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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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## Stellingen behorende bij het proefschrift

*The duty to investigate in situations of armed conflict – An examination under International Humanitarian Law, International Human Rights Law and their interplay*

door Floris Tan

1. The duty to investigate is engrained in the DNA of IHL.
2. Accountability is an integral part of IHRL, and the duty to investigate is crucial for the success of accountability efforts and the effectuation of victims' rights. It is therefore remarkable that the duty to investigate is not explicit in core human rights treaties.
3. Investigative obligations under the ICCPR, the ACHR, and the ECHR showcase a large measure of convergence.
4. Contrary to how such arguments are often framed, the position that IHRL does not apply during armed conflict, is not conservative or based in *lex lata*. It is an argument based on *lex ferenda*.
5. The interaction between general international law and its specialised regimes is akin to the interaction between an octopus and its arms. Like the arms of an octopus, specialised regimes operate semi-autonomously, only partly aware of what other 'arms' are doing, and while general international law provides some guidance, it cannot overrule the arms (Chapter 9, §2.2).
6. *Lex specialis* has confused the debate on interplay because it is often ill-defined. For it to play a useful role in determining the relationship between IHL and IHRL, a clear distinction must be made between *lex specialis* as a concept guiding the interpretation of norms, and *lex specialis* as a tool for the resolution of normative conflict.
7. The definition of normative conflict must encompass conflicts between permissive norms on the one hand, and obligatory norms on the other hand. Otherwise, IHL norms such as those permitting lethal force or detention are rendered obsolete in light of IHRL's prohibition of the same conduct.
8. A balanced understanding of interplay requires the acknowledgement of relationships of normative competition, in addition to paradigms of normative conflict and convergence. A binary perspective of norms as either conflicting or converging, camouflages normative tensions and is therefore unhelpful.
9. Context is crucial in any meaningful assessment of the interplay between IHL and IHRL. This is equally so in relation to the duty to investigate.
10. The apparent conflict between IHRL's requirement that an investigation is independent and IHL's reliance on commanders in conducting investigations, can – with respect to war crimes – be resolved through harmonious interpretation.
11. Contrary to common claims, the investigative obligations which flow from IHRL do not impose an excessive burden on States. During armed conflict, they in large part coincide and are compatible with obligations flowing from IHL.
12. In practice, the distinction made in academia between 'scholarly' and 'professional' publications is often akin to judging a book by its cover. The forum and form of a piece is decisive, rather than the substance.