

LIEBER NOTES

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

Vol. 5 Issue 4 - Winter 2020

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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**

Dear Lieber Society members,

As we head into the holiday season, we wanted to send you off with one last newsletter. Despite all the uncertainties and tensions of 2020, I have been endlessly grateful for this community and its continued enthusiasm for all things IHL/LOAC.

As you may recall, the day that Washington DC shut down was also the day we had planned to host a symposium on civilian harm mitigation and to host a Lieber Society happy hour.

While we had to cancel that keystone event, we managed to pull off a fantastic webinar on civilian harm mitigation thanks to Keith Petty and many of you who volunteered their time and creativity to make it happen. That webinar series is now available for your use in courses or other venues, and I encourage you to check it out if you did not follow live. A special thanks to Claudia Bennett for designing the flyers and other dissemination products.

I also wanted to once again express my sincere gratitude to Mike Meier, the Lieber Society co-chair, for serving as the interim chair during my absence.

Thank you to the entire executive committee who always kindly and promptly respond to my relentless barrage of emails, we couldn't do this without you! And thank you to each of the members who contribute to making this society what it is.

I am looking forward to everything that 2021 will bring, including hopefully seeing many of you in person one again!

With warm wishes for the holidays and beyond,

Andrea Harrison

Call for Submissions to the 2021 Richard R. Baxter and Francis Lieber Writing Prizes

The 2021 Richard R. Baxter Military Writing Prize

The RICHARD R. BAXTER MILITARY WRITING PRIZE is still accepting submissions. Since 2007, the Lieber Society on the Law of Armed Conflict, an interest group of the American Society of International Law, has annually recognized a paper that significantly enhances the understanding and implementation of the law of war. The Richard R. Baxter Military Prize is awarded for exceptional writing in English by an active member of the regular or reserve armed forces, regardless of nationality.

Deadline for submitting papers. Papers for the 2021 competition must be received no later than 9 January 2021. Submissions should be sent to the Baxter Military Prize Coordinator, Dr. Christopher E. Bailey, at christopherbailey286@yahoo.com. The subject line should read "Baxter Prize Submission."

Further details may be found at : <https://www.asil.org/sites/default/files/documents/2021%20Baxter%20Call%20for%20Papers.pdf>

The 2021 Francis Lieber Prize

The American Society of International Law's Lieber Society on the Law of Armed Conflict is now accepting submissions for the Francis Lieber Prize. Both monographs and articles (including chapters in books of essays) are eligible for consideration — the prize is awarded to the best submission in each of these two categories.

Criteria and eligibility may be found on the Lieber Society webpage at: <https://www.asil.org/sites/default/files/documents/Call%20for%20Submissions%20Lieber%20Prize%202021.pdf>

Submissions, including a letter or message of nomination, must be received by 10 January 2021. Three copies of books must be submitted. Electronic submission of articles is encouraged. Authors may submit their own work. All submissions must include contact information (e mail, fax, phone, address) and relevant information demonstrating compliance with eligibility criteria. The Prize Committee will acknowledge receipt of the submission by e mail.

Printed submissions must be sent to:

Professor Laurie Blank
Emory University School of Law
1301 Clifton Road
Atlanta, Georgia 30322
USA

Electronic submissions must be sent to: Lblank@emory.edu

American Red Cross Essay Award

EDUCATION IN WAR

The American Red Cross Essay Award is an essay competition sponsored by the American Red Cross that seeks to promote the dissemination of International Humanitarian Law.

The competition will be open to anyone residing in the U.S. or its territories. Red Cross staff, volunteers, and interns are not eligible. There will be four categories for the competition:

- (1) Youth: High school students
- (2) Young adult: College students
- (3) Law school: Students enrolled in a Law School
- (4) Professional: Graduates / professionals

Topics: Each year the American Red Cross will designate a theme for that year's competition.

For the 2020-2021 competition, the topic is Education in War, including but not limited to: The protection of schools during armed conflicts; The effects of armed conflict on children's education; IHL education through informal means: the role of social media; The role of schools in teaching peace and preventing armed conflicts; The use of video games to teach the laws of armed conflict; IHL education and training for armed carriers; Increasing liability for those who use educational institutions as military objects.

Competition Guidelines:

- Maximum word count of 1,500 words, excluding foot notes and bibliography.
- Essays shall be written solely by the candidate.
- Essays shall not have been published.
- Essays shall be written in English.
- Only one submission will be accepted per person.
- Entries must be typed and emailed to IHLaw@redcross.org
- Essays shall be submitted in .docx or .pdf formats, with proper citation and bibliography.

Evaluation and Prizes: American Red Cross expert level instructors will conduct initial screening and a panel of IHL experts will choose winners. The American Red Cross will grant four awards, one for the best essay in each category.

Judges will value: critical thinking and analysis (25%), argument supported by evidence (25%), presentation and clarity (25%), relevance (25%). The authors of the best essay of each category shall receive a certificate and a \$200 USD cash prize.

Deadlines:

- The deadline for submission is 11:59 pm (EST) of 21 January, 2021
- The winners shall be announced during the Clara Barton Competition IHL 2021 Award Ceremony.
- The American Red Cross shall contact winners by 19 March, 2021.

More information is available at <https://www.rulesofwar.org/other-ihl-events>

Lieber Society Series on Civilian Casualties

By Michael W. Meier

A signature event for the ASIL Lieber Society in 2020, a symposium on civilian casualties, took place from September 30th to November 18, 2020. The series was co-sponsored by the American Society of International Law (ASIL), the American Red Cross, the Stockton Center for International Law at the U.S. Naval War College, and the International Committee of the Red Cross.

This symposium series was developed originally as a project of the American Society of International Law's Signature Topic Initiative. It was intended as a live event to be held on March 13, 2020. The symposium was to focus on the important topic of preventing and addressing civilian casualties in armed conflict, with an emphasis on topics such as: the role of practitioners, including government and military attorneys, NGOs/humanitarian workers, and the academy; developments in law and policy related to preventing and responding to civilian casualties in current conflict; and developments in the legal framework and emerging technologies, and how they will likely affect near peer conflicts of the future.

Unfortunately, March 13th was right around the time many of the COVID restrictions were put in place, which led to the symposium being cancelled a few days before the event. As there had been quite a bit of work already done to host the live event, the organizers decided to turn to the live event into the webinar format that many of us have become accustomed with COVID. It was decided to conduct the symposium through six panels, each touching on a topic critical to the protection of civilians and prevention of civilian casualties. Each is briefly set forth below. There is a link to each of the sessions provided below to easily enable you to watch (or watch again!) a particular session that interests you.

The first panel dealt with compliance professionals, the law and ethics and focused on how to advise leaders and influence operations from the front lines. We were fortunate to have LTG Charles (Chuck) Pede, The U.S. Army Judge Advocate General, provide introductory remarks. Professor Laurie Blank, Emory Law School, moderated a panel with Professor Laura Dickinson, George Washington Law School; Marc Linning, Center for Civilians in Conflict; and Ma-

yor Peter Combe, US Marine Corps Judge Advocate.

The second panel discussed prevention measures that could be taken for future conflicts, in particular looking at urban warfare and near-peer conflicts. The panel was moderated by Mike Pymble, Armed Forces Delegate, International Committee of the Red Cross, Washington DC Delegation. The panelists included: Rob "Butch" Bracknell, Assistant Legal Advisor, NATO, Allied Command Transformation; Professor Mitt Regan, Georgetown University Law Center; and Annie Shiel, Senior Advisor, US Policy and Advocacy, Center for Civilians in Armed Conflict.

The third panel focused on civilian casualty response measures, investigations, reports, and reparations. Daniel Mahanty, Director, Center for Civilians in Conflict, US Program, will provide introductory remarks. Marla B. Keenan, Non-resident Fellow, Henry L. Stimson Center, and Senior Advisor, PAX, moderated the panel, which included: Colonel Joshua Berry, Deputy Chief, National Security Law Division, Office of the Judge Advocate General; Matthew McCormack, Associate General Counsel, US Department of Defense, Office of the General Counsel; and Sahr Muhammedally, Director, MENA & South Asia, Center for Civilians in Conflict.

The fourth panel focused on how to leverage emerging technologies for the prevention and investigations of civilian casualties. Dr. Ulrike Franke, European Council on Foreign Relations, provided the introductory remarks. Dr. Larry Lewis, Vice President and Director of the Center for Autonomy and Artificial Intelligence, CNA. The expert panelists were: Colonel Chris Korpela, Associate Professor and Director of the Robotics Research Center, U.S. Military Academy, West Point; Lieutenant Colonel Matthew Krause, Director, Future Concepts Directorate, The Judge Advocate General's Legal Center and School; Shawn Steen, Senior Force Planner for Emerging Technologies, Office of the Secretary of Defense, Policy; and Iben Yde, Assistant Professor of International and Operational Law, Royal Danish Defence College.

The fifth panel considered how to prevent and respond to civilian casualties in partnered operations. Colonel (Retired) Randy Bagwell, Senior Director of International Services, U.S. Programs, American Red Cross, provided the introductory remarks. The panel was moderated by Annyssa Bellal, Senior Research Fellow and Strategic Advisor on International and Humanitarian Law, Geneva Academy. The panelists included: Major Jonathan Legg, Assistant Professor, Department of Law, U.S. Air Force Academy; Nicholas Mull, Civilian Harm Program Manager, Defense Institute of International Legal Studies (DI-

ILS); and Loren Voss, Senior Advisor, Civilian Harm Mitigation, Defense Security Cooperation Agency.

The sixth and final panel dealt with accountability for civilian casualties. Professor Beth Van Schaack, Stanford Law School, provided the keynote introductory remarks. Professor Geoffrey Corn, South Texas University College of Law Houston moderated the discussion with panelists that included: Dr. Olympia Bekou, Professor of International Law and Head of School, University of Nottingham School of Law; Lieutenant Colonel John Cherry, Deputy Chair and Military Professor, Stockton Center for International Law, U.S. Naval War College; and Marie-Helene Proulx, International Criminal Defence Lawyer. This panel explored potential methods of accountability for civilian casualties, ranging from administrative measures by the chain of command, military and domestic court jurisdiction, international courts, and the increasing use of universal jurisdiction by states.

These webinars could not have happened without the hard work of many ASIL and Lieber Society members who are too numerous to list here. However, I do want to recognize a couple of them. First, MAJ Keith Petty was the driving force for getting this event off the ground and completed. Keith worked tirelessly to arrange for panelists and prepare the notices that were sent out each week announcing the particular webinars. Second, Ms. Claudia Bennett volunteered her time to create all the flyers for the event in addition to preparing this newsletter you are reading now. Finally, we would like to thank Todd Buchwald from ASIL who brought this signature topic to the ASIL Lieber Society and allowed us and the other co-sponsors put on this event. It was a great success and provides an important resource to practitioners and other professionals who are interested in this important topic.

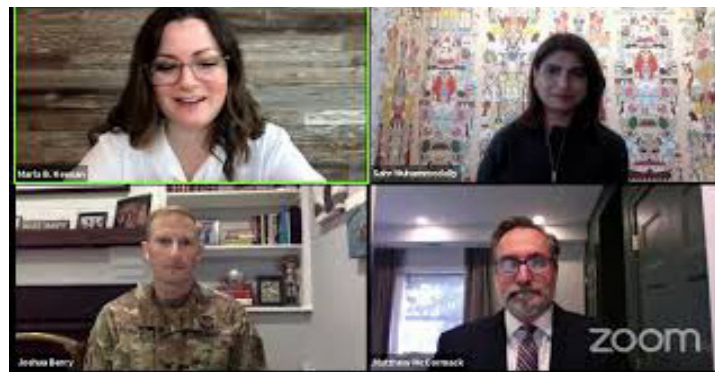
Links:

1. Lieber Society Series on Civilian-Casualties: https://www.youtube.com/watch?v=sga9TsGkuuU&ab_channel=asil1906
2. Civilian Casualties: The Law of Prevention and Response (Week 1): https://www.youtube.com/watch?v=M9mr1YJ0Qv8&ab_channel=asil1906
3. Civilian Casualties: The Law of Prevention and Response (Week 2): https://www.youtube.com/watch?v=TD_ZDlu1vIM
4. Civilian Casualties: The Law of Prevention and Response (Week 3): <https://www.youtube.com/watch?v=4uz8kSNHy2g>

5. Civilian Casualties: The Law of Prevention and Response (Week 4): https://www.youtube.com/watch?v=dSXIMPrmnDQ&ab_channel=asil1906

6. Civilian Casualties: The Law of Prevention and Response (Week 5): https://www.youtube.com/watch?v=9egWo92_BAQ&ab_channel=asil1906

7. Civilian Casualties: The Law of Prevention and Response (Week 6): https://www.youtube.com/watch?v=aCn9QN0XLW0&ab_channel=asil1906



EVENTS

On November 19th, TJAGLCS presented a conference entitled Nuremberg@75, in honor of the 75th anniversary of the International Military Tribunal at Nuremberg. The speakers included the Judge Advocate General of the US Army, LTG Charles Pede, as well as some names well known to the Lieber Society - Professor Gary Solis, Professor Geoff Corn, and Andrea Harrison. The event was recorded and is available to view at <https://www.youtube.com/c/TJAGLCSSTELEVISION>

POSTPONED: The ESIL Interest Group on Peace and Security, the ASIL Lieber Society on the Law of Armed Conflict, the Department of Legal and Economic Studies – Law School – of Sapienza University of Rome and the National Research Council of Italy (CNR) are organising a joint international conference on partnered operations and international law. Due to the COVID crisis, the organizers have decided to postpone the conference until April 9th, 2021.

PUBLICATION

Lieber Society member Ezequiel Heffes, along with Marcos D. Kotlik and Manuel J. Ventura, edited a newly published book entitled “International Humanitarian Law and Non-State Actors. Debates, Law and Practice” (Springer/T.M.C. Asser, 2020): available at: <https://www.springer.com/g./book/9789462653382>.

The Lieber Society and the ICRC Present a Discussion on the Updated Commentary to the Third Geneva Convention

By Michael W. Meier

On November 10th, the Lieber Society and the International Committee of the Red Cross (ICRC) hosted a webinar on the updated commentary to the Third Geneva Conventions Relative to the Treatment of Prisoners of War. There were three distinguished panelists who participated in the webinar. The first was Cordula Droege, who is the chief legal officer and head of the legal division of the ICRC. The second panelist was Tess Bridgeman, who is Co-Editor-in-Chief of *Just Security*. She is also a Senior Fellow and Visiting Scholar at the Reiss Center on Law and Security, NYU School of Law. Finally, Professor Sean Watts, who is a Professor in the Department of Law at the United States Military Academy at West Point where he co-directs the Lieber Institute for the Law of Land Warfare, was our third panelist. He also serves as co-Editor-in-Chief of the law of war blog *Articles of War* and was a contributor to the updated Commentary to the Third Geneva Convention.

Since 1949, the Third Geneva Convention has ensured that prisoners of war are treated humanely and with respect for their dignity while in the hands of enemy forces. Drafted following the Second World War, during which time millions of prisoners of war were victims of horrific atrocities, the Third Convention revised and expanded the existing protections afforded to prisoners of war under the 1929 Convention.

A quick review of the 1949 Convention shows it contains 143 articles, 46 more than the 1929 Convention. The additions and revisions were deemed necessary given the changes that occurred during the previous two decades with respect to the conduct of warfare. The 1949 Convention was drafted to provide more explicit protections and providing clarity that was lacking in the preceding provisions.

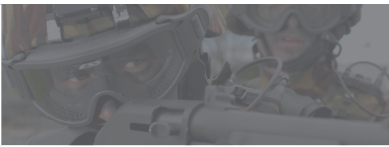
In June of 2020, as part of its ongoing multi-year effort, the ICRC launched its updated Com-

mentary to the Third Convention, following the updated commentaries to the First Geneva Convention in 2016 and the Second Geneva Convention in 2017. The updated Commentary analyzes how the practice in the application and interpretation of the four Geneva Conventions of 1949 has evolved in the past decades. It also provides a fresh interpretation of the Convention, taking into consideration the legal and technological developments that have occurred since the publication of the first Commentary on the Third Geneva Convention sixty years ago.

Ms. Droege gave a background of what led the ICRC to begin the process of updating the commentary and a little of what the process entailed. She reiterated that Pictet's Commentaries are still appropriate references for understanding the Geneva Conventions, but that it was prepared in the 1950s based on preparatory work for the Conventions. Ms. Droege focused on three specific areas that set the new commentaries apart from Pictet's original commentary. They include: (1) It is based not only on preparatory work, but also substantive practice over the last 60 years; (2) the commentaries were not drafted only by the ICRC, but included drafts and edits from legal experts from around the world; and, (3) It contains both the ICRC views on issues as well as divergent views.

Ms. Bridgeman focused her comments on Article 4 of the Third Convention, in particular who is entitled to POW status and, therefore, the protections found in this Convention. Her comments covered when irregular forces would qualify for protection, such as the group must fight on behalf of a party to the conflict and the State party must accept the role of the group (either expressly or impliedly by overall control, contracting, or not denying the role of the group). Ms. Bridgeman noted that there were differences between Pictet's commentary and the 2020 commentary with respect to Article 4A(2)(c), that of "carrying arms openly." Finally, she briefly addressed issues such as members of the armed forces of a party to the conflict losing their protections under the Convention as well as civilians accompanying the force.

Professor Watts, who also is a retired Army Judge Advocate, brought his unique perspective both as a practitioner and an academic to the discussion. He addressed the utility of the updated Commentary to both academics and practitioners. He addressed how the 2020 Commentaries were "not your grandparent's commentaries." Professor Watts noted that it is important to keep reading the entire note in the commentary as the commentary will indicate early on a black letter rule and only a few paragraphs later admit that there are exceptions. The commentary will be the textbook for the course. Finally, Professor Watts teased that the commentary to Article 17 was very interesting and surprising and recommend-



ed the listeners review it. Make sure you do that!

The Lieber Society was proud to join with our colleagues at the ICRC to present this webinar on the updated commentary to the Third Geneva Convention. As the moderator of the panel discussion, I know this short summary does not do the hour long webinar justice. Thankfully, it was recorded by ASIL and available for you to watch. Here is the link and I encourage you to go and watch if you were unable to see it when it aired last month: https://www.youtube.com/watch?v=UZjH4bjIz7c&t=290s&ab_channel=asil1906

[Geneva Convention](#) was released on line and published in print by Cambridge University Press (CUP). The second milestone was the publication on line in May 2017 of the updated Commentary on the Second Geneva Convention and in print by CUP.

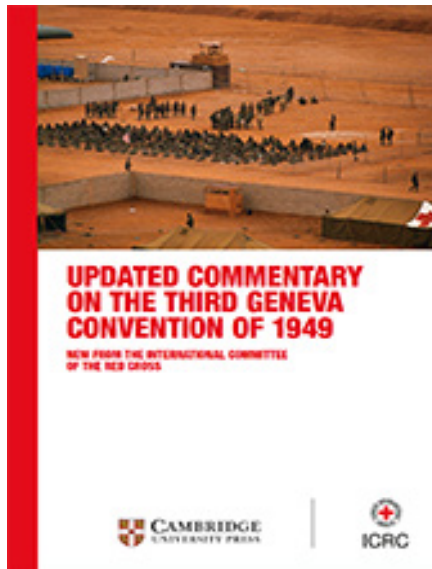
Update on the Third Geneva Convention Published

By Jean-Marie Henckaerts, ICRC

On 16 June 2020, the International Committee of the Red Cross released the online version of the [updated Commentary on the Third Geneva Convention](#).

The print version will be published by Cambridge University Press in April 2021.

The recording of launch event is available and a Q&A about the Commentary are [available online](#).



The initial Commentary on the Convention dates back to 1958. Since the original Commentary was published, the Convention has been put to the test. Practice with respect to its application and interpretation has grown significantly. The new Commentary seeks to provide up-to-date legal interpretations by capturing these developments and reflecting practice.

This publication part of a wider ICRC project to update the Commentaries on the Geneva Conventions of 1949 and their Additional Protocols of 1977. The first milestone of this project was reached in 2016 when [the updated Commentary on the First](#)