



LIEBER NOTES

Periodic Newsletter of the Lieber Society on the Law of Armed Conflict
Interest Group of the American Society of International Law

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Lieber Notes is the periodic newsletter of the Lieber Society. Any views expressed in this newsletter are those of the authors in their private capacities and do not purport to represent the official view of the Society or any government or organisation.

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Letter from your Chair

By Andrea Joy Harrison

I hope everyone had a wonderful holiday season and is ready for everything that 2020 will bring! Despite the sometimes toxic political climates that many of us are facing in our respective places of residence, I am continuously impressed by the respect and generosity with which our members treat one another. On that note, we have been working hard to implement new collaborations and projects in 2020 to capitalize on the platform which this Society provides to engage in candid and fruitful debates on critical legal and policy issues.

As you will see below, the first of these pilot projects is a joint papers workshop with the European Society of International Law's Interest Group on Peace and Security, which will take place next October and which will address the legal and operational issues arising in relation to partnered

military operations. We hope many of you will consider submitting papers for this inaugural event.

We are also happy to be co-sponsoring events like the Symposium on Civilian Casualties taking place in Washington DC on March 13th, which will put the work of practitioners at the forefront of the discussion, a request that was made by many of you in the membership survey. We will plan on hosting a networking reception after the event on the 13th, so please mark that in your calendars as this will be the first such opportunity for a Lieber networking event in 2020.

Please consider attending this year's ASIL Annual Meeting as well and joining us for the Lieber Society Business Meeting (details to follow).

Respectfully,

Andrea

Call for Nominations

This year the Society is having elections for Vice-Chair, Secretary, Treasurer and two (2) Executive Committee positions. All terms are for three years and all candidates must be members of ASIL and the Lieber Society.

Interested candidates should submit a brief statement of interest and a short biography here: <http://asil.org/ig-elections>. The deadline for nominations is Tuesday, February 11, 2020.

If you have any questions regarding the duties and responsibilities of the positions, please contact Chair Andrea Harrison (anharrison@icrc.org) or Vice-Chair Kathleen Doty (kathleendoty@gmail.com).

Upcoming Events

February 14, 2020: Please join the Lieber Society, the American Red Cross, CIVIC and Columbia Law School Human Rights Institute for a panel event entitled “In Search of Answers: US Military Investigations and Civilian Harm” on February 14th at 11:00am. The event will be hosted at the American Red Cross’s National Headquarters in Washington DC. Further details and registration information may be found at <https://www.eventbrite.com/e/in-search-of-answers-us-military-investigations-and-civilian-harm-tickets-90959459191>.

February 21, 2020: Southwestern School of Law in L.A. will be hosting a symposium entitled “Fighting in The Law’s Gaps.” This event, which will gather military, academic, and other experts to analyze apparent gaps in the law of armed conflict and to discuss how the law is operationalized both on the battlefield and off, and to highlight the challenges of applying it in modern arenas such as cyberspace. More information can be found here: <https://www.swlaw.edu/node/18861#t-2>.

March 13, 2020: Register now for the symposium, **Civilian Casualties: The Law of Prevention and Response**, an all-day event on Friday, March 13, 2020, at the American Red Cross National Headquarters in Washington, D.C. This event is co-sponsored by the American Society of International Law, the Lieber Society for the Law of Armed Conflict, the American Red Cross, the Stockton Center for International Law, and the International Committee of the Red Cross. (<https://www.eventbrite.ca/e/civilian-casualties-the-law-of-prevention-and-response-tickets-83971744749>).

Discussion topics include: (1) advising leaders and influencing operations from the front lines, (2) civilian casualty prevention measures in urban warfare and near peer conflict, (3) reporting and investigatory requirements in response to civilian casualty incidents, and (4) leveraging emerging technologies to prevent and respond to civilian casualties. In addition to four expert panels, there will be a morning keynote address by Lieutenant General Charles N. Pede, The Judge Advocate General, U.S. Army, and a noon keynote address by Daniel Mahanty, Director, Center for Civilians in Conflict (CIVIC), U.S. Program.

The Lieber Society will be organizing a “no-host” networking reception at The Admiral in Dupont Circle immediately following the conference.

March 28, 2020: The Canadian Red Cross has organized an academic conference on international humanitarian law at the Peter A. Allard School of Law, University of British Columbia in Vancouver. The event will bring together experts from academia, the military, and the Red Cross Red Crescent movement. The conference will focus especially on cyber warfare in the 21st century. To register for this free event, go to: <https://www.redcross.ca/how-we-help/international-humanitarian-law/conferences-trainings-and-events/mar-28th-2020-international-humanitarian-law-conference-in-vancouver>.

April 6-8, 2020: The Stockton Center for International Law will host the Third Annual Alexander C. Cushing International Law Conference at the U.S. Naval War College. The theme of the conference is “International Law and Conflict at Sea.” The conference is by invitation only, but if you would like to attend, please contact John Hursh at john.hursh.ctr@usnwc.edu.



The **End of War Project** is a multi-year project led by the Emory Law School Center for International and Comparative Law (Professor Laurie Blank, director) and the Lauder School of Government, Diplomacy and Strategy (Dr. Daphné Richemond-Barak, Head of the Law & Security Program) to examine issues related to the seemingly endless nature of contemporary conflicts, which increasingly blur the line between the once clearly delineated ‘state of war’ and the peace.

Eighteen years after the 9/11 attacks and the start of a seemingly never-ending conflict, the pace at which terrorist violence and conflict has spread from location to location is now matched by the challenges of ending these conflicts and addressing the legal, policy, moral and strategic questions that arise in the process. We will consider, inter alia, the now familiar cycle of an announced end to hostilities or defeat of a non-state group (whether in Afghanistan, Iraq or Syria) followed by continued or intensified violence and efforts to quell or prevent further violence; the release and pending release of hundreds convicted of terrorism-related crimes; the hundreds of foreign fighters detained in Iraq and Syria, many facing trial and death sentences in Iraqi courts and others in limbo, refused reentry to their home states. We also plan to address war termination in law and policy, below-the-threshold warfare and the norms governing the use of force, and the evolution of transnational justice in an era of never-ending wars.

The project’s inaugural workshop—**When Conflicts End and How: ISIS as a Case Study**—was held in September 2019 at the World Summit on Counter-Terrorism at the International Institute for Counter-Terrorism in Herzliya, Israel. Through an interdisciplinary conversation focused on counterterrorism strategy, international law, and relevant domestic law, the participants addressed selected initial questions and challenges through the lens of the conflict with ISIS: how do wars end, the extent and limits of self-defense, the meaning and elusiveness of victory, domestic and international authority to continue military operations, and the future of ISIS and other jihadist groups. In addition to an annual workshop at the World Summit on Counter-Terrorism, the project will include additional workshops or other events in the United States.

The End of War Project welcomes suggestions and opportunities for collaboration with individual researchers and institutions across a wide range of disciplines.

Member News

Dr. Noha Aboueldahab won this year's British Council Global Award for Professional Achievement, in recognition of his work and book on transitional justice. <https://www.britishcouncil.org/organisation/press/study-uk-alumni-awards-2019---global-winners-receive-awards-london>.

In commemoration of the 30th anniversary in November of the 1989 Convention on the Rights of the Child, the United Nations Audiovisual Library on International Law published "Child Rights, Conflict, and International Criminal Justice," a lecture by member **Diane Marie Amann**. The lecture is available in video and podcast formats at https://legal.un.org/avl/ls/Amann_HR.html.

Stratis Georgilas presented a paper on *Revisiting Maritime Blockade: Some Preliminary Thoughts on the Application of Force and Proportionality* at a conference entitled "The 1949 Rhodes Armistices—70 Years After" at the University of the Aegean's Department of Mediterranean Studies in October/November 2019.

John Hursh presented a paper "Redrawing the Direct-Indirect Military Assistance Distinction in the Populist Moment" at an international law conference hosted by the University of Ghent on December 5–6, 2019. ASIL member Professor **Gregory Fox** of Wayne State University also attended and presented on the conference's opening panel: Intervention on Whose Authority? The Ghent Rolin-Jaequemyns International Law Institute and the JOURNAL ON THE USE OF FORCE AND INTERNATIONAL LAW co-sponsored the conference: "What Room for Military Assistance on Request in the International Legal Order."

On November 19, **John Hursh** presented a guest lecture, Mass Atrocities and Human Security, in the Human Security Seminar at the Watson Institute for International and Public Affairs at Brown University. The Center for Human Rights and Humanitarian Studies at Brown University and the Humanitarian Response Program at the U.S. Naval War College organized this seminar.

Publications from Members

Robert L. Nelson & Christopher Waters, *Slow or Spectacular Death: Reconsidering the legal history of blockade and submarines in WW1*, 69 U. TORONTO L.J. 473 (2019)

The EMORY INTERNATIONAL LAW REVIEW published in No-

ember Volume 34, Special Issue, *The North Atlantic Treaty Organization's Seventieth Anniversary*. Several ASIL and Lieber Society members contributed to this edition, including Steven Hill, Sherrod Lewis Bumgardner and Mike Schmitt. This volume merits review by all members of the Lieber Society who wish to understand NATO, its multilateral foundation, and the Alliance's approach to collective defence. See <http://law.emory.edu/eilr/content/volume-34/issue-special/index.html>.

Dr. Noha Aboueldahab guest edited a special issue, *The Ethnography of Armed Conflict*, published in the INTERNATIONAL CRIMINAL LAW REVIEW. This publication may be found at the following link: <https://brill.com/view/journals/icla/19/5/icla.19.issue-5.xml>. She also published a Brookings analysis paper, *Re-Claiming Yemen: The Role of the Yemeni Professional Diaspora*. This was published in April 2019 and can be found here: <https://www.brookings.edu/research/reclaiming-yemen-the-role-of-the-yemeni-professional-diaspora/>. Dr Aboueldahab also published a paper for Rowaq, which is the Cairo Institute for Human Rights Studies' academic blog. The paper, *Peace and Justice in Libya's Transition*, was published in May 2019 and can be found here: <https://rowaq.cihrs.org/peace-and-justice-in-libyas-transition/?lang=en>.

Andrea Harrison reviewed fellow member **Dr. Daphné Richemond-Barak**'s book *Underground Warfare* in the AMERICAN JOURNAL OF INTERNATIONAL LAW. The review may be found at: <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/3A10B22819134801977914C82E7242A0/S0002930019000782a.pdf/underground-warfare-by-daphne-richemondbarak-new-york-new-york-oxford-university-press-2018-pp-xxii-296-index.pdf>.

LTC Michael Rizzotti, Judge Advocate, U.S. Army, will publish *Russian Mercenaries, State Responsibility, and Conflict in Syria: Examining the Wagner Group under International Law* in Volume 37(3) of the WISCONSIN INTERNATIONAL LAW JOURNAL later this spring. LTC Rizzotti researched this article for over a year at the Stockton Center. This article will be the first to examine the destabilizing effects of the Wagner Group. It also offers an important contribution for assessing state responsibility for non-state armed groups engaging in extraterritorial military operations.

The Commander's Handbook on the Law of Land Warfare: A New Tool for Commander's and Judge Advocates

By Michael W. Meier

Special Assistant to the Judge Advocate General
for Law of War Matters, National Security Law Division

On August 8, 2019, Army Field Manual (FM) 6-27/ Marine Corps Tactical Publication (MCTP) 11-10C, The Commander's Handbook on the Law of Land Warfare ("Handbook"), was published, replacing FM 27-10, The Law of Land Warfare (1956). This Handbook provides an invaluable tool for commanders, leaders, and their judge advocates to guide land forces in conducting disciplined military training and operations in accordance with the Law of Armed Conflict (LOAC). It is written for commanders and Soldiers in a way that is easily understood and applied across the spectrum of conflict.

The Handbook replaces the outdated FM 27-10, which lacked necessary context and often merely recited a particular rule. FM 6-27 is a user-friendly Handbook written for commanders and judge advocates in a way that is easily understood and applied across the spectrum of conflict. As our Army and Marine Corps transition from counterterrorism to peer-to-peer or near-peer conflicts, commanders and individual Soldiers and Marines must understand and apply LOAC to be effective on the battlefield of the future.

Published in 1956, FM 27-10 was outdated and narrowly scoped, which does not fully contemplate/reflect the modern Army experience. The Handbook captures the relevant intervening highlights, including adoption of the Additional Protocols and other instruments as well as lessons learned over multiple decades of military operations, which add relevancy and legitimacy for today's commanders and warfighters.

One complaint often heard about FM 27-10 is that it often merely recited the rule. The Handbook provides an explanation of and guidance for each of the various rules and principles – and in the right context. Drawing from treaties to which the United States is a party, customary international law (CIL), the DOD Law of War Manual, and other references, the Handbook describes long-standing U.S. military practice in applying LOAC across the spectrum of operations. It will likely prove a valuable tool in the development of complementary doctrine, TTPs and training in the years to come.

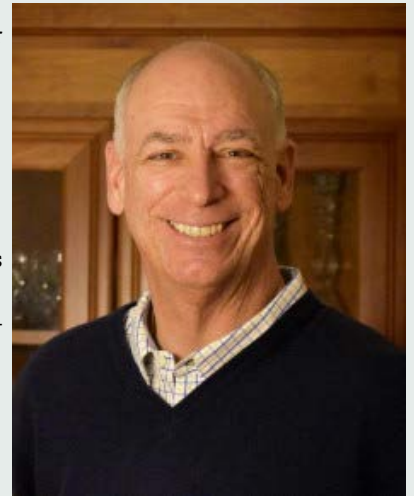
The Handbook is more "user-friendly." Commanders

can't and shouldn't have to read a statute or wordy legal treatise to make decisions on the battlefield. FM 6-27 is concise, clear and user-friendly for field application and non-practitioner utilization. It is written specifically for commanders, Judge Advocates, and individual Soldiers/Marines, from team leader on up, who will need to understand and apply the LOAC principles. Written to be easily understood by commanders and individual Soldiers and Marines, this clarity will support increased and common understanding, and informed compliance with LOAC.

Finally, as the U.S. Army and Marine Corps transition from counter-insurgency and counter-terrorism operations to planning for large scale combat operations, commanders and individual Soldiers must understand and instinctively apply LOAC to be effective on the battlefield of the future. In a high intensity conflict, legal advisors will not be with every decision maker. FM 6-27 is geared to empower those decision makers to understand and apply LOAC effectively in dynamic, complex environments. It places the responsibility on commanders to make LOAC compliance part of their planning and training process, and it is in those early stages of planning where legal advisors and leaders have the greatest impact on maximizing LOAC compliance while also accomplishing the mission. Importantly, if our commanders, Judge Advocates, and individual Soldiers/Marines are forced to operate in an "analog" fight, FM 6-27, at only 200 pages, is the perfect portable and comprehensive resource, while the DoD Law of War Manual remains available only online and sits at over 1200 pages.

FM 6-27 is the culmination of over 20 years of effort by countless attorneys, paralegals, commanders and Soldiers. The Handbook is not intended to compete with or replace DoD Law of War Manual. Each publication aims for a different audience. The Handbook incorporates the generational changes institutionalized over the last 60 years, and more accurately represents the complexities of current and future battlefields. It serves significantly as one more very valuable tool for commanders, Soldiers, and practitioners. You can download a copy for free at:

https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN19354_FM%206-27%20_C1_FINAL_WEB_v2.pdf



Woomera Manual Project Update

From Dean Melissa de Zwart, Adelaide Law School:

The next plenary meeting of the drafting team behind the **Woomera Manual on the International Law of Military Space Operations** will take place in Canberra, Australia between February 2 and February 7, 2020. The Woomera Manual is intended to clarify the international law that applies to military activities associated with the space domain and follows on the successes of earlier manuals such as the San Remo Manual on International Law Applicable to Armed Conflict at Sea, the Harvard Manual of International Law Applicable to Air and Missile Warfare, and the Tallinn Manual on International Law Applicable to Cyber Operations. The expert group consists of practitioners, lawyers, and academics from around the world, with meetings hosted to date in Australia, the United Kingdom, the United States, Japan, and the Netherlands.

As the drafting of the Manual nears completion, the focus in Canberra will be on finalizing the specific rules created by

the U.N. Outer Space Treaties and customary international space law. This effort will include issues such as “due regard” and “avoidance of harmful contamination” under Article IX of the Outer Space Treaty. University New South Wales Canberra, one of the core partners of the project, along with the University of Adelaide, the University of Nebraska, and the University of Exeter, will host the group of experts in February. Lieber Society member **Laurie Blank** of Emory Law School is a core expert on the manual and a participant in the Canberra meeting.

Following the Canberra meeting, the project will move to state engagement, to be hosted by the Netherlands government. This process will invite states to review the draft rules and provide feedback on state practice with respect to the use of outer space. The rules and commentary will also be subject to a rigorous process of peer review. Publication of the Woomera Manual is expected in 2021.

Call for Papers

The ASIL Lieber Society on the Law of Armed Conflict and the ESIL Interest Group on Peace and Security will be hosting a papers conference on Partnered Operations and International Law at La Sapienza, Rome, on **October 23, 2020**.

The details of the conference and papers submission may be found at <https://cmoran55.wixsite.com/esiligps/events>.

If interested, please submit an abstract of no more than 800 words by midnight on **March 31, 2020** to Andrea Harrison (anharrison@icrc.org) and Professor Nicholas Tsagourias (Nicholas.Tsagourias@sheffield.ac.uk).

