Annotated Bibliography – June 2012

In line with its mission to engage in critical examination of humanitarian and conflict policy, HPCR undertakes a variety of academic and research initiatives to identify significant developments in Humanitarian and Human Right Law. As part of this research, in 2010 HPCR established a thematic working group on IHL and IHRL. This working group was comprised of senior level practitioners from both the humanitarian assistance sector and the military. While not comprehensive, this document seeks to provide key jurisprudence and doctrine in both the humanitarian and human rights fields.

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Academic Publications

#	Source	Summary
1	Fionnuala Ni Aolain **The No-Gaps Approach to Parallel Application in the Context of the War on Terror**, 40 ISR. L. REV. 563 (2007) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1044261	This article argues that the conflict with al Qaeda is not illustrative of a gap in international law. Aolain argues that rules on IHL and human rights are not perfect, States are largely comfortable with the use of human rights law to regulate counterterrorism, and human rights norms can serve to legitimize State action. She criticizes attempts to develop an alternative law outside of a law-and-order model for terrorism, noting that States have largely failed to attempt to apply the existing model to counterterrorism and there is no evidence showing terrorism-specific regimes, typically borne out of crisis, are more effective in ensuring safety. Aolain submits that, in order to ensure accountability for both belligerent parties, parallel application and defining the precise boundary between the applicability of IHL and IHRL can be particularly helpful in "high-intensity" emergencies where human rights derogations are likely. The author suggests that clarification of the boundaries of IHL and IHRL would demonstrate the capability of existing legal regimes to deal with low-intensity conflict and to discourage the selective/strategic application of IHL. She argues that in addition to providing heightened protection for victims of conflict, the parallel application of the bodies of law ensures consistency in normative protections. Aolian argues that a system where no or fewer rules were adhered to could threaten the integrity of legal norms and international law. The author concludes that international agreement on terrorism would be helpful to better frame State regulation.
2	Dario Campanelli **The Law of Military Occupation Put to the Test of Human Rights Law**, 90 INT'L REV. OF THE RED CROSS 653 (2008)	After noting the history of the application of IHRL during armed conflicts, the article discusses human rights norms during occupation, which the author distinguishes from armed conflict by noting the heightened degree of control and stability over occupied territories. Drawing upon principles valid during times of peace and with a view toward protecting human dignity, the author argues that the law of occupation may be normatively connected to IHRL. Unsurprisingly, the author notes, the application of IHRL during occupation has been widely acknowledged despite the reluctance of some States to consider an occupied territory as part of its jurisdiction (most notably by the English Court of Appeal

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	Available at http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-871-p653/$File/irrc-871-Campenalli.pdf	in the *al-Skeini* case). The author concludes that both IHRL and IHL are endeavors to guarantee a certain minimum of humanitarian protections, and as such the law of occupation is incomplete. He argues that IHRL can be an important gap filler for this portion of IHL; this is a significant role because the gaps in IHL coincide with the human rights laws most likely to be derogated from in occupation. On the other hand, he notes that the relationship between the needs of the occupiers and the concerns of the occupied are to be balanced, although recent legal developments have pushed the balance in favor of human rights promotion.
3	John Cerone **Human Dignity in the Line of Fire: The Application of International Human Rights Law During Armed Conflict, Occupation, and Peace Operations**, 39 VAND. J. TRANSNAT'L L. 1447 (2006) Available at http://www.heinonline.org.ezp-prod1.hul.harvard.edu/HOL/Page?collection=journals&handle=hein.journals/vantl39&id=1459	This article discusses the various positions regarding the extraterritorial application of IHRL during armed conflict. While some States (particularly the United States and Israel) may have argued that Article 2(1) of the ICCPR limits the guarantees of that treaty to a State's territory, the Human Rights Committee and ICJ have adopted the opposite position, reading the treaty to cover all acts taken within a State's jurisdiction, including occupied territory. The author notes that the ICJ decision in the DRC v. Uganda case contains three significant developments with regards to convergence: it held that human rights law was incorporated into the law of occupation, that the exercise of jurisdiction can occur when a State's level of control over territory does not reach the level of an occupation, and that all human rights obligations are triggered by the exercise of the jurisdiction standard. Cerone also notes the jurisprudence of regional organizations, arguing that the IACHR has adopted a lower threshold of application than the ECtHR (although he argues that the *Ilascu* and *Issa* decisions seem to indicate the European Court's use of a lowering standard). The article also addresses the range of rights covered. Cerone distinguishes applicable rights based upon the degree of the State's control and ability to exert jurisdiction, with a higher level of control required for the positive obligations of treaties such as the ICESCR than the more negative obligations of the ICCPR. The author also notes the complications that collective action introduce, as conduct must be attributable to a State for there to be accountability for any violations of IHRL. However, he contends that the U.N. and other multilateral organizations do have international personality and that serious individual violators may be punished under international criminal law.

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4	John Cerone **Jurisdiction and Power: The Intersection of Human Rights Law & the Law of Non-International Armed Conflict in an Extraterritorial Context**, 40 ISR. L. REV. 396 (2007) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1006833	Noting the generally accepted conclusion that human rights law applies to a non-international armed conflict, the article discusses the complications with extending the application of IHRL to non-international armed conflicts outside of a State's territory. Cerone discusses the convergence of IHL and IHRL, noting the gradual erosion of distinctions between classifications of armed conflict in determining applicable standards as a key outcome and a growing consensus that the law of non-international armed conflict does apply extraterritorially. The article then discusses the extraterritorial application of human rights law. Cerone suggests a distinction between the positive and negative obligations of an occupying State in recognition of the different standards accorded to violations by the State and violations committed by non-state actors within the State. The author notes that the ICJ and regional human rights courts have upheld the extraterritorial applications of IHRL, with the ICJ in DRC v. Uganda holding that acts done in the exercise of a State's jurisdiction – even when the conduct does not amount to an occupation – is subject to human rights obligations, although the range of rights applicable may vary according to the degree of control over the territory where violations occur. Cerone concludes that it is normative conceptions of the universality of human rights, more than any positive law, that have pushed the scope of jurisdiction for violations of human rights violations.
5	Andrew Clapham **Non-State Actors: Rethinking the Role of Non-State Actors Under International Law** Available at http://webcast.un.org/ramgen/ondemand/legal/video/LectureSeries/clapham071105.rm .	This lecture discusses the obligation of non-state actors to follow international law given their increasing participation in armed conflict, and expresses a hope that the law will increasingly hold all actors accountable regardless of State/non-state status. Beginning with the Nuremburg Trials, Clapham notes the expanding notion of international personality to cover violations of IHRL by individuals. He argues that IHL violations of armed groups have not increased those groups' legitimacy, and that holding those groups accountable for their violations would not legitimize their existence. Similarly, holding non-state actors responsible for IHRL violations may not dilute the responsibilities of States. He notes that IHL is not an ideal vehicle to manage non-international armed conflicts, as most violations take place outside of armed conflicts, and that the human rights regimes and capabilities-based determinations are better able to protect civilians.

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		The lecturer highlights a UN-organized effort to secure guarantees from armed groups not to violate certain IHRL principles, with increasing legal significance through targeted sanctions, and encourages broadening this regime to cover a wider range of violations. At the same time, he states that supranational organizations are increasingly bound by human rights treaties. While stating that the Nuremburg trials did not have jurisdiction over corporations, Clapham notes that individuals were found guilty through their association with corporations that violated the Hague Regulations. The ICC does not have jurisdiction over corporations as such, but Clapham suggests that corporations still have a non-legal obligation to comply with human rights norms (in addition to their exposure to national jurisdictions for violations of international law).
6	**Counter-terrorism Strategies, Human Rights and International Law: Meeting the Challenges**, Final Report Poelgeest Seminar, Grotius Center of International Legal Studies (May 31, 2007) Available at http://media.leidenuniv.nl/legacy/Final%20Report%20Counter%20Terrorism%20Expert%20Seminar.pdf	This paper presents the conclusions of a seminar of experts brought together to discuss legal aspects of counterterrorism (CT) policies. The panel concluded that while some branches of international law needed further development, most disputes surrounding CT could be remedied not by an entirely new regime, but by defining which of the current regimes are applicable to particular situations. While there is no formal definition of terrorism, there may be general agreement upon the core elements of it; in addition, there was agreement that overuse of the term may have adverse consequences. The document then outlines the adaptation to the concepts of use of force and armed attacks to demonstrate how they have incorporated the idea of major terrorist attacks. However, the document contends that IHL should not be used to cover the range of CT activities undertaken by the State. The report also indicates a need for greater cooperation between States as well as an "Agenda of Prevention" to counteract State failure before terrorism takes root.
7	Robert J. Delahunty and John C. Yoo **What is the Role of International Human Rights Law in the War On Terror?** 59	This article examines the application of IHRL to the "war on terror." There is a particular emphasis on Article 6(1) of the ICCPR, which proscribes the arbitrary deprivation of life. The authors use this Article, and other provisions of the ICCPR, to examine the legality of the Unites States' use of unmanned aerial vehicle missile strikes in the war on terror. The article further examines the United States' position that LOAC, not IHRL, governed its UAV strike against Qaed Salim Sinan al-Harethi in Yemen on November 3, 2002.

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	DePaul L. Rev. 803(2010) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1595148	The article provides an overview of the convergence and origins of both LOAC and IHRL. The authors argue that the two bodies of law are fundamentally different and that the ICCPR was not intended to be applied in armed conflicts governed by LOAC. The article concludes by summarizing objections to certain constructions of the ICCPR and applying the author's conclusions to the Qaed Salim Sinan al-Harethi killing.
8	Michael J. Dennis **Non-Application of Civil and Political Rights Treaties Extraterritorially During Times of International Armed Conflict**, 40 ISR. L. REV. 453 (2007) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1032167	The article argues that while recent ICJ and UN Human Rights Committee treatments of the applicability of human rights law during armed conflict are entitled to respect, those bodies cannot issue binding statements regarding the obligations of State parties to the ICCPR and other human rights treaties. Dennis concludes that the rules of treaty interpretation codified in the Vienna Convention on the Law of Treaties lead to a determination that the ICCPR applies to a State's armed forces during an armed conflict only if the conflict is on the State's territory. The author argues that, in reading an extraterritorial application to the ICCPR, the ICJ and, in particular, the Human Rights Committee (which supports extraterritorial application even in the absence of effective control) have deviated from a literal reading of the treaty unsupported by State practice, and that such a reading is inconsistent with the European Court of Human Rights' determinations regarding the principle of territoriality in the ECHR. The article further argues that it is unrealistic to expect occupying forces to secure all human rights in their occupying territories and prevent violations by other actors present. The author notes the inconsistent approach towards applying the principle of *lex specialis* during armed conflicts. Dennis finds that even if human rights law is applied extraterritorially, IHL should still apply as the *lex specialis*. He notes that State practice does not support a renunciation of ICCPR Article 4 derogation privileges if undeclared prior to an international armed conflict, and that it is unclear how a state contributing troops to a multilateral coalition could declare a derogation. Instead, Dennis contends that Article 4 should be read to provide for derogation from domestic laws and obligations. Similarly, the author argues that Article 43 of the Hague Regulations should not be read to require occupying States to ensure the occupied State's compliance with international obligations.
9	Sara Dillon	This article reviews the history of U.N. Charter's 'dysfunction' in relation to the failure to

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	Yes, No, Maybe: Why No Clear 'Right' of the Ultra-Vulnerable to Protection via Humanitarian Intervention? 20 Mich. St. J. Int'l L. (2012) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2014310##	create an international military force intended to meet threats to international peace and security. The author argues that this failure has resulted in numerous tragedies, which have left especially vulnerable populations unaided in the face of brutal violence. The author argues that many of these situations, such as in Uganda, would have been quite easy to stop, but the international community felt no compulsion to step in. The article discusses, in turn, the changing views of the international community on unilateral humanitarian intervention and recent trends toward reframing the concept as an international 'responsibility to protect.' The author argues that this change is attractive in the sense of linking military intervention with the idea of 'rights' belonging to those under threat. The article contends that it is a mistake to view unilateral humanitarian intervention as a marginal issue in international law when, in fact, any viable legal system cannot allow genocidal events to play out without some sort intervention. The article also reviews the question of whether international law is in fact 'law.' The author argues that a negative response to this question might lead to a overhauling of the Charter system to ensure more effective responses to genocidal threats.
10	G.I.A.D. Draper **Humanitarian Law and Human Rights**, Reflections on Law and Armed Conflicts: The Selected Works on the Laws of War by the Late Professor Colonel G.I.A.D. Draper, OBE 125 (Michael A. Meyer & Hilaire McCoubrey, eds. 1998)	This article argues that the (once) opposing fields of IHL and IHRL have fused, with human rights law guiding the development of IHL. Draper argues that the growth of IHRL revitalized IHL, which had become stagnant in the years after the 1949 Geneva Conventions were ratified, and with it came the idea that a regime of human rights is the standard norm, and IHL represents a series of necessary derogations from the norm. The author contends that one area in which IHL could benefit from further IHRL influence is in the enforcement of individual rights; he recommends the establishment of a fact-finding body within the UN to report on violations of IHL and for states to more effectively disseminate and enforce the Geneva Conventions. Draper further contrasts IHRL, with its origins in fundamental relationships between governments and citizens, with IHL, with its origins in managing anti-humanitarian goals of killing and military necessity with (increasingly predominant) humanitarian norms. While the author argues that a human rights regime is inadequate to regulate armed conflict, the legal regime (including the interaction between IHL and IHRL) may determine what happens to human rights in times of war. He concludes that the fields have been confused

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		by attempts to include struggles for self-determination within the international armed conflict concept and by attempts to over-humanize IHL, but notes that IHL survives as a distinct field of law.
11	Cordula Droege **Elective Affinities? Human Rights and Humanitarian Law**, 90 INT'L REV. OF THE RED CROSS 501 (2008) Available at http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-871-p501/$File/irrc-871-Droege1.pdf	Droege seeks to provide parameters for the parallel application of IHL and IHRL, stating that complementarity, mutual influence, and *lex specialis* should guide their interaction. While noting U.S. and U.K. objections, Droege concludes that the readings of the ICCPR *travaux preparatoires* that provide for IHRL extraterritoriality are correct and notes that other human rights treaties and most States have more expansive notions of application that answer questions of extraterritorial application in the affirmative. The article then discusses the notion of IHRL as a potential *lex specialis* during non-international armed conflict and occupation. Acknowledging that many of the decisions of international tribunals would come out the same under IHL or IHRL, she states that they may have restricted the use of force beyond what an application of IHL would call for. She then identifies two approaches to parallel application during occupation: courts can determine the question of applicability of IHRL by deciding whether a threshold of effective control has been met, or they can treat IHL as a *lex specialis* for certain provisions that may conflict with human rights law. The author also notes the disharmony of the two systems of laws in procedure in investigation and burden at trial as well as available remedies and reparations.
12	Cordula Droege **The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict**, 40 ISR. L. REV. 310 (2007). Available at	This article analyzes the development of the co-application of IHL and human rights law, and argues that their interaction is mutually reinforcing in most situations – particularly considering the mission of each to protect individuals from abusive behavior – and the concept of *lex specialis*, where the more specific law controls in situations where laws are in conflict. The choice of which law to invoke is a factual question with potentially a considerable impact on procedure, the determination of legality of the questioned conduct, and the available remedies. She states that while the two systems of law were not originally designed to overlap, occupations, non-international armed conflicts, and a number of other situations trigger their concurrent application, which has been increasingly recognized through treaties and State practice.

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	http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/ihl-human -rights-article-011207/$File/ interplay-article-droege.pdf	Droege also discusses the principle of extraterritorial application, commenting that courts have settled upon an effective control (over territory or a person) test to determine when a State can be held liable for violations. The human rights conception of effective control may be broader than the general IHL conception but close to the Hague Regulations concept, and represents more of a scale where control and obligations are directly related.
13	Helen Duffy **Human Rights Litigation and the 'War on Terror**,' 90 INT'L REV. OF THE RED CROSS 573 (2008) Available at http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-871-p573/$File/irrc-871-Duffy.pdf	The article discusses post-9/11 litigation around five issues: arbitrary detention, extraterritorial application of human rights obligations, torture, rendition, and collective responsibility for terrorism. Noting that the anomaly that allowed the United States to detain prisoners in Guantanamo without typical human rights provisions was overturned by *Boumedienne*, Duffy argues that this proposition was always incorrect under IHRL due to the US's jurisdiction and control over the base. The author argues that the purpose of detentions and other programs that have violated human rights after 9/11 has been intelligence gathering, not a desire to bring terrorists to justice; in turn, this has encouraged "playing fast and loose" with human rights obligations. She concludes that the courts can have a key role to play in reinserting the law into what has been a political debate over what to do with terrorists, can serve as a catalyst for change of practices that violate human rights, and can protect the individual rights of defendants.
14	Alejandro Lorite Escorihuela **Humanitarian Law and Human Rights Law: The Politics of Distinction**, 19 Mich. St. J. Int'l L. 299 (2011) Available at https://litigationessentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=	The article discusses the relationship between IHL and IHRL to prompt a conversation around this issue. The author believes this to be important because of the issues of life, death and the legitimization of violence that are encompassed in this topic. The author argues that these need to be debated in terms of practical legal theory and political considerations instead of idealism. The article tries to accomplish this by highlighting the need for a technical and political understanding of the relationship between IHL and IHRL. The author argues that IHL and IHRL, while separate and containing apparently contradictory principles, are both rooted in the same political liberal tradition. The article then touches on recent activities involving the interaction of these two bodies of law. The article examines the case law related to humanitarian law in the European, Inter-American,

	1&doctype=cite&docid=19+Mich.+St.+J.+Int'l+L.+299&srctype=smi&srcid=3B15&key=dda7f447bde832d6d5c397007b788714	and African human rights systems. The article then discusses the connection between *lex specialis* and jurisdiction. The author concludes with examining the political message of defragmentation.
15	Aeyal M. Gross **Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?,** 18 EUR. J. INT'L L. 1 (2007) Available at http://www.ejil.org/pdfs/18/1/212.pdf	This article criticizes the convergence of IHL and international human rights law in situations of occupation as held by the ICJ in the "Wall" Advisory Opinion and the Congo v. Uganda case. Gross argues that in practice (as exemplified in the article by a number of Israel HCJ decisions), occupiers have used IHRL principles to legitimize IHL violations and remove special protections afforded to occupied peoples. The author notes that mixing IHL with IHRL in occupations places occupiers and the occupied on the same plane, allowing occupiers to use a proportionality analysis to weaken the rights of the occupied at the expense of the interests of the occupiers (whereas in IHL proportionality may serve to limit otherwise permissible harms). Gross argues that IHRL is designed to address violations in situations where the norm is compliance; application to an occupation where the norm may be non-compliance may help legitimize situations where rights are mostly denied. While the application of IHRL has granted Palestinians some due process protections in Israeli courts, the author concludes that the introduction of human rights into occupation cases has not resulted in more expansive protections for the inhabitants of the OPT. Gross does note that idiosyncratic factors relating to the HCJ and the OPT issue may also be at issue.
16	Françoise J. Hampson **Direct Participation in Hostilities and the Interoperability of the Law of Armed Conflict and Human Rights Law,** 87 INT'L L. STUD. SER. US NAVAL WAR COL. 187 (2011)	This article examines the overlap of IHL and IHRL through the rules governing targeting and opening fire. The article begins with a discussion on the scope of applicability of both IHL and IHRL. The author then focuses on the applicability on IHL in extraterritorial conflicts while highlighting the distinctions between international armed conflicts (IACs) and non-international armed conflicts (NIACs). The author argues that the process of establishing customary law in NIACs is complicated by the interplay of IHRL. The article then contrasts the rules of various legal mechanisms on targeting and opening fire and concludes with an examination of the *ICRC's Interpretive Guidance*. The article also

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	Available at http://www.usnwc.edu/Research---Gaming/International-Law/Studies-Series/documents/NavalWarCollegeVol-87.aspx	discusses the difference between Geneva Law and Hague Law as well as custom and treaty law regarding targeting and opening fire. The author highlights the differences between the "behavior" test associated with IHRL and the "status" test associated with IHL and discusses the difference in classification between IACs and NIACs. The author concludes that the *Interpretive Guidance* is unhelpful in recommending that the status test be applied in low-intensity NIACs as the author believes that human rights bodies are unlikely to accept this application.
17	Françoise J. Hampson **Is Human Rights Law of Any Relevance to Military Operations in Afghanistan?,** 85 INT'L L. STUD. SER. US NAVAL WAR COL. 485 (2009) Available at http://www.usnwc.edu/Research---Gaming/International-Law/RightsideLinks/Studies-Series/documents/Vol-85-Web1.aspx	The author notes a growing consensus based upon State practice and treaties that IHRL can apply concurrently with IHL. Hampson states that ICJ decisions have determined that IHL may alter understandings of, but does not displace, IHRL during armed conflicts. She writes that the law is unsettled on the extraterritorial application of IHRL, and recommends that interested parties should clarify the legal basis for their positions. The article also notes the uncertain legal status of coalition forces in Afghanistan and whether they have additional responsibilities tied to Afghanistan's status as the host State. While UN authorization may affect considerations of jurisdiction before courts, Hampson argues that States must act in accordance to their obligations as defined by international law and the particular mandates to act. Hampson then proposes that compliance with IHRL standards is militarily useful in a counterinsurgency campaign where support of the population is critical, and presents a "radical suggestion" of creating a court for individuals to petition with regards to alleged IHL violations in order to help clarify the approach to preserving rights extraterritorially.
18	Françoise Hampson **The Relationship Between International Humanitarian and Human Rights Law From the Perspective of a Human Rights Treaty Body**, 90 INT'L REV. OF THE RED CROSS 549	Hampson begins by arguing that what she believes to be the key points from the ICJ's recent decisions on the convergence of IHL and IHRL – that IHRL applies during armed conflict, that it applies to situations of conflict subject to derogation, and that when in conflict with IHL, the relevant humanitarian law controls as *lex specialis* – have not fully resolved questions about the relationship of the two bodies of law. She notes that the *lex specialis* rule can be read to completely displace IHRL (acknowledging such a ruling would be contrary to the ICJ's decisions), that the *lex specialis* rule can be read to supersede IHRL when each body of law has an express provision regarding certain conduct (leaving aside questions about

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	(2008) Available at http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-871-p549/$File/irrc-871-Hampson.pdf	what to do when IHL has no express provision, as well as the role of customary law), or that the body of law with the more specific provision relating to the conduct is the *lex specialis*. The author states that militaries would prefer the first approach and rights activists the third, but suggests that a compromise that addresses the problems with the second approach is the best way forward, although a number of questions remain surrounding how to reconcile key differences in the existing law. According to Hampson, convergence may raise concerns about the ability of human rights courts trying issues of IHL. In particular, she states that the European Court of Human Rights has been unable to apply IHL in non-international armed conflicts and ruled that IHRL did not apply in international armed conflicts to avoid absurd results on the merits. Additionally, while IHL seems to provide for varying responsibilities for occupiers depending on the level of control, IHRL may have more of an off/on application. The author notes conflicts in the application of IHRL in detention and the termination of detention, questions of jurisdiction over people foreseeably affected by attacks, and fear over the chilling effects on worthwhile operations by the extraterritorial application of IHRL.
19	Theodor Meron **The Humanization of Humanitarian Law**, 94 AM. J. INT'L L. 239 (2000) Available at http://www.gistprobono.org/sitebuildercontent/sitebuilderfiles/humanization.pdf	Meron argues that the rules and applications of humanitarian law have evolved to reflect a greater emphasis on protecting human rights. The author acknowledges the limitations to the process of humanization, as strategic concerns remain supreme in the formation of norms as well as decisions to resort to force, and the law of war permits killing and other restrictions upon freedoms that would be impermissible in a completely human rights-based regime. The author argues that while IHL has evolved to provide for more protection and accountability, strategy (particularly in times of crisis) and the concept of reciprocity (even if textually prohibited) may drive developments in the field. The author contends that the process of humanization enjoys widespread moral support, with courts readily accepting rules, including those derived from human rights norms, as customary. Meron argues that, while IHL instruments are increasingly broad in application, the rules do not provide effective redress to States harmed by violators. ICL may be a mechanism to address violations, but according to the author it is unclear whether international tribunals provide an effective deterrent to would-be transgressors – even as IHL increasingly endows individuals with rights and obligations. The article then provides

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		three examples of the expansion of the protections of individuals under IHL, tracing the development of Article 118 of the Third Geneva Convention to its modern application of presenting POWs a "right of free choice" concerning repatriation, noting the ICTY's practical application of Article 4 of the Fourth Geneva Convention to widen those considered protected persons, and the breakdown of the distinction between international and non-international armed conflict in terms of the scope of protection. Meron introduces the concept of convergence of IHL and human rights law by discussing the erosion of the requirement of a nexus between conflict and severe abuses in the definition of crimes against humanity in international criminal law. Arguing that human rights law – or, at least, the nonderogable *jus cogens* components of it – applies even in times of war, Meron illustrates the cross-application of each body of law in recent conflicts. The article concludes by noting that the humanization process is limited by both the scope of international law (which ignores entire concepts such as proportionality in *jus ad bellum*) and by lack of adherence to the law. Stressing the importance of U.S. support for international criminal procedures, Meron suggests a Security Council-led initiative to promote and enforce IHL.
20	Marko Milanovic **Lessons for Human Rights and Humanitarian Law in the War on Terror: Comparing Hamdan and the Israeli Targeted Killings Case**, 89 INT'L REV. OF THE RED CROSS 373 (2007) Available at http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-866-p373/$File/irrc_866_Milanovic.pdf	This article discusses difficult applications of IHL to terrorism by examining the decisions in *Hamdan v. Rumsfeld* and *The Public Committee Against Torture v. Israel*. In *Hamdan*, the Supreme Court of the United States held that Common Article 3 of the Geneva Conventions applied to all detainees. This holding has since been read as classifying hostilities between the United States and al Qaeda as a non-international armed conflict. The author argues that in doing so, the Court misinterpreted international authorities by determining that the status of the parties alone, and not (also) the *territory* of the conflict, determines whether a conflict is international or non-international. Contrastingly, Milanovic notes that the Israeli high court in the Targeted Killings case found there to be an international armed conflict dating to the first *intifada*, despite the roughly seven years between what could be considered protracted violence and the lack of foreign sovereign interest in the OPT. The author criticizes the reasoning as engineered to reach the conclusion that the protections of IHL apply. While Milanovic labels the result as desirable from a humanitarian standpoint, he states that it is unsupported by State practice. The author notes that the Israeli case may offer a much stronger endorsement of the status of

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		unlawful combatants under Article 75 of Additional Protocol I and a much more robust engagement of human rights law, finding that the case restricts a State's freedom of action granted under IHL.
21	Naz K. Modirzadeh **The Dark Side of Convergence: A Pro-Civilian Critique of the Extraterritorial Application of Human Rights Law in Armed Conflict**, 86 INT'L L. STUD. SER. US NAVAL WAR COL. 349 (2010). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1543482	This article challenges the belief that the convergence of IHL and IHRL always increases the protection of civilians. Modirzadeh argues that convergence muddles the obligations and expectations of parties to a conflict. Her concerns with convergence include undermining IHRL (based upon long-term regulation of governmental conduct towards citizens) by crossing it with concepts of IHL (based upon short-term governance of a soldier's conduct towards enemy civilians), as well as questioning how convergence will be operationalized (nothing that most commentators pass on the most difficult questions associated with applying IHL and IHRL). She further notes that attempts to reconcile substantive differences between IHL and IHRL will lead to pandering to the lowest common denominator of protection (and diverting attention from IHL and IHRL in practice), that the moral weight of IHRL can be overwhelmed by security considerations inherent to situations of armed conflict or that the application of IHRL in conflict will lead to the creation of tiers of rights – and that reliance upon the classification of IHL as *lex specialis* in justifications of derogations guts the notion of convergence and doesn't address situations where IHRL would not apply. Furthermore, convergence may dilute the power of IHRL specialists to advocate for the protection of individuals and the introduction of human rights viewpoints into determinations of IHL could complicate or even delegitimize viewpoints of observers as far as States are concerned. The article expresses concern that the extraterritorial application of human rights may undermine the legitimacy and sovereignty of the host States and slow the internal development of rights norms, and that the application of IHRL would remove the impetus to transform IHL to allow for individuals to petition to protect their rights. The article then discusses alternate approaches to address the interplay between IHL and IHRL. She suggests that scholars and practitioners could come together and form a body of human rights applicable during armed conflict in an effort to reshape central concepts of IHL. Alternatively, policymakers could reinforce or add new mechanisms to ensure that IHL is upheld, including a system for individuals to bring claims of IHL violations. A third approach would continue convergence, but without the idea of extraterritorial application of IHRL to help strengthen the development of human rights within occupied or invaded

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		States. Finally, to influence the conduct of hostilities, advocates could focus less on black-letter law and more on a policy-based approach.
22	Stephen Pomper **Human Rights Obligations, Armed Conflict and Afghanistan: Looking Back Before Looking Ahead**, 85 INT'L L. STUD. SER. US NAVAL WAR COL. 525 (2009). Available at http://www.usnwc.edu/Research---Gaming/International-Law/RightsideLinks/Studies-Series/documents/Vol-85-Web1.aspx	The article discusses the approaches to the extraterritorial applicability of human rights law in the conflict in Afghanistan taken by the Bush Administration, allies, and other commentators. The United States argued that the text and *travaux* of the ICCPR did not support extraterritorial application, pointing to the Article 2 limitation to application to persons and territory within a State party's jurisdiction. Furthermore, even States following a theory of convergence may not have laid out clearly how to reconcile differences between IHL and IHRL. Similarly, in litigation against Amnesty International, the Canadian government argued that international tribunals have been consistently uncertain about the extent of the applicability of IHRL in armed conflicts. Pomper then addresses practical considerations concerning the application of IHRL in Afghanistan. In particular, differences in State practice amongst ISAF may have been borne out through targeting (or failure to target) Taliban leaders and in detention policy.
23	Nancie Prud'homme ***Lex Specialis*: Oversimplifying a More Complex and Multifaceted Relationship?**, 40 ISR. L. REV. 356 (2007). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1032156	The article argues that the convergence between IHL and IHRL must be clarified, with the *lex specialis* theory supplanted by a new harmonization model using fixed criteria to manage the co-application of the two systems of laws. The harmonization model is intended to balance recognition of the realities of conflict with the desire to provide humanitarian protections. The author notes a shift dating to 1968 supporting the application of IHRL during armed conflict, but cautions that convergence may weaken human rights law due to the non-accountability of non-state actors, by potentially generating increasing tolerance for derogations, and reflecting the idea that non-derogable rights will inevitably be violated due to the realities of conflict. She argues that the ICJ, in its Advisory Opinions about the threat or use of nuclear weapons and about the legality of the Palestinian "Wall," has insufficiently clarified the interplay between IHL and IHRL during armed conflicts. The court may have ultimately relied upon

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		the *lex specialis* principle when the bodies of law could apply concurrently without defining if IHRL could be the *lex specialis* during conflict. According to Prud'homme, the *lex specialis* doctrine – better suited to manage conflicts of hierarchical national laws – is inadequate to resolve conflicts where both sets of international laws apply, as it does not facilitate the co-application of the laws.
24	Marco Sassoli and Laura Olson **The Relationship Between International Humanitarian and Human Rights Law Where it Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts**, 90 INT'L REV. OF THE RED CROSS 599 (2008) Available at http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-871-p599/$File/irrc-871-Sassoli-Olsen.pdf	The authors argue that the less-developed state of IHL with regards to non-international armed conflict could allow for human rights law to play a more significant role, but that States and courts may have chosen instead to weaken the distinction between international and non-international armed conflicts, demonstrating a preference for the application of IHL rules. Furthermore, the application of *lex specialis* is complicated by controversy surrounding the substance of human rights treaties, questions surrounding the application of human rights law to non-state actors, and inconsistent application of the *lex specialis* rule in conflicts. The article notes that the critical question in determining when an individual may be killed in a non-international armed conflict under IHL may hinge on the construction of "direct participation in hostilities;" contrastingly, the legality of a killing under IHRL turns on the notion of what is "arbitrary." Sassoli and Olson conclude that there is significant common ground between the two regimes, and suggest a sliding-scale application of the *lex specialis* principle tied to the nature of the situation where force is used for the situations where conflict exists. They acknowledge both potential difficulties with operationalizing such a standard, and that only government forces are subjected to human rights rules (while IHL rules apply to both parties). Given the procedural and reciprocal issues with applying human rights rules to detention, the authors state that applying the Fourth Geneva Convention by analogy may be more practical, although they argue that a harmonization of the regimes would best serve the legitimate interests of the State and provide protections against unlawful detentions and detention procedures.
25	William A. Schabas ***Lex Specialis?* Belt and Suspenders? The Parallel**	The article describes the different approaches taken by the ICJ and the Human Rights Committee to the application of IHRL in armed conflicts. Schabas argues that the ICJ has adopted an interpretation of *lex specialis* whereby IHL supplants human rights norms (even though it has not applied the principle in its decisions), while the HRC views the bodies of

	Operation of Human Rights Law and the Law of Armed Conflict, and the Conundrum of *Jus ad Bellum*, 40 ISR. L. REV. 592 (2007). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1044281	law as mutually applicable during armed conflict. While the two bodies of law may lead to the same outcome of a judicial inquiry in many cases, the author argues that there are a number of circumstances where analysis under either IHL or IHRL could lead to a different result, necessitating choice between the two, such as in assessing collateral damage. The article then notes a key potential problem with the application of IHRL in war. Whereas IHL operates with indifference to *jus ad bellum*, the author states that IHRL considers war itself a violation. Schabas argues that IHRL is better served by maintaining this pacifist principle, which necessarily requires an abandonment of the quest of convergence with IHL.
26	Yuval Shany **Human Rights and Humanitarian Law As Competing Legal Paradigms for Fighting Terror, in Collected Courses of the Academy of European Law, Human Rights and International Humanitarian Law,** Vol. XIX/1 (Orna Ben Naftali, ed. 2009), Hebrew University International Law Research Paper No. 23-09. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1504106	This article examines the two paradigms that can be used to establish the rules of conduct in the war on terror: a law enforcement regime and an armed conflict regime. According to the author, the law enforcement regime characterizes terrorism as a criminal phenomenon requiring international coordination. Potentially due to concerns about (alleged) gaps in the international legal architecture to combat terrorism through criminal law, problems concerning jurisdiction over crimes, and the transformation of transnational terrorism into a significantly larger threat, the author suggests that a new law and order-based approach has emerged, providing governments with amplified procedural tools to prosecute terrorism (with a concurrent erosion of human rights), although this regime has faced pushback from the international community and domestic courts. Contrastingly, Shany notes that an armed conflict approach might allow States to move away from the human rights paradigm altogether in counterterrorism, although there are still significant questions over how IHL is to be applied to the "war on terror." The author then argues that any fundamental re-conceptualization of the two regimes into a mixed paradigm will simply serve as an alternative means to continue the jurisdictional arguments that characterize current debates over legal issues in the war on terror. While common rules, the use of IHRL as a "gap-filler" for IHL, and formal endorsements of convergence may have appeared to narrow normative divides between the bodies of law, Shany argues that implementation of each still leads to significant differences in determinations of legality surrounding the use of force in many circumstances and who is held accountable. IHRL, according to the author, might leave a heightened standard of

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		responsibility unsympathetic to military necessity and contrary to State practice.
27	Sandesh Sivakumaran **Courts of Armed Opposition Groups: Fair Trials or Summary Justice?** 7 J. of Int'l Crim. Justice 489 (2009) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1448470	In examining the tribunals established by revolutionary groups in non-international armed conflict, the article discusses the due process guarantees applicable in such situations and the merits of engaging such courts. Both Common Article 3 and Additional Protocol II seem to include provisions at least indirectly acknowledging such courts, and the author argues that the viewpoint that the clauses only serve to outlaw summary judgment is unsustainable, and the notions of equal application of IHL and command responsibility would seem to require such courts. The author counters other arguments that courts of armed groups are not "regularly constituted" by claiming that the phrase refers to the notion of impartiality any court must abide by. If Article Protocol II applies, Sivakumaran argues that it contains a list of applicable due process guarantees. According to the author, Common Article 3 alludes only to protections considered "indispensable by civilized peoples;" only by failing to provide due process might a rebel court necessarily lack legitimacy. The author concludes that the international community should afford legitimacy to these courts when failure to do so would harm the inhabitants of the controlled territory, particularly when the courts are not engaged in politically motivated prosecutions.
28	Guglielmo Verdirame **Human Rights in Wartime: A Framework for Analysis**, EUROPEAN HUMAN RTS. L. REV. 689 (2008)	This article outlines the principles underlying the increasing application of human rights law during armed conflict and then addresses a number of problems with its application. Verdirame notes that positive law supports the proposition that human rights law applies at all times unless derogated under ICCPR Article 4 (and other relevant treaties). He cautions that the process of incorporating human rights norms into armed conflict carries with it the danger of making war more tolerable, and that we should expect some level of deviation from rights norms during armed conflict. According to Verdirame, the extraterritorial application of human rights law is an invention of international courts, and States continue to resist the concept. The concurrent application of international human rights law and IHL raises questions over which law should prevail in particular cases, a particular problem given the limited jurisdiction of human rights bodies and courts. The author notes a particular challenge that arises in UN-authorized peacekeeping operations: any potential violations of human rights are attributable not to the State to which the accused soldier belongs, but to the United Nations, which is generally outside of the jurisdiction of the

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		human rights bodies and courts. While the challenges of applying human rights law during armed conflict are significant, Vedirame concludes that holding violators to account is nonetheless a worthwhile endeavor in order to help make war more humane.
29	Sylvain Vité **The Interrelation of the Law of Occupation and Economic, Social, and Cultural Rights: The Examples of Food, Health, and Property**, 90 INT'L REV. OF THE RED CROSS 629 (2008) Available at http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-871-p629/$File/irrc-871-Vite.pdf	The article discusses the interaction between the law of occupation and the law of socio-economic rights (the latter primarily granted through the ICESCR). Noting a potential conflict between the occupier's obligation to follow human rights law and Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention, Vité cautions against a lax position on the enforcement of the latter two provisions due to the danger of permitting occupiers to undertake radical, non-democratic transformations of the occupied State. However, he argues for a multifaceted approach that relaxes the prohibition on alteration of an occupied State's laws depending on the risk of radical reform. Consequently, human rights provisions relating to socioeconomic governance, particularly laws relating to food and health, should perhaps receive less scrutiny than political reforms, and obligations from the law of occupation in these fields should be enforced, with the progressive notion of the ICESCR also incorporated into the occupier's obligations. While property protections are less developed in human rights law, Vité also notes the limitations (particularly upon pillage) and privileges (particularly tax collection and limited rights of seizure) in the law of occupation.
30	Kenneth Watkin **Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict**, 98 AM. J. INT'L L. 1 (2004). Available at http://www.asil.org/ajil/watkin.pdf	This article addresses the interaction between IHL and IHRL. The author notes the particular challenges posed by non-state actors, which implicate both IHL (as an armed conflict) and IHRL (as a law-enforcement action). While the legal regimes may have jurisdictional differences and substantive differences in how States may maintain order and who may use force, Watkin argues that the uses of force associated with counterterrorism present situations of simultaneous application of IHL and IHRL. The author concludes by noting the impact of IHRL on the conduct of hostilities. He argues that IHRL brings forth greater accountability, which in turn limits the impact of violence. Watkin concludes that IHL should not exclusively govern armed conflict, and principles of IHRL should be integrated in a neutral way (acknowledging the realities of combat

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		operations) into the law governing the use of force to prevent gaps in humanitarian protection, particularly with regards to non-international armed conflicts.
31	David Weissbrodt **The Role of The Human Rights Committee In Interpreting and Developing Humanitarian Law,** 31 U. Pa. J. Int'l L. 1185(2011) Available at http://www.law.upenn.edu/journals/jil/articles/volume31/issue4/Weissbrodt31U.Pa.J.Int'lL.1185(2010).pdf	This article examines the Human Rights Committee's interpretation of the ICCPR concerning international law and specifically the rules of IHL. The article begins with an overview of other international and human rights legal bodies' treatment of IHL and then focuses on the decisions and documents that the Committee has produced on IHL. The author concludes that the Committee has been reluctant to specifically take the Geneva Conventions and other IHL statues into account in its rulings on the Optional Protocol. The author argues that the Committee has previously interpreted the Optional Protocol as only permitting the Committee to review violations of substantive Covenant rights. The author recommends that the Committee reconsider this interpretation and, instead, consider opportunities to create precedential decisions on IHL that specifically incorporate the Geneva Conventions. He concludes that in examining violations of the ICCPR the committed need not necessarily avoid incorporation of IHL but instead could create precedential analysis.
32	David Weissbrodt, Joseph C. Hansen, and Nathaniel H. Nesbitt **The Role of the Committee on the Rights of the Child in Interpreting and Developing International Humanitarian Law,** 24 Harv. Hum. Rts. J. 115(2011) Available at http://harvardhrj.com/wp-content/uploads/2009/09/115	This article examines the Committee on the Rights of the Child interpretation of IHL. The article argues that Article 38 of the Convention of the Rights of the Child gives the Committee a unique opportunity to interpret IHL. The article then examines three ways in which the CRC is able to interpret IHL; these are general comments, concluding observations on periodic reports, and concluding observations on responses to the Optional Protocol. The author argues that while the CRC's rulings encompass the entire IHL corpus, the Committee offers implicit rather than explicit analysis. The author argues that it is possible to determine State parties' responsibilities to IHL by examining Concluding Observations, but finds that the Committee has yet to produce "fact-specific and potentially precedential analysis." The author concludes that the Committee has the potential to do so by modifying the format of their observations and may still be solidifying customary IHL norms by their current decisions.

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33	Ralph Wilde **Triggering State Obligations Extraterritorially: The Spatial Test in Certain Human Rights Treaties**, 40 ISR. L. REV. 503 (2007) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1032874	This article discusses the requisite levels of control required to trigger obligations under the law of occupation and international human rights law. Wilde states that a spatial test determines when each body of laws applies (with a personal connection test also capable of triggering the application of human rights laws). The author's spatial test asserts that control over territory (defined as effective control of an area in IHRL and territory where authority is established and exercised in the law of occupation), regardless of the circumstances of its presence, creates the relevant legal obligations. Wilde considers four potential limitations to the concept of jurisdiction under human rights treaties that might create situations where the law of occupation applied while IHRL did not (noting linkages to the international law concept of jurisdiction, the notion of exceptional applicability, a requirement of ability to control civil authority, or limiting jurisdiction to situations of overall control and rejecting a cause-and-effect basis of jurisdiction). He ultimately concludes that, while the overall control limitation may find favor in the future, at present all arguments have been rejected and merely serve to note that the relevant law is contested and underdeveloped.

Court Decisions

International Court of Justice

Citation	Summary
Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, 353.	Following the 2008 intervention of Russian forces into South Ossetia, the Government of Georgia filed a complaint with the ICJ alleging that since 1990, Russia sought to change the ethnic make-up of breakaway regions through supporting separatist Ossetians and Abkhazians; preventing the return of ethnic Georgians after the 1991-94 and 2008 conflicts; and conducting or permitting other discriminatory measures in areas under its control with the intent of generating declarations of independence. Georgia alleged that Russian interventions prevented Georgia from exercising jurisdiction over the breakaway regions, which in turn prevented it from upholding its obligations under CERD. Russia asserted that it was in compliance with its international obligations (including the Medvedev-Sarkozy peace plan), that its actions were in response to Georgian violations of international law, that it did not occupy or otherwise exercise effective control over the breakaway regions, and that neither was there a real dispute over CERD nor should CERD apply extraterritorially, thus rendering the case outside of the ICJ's jurisdiction. While delaying any rulings on the facts or attribution of any violations until a (later) decision on the merits of the case, the Court ordered both parties to comply with CERD, permit humanitarian

	access, and refrain from taking any actions that "might prejudice the rights of the other Party." In indicating provisional measures, the Court found that there were no inherent territorial limitations to the CERD's application, and that even if the disputes in the case were truly rooted in IHL and other bodies of international law, there was, at least for the purposes of jurisdiction, a cognizable dispute over the provisions of the CERD. In a 2011 decision, the ICJ ruled that it did not have jurisdiction to hear Georgia's complaint. The Court cited Article 22 of CERD which mandated that a dispute could only be referred to the ICJ if it was "not settled by negotiation or by the procedures expressly provided for in this Convention." The Court reasoned that while Georgia had engaged Russia in certain negotiations, the parties had not conducted negotiations on CERD-related matters, and more specifically, the allegations of ethnic cleansing. In dismissing the case on these grounds the court did not address Russia's other objections, but the court did urge both parties to comply with CERD in the future. Key terms: control, extraterritorial jurisdiction, Georgia, *lex specialis*, Russia
Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, 168.	This case arose out of the use of force by Ugandan troops in the DRC against rebel forces following the removal of the DRC's consent to the presence of the Ugandan forces. In its decision, the Court found that Uganda occupied regions of the DRC by deploying troops and exerting administrative control, even though its forces were not present in all of the areas determined to be within the sphere of occupation. Additionally, the DRC alleged violations of both IHL and human rights law. The ICJ determined that both bodies of law operated in times of armed conflict, that Uganda carried its human rights obligations with it into occupied territories or to areas where it exercised jurisdiction, and that human rights norms were incorporated into the law of occupation in its finding that Uganda was responsible for both IHL and IHRL violations. Key terms: control, Democratic Republic of the Congo, extraterritorial jurisdiction, occupation law, Uganda
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, 136.	This Advisory Opinion, referred to the Court by the UN General Assembly, addressed the issue of whether the construction of the security barrier in the OPT would violate rights of the Palestinians to self-determination, freedom of movement and other human rights guarantees. The ICJ responded that the construction of the wall was in violation of international law, as it required internationally wrongful seizures of property, limited movement, and complicated access to arable

	land and essential services. The Court found that the Fourth Geneva Convention applied in all situations of occupation by a state party. It also found that human rights treaties are not entirely superseded by IHL during armed conflict; instead, while IHL was described as the *lex specialis*, it stated that some matters may be exclusively matters of IHL, others exclusively matters of human rights laws, and others a matter of both bodies of law. It recognized a primarily territorial notion of jurisdiction, but found that states could exercise their jurisdiction abroad, and that their obligations under the ICCPR would apply to such extraterritorial acts of jurisdiction. The Court rejected Israel's self-defense and necessity justifications, noting Israel's control over the OPT and a requirement that any such measures must comply with international law. Key terms: extraterritorial jurisdiction, Israel, *lex specialis*, Occupied Palestinian Territories
Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, 226.	The UN General Assembly requested an advisory opinion from the ICJ regarding whether states could use nuclear weapons in an armed conflict or as part of their statecraft. The Court found that the use or threat of nuclear weapons was *prima facie* in violation of international law because usage could not comply with IHL principles of proportionality and could not distinguish between military and civilian targets, although it refused to rule out situations in which the use of tactical nuclear weapons would be permissible. It noted that the ICCPR, which includes the right to life and to be protected from arbitrary deprivation of life, is still in effect during war, although the law applicable to armed conflict, as lex specialis, would frame the concept of "arbitrary." Key terms: lex specialis, necessity, proportionality

European Court of Human Rights

Citation	Summary
Al-Saadoon & Mufdhi v. United Kingdom, Application No. 614098/08, Mar. 2, 2010	The applicants alleged violations of the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms arising out of their detention in Iraq and subsequent transfer to Iraqi authorities. The two detainees initially sought to prohibit their transfer through the British legal system, which determined that while the detainees would face a significant risk of execution as punishment for their roles in the killing of two British soldiers, the United Kingdom had a legal obligation to transfer Iraqi prisoners, held in Iraq and accused of

	committing crimes in Iraq, to Iraqi authorities for prosecution, and the death penalty did not constitute a violation of international law such that the United Kingdom would violate the prohibition on refoulement (if the proceedings in Iraqi courts could be categorized as fair). Additionally, the British courts found that the United Kingdom did not have jurisdiction over prisoners transferred to Iraqi custody such that a death sentence would violate British obligations under the Convention. The Court held that the failure to obtain an assurance that the death penalty would not be imposed prior to transferring the detainees out of the United Kingdom's jurisdiction and into Iraqi jurisdiction constituted a violation of the applicants' rights. The ECtHR found that the United Kingdom's commitments provided for a strong prohibition against the death penalty. Given that the state actively brought the detainees within its jurisdiction, the United Kingdom was under a responsibility not to take acts that would lead to violations of the detainee's rights under the Convention (or to at least take all realistic means available to safeguard their rights), but rejected the applicants' submission that they would be subjected to an unfair trial within Iraq. Key terms: control, detention, extraterritorial jurisdiction, Iraq, state responsibility, United Kingdom
Isaak v. Turkey, Application No. 44587/98, June 24, 2008	The applicants alleged a violation of the right to life for the deadly beating of their relative by a Turkish Republic of Northern Cyprus police officer during demonstrations along the buffer zone. In its decision on jurisdiction, the Court determined that the TRNC may be considered a source of domestic remedies, but did not find that the courts would be effective in offering a remedy to the applicants. On the merits, the Court held that states must not only refrain from intentional killings, but must also take steps to safeguard the lives of its citizens from unintentional killings and killings by others. It found that Isaak's unjustified death constituted a violation of the Convention, and that Turkish forces or the TRNC police either actively engaged in, or permitted the fatal beating. While the beating was in response to an ongoing demonstration, the Court found that the applicant's acts did not justify the use of force. Key terms: control, Cyprus, necessity, state responsibility, Turkey
Khamidov v. Russia,	The applicant was a landowner whose property, after being occupied by rebel fighters for between

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Application No. 72118/01, Feb. 6, 2008	one and three years, was seized for use by the Russian government for the duration of hostilities in Chechnya, ignoring court orders to vacate the applicant's land. The applicant alleged a violation of his right to a home and private life and the peaceful enjoyment of his possessions, while the government challenged his ownership of the land and argued that IHL and Russian law permitted the temporary seizure to conduct counter-terrorism operations. The Court found the occupation (due to a lack of authorization that demonstrated necessity to conduct arbitrary occupations), as well as the failure to provide alternate venues to courts unavailable due to the conflict, and to give effect to the domestic court's eviction orders, to be a violation of Russia's Convention obligations. Key terms: derogation, Chechnya, necessity, Russia
Behrami v. France & Seramati v. France, Application No. 71412/01, May 2, 2007 (Admissibility)	Applicant Behrami sued on behalf of his sons, one of whom was killed and the other seriously injured by a NATO bomblet that exploded as they played with it in an area under the responsibility of a multinational force led by France. The applicant Seramati sued after being detained under the authority of the KFOR commander on weapons possession charges. The Court rejected both petitions as inadmissible. By finding that the relevant detention authority fell within the mandate of NATO's KFOR and that de-mining fell under the UN mission, it held the actions of both of these organizations were attributable to the UN. This attribution removed the case from the jurisdiction of the Court, which had authority over only the state parties. Thus, it dismissed the case without addressing the question of extraterritorial jurisdiction of the Convention. Key terms: Kosovo, multilateral operations, NATO, state responsibility
Isayeva, Yusupova & Bazayeva v. Russia, Application Nos. 57947-49/00, Feb. 24, 2005	The applicants were victims of an alleged indiscriminate air attack by Russian forces against a civilian convoy departing Grozny through a declared humanitarian corridor. Russia claimed that civilian vehicles became visible only after the planes had begun to respond to fire from rebel vehicles. The Court found that states must undertake a strict proportionality analysis when the right to life is threatened. While lethal force could be justified if the planes fell under armed attack, the Court held that Russia had provided insufficient evidence to demonstrate that the use of deadly force was necessary (even in the context of the ongoing military operations) and that the

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	attack was not conducted with sufficient care for the lives of civilians due to the absence of a forward air commander and the use of unnecessarily powerful weapons. Key terms: Chechnya, necessity, proportionality, Russia
Isayeva v. Russia, Application No. 57950/00, Feb. 24, 2005	The applicant was a Russian citizen who was the victim of a Russian bombing attack on a safe passage corridor (as well as on a town declared a safe zone). The government contended that its bombings were in response to the occupation of the town by rebel forces. Noting that no derogations had been made, the Court gave full effect to all Convention provisions. Finding the domestic remedies available to the applicant inadequate, the Court held Russia responsible for violating its obligation to protect the right to life. It ruled that the use of force must be limited to the absolute minimum required to accomplish the permissible objectives of that use of force. Even in "security operations" the Court found that a failure to take all feasible precautions against the loss of life constitutes a violation of the state's obligations and that the state had a duty to warn its citizens against the foreseeable entry of fighters into the city and subsequent military operations. Key terms: Chechnya, derogation, necessity, proportionality, Russia
Issa et al. v. Turkey, Application No. 31821/96, Nov. 16, 2004	The applicants in *Issa* were six Iraqi citizens alleging unlawful arrest, detention, mistreatment, and killing of their relatives by the Government of Turkey following a raid into Northern Iraq. The Court found that by capturing and detaining the Iraqis, the Turkish forces could have brought the victims within the jurisdiction of Turkey, with military operations alone sufficient to find that Turkey temporarily exercised effective control over the area where it conducted operations. However, it found insufficient evidence to determine that Turkey was conducting military operations near the homes of the Iraqis or that the Iraqis had been detained and killed by Turkish soldiers, and thus determined that they were not within the jurisdiction of Turkey for the purposes of the Convention. Key terms: control, extraterritorial jurisdiction, Iraq, Turkey
Ocalan v. Turkey, Application	The applicant, a leader of the Worker's Party of Kurdistan, was arrested in Kenya and transferred

No. 46221/99, Mar. 12, 2003	to Turkey, where he was detained, found guilty of committing acts aimed at secession, as well as training and leading a terrorist organization. He was then sentenced to death. The Court found that the applicant fell within the effective control of Turkey once transferred to the Turkish police in Nairobi, but that the conditions of his arrest were lawful under Article 5 of the Convention and the conditions of his transfer from Kenya to Turkey did not violate the Convention's provisions against inhumane or degrading treatment. However, the Court did find a number of violations in the conduct of the trial relating to lack of access to counsel and fairness of the proceedings. Key terms: control, extraterritorial jurisdiction, Kenya, Turkey
Bankovic v. Belgium, Application No. 52207/99, Dec. 12, 2001 (Admissibility)	The applicants were parents of Serbian citizens killed in a NATO bombing raid on Radio Televizije Srbije in Belgrade. The Court dismissed the case in the admissibility phase because the victims were outside the jurisdiction of the Convention. It found that a state may not exercise jurisdiction upon the territory of another without consent or occupation, and that jurisdiction was essentially a territorial inquiry barring extraordinary circumstances. While a state's exercise of effective control of foreign territory through military operations represents such a circumstance, the Court held that not every act of a state's armed forces results in an establishment of jurisdiction. The Court did not discuss whether the bombing would constitute a violation of the victims' rights had it taken place within the jurisdiction of the state parties. Key terms: control, multilateral operations, NATO, Serbia
Ergi v. Turkey, Application No. 23818/94, July 28, 1998	The application arose out of a Turkish counter-PKK operation within Turkey that resulted in the death of the applicant's sister. While finding insufficient evidence to find Turkey responsible for an intentional killing, the Court determined that the state had failed to fulfill its positive obligations to secure the right to life for its civilians. It noted that the use of force must be limited to what is absolutely necessary and proportionate to the legitimate aims spelled out in the Convention, and found that the Turkish forces had not taken the requisite care in warning the civilians living between them and their planned PKK targets. Key terms: necessity, proportionality, Turkey

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Loizidou v. Turkey, Application No. 15318/89, Dec. 18, 1996	The applicant, a Cypriot landowner, alleged that Turkish forces prevented her from peaceful enjoyment of her property. The application was narrowed from a complaint before the Commission, which found that Turkey did not violate her rights by blocking access to her land. The Court found that Turkey established overall control over the border between Cyprus and the Turkish Republic of Northern Cyprus, and as a result, those affected by the policies and actions of the TRNC were within the jurisdiction of Turkey (regardless of the degree of actual control exerted by Turkey over TRNC policy), particularly in light of the nature of the applicant's claim – denial of enjoyment of property due to border controls. Consequently, the denial of access to the applicant's land was imputable to Turkey. Key terms: control, Cyprus, extraterritorial jurisdiction, state responsibility, Turkey
McCann and Others v. United Kingdom, Application No. 18984/91, Sept. 27, 1995	This case was brought by relatives of three IRA members who were shot by British Special Forces in Gibraltar. The IRA members were shot as they left a car believed to contain a bomb; each was shot during their arrest as the British forces perceived each one to be reaching for the detonator. Noting the fundamental dilemma between the duty to protect others by preventing the bomb from exploding and the duty to minimize the chance of using deadly force, the Court found that the individual soldiers acted justifiably based upon a reasonable and honest belief of danger. However, it held that the planning and reflexive action during the operation demonstrated a breach of Article 2 of the Convention as leading to a use of force that was not absolutely necessary despite the context of the IRA's bombing campaign. Key terms: necessity, Northern Ireland, United Kingdom
Brannigan & McBride v. United Kingdom, Application Nos. 14553-54/89, May 25, 1993	This case arose out of the warrantless detention and interrogation of two IRA members believed to be involved in terrorism in Northern Ireland. The United Kingdom formally derogated from its obligations under Article 5, paragraph 3 of the Convention and permitted detentions for up to seven days without an appearance before a judge, as long as terrorist attacks remained a significant threat or until an alternate detention regime was developed. The Court held that a government was to be afforded a "margin of appreciation" in determining what methods were necessary in responding to crises that threatened the nation. It found that the United Kingdom's

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	measures fell within that margin, and that the procedures implemented by the government in its derogation were a genuine intent to abide by its obligations and safeguard against abuse. Key terms: derogation, detention, necessity, United Kingdom
Cyprus v. Turkey, Application Nos. 6780/74, 6950/75, May 26, 1975 (Admissibility)	The applicant government accused Turkey of violations of a number of articles in the Convention owing to its invasion and occupation of Northern Cyprus, alleging indiscriminate killing, rape, torture, unlawful detention, forcible evictions, forced labor, and a number of other human rights abuses. In turn, the Government of Turkey raised a number of questions regarding the standing of the Greek Cypriot government to bring forth claims on behalf of the state and challenged the admissibility of the application. In its decision on admissibility, the Court rejected arguments that the Greek Cypriot government could not represent the state. It further held that the jurisdictional limitation to the Convention was not purely territorial, but rather that the state could be held responsible for the acts or omissions of its agents abroad when those agents brought individuals within the state's jurisdiction. Key terms: Cyprus, extraterritorial jurisdiction, Turkey

Inter-American Court of (Commission on) Human Rights

Citation	Summary
Case of Bámaca Velásquez v. Guatemala (Merits) (Nov. 25, 2000)	The Inter-American Commission on Human Rights referred this case to the Court, alleging torture, prosecution, and execution of Bámaca Velásquez. The Commission requested punishment for those responsible of these human rights violations after the state failed to implement the Commission's recommendations. The Court recognized that Guatemala was engaged in an "internal conflict" with a guerilla organization led by Bámaca Velásquez. Nonetheless, it held the state liable for violating his right to personal liberty by detaining him outside of the judicial system; his right to humane treatment by mistreating him and presumably torturing him; his right to life by killing him through extrajudicial means; and his rights to a fair trial and due process; as well as violating its obligations under the Convention to protect the rights of its citizens. Key terms: Guatemala, subject matter jurisdiction

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Case of Las Palermas v. Colombia (Preliminary Objections) (Feb. 4, 2000)	This case arose out of a military operation in Las Palermas leading to the injury of a child and the detention and extrajudicial killing of six or seven others. The Inter-American Commission on Human Rights requested the Court to declare Colombia in violation of Articles 1.1, 3, 4, 8, and 25 of the Inter-American Convention and to order the state to conduct a criminal investigation along with granting reparations to the next of kin. Colombia filed preliminary objections, claiming that the Commission was not competent to hear the case due to the application of international humanitarian law and a lack of exhaustion of local remedies and that the Court was not competent to hear issues of IHL or try specific issues of fact. The Court admitted the Colombian objections regarding the competence of the Court and the Commission to determine whether the state acted in violation of IHL, finding its jurisdiction limited to adjudicating alleged violations of the Inter-American Convention. On the merits, the Court found that the delay in domestic adjudication was sufficiently long to constitute an exhaustion of local remedies, and that it was competent to try the issue of the State's responsibility for the killings. Key terms: Colombia, subject matter jurisdiction
Coard et al. v. United States, Case 10.951, Sept. 29, 1999	Coard and sixteen other Grenadians filed a petition with the Commission alleging unlawful detention and mistreatment by United States during its 1983 military operations in Grenada, as well as a violation of their right to a fair trial through corrupting the Grenadian judiciary. The United States denied the admissibility of the case, claiming that IHL applied. The Commission initially found only the claims regarding the detention and holding of the Grenadians incommunicado to be within the Commission's jurisdiction. In assessing subsequent defenses of the detention under IHL, the Commission found that IHL does not entirely displace human rights obligations, although the test for measuring conduct during an armed conflict may differ from that during peace. Interpreting the provisions of the Geneva Conventions as a framework for interpreting U.S. obligations under the American Declaration on the Rights and Duties of Man during an armed conflict, the Commission held that the United States violated the Declaration due to its failure to abide by its Fourth Geneva Convention obligations to promptly conduct status hearings on the continued threat posed by the detainees. The Commission also noted that the Convention applies extraterritorially (a point not in contention between the parties). Key terms: detention, extraterritorial jurisdiction, Grenada, lex specialis, subject matter

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	jurisdiction, United States
Case of Juan Carlos Abella, Nov. 18, 1997, OEA/Ser.L/V/II.98	This case arose out of an attack and retaking (under alleged use of excessive force) of a military barrack by 42 Argentineans and the subsequent execution, disappearance, or torture of the surviving attackers; and the manipulation of the subsequent trials following 30 hours of fighting. The petitioners accused the Argentine government of violations of both the American Convention and of IHL. The Commission classified the fighting as a non-international armed conflict because of the nature of the attack, the armed forces' response, and the level of violence. It then examined the plaintiffs' claims and potential violations of the American Convention through the lens of IHL. It thus found that there was insufficient evidence to substantiate the petitioner's claim that the government refused their surrender as well as the claim of illegal use of munitions, but found that Argentina violated the American Convention after the fighting through extrajudicial killings, torture of survivors, prolonged detention, and failure to conduct a complete investigation into the allegations of rights' violations, or provide a fair trial to the petitioners. Key terms: Argentina, classification of conflicts, lex specialis, subject matter jurisdiction

Canada

Citation	Summary
Amnesty Int'l Canada v. Canada, 2008 FC 336, [2008] 4 F.C.R. 546	The applicants petitioned the Federal Court of Canada to block any future transfers of detainees from Canadian forces to the Government of Afghanistan, to demand the return of detainees previously transferred, and to establish that non-Canadian detainees had rights under the Canadian Charter of Rights and Freedoms while within Canadian control. The court found that the detainees were afforded rights under Afghan law and international law, but not under Canadian law (specifically the Charter of Rights and Freedoms). Noting that its continued presence was by consent of the Government of Afghanistan, the court held that an extraterritorial application of Canadian law would violate Afghanistan's sovereignty unless the Afghan government specifically agreed to such an application. It rejected a test for jurisdiction based upon the level of control that Canadian personnel exert over the detainees, finding military operations to be distinct from other assertions of governmental authority where the effective control standard

	would apply. The case was affirmed upon appeal (Amnesty International Canada *v.* Canada, 2008 FCA 401, [2009] 4 F.C.R. 149). Key terms: Afghanistan, Canada, detention, extraterritorial jurisdiction

Israel

Citation	Summary
HCJ 769/02, The Public Committee Against Torture in Israel v. Israel [2006]	The petitioners sought to challenge the Israeli practice of using targeted killings aimed at leaders of Hamas during the second intifadah, claiming that the law-enforcement framework, and not an IHL framework, was the appropriate legal regime to manage the conflict. Alternatively, they argued that Israel was denying terrorists both combatant privilege and civilian immunity from targeting, as well as violating principles of proportionality through engaging in attacks likely to kill significant numbers of civilians. The court found that a conflict between an occupying power and rebel groups constituted an international armed conflict, and thus the IHL framework applied as lex specialis, with commanders left to balance military needs against the rights and needs of the occupied people. Noting that international law had not yet recognized a categorization of unlawful combatants, the court adopted a conception of direct participation in hostilities that included using or maintaining weapons, transporting terrorists to their targets, or supervising operations, but excluded those who provided general logistical support or strategic advice, and held that Israeli forces must use the least harmful method possible, favoring arrest of civilians taking direct part in hostilities over targeted killings, and recommended that the state undertake proportionality analyses following uses of force against terrorist suspects. Key terms: classification of conflicts, Israel, lex specialis, Occupied Palestinian Territories

United Kingdom

Citation	Summary
R (Smith) v. Secretary of State for Defence, [2010] UKSC 29	Catherine Smith, the mother of a British soldier who died in Iraq of heatstroke, initiated litigation to quash the subsequent inquest into his death and to commence a new inquest that recognized his right to life under the Human Rights Act of 1998. The Supreme Court's ruling, finding that the

	Human Rights Act did not apply in a foreign country outside of a British military base, overturned the decisions of two lower courts. The court rejected the plaintiff's position that Private Smith was within the jurisdiction of the United Kingdom regardless of his location due to his status as a member of the armed forces, holding that the proposition from *Bankovic* – that jurisdiction was essentially a territorial inquiry, barring special exceptions (and that armed forces serving abroad was not an such an exception) – was the best approach towards evaluating the extraterritorial reach of the Human Rights Act. Key terms: extraterritorial jurisdiction, United Kingdom
R (al-Jedda) v. Secretary of State for Defence [2007] UKHL 58	Al-Jedda, a dual citizen of the United Kingdom and Iraq, was detained in Iraq in 2004 without charges due to a suspicion that he was part of a terrorist organization. He alleged a violation of his rights under the European Convention on Human Rights (executed by the Human Rights Act of 1998). The lower courts held that the United Nations Security Council Resolution 1546 qualified the guarantees of the human rights conventions, making his detention legal. The House of Lords determined that the United Nations did not exercise effective control over British forces, and British actions were not attributable to the UN. However, the court held that its obligations under occupation law authorized indefinite detention for security purposes, although the detention must be minimally invasive of the detainee's rights. Accordingly, it dismissed Al-Jedda's claims. Upon appeal, the Grand Chambers of the European Court of Human Rights found that Resolution 1511 did not confer responsibility of acts attributed to the multi-national force within Iraq to the United Nations and, as a result, that the detention of the plaintiff was the responsibility of the United Kingdom. The Court further reasoned that Security Council Resolutions, where ambiguous, must be interpreted in light of the Charter's mandate to promote human rights. The Court further noted that it should be presumed that the Security Council did "not intend to impose any obligation on Member States to breach fundamental principles of human rights." In light of this newly established rule, the Court ruled that the plaintiff had been unlawfully detained. Key terms: attribution, detention, extraterritorial jurisdiction, Iraq, United Kingdom

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Al-Skeini and Others v. Secretary of State for Defence, [2007] UKHL 26	This case concerned the death of six Iraqi civilians at the hands of British forces, including one who was allegedly mistreated in a British-controlled prison. The plaintiffs alleged violations of the European Convention on Human Rights/Human Rights Act of 1998. The lower courts found that one claim fell within both the human rights instruments and the lack of an investigation into the death constituted a violation, while the other five did not; both sides appealed the respective adverse rulings. The House of Lords affirmed the lower courts' opinions, finding that the Human Rights Act was not written to apply extraterritorially and that the European Convention was not intended to apply outside of Europe. The detention of Baha Mousa brought him within the territorial jurisdiction of the United Kingdom and thus triggered the applicability of the act, whereas the occupation of Basra alone did not establish effective control over the other decedents. In issuing its judgment, the Grand Chamber of the European Court of Human Rights upheld the basic *Bankovic* principle that recognition of extraterritorial jurisdiction can only be met under exceptional circumstances. The court found that the United Kingdom, as an occupying force, had assumed, in Iraq, some "public powers" that would normally fall to a sovereign government. The Court noted that this was particularly true in the area of security. The Court found that the exceptional circumstances involved in the occupation had given rise to the UK adopting public powers and, thusly, the UK had jurisdiction over the victims. The court concluded that, because of this jurisdiction, the UK should have conducted an investigation into the victims' deaths. Key terms: control, detention, extraterritorial jurisdiction, Iraq, United Kingdom

United States

Citation	Summary
Munaf v. Geren, 553 U.S. ___ (2008)	*Munaf* combined the cases of two petitioners; one was an American-Jordanian citizen who traveled to Iraq, was detained during a U.S. raid in 2004, and later accused of aiding al Qaida in Iraq; and the other, also an American citizen, was a translator for an abducted media crew who was arrested following their release and accused of aiding the kidnapping. The petitioners sought (and received from the District Court for the District of Columbia) a writ of habeas corpus that would enjoin the United States from releasing them into Iraqi custody. The court held that the federal habeas corpus

	statute did extend to individuals detained by U.S. forces in Iraq, including those detained by U.S. forces assigned to a multinational coalition. It partially sidestepped the effect of multilateral operations on the jurisdiction of the court over the matter, noting that the petitioners were within the control of U.S. forces and finding that sufficient to apply the habeas statute, particularly considering that the detainees were American citizens. However, it found no grounds to grant habeas relief, and vacated the injunction prohibiting their transfer to Iraqi authorities, citing the sovereign right of the Government of Iraq to prosecute crimes committed in its territory, as well as concerns about intrusions into military policy, the domain of the Executive. Key terms: detention, Iraq, multinational operations, United States
Boumediene v. Bush, 553 U.S. 723 (2008)	The petitioners in *Boumediene* were detainees captured in various locations and held at Guantanamo Bay, Cuba, following a Combatant Status Review Tribunal that designated them to be enemy combatants. They sought to petition the District Court of the District of Columbia for a writ of habeas corpus, but the Court of Appeals for the D.C. Circuit held that the 2006 Military Commissions Act stripped the federal courts of jurisdiction over detainees at Guantanamo. The Supreme Court reversed the lower court's decision, holding that the Military Commissions Act unconstitutionally deprived the petitioners of their habeas rights. In its decision, the Court held that the United States' lack of sovereignty over Guantanamo Bay did not affect the petitioners' right to habeas relief, as it had exclusive jurisdiction and control over the base. In considering to whom the U.S. Constitution applies to extraterritoriality, it recalls the *Eisentrager* factors of citizenship of detainee and adequacy of status review, nature of the sites and locations where a detainee is captured and held, and practical obstacles associated with granting relief. It found that at a minimum, a reviewing court must be able to correct errors made at the status review, scrutinize the government's evidence, and allow the defense to provide exculpatory evidence. Key terms: control, detention, United States
Hamdan v. Rumsfeld, 548 U.S. 557 (2006)	The petitioner in *Hamdan* was a Yemeni national captured by U.S. forces in Afghanistan, detained at Guantanamo Bay, Cuba, and charged with one count of conspiracy to commit offenses subject to the jurisdiction of a military commission. He filed petitions seeking writs of habeas corpus and mandamus on the grounds that the only charge against him was not a violation of international

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	law, and that the procedure used to try him violated military and international law. The D.C. Circuit Court of Appeals overturned the district court's grant of the writs, but the Supreme Court held that the military commissions violated both the Uniform Code of Military Justice and the Geneva Conventions. The Supreme Court held that the government may only use a properly constituted military commission to try offenses that are clearly violations of IHL; furthermore, it held that any military commission proceedings must be held in accordance with the UCMJ. Additionally, it stated that Common Article 3 of the Geneva Conventions offered minimum protections to the detainees regardless of the status of the belligerents, although it did not challenge the right of the Executive to detain Hamdan for the indefinite duration of the conflict. Key terms: Afghanistan, classification of conflicts, detention, United States
Rasul v. Bush, 542 U.S. 466 (2004)	This case challenged the right of two Australian and twelve Kuwaiti citizens captured in Afghanistan and held in Guantanamo Bay, Cuba, to challenge the legality of their detention through petitioning the federal courts for a writ of habeas corpus. Both the district court and the court of appeals found that they had no jurisdiction over aliens detained outside of the territory of the United States. The Supreme Court reversed, finding no territorial limitations to the right to petition habeas relief for those within the jurisdiction of the United States, including those held in Guantanamo, and that the right to petition extended to all people regardless of citizenship status. None of the courts made a determination on the merits of the petitioners' claims. Key terms: Afghanistan, control, detention, extraterritorial jurisdiction, United States

Other Documents

United Nations Human Rights Committee

Citation	Summary
General Comment No. 31: The Nature of the General Legal Obligation Imposed on States	This document clarified the Human Rights Committee's position on interpretations of the provisions of the ICCPR. Amongst other statements, the HRC asserted that the ICCPR applied to all individuals within a state's territory and within its jurisdiction, including those outside of its

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Parties to the Convention, U.N. Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004.	borders but under the effective control of the state. It noted that the Covenant applies during armed conflict and is complemented, not replaced by, IHL, which may serve to interpret the provisions of the ICCPR during armed conflict. The General Comment also noted an obligation of states not to remove individuals from within its jurisdiction if such a removal may pose "a real risk of irreparable harm." Key terms: control, extraterritorial jurisdiction
General Comment No. 29: States of Emergency, U.N. Doc CCPR/C/21/Rev.1/Add.11, Aug. 31, 2001	This document clarified the Human Rights Committee's position on interpretations of the provisions of the ICCPR, specifically relating to Article 4, covering permissible derogations from the obligations of the Convention. It noted that derogations may only take place within a constitutionally-enacted state of emergency that threatens the life of the nation and only as necessary to manage the temporary crisis. The HRC wrote that no derogation may be inconsistent with a state's obligations under international law, such as IHL, and cannot be used to justify acts that would trigger international criminal responsibility. Key terms: derogation, lex specialis

Public Statements

Harold Hongju Koh, United States Department of State Legal Advisor, The Obama Administration and International Law, Speech Before the American Society of International Law, March 25, 2010	The speaker outlined the approach of the Obama Administration towards international legal issues, particularly those surrounding what he called "the law of 9/11." Koh noted efforts to close Guantanamo and a commitment to providing periodic status reviews of detainees, but noted that the United States had the authority to detain under Common Article 3 of the Geneva Conventions and the Authorization for Use of Military Force (as "informed" by IHL), given the U.S.'s participation in an armed conflict arising out of self-defense. The Legal Advisor noted a commitment to following IHL in targeting practices, rejecting the notion that targeted killings represented unlawful extrajudicial killings by noting that the rules of armed conflict do not require process before the use of force. Key terms: detention, necessity, proportionality, targeting, United States

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