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The duty to investigate in situations of armed conflict: an examination under international humanitarian law, international human rights law, and their interplay

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PART II

International human rights law

Part I of this study explored investigative obligations under IHL, and answered *whether, when, and how* States must investigate violations of IHL. Beyond IHL, international human rights law also requires States to investigate human rights violations committed during armed conflicts. Part II aims to clarify the law surrounding armed conflict investigations, by answering the second sub-question identified in the Introduction:

Are States under an obligation to investigate (potential) violations of IHRL? If so, what are the scope of application and contents of such an obligation, in particular during armed conflict and occupation?

‘International human rights law’, however, despite continuous affirmations of the ‘indivisibility, interdependence and interrelatedness’ of human rights,¹ is not one coherent and uniform legal system. Rather, it consists of many partly overlapping treaty regimes and rules of customary international law. Many of these systems are in many ways similar, though they all have their own accents and emphases. This study, as was explained in the Introduction, in particular focuses on three treaty regimes: the global International Covenant on Civil and Political Rights (ICCPR), and the regional American Convention on Human Rights (ACHR), and the European Convention on Human Rights (ECHR). These systems have the most refined and developed case-law on the duty to investigate, and it is submitted that they are for that reason – for now –

1 E.g. *Vienna Declaration and Programme of Action*, adopted at the World Conference on Human Rights on 25 June 1993, endorsed by UNGA Res. 20 December 1993, A/RES/48/121 [I.5]; Proclamation of Tehran, Tehran 22 April to 13 May 1968, (13 May 1968), *Final Act of the International conference on Human Rights*, A/CONF.32/41 [13]. For affirmations in scholarship, see Titia Loenen, ‘Introduction to 50 Years ICCPR and ICESCR: Impact, Interplay and the Way Forward’ (2016) 41 *Nederlands Tijdschrift voor de Mensenrechten* | NJCM-Bulletin 451, 451; Cees Flinterman, ‘Freedom, Justice and Peace in the World: The Role of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights’ (2016) 41 *Nederlands Tijdschrift voor de Mensenrechten* | NJCM-Bulletin 452, 455; Nico J Schrijver, ‘Fifty Years International Human Rights Covenants. Improving the Global Protection of Human Rights by Bridging the Gap between the Two Covenants’ (2016) 41 *Nederlands Tijdschrift voor de Mensenrechten* | NJCM-Bulletin 457, 460; Carla Edelenbos, ‘Reflections on Fifty Years of ICCPR and ICESCR: A View from Geneva’ (2016) 41 *Nederlands Tijdschrift voor de Mensenrechten* | NJCM-Bulletin 465, 465.

the most relevant regimes to study. The question how 'IHRL' regulates investigations, is therefore answered by reference to these three systems.

Part II ultimately serves two aims. Firstly, it aims to clarify the law governing investigative obligations under IHRL, during armed conflict. This is accomplished through the study of the three systems, and by drawing conclusions based on a comparison between them. Secondly, this Part aims to facilitate the answer to the overarching research question. The law governing investigative obligations during armed conflict can be clarified only if three legal fields are taken into consideration, namely IHL, IHRL, and their interplay. Part II therefore presents an essential element of that assessment, and a stepping stone, in ultimately answering the research question.

Part II comprises five Chapters. Firstly, Chapter 4 introduces certain basic characteristics of the IHRL system, with a view to facilitating the subsequent enquiry into the duty to investigate. Chapters 5 (global systems and the ICCPR), 6 (Inter-American system), and 7 (European system), then examine for each of these regimes *whether* States are under an obligation to investigate human rights violations arising from armed conflict, and if so, what the scope of application of that obligation is, and what investigative standards apply. They do so by firstly assessing the scope and contents of the duty to investigate in situations of 'normalcy', to then determine to what extent these findings also apply in situations of armed conflict. Chapter 8 brings the findings under the various regimes together. It adopts an overarching comparative approach, in drawing out commonalities and divergences in how the various systems regulate investigations in situations of armed conflict.