Yearbook of International Humanitarian Law

Volume 15

For further volumes: http://www.springer.com/series/8912

Yearbook of International Humanitarian Law Volume 15, 2012







General Editor
Terry D. Gill
Professor of Military Law
University of Amsterdam and Netherlands Defence Academy
Amsterdam/Breda
The Netherlands

Cover Photo: © William Belcher, U.S. Air Force

ISBN 978-90-6704-923-8 ISBN 978-90-6704-924-5 (eBook) DOI 10.1007/978-90-6704-924-5

© T.M.C. ASSER PRESS, The Hague, The Netherlands, and the authors 2014 This Volume is also available as a journal product through Cambridge University Press. In addition to the electronic version published on www.springerlink, the Yearbook is also available online through the Cambridge Journals Online service.

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

Editorial Board

Prof. Terry D. Gill (General Editor), University of Amsterdam/Netherlands Defence Academy
 Prof. Tim McCormack (Editor, Correspondents' Reports), University of Melbourne
 Prof. Robin Geiß (Managing Editor), University of Glasgow
 Dr. Robert Heinsch (Managing Editor), University of Leiden
 Dr. Christophe Paulussen (Assistant Managing Editor), T.M.C. Asser Instituut, The Hague
 Jessica Dorsey JD, LLM (Editorial Assistant), T.M.C. Asser Instituut, The Hague

Board of Advisors to the Editorial Board

Dr. Louise Arimatsu.

The Royal Institute of International Affairs Chatham House, London Dr. William Boothby, Geneva Centre for Security Policy Prof. Geoffrey Corn, South Texas College of Law Prof. Robert Cryer, University of Birmingham

Dr. Cordula Droege, International Committee of the Red Cross

Col. Dr. Paul Ducheine, Netherlands Defence Academy/University of Amsterdam Prof. Wolff Heintschel von Heinegg, United States Naval War College

Dr. Jann Kleffner LL.M., Swedish National Defence College

Prof. Heike Krieger, Free University of Berlin

Dr. iur. Nils Melzer, University of Zürich

Prof. Héctor Olásolo, University of El Rosario, Colombia/The Hague University for Applied Sciences

Jelena Pejic, International Committee of the Red Cross
Dr. Kinga Tibori-Szabó, Special Tribunal for Lebanon
BGen Kenneth W. Watkin (Ret'd)/Former Judge Advocate General, Canada
Dr. Gentian Zyberi, Norwegian Centre for Human Rights

Board of Recommendation

HRH Princess Margriet of the Netherlands, Honorary President of the Netherlands Red Cross Prof. em. George Aldrich, University of Leiden

Prof. Horst Fischer, University of Leiden

Dr. Dieter Fleck, Honorary President of the International Society

for Military Law and the Law of War

H. E. Judge Christopher Greenwood, International Court of Justice Prof. em. Frits Kalshoven, University of Leiden

H. E. Judge Theodor Meron, International Criminal Tribunal for the former Yugoslavia H. E. Judge Fausto Pocar, International Criminal Tribunal for the former Yugoslavia

Prof. Michael N. Schmitt, United States Naval War College

Contents

Part I The Tallinn Manual on the International Law Applicable to Cyber Warfare The Tallinn Manual and International Cyber Security Law. 3 Wolff Heintschel von Heinegg 2 The Tallinn Manual on the International Law Applicable to Cyber Warfare: A Commentary on 19 Nicholas Tsagourias 3 Law in the Virtual Battlespace: The Tallin Manual 45 Rain Liivoja and Tim McCormack Part II Child Soldiers and the Lubanga case 4 Between Consolidation and Innovation: The International Criminal Court's Trial Chamber Judgment in the Lubanga Case..... 61 Sylvain Vité 5 The Effects of the *Lubanga* Case on Understanding and Preventing Child Soldiering...... 87 Mark A. Drumbl 6 Sexual Violence Against Children on the Battlefield as a Crime of Using Child Soldiers: Square Pegs in Round Holes and Missed Opportunities in *Lubanga*..... 117 Joe Tan

viii Contents

Part III Other Articles

7	The Duty to Investigate Civilian Casualties During Armed Conflict and Its Implementation in Practice	155
8	Year in Review 2012	187
Тa	able of Cases	237
In	dex	241

In order to make the *Correspondents' Reports* immediately and widely accessible, they are now available online at

www. asser. nl/YIHL/correspondents reports.

This brings the added benefit of making them fully searchable, thereby more easily serving the needs of scholars and practitioners.