional question arises whether, in what circumstances and how far the mandate given by the UN Security Council prevails, under Article 103 of the UN Charter, over the IHL obligations of member States or contributing States.

Other challenges to the applicability of IHL to peace operations relate to the mandate and purpose of such operations. Peace is certainly a noble reason for conducting hostilities. However, according to the fundamental distinction and complete separation between *jus ad bellum* and *jus in bello*, this should not

matter for the applicability of IHL. Nevertheless, in debates about when IHL fully applies to UN forces, some argue that this depends on the mandate of such forces. More generally, underlying the reluctance of the UN to be bound by the full corpus of IHL rules, there is also the idea that UN forces, which represent international legality and the international community, and which enforce international law, cannot be bound by the same rules as their enemies.

Even if IHL could as such fully apply to the UN (or to contributing States in respect of the conduct of their contingents), it would only do so if and when the UN (or the respective contingent) is engaged in an armed conflict. For this, it is not sufficient for UN forces to be deployed on a territory where others are fighting an armed conflict. This raises the general issue of the material field of application of IHL. In addition, can a peace operation conducted on the territory of a State with the consent of its government be classified as a non-international armed conflict directed at an armed group fighting against that government, or does the IHL of international armed conflicts apply?

One of the main practical reasons for the reluctance of contributing and member States to recognize that IHL applies to peace forces is that they correctly perceive that if IHL (of international armed conflicts) applied to hostilities between those forces and armed forces opposed to them, both would be combatants and therefore lawful targets of attacks. Contributing States obviously hope that their forces will not be attacked. Even when recognizing the applicability of IHL, those States therefore argue that members of their forces are not combatants, but civilians.[44]

Finally, when a territory is placed under the authority of UN forces or a UN administration, the question arises whether the rules of IHL on occupied territories apply. They certainly do not when UN forces are present with the consent of the sovereign power of the territory in question. Beyond that, it is doubtful that a UN presence, if not consented to by the territorial State, can ever be classified as military occupation.

#### Quotation

“The conduct of a State organ does not lose that quality because that conduct is, for example, coordinated by an international organization, or is even authorized by it.”

[Source: A/CN.4/507/Add.2, International Law Commission, 52nd session, Geneva, 1 May-9 June, 10 July 18 August 2000, Third report on State Responsibility. Presented by M. James Crawford, Special Rapporteur, para. 267, available on <http://www.un.org>]

(See also Quotation, IHL and Human Rights, I. Fields of application, 1. Material fields of application: complementarity, b) Human rights apply at all times)

## ^ CASES AND DOCUMENTS

- Convention on the Safety of UN Personnel [Arts 2(2) and 20(a)]
- The International Criminal Court [Part A., Art. 8(2)(b)(iii) and (e)(iii)]
- UN, Guidelines for UN Forces
- UN, Review of Peace Operations
- Israel/Lebanon/Hezbollah, Conflict in 2006 [Part I., paras 233-246, Part II., paras 12-13]
- UN, UN Forces in Somalia
- Belgium, Belgian Soldiers in Somalia
- Canada, R. v. Brocklebank [Paras 62 and 90]
- Canada, R. v. Boland
- Canada, R. v. Seward
- Case Study, Armed Conflicts in the former Yugoslavia [6, 19 and 33]
- Bosnia and Herzegovina, Using Uniforms of Peacekeepers
- Croatia, Prosecutor v. Rajko Radulovic and Others
- The Netherlands, Responsibility of International Organizations
- Case Study, Armed Conflicts in the Great Lakes Region [Part I.C.2 and Part III.C.3]
- Democratic Republic of the Congo, Conflict in the Kivus [Part III., paras 64-70]
- UN, A Multinational Force to Facilitate Humanitarian Aid
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia
- Democratic Republic of Congo, Involvement of MONUSCO
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 97-126]
- ICTY, The Prosecutor v. Radovan Karadzic

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- CHAPMAN Peter F., “Ensuring Respect: United Nations Compliance with International Humanitarian Law”, in *Human Rights Brief*, Vol. 17, Issue 1, 2009, pp. 2-11.
- FERRARO Tristan, “The Applicability and Application of International Humanitarian Law to Multinational Forces”, in *IRRC*, Vol. 95, No. 891/892, 2013, pp. 561-612.
- KOLB Robert (ed.), *Droit humanitaire et opérations de paix internationales: les modalités d’application du droit international humanitaire dans les opérations de maintien ou de rétablissement de la paix auxquelles concourt une organisation internationale (en particulier les Nations Unies)*, Geneva, Helbing & Lichtenhahn; Brussels, Bruylant, 2006, 136 pp.
- MENDIS Chinthaka & JAYAWARDENA Hemamal (eds), *Application of International Humanitarian Law to United Nations Forces*, Newton (MA, USA), Zeilan Press, April 2007, 93 pp.



- Proceedings of the Bruges Colloquium, *International Organisations' Involvement in Peace Operations: Applicable Legal Framework and the Issue of Responsibility*, 12<sup>th</sup> Bruges Colloquium, ICRC, Collegium No. 42, 2012, 179 pp.
- SAMS Katie E., "IHL Obligations of the UN and other International Organisations Involved in International Missions", in ODELLO Marco & PIOTROWICZ Ryszard (eds), *International Military Missions and International Law*, Leiden, Netherland, Brill Nijhoff, 2011, pp. 45-71.
- SAURA Jaume, "Lawful Peacekeeping: Applicability of International Humanitarian Law to United Nations Peacekeeping Operations", in *Hastings Law Journal* 58, February 2007, pp. 479-531.
- SHRAGA Daphna, "The United Nations as an Actor Bound by International Humanitarian Law", in *International Peacekeeping*, Vol. 5(2), 1998, pp. 64-81.
- ZWANENBURG Martin (ed.), *Accountability of Peace Support Operations*, Leiden, Boston, M. Nijhoff, 2005, 363 pp.

### Further reading:

- BANGURA Mohamed A., "Prosecuting the Crime of Attack on Peacekeepers: a Prosecutor's Challenge", in *Leiden Journal of International Law*, Vol. 23, No. 1, 2010, pp. 165-181.
- BOUSTANY Katia, "Brocklebank: A Questionable Decision of the Court Martial Appeal Court of Canada", in *YIHL*, Vol. 1, 1998, pp. 371-374.
- BOUVIER Antoine, "'Convention on the Safety of United Nations and Associated Personnel': Presentation and Analysis", in *IRRC*, No. 309, November-December 1995, pp. 638-666.
- CORN Geoffrey S., "Multi-National Operations, Unity of Effort and the Law of Armed Conflict", *HPCR Working Paper Series*, May 2009, 29 pp.
- DEBARRE Alice (ed.), *Safeguarding Medical Care and Humanitarian Action in the UN Counterterrorism Framework*, New York, International Peace Institute, September 2018, 33 pp.
- HOFFMAN Michael H., "Peace-Enforcement Actions and Humanitarian Law: Emerging Rules for 'Interventional Armed Conflict'", in *IRRC*, No. 837, March 2000, pp. 193-204.
- KESSING Peter Vedel, "Security Detention in UN Peace Operations", in LARSEN Kjetil Mujezinović, COOPER Camilla Guldahl & NYSTUEN Gro (eds), *Searching for a "Principle of Humanity" in International Humanitarian Law*, Cambridge, Cambridge University Press, 2013, pp. 272-303.
- LUPI Natalia, "Report by the Enquiry Commission on the Behaviour of Italian Peace-Keeping Troops in Somalia", in *YIHL*, Vol. 1, 1998, pp. 375-379.
- MACURA Tomas, "Accountability and Protection of UN Peacekeepers in Light of MONUSCO", in *Die Friedens-Warte: Journal of International Peace and Organization*, Vol. 88, , No. 3/4, 2013, pp. 143-156.
- Ministry of Foreign Affairs of Denmark, "The Copenhagen Procession - The Handling of Detainees in International Military Operations", in *Revue de droit militaire et de droit de la guerre*, Vol. 3-4, No. 46, 2007, pp. 363-392.
- NAERT Frederik, "Detention in Peace Operations: The Legal Framework and Main Categories of Detainees", in *Revue de droit militaire et de droit de la guerre*, Vol. 1-2, No. 45, 2006, pp. 51-78.
- OKIMOTO Keiichiro, "Violations of International Humanitarian Law by United Nations Forces and

their Legal Consequences”, in *YIHL*, Vol. 6 (2003), 2006, pp. 199-236.

- PACHOLSKA Magdalena, “(Il)Legality of Killing Peacekeepers: The Crime of Attacking Peacekeepers in the Jurisprudence of International Criminal Tribunals”, in *Journal of International Criminal Justice*, Vol. 13, No. 1, March 2015, pp. 43-72.
- PALWANKAR Umesh, “Applicability of International Humanitarian Law to United Nations Peace-Keeping Forces”, in *IRRC*, No. 294, May-June 1993, pp. 227-240.
- PALWANKAR Umesh (ed.), *Symposium on Humanitarian Action and Peace-Keeping Operations*, Geneva, ICRC, 1994, 107 pp.
- RYNIKER Anne, “Respect du droit international humanitaire par les forces des Nations Unies: quelques commentaires à propos de la circulaire du Secrétaire général des Nations Unies du 6 août 1999”, in *IRRC*, No. 836, December 1999, pp. 795-817.
- SCHINDLER Dietrich, “U.N. Forces and International Humanitarian law”, in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, Geneva, ICRC, The Hague, M. Nijhoff, 1984, pp. 521-530.
- SIEKMANN Robert C.R., “The Fall of Srebrenica and the Attitude of Dutchbat from an International Legal Perspective”, in *YIHL*, Vol. 1, 1998, pp. 301-312.
- TODESCHINI Vito, “The Obligation to Investigate in Peace Operations: The Role of Cooperation in Ensuring Effectiveness”, 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. 405-450.
- VON ARNAULD Andreas, BIRKENKÖTTER Hannah & BUSZEWSKI Sinthiou, “Accountability of Peacekeepers”, in *Die Friedens-Warte: Journal of International Peace and Organization*, Vol. 88, No. 3/4, 2013, 233 pp.
- WECKEL Philippe, “Respect du droit international humanitaire par les forces des Nations Unies. Circulaire du Secrétaire général du 6 août 1999”, in *RGDIP*, Vol. 103/4, 1999, pp. 973-978.
- WILLS Siobhán, “The Geneva Conventions: Do They Matter in the Context of Peacekeeping Missions?”, in EVANGELISTA Matthew & TANNENWALD Nina (eds), *Do the Geneva Conventions Matter?*, Oxford, Oxford University Press, 2017, pp. 303-322.
- WILLS Siobhan, “Continuing Impunity of Peacekeepers: The Need for a Convention”, in *Journal of International Humanitarian Legal Studies*, Vol. 4, Issue 1, 2013, pp. 47-80.
- YOUNG Robert M., “IHL and Peace Operations: Sharing Canada’s Lessons Learned from Somalia”, in *YIHL*, Vol. 1, 1998, pp. 362-370.

aa) the irrelevance of jus ad bellum (legality of the involvement of UN forces, their mandate) for the applicability of jus in bello (based on the facts on the ground)

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- KOUTROULIS Vaios, “Les tensions entre jus ad bellum et jus in bello dans le cadre des mandats du

Conseil de sécurité”, in BANNELIER-CHRISTAKIS Karine & PISON Cyrille (eds), *Le recours à la force autorisé par le Conseil de sécurité : droit et responsabilité*, Paris, Pedone, 2014, pp. 27-52.

**Further reading:**

- LEHMANN Julian M., “All Necessary Means to Protect Civilians: What the Intervention in Libya Says About the Relationship Between the Jus in Bello and the Jus ad Bellum”, in *Journal of Conflict and Security Law*, Vol. 17, Issue 1, Spring 2012, pp. 117–146.
- MÉGRET Frédéric, *Les missions autorisées par le Conseil de sécurité à l'heure de la R2P : vers une application différenciée du jus in bello ?*, McGill University, 2013, 23 pp.

bb) which rules are binding?

- the UN, a Party to the Geneva Conventions?
- the “principles and spirit” of IHL
- the UN Secretary-General’s Guidelines
- the 1994 Convention on the Safety of United Nations and Associated Personnel and its relationship with IHL

## ▶ SPECIFIC BIBLIOGRAPHY

**Suggested reading:**

- BIALKE Joseph P., “United Nations Peace Operations: Applicable Norms and Application of the Law of Armed Conflict”, in *The Air Force Law Review*, Vol. 50, 2001, pp. 1-63.
- MURPHY Ray, “United Nations Military Operations and International Humanitarian Law: What Rules Apply to Peacekeepers?”, in *Criminal Law Forum*, Vol. 14, 2003, pp. 153-194.
- PAUST Jordan J., “The UN is Bound by Human Rights: Understanding the Full Reach of Human Rights, Remedies, and Nonimmunity”, in *Harvard International Law Journal Online*, Vol. 51, 2010, pp. 1-14.
- SHRAGA Daphna, “The United Nations as an Actor Bound by International Humanitarian Law”, in *International Peacekeeping*, Vol. 5, No. 2, 1998, pp. 64-81.

**Further reading:**

- BENVENUTI Paolo, “Le respect du droit international humanitaire par les forces des Nations Unies : la circulaire du Secrétaire général”, in *RGDIP*, Vol. 105/2, 2001, pp. 355-372.
- SERGEEV Artem, “Applying Additional Protocol II of the Geneva Conventions to the United Nations Forces: Legal Insights on a Growing Responsibility”, in *Journal of international humanitarian legal studies*, Vol. 8, Issue 1-2, 2017, pp. 234-254.

cc) existence of an armed conflict?

- is the conflict international or non-international?
- the necessary threshold of violence    different for IHL of international and of non-international armed conflicts
- irrelevance of the legal basis and the mandate of the international forces

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- WHITE Nigel D., "Peacekeeping or War-Fighting?", in WHITE Nigel D. & HENDERSON Christian (eds), *Research Handbook on International Conflict and Security Law: Jus ad Bellum, Jus in Bello and Jus post Bellum*, Cheltenham, Northampton, E. Elgar, 2013, pp. 572-597.

dd) who are the parties to the conflict?

## ^ CASES AND DOCUMENTS

- ICRC, *International Humanitarian Law and the challenges of contemporary armed conflicts in 2015* [paras 108-114]

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- LILLY Damian, "The United Nations as a Party to Armed Conflict: The Intervention Brigade of MONUSCO in the Democratic Republic of Congo (DRC)", in *Journal of International Peacekeeping*, Vol. 20, Issue 3-4, 2016, pp. 313-341.

ee) are the members of the international force combatants?

## ^ CASES AND DOCUMENTS

- ICRC, *International Humanitarian Law and the challenges of contemporary armed conflicts in 2015* [paras 117-121]

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- LAGRANGE Philippe, “Forces des Nations Unies et respect du droit international humanitaire : de l'importance de la notion de participation aux hostilités”, in BIAD Abdelwahab & TAVERNIER Paul (eds), *Le droit international humanitaire face aux défis du XXIe siècle*, Bruxelles, Bruylant, 2012, pp. 291-311.

**Further reading:**

- GHAZI JANABY Mohamad, “The Legal Status of Employees of Private Military/Security Companies Participating in U.N. Peacekeeping Operations”, in *Northwestern Journal of International Human Rights*, Vol. 13, Issue 1, 2015, pp. 82- 102.

ff) the distinction between hostilities and police operations

## ▲ SPECIFIC BIBLIOGRAPHY

**Suggested reading:**

- EMANUELLI Claude (ed.), *Les casques bleus: policiers ou combattants ?*, Collection Bleue, Montréal, 1997, 130 pp.
- MÉGRET Frédéric, “Missions autorisées par le Conseil de sécurité à l'heure de la R2P : au-delà du jus in bello ?”, in *Revue de Droit Militaire et de Droit de la Guerre = The Military Law and Law of War Review = Tijdschrift Voor Militair Recht En Oorlogsrecht = Zeitschrift Für Wehrrecht Und Kriegsvölkerrecht = Rivista Di Diritto Militare E Di Diritto Della Guerra = Revista De Derecho Militar Y De Derecho De La Guerra*, 52/2, 2013, pp. 205-240.

gg) is Convention IV binding on peace forces controlling a territory and an international civil administration?

## ▲ SPECIFIC BIBLIOGRAPHY

**Suggested reading:**

- CORSO Noemi, “A propos de l'applicabilité du droit de l'occupation militaire aux forces des Nations Unies”, in *Schweizerische Zeitschrift für Internationales und Europäisches Recht = Revue suisse de droit international et de droit européen = Rivista svizzera di diritto internazionale e europeo = Swiss Review of International and European Law*, Vol. 23, No. 4, 2013, pp. 609-638.
- INGRAVALLO Ivan, “UN Territorial Administrations: Between International Humanitarian Law and Human Rights Law”, in KOLB Robert & GAGGIOLI Gloria (eds), *Research Handbook on Human Rights and Humanitarian Law?*, Cheltenham, Northampton, E. Elgar, 2013, pp. 391-415.
- OSWALD Bruce, “The Law on Military Occupation: Answering the Challenges of Detention During Contemporary Peace Operations?”, in *Melbourne Journal of International Law*, Vol. 8, No. 2, 2007,

16 pp.

- WILLS Siobhán, “Occupational Law and Multi-National Operations: Problems and Perspectives”, in *BYIL*, 2007, pp. 256-332.
- ZWANENBURG Martin, “Pieces of the Puzzle: Peace Operations, Occupation and the Use of Force”, in *The Military Law and the Law of War Review*, Vol. 1-2, No. 45, 2006, pp. 239-248.

#### a. UN forces as an IHL implementing mechanism

### ^ CASES AND DOCUMENTS

- ICRC, Disintegration of State Structures
- UN, Review of Peace Operations
- UN, UN Forces in Somalia
- Bosnia and Herzegovina, Constitution of Safe Areas in 1992-1993
- Case Study, Armed Conflicts in the Great Lakes Region [Part I.B. and Part III.D.]
- UN, A Multinational Force to Facilitate Humanitarian Aid
- Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1.B.3]
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 97-126]

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- AITKEN Harry, “The Security Council and International Law Enforcement: A Kelsenian perspective on Civilian Protection Peacekeeping Mandates”, in *Journal of Conflict and Security Law*, Vol. 22, No. 3, Winter 2017, pp. 395-432.
- BENVENUTI Paolo, “The Implementation of International Humanitarian Law in the Framework of United Nations Peace-Keeping”, in *Law in Humanitarian Crises: How Can International Humanitarian Law Be Made Effective in Armed Conflicts?*, Luxembourg, Office for Official Publications of the European Communities, 1995, pp. 13-82.
- FOLEY Conor (ed.), *UN Peacekeeping Operations and the Protection of Civilians: Saving Succeeding Generations*, New York, Cambridge, University Press, 2017, 418 pp.

#### Further reading:

- GANZ Niki A., “The United Nations in Afghanistan: Policy as Protection?”, in AMBACH Philipp, BOSTEDT Frédéric, DAWSON Grant & KOSTAS Steve (eds), *The Protection of Non-Combatants During Armed Conflict and Safeguarding the Rights of Victims in Post-Conflict Society: Essays in Honour of the Life and Work of Joakim Dungel*, Leiden, Boston, Brill Nijhoff, 2015, pp. 136-165.
- LELOUP Mathilde, “La formation des casques bleus à la protection des biens culturels au Mali, une

## 6. Respect for IHL and economic sanctions

### ▾ CASES AND DOCUMENTS

- International Law Case, Articles on State Responsibility [Part A., para. 7 of the commentary to Art. 50]
- UN Security Council, Sanctions Imposed Upon Iraq
- Yemen, Potential Existence and Effects of Naval Blockade
- UN Security Council, Resolution 2664 on Humanitarian Exemptions to UN Sanctions Regime

### ▾ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- COHEN Amichai, “Economic Sanctions in IHL – Suggested Principles”, in *Hebrew University International Law Research Paper*, No. 14-09, June 2009, 33 pp.
- GASSER Hans-Peter, “Collective Economic Sanctions and International Humanitarian Law”, in *ZaöRV*, Vol. 56, No. 4, 1996, pp. 871-904.
- SAHBAN Adil, “The Applicability of International Law Standards to the Sanctions of the Security Council”, in *Annuaire de La Haye de droit international = Hague Yearbook of International Law*, Vol. 26, 2013, pp. 239-315.
- SASSÒLI Marco, “Economic Sanctions and International Humanitarian Law”, in GOWLLAND Vera (ed.), *United Nations Sanctions and International Law*, The Hague, 2001, pp. 243-250.
- SHAYGAN Farideh (ed.), *La compatibilité des sanctions économiques du Conseil de Sécurité avec les droits de l'homme et le droit international humanitaire*, Brussels, Bruylant, 2008, 686 pp.

#### Further reading:

- ALRACHID Loulouwa T., “L’humanitaire dans la logique des sanctions contre l’Irak : la formule ‘pétrole contre nourriture’”, in *Politique étrangère*, Vol. 65/1, 2000, pp. 109-121.
- CHARVIN Robert, “Les mesures d’embargo : la part du droit”, in *RBDI*, 1996, pp. 5-32.
- KOLLER David S. & ECKENFELS-GARCIA Miriam, “Using Targeted Sanctions to End Violations Against Children in Armed Conflict”, in *Boston University International Law Journal*, Vol. 33, Issue 1, Spring 2015, pp. 1-36.
- KOZAL Peggy, “Is the Continued Use of Sanctions as Implemented against Iraq a Violation of International Human Rights?”, in *The Denver Journal of International Law and Policy*, Vol. 28/4, 2000, pp. 383-400.
- MINEAR Larry, CORTRIGHT David, WAGLER Julia, LOPEZ George A. & WEISS Thomas G. (eds),

*Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of United Nations System*, Thomas S. Watson Jr. Institute for International Studies, Occasional Paper No. 31, 1988, 90 pp.

- NABTI Najwa M., “Increasing the Cost of Rape: Using Targeted Sanctions to Deter Sexual Violence in Armed Conflict”, in MAROSSALI Ali Z. & BASSETT Marisa R. (eds), *Economic Sanctions Under International Law*, The Hague, T.M.C. Asser Press, 2015, pp. 43-67.
- STARCK Dorothee, *Die Rechtmässigkeit von UNO-Wirtschaftssanktionen in Anbetracht ihrer Auswirkungen auf die Zivilbevölkerung*, Berlin, Duncker & Humblot, 2000, 473 pp.
- WEISS Thomas G., CORTRIGHT David, LOPEZ George A. & MINEAR Larry (eds), *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions*, New York, Rowman & Littlefield, Lannham, 1997, 277 pp.

## 7. The necessary distinction between conflict resolution and humanitarian action

### ^ CASES AND DOCUMENTS

- ICRC, Protection of War Victims [Para. 3.1.3]
- ICRC, Disintegration of State Structures
- UN, Review of Peace Operations
- Iran/Iraq, 70,000 Prisoners of War Repatriated [Part A.]
- UN Security Council, Sanctions Imposed Upon Iraq
- Case Study, Armed Conflicts in the former Yugoslavia [13 and 14]
- Bosnia and Herzegovina, Constitution of Safe Areas in 1992-1993
- Case Study, Armed Conflicts in the Great Lakes Region [Part I.B.]
- UN, A Multinational Force to Facilitate Humanitarian Aid

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- BRAUMAN Rony (ed.), *L'action humanitaire*, Paris, Flammarion, 2000, 128 pp.
- GIROD Christophe & GNAEDINGER Angelo, *Politics, Military Operations and Humanitarian Action: An Uneasy Alliance*, Geneva, ICRC, 1998, 29 pp.
- MACQUEEN Norrie (ed.), *Humanitarian Intervention and the United Nations*, Edinburgh, Edinburgh University Press, 2011, 240 pp.
- MOORE Jonathan (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, New York, Rowman and Littlefield, 1998, 322 pp.
- O'MEARA Chris, “Should International Law recognize a Right of Humanitarian Intervention?”, in *International and Comparative Law Quarterly*, Vol. 66, Part 2, April 2017, pp. 441-466.



### Further reading:

- CORTEN Olivier & KLEIN Pierre, “Action humanitaire et chapitre VII: la redéfinition du mandat et des moyens d'action des forces des Nations Unies”, in *AFDI*, 1993, pp. 105-130.
- O'MEARA Chris, “Should International Law recognize a Right of Humanitarian Intervention?”, in *International and Comparative Law Quarterly*, Vol. 66, Part 2, April 2017, pp. 441-466.
- RUFIN Jean-Christophe (ed.), *Le piège, quand l'aide humanitaire remplace la guerre*, Paris, Lattès, 1986, 336 pp.
- SAPIR Debarati G., “The Paradox of Humanitarian and Military Intervention in Somalia”, in WEISS Thomas G. (ed.), *The United Nations and Civil Wars*, London, Lynne Rynner, 1995, pp. 151-172.
- TESÓN Fernando (ed.), *Humanitarian Intervention: An Inquiry into Law and Morality*, Dobbs Ferry, Transnational Publishers, 1988, 272 pp.

### a. conflict resolution must address the causes of the conflict, humanitarian action must be neutral

#### ▸ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- POMMIER Bruno, “The Use of Force to Protect Civilians and Humanitarian Action: The Case of Libya and Beyond”, in *IRRC*, Vol. 93, No. 884, 2011, pp. 1063-1083.

### b. the need to ensure that humanitarian action does not serve as an alibi

#### ▸ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- GOODMAN Ryan, “Humanitarian Intervention and Pretexts for War”, in *AJIL*, Vol. 100, No. 1, January 2006, pp 107-141.

#### aa) for intervention

#### ▸ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- BRAUMAN Rony (ed.), *Guerres humanitaires ? : mensonges et intox*, Paris, Textuel, 2018, 127 pp.

#### bb) for non-resolution of the conflict

Suggested reading:

- GOODMAN Ryan, “Humanitarian Intervention and Pretexts for War”, in AJIL, Vol. 100, No. 1, January 2006, pp 107-141.

Footnotes

- [34] UN Charter, Chapter VII
- [35] But see P I, Art. 89 (concerning cooperation of States Parties with the UN); GC I-IV, Arts 64/63/143/159 respectively; P I, Art. 101; P II, Art. 27 (regarding ratification, accession, denunciation, and registration of the Conventions and Protocols)
- [36] UN Charter, Art. 24(2)
- [37] UN Charter, Arts 1(3) and 55(c)
- [38] UNGA Res. 2444 (XXIII) of 19 Dec. 1968
- [39] Certain provisions of the Conventions could literally not even apply to or be applied by the UN, e.g., GC IV, Art. 49(6) (prohibiting an occupying power to transfer “its own population” into an occupied territory), or GC I-IV, Arts 49/50/129/146 respectively and P I, Art. 85(1) (relating to the repression of grave breaches).
- [40] See GC IV, Art. 142; P I, Art. 81
- [41] See UN, Guidelines for UN Forces
- [42] See GC I-IV, common Art. 1 and P I. *See also supra*, V. The obligation to ensure respect (common Article 1)
- [43] See Draft Article 28 on the Responsibility of International Organizations, ILC, Report of the International Law Commission on the Work of its 58th Session, 1 May-9 June, 3 July-11 August 2006, UN Doc A/61/10, ch. VII
- [44] See The International Criminal Court [Part A., Art. 8(2)(b)(iii) and 8(2)(e)(iii)]

## IX. Implementation in time of non-international armed conflict

### Introductory text

Only two specific implementing mechanisms are provided for by the treaty rules of IHL applicable in non-international armed conflicts: (i) the obligation to disseminate IHL “as widely as possible”<sup>[45]</sup> and (ii) the right of the ICRC to offer its services.<sup>[46]</sup> The first mechanism has the same meaning as in international armed conflicts. The second means that in such conflicts the ICRC has no right to undertake its usual activities in the fields of scrutiny, protection and assistance; it may only offer these services to each party to the conflict and then initiate them with each party that has accepted its offer. This right of initiative clearly implies that such an offer is never interference in the internal affairs of the State concerned, nor is the ICRC’s

undertaking of activities in respect of a party accepting such an offer an unlawful intervention. Furthermore, such an offer – as any other measure of implementation of the IHL of non-international armed conflicts – cannot be construed to confer any legal status on any party to a conflict.[47]

Even though they are not specifically prescribed by the IHL of non-international armed conflicts, if the preparatory measures that the IHL of international armed conflicts directs to be taken already in peacetime are actually taken, they will also have a beneficial influence on respect for the IHL of non-international armed conflicts. For instance, building hospitals away from possible military objectives, properly restricting the use of the red cross, red crescent or red crystal emblem, and instructing combatants to wear identity tags will necessarily have the same effects in international and non-international armed conflicts. In practice, armed forces train their members in peacetime in view of international armed conflicts. If such training is properly accomplished, all soldiers will have the same reflexes in a non-international armed conflict. Indeed, at the lower levels of the military hierarchy, the rules of behaviour are exactly the same.

Within their national legislation, some States have explicitly laid down that the same rules of IHL apply in both kinds of conflicts. Other States prescribe specific rules for non-international armed conflicts. Where penal legislation on war crimes exists, it is often limited to violations of the IHL of international armed conflicts, while legislation on the use of the emblem usually covers both. As a minimum requirement, States with a legal system in which international treaties are not part of the law of the land have to adopt legislation to transform the rules of the IHL of non-international armed conflicts into national law in order to make them binding on individuals, including rebels. Furthermore, for the same purpose, all States must adopt implementing legislation for the presumably rather few rules of Art. 3 common to the Conventions and of Protocol II which they consider not to be self-executing. Indeed, States have the international responsibility to ensure that individuals under their jurisdiction respect the basic rules of behaviour laid down in those rules.

Since the ICJ has decided that the principle laid down in Art. 1 common to the Conventions and Protocol I also applies to non-international armed conflicts,[48] third States have the right and the obligation to ensure that not only government forces in a State confronted with a non-international armed conflict, but also non-governmental and anti-governmental forces respect the IHL of non-international armed conflicts.

The repression of violations of the IHL of non-international armed conflicts is expressly prescribed in neither Art. 3 common to the Conventions nor Protocol II. It is, however, one of the traditional means available to a State for ensuring compliance with its corresponding international obligations. Punishment will often, but not always, be possible under the ordinary rules of penal law. However, the principle of universal jurisdiction will not necessarily operate without specific legislation.

The establishment of universal jurisdiction and the criminalization of serious violations not falling under ordinary penal law are, however, achieved when national legislation assimilates violations of both the law of international armed conflicts and the law of non-international armed conflicts. Otherwise, repression under a regime similar to that applicable to grave breaches of the law of international armed conflicts can be

accomplished by several legal constructions. First, some authors and States claim that – contrary to their textual and systematic interpretation – the detailed provisions on grave breaches provided for by the Conventions also apply to violations of the law of non-international armed conflicts. Second, recent developments, such as the reactions of the international community to violations of the IHL of non-international armed conflicts in the former Yugoslavia and Rwanda and the ICC Statute, prompt most authors, judicial decisions and – implicitly – the statutes of both international ad hoc tribunals to consider that customary international law criminalizes serious violations of the IHL of non-international armed conflicts. Such an understanding signifies permission, if not an obligation, to apply the principle of universal jurisdiction. Third, a violation of the IHL of non-international armed conflicts may often simultaneously be an act criminalized by other rules of customary or treaty-based international law, such as crimes against humanity, genocide, torture or terrorism.

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ICRC, *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts*, Geneva, ICRC, February 2008, 32 pp.
- MOIR Lindsay, “The Implementation and Enforcement of the Laws of Non-International Armed Conflict”, in *Journal of Armed Conflict Law*, Vol. 3, No. 2, 1998, pp. 163-195.

### Further reading:

- OLSON Laura M., “Practical Challenges of Implementing the Complementarity between International Humanitarian and Human Rights Law - Demonstrated by the Procedural Regulation of Internment in Non-International Armed Conflict”, in *Case Western Reserve Journal of International Law*, Vol. 40, No. 3, 2009, pp. 437-461.
- RAMCHARAN B.G., “The Role of International Bodies in the Implementation and Enforcement of Humanitarian Law and Human Rights Law in Non-International Armed Conflicts”, in *American University Law Review*, Vol. 33/1, 1983, pp. 99-115.

## 1. Dissemination

P I, Art. 19 [CIHL, Rules 142 and 143]

## ▲ CASES AND DOCUMENTS

- ICRC/Geneva Call, Dissemination of IHL using I.T.
- ICRC, Disintegration of State Structures
- China, Military Writings of Mao Tse-Tung
- Nigeria, Operational Code of Conduct

- South Africa, African National Congress Manual
- Sri Lanka, Conflict in the Vanni [Para. 10]
- Afghanistan, Code of Conduct for the Mujahideen
- United States of America, Holder v. Humanitarian Law Project
- Philippines, Armed Group Undertakes to Respect Children
- Syria, Code of Conduct of the Free Syrian Army

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- KLENNER Dietmar, "Training in International Humanitarian Law", in *IRRC*, No. 839, September 2000, pp. 653-662.

## 2. Other preventive measures

[CIHL, Rules 139, 140 and 141]

### ^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- United States of America, Holder v. Humanitarian Law Project

## 3. The obligation of third States to ensure respect

[CIHL, Rule 144]

### ^ CASES AND DOCUMENTS

- ICJ, Nicaragua v. United States [Paras 220 and 255]
- Germany, Government Reply on Chechnya

## 4. The ICRC's right of initiative

GC I-IV, common Art. 3(2)

### ^ CASES AND DOCUMENTS

- Sudan, Report of the UN Commission of Enquiry on Darfur [Para. 550]
- Sri Lanka, Jaffna Hospital Zone

- Sri Lanka, Conflict in the Vanni [Paras 31-36]
- Colombia, Constitutional Conformity of Protocol II [Para. 18]
- Afghanistan, Soviet Prisoners Transferred to Switzerland
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 93-95]

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BUGNION François, *The International Committee of the Red Cross and the Protection of War Victims*, Geneva/Oxford, ICRC/Macmillan, 2003, 1161 pp.
- VEUTHEY Michel, "Implementation and Enforcement of Humanitarian Law and Human Rights Law in Non-International Armed Conflicts: The Role of the International Committee of the Red Cross", in *American University Law Review*, Vol. 33/1, 1983, pp. 83-97.

### a. meaning

## ^ CASES AND DOCUMENTS

- UN, Guiding Principles on Internal Displacement [Principle 25]
- Counterterrorism and IHL, Humanitarian Exemptions

### a. addressees: both the government and insurgents

## ^ CASES AND DOCUMENTS

- Belgium and Brazil, Explanations of Vote on Protocol II [Part A.]
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [para. 140]

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- PERRET Françoise & BUGNION François, "Between Insurgents and Government: The International Committee of the Red Cross's action in the Algerian War (1954-1962)", in *IRRC*, Vol. 93, No. 883, 2011, pp. 707-742.

### c. ICRC activities

(See *infra*, ICRC and the Law, II. ICRC activities, 1. In armed conflicts)

## 5. International responsibility of the State and of the insurgent movement

### ^ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility [Part A., Art. 10 and its commentary]
- Canada, Ramirez v. Canada
- Canada, Sivakumar v. Canada
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo [Paras 177-179, 246-250]
- Switzerland, The Niyonteze Case [Part A., II, 3.B., and Part. B, III., ch.1.B.]
- Philippines, Application of IHL by the National Democratic Front of the Philippines
- Turkey/Iraq, Turkish Military Operations in Northern Iraq
- Central African Republic, Coup d'Etat
- Women and Sexual violence
- Colombia – Sexual violence

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- KOOIJMANS Pieter H., “The Security Council and Non-State Entities as Parties to Conflicts”, in WELLENS Karel (ed.), *International Law: Theory and Practice: Essays in Honour of Eric Suy*, The Hague, Boston and Cambridge, M. Nijhoff, 1998, p. 339.
- ZEGVELD Liesbeth, *Accountability of Armed Opposition Groups in International Law*, Cambridge, CUP, 2002, 290 pp.

## 6. Repression of individual breaches of IHL

(See also *supra*, Criminal Repression, I. Definition of crimes, b) the extension of the concept of grave breaches to non-international armed conflicts) [CIHL, Rules 151-155]

### ^ CASES AND DOCUMENTS

- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996 (Protocol II to the 1980 Convention)
- The International Criminal Court [Part A., Art. 8(2)(c) and 8(2)(e)]
- Switzerland, Military Penal Code [Art. 108]

- Germany, International Criminal Code [Paras 8-12]
- United States, War Crimes Act
- Hungary, War Crimes Resolution
- Belgium, Public Prosecutor v. G.W.
- Chile, Prosecution of Osvaldo Romo Mena [Para. 12]
- Canada, Ramirez v. Canada
- South Africa, AZAPO v. Republic of South Africa [Paras 30 and 31]
- Canada, Sivakumar v. Canada
- Former Yugoslavia, Special Agreements Between the Parties to the Conflicts [Part A., Art. 11(2) and Part B., Art. 5(2)]
- ICTY, The Prosecutor v. Tadic [Part A., paras 128-136 and Part B., paras 623-654]
- ICTY, The Prosecutor v. Blaskic [Part A., paras 179-187]
- ICTY, The Prosecutor v. Galic [Part A., paras 16-31]
- ICTY, The Prosecutor v. Boskoski [Para. 196]
- United States, Kadic et al. v. Karadzic
- Switzerland, Military Tribunal of Division 1, Acquittal of G.
- Croatia, Prosecutor v. Rajko Radulovic and Others
- Case Study, Armed Conflicts in the Great Lakes Region [Part I.F.]
- UN, Statute of the ICTR [Art. 4]
- ICTR, The Prosecutor v. Jean-Paul Akayesu
- Switzerland, X. v. Federal Office of Police
- Switzerland, The Niyonteze Case
- Somalia, the fate of Children in the conflict
- Syria, Code of Conduct of the Free Syrian Army
- Women and Sexual violence
- Colombia – Sexual violence
- Mali, Conduct of Hostilities
- Mali, Accountability for the Destruction of Cultural Heritage
- Sweden/Syria, Can Armed Groups Issue Judgments?
- Afghanistan and Colombia, Conflict-Related Sexual Violence and Violence Against LGBT+ and Gender-Diverse Persons
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare
- Colombia, Special Jurisdiction for Peace, Crimes against the Environment in Cauca

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- MOMTAZ Djamchid, “War Crimes in Non-International Armed Conflicts under the Statute of the International Criminal Court”, in *YIHL*, Vol. 2, 1999, pp. 177-192.



- SPIEKER Heike, "The International Criminal Court and Non-International Armed Conflicts", in *Leiden Journal of International Law*, Vol. 13/2, 2000, pp. 395-425.

#### Further reading:

- BOELART-SUOMINEN Sonja, "The Yugoslavia Tribunal and the Common Core of Humanitarian Law Applicable to all Armed Conflicts", in *Leiden Journal of International Law*, Vol. 13/3, 2000, pp. 619-653.
- BOTHE Michael, "War Crimes in Non-International Armed Conflicts", in *IYHR*, Vol. 24, 1994, pp. 241-252.
- CLAPHAM Andrew, "Extending International Criminal Law Beyond the Individual to Corporations and Armed Opposition Groups", in *Journal of International Criminal Justice*, Vol. 6, No. 5, November 2008, pp. 899-926.
- GRADITZKY Thomas, "Individual Criminal Responsibility for Violations of International Humanitarian Law Committed in Non-International Conflicts", in *IRRC*, No. 322, March 1998, pp. 29-56.
- MEINDERSMA Christa, "Violations of Common Article 3 of the Geneva Conventions as Violations of the Laws or Customs of War under Article 3 of the Statute of the International Criminal Tribunal for the Former Yugoslavia", in *Netherlands International Law Review*, Vol. 42/3, 1995, pp. 375-397.
- MERON Theodor, "War Crimes Law for the Twenty-First Century", in *International Law Studies, US Naval War College*, Vol. 71, 1998, pp. 325-335.
- NAQVI Jasmin, "Enforcement of Violations of IHL: The ICTY Statute: Crimes and Form of Liability", in *University of Tasmania Law Review*, Vol. 33, No. 1, 2014, pp. 1-27.
- PLATTNER Denise, "The Penal Repression of Violations of International Humanitarian Law Applicable in Non-International Armed Conflicts", in *IRRC*, No. 278, September-October 1990, pp. 409-420.
- ROWE Peter, "Liability for 'War Crimes' During a Non-International Armed Conflict", in *RDMDG*, Vol. 34, 1995, pp. 149-168.
- SIVAKUMARAN Sandesh, "Courts of Armed Opposition Groups: Fair Trials or Summary Justice?", in *Journal of International Criminal Justice*, Vol. 7, No. 3, July 2009, pp. 489-513.
- SOMER Jonathan, "Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-International Armed Conflict", in *IRRC*, Vol. 89, No. 867, September 2007, pp. 655-690.
- TURNS David, "War Crimes Without War? The Applicability of International Humanitarian Law to Atrocities in Non-International Armed Conflicts", in *African Journal of International and Comparative Law*, Vol. 7/4, 1995, pp. 804-830.
- ZELLWEGER Valentin & KOLLER David, "Non-State Actors, International Criminal Law and the Role of the International Criminal Court", in BREITENMOSER Stephan, EHRENZELLER Bernhard, SASSÒLI Marco, STOFFEL Walter & WAGNER PFEIFER Beatrice (eds), *Human Rights, Democracy and the Rule of Law: Liber Amicorum Luzius Wildhaber*, Zürich, Dike, February 2007, pp. 1619-1634.

## **7. Other mechanisms foreseen for international armed conflicts**

## **8. Necessity and ways to engage non-State armed groups**

### **Introductory text**

As mentioned above, the IHL of non-international armed conflicts is equally binding on non-State armed groups.[49] The legal mechanisms for its implementation are, however, still mainly geared toward States. Ways might be explored as to how armed groups could be involved in the development, interpretation and operationalization of the law. While an explicit acceptance is not necessary for them to be bound, armed groups should be encouraged to accept IHL formally, inter alia to foster a sense of ownership. Getting a commitment from insurgents is an important step as it places the onus on the members and leaders who undertook the commitment to become advocates of IHL within the group. Common Art. 3 encourages parties to non-international armed conflicts, including armed groups, to conclude agreements putting all or parts of the IHL of international armed conflicts into force. Armed groups also frequently make unilateral declarations in which they undertake to respect IHL. In this respect it may be sometimes more beneficial to negotiate a code of conduct than to obtain a declaration promising compliance with all of international law. Respect for the rules should then be rewarded, which is not yet the case in the present IHL of non-international armed conflicts. A citizen who is, for example, involved in an internal armed conflict against the government will be prosecuted for treason and murder once captured by government forces even if he kills only soldiers and complies with IHL. In addition, acts that are committed in an armed conflict and are not prohibited under IHL should never fall under any definition of terrorism.

Armed groups should equally be offered advisory services. It remains unclear, for instance, how and whether insurgents can legislate and establish tribunals, although they will have to do so to obtain compliance from their members, punish those who do not comply or require certain conduct from those who are under their de facto control. Respect for IHL must also be monitored. Under common Art. 3 of the Conventions, the ICRC may offer its services to insurgents. If they accept, the ICRC can monitor their compliance in exactly the same way as it monitors States Parties involved in international or non-international armed conflicts.

As for punishing violations, international criminal law is as applicable to insurgents as to government armed forces. Insurgent groups are responsible for violations committed by their members. Their responsibility to the international community has already been demonstrated by sanctions imposed on them by the Security Council. Understanding how humanitarian organizations react and how they should react to violations of IHL by insurgents is another area deserving of exploration.

There are two main objections to attempting to engage all insurgents. First, some argue that it encourages them to continue fighting. While a world without insurgents would be a better world, they are as real as armed conflicts. They will not disappear if we ignore them. Others believe that some, but not all insurgents should be engaged. However, it is important to engage all armed groups that are parties to genuine armed conflicts, a concept that is admittedly not very clearly defined in IHL. Beyond the need to clarify this concept, it is difficult to articulate a universally acceptable distinction between “good” and “bad” insurgents. Their

willingness to comply with legal restraints will be revealed by the outcome of the process and therefore cannot be a precondition to it. From a humanitarian point of view, any distinction between insurgents would mean that those in need of the greatest protection would be deprived of efforts aimed at their protection. In addition, once certain groups are excluded from efforts to be engaged, it becomes more difficult to convince governments fighting against the other groups to tolerate such engagement.

## ^ CASES AND DOCUMENTS

- ICRC, *The Challenges of Contemporary Armed Conflicts* [Part B.]
- UN, *Secretary-General's Reports on the Protection of Civilians in Armed Conflict* [Part A., paras 19-21; Part B., paras 38-47]
- South Africa, *African National Congress Manual*
- Geneva Call, *Puntland State of Somalia adhering to a total ban on anti-personnel mines*
- Afghanistan, *Code of Conduct for the Mujahideen* [Arts 34-37, 46-47 and 67]
- Philippines, *Application of IHL by the National Democratic Front of the Philippines*
- United States of America, *Holder v. Humanitarian Law Project*
- Sweden/Syria, *Can Armed Groups Issue Judgments?*

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BANGERTER Olivier, "Reasons Why Armed Groups Choose to Respect International Humanitarian Law or Not", in *IRRC*, Vol. 93, No. 882, 2011, pp. 353-384.
- BASSIOUNI Cherif, "The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors", in *Journal of Criminal Law and Criminology*, Vol. 98, No. 3, 2008, pp. 711-810.
- CLAPHAM Andrew, "Non-State Actors", in CHETAİL Vincent (ed.), *Post-conflict Peacebuilding: a Lexicon*, Oxford, OUP, 2009, pp. 207-213.
- CLAPHAM Andrew, *The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape and Issues Surrounding Engagement*, Geneva, Academy of International Humanitarian Law and Human Rights, February 2010, 45 pp.
- HEFFES Ezequiel, KOTLIK Marcos D. & VENTURA Manuel J. (eds), *International Humanitarian Law and Non-State Actors. Debates, Law, and Practice*, The Hague, Asser Press, 2020, 451 pp.
- LA ROSA Anne-Marie & WUERZNER Carolin, "Armed Groups, Sanctions and the Implementation of International Humanitarian Law", in *IRRC*, Vol. 90, No. 870, June 2008, pp. 327-341.
- SASSÒLI Marco, "Possible Legal Mechanisms to Improve Compliance by Armed Groups with International Humanitarian Law and International Human Rights Law", 2003, *Armed Groups Project*.
- VEUTHEY Michel, "Le rôle des acteurs non étatiques dans le respect du droit international humanitaire", in *Annuaire français de relations internationales*, Vol. 10, 2009, pp. 993-1117.

## Further reading:

- ATADJANOV Rustam B., “Ensuring Compliance by Non-State Actors with Rules of International Humanitarian Law On The Use Of Weapons in NIAC: A Way To Follow?”, in *Asia-Pacific Yearbook of International Humanitarian law*, Vol. 4, 2008-2011, pp. 140-182.
- CARSWELL Andrew & SOMER Jonathan, “Comparing experiences: engaging states and non-state armed groups on international humanitarian law”, in DJUKIC Dražan & PONS Niccolò (eds.), *The Companion to International Humanitarian Law*, Leiden, Boston, Brill, Nijhoff, 2018, pp. 39-55.
- EWUMBUE-MONONO, “Respect for International Humanitarian Law by Armed Non-State Actors in Africa”, in *IRRC*, Vol. 88, No. 864, December 2006, pp. 905-924.
- HOFMANN Claudia, “Engaging Non-State Armed Groups in Humanitarian Action”, in *International Peacekeeping*, Vol. 13, No. 3, September 2006, pp. 396-409.
- HOFMANN Claudia & SCHNECKENER Ulrich, “Engaging Non-State Armed Actors in State and Peace-Building: Options and Strategies”, in *IRRC*, Vol. 93, No. 883, 2011, pp. 603-621.
- SOMER Jonathan, “Engaging Armed Non-State Actors to Protect Children from the Effects of Armed Conflict: When the Stick Doesn't Cut the Mustard”, in *Journal of Human Rights Practice*, Vol. 4, No. 1, pp. 106-127.
- TENEFRENCIA Roselle C., “A Breed of its Own: Characterizing the CARHRIHL as a Legal Document”, in *Ateneo Law Journal*, Vol. 54, 2009, pp. 149-163.

### a. IHL applies to armed groups

## ^ CASES AND DOCUMENTS

- UN, Secretary-General's Reports on the Protection of Civilians in Armed Conflict
- Geneva Call, Puntland State of Somalia adhering to a total ban on anti-personnel mines

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- CASSESE Antonio, “The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflicts”, in *The International and Comparative Law Quarterly*, Vol. 30, No. 2, 1981, pp. 416-439.
- KLEFFNER Jann K., “The Applicability of International Humanitarian Law to Organized Armed Groups”, in *IRRC*, Vol. 93, No. 882, 2011, pp. 443-461.
- SIVAKUMARAN Sandesh, “Binding Armed Opposition Groups”, in *The International and Comparative Law Quarterly*, Vol. 55, No. 2, 2006, pp. 369-394.

### a. Ways to enforce IHL against armed groups

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- PETROV Anton O., "Non-State Actors and Law of Armed Conflict Revisited: Enforcing International Law through Domestic Engagement", in *Journal of Conflict and Security Law*, Vol. 19, No. 2, 2014, pp. 279-316.

aa) indirectly, through States

bb) indirectly, through individual criminal responsibility

## ^ CASES AND DOCUMENTS

- Mali, Accountability for the Destruction of Cultural Heritage

cc) directly, against the armed group

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- HEFFES Ezequiel, "The Responsibility of Armed Opposition Groups for Violations of International Humanitarian Law: Challenging the State-Centric System of International Law", in *Journal of International Humanitarian Legal Studies*, Vol. 4, No. 1, 2014, pp. 81-107.
- SANJUAN PRIETO Rafael A., "Les groupes armés non étatiques comme destinataires des sanctions n'impliquant pas l'emploi de la force", in AKANDJI-KOMBÉ Jean-François (ed.), *L'homme dans la société internationale, Mélanges en hommage au Professeur Paul Tavernier*, Brussels, Bruylant, 2013, pp. 315-329.

c. Promotion of IHL among armed groups

## ^ CASES AND DOCUMENTS

- Geneva Call, Puntland State of Somalia adhering to a total ban on anti-personnel mines
- United States of America, Holder v. Humanitarian Law Project

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BONGARD Pascal & SOMER Jonathan, “Monitoring armed non-state actor compliance with humanitarian norms: a look at international mechanisms and the Geneva Call *Deed of Commitment*”, in *IRRC*, Vol. 93, No. 883, 2011, pp. 673-706.

aa) dissemination

## ^ CASES AND DOCUMENTS

- ICRC/Geneva Call, Dissemination of IHL using I.T.

bb) increase their sense of ownership of IHL

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- RONDEAU Sophie, “Participation of armed groups in the development of the law applicable to armed conflicts”, in *IRRC*, Vol. 93, No. 883, 2011, pp. 649-672.
- WILMS Jan, *Justice through Armed Groups’ Governance - An Oxymoron?*, Berlin, DFG Collaborative Research Center (SFB) 700, 2012, 30 pp.

cc) allow or encourage armed groups to commit themselves to IHL

## ^ CASES AND DOCUMENTS

- Geneva Call, Puntland State of Somalia adhering to a total ban on anti-personnel mines

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BELLAL Annyssa & HEFFES Ezequiel, “Yes I Do: Binding Armed Non-State Actors to IHL and Human Rights Norms Through Their Consent”, in *HR&ILD*, Vol. 12, No. 1, 2018, pp. 120-136.

### Further reading:

- PLATTNER Denise, “La portée juridique des déclarations de respect du droit international humanitaire qui émanent de mouvements en lutte dans un conflit armé”, in *RBDI*, Vol. 18, No. 1, 1984, pp. 299-320.

dd) encourage and assist them to implement IHL?

#### ^ SPECIFIC BIBLIOGRAPHY

##### Suggested reading:

- LA ROSA Anne-Marie, "Sanctions as a Means of Obtaining Greater Respect for Humanitarian Law: a Review of their Effectiveness", in *IRRC*, Vol. 90, No. 870, June 2008, pp. 221-247.

ee) reward the respect of IHL

**d. Monitor the respect for IHL by armed group**

**e. Responsibility of armed groups for violations**

#### ^ SPECIFIC BIBLIOGRAPHY

##### Suggested reading:

- DUDAI Ron, "Closing the gap: symbolic reparations and armed groups", in *IRRC*, Vol. 93, No. 883, 2012, pp. 783-808.
- FORTIN Katharine, "Armed groups and procedural accountability: a roadmap for further thought", in *Yearbook of International Humanitarian Law*, Vol. 19, 2016, pp. 157-180.
- RYNGAERT Cedric & VAN DE MEULEBROUCKE Anneleen, "Enhancing and Enforcing Compliance with International Humanitarian Law by Non-State Armed Groups: an Inquiry into some Mechanisms", in *Journal of Conflict and Security Law*, Vol. 16, No. 3, 2011, pp. 443-472.

aa) criminal responsibility

#### ^ SPECIFIC BIBLIOGRAPHY

##### Suggested reading:

- ELLIS Mark S., "The ICC's Role in Combatting the Destruction of Cultural Heritage", in *Case Western Reserve Journal of International Law*, Vol. 49, No. 1, 2017, pp. 23-62.

bb) private law liability

cc) international law responsibility

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- DAHMANE Farid Wahid, “Les mesures prises par le Conseil de sécurité contre les entités non-étatiques: une tentative de cerner l’application du chapitre VII aux crises internes”, in *African Journal of International and Comparative Law*, Vol. 11/2, 1999, pp. 227-244.
- KOOIJMANS Pieter H., “The Security Council and Non-State Entities as Parties to Conflicts”, in WELLENS Karel (ed.), *International Law: Theory and Practice: Essays in Honour of Éric Suy*, The Hague, Boston and Cambridge, M. Nijhoff, 1998, p. 339.

## ^ CASES AND DOCUMENTS

- Afghanistan, Code of Conduct for the Mujahideen (Arts 34-37, 46-47 and 67)

### a. Dilemmas involved

## ^ CASES AND DOCUMENTS

- United States of America, Holder v. Humanitarian Law Project
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 93-95]

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- CASSESE Antonio, “Should Rebels be Treated as Criminals? Some Modest Proposals for Rendering Internal Armed Conflicts Less Inhumane?”, in CASSESE Antonio, *Realizing Utopia: The Future of International Law*, Oxford, OUP, 2012, pp. 519-524.
- STEINHOFF Dawn, “Talking to the Enemy: State Legitimacy Concerns with Engaging Non-State Armed Groups”, in *Texas International Law Journal*, Vol. 45, 2009, pp. 297-322.

aa) does engaging armed groups encourage their use of violence? bb) should only some armed groups be engaged?

### Footnotes

---



- [45] See P II, Art. 19
- [46] See GC I-IV, common Art. 3(2)
- [47] See GC I-IV, common Art. 3(4)
- [48] See ICJ, *Nicaragua v. United States* [Para. 255]
- [49] See *supra*, Internal Armed conflicts, VIII. Who is bound by the law of non-international armed conflicts?

## X. Factors contributing to violations of International Humanitarian Law

(See also *supra*, Fundamentals of IHL, B. International Humanitarian Law as a Branch of Public International Law, I. International Humanitarian Law: at the vanishing point of international law, 4. Application of International Humanitarian Law by and in failed States)

### Introductory text

First, it is a distinctive feature of social rules that – contrary to the laws of physics – they can be and are actually violated.

Second, violations of IHL mostly consist of violent acts committed in situations already marked by violence: armed conflicts. This is not the place to explain the reasons for violence, a field in which much would appear to be unexplained. Suffice it to mention that violence seems to be inherent in the human condition and results from various complex factors, both objective (historical, cultural, educational and economic) and subjective. However, violence is never inevitable, not even when all factors leading to violence exist. No one is immune from violating IHL, but no one is ever put in a situation where he or she has to violate IHL. In addition, violence is contagious and may render further violence banal. Armed conflicts are marked by plenty of instances of legal and illegal violence which can and do contaminate those who have not yet resorted to violence.

Third, armed conflicts are situations where the primary international legal and social regime – peace – is overruled, in other words *jus ad bellum* has been violated. It is not astonishing that human beings, having experienced the failure of the primary international legal regime, will not necessarily respect the subsidiary regime applicable to such a situation of failure, namely IHL. Lack of respect for the international rules regulating *jus ad bellum*, and more so *jus in bello*, will be reflected in situations of armed conflict and in the behaviour of every human being. Another aspect of this is that an armed conflict is an exceptional experience for every human being, even the best-trained soldiers. Prohibited acts usually become commonplace. Human beings are killed, and property is destroyed, with society's approval. In such circumstances, it is also easy to violate other rules of human behaviour – committing acts which remain prohibited even in armed conflicts by IHL.

Fourth, many of those fighting in and suffering from armed conflicts are continuously exposed to death,

injury, fear, hate, cries, cadavers, dirt, cold, heat, hunger, thirst, exhaustion, weariness, physical tension, uncertainty, arbitrariness and lack of love. In other words, they are deprived of nearly everything which makes human life civilized; they live continuously in a kind of folly in which traditional references no longer exist. Is it astonishing under these circumstances that they commit inhumane and uncivilized acts?

Fifth, modern weapons make it possible for human beings to be killed from a great distance, without singling them out as individuals or even seeing them. Moreover, those weapons are launched according to a “division of labour” that waters down responsibility. Those two factors end up damping certain ethical reflexes. To take but one example, it is unlikely that the pilots who bombed Coventry, Dresden or Hiroshima would have slit the throats of or poured petrol over tens of thousands of women and children. That being said, recent genocidal conflicts have shown that as soon as inter-ethnic hatred has been triggered, good fathers are capable of raping, slitting the throats of and hacking to pieces their neighbours while looking them straight in the eye.

Sixth, most of those fighting in contemporary armed conflicts lived, before the conflict, in an environment of injustice and denial of the most fundamental civil and political, social, economic and cultural rights. This environment often contributed to the outbreak of the conflict. Is it surprising that individuals raised without a proper education, in an atmosphere of street violence, organized crime, misery, racism, perhaps in one of the ever-growing megalopolises where all social structures have collapsed, violate IHL once they are given a weapon and told to fight an “enemy”?

Seventh, the public at large and those who are likely to be protagonists in armed conflicts are often not instructed and trained in IHL. It may be objected that the basic moral principles of IHL are self-evident, but the detailed rules are not always self-explanatory. In particular, it is not obvious that basic moral principles also apply precisely in an armed conflict, where most other rules of social behaviour are suspended, and where fighters are trained to do the opposite: to kill and destroy.

Eighth, knowledge of the rules of IHL is a necessary but not sufficient condition to ensure their respect. They also have to be accepted and implemented. It has to be understood that they are the law accepted by States. It has to be understood that the numerous justifications for violating IHL that may be put forward, for instance, “state of necessity”, “self-defence”, the “sense of having suffered an injustice”, “strategic interests”, the desire to spare friendly forces, or any aim, however noble, cannot be and are not accepted grounds for violating IHL.

Furthermore, it has to be stressed that the rules of IHL can be and often are respected. Scepticism is the first step towards the worst atrocities. Indeed, if we want the public at large to respect these rules, it must become as politically incorrect to be sceptical about IHL as it has fortunately become politically incorrect to be sceptical about gender and racial equality.

Ninth, while respect for IHL is impossible without a minimum of discipline and organization, it is also impossible in the climate of blind obedience that is so commonplace in regular armies and in armed groups who identify their cause with a leader. Indoctrination creates situations in which “the cause” becomes more important than any (other) human value.

Tenth, despite the explanations of sociologists and international lawyers, our societies are still profoundly impregnated with the idea that rules are only valid if their violations are punished. The widespread, nearly generalized impunity met by violations of IHL therefore has a terribly corrupting effect, including on those accepting the rules, who are left with the impression that they are the only ones who comply with them.

Eleventh, IHL will be violated as long as there are cultures, ideologies and ideas excluding others, characterizing them as less human because of their nationality, race, ethnic group, religion, culture or economic condition.

Twelfth, in today's increasingly asymmetric conflicts, both sides are convinced that they cannot win without violating or at least “reinterpreting” IHL. How can the necessary intelligence information about terrorist networks be obtained by humanely treating those who are supposed to have such information? Is not demoralization of the civilian population through terrorist acts the only chance for many groups labelled as “terrorist” to overcome their enemy, which is far superior in equipment, technology and often manpower? In our view, both these calculations are wrong. Inhumane treatment of suspected “terrorists” will only help recruit others and put democratic States on the same moral level as the terrorists. Terrorist attacks only strengthen the determination of the public in democracies to stand behind their governments and to favour military solutions rather than to eradicate the root causes of terrorism (but this may be precisely what the terrorists aim for, because it guarantees them continued support from their constituencies).

Furthermore, in asymmetric conflicts, most rules of IHL are in fact addressed to one side only. Only one side has prisoners, only one side has an air force and only one side could possibly use the civilian population as shields. Beyond that, the very philosophy of IHL – that the only legitimate aim is to weaken the military forces of the enemy – is challenged by such conflicts. That aim is beside the point in asymmetric wars. One side often has no military forces and most of the military forces of the other side are outside the reach of their enemy. One of the strongest arguments used to convince belligerents to respect IHL is that they can achieve victory while respecting IHL and that IHL will even make victory easier, because it ensures that they concentrate on what is decisive, the military potential of the enemy. This argument is not fully true in asymmetric conflicts. Finally, the weaker side in an asymmetric conflict often lacks the necessary structures of authority, hierarchy, communication between superiors and subordinates and processes of accountability, all of which are needed to enforce IHL. Legally, one may obviously consider that such groups do not possess the minimum structure of organization required to be a party to an armed conflict, and that IHL therefore does not apply to such conflicts. In practice, this would, however, mean that IHL does not apply at all to asymmetric conflicts, not even to the more organized government side.

Taking all these factors into account, it is no small source of astonishment that, as the tens of thousands of prisoners visited every year by the ICRC prove, countless fighters respect their surrendering enemies even after their comrades, wives, and children have been killed by those belonging to the same side as those who surrendered. Equally surprising, countless fighters, police officials and investigators do not resort to torture although they assume that those in their hands must know when an attack will happen, countless oppressed citizens do not plant indiscriminate bombs even though their rulers deny them the most fundamental civil, political, social and economic rights, and countless leaders do not fight with no holds barred, even though they fear they may lose the war or their power and are convinced that they are fighting for a just cause.

Only those who experience armed conflicts through their television sets can think that war inevitably entails violations of the laws of war. Those who actually live through wars know that they are fought by human beings who have the inherent choice to be humane.

A major challenge for the implementation of IHL is nevertheless the widening gap between the law's increased promises of protection and the growing perception that it is not respected in actual conflicts.

This widening gap has negative effects on the implementation of IHL. The perceived gap concerning some rules has a contagious effect on other rules. Sometimes, promises have also served as an alibi for not acting. When they see the gap between promises and the reality they suffer, the victims are frustrated, they no longer believe in the law and, what is worse, those who fight for them are even less likely to comply with IHL. Placing their trust in the promises of the international community, victims may even take wrong decisions, which may be fatal for them. Finally, and most importantly, no fighter, combatant or commander wants to risk his life, freedom and health, and forego the easiest solution or even victory to be the only one who respects IHL if he is convinced (or suspects) that no one else respects IHL, or that IHL is not appropriate for the conflict being fought.

The main way of reducing the gap between promises and reality is to respect IHL as promised. Next, those who claim that IHL as it stands was developed at another time and is not adequate for the new challenges of contemporary conflicts should be clear that they advocate a change in the law and are not suggesting that the existing rules are no longer valid. In some instances, it may also be wise to nuance promises. True, law always lays down, in Kantian categories, a "sollen" (what ought to be) and therefore a promise. When Henry Dunant came back from the battlefield of Solferino, he suggested a promise (by States) that the wounded and sick should be respected, protected and cared for, "to whatever nation they belong". Even today, this promise has not been entirely fulfilled. If Henry Dunant had not advocated that promise because he was not sure that States would actually deliver on it, there would be no Geneva Conventions. Those promises, although never entirely fulfilled, nevertheless clearly influenced reality for the benefit of war victims. We should simply make sure the gap never becomes too wide, mainly by bringing reality closer to our promises, but also by avoiding promises we can never deliver on and which are, moreover, often made by those who cannot deliver.

Another way of reducing the credibility gap and the disadvantages it implies is to have the perceived reality of systematic violations cede precedence to the actual reality of frequent respect. Those who consult the media and NGO reports probably believe that IHL is almost never respected. This feeling that IHL is systematically violated is both inaccurate and extremely dangerous for the credibility of IHL and for war victims. Only a few individuals are ready to respect rules protecting those they perceive as enemies even if they are convinced that their enemies do not respect those rules. This vicious circle of non-respect has to be broken. First by an attitude of respect. Second, States accused – often falsely – of violations should make serious enquiries and make their results public in every instance, in order to convince those who consider them as the enemy of their general willingness to respect IHL and their honest endeavour to ensure its respect by their forces. Third, all involved, but in particular teachers and trainers, should, whenever possible and when it is true, show that IHL is most often respected. This is not an easy task. It is not easy to get the facts of real-life examples of respect. Too much hope cannot be pinned on the media. A world in which they would report even-handedly and proportionately about respect and violations would be an Orwellian world. The fact that public opinion perceives violations as a scandal to be reported and respect as normal is a sign that IHL is profoundly anchored in the public conscience.

## ^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- ICRC, Protection of War Victims [Para. 2]
- ICRC, Disintegration of State Structures [Part II.]
- ICRC, The Challenges of Contemporary Armed Conflicts [Part B.]
- First Periodical Meeting, Chairman's Report [Part II.2]
- UN, Resolutions and Conference on Respect for the Fourth Convention [Part G.II.1]
- Autonomous Weapon Systems

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- GROSSMAN Dave, *On Killing, The Psychological Cost of Learning to Kill in War and Society*, Boston, Little, Brown and Company, 1996.
- ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, Recommitting to Protection in Armed Conflict on the 70<sup>th</sup> Anniversary of the Geneva Conventions*, Geneva, ICRC, 2019, 84 pp.
- MUNOZ ROJAS Daniel & FRESARD Jean-Jacques, "The Roots of Behaviour in War: Understanding and Preventing International Humanitarian Law Violations", in *IRRC*, No. 853, March 2004, pp. 189-206.
- SMITH Dan, *Atlas des conflits fin de siècle. Années 90 : guerres d'identité, guerres de pauvreté*,

### Further reading:

- DEHN Jonh C., “Why a President Cannot Authorize the Military to Violate (most of) the Law of War?”, in *Military and Mary Law Review*, Vol. 59, No. 3, 2018, pp. 813-896.
- LEATHERMAN Janie, “Sexual Violence and Armed Conflict: Complex Dynamics of Re-Victimization”, in *International Journal of Peace and Studies*, Vol. 12, No. 1, 2007, pp. 53-71.
- TARAS Raymond & GANGULY Rajat, *Understanding Ethnic Conflict*, 4<sup>th</sup> ed., New-York, Routledge, 2015, 336 pp.

## XI. Non-legal factors contributing to respect for International Humanitarian Law

### Introductory text

As with all law, if IHL is respected, it is not mainly because of the efficiency of the legal mechanisms set up to ensure respect but because of non-legal factors. In that regard, routine is an important factor contributing to respect. Indeed, once soldiers or civil servants are aware of a regulation and know that their superiors expect it to be followed, they will apply and respect it without further discussion, especially if they have understood that it is possible to do so. For this reason, appropriate and meaningful dissemination of the rules is very important. In all human societies there is a positive predisposition to respect the law. In most cases, if individuals understand that the rules of IHL are the law applicable in armed conflicts accepted by States and the international community, and not simply the philanthropic wishes of professional do-gooders, they will respect them.

Respect for IHL is also largely in the military’s interest. Troops who respect IHL form a disciplined unit, whereas looting and raping lacks military value. In addition, respect for IHL is a question of military efficiency. Attacks on civilians constitute not only war crimes but also a waste of ammunition needed for attacking military objectives. Many rules of IHL on the conduct of hostilities simply implement the tactical principles of economy and proportionality of means.

In a global information society, international and national public opinion increasingly contribute to respect for – but unfortunately sometimes also to violations of – IHL. Belligerents need the sympathy of international and national public opinion as much as they need supplies of ammunition. In non-international armed conflicts the battle for the hearts of the people is even one of the main issues. There is no more effective way to lose public support than television images of atrocities that may, unfortunately, also have been manipulated. Free access to the truth by the media may be hindered or manipulated by belligerents: for instance, enemy atrocities may be sheer fabrications. Some belligerents have even bombed their own population to provoke outside intervention against the enemy. Humanitarian assistance increasingly becomes an excuse not to initiate political solutions. Suffering populations are held hostage to achieve political objectives. Manipulated

or not, some media incite hatred and atrocities by dehumanizing members of specific ethnic groups, depriving them of humanitarian protection; fanatic populations demonstrate against humanitarian assistance being brought to “enemy” populations. Even a freely elected parliament may enact legislation depriving “enemies” or “terrorists” of fundamental judicial guarantees or condone torture for reasons of national security.

Respect for many rules of IHL corresponds to the cultural, ethical and religious imperatives of most societies. All religions contain rules on respect for the earth’s or God’s creatures; many holy books contain specific prohibitions applicable in wartime.[50] One does not have to study the Geneva Conventions and Protocols to know that it is prohibited to kill children and to rape women. When the ICRC studies local and regional traditions, including poetry and proverbs, in an effort to anchor its dissemination work in the culture of the people it targets, it always finds principles and detailed rules of behaviour which run parallel to those of IHL.

Whereas (negative) reciprocity is not a legal argument to discontinue respect for IHL, whatever violations the enemy commits, positive reciprocity certainly plays an important role as a non-legal factor in encouraging belligerents to respect IHL. A soldier, an armed group or a State will also respect IHL in order to incite the enemy to respect it. However, even when a State or a soldier doubts whether the enemy will obey IHL, the other reasons for respecting IHL will not disappear.

Finally, the only rational aim of most armed conflicts is peace.[51] At the conclusion of an armed conflict, territorial, political and economic issues remain to be resolved. However, peace is much more readily restored if it is not also necessary to overcome the hatred between peoples invariably spawned and most certainly exacerbated by violations of IHL.

## ^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- China, Military Writings of Mao Tse-Tung
- Nigeria, Operational Code of Conduct
- ICTR, The Media Case

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ICRC, *The Roots of Restraint in War*, Geneva, ICRC, 2018, 78 pp.
- IGNATIEFF Michael, *Warrior’s Honour: Ethic War and the Modern Conscience*, New York, Metropolitan Books, 1997, 207 pp.
- MUNOZ ROJAS Daniel & FRESARD Jean-Jacques, “The Roots of Behaviour in War: Understanding and Preventing International Humanitarian Law Violations”, in *IRRC*, No. 853, March 2004, pp. 189-

## 1. Routine

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- SUTTON Rebecca, “How the Emotions and Perceptual Judgments of Frontline Actors Shape the Practice of International Humanitarian Law”, in BANDES A. Susan, MADEIRA LYNEE Jody, TEMPLE Kathryn & KIDD WHITE Emily, *Research Handbook on Law and Emotion*, Edward Elgar, 2020, 17 pp.

## 2. Military interest

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- BERGSMO Morten & SONG Tianying (eds.), *Military Self-Interest in Accountability for Core International Crimes*, 2<sup>nd</sup> ed., Brussels, Torkel Opsahl Academic EPublisher, 2018, 504 pp.

a) discipline

### ^ CASES AND DOCUMENTS

- China, Military Writings of Mao Tse-Tung
- Nigeria, Operational Code of Conduct

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- RENAUT Céline, “The Impact of Military Disciplinary Sanctions on Compliance with International Humanitarian Law”, in *IRRC*, Vol. 90, No. 870, June 2008, pp. 319-326.

#### Further reading:

- VERHAEGEN Jacques, “Le refus d’obéissance aux ordres manifestement criminels”, in *IRRC*, No. 845, March 2002, pp. 35-50.



b) military efficiency

#### ^ CASES AND DOCUMENTS

- Afghanistan, Assessment of ISAF Strategy

#### ^ SPECIFIC BIBLIOGRAPHY

##### Suggested reading:

- BEER Yishai, "Humanity Considerations Cannot Reduce War's Hazards Alone: Revitalizing the Concept of Military Necessity", in *European Journal of International Law*, Vol. 26, No. 4, 2015, pp. 801-828.

c) tactical principles of economy and proportionality of means

### 3. Public opinion

#### ^ CASES AND DOCUMENTS

- ICRC, Protection of War Victims [Para. 2.3.3]
- China, Military Writings of Mao Tse-Tung
- Nigeria, Operational Code of Conduct
- United States/United Kingdom, Report on the Conduct of the Persian Gulf War
- ICTR, The Media Case
- Afghanistan, Assessment of ISAF Strategy
- Russian Federation, Chechnya, Operation Samashki [Part 7]
- United States, Public curiosity

#### ^ SPECIFIC BIBLIOGRAPHY

##### Suggested reading:

- D'ABOVILLE Benoît, "Médiatisation des opérations de paix et respect du droit international humanitaire?", in *Annuaire français de relations internationales*, 2009, pp. 1027-1036.
- GUTMAN Roy W., "Spotlight on Violations of International Humanitarian Law: The Role of the Media", in *IRRC*, No. 325, December 1998, pp. 667-675.
- HERZBERG Anne & STEINBERG Gerald M., "IHL 2.0: Is There a Role for Social Media in Monitoring and Enforcement?", in *Israel Law Review*, Vol. 45, No. 3, 2012, pp. 493-536.

### Further reading:

- BOEGLI Urs, “A Few Thoughts on the Relationship between Humanitarian Agencies and the Media”, in *IRRC*, No. 325, December 1998, pp. 627-631.
- CHILTON Adam, “The Laws of War and Public Opinion: An Experimental Study”, in *Coase-Sandor Working Paper Series in Law and Economics*, No. 687, 2014.
- CHU Jonathan A., “A clash of norms? How reciprocity and international humanitarian law affect American opinion on the treatment of POWs”, in *Journal of Conflict Resolution*, Vol. 63, No. 5, 2019, pp. 1140-1164.
- LUSTGARTEN Audrey & DEBRIX François, “The Role of the Media in Monitoring International Humanitarian Law During Military Interventions: The Case of Kosovo”, in *Peace & Change*, Vol. 30, No. 3, 2005, pp. 359-397.
- MINEAR Larry, SCOTT Colin & WEISS Thomas G., *The News Media, Civil War and Humanitarian Action*, London, Boulder, 1996, 123 pp.
- SANDOZ Yves, “Is There a ‘droit d’ingérence’ in the Sphere of Information? The Right to Information from the Standpoint of International Humanitarian Law”, in *IRRC*, No. 325, December 1998, pp. 633-642.
- WOODS Michael, DECRISTOFARO Sara & A. GUTIERREZ Brad, “What Americans think of International Humanitarian Law”, in *IRRC*, Vol. 93, No. 884, 2011, pp. 1009-1034.

## 4. Ethical and religious factors

(See *supra*, Fundamentals of IHL, A. Concept and Purpose of International Humanitarian Law, III. International Humanitarian Law and Cultural Relativism)

## 5. Positive reciprocity

### ^ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- PEELER Bryan, *The Persistence of Reciprocity in International Humanitarian Law*, Cambridge, CUP, 2019, 224 pp.
- PROVOST René, “Asymmetrical Reciprocity and Compliance with International Humanitarian law”, in PERRIN Benjamin (ed.), *Modern Warfare: Armed Groups, Private Militaries Humanitarian Organizations and the Law*, Vancouver, UBC Press, 2012, pp. 17-42.

## 6. Return to peace

### ^ CASES AND DOCUMENTS

- Nigeria, Operational Code of Conduct

- UN, Resolutions and Conference on Respect for the Fourth Convention
- ICRC, Iran/Iraq Memoranda
- Colombia, Constitutional Conformity of Protocol II [Para. 21]

## Footnotes

- [50] *See supra*, Quotations 1-5, Fundamentals of IHL, C. Historical Development of International Humanitarian Law
- [51] If the aim of some fighters is not to win the war, but to “earn” their life (through pillage) by perpetuating the war, this logic no longer works and the respect of IHL is therefore particularly difficult to achieve.