



Universiteit  
Leiden  
The Netherlands

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

Tan, F.

**Citation**

Tan, F. (2022, May 19). *The duty to investigate in situations of armed conflict: an examination under international humanitarian law, international human rights law, and their interplay*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/3304153>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3304153>

**Note:** To cite this publication please use the final published version (if applicable).

## PART III

### Interplay

Parts I and II of this study have clarified the scope and contents of investigative obligations under IHL and IHRL, respectively. Yet, this does not in and of itself suffice to answer the research question. Whereas IHL and IHRL apply simultaneously, how they interrelate has been subject to controversy. Especially where rules under both regimes diverge, this potentially obscures what States must do in order to live up to their obligations under international law, and equally leads to legal insecurity for individuals attempting to effectuate their rights, and for members of States' armed forces who may become the subject of investigation.

The research outcomes in Parts I and II show that indeed, certain rules in respect of the duty to investigate diverge under IHL and IHRL. Such divergences relate, for instance, to *when* States must investigate – with IHRL potentially requiring investigations into deaths caused by third parties and even armed groups who are in conflict with the State, whilst IHL appears to require an investigation into third party conduct only when war crimes are concerned. Whether and how investigations must be conducted when lethal force is used during armed conflict then depends on the interplay of IHL and IHRL. This is equally the case with respect to *how* investigations are conducted, because IHRL's rules with respect to the independence of investigators appear to be at odds with IHL's reliance on command investigations. These are examples of potential tensions in respect of the duty to investigate, which can only be resolved by reference to the interplay of IHL and IHRL.

Part III engages with interplay, and sets out to answer the third and fourth sub-questions guiding this study, 'how do norms of IHL and IHRL interact, and how can instances of normative overlap be resolved under the interplay of both regimes?'; and 'how are normative overlaps between investigative obligations under IHL and IHRL resolved under the interplay of both regimes?' Chapter 9 tackles the former, engaging with the secondary rules of international law which guide the interaction of norms of various branches of international law. Chapter 10 engages with the latter question, by applying the legal framework set out in Chapter 9 to the rules relating to the duty to investigate.

