

# **Yearbook of International Humanitarian Law**

Volume 16

More information about this series at <http://www.springer.com/series/8912>

Terry D. Gill  
General Editor

Yearbook of International  
Humanitarian Law  
Volume 16, 2013



ASSER PRESS

CAMBRIDGE  
UNIVERSITY PRESS



Springer

*General Editor*

Terry D. Gill

Professor of Military Law

University of Amsterdam and Netherlands Defence Academy

Amsterdam/Breda

The Netherlands

Cover Photo: © CICR/VII/HAVIV, Ron Haïti—Prison in Port au Prince

ISBN 978-94-6265-037-4

ISBN 978-94-6265-038-1 (eBook)

DOI 10.1007/978-94-6265-038-1

© T.M.C. ASSER PRESS and the author(s) 2015

This Volume is also available as a journal product through Cambridge University Press. In addition to the electronic version published on [www.springerlink](http://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](http://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](http://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 J.D., LL.M. (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  
of 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 Detention in Non-International Armed Conflict

<b>1</b>	<b>The Copenhagen Process: Principles and Guidelines</b> . . . . .	<b>3</b>
	Jacques Hartmann	
<b>2</b>	<b>Beyond Process: The Material Framework for Detention and the Particularities of Non-International Armed Conflict</b> . . . . .	<b>33</b>
	Ramin Mahnad	
<b>3</b>	<b>A Dialogue: Ethics, Law, and the Question of Detention in Non-International Armed Conflicts</b> . . . . .	<b>53</b>
	James Turner Johnson	

## Part II Other Articles

<b>4</b>	<b>Autonomous Attack—Opportunity or Spectre?</b> . . . . .	<b>71</b>
	Bill Boothby	
<b>5</b>	<b>The Practices of Apartheid as a War Crime: A Critical Analysis</b> . . . . .	<b>89</b>
	Paul Eden	
<b>6</b>	<b>A Critical Discussion of the Second Turkel Report and How It Engages with the Duty to Investigate Under International Law</b> . . . . .	<b>119</b>
	Michelle Lesh	
<b>7</b>	<b>Year in Review 2013</b> . . . . .	<b>147</b>
	Christophe Paulussen, Jessica Dorsey and Sarah-Jane Koulen	

**Part III Essays on the Boundaries of the Battlefield**

**8 Boundaries of the Battlefield: A Critical Look at the Legal Paradigms and Rules in Countering Terrorism . . . . .** 219  
 Jessica Dorsey and Christophe Paulussen

**9 Some Thoughts on the Relationship Between International Humanitarian Law and International Human Rights Law: A Plea for Mutual Respect and a Common-Sense Approach. . . . .** 251  
 Terry D. Gill

**10 Counter-Terrorism and International Law Since 9/11, Including in the EU-US Context . . . . .** 267  
 Gilles De Kerchove and Christiane Höhn

**11 Debates and Dichotomies: Exploring the Presumptions Underlying Contentions About the Geography of Armed Conflict. . . . .** 297  
 Laurie R. Blank

**12 Crossing Borders to Target Al-Qaeda and Its Affiliates: Defining Networks as Organized Armed Groups in Non-International Armed Conflicts . . . . .** 319  
 Peter Margulies and Matthew Sinnot

**Table of Cases. . . . .** 347

**Index . . . . .** 351

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

[www.asser.nl/YIHL/correspondentsreports](http://www.asser.nl/YIHL/correspondentsreports)

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