

Introduction

International human rights law (HRL) was once conceived as a law for times of peace, an internal law, bound to the institutions of the State and its systems of governance.¹ This view has been supplanted as the application of HRL has shifted from the domestic sphere to the extra-territorial, and from peace to conflict. While traces of this shift have been evident for many years,² its full force is only now being felt. Recent years have seen truly profound developments at the European Court of Human Rights (the Court) with the European Convention on Human Rights (the Convention) applied to military operations of every kind throughout the world.³

The application of the Convention to military operations presents both benefits and challenges. A detailed body of law, international humanitarian law (IHL), already applies to many military operations. While both IHL and HRL are concerned with the protection of human life and share some basic rules,⁴ fundamentally different assumptions underlie each body

¹ Guglielmo Verdirame, 'Human Rights in Wartime: A Framework for Analysis' [2008] EHRLR 689, 689–90.

² Cases on the extra-territorial application of the European Convention on Human Rights arise from the 1960s: *X v. Federal Republic of Germany* App no 1611/62 (EComHR, 25 September 1965). The crossover between human rights law and armed conflict begins in the 1950s – Cordula Droege, 'The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict' (2007) 40 *Israel Law Review* 310, 312–17.

³ See, for example, *Al-Skeini and Others v. United Kingdom* (2011) 53 EHRR 18; *Medvedyev v. France* (2010) 51 EHRR 39; *Al-Jedda v. United Kingdom* (2011) 53 EHRR 23.

⁴ Claire Landais and Lea Bass, 'Reconciling the Rules of International Humanitarian Law with the Rules of European Human Rights Law' (2015) 97 *IRRC* 1295, 1300.

of law.⁵ IHL is designed to function in a situation of widespread death and destruction, and a complete breakdown of law and order.⁶ It presumes an environment in which killing and suffering are expected.⁷ It tolerates preventive detention and incidental loss of life, where such practices are anathema to human rights law.⁸ By contrast, HRL presupposes a functioning nation State with control over its territory and institutions at its disposal to guarantee human rights. Once these pre-conditions change, as they often do during military operations, realising human rights protection becomes more difficult. The State's limited control significantly reduces its capacity to guarantee human rights.⁹

Many violations of IHL go unpunished and it is an area of law characterised by weak enforcement.¹⁰ When violations are addressed under IHL, the focus has been on punishing perpetrators with criminal sanctions rather than compensating victims.¹¹ The absence of forums in which to raise individual complaints concerning IHL violations has been a key driver behind individuals seeking redress through HRL at both domestic and

⁵ Bill Bowring, 'Fragmentation, Lex Specialis and the Tensions in the Jurisprudence of the European Court of Human Rights' (2009) 14 *Journal of Conflict & Security Law* 485; Naz Modirzadeh, 'The Dark Sides of Convergence: A Pro-civilian Critique of the Extraterritorial Application of Human Rights Law in Armed Conflict' (2010) 86 *US Naval War College International Law Studies* 349. For an opposing view on how the similarities between the law should affect interpretation see Anthony Cassimatis, 'International Humanitarian Law, International Human Rights Law, and Fragmentation of International Law' (2007) 56 *ICLQ* 623.

⁶ Audrey Benison, 'War Crimes: A Human Rights Approach to a Humanitarian Law Problem at the International Criminal Court' (2000) 88 *Georgetown Law Journal* 141, 152.

⁷ David Kretzmer, 'Rethinking the Application of IHL in Non-International Armed Conflicts' (2009) 42 *Israel Law Review* 8, 21.

⁸ Theodor Meron, 'The Humanization of Humanitarian Law' (2000) 94 *AJIL* 239, 240; Nancie Prud'homme, 'Lex Specialis: Oversimplifying a More Complex and Multifaceted Relationship?' (2007) 40 *Israel Law Review* 356, 361.

⁹ Harmen van der Wilt and Sandra Lyngdorf, 'Procedural Obligations Under the European Convention on Human Rights: Useful Guidelines for the Assessment of 'Unwillingness' and 'Inability' in the Context of the Complementarity Principle' (2009) 9 *International Criminal Law Review* 39, 59.

¹⁰ M. Cherif Bassiouni, 'Searching for Peace and Achieving Justice: The Need for Accountability' (1996) 59 *Law & Contemporary Problems* 9, 17–18.

¹¹ Jean-Marie Henckaerts, 'Concurrent Application of International Humanitarian Law and Human Rights Law: A Victim Perspective' in Noelle Quenivet and Roberta Arnold (eds), *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law* (Brill 2008) 249. The ICC aims to redress some of this bias by creating a permanent institution to prosecute international crimes occurring throughout the world. It also took some steps toward re-focusing on and offering reparations to victims of IHL, see Article 75, Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (hereinafter Rome Statute).

international levels.¹² The Convention system offers clear benefits to victims of violations of IHL. It has integrated domestic and supra-national forums to seek redress for human rights violations that are substantively similar to violations of IHL. It offers clear procedures, a developed jurisprudence and, perhaps crucially, a means of securing compensation for victims. The Convention's institutional and procedural architecture can complement the dearth of such elements in IHL.¹³

The benefits and challenges of this confluence of laws present a tantalising conundrum. These developments demand a fundamental re-evaluation of how law protects people during military operations of every kind. What happens when this human rights law is applied to military operations? How does it impact the way rules are interpreted and applied? What happens to IHL and is it possible to reconcile the application of these two bodies of law to the same military operation? These are some of the central questions addressed in this book. Before embarking on this discussion, this introductory chapter defines the parameters of this book. It provides a more detailed introduction to IHL and discusses the European Court of Human Rights' mandate to engage with IHL and apply the Convention to different types of military operation. It highlights the key differences between IHL and HRL, before outlining how these issues are addressed in the forthcoming chapters.

THE EUROPEAN COURT OF HUMAN RIGHTS AND MILITARY OPERATIONS

The term 'military operations' is defined broadly for the purposes of this book and encompasses all actions whether they occur domestically or extra-territorially involving the armed forces of the State. The armed forces are defined as the State's entire organised armed forces, groups and units which are under a command responsible to the State for the conduct of its subordinates.¹⁴ The definition is deliberately broad to encompass the breadth

¹² Noelle Quenivet, 'The Right to Life in International Humanitarian Law and Human Rights Law' in Roberta Arnold and Noelle Quenivet (eds), *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law* (Brill 2008) 9; Meron (n. 8) 247; Emiliano Buis, 'The Implementation of International Humanitarian Law by Human Rights Courts: The Example of the Inter-American Human Rights System' in Noelle Quenivet and Roberta Arnold (eds), *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law* (Brill 2008) 269–70.

¹³ Meron (n. 8) 247; Kenneth Watkin, 'Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict' (2004) 98 *AJIL* 1, 24.

¹⁴ Louise Doswald-Beck and Jean-Marie Henckaerts (eds), *Customary International Humanitarian Law*. 2 vols. (Cambridge University Press 2004) vol I, 14.

of modern military deployments. The traditional paradigm, wherein military forces participated only in international armed conflicts (IACs) and non-international armed conflicts (NIACs), has been supplanted by one in which military forces occupy a variety of operational roles, including humanitarian support, security and even construction roles.¹⁵

This shift in practice has been accompanied by a broader sense that traditional IHL rules, applied to the military and designed to regulate IACs and belligerent occupations, are ill-suited to regulate modern military operations.¹⁶ As faith in IHL has declined and the diversity of military operations increased, a debate has emerged over whether HRL, or a hybrid of both IHL and HRL, could replace it. The debate has ranged from whether this convergence is desirable in principle to whether it is achievable in practice.¹⁷ This book aims firmly at the latter issue, examining the practicalities of applying the Convention to military operations. Before discussing those issues of convergence, it is necessary to lay a solid foundation for the application of HRL to military operations.

Applying the Convention to All Military Operations

The Convention is designed to apply to functioning, democratic States in Europe. One need look no further than the text of the Convention to confirm this fact. Articles 9, 10 and 11 safeguard freedoms that are essential to the

¹⁵ Francisco Martin, 'Using International Human Rights Law for Establishing a Unified Use of Force Rule in the Law of Armed Conflict' (2001) 64 *Saskatchewan Law Review* 347, 352; Kenneth Watkin, 'Stability Operations: A Guiding Framework for "Small Wars" and Other Conflicts of the Twenty-First Century?' (2009) 85 *US Naval War College International Law Studies* 411, 412–15.

¹⁶ Fionnuala Ni Aolain, 'The No-Gaps Approach to Parallel Application in the Context of the War on Terror' (2007) 40 *Isarel Law Review* 563, 563–9; Nicolas Lamp, 'Conceptions of War and Paradigms of Compliance: The "New War" Challenge to International Humanitarian Law' (2011) 16 *Journal of Conflict & Security Law* 225; Gabor Rona, 'Interesting Times for International Humanitarian Law: Challenges from the "War on Terror"' (2003) 27 *Fletcher Forum of World Affairs* 55; Geoffrey Corn, 'Mixing Apples and Hand Grenades: The Logical Limits of Applying Human Rights Norms to Armed Conflict' (2010) 1 *International Humanitarian Legal Studies* 52, 64.

¹⁷ Roberta Arnold and Noelle Quenivet, *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law* (Brill 2008); Modirzadeh (n. 5); Aeyal Gross, 'Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?' (2007) 18 *EJIL* 1; Christine Byron, 'A Blurring of the Boundaries: The Application of International Humanitarian Law by Human Rights Bodies' (2006–2007) 47 *Virginia Journal of International Law* 839; Barry Feinstein, 'The Applicability of the Regime of Human Rights in Times of Armed Conflict and Particularly to Occupied Territories: The Case of Israel's Security Barrier' (2005–2006) 4 *Northwestern University Journal of International Human Rights* 241.

correct functioning of democracy, such as freedom of religion, freedom of expression and freedom of assembly. Many articles pre-suppose the existence of a functioning judicial system, such as Articles 5(3) and 5(4), for example, which offer safeguards for people deprived of their liberty, pre-suppose the existence of courts and judges.¹⁸ Article 13 on the provision of effective remedies pre-supposes the existence of public authorities capable of providing them.¹⁹ As such, the Convention is State-centric and dependent on functioning administrative bodies in a democratic State. On what basis then has the Convention come to apply to military operations of all kinds, including those conducted by contracting States outside their own territory and far from the institutions of those States?

The Convention Text

The text of the Convention clearly indicates that it is intended to continue to apply during military operations, including armed conflicts. There is no express reference to the Convention ceasing to apply as a matter of course during armed conflict and express provisions indicate it continues to apply. Article 2(2)(c), for example, permits the use of force ‘in action lawfully taken for the purpose of quelling a riot or insurrection’. The latter term ‘insurrection’ refers to an organised attempt by a group of people to defeat and depose a government through violent means. This definition clearly overlaps with the definition of a NIAC under IHL,²⁰ which is defined as an armed conflict:

which take[s] place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations.²¹

¹⁸ Article 5(3) states that ‘Everyone arrested or detained [...] shall be brought promptly before a judge or other officer authorised by law to exercise judicial power’. Article 5(4) states ‘Everyone who is deprived of his liberty [...] shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court’ emphasis added.

¹⁹ Article 13 states ‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority’ emphasis added.

²⁰ Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism* (Oxford University Press 2011) 193.

²¹ Article 1, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (hereinafter Additional Protocol 2).

Thus, Article 2 continues to apply to NIACs. Equally, Article 15 of the Convention states that there can be ‘no derogation from Article 2, except in respect of deaths resulting from lawful acts of war’. The term ‘war’ naturally implies an IAC and there would be no need for this exception to exist if the Convention was not applicable to such a conflict in the first place.

The extension of the Convention extra-territorially is less straightforward; this is discussed extensively in Chapter 2. It suffices to note for now that the Convention does not expressly place a territorial limitation on its application, it simply states that: ‘High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.’ The term ‘jurisdiction’ has been interpreted by the Court to encompass acts outside the normal territory of the contracting State.²²

International Practice

The application of human rights law to all military operations, including armed conflicts, is also endorsed by several international bodies, including the International Court of Justice (ICJ) and the Inter-American human rights bodies. The ICJ referred to the continued application of HRL during armed conflict in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* stating:

the protection of the International Covenant for the Protection of Civil and Political Rights does not cease in times of war [...] In principle, the right not arbitrarily to be deprived of one’s life applies also in hostilities.²³

In a later Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ stated:

the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation.²⁴

While the ICJ was referring to the application of the International Covenant on Civil and Political Rights (ICCPR) on both occasions, the same

²² See, for example, *Al-Skeini and Others v. United Kingdom* (2011) 53 EHRR 18; *Cyprus v. Turkey* (1982) 4 EHRR 482; *Ocalan v. Turkey* (2003) 37 EHRR 10.

²³ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226 8 July 1996 at [25].

²⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 9 July 2004 at [106].

rationale applies equally to the Convention. The Inter-American human rights bodies have also applied HRL to armed conflict situations,²⁵ as has the UN Human Rights Committee.²⁶ Thus, there is a strong legal basis for the application of HRL to military operations of all kinds. The Court has applied the Convention to a variety of different types of military operations in its jurisprudence, including IACs,²⁷ foreign belligerent occupations,²⁸ peace-support operations,²⁹ domestic counter-insurgency operations,³⁰ and NIACs.³¹ However, these military operations are often subject to the law of armed conflict or international humanitarian law, which begs the question, how do these different bodies of law compare to one another in their application to military operations?

INTERNATIONAL HUMANITARIAN LAW

There are significant differences between IHL and the Convention, both in terms of their substantive content and their fundamental precepts. It is worth outlining the scope of IHL and exploring some of these differences to contextualise the discussion of how the Convention applies to military operations. IHL is a set of international rules, which seek to limit the effects of armed conflict. The primary aim of IHL is to protect non-participants in the armed conflict, e.g. civilians,³² and those who have ceased to actively participate in the armed conflict, e.g. persons placed *hors de combat* by wounds or sickness³³ and prisoners of war.³⁴ It also seeks to place limits on the conduct of hostilities,

²⁵ See, for example, *Arturo Ribón Avilán v. Colombia* Report No 26/97 IAComHR 30 September 1997; *Juan Carlos Abella v. Argentina* Report No 55/97 IAComHR 18 November 1997; *Santo Domingo Massacre v. Colombia* Series No 259 IACtHR 30 November 2012; *Hugo Bustios Saavedra v. Peru* Report No 38/97 IAComHR 16 October 1997; *Las Palmeras v. Colombia* (Preliminary Objections) Series C No 67 IACtHR 4 February 2000.

²⁶ UN Human Rights Committee, General Comment No. 29, States of Emergency (Article 4), 31 August 2001, CCPR/C/21/Rev.1/Add.13 at [3].

²⁷ *Cyprus v. Turkey* (1982) 4 EHRR 482; *Georgia v. Russia (II)* (2012) 54 EHRR SE10.

²⁸ The occupation of Iraq in *Al-Skeini and Others v. United Kingdom* (2011) 53 EHRR 18.

²⁹ Kosovo in *Behrami v. France* (2007) 45 EHRR SE10.

³⁰ Counter-insurgency in South-East Turkey in *Ergi v. Turkey* (2001) 32 EHRR 18.

³¹ Russian operations in Chechnya in *Isayeva v. Russia* (2005) 41 EHRR 38.

³² Article 48 and Article 51(2), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1979) 1125 UNTS 3 (hereinafter Additional Protocol 1).

³³ See Article 3, Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (hereinafter Geneva Convention III). This article is the same in each of the Geneva Conventions 1949.

³⁴ See generally Geneva Convention III.

for example, by placing limitations on the types of weapons States can use and the circumstances in which they can be used.³⁵

IHL only begins to apply once an armed conflict commences, this is generally understood to mean the resort to armed force.³⁶ IHL further distinguishes between different types of conflicts, IACs and NIACs, with some variations in the applicable rules depending on the nature of the conflict, although there is a body of customary international law applicable to both.³⁷ An IAC is an armed conflict in which at least two States are involved.³⁸ Such conflicts are regulated by several international treaties, perhaps most importantly the Geneva Conventions of 1949, the First Additional Protocol to the Geneva Conventions of 1977 and customary international law. Much of the law governing IACs also applies when territory is occupied by a hostile State (belligerent occupation).³⁹ A NIAC is an armed conflict restricted to a single State, involving either regular armed forces fighting groups of armed dissidents, or armed groups fighting each other.⁴⁰ These conflicts are regulated under a more limited and permissive legal regime in IHL, including Common Article 3 of the four Geneva Conventions, the Second Additional Protocol to the Geneva Conventions 1977 and customary international law. In contrast to the contextual limitations of IHL, the Convention applies at all times where the contracting State is exercising jurisdiction and provided the State has not derogated.

Many of the protections of IHL depend on the status that an individual holds, e.g. combatant, civilian, prisoner of war etc. If a person is classified as a civilian under IHL, for example, it is against the law to target them directly.⁴¹ Whereas if a person is classified as a combatant, they may be made the object of an attack, but they are also immune from prosecution for lawful acts of war.⁴² By contrast, the Convention confers protections on

³⁵ Some of the earliest international agreements in IHL relate to limitations on weapons, see for example, Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight (adopted 29 November 1868).

³⁶ ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995 at [70].

³⁷ See Doswald-Beck and Henckaerts (n. 14).

³⁸ Article 2, Geneva Convention III – ‘cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties’. This article is the same in each of the Geneva Conventions 1949.

³⁹ Article 2, Geneva Convention III – ‘The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party’. This article is the same in each of the Geneva Conventions 1949.

⁴⁰ Article 1(2), Additional Protocol 2 ‘all armed conflicts [...] which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups’.

⁴¹ Article 51(2), Additional Protocol 1.

⁴² Article 43(2), Additional Protocol 1.

everyone once they fall within the jurisdiction of a contracting State and should not create distinctions based on status.

IHL as it pertains to IACs is specifically designed to govern the conduct of hostilities where control over territory between two States is contested, as such it is naturally extra-territorial. The application of Convention, by contrast, is specifically contingent on a jurisdictional link to a contracting State.

The differences are more acute when one considers the substantive content of the rules. Under IHL, for example, States are permitted to engage in security detention (internment) of various parties,⁴³ whereas Article 5(1) of the Convention places very strict limitations on the circumstances when persons can be deprived of their liberty. Similarly, IHL permits the targeting and killing of enemy combatants,⁴⁴ while Article 2(1) of the Convention places very strict limitations on the circumstances when persons can be deprived of their lives.

Thus, while both bodies of law are supposed to apply to military operations of various kinds, there are significant differences in their fundamental precepts and content. HRL has not been specifically designed for all military operations, whereas IHL has been specifically designed for armed conflicts. IHL will always be a body of law aiming to make the best of a bad situation, while HRL will always strive for the ideal. As a result, there are and perhaps will always be, unavoidable problems with applying HRL to military operations, a perfect solution is largely untenable. It is important to recognise the limits of the law and work around them as best we can.

The Court's Mandate and International Humanitarian Law

This book argues that the Court should utilise IHL to guide and moderate its interpretation of the Convention where IHL is applicable. Before discussing the merits of this approach, we must address the issue of the Court's mandate to consider IHL. Many authors point out that the Court does not have an express mandate to interpret and apply IHL.⁴⁵ The Convention appears to limit the

⁴³ See Article 21, Geneva Convention III; Article 42, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (hereinafter Geneva Convention IV).

⁴⁴ Doswald-Beck and Henckaerts (n. 14) 46.

⁴⁵ Giulia Pinzauti, 'The European Court of Human Rights' Incidental Application of International Criminal Law and Humanitarian Law: A Critical Discussion of *Kononov v. Latvia*' (2008) 6 *Journal of International Criminal Justice* 1043, 1044; Michael O'Boyle and Jean Paul Costa, 'The ECtHR and IHL' in Christos Rozakis (ed), *The European Convention on Human Rights: A Living Instrument* (Bruylant Press 2011) 107. The Court itself has expressed some doubts about the scope of its mandate, see *Markovic v. Italy* (2007) 44 EHRR 52 at [108]–[109].

Court's subject matter jurisdiction to 'all matters concerning the interpretation and application of the Convention and the Protocols thereto'.⁴⁶ However, this article must be read in light of other provisions and international practice.

Firstly, other articles of the Convention seem to make it necessary for the Court to consider other bodies of law, including IHL. Article 15 demands that when States derogate from the Convention, those derogations must not be 'inconsistent with its other obligations under international law'. It is foreseeable that the Court could be called upon to determine whether a State's derogation is consistent with its obligations under IHL.⁴⁷ Article 15 also refers to the possibility of States derogating from Article 2 for 'lawful acts of war', meaning the legality of some acts in this context would need to be assessed by reference to IHL standards.⁴⁸ Article 7 also ensures that no one is held guilty of a criminal offence that does not constitute an offence under national 'or international law at the time when it was committed'. This may require the Court to assess whether an individual's conduct was contrary to IHL at the time they acted.⁴⁹ Thus, the argument that the Convention text constrains the Court's mandate solely to interpreting the Convention is unsustainable when one considers the wider requirements of the Convention text.

Secondly, as noted above, both the ICJ and the Inter-American human rights bodies have applied human rights law to armed conflict. In doing so, they have also interpreted human rights treaties in light of IHL norms. The ICJ set out its approach to interpretation where both IHL and HRL are applicable in its *Advisory Opinion on the Wall*:

As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law.⁵⁰

⁴⁶ Article 32(1), European Convention on Human Rights 1950.

⁴⁷ Byron (n. 17) 839; Noam Lubell, 'Challenges in Applying Human Rights Law to Armed Conflict' (2005) 87 IRRC 737, 742–4.

⁴⁸ Doswald-Beck (n. 20) 192–3; O'Boyle and Costa (n. 45) 115.

⁴⁹ The Court has been called on to do this in practice. See, for example, *Korbely v. Hungary* (2010) 50 EHRR 48 and *Kononov v. Latvia* (GC) (2011) 52 EHRR 21. Pinzauti (n. 45) 1046–8.

⁵⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 9 July 2004 at [106].