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## Introductory text

Increasingly, civilians make up the overwhelming majority of the victims of armed conflict, [1] even though International Humanitarian Law (IHL) stipulates that attacks should only be directed at combatants and military objectives and that civilians and civilian objects should be respected. However, even if IHL is scrupulously respected, civilians can become victims of armed conflicts, as attacks and military operations directed at military objectives are not prohibited merely because they may also affect civilians.

Civilians in war need to be respected by those into whose hands they have fallen, those who could, for example, arrest, ill-treat or harass them, confiscate their property, or deprive them of food or medical assistance.

Under IHL, some of those protections are prescribed for all civilians, [2] but most apply only to "protected civilians", [3] i.e. basically those who are in enemy hands. The rules on the treatment of protected civilians are subdivided into three groups: the first applies to civilians who find themselves on enemy territory, [4] the second contains more detailed and protective rules applying to protected civilians whose territory is occupied by the enemy, [5] while the third encompasses provisions common to the enemy's own territory and occupied territories. [6] This means that no rules cover civilians who are neither (enemy civilians) on the territory of a belligerent nor on an occupied territory. "Occupied territory" is therefore to be understood as a functional concept as far as civilians in enemy hands are concerned, one that applies as soon as civilians fall into enemy hands outside the enemy's own territory. The most detailed rules concern the treatment of civilians interned in connection with the conflict, in both the enemy's own and occupied territories, for imperative security reasons and not in view of a trial. [7] This detailed regime for civilian internees is justified by the fact that such internment is an exception to the general rule that enemy civilians, unlike combatants, may not be detained. It is broadly similar to the regime provided for by Convention III for prisoners of war.

Civilians in war also need to be respected by the belligerent opposing the party in whose hands they are, who could, for example, bomb their towns, attack them on the battlefield, or hinder the delivery of food supplies or family messages. These rules on the protection of the civilian population against the effects of hostilities, which are set out for the most part in Protocol I [8] and customary law (partly based on the 1907

Hague Regulations), are part of the law of the conduct of hostilities and benefit all civilians finding themselves on the territory of parties to an international armed conflict. [9]

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- UN, Secretary-General's Reports on the Protection of Civilians in Armed Conflict
- Belgium, Belgian Soldiers in Somalia
- Syria, Syrian rebels treat captured Filipino soldiers as 'guests'
- Central African Republic/Democratic Republic of Congo/Uganda, LRA attacks

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### Footnotes

- [1] The figures of this table have been taken from the *Office fédéral de la Protection civile, Berne (Switzerland)*, 1988. The scale of the different sections of the chart is only illustrative of the figures mentioned. ICRC. 1999.
- [2] See GC IV, Part II (Arts 13-26) and P I, Section II of Part IV (Arts 72-79, in particular the fundamental guarantees provided for in Art. 75)
- [3] While IHL protects all civilians, this is a term of art defined in Art. 4 of Convention IV in line with the traditional inter-State structure of IHL and does not therefore cover those who are in the hands of a belligerent of which they are nationals (see *supra* Fundamentals of IHL, International Humanitarian

Law as a Branch of Public International Law, 2. personal scope of application).

- [4] See GC IV, Arts 35-46
- [5] See GC IV, Arts 47-78
- [6] See GC IV, Arts 27-34
- [7] See GC IV, Arts 79-135
- [8] See in particular, P I, Arts 48-71
- [9] See P I, Arts 49(2) and 50(1)

## I. The protection of the civilian population against the effects of hostilities

(See *infra*, Conduct of Hostilities, II. The Protection of the Civilian Population against Effects of Hostilities)

## II. The protection of civilians against arbitrary treatment

### ▲ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- UN, Secretary-General's Reports on the Protection of Civilians in Armed Conflict
- UN, Resolutions and Conference on Respect for the Fourth Convention [Part E.II.2]

### 1. The structure of Convention IV

- a. Part II: rules benefiting all civilians
- b. Part III: rules benefiting “protected persons” (as defined in GC IV, Art. 4)
  - aa) Section II: rules protecting foreigners on a party’s own (= non-occupied) territory
  - bb) Section III: rules applicable to occupied territory
  - cc) Section I: rules common to the enemy’s own and occupied territories
  - dd) Section IV: rules protecting civilian internees in the enemy’s own and occupied territories

### 2. Rules benefiting all civilians

#### a. aid and relief

(See *infra*, Conduct of Hostilities, IV. International Humanitarian Law and Humanitarian Assistance)

### ▲ CASES AND DOCUMENTS

- Myanmar, Escalation of the Conflict

- Iraq: Situation of Internally Displaced Persons
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017

### b. special protection of women

GC I-II, Art. 12; GC III, Arts 14, 25, 88, 97 and 108; GC IV, Arts 14, 16, 21-27, 38, 50, 76, 85, 89, 91, 97, 124, 127 and 132; P I, Arts 70 and 75-76; P II, Arts 5(2) and 6(4) [CIHL, Rule 134]

IHL first protects women if they are wounded, sick or shipwrecked, as civilians, as members of the civilian population or as combatants, according to their status. As such, women must benefit from the same protection as that given to men and may not be discriminated against. [10] However, IHL also takes into account the fact that women are more vulnerable, and gives them preferential treatment in some particular cases. First, women are specially protected against any attack on their sexual integrity, in particular against rape, enforced prostitution or any form of indecent assault. [11] The International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC) have included rape and other forms of sexual violence in their list of war crimes, [12] and although the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) does not explicitly mention rape as a war crime, a Trial Chamber nevertheless recognized it as a grave breach of the Geneva Conventions. [13]

Moreover, IHL specially protects pregnant women and maternity cases against the effects of war, [14] and stipulates that, during occupation, such preferential treatment is not to be hindered by the occupying power. [15]

Finally, female prisoners of war or female civilian internees also benefit from specific rules. [16] Here again, IHL seeks to protect women's sexual integrity [17] and to ensure that due attention is paid to pregnant and nursing mothers, [18] while preventing States from discriminating against women belonging to the enemy party. [19]

The special protection afforded to women in time of war and the prohibition of rape and other forms of sexual violence were both recently recognized as having attained customary status. [20]

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- ICRC Report on Yemen, 1967
- Germany, Government Reply on Rapes in Bosnia
- ICTY, The Prosecutor v. Kunarac, Kovac and Vukovic [Paras 127-186]
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- Women and Sexual violence
- UN, Report of the Secretary-General on Women and Peace and Security
- Italy, Use of force against ambulances in Iraq
- Central African Republic/Democratic Republic of Congo/Uganda, LRA attacks

- Central African Republic, Coup d'Etat
- Afghanistan and Colombia, Conflict-Related Sexual Violence and Violence Against LGBT+ and Gender-Diverse Persons
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### aa) the feminist criticism of International Humanitarian Law

The very fact that IHL seeks to protect women's "honour" and grants special protection to expectant and nursing mothers has given rise to much criticism from feminist theorists. [21] They argue that IHL is inherently discriminatory – and somewhat old-fashioned – in that it mostly considers women as victims and men as combatants. At the same time, they contend that the rules on women are low down in the hierarchy of IHL rules: for instance, provisions on women aim at ensuring protection rather than imposing strict prohibitions, and rape is not even included in the list of grave breaches. [22]

However, as mentioned above, the notion of rape, and the broader category of sexual violence, has evolved in international criminal law and such acts are now often prosecuted as grave breaches. Moreover, the language used in IHL texts may be outdated, but the rules on the protection of women should be read and adapted in the light of their contemporary meaning. In our view, the main problem is not that the texts are insufficient, but that in this field, as in others, the rules are not sufficiently respected.

## Quotation

IHL in addressing humanitarian needs in armed conflict assumes a population in which there is no systemic gender inequality. The system fails to recognize the unequal situation of men and women in society generally.

[Source: GARDAM Judith & JARVIS Michelle J., *Women, Armed Conflict and International Law*, The Hague, Kluwer Law International, 2001, p. 97; quoted in DURHAM Helen "Women, Armed Conflict and International Law", in *IRRC*, No. 847, September 2002, p. 657]

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bb) the principles of non-discrimination and special protection

### Quotation

Ever since its inception, international humanitarian law has accorded women general protection equal to that of men. [...] Women who have taken an active part in hostilities as combatants are entitled to the same protection as men when they have fallen into enemy hands. [...] Besides this general protection, women are also afforded special protection based on the principle outlined in Article 14, paragraph 2 [of Geneva Convention III], that "women shall be treated with all the regard due to their sex". This principle is followed through in a number of provisions which expressly refer to the conditions of detention for women in POW camps [...]. Women (and men) who, as members of the civilian population, are taking no active part in hostilities are afforded protection under the Fourth Geneva Convention [...] and under Additional Protocol I. [...] In addition to this general protection, women are afforded special protection under the said Convention and Protocol I, which stipulate that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault". International humanitarian law also lays down special provisions for pregnant women and mothers of small children [...].

[Source: LINDSEY Charlotte, "Women and War", in *IRRC*, No. 839, September 2000, p. 580]

cc) protection against rape and sexual violence

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- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 333-358]
- Democratic Republic of the Congo, Conflict in the Kivus [Part III, paras 16, 35-37]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 87-89]
- Democratic Republic of Congo, Involvement of MONUSCO
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- ICC, Confirmation of Charges against LRA Leader
- International Criminal Court, Trial Judgment in the Case of the Prosecutor V. Jean-Pierre Bemba Gombo
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dd) grounds for preferential treatment

- pregnant women or maternity cases
- mothers of children under seven years of age

a. **special protection of children**

GC IV, Arts 14, 17, 23, 24, 38, 50, 76, 82, 89, 94 and 132; P I, Arts 70 and 77-78; P II, Art. 4 [CIHL, Rules 135-137]

Like women, children are first protected by IHL if they are wounded, sick or shipwrecked, as civilians and as members of the civilian population. They also benefit from special protection because of their vulnerability. Every armed conflict leaves numerous children without resources or separated from their families, a situation that renders them even more vulnerable. This is why IHL contains specific rules aimed at protecting children from the effects of hostilities, from any form of indecent assault, or from any other danger arising from the

general circumstances of a war situation. [23]

But above all, IHL aims to prevent the participation of children in hostilities. Parties to conflicts may not recruit children under 15 into their armed forces and have to ensure that they do not take a direct part in hostilities. [24] In Protocols I and II and in Art. 38 of the Convention on the Rights of the Child, the age threshold is 15; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict [25]

#### Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict

raises it to 18, except that States may accept voluntary enrolment of persons under 18 into military schools, thus establishing an inequality between governmental forces and non-State armed groups. If children nevertheless participate in hostilities, they will still benefit, if captured, from preferential treatment. [26] If they are, despite the above-mentioned prohibitions, members of armed forces, they benefit from combatant and prisoner-of-war status.

The contents of the special protection afforded to children must nevertheless be construed with care. For instance, as the treaty rules prevent the direct involvement of children in hostilities, organizations working in the field of children's rights and some soft law instruments suggest that the prohibition (or even the notion of direct participation) be extended to the case of children associated with armed groups, in order to ensure that children are kept away from all sorts of involvement. This might not be realistic in the case of insurgent groups and might at the same time make it easier for the enemy to directly target participating children, thus putting such children in greater danger. At the same time, the mere fact that children could be targeted when involved in combat goes against the idea of preferential treatment afforded to children. A solution would be to exclude participating children from the category of legitimate targets, but it seems unrealistic to expect the parties to refrain from targeting such armed enemies. The principle of military necessity as a restriction to violence even against legitimate targets should at least in this case require them to arrest rather than kill such children whenever possible.

#### Quotation 1

Article 38.

1. States Parties undertake to respect and to ensure respect for rules of International Humanitarian Law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give

priority to those who are oldest.

4. In accordance with their obligations under International Humanitarian Law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

[Source: Convention on the Rights of the Child, November 20, 1989; available on <http://www.ohchr.org>]

## Quotation 2

**Convention (182) on the Worst Forms of Child Labour, 1999. [...]**

### Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

### Article 2

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

### Article 3

For the purposes of this Convention, the term the worst forms of child labour comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; [...]

[Source: Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C182), 17 June 1999; available on <http://www.ilo.ch>]

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- Central African Republic, Report of the UN Independent Expert, July 2016

bb) prohibition of recruitment

- the age threshold
  - under Protocols I and II and the Convention on the Rights of the Child: 15 years of age
  - under the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflicts: 18 years of age for direct participation in hostilities and for compulsory recruitment
- but States (unlike armed groups) may accept voluntary enrolment into military schools

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- Sri Lanka, Conflict in the Vanni [Paras 10-11]
- ICC, The Prosecutor v. Thomas Lubanga Dyilo
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- Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 2., A.]
- Sierra Leone, Special Court Ruling on the Recruitment of Children
- Democratic Republic of Congo, Involvement of MONUSCO
- Mali, Conduct of Hostilities
- Engaging Non-state Armed Groups on the Protection of Children
- Philippines, Armed Group Undertakes to Respect Children
- Somalia, the fate of Children in the conflict
- South Sudan, The Nuer “White Armies”
- Geneva Call and the Chin National Front
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare
- Switzerland, Swiss Federal Criminal Court Finds Liberian Commander Guilty of War Crimes

cc) status and treatment of child soldiers

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a. **special protection of journalists**

GC I-III, Arts 13/13/4; P I, Art. 79 [CIHL, Rule 34]

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a. **restoring family links**

GC III, Arts. 70 and 122; GC IV, Arts 25-26 and 106; P I, Art. 32; P II, Art. 4(3)(b) [CIHL, Rule 125]

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a. **who is a protected civilian?**

GC IV, Art. 4

(See *supra*, Fundamentals, B. International Humanitarian Law as a Branch of Public International Law, III. International Humanitarian Law: a branch of international law governing the conduct of States and individuals, 2. Personal scope of application)

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- UN, Detention of Foreigners
- ICTY, *The Prosecutor v. Tadic* [Part C., paras 163-169]
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- ICTY, *The Prosecutor v. Blaskic* [Paras 127-146]
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- Georgia/Russia: Tbilisi Nervously Eyes Russia's Border Barricade of South Ossetia
- ICTY, *The Prosecutor v. Prlić et al.*
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aa) foreigners on a party's own territory: basically the rules protecting foreigners in peacetime remain applicable

GC IV, Art. 38 (initial sentence)

bb) right to leave?

GC IV, Arts 35-37 and 48

## ▲ CASES AND DOCUMENTS

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- UN, Detention of Foreigners

cc) humane treatment

GC IV, Art. 27 [CIHL, Rule 87]

## ► CASES AND DOCUMENTS

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dd) forced labour

GC IV, Arts 40, 51 and 95 [CIHL, Rule 95]

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ee) prohibition of collective punishment

GC IV, Art. 33 [CIHL, Rule 103]

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- Israel, Power Cuts in Gaza [Part A., para. 17]
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ff) visits by the Protecting Power and by the ICRC

GC IV, Arts 9-10, 30 and 143 [CIHL, Rule 124 A]

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gg) if interned: civilian internees

GC IV, Arts 41-43, 68 and 78-135

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- decision of internment: individual administrative decision  
GC IV, Art. 78

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- reasons for internment: imperative security reasons; not punishment  
GC IV, Arts 41, 42 and 78

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GC IV, Arts 132-135 [CIHL, Rule 128 B]

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- Bangladesh/India/Pakistan, 1974 Agreement [Arts 3-11 and 13-15]
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### a. possible derogation

GC IV, Art. 5

- aa) from substantive rights on a party's own territory
- bb) from communication rights in occupied territory
- cc) in any case, humane treatment and judicial guarantees are non-derogable

## ▲ CASES AND DOCUMENTS

- Israel, Cheikh Obeid et al. v. Ministry of Security [Para. 6]

## Footnotes

- [10] GC I-IV, common Art. 3; GC I-II, Art. 12; GC III, Art.16; GC IV, Arts 13 and 27(3)
- [11] GC IV, Art. 27
- [12] ICTR Statute, Art. 4(e) [See UN, Statute of the ICTR]; ICC Statute, Art. 8(2)(b)(xxii) [See The International Criminal Court].
- [13] The Trial Chamber in the Celebici case declared that rape could constitute torture, thus amounting to a grave breach of the Geneva Conventions. See ICTY, The Prosecutor v. Delalic et al., paras 475 ff. Rape was also condemned by the ICTY as a crime against humanity. [See ICTY, Kunarac, Kovac and Vukovic, paras 127-186]
- [14] GC IV, Arts 14, 16, 21 and 22
- [15] GC IV, Art. 50
- [16] See, for instance, P I, Art. 76(2)
- [17] See, for instance, GC III, Arts 25, 97 and 108; GC IV, Arts 76, 85, 119 and 124
- [18] See, for instance, GC IV, Arts 89 and 132; P I, Art. 76(3); P II, Art. 6(4)
- [19] GC III, Art. 88

- [20] See ICRC, *Customary International Humanitarian Law* [Part C., Rules 134 and 93]
- [21] In general, see Judith Gardam & Michelle J. Jarvis, *Women, Armed Conflict and International Law*, The Hague, Kluwer Law International, 2001, 283 pp.
- [22] GC I-IV, Arts 50/51/130/147 respectively; P I, Art. 85
- [23] See, for example, GC IV, Arts 14, 17, 23, 24, 38(5), 50, 51, 68, 76, 82, 89, 94 and 132; P I, Arts 70, 77 and 78; P II, Art. 4(3)(e)
- [24] P I, Art. 77(2); P II, Art. 4(3)(c)
- [25] See
- [26] P I, Art. 77

## III. Refugees and displaced persons in International Humanitarian Law

### Introductory text

If States consistently and fully observed the principles of IHL protecting civilians, [27] most population movements brought about by armed conflicts would be prevented. The IHL of non-international armed conflicts contains a general prohibition of forced movements of civilians, [28] while the IHL of international armed conflicts stipulates such a general prohibition only for occupied territories. [29] Recognizing that such situations and population movements may occur for reasons other than an armed conflict, IHL provides protection to both displaced persons and refugees.

Displaced persons are civilians fleeing within their own country, e.g., from armed conflict. IHL protects those displaced because of an international armed conflict, e.g., grants them the right to receive items essential to survival. [30] Civilians displaced by internal armed conflict enjoy similar but less detailed protection. [31]

Refugees, in contrast, are those who fled their country. IHL protects such individuals, as civilians affected by hostilities, [32] only if they have fled to a State taking part in an international armed conflict [33] (or if that State is beset by internal armed conflict [34]). IHL specifically protects refugees entering the territory of an enemy State against unfavourable treatment (based on their nationality). [35] Those considered refugees prior to the outbreak of hostilities (including those from a neutral State) are always considered protected persons under the IHL of international armed conflicts, [36] which also provides special guarantees for those who fled to territory which becomes occupied by the State of which they are nationals. [37] Finally, regarding non-refoulement, the Conventions expressly state that protected persons may not be transferred to a State where they fear persecution on political or religious grounds. [38]

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## 1. Displaced persons fleeing within their own country because of an armed conflict

### ▲ CASES AND DOCUMENTS

- Myanmar, Escalation of the Conflict
- Colombia/Displacement of Civilians
- Case Study, Armed Conflicts in the Great Lakes Region [Part II., A.]
- Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea (Part 2., C.)
- The armed conflict in Syria
- Libya, Report of the Office of the UN High Commissioner for Human Rights (2014/15)
- Myanmar, Forced Population Movements
- Iraq: Situation of Internally Displaced Persons

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#### a. protection by IHL

##### aa) prohibition of population displacements

(See *infra*, Civilian Population, IV. Special rules on Occupied Territories, 8. Specific prohibitions, a) Deportations and Internal Armed conflicts, II. Comparison of the legal regimes for international and for non-international armed conflicts, 3. Uncontroversial similarities and differences, b) more absolute prohibition of forced displacement)

## • CASES AND DOCUMENTS

- ICRC, Sixtieth Anniversary of the Geneva Conventions
- Israel/Lebanon/Hezbollah, Conflict in 2006 [Part I, paras 199-208]
- Sri Lanka, Conflict in the Vanni [Paras 3-9]
- Bosnia and Herzegovina, Constitution of Safe Areas in 1992-1993
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 120-125]
- Iraq: Situation of Internally Displaced Persons
- Syria, Report by UN Commission of Inquiry (March 2017)
- Syria, the Battle for Aleppo

bb) same protection as other civilians

## • CASES AND DOCUMENTS

- ICRC, Sixtieth Anniversary of the Geneva Conventions
- Sri Lanka, Conflict in the Vanni [Paras 29-46]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 135-139]
- Iraq: Situation of Internally Displaced Persons

a. need for a specific instrument?

## • CASES AND DOCUMENTS

- African Union, Convention for the Protection and Assistance of Internally Displaced Persons in Africa
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- UN Guiding Principles on Internal Displacement

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## 2. Persons fleeing into a third country because of an armed conflict

- protected by the OAU Convention, the 1984 Cartagena Declaration and UN General Assembly Resolutions

### ▲ CASES AND DOCUMENTS

- Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa

The Cartagena Declaration on Refugees is available on

<http://www1.umn.edu/humanrts/instree/cartagena1984.html>.

The UN General Assembly Resolutions are available on <http://www.un.org/documents/resga.htm>.

- protected by IHL if

- aa) the third country is the adverse party in an international armed conflict  
GC IV, Art. 44

### ▲ CASES AND DOCUMENTS

- ICRC, Iran/Iraq Memoranda
- Case Study, Armed Conflicts in the Great Lakes Region (Part 1., D.)

bb) the third country is affected by another armed conflict

### ▲ CASES AND DOCUMENTS

- Case Study, Armed Conflicts in the Great Lakes Region (Part 1., D.)

### 3. Persons fleeing persecution: protected by IHL if the third country is subsequently affected by an armed conflict

GC IV, Art. 70(2); P I, Art. 73

- a. on a party's own territory: protected persons on the grounds of their nationality (but GC IV, Art. 44)
- b. on occupied territory:
  - aa) protected persons on the grounds of their nationality
  - bb) if nationals of the occupying power:
    - o protected by GC IV, Art. 70(2)
    - o protected persons under P I, Art. 73

#### ► CASES AND DOCUMENTS

- ICTY, The Prosecutor v. Kupreskic et al. [Paras 587-588]
- Case Study, Armed Conflicts in the Great Lakes Region (Part 1., D.)

#### ► SPECIFIC BIBLIOGRAPHY

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- LAVOYER Jean-Philippe, "Refugees and Internally Displaced Persons: International Humanitarian Law and the Role of the ICRC", in *IRRC*, No. 305, March-April 1995, pp. 162-180.

#### a. Loss of protection in refugee law and IHL

#### ► CASES AND DOCUMENTS

- Canada, Ramirez v. Canada
- Canada, Sivakumar v. Canada
- Case Study, Armed Conflicts in the Great Lakes Region (Part I. D.)
- Switzerland, The Niyonzeze Case [Part A., consid. 10]

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GC IV, Art. 45(4)

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## 5. The return of refugees and displaced persons at the end of the conflict

### • CASES AND DOCUMENTS

- UN, Minimum Humanitarian Standards [Part A., Art. 7 (1)]
- UN Guiding Principles on Internal Displacement
- Case Study, Armed Conflicts in the Great Lakes Region [Part I. D.]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 131-134]
- obligation to accept those willing to return?

### • CASES AND DOCUMENTS

- Bangladesh/India/Pakistan, 1974 Agreement [Art. 12]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 85-86]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 131-134]

- Iraq: Situation of Internally Displaced Persons

## - SPECIFIC BIBLIOGRAPHY

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- Canadian International Development Agency, *The Long Road Home: Opportunities and Obstacles to the Reintegration of IDPs and Refugees Returning to Southern Sudan and the Three Areas: Report of Phase II: Conflict, Urbanisation and Land*, London, Overseas Development Institute, September 2008, 84 pp.

### Footnotes

- [27] For example, prohibitions against direct or reprisal attacks on civilians, including those intended to spread terror among the population and against starvation of civilians. (See P I, Arts 51 and 54)
- [28] See P II, Art. 17
- [29] See GC IV, Art. 49
- [30] See GC IV, Art. 23; P I, Art. 70
- [31] See GC I-IV, common Art. 3; P II (repeating and expanding the rules in common Art. 3)
- [32] The 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol define a refugee in much narrower terms (generally, as one fleeing persecution). Only the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa includes people fleeing armed conflicts under the concept of refugee. Yet, civilians must rely upon these Conventions and the United Nations High Commissioner for Refugees for protection and benefits when fleeing to territory not involved in armed conflict, as IHL is inapplicable.
- [33] See GC IV, Arts 35 to 46
- [34] In this case GC I-IV, common Art. 3 and P II would apply.
- [35] See GC IV, Art. 44
- [36] See particularly P I, Art. 73
- [37] See GC IV, Art. 70(2)
- [38] See GC IV, Art. 45(4)

## IV. Special rules on Occupied Territories

### - Introductory text

From the point of view of IHL, civilians in occupied territories deserve and need particularly detailed protecting rules. Living on their own territory, they come into contact with the enemy independently of their will, merely because of the armed conflict in which the enemy obtains territorial control over the place where they live. The civilians have no obligation towards the occupying power other than the obligation inherent in

their civilian status, i.e., not to participate in hostilities. Because of that obligation, IHL allows them neither to violently resist occupation of their territory by the enemy [39] nor to try to liberate that territory by violent means. [40]

Starting from this philosophy, the obligations of the occupying power can be logically summed up as permitting life in the occupied territory to continue as normally as possible. IHL is therefore strong in protecting the status quo ante, but weak in responding to any new needs experienced by the population in the occupied territory. The longer the occupation lasts, the more shortcomings IHL tends to reveal.

In practice, this has the following consequences: except concerning the protection of the occupying power's security, local laws remain in force [41] and local courts remain competent. [42] Except when rendered absolutely necessary by military operations, private property may not be destroyed [43] and may only be confiscated under local legislation. [44] Public property (other than that of the municipalities [45]) can obviously no longer be administered by the State previously controlling the territory (normally the sovereign). It may therefore be administered by the occupying power, but only under the rules of usufruct. [46] The local population may not be deported; [47] the occupying power may not transfer its own population into the occupied territory. [48]

The occupying power's only protected interest is the security of the occupying armed forces; it may take the necessary measures to protect that security, but it is also responsible for law and order in the occupied territory, [49] as well as for ensuring hygiene and public health [50] and food and medical supplies. [51] Its legitimate interest is to control the territory for the duration of the occupation, i.e., until the territory is liberated by the former sovereign or transferred to the sovereignty of the occupying power under a peace treaty. IHL is neutral on jus ad bellum issues and shows no preference for either solution, but international law tries to ensure that no measures are taken during the occupation which would compromise a return to the former sovereign.

The IHL of military occupation protects all civilians, except nationals of the occupying power [52] other than refugees. [53] Unilateral annexation of the occupied territory by the occupying power, whether lawful or unlawful under jus ad bellum, or agreements concluded by the occupying power with the local authorities of the occupied territory, cannot deprive protected persons from the protection afforded by IHL. [54] The rules of IHL on occupied territories apply whenever, during an armed conflict, a territory comes under the control of the enemy of the power previously controlling that territory, [55] as well as in every case of belligerent occupation, even when it does not encounter armed resistance and there is therefore no armed conflict. [56] It is a matter of controversy whether the rules of IHL of military occupation only start to apply once the enemy exercises full authority over a (part of a) territory, or, according to a functional approach, already during the invasion, as soon as a protected person falls into the power of the enemy. The answer may differ according to the individual rule concerned. Similar controversies exist regarding the end of military occupation and therefore the end of the application of the IHL of military occupation: is a troop withdrawal decisive, even

when the (former) occupying power still controls many aspects of life in a territory, e.g., entry and exit of persons and objects? [57] Does the IHL of military occupation cease to apply when troops of the (former) occupying power, acting at the invitation of a new national government or on the basis of a UN Security Council authorization, remain present and keep overall control over a (former) occupied territory?

## ► CASES AND DOCUMENTS

- ICRC, The Challenges of Contemporary Armed Conflicts [Part A.]
- ICRC Appeals on the Near East [Part C.]
- Israel, Power Cuts in Gaza
- Eritrea/Ethiopia, Awards on Occupation
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- Gaza: Health situation in the Gaza Strip
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel/Occupied Palestinian Territory, Occupation and Natural Resources

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## 1. The place of rules on military occupation in contemporary IHL

- a. **inter-State rules, which apply to situations arising between two States, but which also govern relations between individuals and a State and between individuals**
- b. **sources**
  - aa) HR, Arts 42-56

### ‐ CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 124]
- bb) GC IV, Sections I, III and IV
- cc) The contributions of P I: Arts 44(3), 63, 69, 73 and 85(4)(a)

## 2. The applicability of the rules of IHL concerning occupied territories

### ‐ CASES AND DOCUMENTS

- ICRC, The Challenges of Contemporary Armed Conflicts [Part A.]
- ICRC Appeals on the Near East [Part C., para. 2]
- Israel/Gaza, Operation Cast Lead
- Israel, Applicability of the Fourth Convention to Occupied Territories
- Israel, Ayub v. Minister of Defence
- Israel, Al Nawar v. Minister of Defence
- Israel, The Targeted Killings Case (Paras 18-24)
- UN, Resolutions and Conference on Respect for the Fourth Convention (Parts A., E. II. 2, and G.)
- Israel, Human Rights Committee's Report on Beit Hanoun (para. 10-14)
- United Kingdom, Position on Applicability of Fourth Convention
- Switzerland, Prohibition of Deportation from Israeli Occupied Territories
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- ECHR, Cyprus v. Turkey
- Belgium, Belgian Soldiers in Somalia
- Case Study, Armed Conflicts in the former Yugoslavia [2, 6, 15 and 33]
- ICTY, The Prosecutor v. Tadic [Part B., paras 580-58]
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo (Judgement, paras 80-81, 172-179; Separate opinion, paras 34-49)
- The Conflict in Western Sahara [Part A.]

- Gaza: Health situation in the Gaza Strip
- Georgia/Russia: Tbilisi Nervously Eyes Russia's Border Barricade of South Ossetia
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel/Palestine, Operation Protective Edge (Gaza, 13 June - 26 August 2014)
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### a. independently of jus ad bellum

### b. in the case of armed conflict

GC IV, Art. 2(1)

## ▲ CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 90-101 and B., para. 23]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 1, 3-4, 16-17, 76]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia (Paras 19-28)

### a. in the case of belligerent occupation encountering no resistance

b. **absence of sovereignty of the occupying power**

• **CASES AND DOCUMENTS**

- Eritrea/Ethiopia, Awards on Occupation [Part A.]

a. **beginning of the occupation**

HR, Art. 42 – also applicable to GC IV?

aa) the standard of the HR

bb) same standard for GC IV? Or does GC IV contain a functional (= flexible) concept of occupation, depending on the rule concerned?

• **CASES AND DOCUMENTS**

- Israel, Al Nawar v. Minister of Defence
- Eritrea/Ethiopia, Awards on Occupation [Part A.]
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo (Judgement, paras 80-81, 172-179; Separate opinion, paras 34-49)
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- Gaza: Health situation in the Gaza Strip
- 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 43-47]

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a. **annexation does not make the IHL of military occupation inapplicable**

GC IV, Art. 47

• **CASES AND DOCUMENTS**

- United States Military Tribunal at Nuremberg, *United States v. Alfried Krupp et al.* [Para. 4.(iv).]

- India, Rev. Mons. Monteiro v. State of Goa
- Georgia/Russia: Tbilisi Nervously Eyes Russia's Border Barricade of South Ossetia

### 3. Protected persons

#### • CASES AND DOCUMENTS

- UN, Detention of Foreigners
- Georgia/Russia: Tbilisi Nervously Eyes Russia's Border Barricade of South Ossetia

GC IV, Art. 4

- a. nationals of the occupied power

#### • CASES AND DOCUMENTS

- Eritrea/Ethiopia, Awards on Occupation [Part A.]

- a. nationals of third States (except of co-belligerent States)
- b. refugees, even if they are nationals of the occupying power

P I, Art. 73

### 4. Philosophy of the rules on occupied territories

#### • CASES AND DOCUMENTS

- ICRC Appeals on the Near East [Parts B. and C.]
- UN, Resolutions and Conference on Respect for the Fourth Convention (Part E.)
- ECHR, Cyprus v. Turkey

- a. protected interests of the territory's population: its life must continue as normally as possible

#### • CASES AND DOCUMENTS

- Burma, Ko Maung Tin v. U Gon Man
- ICRC Appeals on the Near East [Part C., para. 3]
- Gaza: Health situation in the Gaza Strip

- a. protected interests of the occupying power: security of the occupying forces

## ► CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part B., paras 27-31]
- Gaza: Health situation in the Gaza Strip
- Israel, Blockade of Gaza and the Flotilla Incident

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- a. **protected interests of the occupied power: no change in status?**

## 5. Legal order of an occupied territory

## ► SPECIFIC BIBLIOGRAPHY

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- SCHEFFER David J., "Beyond Occupation Law", in AJIL, Vol. 97, 2003, pp. 842-860.

- a. **the principle concerning legislation: occupying powers must leave local legislation in force**

## ► CASES AND DOCUMENTS

- United States Military Tribunal at Nuremberg, United States v. Alfried Krupp et al.
- Burma, Ko Maung Tin v. U Gon Man
- Israel, House Demolitions in the Occupied Palestinian Territory

aa) the relationship between Art. 43 of HR and Art. 64 of Convention IV

- Art. 64 of Convention IV further defines (and softens) the exceptions in Art. 43 of HR
- Art. 64(2) of Convention IV clarifies para. 1

bb) applicability of Art. 43 to legislation enacted by local authorities under the effective control of an occupying power

a. **exceptions to the prohibition to legislate**

▲ **CASES AND DOCUMENTS**

- Iraq, Occupation and Peacebuilding (Part B.)

▲ **SPECIFIC BIBLIOGRAPHY**

**Suggested reading:**

- SASSÒLI Marco, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", in *EJIL*, Vol. 16, No. 4, September 2005, pp. 661-694.

aa) the occupying power may legislate to ensure its security.

bb) the occupying power may adopt legislation essential for the implementation of IHL.

▲ **CASES AND DOCUMENTS**

- Iraq, The Trial of Saddam Hussein

cc) the occupying power may adopt legislation essential for the implementation of International Human Rights Law.

- special problem concerning economic, social and cultural rights

▲ **CASES AND DOCUMENTS**

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 112]

dd) the occupying power may legislate where necessary to maintain public order.

## ▲ CASES AND DOCUMENTS

- Iraq, Occupation and Peacebuilding [Part B. 1bis]

ee) may the occupying power legislate to maintain civil life in an occupied territory?

ff) may an occupying power legislate to enhance civil life in an occupied territory?

## ▲ CASES AND DOCUMENTS

- Iraq, Occupation and Peacebuilding (Part B. 5., 5bis., 5ter; Part C.)

gg) Security Council authorization?

## ▲ CASES AND DOCUMENTS

- Iraq, Occupation and Peacebuilding [Part A.]

a. **special rules on criminal law**

GC IV, Arts 64, 65, 67 and 70

aa) penal laws in force are applied by existing local tribunals

## ▲ CASES AND DOCUMENTS

- Iraq, Occupation and Peacebuilding [Part B. 3 and 4]
- Iraq, The Trial of Saddam Hussein

bb) legislation introduced by the occupying power (for the reasons mentioned under b) above)

## ▲ CASES AND DOCUMENTS

- Iraq, The Trial of Saddam Hussein

- non-retroactive  
GC IV, Art. 67
- prosecution of offences committed before the occupation  
GC IV, Art. 70
- competent military tribunals  
GC IV, Art. 66
- detailed judicial guarantees  
GC IV, Arts. 68-75

## 6. Protection of persons deprived of liberty

### • CASES AND DOCUMENTS

- ICRC/South Lebanon, Closure of Insar Camp

- a. **the principle: unlike combatants, civilians may not be deprived of their liberty**

### • CASES AND DOCUMENTS

- Inter-American Commission on Human Rights, Coard v. United States
- Case Study, Armed Conflicts in the former Yugoslavia [12]

- a. **indicted or convicted persons**

aa) judicial guarantees

GC IV, Arts 71-75

### • CASES AND DOCUMENTS

- United States, The Schlesinger Report
- Iraq, Occupation and Peacebuilding [Part B. 1ter]
- Iraq, The Trial of Saddam Hussein

## • SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- FARRELL Norman, "International Humanitarian Law and Fundamental Judicial Guarantees", in Annual Conference/The African Society of International and Comparative Law, Vol. 10, 1998, pp. 130-141.
- GASSER Hans-Peter, "Respect for Fundamental Judicial Guarantees in Time of Armed Conflict: The Part Played by ICRC Delegates", in *IRRC*, No. 287, March-April 1992, pp. 121-142.

- SASSÒLI Marco, "La peine de mort en droit international humanitaire et dans l'action du Comité international de la Croix-Rouge", in Revue internationale de droit pénal, Vol. 58, 1987, pp. 583-592.

bb) detention in the occupied territory

GC IV, Art. 76

## ▲ CASES AND DOCUMENTS

- Israel/Palestine, Operation Protective Edge (Gaza, 13 June - 26 August 2014)

cc) humane treatment

GC IV, Art. 76

## ▲ CASES AND DOCUMENTS

- Israel, Methods of Interrogation Used Against Palestinian Detainees
- Iraq, Occupation and Peacebuilding [Part B. 2.]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 90-98]

dd) handing over to local authorities at the end of the occupation

GC IV, Art. 77

### a. **civilian internees**

aa) decision on internment or assignment to residence

GC IV, Art. 78

## ▲ CASES AND DOCUMENTS

- Israel, Ajuri v. IDF Commander
- United States, The Schlesinger Report
- ECHR, Al-Jedda v. UK
- ECHR, Hassan v. UK

- for imperative reasons of security
- individual administrative decision
- possibility of appeal
- if possible, review every six months

## • CASES AND DOCUMENTS

- Israel, Detention of Unlawful Combatants [Part A.]
- United States, The Taguba Report

bb) detailed rules on their treatment

GC IV, Arts 79-135

- a. **re-interned prisoners of war**

GC III, Art. 4(B)(1)

## 7. Protection of private property

### • CASES AND DOCUMENTS

- United States Military Tribunal at Nuremberg, United States v. Alfried Krupp et al.
- Singapore, Bataafsche Petroleum v. The War Damage Commission
- Israel, Ayub v. Minister of Defence
- Israel, House Demolitions in the Occupied Palestinian Territory
- Israel, Al Nawar v. Minister of Defence
- Israel, Evacuation of Bodies in Jenin
- ECHR, Cyprus v. Turkey (Paras 183-189 and 265-270)
- Iran/Iraq, UN Security Council Assessing Violations of International Humanitarian Law (Part A., Annex, paras 32, 34, 50, 55 and 56)
- Georgia/Russia: Tbilisi Nervously Eyes Russia's Border Barricade of South Ossetia

## • SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ABOUALI Gamal, "Natural Resources under Occupation: The Status of Palestinian Water under International Law", in *Pace International Law Review*, Vol. 10/2, 1998, pp. 411-574.
- ANDO Nisuke, *Surrender, Occupation and Private Property in International Law*, Oxford, Clarendon Press, 1991, 208 pp.
- DINSTEIN Yoram, "The Israel Supreme Court and the Law of Belligerent Occupation: Demolitions and Sealing off of Houses", in *IYHR*, Vol. 29, 1999, pp. 285-304.
- LANGENKAMP R. Dobie & ZEDALIS Rex J., "What Happens to the Iraqi Oil?: Thoughts on Some Significant, Unexamined International Legal Questions Regarding Occupation of Oil Fields", in *EJIL*, Vol. 14, No. 3, 2003, pp. 417-435.
- VERHOVEN Sten, "A Missed Opportunity to Clarify the Modern *Ius ad Bellum*: Case Concerning

Armed Activity on the Territory of the Congo", in *Revue de droit militaire et de droit de la guerre*, Vol. 3-4, No 45, 2006, pp. 355-368.

- WATSON Geoffrey R. et al., "Agora: ICJ Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory", in *AJIL*, Vol. 99/1, January 2005, pp. 1-141.

- a. **rights covered by the concept of property: broader in common law than in civil law traditions**
- b. **prohibition of pillage**

GC IV, Art. 33(2); HR, Arts 28 and 47 [CIHL, Rule 52]

## ▲ CASES AND DOCUMENTS

- Senegal, Exploitation of Natural Resources
- United States Military Tribunal at Nuremberg, *United States v. Alfried Krupp et al.*
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo [Paras 240-245, 250]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 75, 79, 82-83, 87-89]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 94-100]
- The armed conflict in Syria
- International Criminal Court, Trial Judgment in the Case of the Prosecutor V. Jean-Pierre Bemba Gombo
- Israel/Occupied Palestinian Territory, Occupation and Natural Resources
- Colombia, Special Jurisdiction for Peace, Crimes against the Environment in Cauca

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- STEWART James G., *Corporate War Crimes: Prosecuting the Pillage of Natural Resources*, New York, The Open Society Institute, 2010, 157 pp.

- a. **prohibition of confiscation of private property**

HR, Art. 46(2) [CIHL, Rule 51(c)]

- except for war material

HR, Art. 53(2)

## ▲ CASES AND DOCUMENTS

- Singapore, *Bataafsche Petroleum v. The War Damage Commission*

a. **limited admissibility of requisitions**

HR, Art. 52

▲ **CASES AND DOCUMENTS**

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory (Part A., para. 132 and Part B., paras 8 and 32)
- Israel, Ayub v. Minister of Defence
- Israel/Occupied Palestinian Territory, Occupation and Natural Resources

## 8. Specific prohibitions

a. **deportations**

GC IV, Art. 49(1) [CIHL, Rule 129 A.]

▲ **CASES AND DOCUMENTS**

- India, Rev. Mons. Monteiro v. State of Goa
- Israel, Cases Concerning Deportation Orders
- Israel, Ajuri v. IDF Commander [Paras 20-22]
- UN, Resolutions and Conference on Respect for the Fourth Convention [Part A.]
- Switzerland, Prohibition of Deportation from Israeli Occupied Territories
- ICRC/South Lebanon, Closure of Insar Camp
- Eritrea/Ethiopia, Awards on Occupation [Part A., para. 54]
- ICRC, Iran/Iraq Memoranda
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 120-125]
- Gaza: Health situation in the Gaza Strip
- Georgia/Russia: Tbilisi Nervously Eyes Russia's Border Barricade of South Ossetia
- ICTY, The Prosecutor v. Gotovina and Markač

## ▲ **SPECIFIC BIBLIOGRAPHY**

**Suggested reading:**

- DINSTEIN Yoram, "The Israel Supreme Court and the Law of Belligerent Occupation: Deportations", in *IYHR*, Vol. 23, 1993, pp. 1-26.
- LAPIDOTH Ruth, "The Expulsion of Civilians from Areas which Came under Israeli Control in 1967: Some Legal Issues", in *EJIL*, Vol. 1, 1991, pp. 97-109.
- SHERRY Virginia N., *Persona Non Grata: The Expulsion of Lebanese Civilians from Israeli-Occupied*

a. **transfer of the occupying power's own population**

GC IV, Art. 49(6) [CIHL, Rule 130]

▲ CASES AND DOCUMENTS

- ICRC Appeals on the Near East (Parts B. and C., para. 5)
- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory (Part A., paras 120 and 135)
- Israel, Ayub v. Minister of Defence
- UN, Resolutions and Conference on Respect for the Fourth Convention (Parts B. and F.)
- The Conflict in Western Sahara [Part A.]

aa) status and protection of settlers

▲ CASES AND DOCUMENTS

- ICRC Appeals on the Near East (Part C., para. 5)
- Amnesty International, Breach of the Principle of Distinction

▲ SPECIFIC BIBLIOGRAPHY

**Suggested reading:**

- AL-RAYYES Nasser, The Israeli Settlements from the Perspective of International Humanitarian Law, Ramallah, Al-Haq Institute, 2000, 139 pp.
- MALLISON William T., "A Juridical Analysis of the Israeli Settlements in the Occupied Territories", in The Palestine Yearbook of International Law, Vol. 10, 1998-99, pp. 1-26.

a. **destruction of property**

GC IV, Art. 53

aa) except when rendered absolutely necessary by military operations

▲ CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 132 and 135]

- Israel/Gaza, Operation Cast Lead [Part II, paras 913-989]
- Israel, House Demolitions in the Occupied Palestinian Territory

## ► SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- DINSTEIN Yoram, "The Israel Supreme Court and the Law of Belligerent Occupation: Demolitions and Sealing off of Houses", in *IYHR*, Vol. 29, 1999, pp. 285-304.

## 9. The administration of an occupied territory

### ► CASES AND DOCUMENTS

- Israel, High Court of Justice, Quarrying in an Occupied Territory

#### a. responsibility for public order and safety ("la vie et l'ordre publics")

HR, Art. 43

### ► CASES AND DOCUMENTS

- United States Military Tribunal at Nuremberg, United States v. Alfried Krupp et al.
- United States, *In re Yamashita*
- ICRC/Lebanon, Sabra and Chatila
- ECHR, Cyprus v. Turkey [Paras 69 and 77]
- Iraq, Occupation and Peacebuilding [Part B. 1 bis]
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo [Paras 177-179]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 76-78, 84]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 110-119]
- Gaza: Health situation in the Gaza Strip
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel/Occupied Palestinian Territory, Occupation and Natural Resources

aa) field of application: not only security, but also welfare (according to the authentic French version of Art. 43 of HR)

bb) an obligation of means and not of result

cc) an obligation subject to the limitations human rights law sets for any State action

## ▲ CASES AND DOCUMENTS

- Iraq, Use of Force by United States Forces in Occupied Iraq

### a. taxation

HR, Arts 48, 49 and 51

### b. administration of public property

HR, Art. 55 [CIHL, Rule 51(a) and (b)]

## ▲ CASES AND DOCUMENTS

- Israel, High Court of Justice, Quarrying in an Occupied Territory
- Israel/Occupied Palestinian Territory, Occupation and Natural Resources

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ABOUALI Gamal, "Natural Resources under Occupation: The Status of Palestinian Water under International Law", in Pace International Law Review, Vol. 10/2, 1998, pp. 411-574.
- BENVENISTI Eyal, "Water Conflicts During the Occupation in Iraq", in AJIL, Vol. 97, 2003, pp. 860-872.
- STEWART James G., Corporate War Crimes: Prosecuting the Pillage of Natural Resources, New York, The Open Society Institute, 2010, 157 pp.

aa) but no confiscation, except of property which may be used for military operations

HR, Art. 53

## ▲ CASES AND DOCUMENTS

- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo [Paras 240-245, 250]

### a. respect for the status of civil servants

GC IV, Art. 54

## 10. Protection of economic, social and cultural rights

### Suggested reading:

- DE FALCO Randle C., "The Right to Food in Gaza: Israel's Obligations under International Law", in Rutgers Law Record, Vol. 35, 2009, pp. 11-22.
- VITE Sylvain, "The Interrelation of the Law of Occupation and Economic, Social and Cultural Rights: the Examples of Food, Health and Property", in *IRRC*, Vol. 90, No. 871, September 2008, pp. 629-651.

#### a. food and medical supplies

GC IV, Arts 55 and 59-62; P I, Art. 69

### ▲ CASES AND DOCUMENTS

- Israel, The Rafah Case [Paras 27-28]
- Gaza: Health situation in the Gaza Strip
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Israel/Occupied Palestinian Territory, Occupation and Natural Resources

aa) obligation not to interfere with local supply system

bb) obligation to furnish supplies

### ▲ CASES AND DOCUMENTS

- Israel, Power Cuts in Gaza [Part A., paras 15-17]
- Gaza: Health situation in the Gaza Strip
- Israel, Blockade of Gaza and the Flotilla Incident

cc) obligation to allow free passage of aid

### ▲ CASES AND DOCUMENTS

- Israel, Human Rights Committee's Report on Beit Hanoun [Para. 20]
- Israel, Blockade of Gaza and the Flotilla Incident

#### a. public health and hygiene

## ► CASES AND DOCUMENTS

- Israel, The Rafah Case
- Israel, Human Rights Committee's Report on Beit Hanoun [Paras 20 and 31]
- Gaza: Health situation in the Gaza Strip
- Israel/Occupied Palestinian Territory, Occupation and Natural Resources

aa) obligation to guarantee them

bb) respect for medical personnel

cc) respect for hospitals

dd) respect for the National Red Cross or Red Crescent Society

**a. children and their education**

GC IV, Art. 50

## ► SPECIFIC BIBLIOGRAPHY

**Suggested reading:**

- HOROWITZ Jonathan T., "The Right to Education in Occupied Territories: Making More Room for Human Rights in Occupation Law", in *YIHL*, Vol. 7 (2004), 2006, pp. 233-281.

**a. protection of workers**

aa) limits on working obligations

GC IV, Art. 51

bb) prohibition to cause unemployment

GC IV, Art. 52

**b. cultural property**

[See

Conventions on the Protection of Cultural Property

[See Second Hague Protocol for the Protection of Cultural Property, Art. 9]

## **11. The end of the applicability of the rules on occupied territories**

## ► CASES AND DOCUMENTS

- Iraq, The End of Occupation

- Georgia/Russia: Tbilisi Nervously Eyes Russia's Border Barricade of South Ossetia
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011

## ► SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ALONZO-MAIZLISH David, "When Does it End? Problems in the Law of Occupation", in ARNOLD Roberta & HILDBRAND Pierre-Antoine (eds), International Humanitarian Law and the 21st Century's Conflicts, Lausanne, Edis, 2005, pp. 97-116.
- BENVENISTI Eyal, "The Law on the Unilateral Termination of Occupation", in GIEGERICH, Thomas (ed.), A Wiser Century?: Judicial Dispute Settlement, Disarmament and the Laws of War 100 Years After the Second Hague Peace Conference, Berlin, Duncker and Humblot, 2009, pp. 371-382.
- ROBERTS Adam, "The End of Occupation in Iraq (2004)", in ICLQ, Vol. 54, 2005, pp. 27 (also online: <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=1524012>).
- KOUTROULIS Vaios, Le début et la fin du droit de l'occupation, Paris, Pedone, 2010, 334 pp.

### a. during an occupation according to Convention IV (Art. 6 (3)), but not to Protocol I (Art. 3(b))

## ► CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Para. 125]
- Gaza: Health situation in the Gaza Strip

### a. in the case of self-government?

- aa) if the new government invites the former occupying forces to remain?
- bb) at least on issues administered by the new government?
- cc) can the occupying power (which cannot deprive protected persons of the protection afforded by Convention IV, according to Art. 47 of Convention IV) introduce free elections?

### b. in the case of a peace treaty

### c. should the occupying power retreat,

- aa) how much de facto control need the retreating occupying power retain for the IHL of military occupation (or some of its rules) to be applicable even after troops retreat?

## ► CASES AND DOCUMENTS

- Israel, Operation Cast Lead [Part II, paras 273-283]
- Israel, Power Cuts in Gaza [Part A., paras 12-18]
- Israel, Detention of Unlawful Combatants [Part A., para. 11]
- Israel, Human Rights Committee's Report on Beit Hanoun

- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 48-52]

a. **by UN Security Council determination?**

• **CASES AND DOCUMENTS**

- Iraq, The End of Occupation

a. **protection of persons who remain detained or are not yet re-established**

GC IV, Art. 6(4)

**Footnotes**

- [39] Except in the framework of a levée en masse against the approaching enemy, in which case they become combatants. (See GC III, Art. 4(A)(6))
- [40] If they commit hostile acts, they may be punished under legislation introduced by the occupying power, but do not lose their status of protected civilians. (They may however lose their communication rights under GC IV, Art. 5(2).) Except if and for as long as they directly participate in hostilities, they benefit from the protection of civilians against effects of hostilities. (See P I, Art. 51(3); and ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities)
- [41] See HR, Art. 43; GC IV, Art. 64
- [42] See GC IV, Art. 66
- [43] See GC IV, Art. 53
- [44] See HR, Art. 46
- [45] See HR, Art. 56
- [46] See HR, Art. 55
- [47] See GC IV, Art. 49(1)
- [48] See GC IV, Art. 49(6)
- [49] See HR, Art. 43
- [50] See GC IV, Art. 56
- [51] See GC IV, Art. 55
- [52] See GC IV, Art. 4(1)
- [53] See P I, Art. 73; GC IV, Art. 70(2)
- [54] See GC IV, Art. 47
- [55] See HR, Art. 42; GC IV, Art. 2(1)
- [56] See GC IV, Art. 2(2)
- [57] See Israel, Power Cuts in Gaza

## **V. Transmission of information**

## • CASES AND DOCUMENTS

- ICRC, Tracing Service

- a. **internment cards (to be sent to the family and to the Central Tracing Agency)**

GC IV, Art. 106

- b. **notification (to the power of origin through the Central Tracing Agency)**

GC IV, Arts 136-138, 140

- c. **correspondence**

GC IV, Art. 107

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