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^ CHAPTER BIBLIOGRAPHY

- CULLEN Anthony, *The Concept of Non-International Armed Conflict in International Humanitarian Law*, Cambridge, Cambridge University Press, 2010, 224 pp.
- DINSTEIN Yoram, *Non-International Armed Conflicts in International Law*, Cambridge, Cambridge University Press, 2014, 264 pp.
- MOIR Lindsay, *The Law of Internal Armed Conflict*, Cambridge, Cambridge University Press, 2002, 297 pp.
- SIVAKUMARAN Sandesh, *The Law of Non-International Armed Conflict*, Oxford, Oxford University Press, 2012, 370 pp.
- WATKIN Kenneth & NORRIS J. Andrew, *Non-International Armed Conflict in the Twenty-First Century*, Newport, Naval War College, 2012, 490 pp.

Introduction

According to the typology of armed conflicts in International Humanitarian Law (IHL), two types of conflicts exist: international armed conflicts and non-international armed conflicts. Applicable conventional IHL, and to a lesser extent customary IHL, varies depending on each situation. If non-international armed conflicts are today by far more numerous than international armed conflicts, the law of international armed conflict is still quantitatively as well as qualitatively more substantial.

From a humanitarian point of view, the victims of non-international armed conflicts should be protected by the same rules as the victims of international armed conflicts. They face similar problems and need similar protection. Indeed, in both situations, fighters and civilians are arrested and detained by “the enemy”; civilians are forcibly displaced; they have to flee, or the places where they live fall under enemy control. Attacks are launched against towns and villages, food supplies need to transit through front lines, and the same weapons are used. Furthermore, the application of different rules for protection in international and in non-international armed conflicts obliges humanitarian players and victims to classify the conflict before those rules can be invoked. This can be theoretically difficult and is always politically delicate. To classify a conflict may imply assessing questions of jus ad bellum. For instance, in a war of secession, for a humanitarian actor

to invoke the law of non-international armed conflicts implies that the secession is not (yet) successful, which is not acceptable for the secessionist authorities fighting for independence. On the other hand, to invoke the law of international armed conflicts implies that the secessionists are a separate State, which is not acceptable for the central authorities.

However, States, in the international law they have made, have never agreed to treat international and non-international armed conflicts equally. Indeed, wars between States have until recently been considered a legitimate form of international relations and the use of force between States is still not totally prohibited today. Conversely, the monopoly on the legitimate use of force within its boundaries is inherent in the concept of the modern State, which precludes groups within that State from waging war against other factions or the government.

On the one hand, the protection of victims of international armed conflicts must necessarily be guaranteed through rules of international law. Such rules have long been accepted by States, even by those which have the most absolutist concept of their sovereignty. States have traditionally accepted that soldiers killing enemy soldiers on the battlefield may not be punished for their mere participation: in other words, they have a “right to participate” in the hostilities. [1]

On the other hand, the law of non-international armed conflicts is more recent. States have for a long time considered such conflicts as internal affairs governed by domestic law, and no State is ready to accept that its citizens would wage war against their own government. In other words, no government would renounce in advance the right to punish its own citizens for their participation in a rebellion. Such renunciation, however, is the essence of combatant status as defined in the law of international armed conflicts. To apply all the rules of the contemporary IHL of international armed conflicts to non-international armed conflicts would be incompatible with the very concept of the contemporary international society being made up of sovereign States. Conversely, if ever the international community is organized as a world State, all armed conflicts would be “non-international” in nature and it would thus be inconceivable for combatants to have the right to participate in hostilities independently of the cause for which they fight, as foreseen in the law of international armed conflicts.

In recent years, however, IHL of non-international armed conflicts has drawn closer to IHL of international armed conflicts: through the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda based on their assessment of customary international law; [2] in the crimes defined in the ICC Statute; [3] because States have accepted that recent treaties on weapons and on the protection of cultural objects are applicable to both categories of conflicts; [4]

- Amendment to Article 1 of the 1980 Convention, in Order to Extend it to Non-International Armed Conflicts
- 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)

- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
- Conventions on the Protection of Cultural Property

under the growing influence of International Human Rights Law; and according to the outcome of the ICRC Study on Customary International Humanitarian Law. [5] This study, which assesses official State practice and opinion juris (rather than actual conduct in the field, comes to the conclusion that 136 (and arguably even 141) out of 161 rules of customary humanitarian law, many of which run parallel to rules of Protocol I applicable as a treaty to international armed conflicts, apply equally to non-international armed conflicts.

Theoretically, IHL of international armed conflicts and IHL of non-international armed conflicts should be studied, interpreted and applied as two separate branches of law – the latter being codified mainly in Art. 3 common to the Conventions and in Protocol II. Furthermore, non-international armed conflicts occur much more frequently today and entail more suffering than international armed conflicts. Thus, it would be normal to study first the law of non-international armed conflicts, as being the most important.

However, because IHL of non-international armed conflicts must provide solutions to problems similar to those arising in international armed conflicts, because it was developed after the law applicable to international armed conflicts, and because it involves the same principles, although elaborated in the applicable rules in less detail, it is best to start by studying the full regime of the law applicable to international armed conflicts in order to understand the similarities and differences between it and the law of non-international armed conflicts. The two branches of law share the same basic principles, and analogies have to be drawn between them to flesh out certain provisions or to fill logical gaps. Similarly, only by taking the law of international armed conflicts as a starting point can one identify which changes must result, for the protective regime in non-international armed conflicts, from the fundamental legal differences between international and non-international armed conflicts. Finally, from the perspective of the law of international armed conflicts, there is a grey area not affected by those fundamental differences but in which States have refused to provide the same answer in the treaties of IHL. The practitioner in a non-international armed conflict confronted with a question to which the treaty rules applicable to such situations fail to provide an answer will either look for a rule of customary IHL applicable to non-international armed conflicts or search for the answer applicable in international armed conflicts and then analyse whether the nature of non-international armed conflicts allows for the application of the same answers in such conflicts. In any event, soldiers are instructed and trained to comply with one set of rules and not with two different sets.

The ICRC Study on customary IHL [6] has confirmed the customary nature of most of the treaty rules applicable in non-international armed conflicts (Art. 3 common to the Conventions and Protocol II in particular). Additionally, the study demonstrates that many rules initially designed to apply only in international conflicts also apply – as customary rules – in non-international armed conflicts. They include the rules relating to the use of certain means of warfare, relief assistance, the principle of distinction between civilian objects and military objectives and the prohibition of certain methods of warfare.

The fact that IHL of non-international armed conflicts comes closer to that of international armed conflicts is certainly a good thing for the victims of such conflicts, which are the most frequent in today's world, but it should never be forgotten that these rules are equally binding on government forces and non-State armed groups. [7] Therefore, for all existing, claimed and newly suggested rules of IHL of non-international armed conflicts, or whenever we interpret any of these rules, we should check whether an armed group willing to comply with the rule in question is able to do so without necessarily losing the conflict. Unrealistic rules do not protect anyone and undermine the credibility of other, realistic rules of IHL.

In addition, it should be borne in mind that if a given situation or issue is not regulated by IHL of non-international armed conflicts applying as the *lex specialis*, international human rights law applies, although possibly limited by derogations.

To conclude, it should be stressed that even in cases in which IHL of international armed conflicts contains no detailed provisions or to which no analogies with that law apply, and even without falling back on customary law, the plight of the victims of contemporary non-international armed conflicts would be incomparably improved if only the basic black-letter provisions of Art. 3 common to the Conventions and of Protocol II were respected.

^ CASES AND DOCUMENTS

- ICRC, Sixtieth Anniversary of the Geneva Conventions
- ICTY, The Prosecutor v. Tadic [Part E., paras 37-100]
- ICTY, The Prosecutor v. Boskoski
- Colombia, Constitutional Conformity of Protocol II
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- ECJ, Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides
- Mexico, Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ABI-SAAB Georges, "Non-International Armed Conflicts", in *International Dimensions of Humanitarian Law*, Geneva, Henry-Dunant Institute/UNESCO, 1986, pp. 217-239.
- ABI-SAAB Georges, "Humanitarian Law and Internal Conflicts: The Evolution of Legal Concern", in *Humanitarian Law of Armed Conflict Challenges Ahead, Essays in Honour of Frits Kalshoven*, Dordrecht, M. Nijhoff, 1991, pp. 209-223.
- BOTHE Michael, "Conflits armés internes et droit international humanitaire", in *RGDIP*, Vol. 82/1,

1978, pp. 82-102.

- CULLEN Anthony, "Key Developments Affecting the Scope of Internal Armed Conflict in International Humanitarian Law", in *Military Law Review*, Vol. 183, Spring 2005, pp. 66-109.
- FLECK Dieter, "12 - The Law of Non-International Armed Conflict", in FLECK Dieter (ed.), *The Handbook of International Humanitarian Law*, 3rd ed, Oxford, OUP, 2013, 830 pp.
- MOMTAZ Djamchid, "Le droit international humanitaire applicable aux conflits armés non internationaux", in *Collected Courses*, Vol. 292, 2001, pp. 9-146.
- MOIR Lindsay, "The Concept of Non-International Armed Conflict", in CLAPHAM Andrew, GAETA Paola and SASSÒLI Marco (eds.), *The 1949 Geneva Conventions. A Commentary*, Oxford University Press, 2015, pp.391-414. [AQ1] [MS2] [TR3]
- PERNA Laura, *The Formation of the Treaty Law of Non-International Armed Conflicts*, Leiden, M. Nijhoff, 2006, 168 pp.
- SCHMITT Michael N., DINSTEIN Yoram & GARRAWAY Charles H. B. (eds), "The Manual of Law of Non-International Armed Conflict: with Commentary", in *IYHR*, Vol. 36, 2006, 71 pp.
- VEUTHEY Michel, "Les conflits armés de caractère non international et le droit humanitaire", in CASSESE Antonio (ed.), *Current Problems of International Law*, Milan, Giuffrè, 1975, pp. 179-266.

Further reading:

- "Humanitarian Protection in Non-International Armed Conflicts", in *IYHR*, Vol. 30, 2000, pp. 1-226.
- ABI-SAAB Rosemary, *Droit humanitaire et conflits internes : Origine de la réglementation internationale*, Paris/Geneva, Pedone/Henry-Dunant Institute, 1986, 280 pp.
- ARIMATSU Louise, "Territory, Boundaries and the Law of Armed Conflict", in *Yearbook of International Humanitarian Law*, Vol. 12, 2009, pp. 157-192.
- BUGNION François, "Jus ad Bellum, Jus in Bello and Non-International Armed Conflicts", in *YIHL*, Vol. 6, 2006, pp. 167-198.
- FOUQUET Catherine de (ed.), *Guerres civiles*, Toulouse, Presse universitaire du Mirail, 1997.
- ICRC, *IHL and the Challenges of Contemporary Armed Conflicts – Recommitting To Protection In Armed Conflict On the 70th Anniversary Of The Geneva Conventions*, Geneva, ICRC, 2019, 84 pp.
- KÜEFNER Stefanie, "The Threshold of Non-International Armed Conflict: the Tadic Formula and its First Criterion Intensity", in *Militair-Rechtelijk Tijdschrift*, Vol. 102, Issue 6, 2009, pp. 301-311.
- SASSÒLI Marco, "Le droit international humanitaire applicable aux conflits armés non internationaux : Quelques problèmes fondamentaux et le rôle du CICR", in *Revue burkinabè de droit*, No. 17, 1990, pp. 115-143.
- SIOTIS Jean, *Le droit de la guerre et les conflits armés d'un caractère non international*, Paris, LGDJ, 1958, 248 pp.
- VEUTHEY Michel, *Guérilla et droit humanitaire*, Geneva, ICRC, 1983, 451 pp.
- WEHBERG Hans, "La guerre civile et le droit international", in *Collected Courses*, Vol. 63, 1938, pp. 1-127.
- WYSS Gabriela M., *Der nicht internationale bewaffnete Konflikt in El Salvador: Die Anwendung des Zusatzprotokoll II von 1977 zu den Genfer Abkommen von 1949*, Verlag Hans Schellenberg,

Winterthur, 1989, 225 pp.

- ZORGBIBE Charles, *La guerre civile*, Paris, PUF, 1975, 208 pp.

Footnotes

- [1] As recalled in P I, Art. 43(2)
- [2] See in particular ICTY, The Prosecutor v. Tadic [Part A., paras 96-136]
- [3] Compare Art. 8 (2) (a) and (b) with Art. 8. (2) (c) and (e), The International Criminal Court [Part A.]
- [4] See
- [5] See ICRC, Customary International Humanitarian Law
- [6] See ICRC, Customary International Humanitarian Law
- [7] See *infra*, Internal Armed Conflicts, VIII. Who is bound by the IHL of non-international armed conflicts?

I. International and non-international armed conflicts

^ CASES AND DOCUMENTS

- ICTY, The Prosecutor v. Tadic [Part A., paras 71-76 and 96-98]
- United States, Hamdan v. Rumsfeld
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 2-27]
- Syria, Syrian rebels treat captured Filipino soldiers as 'guests'
- Central African Republic/Democratic Republic of Congo/Uganda, LRA attacks
- Central African Republic, Coup d'Etat

Quotation

The treaty-based law applicable to internal armed conflicts is relatively recent and is contained in common article 3 of the Geneva Conventions, Additional Protocol II, and article 19 of the 1954 Hague Convention on Cultural Property. It is unlikely that there is any body of customary international law applicable to internal armed conflict which does not find its root in these treaty provisions.

[**Source:** Commission of Experts appointed to investigate violations of International Humanitarian Law in the Former Yugoslavia. UNDoc. S/1994/674, para. 52]

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- AKANDE Dapo, "Classification of Armed Conflicts: Relevant Legal Concepts", in WILMSHURST Elizabeth (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, pp. 32-79.

Further reading:

- CARRON Djemila, *L'acte déclencheur d'un conflit armé international*, Schulthess Verlag, Zürich, 2016, 516 pp.

II. Comparison of the legal regimes for international and for non-international armed conflicts

^ CASES AND DOCUMENTS

- The International Criminal Court [Part A., Art. 8]
- UN, Minimum Humanitarian Standards [Part B., paras 74-77]
- Germany, International Criminal Code [Paras 8-12]
- Belgium, Law on Universal Jurisdiction [Part A., Art. 136(c)]
- UN, UN Forces in Somalia
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [para. 18]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BARTELS Rogier, "Timelines, Borderlines and Conflicts: the Historical Evolution of the Legal Divide between International and Non-International Armed Conflicts", in *IRRC*, Vol. 91, No. 873, March 2009, pp. 35-67.
- OBRADOVIC Konstantin, "Les règles du droit international humanitaire relatives à la conduite des hostilités en période de conflits armés non internationaux", in *Yearbook of the International Institute of Humanitarian Law (San Remo)*, Milano, Giuffrè, 1992, pp. 95-116.

Further reading:

- CRAWFORD Emily, "Unequal before the Law: The Case for the Elimination of the Distinction between International and Non-International Armed Conflicts", in *Leiden Journal of International Law*, No. 20, 2007, pp. 441-465.
- HELLESTVEIT Cecilie, "The Geneva Conventions and the dichotomy between international and non-

international armed conflict: curse or blessing for the 'principle of humanity'?", in LARSEN Kjetil Mujezinovic, GULDAHL COOPER Camilla and NYSTUEN Gro (eds.), *Searching for a "principle of humanity" in International Humanitarian Law*, Cambridge, Cambridge University Press, 2013, pp. 86-123.

1. Traditional difference: protection not based on status (e.g. prisoner-of-war or protected civilian status) but on actual conduct (direct participation in hostilities)

^ CASES AND DOCUMENTS

- ICTY, The Prosecutor v. Tadic [Part C., paras 68, 171]
- Colombia, Constitutionality of IHL Implementing Legislation [Paras D.3.3.1.-5.4.3., Para. E.1]
- Afghanistan, Drug Dealers as Legitimate Targets
- ECHR, Khatsiyeva v. Russia [Paras 132-138]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 7-15, 42, 84 and 92]
- Syria, Code of Conduct of the Free Syrian Army
- Syria, Press conference with French President Francois Hollande and Russian President Vladimir Putin
- USA, Guantánamo, End of "Active Hostilities" in Afghanistan
- USA, Jawad v. Gates
- Italy, Use of force against ambulances in Iraq
- United States of America, Military Commissions Trial Judiciary, Guantanamo Bay, Cuba: United States of America v. Khalid Shaikh Mohammad et al.
- Mexico, Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel
- United Kingdom, Unlawful Killings in Afghanistan

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- KLEFFNER Jann K., "From "Belligerents" to "Fighters" and Civilians Directly Participating in Hostilities: on the Principle of Distinction in Non-International Armed Conflicts One Hundred Years After the Second Hague Peace Conference", in *Netherlands International Law Review*, Vol. 54, No. 2, 2007, pp. 315-336.
- KLEFFNER Jann K., "The Notions of Civilians and Fighters in Non-International Armed Conflicts", in BERUTO Gian Luca (ed.), *The Conduct of Hostilities: Revisiting the Law of Armed Conflict: 100 Years After the 1907 Hague Conventions and 30 Years After the 1977 Additional Protocols: Current Problems of International Humanitarian Law*, Sanremo, 6-8 September 2007: Proceedings, Milano,

2. However, the regime is closer to that of international armed conflicts if fighters (members of an armed group with a continuous fighting function) are not considered to be civilians:

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- SASSÒLI Marco, "The International Legal Framework for Stability Operations: When May International Forces Attack or Detain Someone in Afghanistan?", in *IYHR*, Vol. 39, 2009, pp. 177-212.

- a. and may therefore be targeted not only while directly participating in hostilities through specific acts but also – like combatants in international armed conflicts – as long as they do not fall into the power of the enemy or are otherwise hors de combat;

^ CASES AND DOCUMENTS

- ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities
- "Great March of Return" Demonstrations and Israel's Military Response

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- GAGGIOLI Gloria, "Targeting Individuals Belonging to an Armed Group", in *Vanderbilt Journal of Transnational Law*, Vol. 51, No. 3, 2018, pp. 901-918.
- LAWAN HARUNA Abdulrashid & MUSA BUBA Tijjani, "Direct Participation of Civilians in Hostilities as an Exception to Civilians Immunity in Armed Conflict: A Critical Review", in *Journal of Law, Policy and Globalization*, Vol. 21, 2014, pp. 43-49.

- a. and may, in the view of some States and specialists, also be detained for the mere fact that they belong to the enemy (like prisoners of war in international armed conflicts).

^ CASES AND DOCUMENTS

- ICRC, Sixtieth Anniversary of the Geneva Conventions
- United States, President's Military Order
- United States, Hamdan v. Rumsfeld
- United States, The Obama Administration's Internment Standards

- United States, Closure of Guantanamo Detention Facilities
- United Kingdom, The Case of Serdar Mohammed (High Court Judgment)
- United States, Mukhtar Yahia Maji Al Warafi v. Obama
- Syria, Code of Conduct of the Free Syrian Army
- Malaysia/Philippines, Conflict over the Sultanate of Sulu
- US/Afghanistan, Transfer of Control over Bagram Prison
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- Central African Republic, Report of the UN Independent Expert, July 2016
- Somalia/US, Airstrikes in Somalia

3. Uncontroversial similarities and differences

- a. protection of all those who do not or no longer directly participate in hostilities

^ CASES AND DOCUMENTS

- Belgium, Public Prosecutor v. G.W.
- Nigeria, Operational Code of Conduct
- Chile, Prosecution of Osvaldo Romo Mena
- ICJ, Nicaragua v. United States [Para. 255]
- UN, Security Council Resolution 688 on Northern Iraq
- ICTY, The Prosecutor v. Tadic [Part B., paras 573-575 and 615]
- Switzerland, Military Tribunal of Division 1, Acquittal of G.
- Case Study, Armed Conflicts in the Great Lakes Region [Part II.]
- Switzerland, The Niyonteze Case [Part A., consid. 9a.; Part B., III. ch. 3.D.1]
- India, People's Union for Civil Liberties v. Union of India
- Civil War in Nepal
- Russian Federation, Chechnya, Operation Samashki
- Syria, Code of Conduct of the Free Syrian Army
- Central African Republic, Report of the UN Independent Expert, July 2016
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017
- Iraq, Crimes by Militia Groups
- United States, The US Plan to Mitigate Civilian Harm in Armed Conflicts
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare
- United Kingdom, Unlawful Killings in Afghanistan
- Switzerland, Swiss Federal Criminal Court Finds Liberian Commander Guilty of War Crimes

- aa) who is protected?

^ CASES AND DOCUMENTS

- Sudan, Report of the UN Commission of Enquiry on Darfur [Para. 292]
- ICTR, The Prosecutor v. Jean-Paul Akayesu [Part A., para. 629]
- Switzerland, The Niyonteze Case [Part B., III., ch. 3.D.1]
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

bb) the wounded and sick

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- ICRC Report on Yemen, 1967
- Afghanistan, Separate Hospital Treatment for Men and Women
- Yemen, Obstructing Medical Care
- South Sudan: Medical Care Under Fire
- Health Care in Pakistan's Tribal Areas
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Afghanistan, Attack on Kunduz Trauma Centre
- Italy, Use of force against ambulances in Iraq
- Cameroon, Dead and Missing Persons

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

FLECK Dieter, "Humanitarian Protection in Non-international Armed Conflicts: the New Research Project of the International Institute of Humanitarian Law", in IYHR, Vol. 30, 2000, pp. 1-16.

PIERNAS Carlos, "The Protection of Foreign Workers and Volunteers in Situation of Internal Conflict, with Special Reference to the Taking of Hostages", in IRRC, No. 287, March-April 1992, pp. 143-172.

SOLF Waldemar A, "Development of the Protection of the Wounded, Sick and Shipwrecked under the Protocols Additional to the 1949 Geneva Conventions", 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. 237-248.

cc) prohibition of rape and other forms of sexual violence

^ CASES AND DOCUMENTS

- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 166 and 333-358]
- Central African Republic, Report of the UN Independent Expert, July 2016
- Afghanistan and Colombia, Conflict-Related Sexual Violence and Violence Against LGBT+ and Gender-Diverse Persons

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

GAGGIOLI Gloria, "Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law", in *IRRC*, Vol. 96, No. 894, 2014, pp. 503-538.

MESNER-HAGE Katherine, "Prosecuting Rape, Humanizing Women: Sexual Violence in International Humanitarian Law", in *Dartmouth Law Journal*, Vol. 5, 2007, pp. 169-180.

Further reading:

CAMPBELL Kirsten, "The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia", in *International Journal of Transitional Justice*, Vol. 1, No. 3, 2007, pp. 411-432.

dd) treatment of detainees

^ CASES AND DOCUMENTS

- ICRC, Tracing Service
- Israel, Methods of Interrogation Used Against Palestinian Detainees
- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 298 and 422]
- Case Study, Armed Conflicts in the Great Lakes Region [Part I. F.2]
- Afghanistan, Assessment of ISAF Strategy
- United States, Treatment and Interrogation in Detention
- Russian Federation, Chechnya, Operation Samashki [Para. 14]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 90-93]
- Syria, Code of Conduct of the Free Syrian Army
- US/Afghanistan, Transfer of Control over Bagram Prison
- Sweden/Syria, Can Armed Groups Issue Judgments?
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- USA, Jawad v. Gates
- Central African Republic, Report of the UN Independent Expert, July 2016
- Cameroon, Dead and Missing Persons

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CRAWFORD Emily, *The Treatment of Combatants and Insurgents under the Law of Armed Conflict*, Oxford, OUP, 2010, 213 pp.
- DÖRMANN Knut, "Detention in Non-International Armed Conflicts", in *International Law Studies*, Vol. 88, 2012, pp.347-366.
- GOODMAN Ryan, "Authorization versus Regulation of Detention in Non-International Armed Conflicts", in *International Law Studies*, Vol. 91, 2015, pp. 155-170.
- HAMPSON Françoise J., "Administrative Detention in Non-International Armed Conflicts", in LATTIMER Mark and SANDS Philippe (ed.), *The Grey Zone. Civilian Protection Between Human Rights and the Law of War*, Oxford Hart Publishing, Oxford 2018, pp. 215-228.
- HILL-CAWTHORNE Laurence, *Detention in Non-International Armed Conflict*, Oxford University Press, Oxford, 2016, 300 pp.
- MAHNAD Ramin, "Beyond Process: the material framework for detention and the particularities of non-international armed conflict", in *Yearbook of International Humanitarian Law*, Vol. 16, 2015, pp. 33-52.
- MURRAY Daragh, "Non-State Armed Groups, Detention Authority in Non-International Armed Conflict, and the Coherence of International Law: Searching for a Way Forward", in *Leiden Journal of International Law*, Vol. 30, No. 2, 2017, pp. 435-456.
- RODLEY Nigel S., *The Treatment of Prisoners under International Law*, Oxford, OUP, 4th ed., 2011, 752 pp.
- RONA Gabor, "Is There a Way Out of the Non-International Armed Conflict Detention Dilemma?", in *International Law Studies*, Vol. 91, 2015, pp.32-59.
- SASSÒLI Marco, "Legal Framework for Detention by States in Non-International Armed Conflict", in *Proceedings of the Bruges Colloquium, Detention in Armed Conflicts, 16-17 October 2014*, 2015, pp. 51-65.
- SASSÒLI Marco, "Legal basis of detention and determination of detainee status", in ODELLO Marco & BERUTO Juan Luca (eds.), *Global Violence: Consequences and Responses*, Milano, International Institute of Humanitarian Law/Franco Angeli, 2011, pp. 149-156.
- SCHARF Michael P. & GILLESPIE Gwen, "Security Detention", in *Case Western Reserve Journal of International Law*, Vol. 40, No. 3, 2009, pp. 315-650.

Further reading:

- AUGHEY Sean & AUREL Sari, "Targeting and Detention in Non-International Armed Conflict: Serdar Mohammed and the Limits of Human Rights Convergence", in *International Law Studies*, Vol. 91, 2015, pp. 60-118.
- BRUNNER Manuel, "Detention for Security Reasons by the Armed Forces of a State in Situations of Non-International Armed Conflict: the Quest for a Legal Basis", in BJÖRNSTJERN Baade, MÜHREL Linus and PETROV O. Anton (eds.), *International Humanitarian Law in Areas of Limited Statehood: Adaptable and Legitimate or Rigid and Unreasonable?*, Nomos, Baden-Baden, 2018, pp. 89-117.

- GAVRILOVA Maria, “Administrative Detention by Non-State Armed Groups: Legal Basis and Procedural Safeguards”, in *Israel Law Review*, Vol. 53, No. 1, 2020, pp. 35-70.
- GOODMAN Ryan, “The Detention of Civilians in Armed Conflicts”, in *American Journal of International Law*, Vol. 103, No. 1, January 2009, pp. 48-74.
- ICRC, HLS PILAC, U.S. Naval War College, “The Future of U.S. Detention under International Law: Workshop Report”, in *International Law Studies*, Vol. 93, 2017, pp. 272-298.
- KLEFFNER Jan K., “Operational Detention and the Treatment of Detainees”, in GILL D. Terry and FLECK Dieter (eds.), *The Handbook of the International Law of Military Operations*, 2nd ed., Oxford University Press, Oxford, 2015, pp. 518-532.
- MAČÁK Kubo, “A Needle in a Haystack? Locating the Legal Basis for Detention in Non-International Armed Conflict”, in *Israel Yearbook on Human Rights*, Vol. 45, 2015, pp. 87-106.
- Ministry of Foreign Affairs of Denmark, “The Copenhagen Process on 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.
- PETROV O. Anton, “Comment: Detention in Non-International Armed Conflict by States: Just a Matter of Perspective on Areas of Limited Statehood”, in BJÖRNSTJERN Baade, MÜHREL Linus & PETROV O. Anton (eds.), *International Humanitarian Law in Areas of Limited Statehood: Adaptable and Legitimate or Rigid and Unreasonable?*, Nomos, Baden-Baden, 2018, pp. 118-123.
- OSWALD Bruce, “The Detention of Civilians in Military Operations: Reasons for and Challenges to Developing a Special Law of Detention”, in *Melbourne University Law Review*, Vol. 32, 2008, pp. 524-553.
- SASSÒLI Marco, “Detention in non-international armed conflicts: Can the legal framework applicable to internment in international armed conflicts be replicated?”, in *The distinction between International and Non-International Armed Conflicts: 38th Round Table on current issues of IHL, 3-5 September 2015*, San Remo, 2015, pp. 156-162.
- SASSÒLI Marco & OLSON M. Laura, “The relationship between international humanitarian and human rights law where it matters: admissible killing and internment of fighters in non international armed conflicts”, in *International Review of the Red Cross*, Vol. 90, No. 871, 2008, pp. 599-627.

ee) judicial guarantees

▸ CASES AND DOCUMENTS

- Armed Conflicts in the Great Lakes Region [Part I. F.]
- United States, President’s Military Order
- United States, Hamdan v. Rumsfeld
- United States, Military Commissions
- United States, Habeas Corpus for Guantanamo Detainees
- United States, Closure of Guantanamo Detention Facilities
- Syria, Code of Conduct of the Free Syrian Army

- Sweden/Syria, Can Armed Groups Issue Judgments?
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- USA, Jawad v. Gates
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DOSWALD-BECK Louise, "Judicial Guarantees under Common Article 3" in CLAPHAM Andrew, GAETA Paola & SASSÒLI Marco (eds), *The 1949 Geneva Conventions. A Commentary*, Oxford, Oxford University Press, 2015, pp. 469-494.
- ICRC, Chatham House, "Expert Meeting on Procedural Safeguards for Security Detention in Non-International Armed Conflict", in *IRRC*, Vol. 91, No. 876, December 2009, pp. 859-881.

Further reading:

- Geneva Call, *Administration of Justice by Armed Non-States Actors, Report From the 2017 Garance Talks*, Geneva, Geneva Call, 2018, 23 pp.

a. more absolute prohibition of forced displacements

^ CASES AND DOCUMENTS

- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 226 and 328]
- Sri Lanka, Conflict in the Vanni
- Case Study, Armed Conflicts in the former Yugoslavia [9, 30 and 36]
- Bosnia and Herzegovina, Constitution of Safe Areas in 1992-1993
- Case Study, Armed Conflicts in the Great Lakes Region [Part II. A.]
- 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

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- MANGALA Jack M., "Préventions des déplacements forcés de population – possibilités et limites", in

IRRC, No. 844, December 2001, pp. 1067-1095.

- PLATTNER Denise, "The Protection of Displaced Persons in Non-International Armed Conflicts", in *IRRC*, No. 291, November-December 1992, 13 pp.
- WILMS Jan, "Without Order, Anything Goes?: The Prohibition of Forced Displacement in Non-International Armed Conflict", in *IRRC*, Vol. 91, No. 875, September 2009, pp. 547-575.

III. Different types of non-international armed conflicts

^ CASES AND DOCUMENTS

- The International Criminal Court [Part A., Art. 8(2)(d) and 8(2)(f)]
- Belgium and Brazil, Explanations of Vote on Protocol II
- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 74-76]
- ICTY, The Prosecutor v. Boskoski [Para.197]
- Democratic Republic of the Congo, Conflicts in the Kivus
- ICTR, The Prosecutor v. Jean-Paul Akayesu [Part A., paras 601-610 and 622-627]
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- ECJ, Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ANGSTROM Jan, "Towards a Typology of Internal Armed Conflict: Synthesising a Decade of Conceptual Turmoil", in *Civil Wars*, Vol. 4/3, 2001, pp. 93-116.
- DAHL Arne Willy & SANDBU Magnus, "The Threshold of Armed Conflict", in *Revue de droit militaire et de droit de la guerre*, Vol. 3-4, No. 45, 2006, pp. 369-388.
- SCHINDLER Dietrich, "The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols", in *Collected Courses*, Vol. 163, 1979, pp. 153-156.

Further reading:

- BOTHE Michael, "Article 3 and Protocol II: Case Studies of Nigeria and El Salvador", in *American University Law Review*, Vol. 31/4, 1982, pp. 899-909.

1. Conflicts to which common Art. 3 is applicable

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- Hungary, War Crimes Resolution
- ICJ, Nicaragua v. United States [Para. 219]
- Sri Lanka, Conflict in the Vanni
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 23]
- ICTR, The Prosecutor v. Jean-Paul Akayesu [Part A., paras 619-621]
- Switzerland, The Niyonteze Case [Part B., III., ch. 3.C.]
- United States, Hamdan v. Rumsfeld
- Civil War in Nepal [Part I.]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 84 and 92]
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- Nepal, Torture and Extra-Judicial Killing of a Child in the Context of the Nepalese Conflict

- lower threshold

^ CASES AND DOCUMENTS

- The Seville Agreement [Part II Art. 5.2]
- ICRC, Disintegration of State Structures
- UN, Minimum Humanitarian Standards
- ECHR, Korbely v. Hungary
- Chile, Prosecution of Osvaldo Romo Mena
- Inter-American Commission on Human Right, Tablada [Paras 154-56]
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 23]
- ICTY, The Prosecutor v. Tadic [Part B., paras 562-568, Part E.]
- ICTY, The Prosecutor v. Boskoski
- ICTR, The Prosecutor v. Jean-Paul Akayesu [Part A., paras 619-621]
- India, People's Union for Civil Liberties v. Union of India
- Russian Federation, Chechnya, Operation Samashki
- South Sudan, The Nuer "White Armies"
- Mexico, Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- NEWTON Michael A., "Contorting Common Article 3: Reflections on the Revised ICRC Commentary", in *Georgia Journal of International and Comparative Law*, Vol. 45, No. 3, 2017, pp. 513-528.
- PEJIC Jelena, "The Protective Scope of Common Article 3: More Than Meets the Eye", in *IRRC*, Vol.

93, No. 881, 2011, pp. 189-227.

- RODENHÄUSER Tilman, *Organizing Rebellion, Non-State Armed Groups under International Humanitarian Law, Human Right Law and International Criminal Law*, Oxford, Oxford University Press, 2018 (360 pp.).
- SIVAKUMARAN Sandesh Sarah, “The Addressees of Common Article 3”, in CLAPHAM Andrew, GAETA Paola & SASSÒLI Marco (eds), *The 1949 Geneva Conventions. A Commentary*, Oxford, Oxford University Press, 2015, pp. 415-432.

2. Conflicts covered by common Art. 3 and Art. 8(2)(e) of the ICC Statute

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CULLEN Anthony, “The Definition of Non-International Armed Conflict in the Rome Statute of the International Criminal Court: an Analysis of the Threshold of Application Contained in Article 8(2)(f)”, in *Journal of Conflict & Security Law*, Vol. 12, No. 3, 2007, pp. 419-445.
- DÖRMANN Knut, “Article 8(2)(e) ICC Statute – Other serious violations of the laws and customs applicable in armed conflicts not of an international character”, in DÖRMANN Knut (ed.), *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge, CUP, ICRC, 2003, pp. 439-486.
- LA HAYE Eve, *War Crimes in Internal Armed Conflicts*, Cambridge, Cambridge University Press, 2008, 424 pp.

Further reading:

- ALAMUDDIN Amal & WEBB Philippa, “Expanding Jurisdiction over War Crimes under Article 8 of the ICC Statute”, in *Journal of International Criminal Justice*, Vol. 8, No. 5, 2010, pp. 1219-1244.

3. Conflicts to which, in addition, Protocol II is applicable

[See 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, 1. Situations of application, B) Non international armed conflicts]

^ CASES AND DOCUMENTS

- Colombia/Displacement of Civilians
- International Law Commission, Articles on State Responsibility [Part A., Art. 10 and Commentary, para. 9]
- UN, Minimum Humanitarian Standards [Part B., paras 78-81]
- Belgium and Brazil, Explanations of Vote on Protocol II

- Switzerland, Qualification of the Conflict in El Salvador
- Case Study, Armed Conflicts in the former Yugoslavia [Paras 16, 24 and 34-37]
- ICTR, The Prosecutor v. Jean-Paul Akayesu [Part A., paras 622-627]
- Switzerland, The Niyonteze Case [Part A., 9 a. and Part B., III., ch. 3, Part C., III., ch. 3, and Part D(2)., III., ch 3]
- Human Rights Committee, Guerrero v. Colombia
- Germany, Government Reply on Chechnya
- Russian Federation, Chechnya, Operation Samashki
- Russia, Constitutionality of Decrees on Chechnya
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 11-12]
- ICC, Confirmation of Charges against LRA Leader
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare
- Switzerland, Swiss Federal Criminal Court Finds Liberian Commander Guilty of War Crimes
- Colombia, Special Jurisdiction for Peace, Crimes against the Environment in Cauca

▲ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- JUNOD Sylvie S., “Additional Protocol II: History and Scope”, in *American University Law Review*, Vol. 33/1, 1983, pp. 29-40.
- LEVIE Howard S., “Scope of this Protocol”, in LEVIE Howard S. (Ed.), *The Law of Non-International Armed Conflict, Protocol II to the Geneva Conventions*, Dordrecht, Boston, Lancaster, Martinus Nijhoff, 1987, pp. 21-135.
- LYSAGHT Charles, “The Scope of Protocol II and its Relation to Common Article 3 of the Geneva Conventions of 1949 and Other Human Rights Instruments”, in *American University Law Review*, Vol. 33/1, 1983, pp. 9-27.

Further reading:

- SERGEEV Artem, “Applying Additional Protocol II of the Geneva Conventions to the United Nations Forces”, in *Journal of International Humanitarian Legal Studies*, Vol. 8, No. 1-2, 2017, pp. 234-254.

4. Material field of application of the customary IHL of non-international armed conflicts

▲ CASES AND DOCUMENTS

- ICTY, The Prosecutor v. Boskoski
- South Sudan, The Nuer “White Armies”

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HOFFMANN Tamás, “The Gentle Humanizer of Humanitarian Law: Antonio Cassese and the Creation of the Customary Law of Non-International Armed Conflicts”, in STAHN Carsten & VAN DEN HERIK Larissa (eds.), *Future Perspectives on International Criminal Justice*, TMC Asser Press, 2010, pp. 58-80.
- KALSHOVEN Frits, “Applicability of Customary International Law in Non-International Armed Conflicts”, in CASSESE Antonio (ed.), *Current Problems of International Law*, Milan, Giuffrè, 1975, pp. 267-285.

5. Conflicts to which IHL as a whole is applicable

a. recognition of belligerency by the government

^ CASES AND DOCUMENTS

- United States, The Prize Cases
- Nigeria, Operational Code of Conduct
- Colombia, Constitutional Conformity of Protocol II [Paras 14 and 15]
- Philippines, Application of IHL by the National Democratic Front of the Philippines
- US, Combatant Immunity and Recognition of belligerency

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- MASTORODIMOS Konstantinos, “Belligerency Recognition: Past, Present and Future”, in *Connecticut Journal of International Law*, Vol. 29, No. 2, 2013, pp. 301-328.
- McLAUGHLIN Rob, *Recognition of Belligerency and the Law of Armed Conflict*, New-York, OUP, 2020, 307 pp.
- WILSON Robert R., “Recognition of Insurgency and Belligerency”, in *American Society of International Law Proceedings*, Vol. 31, Fourth session, 1937, pp. 136-143.

Further reading:

- BEALE Joseph H. Jr., “Recognition of Cuban Belligerency”, in *Harvard Law Review*, Vol. 9, No. 6, 1895-1896, pp. 406-419.
- O’ROURKE Vernon A., “Recognition of Belligerency and the Spanish War”, in *American Journal of International Law*, Vol. 31, No. 3, 1937, pp. 398-413.

a. special agreements between the parties

^ CASES AND DOCUMENTS

- Sudan, Report of the UN Commission of Enquiry on Darfur [Para. 168]
- Sri Lanka, Jaffna Hospital Zone
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 4]
- Former Yugoslavia, Special Agreements Between the Parties to the Conflicts
- Bosnia and Herzegovina, Release of Prisoners of War and Tracing Missing Persons After the End of Hostilities
- ICTY, The Prosecutor v. Tadic [Part A., para. 73]
- ICTY, The Prosecutor v. Galic [Part A., para. 22]
- ICTY, The Prosecutor v. Mrksic and Sljivancanin [Part B., para. 69]
- Case Study, Armed Conflicts in the Great Lakes Region [Part III.B.]
- Germany, Government Reply on the Kurdistan Conflict
- Afghanistan, Soviet Prisoners Transferred to Switzerland
- Colombia Peace Agreement

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HEFFES Ezequiel & D.KOTLIK Marcos, "Special agreements as a means of enhancing compliance with IHL in non-international armed conflicts: An inquiry into the governing legal regime", in *IRRC*, Vol. 96, No. 895/896, 2014, pp. 1195-1224.
- VIERUCCI Luisa, "Applicability of the Conventions by Means of Ad Hoc Agreements", in CLAPHAM Andrew, GAETA Paola and SASSÒLI Marco (eds.), *The 1949 Geneva Conventions. A Commentary*, Oxford University Press, 2015, pp. 509-521.

Further reading:

- JAKOVLJEVIC Bosko, "Memorandum of Understanding of 27 November 1991: International Humanitarian Law in the Armed Conflict in Yugoslavia in 1991", in *Yugoslav Review of International Law*, No. 3, 1991, pp. 301-312.
- JAKOVLJEVIC Bosko, "The Agreement of May 22, 1992, on the Implementation of International Humanitarian Law in the Armed Conflict in Bosnia-Herzegovina", in *Yugoslavenska Revija za Medunarodno Pravo*, No. 2-3, 1992, pp. 212-221.
- 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.
- SMITH Colin, "Special Agreements to Apply the Geneva Conventions in Internal Armed Conflicts: the

Lessons of Darfur”, in *Irish Yearbook of International Law*, 2009, pp. 91-101.

- TENEFANCIA 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. meaning of declarations of intention

^ CASES AND DOCUMENTS

- Geneva Call, Puntland State of Somalia adhering to a total ban on anti-personnel mines
- Germany, Government Reply on the Kurdistan Conflict
- Philippines, Application of IHL by the National Democratic Front of the Philippines

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- PLATTNER Denise, “La portée juridique des déclarations de respect du droit international humanitaire qui émanent de mouvement en lutte dans un conflit armé”, in *RBDI*, Vol. 18/1, 1984-1985, pp. 298-320.
- See documents on <http://www.genevacall.org>.

6. Problems of qualification

^ CASES AND DOCUMENTS

- Israel/Lebanon/Hezbollah, Conflict in 2006
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BYRON Christine, “Armed Conflicts: International or Non-International?”, in *Journal of Conflict and Security Law*, Vol. 6, No. 1, June 2011, pp. 63-90.
- CARSWELL Andrew J., “Classifying the Conflict: a Soldier’s Dilemma”, in *IRRC*, Vol. 91, No. 873, March 2009, pp. 143-161.
- SIVAKUMARAN Sandesh, “Identifying an Armed Conflict not of an International Character”, in STAHN Carsten & SLUITER Göran (eds), *The Emerging Practice of the International Criminal Court*,

Leiden, Boston, M. Nijhoff, 2009, pp. 363-380.

- VITÉ Sylvain, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations", in *IRRC*, Vol. 91, No. 873, March 2009, pp. 69-94.

Further reading:

- ARIMATSU Louise, "The Democratic Republic of the Congo 1993-2010" in WILMSHURST Elizabeth (ed), *International Law and the Classification of Conflicts*, Oxford, OUP, 2012, pp. 146-202.
- GRAY Christine, "Bosnia and Herzegovina: Civil War or Inter-State Conflict? Characterization and Consequences", in *BYIL*, Vol. 67, 1996, pp. 155-197.
- MERON Theodor, "Classification of Armed Conflict in the Former Yugoslavia, Nicaragua's Fallout", in *AJIL*, Vol. 92/2, 1998, pp. 236-242.
- SASSÒLI Marco, "The Legal Qualification of the Conflicts in the former Yugoslavia: Double Standards or New Horizons in International Humanitarian Law?", in WANG Tieya & SIENHO Yee (eds), *International Law in the Post-Cold War World: Essays in Memory of Li Haopei*, Routledge, London, 2001, pp. 307-333.
- SCHMITT Michael N., "Charting the Legal Geography of Non-International Armed Conflict", in *International Law Studies*, Vol. 90, 2014, pp. 1-19.

a. traditional internationalized internal conflicts

^ CASES AND DOCUMENTS

- United States/Iraq/Military Presence in Iraq
- International Law Commission, Articles on State Responsibility [Part A., Art. 8]
- ICJ, Nicaragua v. United States [Paras 219 and 254]
- Case Study, Armed Conflicts in the former Yugoslavia [Paras 9 and 26]
- ICTY, The Prosecutor v. Tadic [Part A., para. 72 and Part C., paras 87-162]
- ICTY, The Prosecutor v. Rajic [Part A., paras 11]
- United States, Kadic et al. v. Karadzic
- Switzerland, Military Tribunal of Division 1, Acquittal of G.
- Case Study, Armed Conflicts in the Great Lakes Region [Part III. A.]
- Philippines, Application of IHL by the National Democratic Front of the Philippines
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 7-15]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 2-27]
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Democratic Republic of Congo, Fighting with the M 23 Group
- Syria, the Battle for Aleppo
- International Criminal Court, Trial Judgment in the Case of the Prosecutor V. Jean-Pierre Bemba Gombo

- Eastern Ukraine, Attacks Against and Military Use of Schools
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017
- Central African Republic/Democratic Republic of Congo/Uganda, LRA attacks
- Central African Republic, Coup d'Etat
- The Netherlands/Ukraine, Classification of the Situation and Combatant Status (2014)

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CASSESE Antonio, "The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia", in *European Journal of International Law*, Vol. 18, No. 4, 2007, pp. 649-668.
- SCHINDLER Dietrich, *International Humanitarian Law and the Internationalization of Internal Armed Conflict*, San Remo, International Institute of Humanitarian Law, 1981, 15 pp.

Further reading:

- GASSER Hans-Peter, "Internationalized Non-International Armed Conflicts: Case Studies of Afghanistan, Kampuchea and Lebanon", in *American University Review*, Vol. 33/1, 1983, pp. 145-161.
- STEWART James G., "Towards a Single Definition of Armed Conflict in International Humanitarian Law: a Critique of Internationalized Armed Conflict", in *IRRC*, No. 850, June 2003, pp. 313-349.

a. conflicts of secession

^ CASES AND DOCUMENTS

- United States, The Prize Cases
- Case Study, Armed Conflicts in the former Yugoslavia [Paras 2 and 34]
- Former Yugoslavia, Special Agreements Between the Parties to the Conflicts [Part A.]
- Philippines, Application of IHL by the National Democratic Front of the Philippines
- South Sudan: Medical Care Under Fire

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- WALTER Christian, VON UNGERN-STERMBERG & ABUSHOV Kavus (eds.), *Self-Determination and Secession in International Law*, New-York, OUP, 2014, 340 pp.

a. foreign intervention not directed against governmental forces

^ CASES AND DOCUMENTS

- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- Israel, Operation Cast Lead [Part I, paras 29-30]
- ICRC/Lebanon, Sabra and Chatila
- Israel/Lebanon/Hezbollah, Conflict in 2006
- Case Study, Armed Conflicts in the Great Lakes Region [Part III. A.]
- Democratic Republic of the Congo, Conflicts in the Kivus [Parts I, II, and III, paras 1-12]
- Afghanistan, Drug Dealers as Legitimate Targets
- Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1. B. 4]
- Turkey/Iraq, Turkish Military Operations in Northern Iraq
- UN, Statement of a Special Rapporteur on Drone Attacks
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- United States of America, The Death of Osama bin Laden
- Syria, Press conference with French President Francois Hollande and Russian President Vladimir Putin
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 26, 57]
- Yemen, Potential Existence and Effects of Naval Blockade
- Syria, Report by UN Commission of Inquiry (March 2017)
- Syria, the Battle for Aleppo
- Iraq/Syria/UK, Drone Operations against ISIS
- Iraq, The Battle for Mosul
- Yemen , Humanitarian Impact of the Conflict
- United Kingdom, Unlawful Killings in Afghanistan
- Somalia, The Death of Bilal Al-Sudani

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CARRON Djemila, "Transnational Armed Conflicts. An Argument for a Single Classification of Non-International Armed Conflicts", in *Journal of International Humanitarian Legal Studies*, Vol. 7, 2016, pp. 5-31.
- FERRARO Tristan, "The ICRC's legal position on the notion of armed conflict involving foreign intervention and on determining the IHL applicable to this type of conflict", in *IRRC*, Vol. 97, No. 900, 2015, pp. 1227-1252.
- RADIN Sasha, "Global Armed Conflict? The Threshold of Extraterritorial Non-International Armed Conflicts", in *International Law Studies*, Vol. 89, 2013, pp. 695-743.

- ZAMIR Noam, "Classification of Conflicts in International Humanitarian Law: The Legal Impact of Foreign Intervention in Civil Wars", in *Australian Yearbook of International Law*, Vol. 35, No. 1, 2017, pp. 238-242.

Further reading:

- KOUTROULIS Vaivos, "The Fight Against the Islamic State and Jus in Bello", in *Leiden Journal of International Law*, Vol. 29, No. 3, 2016, pp. 827-852.
- TURNS David, "International Humanitarian Law Classification of Armed Conflicts in Iraq since 2003", in *International Law Studies. US Naval War College*, Vol. 86, No. 1, 2010, pp. 97-126.

a. non-international armed conflicts that spread into a neighbouring country

^ CASES AND DOCUMENTS

- Democratic Republic of the Congo, Conflicts in the Kivus
- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo
- Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea
- 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 68]
- Myanmar, Incidents at Chinese border
- Iraq/Syria/UK, Drone Operations against ISIS
- Cameroon, Dead and Missing Persons

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CORN Geoffrey & TALBOT JENSEN Eric, "Transnational Armed Conflict: A "Principled" Approach To the Regulation of Counter-Terror Combat Operations", in *Israel Law Review*, Vol. 42, 2009, pp. 46-79.

Further reading:

- COOMBES Karinne, "Protecting Civilians during the Fight against Transnational Terrorism: Applying International Humanitarian Law to Transnational Armed Conflicts", in *Canadian Yearbook of International Law*, Vol. 46, pp. 241-306.

a. UN peacekeeping and peace-enforcement operations in a non-international armed conflict

^ CASES AND DOCUMENTS

- Convention on the Safety of UN Personnel
- UN, UN Forces in Somalia
- Case Study, Armed Conflicts in the Great Lakes Region [Part III. D.]
- Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea. [Part 1. B. 3.]
- Democratic Republic of Congo, Involvement of MONUSCO
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Central African Republic: Sexual Violence by Peacekeeping Forces
- Central African Republic, Report of the UN Independent Expert, July 2016
- Central African Republic, No Class: When Armed Groups Use Schools

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- 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.
- DAVID Eric David et ENGDAHL Ola, "How does the involvement of a multinational peacekeeping force affect the classification of a situation?", in *IRRC*, Vol. 95, No. 891/892, 2013, pp. 659-680.
- FERRARO Tristan, "The applicability and application of international humanitarian law to multinational forces", in *IRRC*, Vol. 95, No. 891/892, 2013, pp. 561-612.
- SHRAGA Daphna, "The United Nations as an Actor Bound by International Humanitarian Law", in *International Peacekeeping*, Vol. 5/2, 1998, pp. 64-81.

a. UN operations to restore or maintain law and order

^ CASES AND DOCUMENTS

- Democratic Republic of the Congo, Conflicts in the Kivus (Part II, Part III, paras 10-11; paras 61-70]
- Central African Republic, No Class: When Armed Groups Use Schools

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- OSWALD Bruce, "Addressing the Institutional Law and Order Vacuum: Key Issues and Dilemmas for Peacekeeping Operations", in *New Zealand Armed Forces Law Review*, Vol.6, 2006, pp. 1-19.

a. the "global war on terror"

[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, 1. Situations of application, e. The global war on terror]

^ CASES AND DOCUMENTS

- ICRC, The Challenges of Contemporary Armed Conflicts
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- United States, Hamdan v. Rumsfeld [Parts I and III]
- United States, The Obama Administration's Internment Standards
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- USA, Guantánamo, End of "Active Hostilities" in Afghanistan
- USA, Jawad v. Gates

IV. The explicit rules of Common Article 3 and of Protocol II

^ CASES AND DOCUMENTS

- UN, Minimum Humanitarian Standards [Part B., para. 74-76.]
- ECHR, Korbely v. Hungary
- Case Study, Armed Conflicts in the Great Lakes Region [Part II. B., Part III. C. 1 and 2]
- Colombia, Constitutional Conformity of Protocol II
- Russian Federation, Chechnya, Operation Samashki

1. Who is covered by common Art. 3?

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- ICTY, The Prosecutor v. Radovan Karadzic
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

HAMPSON Françoise, "Personal scope of IHL protection in NIAC: Legal and Practical Challenges", in *Scope of Application of International Humanitarian Law, Proceedings of the Bruges Colloquium*, 13th Bruges Colloquium, 18-19 October 2012, pp. 59-63.

Further reading:

NEWTON Michael A., “Contorting Common Article 3: Reflections on the Revised ICRC Commentary”, in *Georgia Journal of International and Comparative Law*, Vol. 45, No. 3, 2017, pp. 513-528.

2. Principles under common Art. 3

Cases and documents

United States, Jurisprudence Related to the Bombing of the U.S.S Cole

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

PEJIC Jelena, “The Protective Scope of Common Article 3: More Than Meets the Eye”, in *IRRC*, Vol. 93, No. 881, 2011, pp. 189-227.

a. non-discrimination

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- Somalia, Traditional Law and IHL
- Iraq: Situation of Internally Displaced Persons
- Syria, Report by UN Commission of Inquiry (March 2017)
- Iraq, Crimes by Militia Groups
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare [paras 528-536, 624-640, 540-541]

b. humane treatment

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces
- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*,
- Canada, *Ramirez v. Canada*
- ICTY, *The Prosecutor v. Strugar* [Part B., paras 219 and 234-250]
- Human Rights Committee, *Guerrero v. Colombia*
- Afghanistan, Code of Conduct for the Mujahideen [Arts 3, 8, 12-13, 18, 21]
- United States, Treatment and Interrogation in Detention
- Mali, Conduct of Hostilities
- Central African Republic, Coup d’Etat

- Syria, Code of Conduct of the Free Syrian Army
- Somalia, the fate of Children in the conflict
- ICTY, The Prosecutor v. Radovan Karadzic
- Myanmar, Forced Population Movements
- USA, Jawad v. Gates
- Central African Republic, Report of the UN Independent Expert, July 2016
- Iraq: Situation of Internally Displaced Persons
- Syria, Report by UN Commission of Inquiry (March 2017)
- Syria, the Battle for Aleppo
- ICC, Confirmation of Charges against LRA Leader
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)
- International Criminal Court, Trial Judgment in the Case of the Prosecutor V. Jean-Pierre Bemba Gombo
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare [paras 528-536, 624-640]
- United Kingdom, Unlawful Killings in Afghanistan
- Switzerland, Swiss Federal Criminal Court Finds Liberian Commander Guilty of War Crimes
- Nepal, Torture and Extra-Judicial Killing of a Child in the Context of the Nepalese Conflict

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DROEGE Cordula, ““In Truth the Leitmotiv”: The Prohibition of Torture and Other Forms of Ill-Treatment in International Humanitarian Law”, in *IRRC*, Vol. 89, No. 867, September 2007, pp. 515-541.

- does the prohibition of murder cover attacks in the conduct of hostilities?

Cases and documents

- United States, Jurisprudence Related to the Bombing of the U.S.S Cole

a. judicial guarantees

^ CASES AND DOCUMENTS

- United States, President's Military Order
- United States, Hamdan v. Rumsfeld
- United States, Military Commissions

- United States, Habeas Corpus for Guantanamo Detainees
- Yemen, Obstructing Medical Care
- Mali, Conduct of Hostilities
- Syria, Code of Conduct of the Free Syrian Army
- Sweden/Syria, Can Armed Groups Issue Judgments?
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- USA, Jawad v. Gates
- Syria, Report by UN Commission of Inquiry (March 2017)
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DOSWALD-BECK Louise, "Judicial Guarantees under Common Article 3", in CLAPHAM Andrew, GAETA Paola and SASSÒLI Marco (eds.), *The 1949 Geneva Conventions. A Commentary*, Oxford University Press, 2015, pp. 469-494.
- JACKSON Dick et JENSEN Eric T., "Common Article 3 and Its Application to Detention and Interrogation", in *Army Lawyer*, No. 5, 2007, pp. 69-70.

Further reading:

- SAYAPIN Sergey, "The Application of the Fair Trial Guarantees to Alleged Terrorists in Non-International Armed Conflicts", in *Humanitäres Völkerrecht*, Vol. 3, 2004, pp. 152-159.

a. obligation to collect and care for the wounded and sick

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- Yemen, Obstructing Medical Care
- South Sudan: Medical Care Under Fire
- Health Care in Pakistan's Tribal Areas
- United States, Mukhtar Yahia Maji Al Warafi v. Obama
- Democratic Republic of Congo, Fighting with the M 23 Group
- Syrian Statement at the UN on the Medical Treatment of Enemy Fighters
- The armed conflict in Syria
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- United States of America, The Death of Osama bin Laden

- Afghanistan, Attack on Kunduz Trauma Centre
- Sri Lanka, Naval War against Tamil Tigers

3. Additional rules under Protocol II

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BOTHE Michael, PARTSCH Karl Josef & SOLF Waldemar A., "Protocol II", in *New Rules for Victims of Armed Conflicts, Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, The Hague, Boston, London, Martinus Nijhoff Publishers, 1982, pp. 604-707.
- ASBJORN Eide, "The New Humanitarian Law in Non-International Conflict", in CASSESE Antonio (ed.), *The New Humanitarian Law of Armed Conflict*, Napoli, Editoriale Scientifica, 1979, pp. 277-309.

Further reading:

- SPIEKER Heike, "Twenty-five Years after the Adoption of Additional Protocol II: Breakthrough or Failure of Humanitarian Legal Protection?", in *YIHL*, Vol. 4, 2001, pp. 129-166.

a. more precise rules on:

aa) fundamental guarantees of humane treatment

P II, Arts 4 and 5 [CIHL, Rules 87-96, 103, 118, 119, 121, 125, 128]

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- Sri Lanka, Conflict in the Vanni [Paras 29-46]
- Democratic Republic of the Congo, Conflict in the Kivus (Part III, paras 16, 35-41)
- Afghanistan, Code of Conduct for the Mujahideen [Art. 51]
- Mali, Conduct of Hostilities
- Central African Republic, Coup d'Etat
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- El Salvador, Supreme Court Judgment on the Unconstitutionality of the Amnesty Law
- ICC, Confirmation of Charges against LRA Leader
- South Sudan, AU Commission of Inquiry on South Sudan
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare [paras 528-536, 624-640]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- LEVIE Howard S., “Humane Treatment”, in LEVIE Howard S. (Ed.), *The Law of Non-International Armed Conflict, Protocol II to the Geneva Conventions*, Dordrecht, Boston, Lancaster, Martinus Nijhoff, 1987, pp. 135-305.

bb) judicial guarantees

P II, Art. 6 [CIHL, Rules 100-102]

^ CASES AND DOCUMENTS

- United States, President’s Military Order
- Mali, Conduct of Hostilities
- Sweden/Syria, Can Armed Groups Issue Judgments?
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017

cc) wounded, sick and shipwrecked

P II, Arts 7-8 [CIHL, Rules 109-111]

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- Yemen, Obstructing Medical Care
- South Sudan: Medical Care Under Fire
- Health Care in Pakistan’s Tribal Areas
- Democratic Republic of Congo, Fighting with the M 23 Group
- Syrian Statement at the UN on the Medical Treatment of Enemy Fighters
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Sri Lanka, Naval War against Tamil Tigers
- South Sudan, AU Commission of Inquiry on South Sudan
- Cameroon, Dead and Missing Persons

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- LEVIE Howard S., “Wounded, Sick and Shipwrecked”, in LEVIE Howard S. (Ed.), *The Law of Non-International Armed Conflict, Protocol II to the Geneva Conventions*, Dordrecht, Boston, Lancaster, Martinus Nijhoff, 1987, pp. 305-447.

dd) use of the emblem

P II, Art. 12 [CIHL, Rules 30 and 59]

▸ CASES AND DOCUMENTS

- Colombia, Misuse of the Emblem

a. specific rules on:

aa) protection of children

P II, Art. 4(3) [CIHL, Rules 136 and 137]

▸ CASES AND DOCUMENTS

- Sri Lanka, Conflict in the Vanni [Paras 10-11]
- ICC, The Prosecutor v. Thomas Lubanga Dyilo
- Afghanistan, Code of Conduct for the Mujahideen [Art. 50]
- Civil War in Nepal
- Sierra Leone, Special Court Ruling on the Recruitment of Children
- 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
- Central African Republic, Report of the UN Independent Expert, July 2016
- ICC, Confirmation of Charges against LRA Leader
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)
- Eastern Ukraine, Attacks Against and Military Use of Schools
- Central African Republic, No Class: When Armed Groups Use Schools
- South Sudan, AU Commission of Inquiry on South Sudan
- Yemen , Humanitarian Impact of the Conflict
- Geneva Call and the Chin National Front
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare [paras 537-538, 563-607]

▸ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ARAI TAKAHASHI Yutaka, “War Crimes relating to child soldiers and other children that are otherwise associated with armed groups in situations of non-international armed conflict. An incremental step toward a coherent legal framework?”, in *QIL*, Vol. 60, 2019, pp. 25-48.

Further reading:

- RODENHAUSER Tilman, “Squaring the Circle: Prosecuting Sexual Violence against Child Soldiers by their own Forces”, in *Journal of International Criminal Justice*, Vol. 14, No. 1 2016, pp. 171-194.

bb) protection of medical personnel and units, duties of medical personnel

P II, Arts 9-12 [CIHL, Rules 25, 26 and 28-30]

^ CASES AND DOCUMENTS

- Sri Lanka, Conflict in the Vanni [Paras 17-22]
- Yemen, Obstructing Medical Care
- South Sudan: Medical Care Under Fire
- United States, Mukhtar Yahia Maji Al Warafi v. Obama
- Democratic Republic of Congo, Fighting with the M 23 Group
- The armed conflict in Syria
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- South Sudan, AU Commission of Inquiry on South Sudan
- Yemen , Humanitarian Impact of the Conflict

a. rules on the conduct of hostilities

aa) protection of the civilian population against attacks

P II, Art. 13 [CIHL, Rules 1 and 6]

^ CASES AND DOCUMENTS

- Sri Lanka, Conflict in the Vanni [Paras 12-16]
- Democratic Republic of the Congo, Conflicts in the Kivus [Part III, paras 12-23]
- Afghanistan, Assessment of ISAF Strategy
- Civil War in Nepal
- ECHR, Isayeva v. Russia
- ECHR, Khatsiyeva v. Russia
- ICC, Confirmation of Charges against LRA Leader
- UN, Working Group on the use of Mercenaries: Preliminary Findings of Mission to Ukraine
- South Sudan, AU Commission of Inquiry on South Sudan

- Yemen , Humanitarian Impact of the Conflict

bb) protection of objects indispensable for the survival of the civilian population

P II, Art. 14 [CIHL, Rules 53 and 54]

CASES AND DOCUMENTS

- Syria, Report by UN Commission of Inquiry (March 2017)
- Syria, the Battle for Aleppo
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017
- South Sudan, AU Commission of Inquiry on South Sudan
- Yemen , Humanitarian Impact of the Conflict

cc) protection of works and installations containing dangerous forces

P II, Art. 15 [CIHL, Rule 42]

^ CASES AND DOCUMENTS

- Colombia, Constitutionality of IHL Implementing Legislation [Paras 2, and E.3]
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017

dd) protection of cultural objects

P II, Art. 16 [CIHL, Rules 38-40]

^ CASES AND DOCUMENTS

- Colombia, Constitutionality of IHL Implementing Legislation [Paras 3, and E.3]
- Mali, Accountability for the Destruction of Cultural Heritage
- Yemen , Humanitarian Impact of the Conflict
- Colombia, Special Jurisdiction for Peace, Crimes against the Environment in Cauca

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HENCKAERTS Jean-Marie, "The protection of cultural property in non-international armed conflicts", in VAN WOUDEBERG Nout & LIJNZAAD Liesbeth (eds.), *Protecting Cultural Property in Armed Conflict*, Brill, Nijhoff, 2010, pp.81-93.

Further readings:

- ABTAHI Hirad, “The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia”, in *Harvard Human Rights Journal*, Vol. 14, No. 1, 2001, 32 pp.
- BRAMMERTZ Serge, HUGHES Kevin C., KIPP Alison, TOMLJANOVICH William B., “Attacks against Cultural Heritage as a Weapon of War: Prosecutions at the ICTY”, in *Journal of International Criminal Justice*, Vol. 14, No. 5, 2016, pp. 1143-1174.
- CASALY Paige, “Al Mahdi before the ICC: Cultural Property and World Heritage in International Criminal Law”, in *Journal of International Criminal Justice*, Vol. 14, No. 5, pp. 1199-1220.

a. **prohibition of forced movements of civilians**

P II, Art. 17 [CIHL, Rule 129 B]

^ CASES AND DOCUMENTS

- Sri Lanka, Conflict in the Vanni [Paras 3-9]
- Case Study, Armed Conflicts in the former Yugoslavia [Paras 24, 30, 33 and 36]
- Democratic Republic of the Congo, Conflicts in the Kivus [Part III, paras 38-40]
- Iraq: Situation of Internally Displaced Persons
- Syria, Report by UN Commission of Inquiry (March 2017)
- Syria, the Battle for Aleppo

a. **relief operations**

P II, Art. 18 [CIHL, Rules 55 and 56]

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- Sri Lanka, Conflict in the Vanni [Paras 23-28]
- United States of America, Holder v. Humanitarian Law Project
- Yemen, Potential Existence and Effects of Naval Blockade
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017
- South Sudan, AU Commission of Inquiry on South Sudan
- Yemen , Humanitarian Impact of the Conflict

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BINDSCHEDLER-ROBERT Denise, “Actions of Assistance in Non-international Conflicts – Art. 18 of Protocol II”, in *European Seminar on Humanitarian Law (Jagellonean University, Krakow, 1979)*,

V. Customary Law of non-international armed conflicts

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- ICRC, Customary International Humanitarian Law
- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 154-167]
- ICTY, The Prosecutor v. Tadic [Part A., paras 96-126]
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- Syria, Report by UN Commission of Inquiry (March 2017)
- Syria, the Battle for Aleppo
- Central African Republic/Democratic Republic of Congo/Uganda, LRA attacks
- Central African Republic, Coup d'Etat
- Mexico, Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- COWLING Michael, "International Lawmaking in Action: the 2005 Customary International Humanitarian Law Study and Non-International Armed Conflicts", in *African Yearbook on International Humanitarian Law*, 2006, pp. 65-87.
- CRAWFORD Emily, "Blurring the Lines between International and Non-International Armed Conflicts: the Evolution of Customary International Law Applicable in Internal Armed Conflicts", in *Australian International Law Journal*, Vol. 15 (2008), 2009, pp. 29-54.
- TAVERNIER Paul & HENCKAERTS Jean-Marie (Dir.), *Droit international humanitaire coutumier : enjeux et défis contemporains*, Brussels, Bruylant, 2008, 289 pp.
- WILMSHURST Elizabeth & BREAU Susan (eds), *Perspectives on the ICRC Study on Customary International Humanitarian Law*, Cambridge, CUP, 2007, 433 pp.

Further reading:

- CASSESE Antonio, "The Spanish Civil War and the Development of Customary Law Concerning Internal Armed Conflicts", in CASSESE Antonio (ed.), *Current Problems of International Law*, Milan, Giuffrè, 1975, pp. 287-318.
- FOX Gregory H., BOON Kristen E. & JENKINS Isaac, "The Contributions of United Nations Security Council Resolutions to the Law of Non-International Armed Conflict: New Evidence of Customary

International Law", in *American University Law Review*, Vol. 67, 2018, pp. 649-732.

- HOFFMANN Michael H., *The Customary Law of Non-International Armed Conflict: Evidence from the United States Civil War*, Geneva, ICRC, October 1990, 23 pp.
- KALSHOVEN Frits, "Applicability of Customary International Law in Non-International Armed Conflicts", in CASSESE Antonio (ed.), *Current Problems of International Law*, Milan, Giuffrè, 1975, pp. 267-285.

VI. Applicability of the general principles on the conduct of hostilities

^ CASES AND DOCUMENTS

- The International Criminal Court [Part A., Art. 8(2)(e)]
- Sudan, Report of the UNCommission of Enquiry on Darfur [Para. 166]
- Inter-American Commission on Human Rights, *Tablada* [Paras 182-189]
- ICTY, *The Prosecutor v. Rajic* [Part A., para. 48]
- Colombia, *Constitutional Conformity of Protocol II* [Paras 22-24]
- Mali, *Conduct of Hostilities*
- Somalia, *the fate of Children in the conflict*
- United States, *Use of Armed Drones for Extraterritorial Targeted Killings*
- The armed conflict in Syria
- General Assembly, *The use of drones in counter-terrorism operations*
- Libya, *Report of the Office of the UN High Commissioner for Human Rights (2014/15)*
- Iraq, *Forced displacement and deliberate destruction*
- Eastern Ukraine, *OHCHR Report on the Situation: November 2016 - February 2017*
- United States, *The US Plan to Mitigate Civilian Harm in Armed Conflicts*

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- "Declaration on the Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-International Armed Conflicts", in *IRRC*, No. 278, September-October 1990, 5 pp.
- BOOTHBY William H., "Differences in the Law of Weaponry When Applied to Non-International Armed Conflicts", in WATKINS Kenneth & NORRIS J. Andrew, *Non-International Armed Conflict in the Twenty-First Century*, Newport, Naval War College, 2012, pp. 197-210.
- KABORÉ Antoine P., *L'usage de la force létale dans les conflits armés non internationaux. Contribution à la clarification des rapports entre le droit international humanitaire et le droit international des droits de l'homme*, Thesis, University of Geneva, Geneva, 2016 (manuscript with the author).

- “Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-International Armed Conflicts”, in *IRRC*, No. 278, September-October 1990, pp. 383-403.

Further reading:

- SMITH Tara, “Critical perspectives on environmental protection in non-international armed conflict: Developing the principles of distinction, proportionality and necessity”, in *Leiden Journal of International Law*, Vol. 32, No. 4, 2019, pp. 759-779.

1. Principle of distinction

▸ CASES AND DOCUMENTS

- Myanmar, Escalation of the Conflict
- Belgium, Law on Universal Jurisdiction [Part A., Art. 136(c)]
- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 166 and 240-268]
- Inter-American Commission on Human Rights, *Tablada* [Para. 177]
- ICTY, *The Prosecutor v. Martić* [Part A., paras 11-14]
- ICTY, *The Prosecutor v. Strugar* [Part A.; Part B., paras 116 and 228]
- Democratic Republic of the Congo, *Conflicts in the Kivus* [Part III, paras 31 and 39]
- Colombia, *Constitutional Conformity of Protocol II* [Paras 28-34]
- Germany, *Government Reply on Chechnya*
- Russian Federation, *Chechnya, Operation Samashki*
- Sri Lanka, *Naval War against Tamil Tigers*
- Syria, *the Battle for Aleppo*
- Iraq/Syria/UK, *Drone Operations against ISIS*
- United Kingdom, *Arms Trade With Saudi Arabia*
- Germany, *Aerial Drone Attack in Mir Ali/Pakistan*
- Eastern Ukraine, *Attacks Against and Military Use of Schools*
- Syria, *Syrian rebels treat captured Filipino soldiers as 'guests'*
- Central African Republic, *No Class: When Armed Groups Use Schools*
- Mexico, *Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel*
- Colombia, *Special Jurisdiction for Peace, Extrajudicial Executions in Casanare* [paras 552-561]

▸ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CORN Geoffrey & JENKS Chris, “Two Sides of the Combatant Coin: Untangling Direct Participation in Hostilities from Belligerent Status in Non-International Armed Conflicts”, in *University of Pennsylvania Journal of International Law*, Vol. 33, No. 2, 2011, pp. 313-360.

- KLEFFNER Jann K., “From ‘Belligerents’ to ‘Fighters’ and Civilians Directly Participating in Hostilities — On the Principle of Distinction in Non-International Armed Conflicts One Hundred Years After the Second Hague Peace Conference”, in *Netherlands International Law Review*, Vol. 54, 2007, pp. 315-336.

2. Principle of military necessity

Cases and documents

- International Criminal Court, Trial Judgment in the Case of the Prosecutor V. Jean-Pierre Bemba Gombo

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ONISHI Kosuke, “Rethinking the Permissive Function of Military Necessity in Internal Non-International Armed Conflicts”, in *Israel Law Review*, Vol. 51, No. 2, 2018, pp. 235-259.

3. Principle of proportionality

^ CASES AND DOCUMENTS

- Myanmar, Escalation of the Conflict
- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 166 and 260]
- Germany, Aerial Drone Attack in Mir Ali/Pakistan

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- VALIOLLAH Noori & SEYED GHASEM Zamani, “Principle of Proportionality and Non-International Armed Conflicts”, in *Journal of Public Law*, Vol. 9, No. 58, 2018, pp. 9-27.

Further reading:

- CRIDDLE Evan J., “Proportionality in Counterinsurgency: A Relational Theory”, in *Notre Dame Law Review*, Vol. 87, No. 3, 2012, pp. 1073-1112.

4. Right to relief

^ CASES AND DOCUMENTS

- Myanmar, Escalation of the Conflict
- Colombia, Response of armed groups to COVID-19
- UN, Guiding Principles on Internal Displacement [Principle 25]
- UN, Security Council Resolution 688 on Northern Iraq
- Sri Lanka, Conflict in the Vanni [Paras 23-28]
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 36]
- United States of America, Holder v. Humanitarian Law Project
- Yemen, Potential Existence and Effects of Naval Blockade
- Syria, the Battle for Aleppo

▲ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BOUCHET-SAULNIER Françoise, "Consent to humanitarian access : An obligation triggered by territorial control, non States' rights", in *IRRC*, Vol. 96, No. 893, 2014, pp. 207-218.
- SCHWENDIMANN Felix, "The legal framework of humanitarian access in armed conflict", in *IRRC*, Vol. 93, No. 884, 2011, pp. 993-1008.

Further reading:

- DONNELLY Elizabeth Rose, « Towards Greater Legal Protection for Medical-Humanitarian NGOs in Situations of Armed Conflict », *Cambridge Law Review*, vol.3 (2018), pp.144-173.
- KWAKWA Edward, "Internal Conflicts in Africa: Is There a Right of Humanitarian Action?", in *African Yearbook of International Law*, 1994, pp. 9-46.

VII. Necessity and limits of analogies with the law of international armed conflicts

Introductory text

First, in some cases the precise rule resulting from a common principle or from combining principles with a provision of the law of non-international armed conflicts or with simple legal logic can be found by analogy in rules which have been laid down in the much more detailed texts of the Conventions and Protocol I for international armed conflicts. [8]

Second, certain rules and regimes of the law of international armed conflicts have to be applied in non-international armed conflicts to fill gaps in the applicable provisions, to make the application of explicit provisions possible, or to give the latter a real chance of being applied.

For example, the law of non-international armed conflicts contains no definition of military objectives or of the

civilian population. Such definitions are required, however, to apply the principle of distinction applicable in both types of conflict and the explicit prohibitions to attack the civilian population, individual civilians and certain civilian objects. [9] No fundamental difference between the regimes applicable to the two types of conflict precludes the application of one and the same definition.

Prohibitions or limitations on the use of certain weapons are a more difficult case. None of the relevant differences between the two categories of conflict could justify not applying in non-international armed conflicts prohibitions or restrictions on the use of certain weapons set out in the law of international armed conflicts. Yet States have traditionally refused to accept proposals explicitly extending such prohibitions to non-international armed conflicts. Fortunately, this trend has been reversed in recent codification efforts. [10]

A striking feature of the law of non-international armed conflicts is that it foresees no combatant status, does not define combatants and does not prescribe specific rights and obligations for them; its provisions do not even use the term “combatant”. This is a consequence of the fact that no one has the “right to participate in hostilities” in a non-international armed conflict (a right which is an essential feature of combatant status). Some authors conclude that the law of non-international armed conflicts does not protect people according to their status but according to their actual activities. If this is correct, on the crucial question of when a fighter (i.e. a member of an armed group with a fighting function [11] may be attacked and according to what procedures a captured fighter may be detained, no analogy could be made with the rules applicable in international armed conflicts to combatants and prisoners of war. Fighters could only be attacked if and for such time as they directly participate in hostilities and the admissibility of their detention would be governed, in the absence of specific rules of the IHL of non-international armed conflicts, by domestic law and International Human Rights Law.

Other authors and States consider that fighters may be attacked in non-international armed conflicts like combatants may be attacked in international armed conflicts, i.e. at any time until they surrender or are otherwise hors de combat. Some of those who promote this analogy also consider that captured fighters may be detained, like prisoners of war in international armed conflicts, without any individual judicial determination until the end of the conflict.

This controversy, which has important humanitarian consequences in non-international armed conflicts and armed conflicts which have both international and non-international components, shows that an analogy between international and non-international armed conflicts does not always lead to better protection for those affected by the conflict. It also raises the question of whether International Human Rights Law should not have a greater impact in non-international armed conflicts than in international armed conflicts, inter alia because the applicable IHL treaty rules are incomplete.

In any case, if civilians are to be respected in non-international armed conflicts as prescribed by the applicable provisions of IHL, those conducting military operations must be able to distinguish those who fight from those who do not fight, and this is only possible if those who fight distinguish themselves from those

who do not fight. Detailed solutions on how this can and must be done are found, *mutatis mutandis*, in the law of international armed conflicts. In addition, it might be reasonable not to consider fighters as civilians (who may be attacked only if and for such time as they directly participate in hostilities), but this presupposes clear criteria and a real possibility to determine who is a fighter. On the other hand, in our view, captured fighters should not be detained by analogy to prisoners of war. On arrest, it is more difficult to identify fighters than soldiers of armed forces of another State. The correct classification can be made by a tribunal, which will only have its say if the arrested person is not classified as a POW.

^ CASES AND DOCUMENTS

- ICTY, *The Prosecutor v. Tadic* [Part A., para. 126]
- United States, *The Obama Administration's Internment Standards*
- United Kingdom, *The Case of Serdar Mohammed* (High Court Judgment)
- U.S., *Lethal Operations against Al-Qa'ida Leaders*
- Colombia, *Special Jurisdiction for Peace, Crimes against the Environment in Cauca*

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CARILLO-SUÀREZ Arturo, "Hors de Logique: Contemporary Issues in International Humanitarian Law as Applied to Internal Armed Conflict", in *American University International Law Review*, Vol. 15/1, 1999, pp. 1-150.
- CRAWFORD Emily, "Unequal Before the Law; the Case for the Elimination of the Distinction Between International and Non-International Armed Conflicts", in *Leiden Journal of International Law*, Vol. 20, 2007, pp. 441-465.
- KRETZMER David, "Rethinking the Application of IHL in Non-International Armed Conflicts", in *Israel Law Review*, vol.42 (2009), pp.8-45.
- SASSÒLI Marco, "The Convergence of the International Humanitarian Law of Non-International and of International Armed Conflicts: Dark Side of a Good Idea", in: BIAGGINI, DIGGELMANN and KAUFMANN (eds), *Polis und Kosmopolis, Festschrift für Daniel Thürer*, Zürich/Baden-Baden, Dike/Nomos, 2015, pp. 678-689.
- SIVAKUMARAN Sandesh, "Re-envisaging the International Law of Internal Conflict", in *EJIL*, Vol. 22, No. 1, 2011, pp. 219-264.

Further reading

- HELLER Kevin John, "The Use and Abuse of Analogy in IHL", in OHLIN Jens (ed.), *Theoretical Boundaries of Armed Conflict & Human Rights*, Cambridge University Press, Cambridge, 2015, pp.232-286.
- SOMER Jonathan, "Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-

1. “Combatants” must distinguish themselves from the civilian population

▸ CASES AND DOCUMENTS

- Malaysia, *Osman v. Prosecutor*
- Nigeria, *Pius Nwaoga v. The State*
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 35]
- Case Study, Armed Conflicts in the Great Lakes Region [Part II. B.]
- Russian Federation, Chechnya, Operation Samashki
- Sri Lanka, Naval War against Tamil Tigers

▸ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BLANK Laurie R., “Taking Distinction to the Next Level: Accountability for Fighter’s Failure to Distinguish Themselves from the Civilians”, in *Valparaiso University Law Review*, Vol. 46, No. 3, 2012, pp.765-802.

Further reading:

- CUMMINGS Robert, “General Orders No. 100: Why the Lieber Code’s Requirement for Combatants to Wear Uniforms is Still Applicable for the Protection of Civilian Populations in Modern Warfare”, in *Northern Kentucky Law Review*, Vol. 39, No. 4, 2012, pp.785-806.
- ELMORE Christina D., “An Enemy within Our Midst: Distinguishing Combatants from Civilians in the War against Terrorism”, in *University of Kansas Law Review*, Vol. 57, No. 1, 2008, pp.213-250.

2. Respect for IHL must be rewarded

▸ CASES AND DOCUMENTS

- United States, The Prize Cases
- South Africa, *Sagarius and Others*
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 16]

▸ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- SASSÒLI Marco, “Taking Armed Groups Seriously: Ways to Improve their Compliance with

International Humanitarian Law”, in *Journal of International Humanitarian Studies*, Vol. 1, No. 1, 2010, pp. 5-51.

a. **internment, not imprisonment for those captured bearing arms**

▸ **CASES AND DOCUMENTS**

- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*,

a. **encouragement of amnesty at the end of the conflict**

P II, Art. 6(5)

▸ **SPECIFIC BIBLIOGRAPHY**

Suggested reading:

- DUGARD John, “Dealing with Crimes of Past Regime. Is Amnesty still an Option?”, in *Leiden Journal of International Law*, Vol. 12/4, 1999, pp. 1001-1015.
- MARQUIS-BISSONNETTE Camille, “L’article 6(5) PAII : quelle pertinence à l’ère du contre-terrorisme?”, in *RQDI*, Vol. 30, No. 2, 2017, pp. 151-169.

Further reading:

- MACDONALD Avril, “Sierra Leone’s Uneasy Peace: The Amnesties Granted in the Lomé Peace Agreement and the United Nations’ Dilemma”, in *Humanitäres Völkerrecht*, Vol. 13, No. 1, 2000, pp. 11-26.
- MUYOT Alberto T., “Amnesty in the Philippines: The Legal Concept as a Political Tool”, in *Philippine Law Journal*, Vol. 69, No. 1, 1994, pp. 51-95.

aa) for the mere fact of having taken part in hostilities

CASES AND DOCUMENTS

- El Salvador, Supreme Court Judgment on the Unconstitutionality of the Amnesty Law
- Colombia Peace Agreement

bb) but not for war crimes or other violations

▸ **CASES AND DOCUMENTS**

- South Africa, *AZAPO v. Republic of South Africa*

- Sri Lanka, Jaffna Hospital Zone
- Columbia, Constitutional Conformity of Protocol II[Paras 41-43]
- Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 3. D.]
- El Salvador, Supreme Court Judgment on the Unconstitutionality of the Amnesty Law
- Colombia Peace Agreement

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- NAQVI Yasmin, “Amnesty for war crimes: Defining the limits of international recognition”, in *IRRC*, Vol. 85, No. 851, 2003, pp.583-626.

Further reading:

- SSENYONJO Manisuli, “Accountability of Non-State Actors in Uganda for War Crimes and Human Rights Violations: Between Amnesty and the International Criminal Court”, in *Journal of Conflict and Security Law*, Vol. 10, No. 3, 2005, pp. 405-434.

3. Rules on the use of the emblem

P II, Art. 12

^ CASES AND DOCUMENTS

- Sri Lanka, Jaffna Hospital Zone
- Colombia, Misuse of the Emblem
- Afghanistan, Attack on Kunduz Trauma Centre

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- JACKSON Richard B., “Perfidy in Non-International Armed Conflicts”, in *International Law Studies*, Vol. 88, 2012, pp. 237-259.

Further reading:

- DEHN John C., “Permissible Perfidy? Analysing the Colombian Hostage Rescue, the Capture of Rebel Leaders and the World’s Reaction”, in *Journal of International Criminal Justice*, Vol. 6, 2008, pp. 627-653.

4. Prohibition of the use of certain weapons

▸ CASES AND DOCUMENTS

- Amendment to Article 1 of the 1980 Convention, in Order to Extend it to Non-International Armed Conflicts
- 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)
- ICRC, Customary International Humanitarian Law
- Minimum Humanitarian Standards [Art. 5(3)]
- ICRC Report on Yemen, 1967
- UN/ICRC, The Use of Chemical Weapons
- Inter-American Commission on Human Rights, *Tablada* [Para. 187]
- Geneva Call, *Puntland State of Somalia Adhering to a Total Ban on Anti-Personnel Mines*
- ICTY, *The Prosecutor v. Tadic* [Part A., paras 119-124]
- ICTY, *The Prosecutor v. Martić* [Part A., para. 18; Part B., 303-313, 461-463, 470 and 472]

▸ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- FISCHER Horst, "Limitation and Prohibition of the Use of Certain Weapons in Non-International Armed Conflicts", in *Yearbook of the International Institute of Humanitarian Law* (San Remo), 1989, pp. 117-180.
- PLATTNER Denise, "The 1980 Convention on Conventional Weapons and the Applicability of Rules Governing Means of Combat in a Non-International Armed Conflict", in *IRRC*, No. 279, November-December 1990, pp. 551-564.

Further reading:

- RADIN Sasha & COATS Jason, "Autonomous Weapon Systems and the Threshold of Non-International Armed Conflict", in *Temple International & Comparative Law Journal*, Vol. 30, No. 1, 2016, pp. 133-150.

5. Protection of the environment

▸ CASES AND DOCUMENTS

- Colombia, Special Jurisdiction for Peace, Crimes against the Environment in Cauca

6. Limits to analogies

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- KREß Claus and MÉGRET Frédéric, “The regulation of non-international armed conflicts: Can a privilege of belligerency be envisioned in the law of non-international armed conflicts?”, in *IRRC*, Vol. 96, No. 893, 2014, pp. 29-66.
- KRETZMER David, BEN-YEHUDA Aviad and FURTH Meirav, “‘Thou Shall Not Kill’: The Use of Lethal Force in Non-International Armed Conflicts”, in *Israel Law Review*, Vol. 47 2014, pp. 191-224.
- SOLF Waldemar A., “Problems with the Application of Norms Governing Interstate Armed Conflict to Non-International Armed Conflict”, in *Georgia Journal of International and Comparative Law*, Vol. 13, 1983, pp. 323-326.

- no combatant status (but members of armed groups with a continuous fighting function are argued to have the same disadvantages – but not privileges – as combatants in international armed conflicts)

^ CASES AND DOCUMENTS

- ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- United States, Hamdan v. Rumsfeld
- United States, The Obama Administration’s Internment Standards
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- USA, Jawad v. Gates

- no occupied territories

^ CASES AND DOCUMENTS

- Case Study, Armed Conflicts in the former Yugoslavia [Para. 8]

Footnotes

- [8] Thus, one may claim that the prohibition of indiscriminate attacks as codified in Art. 51(5) and the precautionary measure laid down in Art. 57(2)(b) of Protocol I are necessary consequences of the principle of distinction, and the rules of Conventions I and IV as well as Protocol I concerning who may use, and in which circumstances, the distinctive emblem have to be taken into account when applying Art. 12 of Protocol II on the distinctive emblem.
- [9] See P II, Arts 13 and 14

- [10] Thus the Protocol on Mines, Booby-Traps and other Devices also applies to non-international armed conflicts (See 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) (Art. 1(2)))
- [11] For a discussion of this concept, see *supra*, Part I, Chapter 9, II. 7. Loss of protection: The concept of direct participation in hostilities and its consequences

VIII. Who is bound by the law of non-international armed conflicts?

Introductory text

From the point of view of the law of treaties, Art. 3 common to the four Geneva Conventions and Protocol II are binding on the States party to those treaties. Even those rules of the IHL of non-international armed conflicts considered customary international law would normally be binding only on States. The obligations of the States parties include responsibility for all those who can be considered as their agents. IHL must, however, also be binding on non-State parties in a non-international armed conflict – which means not only those who fight against the government but also armed groups fighting each other – because victims must also be protected from rebel forces and because if IHL did not respect the principle of the equality of belligerents before it in non-international armed conflicts, it would have an even smaller chance of being respected by either the government forces, because they would not benefit from any protection under it, or by the opposing forces, because they could claim not to be bound by it.

A first possibility to explain why armed groups are bound by IHL is to consider that when the rules applicable to non-international armed conflicts, which include the provision that those rules be respected by “each Party to the conflict,” [12] are created by agreement or custom, States implicitly confer on the non-governmental forces involved in such conflicts the international legal personality necessary to have rights and obligations under those rules. According to this construction, the States have conferred on rebels – through the law of non-international armed conflicts – the status of subjects of IHL; otherwise their legislative effort would not have the desired effect, the *effet utile*. At the same time, the States explicitly stated that the application and applicability of IHL by and to rebels would not confer on the latter a legal status under rules of international law (other than those of IHL). [13]

A second theory is to consider that armed groups are bound because a State incurring treaty obligations has legislative jurisdiction over everyone found on its territory, including armed groups. Those obligations then become binding on the armed group via the implementation or transformation of international rules into national legislation or by the direct applicability of self-executing international rules. Under this construction, IHL is indirectly binding on the rebels. Only if they became the effective government would they be directly bound.

Other possible explanations for the binding effect of IHL on rebel armed groups are: third, that armed groups

may be bound under the general rules on the binding nature of treaties on third parties (this presupposes, however, that those rules are the same for States and non-State actors and, more importantly, that a given armed group has actually expressed its consent to be bound); fourth, that the principle of effectiveness is said to imply that any effective power in the territory of a State is bound by the State's obligations; fifth, armed groups often want to become the government of the State and such government is bound by the international obligations of that State.

The precise range of persons who are the addressees of the IHL of non-international armed conflicts has been discussed in the jurisprudence of the two ad hoc International Criminal Tribunals. [14] Certainly, not only members of armed forces or groups, but also others mandated to support the war effort of a party to the conflict are bound by IHL. Beyond that, all those acting for such a party, including all public officials on the government side, must comply with IHL in the performance of their functions. Otherwise judicial guarantees, which are essentially of concern to judges, rules on medical treatment, which are equally addressed to ordinary hospital staff, and rules on the treatment of detainees, which also apply to ordinary prison guards, could not have their desired effect because those groups could not be considered as "supporting the war effort". On the other hand, acts and crimes unconnected to the armed conflict are not covered by IHL, even if they are committed during the conflict.

As for individuals who cannot be considered as connected to one party but who nevertheless commit acts of violence contributing to the armed conflict for reasons connected with it, those perpetrating such acts are bound by the criminalized rules of IHL. If such individuals were not considered addressees of IHL, most acts committed in anarchic conflicts would be neither covered by IHL nor consequently punishable as violations of IHL. What is unclear is whether the many rules of IHL that are not equally criminalized cover all individual acts having a link to the conflict.

1. Both parties

^ CASES AND DOCUMENTS

- International Law Commission, Articles on State Responsibility [Part A., para. 16 of the Commentary to Art. 10]
- UN, Secretary-General's Reports on the Protection of Civilians in Armed Conflict
- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 172-174]
- Geneva Call, Puntland State of Somalia Adhering to a Total Ban on Anti-Personnel Mines
- ICTR, The Prosecutor v. Jean-Paul Akayesu [Part B., paras 430-446]
- Colombia, Constitutional Conformity of Protocol II [Para. 8]
- Engaging Non-state Armed Groups on the Protection of Children
- Syria, Code of Conduct of the Free Syrian Army
- Sweden/Syria, Can Armed Groups Issue Judgments?
- Colombia Peace Agreement

- Geneva Call and the Chin National Front

▲ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HENCKAERTS Jean-Marie, "Binding Armed Opposition Groups through Humanitarian Treaty Law and Customary Law", in *Proceedings of the Bruges Colloquium, Relevance of International Humanitarian Law to Non-State Actors*, 25th-26th October 2002, in *Collegium No. 27*, Spring 2003, pp. 123-138.
- MURRAY Daragh, "How international humanitarian law treaties bind non-state armed groups", in *Journal of Conflict and Security Law*, vol.20, 2015, pp. 101-131.
- RODENHÄUSER Tilman, *Organizing Rebellion, Non-State Armed Groups under International Humanitarian Law, Human Right Law and International Criminal Law*, Oxford, Oxford University Press, 2018 (360 pp.).
- SIVAKUMARAN Sandesh, "Binding Armed Opposition Groups", in *ICLQ*, Vol. 55, Part 2, April 2006, pp. 369-394.
- ZEGVELD Liesbeth, *Accountability of Armed Opposition Groups in International Law*, Cambridge, CUP, 2002, 260 pp.

Further reading:

- AIVO Gérard, *Le statut de combattant dans les conflits armés non internationaux : étude critique de droit international humanitaire*, Bruxelles, Bruylant, 2013, 514 pp.
- SASSÒLI Marco, "Taking Armed Groups Seriously: Ways to Improve Their Compliance with International Humanitarian Law", in *Journal of International Humanitarian Legal Studies*, Vol. 1, 2010, pp. 5-51.
- SASSÒLI Marco, "Challenges Faced by Non-State Armed Groups as regards the Respect for the Law Governing the Conduct of Hostilities", in GREPPI (ed.), *Conduct of hostilities: the Practice, the Law and the Future*, International Institute of Humanitarian Law/Franco Angeli, 2014, pp. 171-176.

2. All those belonging to one party

▲ CASES AND DOCUMENTS

- United States, *Kadic et al. v. Karadzic*
- Case Study, *Armed Conflicts in the Great Lakes Region* (Parts II. 2 and III.)
- ICTR, *The Prosecutor v. Jean-Paul Akayesu* [Part B., paras 425-446]
- Switzerland, *The Niyonteze Case* [Part A., para. 9 and Part B., III. ch. 3.D]
- Syria, *Code of Conduct of the Free Syrian Army*
- ICRC, *International humanitarian law and the challenges of contemporary armed conflicts in 2015*

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- VIERUCCI Luisa, “The role of private military and security companies in non-international armed conflicts: ius ad bellum and ius in bello issues”, in FRANCIONI Francesco & RONZITTI Natalino (eds.), *War by Contract: Human Rights, Humanitarian Law, and Private Contractors*, Oxford, OUP, 2011, pp. 235-261.

3. All those affecting persons protected by IHL by an action linked to the armed conflict

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- ICTR, The Prosecutor v. Jean-Paul Akayesu [Part B., paras 432-445]
- Switzerland, The Niyonteze Case [Part B., III. ch. 3.D.2]
- Central African Republic: Sexual Violence by Peacekeeping Forces
- Central African Republic, Report of the UN Independent Expert, July 2016
- International Criminal Court, Trial Judgment in the Case of the Prosecutor V. Jean-Pierre Bemba Gombo
- Somalia/Kenya, Al-Shabab Attacks
- United States, The US Plan to Mitigate Civilian Harm in Armed Conflicts

Footnotes

- [12] See GC I-IV, common Art. 3(1)
- [13] See GC I-IV, common Art. 3(4) (See *infra* IX. Consequences of the Existence of a Non-International Armed Conflict for the Legal Status of the Parties)
- [14] See in particular ICTR, The Prosecutor v. Jean-Paul Akayesu [Part B., paras 432-445]

IX. Consequences of the existence of a non-international armed conflict on the legal status of the parties

Introductory text

Art. 3(4) common to the Conventions clearly states that application of Art. 3 “shall not affect the legal status of the Parties to the conflict”. As any reference to “parties” has been removed from Protocol II, a similar clause could not appear in it. However, Protocol II contains a provision clarifying that nothing it contains shall

affect the sovereignty of the State or the responsibility of the government, by all legitimate means – legitimate in particular under the obligations foreseen by IHL – to maintain or re-establish law and order or defend national unity or territorial integrity. The same provision underlines that the Protocol cannot be invoked to justify intervention in an armed conflict. [15]

The application of IHL to a non-international armed conflict therefore never internationalizes the conflict or confers any status – other than the international legal personality necessary to have rights and obligations under IHL – to a party to that conflict. Even when the parties agree, as encouraged by Art. 3(3) common to the Conventions, to apply all of the laws of international armed conflicts, the conflict does not become an international one. In no case does the government recognize, by applying IHL, that rebels have a separate international legal personality which would hinder the government's ability or authority to overcome them and punish them – in a trial respecting the judicial guarantees provided for in IHL – for their rebellion. Nor do the rebels, by applying the IHL of non-international armed conflicts, affect their possibility to become the effective government of the State or to create a separate subject of international law – if they are successful. Never in history has a government or have rebels lost a non-international armed conflict because they applied IHL. The opposite is not necessarily true.

^ 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)
- International Law Commission, Articles on State Responsibility [Part A., Art. 10 and Commentary, paras 2 and 9]
- Sudan, Report of the UN Commission of Enquiry on Darfur [Para. 174]
- Former Yugoslavia, Special Agreements Between the Parties to the Conflicts [Part A., Art. 14(2) and Part B., Introduction]
- Colombia, Constitutional Conformity of Protocol II [Paras 14-16]
- Syria, Code of Conduct of the Free Syrian Army
- United States of America, Holder v. Humanitarian Law Project
- Geneva Call and the Chin National Front

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DABONÉ Zakaria, "International Law: Armed Groups in a State-Centric System", in *IRRC*, Vol. 93, No. 882, 2011, pp. 395-424.
- NIYUNGEKO Gérard, "The Implementation of International Humanitarian Law and the Principle of State Sovereignty", in *IRRC*, No. 281, March-April 1991, pp. 105-133.

Further reading:

- CASSESE Antonio, “The Status of Rebels under the 1977 Geneva Protocol on Non-international Armed Conflicts”, in *ICLQ*, Vol. 30/2, 1981, pp. 416-439.
- DAM-DE JONG Daniëlla, “Armed Opposition Groups and the Right to Exercise Control over Public Natural Resources: A Legal Analysis of the Cases of Libya and Syria”, in *Netherlands International Law Review*, Vol. 62, 2015, pp. 3-24.

Footnotes

- [15] See P II, Art. 3