

Institution: University of Essex		
Unit of Assessment: 18 - Law		
Title of case study: Setting Standards for Protection of Human Rights in Armed Conflict		
Period when the underpinning research was undertaken: 2004 - 2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Professor Noam Lubell	Professor	2011 – current
Professor Francoise Hampson	Emeritus Professor	1983 – 2014 (Emeritus since retirement in 2014)
Period when the claimed impact occurred: August 2013 – December 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>The authors' research has significantly influenced the setting of standards and development of law and practice at a global level in relation to protection of human rights and adherence to international humanitarian law (IHL, also known as the law of armed conflict). This includes co-authoring internationally recognised guidelines for investigating war crimes, published in 2019 and now formally used by the International Committee of the Red Cross (ICRC) in their work across all armed conflicts in the world, as well as being incorporated into the practice of militaries including the UK Army. In addition, the European Court of Human Rights has relied upon their invited expert opinions in the development of its jurisprudence relating to detention during armed conflict.</p>		
2. Underpinning research		
2.1 Research for new solutions to investigation of violations during conflict		
<p>A major area of concern with relation to protection of human rights during conflict, on which Lubell and Hampson have both written [R1, R2] has been the lack of detailed law on investigations of war crimes and other IHL violations. While international human rights law has much to say about investigations and judicial processes, IHL contains an implicit requirement for investigating violations, but no detail on how it is to take place. Simply transposing human rights processes into armed conflict creates many challenges. Chief among them is the problem of using a civilian-based investigative and judicial process in the midst of a war zone: the police do not operate in these areas (especially in an overseas conflict), securing a crime-scene on a battlefield in the midst of hostilities can be impossible, and securing forensic evidence can be equally difficult (especially following air strikes in an area that is not under the state's control). Questions have even arisen as to what it is that requires investigation – human rights law tends to assume that any death should be investigated, whereas IHL accepts in advance that certain casualties are acceptable and lawful, and most militaries do not expect to investigate every killing of an enemy soldier on the battlefield. Additional challenges emerge from questions surrounding the appropriateness of military investigative systems, and how and whether independence and impartiality can be maintained if the military is investigating its own actions.</p>		
<p>To address these issues, in 2014 Lubell initiated a five-year research project on investigations of violations during armed conflict, supported by the Geneva Academy of International Humanitarian Law and Human Rights and funded primarily by the Swiss Foreign Office (with additional support from the Defence Ministries of the Netherlands and France). This project included running five expert workshops, with participation of academics (including Hampson) as well as senior government and military lawyers from dozens of countries in Europe, Africa, North and South</p>		

America, Asia, and the Middle East. The project, building upon the above-mentioned research of Lubell, Hampson and others [R1, R2], included extensive new research into the legal frameworks surrounding the obligation to carry out effective investigations into war crimes. The research led to the creation of new international guidelines with detailed commentary [R3], co-authored by Lubell (with Jelena Pejic of the ICRC and Claire Simmons, a researcher at Essex), and now formally relied upon by major actors in the field [S1, S2, S3, S4, S6]. This was achieved through five years of dedicated research overseen by Lubell and Pejic, collecting extensive legal material and evidence of investigative practice from across the world, engaging in a comparative analysis, and developing new approaches to subjects previously unaddressed in the literature. This research has addressed and provided new solutions for a wide range of issues, such as what types of incidents should trigger an investigation, what recording and reporting actions the military must take in the conduct of its operations in order to ensure investigations are possible (including what can be expected from a commander at the scene of an incident), and how the concepts of independence and impartiality can apply to military investigations. The Guidelines also addressed questions of policy-related violations, and how to deal with systemic concerns of abuse.

2.2 Clarifying the role of international human rights judiciary bodies on issues of armed conflict

An additional challenge to the protection of rights during conflict arises whenever international human rights bodies are required to adjudicate and pronounce on situations of armed conflict. The mandate and expertise of these bodies requires them to deliver opinions based on human rights law, even though the actions of the State before them may have been based on IHL rather than human rights. This requires such bodies to navigate the complexities of the interplay between human rights and IHL which, at times, appear to provide contradicting legal rules and standards for critical matters such as the grounds for detention, and when lethal force may be used. This has created much debate and practical challenges for governments, militaries, practitioners, and academics working in this field. Hampson and Lubell were prominent and early voices in these debates [R5, R6, R7], researching and publishing material designed to develop new modes of interaction between the legal frameworks. A common feature in much of the other writing in this area was to advocate for a 'top down' solution of a single principle to regulate all interactions between the two legal frameworks. The solutions proposed by Hampson and Lubell stood out for being based on a 'bottom up' approach, advocating an interplay between the legal frameworks which includes an analysis of dynamic and changing factors, and enables a more nuanced and contextual application of the interplay between the frameworks. Lubell and Hampson have both researched and written specifically on the question of how human rights bodies should address situations of armed conflict using this approach [R1, R2, R3, R7]. Based on this, they have been active in further research and writing specifically supporting the work of human rights bodies, including invited expert opinions for the European Court of Human Rights [R8], clarifying how the Court might apply human rights law in relation to detention and use of force during armed conflict.

3. References to the research [can be supplied by HEI on request]

R1 Lubell, N. and Prud'homme, N., (2016). Impact of Human Rights Law. In: Routledge Handbook of the Law of Armed Conflict. Editors: Liivoja, R. and McCormack, T., Routledge, 106-120. ISBN: 978-0-415-64037-4.

R2 Hampson, F. J., (2016). An Investigation of Alleged Violations of The Law of Armed Conflict. Israel Yearbook on Human Rights, 46, 1-27. DOI: https://doi.org/10.1163/9789004331181_002

R3 Lubell, N., Pejic, J., Simmons, C., (2019). Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice. Published by the International Committee of the Red Cross, and the Geneva Academy of International Humanitarian Law and Human Rights, 1-69. <https://www.icrc.org/en/document/guidelines-investigating-violations-ihl-law-policy-and-good-practice>

R4 Murray, D., Akande, D., Garraway, C., Hampson F. J., Lubell, N., Wilmshurst, E., (2016).

Practitioners' Guide to Human Rights Law in Armed Conflict. Oxford University Press (OUP). ISBN: 9780198791393

R5 Lubell N., (2012). Human Rights Obligations in Military Occupation. International Review of the Red Cross (CUP) 94 (885), 317-337. <https://international-review.icrc.org/sites/default/files/irrc-885-lubell.pdf>

R6 Hampson, F. J., (2011). Direct Participation in Hostilities and the Interoperability of the Law of Armed Conflict and Human Rights Law. International Law Studies. 87, 187-213. ISSN 2154-6266

R7 Hampson, F. J., (2008). The relationship between international humanitarian law and human rights law from the perspective of a human rights treaty body International Review of the Red Cross 90 (871), 549-572. https://international-review.icrc.org/sites/default/files/irrc-871-hampson_0.pdf

R8 Expert Opinions submitted by Hampson & Lubell to European Court of Human Rights, Hassan v. United Kingdom, 29750/09 (2013) (can be supplied by HEI upon request).

4. Details of the impact

4.1 Impact of the Guidelines

Lubell's research project on guidelines for investigations during armed conflict [2.1] was formally partnered with the International Committee of the Red Cross (ICRC). [Text removed for publication] **[S1]**. The ICRC is an international body mandated by states and recognised in international law as the primary organisation responsible for protecting victims of war and promoting respect for humanitarian law. It has a formal role recognised by law to engage in direct dialogue with States and armed groups, including in relation to investigations of war crimes and other violations. Conducting investigations into alleged war crimes and violations of humanitarian law is a critical component in ensuring protection of individuals during conflict.

[Text removed for publication] **[S2]**. To increase their reach, the Guidelines are translated and published by the ICRC in English, French, Arabic, Spanish, and Russian. As part of its mandate, the ICRC conducts training courses for militaries, and provides technical and legal assistance in developing national legislation and practice to comply with international humanitarian law. Having been adopted by the ICRC **[R3, S1]**, the Guidelines on Investigations are now used by them to guide States in creating and reforming their investigative systems. The ICRC also engages with States and armed groups to draw their attention to violations and work with them to comply with the law. Here too, the Investigations Guidelines are now serving as a standard by which the ICRC assesses investigation systems of militaries. [Text removed for publication] **[S2]**

In addition, States themselves have been following this research closely and their military and justice systems have been further beneficiaries. [Text removed for publication] **[R3] [S3]**. [Text removed for publication] **[S4]**. [Text removed for publication] **[S3]**, [Text removed for publication] **[S3]**. [Text removed for publication] **[S4]**.

The Investigations Guidelines research project also included engagement with United Nations bodies, and the final Guidelines were formally launched at the Headquarters of the United Nations in New York in October 2019 at an event attended by senior legal advisors and diplomats from around the world. In his May 2020 Report on Protection of Civilians in Armed Conflict, the UN Secretary General hailed the Investigations Guidelines as the new international benchmark for all States investigating violations during armed conflict **[S6, para.59]**.

Having created a new internationally recognised benchmark for investigating violations during armed conflict, one which is being implemented by States in practice, and which the ICRC is using as the desired standard in its interactions with warring parties, the Guidelines have impacted militaries, the ICRC, and other organisations. [Text removed for publication] **[S2]**.

4.2 Impact on International Human Rights Bodies

Lubell and Hampson's work has also directly informed the reports and judgements of international human rights bodies. Utilising their extensive publications in this area [R1, R2, R4, R5, R6], Hampson and Lubell have co-authored three expert opinions for the European Court of Human Rights, at the request of the Court, to aid it in cases dealing with protection of human rights during armed conflict [R8]. Of these, the case of *Hassan v UK* has already resulted in a final decision [S7]. The case dealt with the rules applying to detention during armed conflict (the Iraq war), and revealed tensions between the detention regimes of human rights law and humanitarian law. In its 2014 judgement, the Court refers extensively to the opinion by Hampson and Lubell [paras. 91-95 of the judgment, S7]. Rather than taking the top-down approach of a single principle to resolve the tension between human rights and the laws of armed conflict (as used in previous cases of international bodies), the Court follows the approach advocated in Hampson and Lubell's expert opinion [2.2, R8]. In the judgment [paras. 104-111, S7], the Court used a contextual analysis, resolving the tension between the legal frameworks by reference to specific factors such as the legal status of the individual detained, and the type of armed conflict (there are different rules for international and non-international armed conflicts). The Court's adoption of the approach advocated in the expert opinion was recognised as a major development of the jurisprudence in this area. [Text removed for publication] [S2].

5. Sources to corroborate the impact

S1 International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, Report of The International Committee of the Red Cross, October 2019, pp.56-57.

S2 [Text removed for publication]

S3 [Text removed for publication]

S4 [Text removed for publication]

S5 [Text removed for publication]

S6 Report of the UN Secretary General on Protection of Civilians in Armed Conflict, S/2020/366, 6 May 2020, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/S_2020_366_E.pdf

S7 European Court of Human Rights Hassan Judgment, Application no. 29750/09, 16 September 2014.