

## 2023 ISMLLW Seminar for Legal Advisors of the Armed Forces – Recommended Readings

### *Fault Lines in the Laws of War*

#### **Panel Topic: Neutrality & Belligerency**

The traditional law of neutrality was codified at the 1899 and 1907 Hague Conferences. Since then, this body of law has met challenges including varied practices among States, changing geopolitical considerations, and new means of support to belligerents due to technological advances. This panel will examine whether the traditional law of neutrality is fit for purpose under the modern condition of warfare, especially in light of various types of support provided to Ukraine against Russia's invasion. The panel will reflect on the classic debate regarding the legal status of qualified neutrality and the legal significance of acts inconsistent with neutrality obligations. The panel will also examine the extent to which support to a belligerent party impacts the status of a neutral State.

#### Recommended Readings:

- Wolff Heintschel von Heinegg, "[Neutrality in the War Against Ukraine](#)," *Articles of War* (Mar. 1, 2022)
- Raul "Pete" Pedrozo, "[Ukraine Symposium -- Is the Law of Neutrality Dead?](#)" *Articles of War* (31 May 2022)
- Michael N. Schmitt, "[Ukraine Symposium – Are We At War?](#)" *Articles of War* (May 9, 2022)

#### **Panel Topic: Targeting**

The law of targeting is well established under customary international law and has been extensively applied in modern warfare. Nonetheless, there are contentious issues that remain unresolved and new issues that have arisen due to innovative applications of new technologies. This panel will discuss the application of targeting law in the modern conditions of warfare by exploring issues such as the legality of targeting war-sustaining objects; doubt in targeting; the use of deception in battle; and the use of artificial intelligence and machine learning.

#### Recommended Readings:

- Michael N. Schmitt and Eric W. Widmar, "'On Target': Precision and Balance in the Contemporary Law of Targeting," 7 *Journal of National Security Law and Policy* 379 (2014)
- Michael N. Schmitt and William Casey Biggerstaff, "[The Al-Zawahiri Strike and the Law of Armed Conflict](#)" *Articles of War* (5 Aug. 2022)
- Mehmet Çoban Kiliç, "[Ukraine Symposium - Targeting Leadership - Lieber Institute West Point](#)"
- Camilla G. Cooper [Curing the COIN Hangover](#), *Articles of War*, 7 July 2023

#### **Breakout Session: Humanitarian Access to Conflict Zones**

This panel will explore how the law of armed conflict regulates access by humanitarian organizations to zones of conflict for relief purposes. While addressed in both the 1949 Geneva Conventions and 1977 Additional Protocol I, humanitarian access now involves important questions of interpretation and application by States. In particular, the extent to which access remains a matter of unfettered

prerogative of belligerent parties is a subject of current debate. The panel will feature perspectives of States' militaries, international organizations, and non-governmental organizations.

Recommended Readings:

- Dapo Akande & Emanuela-Chara Gillard, [Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict](#) (2016)
- Sean Watts, "Humanitarian Logic and the Law of Siege: A Study of the Oxford Guidance on Relief Actions", 95 *International Law Studies* 1 (2019)
- Dr. Tristan Ferraro, Senior Legal Adviser at the ICRC - <https://www.iihl.org/wp-content/uploads/2018/03/RT-2017-FERRARO.pdf>
- UN Secretary-General, [Report on the protection of civilians in armed conflict](#), UN Doc. S/2022/381, Section III on "Challenges to humanitarian operations in armed conflict" (2022)
- Emanuela-Chiara Gillard and Nathalie Weizmann, "[Humanitarian Relief in Situations of Armed Conflict](#)" in R. Geiss & N. Melzer, ed., *The Oxford Handbook of the International Law of Global Security* (2021).

### **Breakout Session: Naval Blockade and Maritime Zones**

The traditional term "naval blockade" does not attract a universally agreed definition and, despite having a history of use dating back to the 16th Century, the law remains unsettled (indeed it has been argued that given the ambiguity, the traditional law as it relates to blockades has fallen into desuetude). The legality of blockades in Yemen, Ukraine, and Gaza remain debated by legal scholars. Such blockades (and the newer concept of 'maritime zones') have, more often than not, had a significant impact on civilian populations, leading to humanitarian crises such as starvation and disruption of global food supplies. This panel will discuss the legality and status of these recent blockades, consider whether the law as it relates to naval blockades remains fit for purpose, and what, if any, rights and obligations States have under the law of armed conflict when utilizing such measures.

Recommended Readings:

- Phillip J Drew, "Blockade? A Legal Assessment of the Maritime Interdiction of Yemen's Ports", *Journal of Conflict and Security Law*, OUP 2019
- Martin Fink, "[The War at Sea: Is There a Naval Blockade in the Sea of Azov?](#)" *Articles of War* (Mar 24, 2022)

### **Breakout Session: Multinational Procurement Efforts and Technology Transfers**

Multinational involvement in the development and production of weapons systems has become an economic necessity due to the rising cost of war-fighting capabilities. The ability to export weapons and military equipment also provides significant financial incentives for the participation of private companies in the military industry. This panel explores legal challenges arising from multinational weapons procurement efforts and the transfer of advanced weapons technologies. These challenges are partly derived from domestic legal constraints but also involve State responsibility issues in cases where these weapons and military equipment are used for human rights violations and war crimes.

Recommended Readings:

- Silke Zwijsen, Machiko Kanetake and Cedric Ryngaert, "[State Responsibility for Arms Transfers: The Law of State Responsibility and the Arms Trade Treaty](#)," *Ars aequi* 151-160 (2020)
- Alexandra Boivin, "[Complicity and Beyond: International Law and the Transfer of Small Arms and Light Weapons](#)," 87 *International Review of the Red Cross* 467 (2005)
- Machiko Kanetake and Cedric Ryngaert, "[Due diligence and corporate liability of the defence industry: Arms exports, end use and corporate responsibility | Vlaams Vredesinstituut](#)" Flemish peace institute, (2023).
- *Ethical Dilemmas in the Global Defense Industry* (Oxford University Press, 2023) <https://global.oup.com/academic/product/ethical-dilemmas-in-the-global-defense-industry-9780190675813>

### **Panel Topic: Human Rights in Armed Conflict**

This panel will address questions related to the application of international human rights law during armed conflict. The extent to which IHRL applies during armed conflict is a controversial question. This raises concerns with IHRL rules impact lethal targeting operations during armed conflict, whether and how IHRL rules apply to detention and internment during armed conflict, as well as the role of human rights law during situations of belligerent occupation.

#### Recommended Readings:

- Marko Milanovic, "[The Russia-Ukraine War and the European Convention on Human Rights](#)," *Articles of War* (1 Mar. 2022);
- United Nations, Office of the High Commissioner for Human Rights, *International Legal Protection of Human Rights in Armed Conflict* (2011);
- Michael J. Dennis, "Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict" 99 *American Journal of International Law* 119 (2005).

### **Panel Topic: Legal and Diplomatic Resolutions or Repair of Fault Lines**

Members of the military operational and legal communities often lack understanding about how States and international organizations engage in legal policy and diplomatic resolutions to address perceived fault lines in the international law related to armed conflict. This panel will present legal practitioners with an overview of this area and introduce a framework for understanding this area of law and policy. Representatives from the diplomatic community will have an opportunity to explain their role in this area of the law.

#### Recommended Readings:

- Steven van de Put, "Dutch chora judgment ex-gratia payments compensation" *Articles of War* (2023) <https://lieber.westpoint.edu/dutch-chora-judgment-ex-gratia-payments-compensation/>
- Steven van de Put, *Ex Gratia Payments and Reparations: A Missed Opportunity?* *Journal of International Humanitarian Legal Studies* (2023) [https://brill.com/view/journals/ihls/14/1/article-p131\\_008.xml](https://brill.com/view/journals/ihls/14/1/article-p131_008.xml)

## **Panel Topic: Law Formation and Development: Manuals, Commentaries, Judgments, and Military Legal Doctrine**

In recent decades, there has been remarkable growth in the amount of publicly available doctrinal and secondary material concerning the Law of Armed Conflict, including, for example, national military manuals and commentaries by prominent nongovernmental organizations. This panel will discuss the ways in which these materials may formally and informally contribute to the international law-making process. On a more practical level, this panel will examine the role these materials play in operational legal decision-making in the context of armed conflict.

### Recommended Readings:

- Nobuo Hayashi (ed.), *National Military Manuals on the Law of Armed Conflict* (2010)
- Michael N. Schmitt & Sean Watts, [State Opinio Juris and International Humanitarian Law Pluralism](#), 91 *International Law Studies* 171 (2015)
- Marco Sassòli, "Is the Time for Law of War Treaty Commentaries Over?," *Articles of War* (Feb. 26, 2021)
- Michael N. Schmitt, *Normative Architecture and Applied International Humanitarian Law*, 104 *INTERNATIONAL REVIEW OF THE RED CROSS* 2097-2110 (2022).
- Michael N. Schmitt, *Expert Manuals: An Insider's Account*, in *MAKING AND SHAPING THE LAW OF ARMED CONFLICT* (Sandesh Sivukarin and Christian Burne eds. Oxford University Press, 2023).

## **Panel Topic: Accountability for Misconduct during Military Operations**

This panel equips military legal advisors with best practices and principles for responding to misconduct committed by their own forces during military operations. The panel explores the fault lines of a range of situations, from combat operations to peacekeeping, violations of the LOAC to more minor acts of indiscipline and neglect, judicial and administrative responses, and civilian and military fora. The panel will emphasize the UN approach for national militaries participating in a military coalition. The panelists combine both academic expertise and practical experience in military operations around the world.

### Recommended Readings:

- International Society Leuven Manual on the International Law Applicable to Peace Operations
- Bergsmo, Dahl, and Sousa, *Military Self-Interest in Accountability for Core International Crimes* (2013) available at <https://www.toaep.org/pbs-pdf/14-bergsmo-dahl-sousa>

## **Lieber Series Book Launch**

'The West Point Companion to the ICRC Updated Commentary to the Third Geneva Convention'.  
Published by West Point Press.

Professor Sean Watts Professor, Professor and Co-Director, Department of Law and Lieber Institute for Law and Warfare, U.S. Military Academy, West Point.

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