



NEWS FLASH 25

(July 2019)

Upcoming Events

IIIrd “Silent leges inter arma?” Conference – Bruges, 17th to 20th September 2019



The International Society for Military Law and the Law of War will hold the IIIrd ‘Silent leges inter arma?’ Conference in Bruges (Belgium) from 17 through 20 September 2019. The conference is built around various themes, including:

- Challenges of Evidence Gathering in Conflict Areas and Prosecution of Foreign Fighters

- Recent Developments of Human Rights Jurisprudence in relation to the Armed Forces
- The Use of Propaganda and Other Methods of Influencing Other Nations
- Follow-up on *The Leuven Manual on the International Law Applicable to Peace Operations* (Cambridge University Press, December 2017)

For additional information on this conference see the *Society's* website:

<https://www.ismllw.org/iiird-conference-bruges/>.

The report of the IInd “Silent leges inter arma?” Conference is available at

<https://www.ismllw.org/wp-content/uploads/2019/07/ISMLLW-996-N-E-6-Report-Bruges-Conference-2018.pdf>.

Advanced IHL Seminar for Lecturers and Researchers – Geneva, 9th to 13th September 2019

The International Committee of the Red Cross (ICRC) and the Geneva Academy of International Humanitarian Law and Human Rights will organize the 13th edition of their Advanced IHL Seminar for Lecturers and Researchers. It aims to enhance the capacity of lecturers and researchers to teach and research IHL contemporary issues, addressing both substantive and pedagogical aspects. The participants will *inter alia* be invited to conferences reflecting humanitarian issues currently faced in situations of armed conflicts and violence, as well as relating to the implementation of IHL. Several visits are also planned to help participants grasp the historical origins of IHL and how it is implemented in armed conflicts today. To foster interactions and debate amongst participants, sessions will be chaired by several speakers, who will provide different perspectives. Side events will also provide participants with informal opportunities for discussions with senior ICRC staff. Participants will be invited to keep in touch for further academic exchanges through a specific social media group. For additional information on this Advanced IHL Seminar, see: <https://www.icrc.org/en/event/12th-advanced-seminar-international-humanitarian-law-university-lecturers-and-researchers>.

UN Security Council adopts Resolution 2475 (2019) on Protection of Persons with Disabilities in Conflict – 20th June 2019

On 20th June 2019, the UN Security Council, acting unanimously, adopted Resolution 2475 (2019) on Protection of Persons with Disabilities in Conflict. The Security Council hereby expressed its commitment to address the disproportionate impact of armed conflict and related humanitarian crises on persons with disabilities.

The Resolution recalls the Geneva Conventions of 1949 and the additional Protocols thereto of 1977, as applicable, as well as the Convention on the Rights of Persons with Disabilities, in particular art. 11 on situations of risk and humanitarian emergencies. Furthermore, the resolution reaffirms that parties to armed conflict bear the primary responsibility to protect civilians, and recalls that States bear the primary responsibility to respect and ensure the human rights of all persons within their territory and subject to their jurisdiction as provided for by international law.

The Security Council *inter alia* urged all parties to armed conflict to take measures, in accordance with applicable international law obligations to protect civilians, including those with disabilities, and to prevent violence and abuses against civilians in situations of armed conflict, including those involving killing and maiming, abduction and torture; as well as rape and other forms of sexual violence in conflict and post-conflict situations.

It also emphasized the importance of building capacity and knowledge of the rights and specific needs of persons with disabilities across UN peacekeeping and peacebuilding actors.

The Council further urged States to enable the meaningful participation and representation of persons with disabilities, including their representative organizations, in humanitarian action and in conflict prevention, resolution, reconciliation, reconstruction and peacebuilding

Furthermore, State Parties are for instance asked to take all appropriate measures to eliminate discrimination and marginalization of persons on the basis of disability in

situations of armed conflict and to comply with the obligations applicable to them under the Convention on the Rights of Persons with Disabilities.

For more information:

The meeting coverage: <https://www.un.org/press/en/2019/sc13851.doc.htm>

The full text of the resolution: [http://undocs.org/s/res/2475\(2019\)](http://undocs.org/s/res/2475(2019))

(Thibaut East)

UN Secretary General compilation of decisions of international courts, tribunals and other bodies referring to the ILC's ARSIWA 2001 – 23rd April 2018

On 23rd April 2019, the UN Secretary-General released the fifth compilation, supplementing the previous four, of decisions of international courts, tribunals and other bodies referring to the State responsibility articles (the International Law Commission's 2001 articles on the responsibility of States for internationally wrongful acts). The compilation contains an analysis of a further 86 cases in which the State responsibility articles were referred to in decisions taken during the period from 1st February 2016 to 31st January 2019 by the International Court of Justice; the International Tribunal for the Law of the Sea; the International Criminal Court; panels of the World Trade Organization; international arbitral tribunals; the African Court on Human and Peoples' Rights; the African Commission on Human and Peoples' Rights; the European Court of Human Rights; the Inter-American Court of Human Rights; the Caribbean Court of Justice; the Economic Community of West African States Court of Justice; and the General Court of the European Union.

For the full document: <https://undocs.org/A/74/83>

(Thibaut East)

Sudan's ongoing internet shutdown from a human rights perspective

According to Human Rights Watch, Sudan's ongoing internet shutdown by the Transitional Military Council since 3rd June 2019 is an infringement of multiple human rights, including the rights to freedom of expression and information, and hinders others, including the right to free assembly. Sudan's authorities should immediately restore access to the internet, Human Rights Watch said.

The UN Human Rights Council has unequivocally (see e.g. landmark Resolution A/HRC/32/L.20 adopted on 1st July 2016) condemned measures to intentionally prevent or disrupt access to or dissemination of information online, in violation of international human rights law, and said that all countries should refrain from and cease such measures.

With reference to General comment N° 34 of UN Human Rights Committee (see <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>) on art. 19 of the International Covenant on Civil and Political Rights (freedom of opinion and expression), Human Rights Watch stresses that Sudan has an international obligation to ensure that internet-based restrictions are provided by law and a necessary and proportionate response to a specific security concern. Officials should not use broad, indiscriminate shutdowns to curtail the flow of information, or to harm civilians' ability to freely assemble and express political views, Human Rights Watch said. See also the Joint Declaration on Freedom of Expression and responses to conflict situation adopted by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE, Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15921&LangID=E>, which *inter alia* states that States should not respond to crisis situations by adopting additional restrictions on freedom of expression, except as strictly justified by the situation and international human rights law, and that any restriction on the freedom of expression must meet the three-part test under international human rights law, namely that it is provided for by law, it serves to protect a legitimate interest recognized under international law and it is necessary to protect that interest.

For the full text of the statement made by Human Rights Watch: <https://www.hrw.org/news/2019/06/12/sudan-end-network-shutdown-immediately>.

(Benoit Contzen)

The Human Rights situation in Ukraine

On 13th June 2019, the Office of the UN High Commissioner on Human Rights released its 26th report on the human rights situation in Ukraine between 16th February and 15th May 2019.

Impact of hostilities:

A. Conduct of hostilities and civilian casualties (§§ 25-30): Between 16th February and 15th May 2019, 45 civilian casualties related to conflict were recorded by the OHCHR including 10 killed and 35 injured. The number constituted a 181 per cent increase compared with the previous reporting period (between 16th November 2018 and 15th February 2019) in which 16 civilian casualties were recorded (2 killed, 14 injured). However, this number is the lowest compared with the same calendar periods from 2015 to 2018. In 2019, civilian casualties remain among the lowest of the entire conflict period, 11 on average per month (2-3 killed, 8-9 injured). These numbers have been steadily decreasing since 2017. If they sustain until the end of 2019, there would be an over 50 per cent decrease in civilian casualties compared with 2018, which in turn has seen a 50 percent decrease compared with 2017. According to the report this shows that it is possible to progressively decrease civilian casualties, to bring them close to zero, until a sustainable solution to the conflict is found. Adherence to the Minsk Agreements and respect of international humanitarian law have been key factors in making this happen, according to OHCHR.

The Government decided, in March 2019, to develop a national policy framework that would establish institutional authorities and responsibilities for the protection of civilians and civilian objects in hostilities as recommended in the 2018 United Nations Secretary General's report on protection of civilians in armed conflict.

B. The impact on economic and social rights such as remedy and reparation to civilian victims (§§ 32-33), restitution and reparation for use or damage of private property (§§ 34-36), right to social security and social protection (§§37-39) and the freedom of movement (§§ 40-42): Remedy and reparation to civilian victims remain lacking five years after the outbreak of the conflict. There is a lack of a comprehensive State policy and mechanism on remedy and reparation in line with international standards, advocated for by the OHCHR, which remains a concern despite advances in the forms of implementation of amendments to the law on war veterans concerning persons who suffered disabilities from conflict-related injuries. The OHCHR noted that there have been positive court cases regarding remedy and reparation to families who lost their family members due to hostilities.

The OHCHR documented cases of pillage of civilian homes on both sides of the contact line as well as cases of military use of civilian property without the provision of compensation, nor alternative housing to the owners. According to the OHCHR, lease agreements are necessary to guarantee owners access to compensation for the use of their property, even when prompted or justified by imperative military necessity.

Regarding social security and social protection rights, the OHCHR noted that there is a continued lack of Ukrainian Government action to guarantee the payment of a pension to all Ukrainian citizens irrespective of their place of residence and registration. The OHCHR commended the *Pension Fund of Ukraine* initiative to develop draft amendments to resolutions regulating the payment of pensions to internally displaced persons which annul the residency verification requirement for pensioners. However, the OHCHR reiterated that current draft amendments do not protect internally displaced persons from the arbitrary suspension of their pensions.

Freedom of movement remains significantly curtailed, the OHCHR noted. Throughout the reporting period, conditions for crossing between the Government-controlled territory and territory controlled by the 'Donetsk people's republic' and the 'Luhansk people's republic' remained harrowing, due to insufficient entry-exit checkpoints (EECPs) and dangerous crossing conditions. At least 9 civilians died from health complications while crossing the EECPs during the reporting period. The Ukraine Security Service changed the validity of permits for civilians to cross the contact line: as of 28 March 2019, permits requested or renewed no longer have an expiry date, a positive development the OHCHR welcomed.

Violations of the right to physical integrity (§§ 43-55): The OHCHR documented 231 human rights violations and abuses involving arbitrary detention, torture, ill-treatment and/or threats to physical integrity, committed on both sides of the contact line. 68 violations occurred within the reporting period, which affected 39 victims (38 men and one woman), of which, 14 are attributed to the Government of Ukraine, 4 are attributed to the 'Donetsk people's republic' and 50 are attributed to the 'Luhansk people's republic'.

Administration of justice (§§56-65) and accountability (§§66-72): The administration of justice in Ukraine is overall an area of concern for the OHCHR. The latter documented 95 violations of the right to a fair trial in conflict-related cases, particularly through the continued practice of prolonged trials and detention pending trial in order to pressure defendants.

With regards to accountability for the killings and violent deaths of over 140 people during the 2013-2014 Maidan protests and the violent events of 2 May 2014 in Odesa, no individual has been brought to justice in both cases.

Human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation (§§95-106): The report also addresses the human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation, in which it states the continued violations of international humanitarian law and human rights, including those of detainees, committed by the Russian Federation, as the occupying power on the peninsula.

The OHCHR concludes its report with an extensive list of recommendations addressed respectively to the Ukrainian authorities and governmental organs, all parties involved in the hostilities in the Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and armed groups of the 'Donetsk people's republic' and 'Luhansk people's republic' and to the international community (particularly the Russian Federation), which have as broad aim to improve and uphold the protection of human rights until a sustainable peaceful solution to the conflict is found.

For the full text of the report:
<https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UAREports.aspx>

(Thibaut East)

XIIth Seminar for Legal Advisors of the Armed Forces – Geneva, 18th to 21st June 2019

From 18th to 21st June 2019, the *International Society for Military Law and the Law of War* held its XIIth Seminar for Legal Advisors of the Armed Forces in Geneva with the support of the Geneva Centre for Security Policy (GCSP)(co-organizer), as well as the Swiss Federal Department of Defence, Civil Protection and Sport (DDPS), the Swiss Federal Department of Foreign Affairs (FDFA) and the Swiss Group of the ISMLLW. The main theme of the Seminar was *the Law of Armed Non-State Actors 70 Years After the Geneva Conventions*.

Sub-themes explored during lectures in sessions chaired by distinguished scholars and senior officers included:

- 70 Years of International Law Applied to Non-State Armed Groups: From Common Article 3 to the Equivalence of IAC and NIAC Law?
- Losing Clarity on the Use of Force: From Targeted Strikes to Permanent War
- Military Legal Advisers dealing with Volatile Legal Environments
- Legal Basis, Grounds for Detention and Procedural Safeguards for Detention in Non-International Armed Conflicts
- Making Justice in Non-International Armed Conflicts: Missing Link or Overlapping Jurisdiction?
- The Evolution of Peace Operations: From Buffer Force between States to Robust Mandates and Active Protection of Civilians against Non-State Armed Groups
- Bringing Private Military and Security Companies under International Law: Need for Clear Hard Law or New Soft Law?
- Future Challenges in Non-International Armed Conflicts: Conducting Operations in Complex Environments

The full programme of the Seminar is available on the *Society's* website:

<https://www.ismllw.org/events/seminars-for-legal-advisors-of-the-armed-forces/>

ICC: Situation in Bangladesh/ Myanmar assigned to Pre-Trial Chamber III – 25th June 2019

On 25th June 2019, the ICC presidency constituted and assigned to Pre-Trial Chamber III the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar concerning the alleged deportation of the Rohingya people from Myanmar to Bangladesh.

The decision comes following the announcement on 18th September 2018 of the opening of a preliminary investigation on the situation after ICC Pre-Trial Chamber I had decided that the ICC may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar (not a State party to the Rome Statute) to Bangladesh (State party to the Rome Statute).

For the full text of the decision: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/19-1>

(Thibaut East)

ICC: President speaks at Economic Community of West African States Summit – 29th June 2019

On 29th June 2019, the President of the International Criminal Court (ICC), Judge Chile Eboe-Osuji, delivered a speech at the opening ceremony of the 55th Ordinary Session of the Authority of Heads of State and Government of the Economic Community of West African States (ECOWAS) in Abuja, Nigeria.

He recalled that West Africa has long been a strong bastion of support for the ICC and international justice. Today, only two of the ECOWAS Member States are not yet parties to the Rome Statute (Guinea Bissau and Togo). He hoped to see these States soon within the fold of the Rome Statute. Then, he affirmed that the International Criminal Court has changed the way the world looks at atrocities. « The world expects accountability ». However, the ICC needs the cooperation of the State in order to accomplish its task suitably. Moreover, under the principle of complementarity, the ICC is a court of last resort. Justice must be held by the national courts in the first instance. He concluded by saying that West African leaders must continue their efforts to protect the principles of the Court.

For the full text of the remarks: <https://www.icc-cpi.int/itemsDocuments/190629-ICC-President-remarks-ECOWAS-Summit-ENG.pdf>

(Benoit Contzen)

ICJ: Application of the Convention on the Elimination of all forms of Racial Discrimination (CERD) (Qatar v. United Arab Emirates) – The Hague, 14th June 2019

On 14th June 2019, the ICJ rejected, by 15 votes to 1, the Request for the indication of provisional measures submitted by the United Arab Emirates on 22nd March 2019.

The provisional measures requested by the United Arab Emirates were (1st) that the ICJ order that Qatar immediately withdraw its Communication submitted to the CERD Committee and take all necessary measures to terminate consideration thereof by that Committee; (2nd) that Qatar immediately desist from hampering the United Arab Emirates' attempts to assist Qatari citizens, including by un-blocking in its territory access to the website by which Qatari citizens can apply for a permit to return to the United Arab Emirates and requests relating to the non-aggravation of the dispute (3rd and 4th).

The recent ICJ Order comes following Qatar's application, on 11th June 2018, against the United Arab Emirates regarding alleged violations of the CERD, coupled with a request for the indication of provisional measures, upon which the ICJ acted by indicating certain provisional measures directed at the United Arab Emirates by an Order on 23rd July 2018.

For the summary of the Order of 14th June 2019: <https://www.icj-cij.org/files/case-related/172/172-20190614-SUM-01-00-EN.pdf>

For the press release of the Order of 14th June 2019: <https://www.icj-cij.org/files/case-related/172/172-20190614-PRE-01-00-EN.pdf>

(Thibaut East)

ITLOS: Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), Provisional Measures- - 25th May 2019

In the dispute between Ukraine and the Russian Federation concerning the immunity of three Ukrainian naval vessels and the twenty-four servicemen on board, the International Tribunal for the Law of the Sea prescribed, on the 25th May 2019, by 19 votes to 1, provisional measures, following a request made by Ukraine, on 26th April

2019, under article 290, paragraph 5, of the United Nations Convention on the Law of the Sea.

Facts: On 25th November 2018, three Ukrainian naval vessels (the *Berdyansk*, the *Nikopol* and the *Yani Kapu*) were seized and their 24 servicemen were arrested and detained by authorities of the Russian Federation. The incident took place in the Black Sea near the Kerch Strait. The *Berdyansk* and the *Nikopol* are artillery boats of the Ukrainian Navy, the *Yani Kapu* is a Ukrainian naval tugboat. They have the status of respectively Ukrainian naval warships and an auxiliary vessel. The crew of these three ships are considered as Ukrainian naval personnel.

According to Ukraine, the three naval vessels had departed from the “port of Odesa”, in the Black Sea, and their mission was to transit, through the Kerch Strait, to the port of Berdyansk in the Sea of Azov. When the Ukrainian vessels proceeded to the strait on 25th November 2018, they were blocked by Coast Guard vessels of the Russian Federation. The Ukrainian vessels later turned around and navigated away from the Kerch Strait but were pursued by the Coast Guard vessels. During the pursuit, one Coast Guard vessel fired at the *Berdyansk*, wounding three members of its crew and causing damage to the vessel. In the following course of events, all three Ukrainian vessels and the servicemen on board were seized and detained by Coast Guard vessels of the Russian Federation.

According to the Russian Federation, the 24 Ukrainian servicemen on board were formally apprehended under Article 91 of the Code of Criminal Procedure of the Russian Federation as persons suspected of having committed a crime of aggravated illegal crossing of the State border of the Russian Federation (section 3 of Article 322 of the Criminal Code of the Russian Federation). By separate decisions of 27th and 28th November 2018 delivered by the Kerch City Court and the Kievskiy District Court of Simferopol, the Military Servicemen were placed in detention. On 17 April 2019, the Court Lefortovo District Court of Moscow extended the detention of the Military Servicemen until 24 July 2019.

Decision: Considering the *prima facie* jurisdiction and the urgency of the situation, the International Tribunal for the Law of the Sea prescribed the following provisional measures:

- The Russian Federation shall immediately release the Ukrainian naval vessels *Berdyansk*, *Nikopol* and *Yani Kapu*, and return them to the custody of Ukraine.

- The Russian Federation shall immediately release the 24 detained Ukrainian servicemen and allow them to return to Ukraine.

- Ukraine and the Russian Federation shall refrain from taking any action which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal.

The Tribunal also decided that Ukraine and the Russian Federation shall each submit to the Tribunal an initial report and authorized the President to request further reports and information as he may consider appropriate after that report.

Full text of the order of 25th May 2019:
https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_26/C26_Order_25.05.pdf

For a critical analysis of the case see the piece authored by Prof. James Kraska for EJIL: *Talk!*, available at <https://www.ejiltalk.org/did-itlos-just-kill-the-military-activities-exemption-in-article-298/>.

(Benoit Contzen)

NATO: First overarching space policy approved at meeting of Defence Ministers in Brussels, 27th June 2019

On 27th June 2019, NATO Defence Ministers approved NATO's first overarching space policy, which will guide NATO's opportunities and challenges for its approach to space, from the ability to navigate and track forces, to satellite communications, and detecting missile launches. According to NATO Secretary-General Jens Stoltenberg, this is not about militarizing space: NATO can play an important role as a forum to share information, increase interoperability, and ensure that missions and operations can call on the support they need.

For the minutes of the press-conference of NATO's Secretary-General following the meeting of Defence Ministers:

https://www.nato.int/cps/en/natohq/opinions_167245.htm

(Thibaut East)

European Committee of Social Rights recognizes again trade union rights for members of the armed forces in Europe – 7th June 2019

On 7th June 2019, the decision of the European Committee of Social Rights on the *CGIL v. Italy* (No. 140/2016) case was published. The ECSR found that Italy had violated rights to establish and join trade unions, negotiate collective agreements and strike established in the European Social Charter (respectively articles 5, 6§2 and 6§4) following a complaint by the Italian General Confederation of Labour concerning the alleged violation of the rights of members of the financial guards (which has military status). The ECSR had already recognized trade union rights for military personnel in its decision in the [EUROMIL v. Ireland \(No 112/2014\)](#) case (rendered public in February 2018), which dealt with trade union rights of Irish military associations.

Full text of the *CGIL v. Italy* (No. 140/2016) decision:

[https://hudoc.esc.coe.int/fre/#{"ESCDcIdentifier":\["cc-140-2016-dmerits-en"\]}](https://hudoc.esc.coe.int/fre/#{)

Full text of the [EUROMIL v. Ireland \(No 112/2014\)](#) decision:

[https://hudoc.esc.coe.int/fre/#{"ESCDcIdentifier":\["cc-112-2014-dmerits-en"\]}](https://hudoc.esc.coe.int/fre/#{)

See also: <http://euromil.org/trade-union-rights-recognized-again-for-military-personnel-by-the-european-committee-of-social-rights/>

(Thibaut East)

Strait of Hormuz, Iran-U.S. situation

Naval Mine Strikes and Attribution in International Law

On 13th June 2019, two tankers, the Japanese *Kokuka Courageous* and the Norwegian *Front Altair*, suffered damage seemingly caused by limpet mines while in transit across the Gulf of Oman at the mouth of the Strait of Hormuz. The United States and the UK have both blamed an attributed responsibility to

Iran for the attacks. Iran has denied responsibility and the Iranian foreign minister commented that the charge was '[without] a shred of factual or circumstantial evidence'.

James Kraska and Robert McLaughlin writing in the European Journal of International Law blog sought to answer, by referring to three landmark cases of the International Court of Justice (namely the *Corfu Channel* case, the *Military and Paramilitary Activities* case, and the *Oil Platforms* case), whether the attacks can be attributed to Iran based on the available evidence and if so, what measures the affected States can take in response. See J. Kraska & R. McLaughlin, *Attribution of Naval Mine Strikes in International Law* <https://www.ejiltalk.org/attribution-of-naval-mine-strikes-in-international-law/>.

See also Douglas Guilfoyle, *Iran and the Strait of Hormuz: some initial thoughts* <https://www.ejiltalk.org/iran-and-the-strait-of-hormuz-some-initial-thoughts/>.

U.S. Drone shoot - down by Iranian military forces

On 20th June 2019, a US Navy remotely piloted aircraft (RPA) was shot down by the Iranian Islamic Revolutionnary Guard Corps Navy (IRGCN).

Whereas the mine strikes on two tankers in the Gulf of Oman on 13th June 2019 case primarily concerned the question of attributability from an international law perspective, there is no question that the shooting down of the US drone on 20th June via a surface-to-air missile is attributable to Iran. The latter situation concerns issues of *jus ad bellum*, and whether the U.S. could have a right of use of force against Iran in response to the attack.

Of the three exceptions to article 2(4) UN Charter's prohibition of the use of force (namely if the other State gives its consent; if the UN Security Council authorizes the use of force and if there is a right of self-defence or collective self-defence according to article 51 UN Charter) only the right to self-defence would seem to be an option for the U.S. . Iran has not given its consent for US strikes, nor has the UNSC authorized military action by the US in response to the attacks (limpet mine and drone strikes of 13th and 20th June 2019 respectively). For a right of self-defence or collective self-defence to arise according to article 51 UN Charter firstly an armed attack has to take place and the response must be necessary and proportional.

The Iranian foreign minister, Javad Zarif, claimed that the drone was in Iranian airspace when it was shot down. If this was indeed the case the U. S. seemingly

would not have a right to self-defence. Furthermore, according to the ICJ judgments in the *Military and Paramilitary Activities* and *Oil Platforms* cases, a minimum level of severity is necessary in order to constitute an armed attack, this may not have been reached in the present case with the attack on an unmanned military drone that places no lives at risk.

Articles consulted:

- M. Schmitt, *Top Expert Backgrounder: Aborted U.S. Strike, Cyber Operation Against Iran and International Law*

<https://www.justsecurity.org/64669/top-expert-backgrounder-on-aborted-u-s-strike-and-cyber-operation-against-iran-and-international-law/>

- A. Deeks, *Does the U.S. Currently Have a Right of Self-Defence Against Iran?* <https://www.lawfareblog.com/does-us-currently-have-right-self-defense-against-iran>

- A. Deeks and S. R. Anderson, *Iran Shoots Down a U.S. Drone: Domestic and International Legal Implications* <https://www.lawfareblog.com/iran-shoots-down-us-drone-domestic-and-international-legal-implications>

International Aviation Law misunderstanding?

Writing in the European Journal of International Law blog, on 1st July 2019, James Kraska stated that Iran's shootdown of the U.S. drone on 20th June 2019 may have been caused by a misunderstanding of international aviation law by the Iran Revolutionary Guard Corps Navy (IRGCN) commander who ordered the shootdown. It also appears that the order had not been sanctioned by the Iranian government in Tehran.

Following the shootdown of the drone, Iran and U.S. propounded conflicting accounts of what had occurred (similarly to the direct aftermath of the limpet mines and tankers situation of the Strait of Hormuz of 13th June 2019).

Iran claimed the drone was operating in "Iranian airspace," and "over its territory" (over which Iran has complete and exclusive sovereignty according to articles 1 and 2 of the Chicago Convention), while the U.S. claim that it was flying in international airspace, 21 nautical miles offshore (beyond the 12 nautical miles limit of Iran's territorial waters, article 3 UNCLOS) and thus not over Iranian airspace. Regardless of which claim is factual, it seems that the drone was flying in Iran's Flight Information Region (FIR).

An FIR is a region that is managed by national air traffic authorities but only to facilitate international overflight and the areas of FIRs that include

international airspace do not fall under the sovereignty of coastal States (such as Iran in this case). Although national air traffic authorities may direct commercial air traffic in their FIRs (pursuant to article 2 Rules of the Air, appendix to the Chicago Convention), according to article 3 of the Chicago Convention, they do not have authority to direct or interfere with State and military aircraft. The latter only have a duty to fly with “due regard” for the safety and freedom of overflight of other aircraft (articles 56 and 58 UNCLOS). According to this theory, the IRGCN commander would have mistaken Iran’s FIR for Iran’s national airspace and consequently ordered the shutdown of the drone flying in the FIR.

Furthermore, if it was in fact the case that the drone was flying over Iranian airspace questions arise as to whether the shutdown was necessary. Even though States can enforce and there is no right of innocent passage for foreign aircraft (articles 17-19 UNCLOS) over their national airspace, they are usually reluctant to use force against foreign aircraft in the exercise of this.

Kraska concludes that if this theory proves to be true, it would reassert the need for operational military commanders to have significant knowledge of international law as this legal misunderstanding nearly triggered an armed conflict between Iran and the U.S.

For the full article: <https://www.ejiltalk.org/misunderstanding-of-international-aviation-law-may-be-behind-irans-shutdown-of-the-u-s-global-hawk-drone/>

Another interesting article with a focus on transit rights according to articles 38 and 39 UNCLOS and the Strait of Hormuz by M. Nevitt: <https://www.justsecurity.org/64725/the-missing-piece-in-us-iran-drone-dispute-navigational-freedoms-and-the-strait-of-hormuz/>

Recent publications

- L. A. Sicilianos & M. A. Kostopoulou, *The Individual Application under the European Convention on Human Rights* (2019).
 - A practical guide, created by the current President of the ECtHR and a lawyer at the Greek Court of Cassation, aimed at lawyers and potential individual applicants under the ECHR, which explains and analyses clearly and in detail the different stages of an individual application

procedure under the ECHR as well as rules and procedures of the ECtHR.

For more information: <https://book.coe.int/fr/cour-europeenne-des-droits-de-l-homme/7936-the-individual-application-under-the-european-convention-on-human-rights.html>

- M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edgar Elward Publishing Ltd., (2019).

For more information: <https://www.geneva-academy.ch/news/detail/223-marco-sassoli-focuses-in-his-new-ihl-book-on-controversies-solutions-and-the-challenges-faced-when-implementing-the-law>

- S. Casey-Maslen & T. Vestner, *A Guide to International Disarmament Law*, Routledge, (2019).

For more information: <https://www.routledge.com/A-Guide-to-International-Disarmament-Law-1st-Edition/Casey-Maslen-Vestner/p/book/9780815363873>

News Flash of the International Society for Military Law and the Law of War - Terms and conditions:

The News Flash is circulated electronically. The selected authors contributing to an issue of this News Flash do so in their personal capacity. All views expressed and all descriptions of facts in any issue of this News Flash are solely those of its respective author. The *International Society for Military Law and the Law of War* holds the right to modify any issue of this News Flash as deemed necessary, including after initial publication. All issues of this News Flash, as modified if deemed necessary, will be published at www.ismllw.org. This official website of the *International Society for Military Law and the Law of War* shall serve as the source for referencing to this News Flash. The *International Society for Military Law and the Law of War* is the exclusive copy right holder of this News Flash. Reproduction under any form and of any issue of this News Flash is only authorized after having received the written approval thereto of the General Secretariat of the *International Society for Military Law and the Law of War*.

News Flash de la Société Internationale de Droit Militaire et de Droit de la Guerre – Conditions :

Le News Flash est distribué en format électronique. Les auteurs sélectionnés contribuent à ce News Flash de leur propre chef. Toutes opinions émises et toutes descriptions de faits dans ce News Flash est uniquement celles de leurs auteurs respectifs. La *Société Internationale de Droit Militaire et de Droit de la Guerre* se réserve le droit de modifier tous les points de ce News Flash en cas de besoin, même après publication initiale. Tous les numéros de ce News Flash, modifiés en cas de besoin, seront publiés sur www.ismllw.org. Ce site Web officiel de la *Société Internationale de Droit Militaire et de Droit de la Guerre* sera la source de référence pour ce News Flash. La *Société Internationale de Droit Militaire et de Droit de la Guerre* est titulaire exclusive des droits d'auteur de ce News Flash. La reproduction sous toutes ses formes, d'un point de ce News Flash n'est autorisée qu'après en avoir obtenu l'autorisation par écrit du Secrétariat général de la *Société Internationale de Droit Militaire et de Droit de la Guerre*.