EU Law and International Humanitarian Law

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Abstract:

International humanitarian law (IHL) applies to armed conflicts. This contribution begins with some thoughts on the relationship between IHL and EU law in case of an armed conflict between member states or within a member state. Following this, how EU law contributes to the peacetime implementation of IHL by EU member states is mentioned. The main developments are dedicated to the question of whether, when and on what basis IHL applies to EU military operations outside of the EU and discusses practical problems which would arise if EU forces were required to apply IHL. In this respect, the fact that IHL protects human rights is a main argument, but controversies about the extraterritorial application of the latter are an obstacle. Finally, we describe how the EU promotes respect for IHL by third states and non-state armed groups, by encouraging the development of IHL, accession to its treaties and their domestic implementation, and through commercial and other measures against those who violate IHL.

Introduction

The EU is based on law. Any EU action promoting or implementing IHL is therefore based on EU law. Article 2 TEU includes among the fundamental values of the EU the respect of human rights and the rule of law. Article 3(5) states that the EU must uphold these values in its external relations. IHL protects the human rights of those affected by armed conflicts. Up to now, the EU has mainly referred to IHL in its policy and in non-binding sources, only rarely in binding EU law. EU law referring to IHL is much more advanced on what third states and actors should do than on what the EU and its member states should do. After some thoughts about EU law and IHL in case of armed conflicts within the EU, we discuss the application of IHL to EU military operations outside of the EU. Finally, we describe where the EU has performed best: promoting the development, acceptance and respect of IHL by others.

IHL and EU Law in case of armed conflicts within the EU

Since the EC were founded (and certainly also thanks to their existence), there have been no armed conflicts between member states. EU law does not deal with such a possibility. Article 347 TFEU merely requires member states to “consult each other with a view to taking together the steps needed to prevent the functioning of the internal market being affected by measures a Member State may be called upon to take […] in the event of war […]”. Yet, it is highly improbable that member states would do this if they were involved in an armed conflict against each other. If measures taken according to Article 347 TFEU distort the
conditions of competition in the internal market, the Commission and any member state may however bring the matter before the Court of Justice.¹

In case of an an armed conflict between EU member states, genuine conflicts between IHL provisions and EU law would be rare, since EU law does not cover most issues covered by IHL (e.g. the conduct of hostilities or the protection of medical personnel). Additionally, IHL never prohibits the EU or a member state from respecting guarantees of EU law, which offer better protection than IHL. Nevertheless, in the case of an armed conflict between member states, it would be unimaginable for belligerents to respect rules of EU law on issues like free movement of persons and goods, judicial and police cooperation, and economic and monetary policy. In cases where norms do not genuinely conflict, but IHL allows measures prohibited by EU law (e.g. to intern civilians for imperative security reasons with only administrative and no judicial control²), from a public international law perspective, IHL might prevail as the lex specialis in armed conflicts. However, whether the same would be true from a EU law point of view is not clear. In the past, the Court of Justice has concluded that international agreements cannot affect the autonomy of the EU legal system, when they conflict with EU constitutional principles, including fundamental rights.³

Arguably, non-international armed conflicts (NIAC) have taken place on EU territory (e.g. in Northern Ireland). Yet, they did not appear to raise major problems regarding the applicable Article 3 common to the Geneva Conventions and its compatibility with EU law. Today, with the considerable development of both the substantive and institutional rules of EU law and of IHL of NIACs, there would certainly be many more areas of overlap (where EU law would normally offer better protection to individuals), but not necessarily of contradiction.

Finally, part of the territory of one EU member state, Cyprus, is arguably occupied by a non-member state, Turkey.⁴ The theoretically interesting question whether an occupying power must respect EU law in an occupied territory because it must respect under IHL local law and local institutions,⁵ does not arise in this case. Indeed, this obligation covers only laws and institutions already in force when the occupation starts,⁶ while, Cyprus joined the EU only after the arguable occupation started. In addition, EU law itself prescribes that its application is suspended in the areas in which "the Government of the Republic of Cyprus does not exercise effective control".⁷

EU law and provisions of IHL applicable in peacetime

Under Article 87 TFEU (at the time Art. 30 EU), the Council has adopted rules to facilitate cooperation between member states to investigate war crimes,⁸ whereby they must set up national contact points for exchanging information on such investigations.⁹ This had an important impact on the willingness and ability of member states to comply with their IHL obligations in this field.¹⁰ Another peacetime obligation under IHL requires that states not involved in an armed conflict ensure IHL is respected by belligerents, which will be dealt with hereafter when discussing the EU as a promoter of IHL.

Is the EU an addressee of IHL in its external action?
International organizations such as the EU are not among the explicit addressees of IHL. While security has always been a concern for the European institutional construction, in the last 20 years the EU has equally grown into a military actor. Its Common Foreign and Security Policy (CFSP) comprises a Common Security and Defence Policy (CSDP), which was implemented since 2003 in six EU-led military operations deploying more than 10’000 military personnel. In two operations, Artemis (in the DRC) and EUFOR (in Tchad/RCA), EU forces had the mandate to use force beyond self-defence. IHL, however, applies based upon the facts on the ground, not on the mandate of the belligerents. Only on four occasions did EU forces return fire and only one member of EU forces has been killed. If the EU was a state, it is doubtful whether such incidents would have triggered the applicability of IHL, as EU forces were deployed with the consent of all states concerned. Therefore, the higher threshold of intensity of violence and organization of the insurgent group applicable in NIACs would have to be met to make IHL applicable to the EU.

Nevertheless, EU forces could easily be involved in an armed conflict. With the TEU, such involvement has a broad legal basis, as it authorizes the use of military means, for “tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation”. Therefore, it is appropriate to enquire whether, when, how and why IHL would apply to the EU and its forces. This enquiry has similarities with the question of whether IHL applies to the UN and its peace forces, but EU law and the specificity of the EU imply many particularities.

An international organization such as the EU may be bound by IHL, either because its internal law says so, because it has undertaken to respect it, or because customary law is the same for states and international organisations.

Attempts by the ICRC to introduce IHL into the primary EU law have failed. IHL may however be introduced through the well-established internal obligation of the EU to respect human rights. Human rights which are highly relevant for those affected by armed conflict, are protected by the Charter of Fundamental Rights of the European Union, including the right to life, to physical integrity, to liberty and security, to health care and to an effective remedy. These rights bind EU institutions and agencies equally in their external action, as well as member states’ implementation of EU law, including in their foreign and defence policy. IHL details, specifies and modifies those rights to make them more realistic for armed conflicts.

Furthermore, the possible accession of the EU to the European Convention on Human Rights (ECHR), foreseen in Article 6(2) TEU and Protocol 14 to the ECHR, may make the ECHR applicable to the EU. To the extent that the ECHR applies extraterritorially, an issue discussed below, accession will subject EU operations to the ECHR and to judicial control by the European Court of Human Rights (ECtHR), while the Court of Justice currently has no such jurisdiction. A final entry point for IHL in EU primary law is Article 21(1) TEU that mentions the respect for international law among the principles which must guide the external action of the EU.
Another indication of the EU attachment to IHL can be found in its Guidelines on Promoting Compliance with IHL. These deal with the promotion of IHL by the EU towards third states and non-state actors in third states, “in line with the commitment of the EU and its Member States to IHL.” The Guidelines mention that “the same commitment extends to measures taken by the EU and its Member States to ensure compliance with IHL in their own conduct, including by their own forces”, but stress that “such measures are not covered by these Guidelines. While the Guidelines do not apply to EU forces, this text contains a non-binding commitment by the EU to comply with IHL.”

Concerning EU treaty obligations, while all of its member states are parties to the Geneva Conventions and their Additional Protocols, the EU itself is not. Obligations of members normally do not bind an international organization. Presently, the EU is not capable of becoming a party to IHL treaties and there are a good number of rules which can be respected only by a state having a territory, laws and criminal tribunals.

As for the possibility that the EU is bound by IHL through customary law, the majority view in scholarly writings on IHL is that as international organisations have (limited) legal personality, they are bound by the same rules as states if they engage in the same activities as states. Two ICJ Advisory Opinions are invariably quoted to support this claim. In the Reparations case, the ICJ writes that the UN is “a subject of international law and capable of possessing international rights and duties.” In the WHO-Egypt Agreement case it states, “international organizations are subjects of international law and as such, are bound by any obligation incumbent upon them under general rules of international law.” As such, the EU is a subject of international law and military operations are among its functions under EU primary law. Moreover, the Court of Justice has consistently reaffirmed that the EU must respect customary international law.

However, in our view, the dicta of the ICJ quoted above, state only that international organizations may have obligations under general international law, but not that they have the same obligations as states. Whether an international organization is or is not bound by the same rules of customary law as states, must be determined on the basis of the practice of international organizations and of states in relation to international organizations. For IHL and the UN, this is extremely doubtful. However, as mentioned, EU practice raises less doubt. Although the EU possibly has not had an occasion to apply IHL in an armed conflict, its declarations and those of its member states, which are equally a form of practice, invariably state that it will do so.

Even if the EU is not bound by IHL, those who act for it are bound as individuals (by criminalized rules of IHL), or because they are organs of (contributing) states. States contributing to EU missions are parties to IHL treaties, but it is controversial whether and when they are addressees of IHL obligations if the EU has command and control. For human rights obligations, a ECtHR judgement suggests that in such a case the sending state will not have jurisdiction for the purposes of its obligations under the ECHR. If this is correct, it is also valid for IHL obligations. In our view, who has command and control must be determined for every mission separately; everything depends on the facts, i.e. on who has
effectively control. Until now, both the EU and the sending states have exercised command and control over EU missions - the EU keeping the political, military, and operational control, and sending states keeping full command (administrative, disciplinary and criminal control). As long as the sending state controls respect of IHL by its troops, through its disciplinary and criminal systems, it should ensure that its IHL obligations are fulfilled when they are acting for the EU.

Finally, under Article 1 common to the Geneva Conventions, EU member states have the obligation to ‘ensure respect’ of IHL by their organisation. In addition, they are responsible for activities they entrust to their organisation to perform, if such delegation aims to circumvent their own obligations with respect to those activities. The ECtHR requires states, which entrust an international organisation with a certain task, to ensure that persons benefit from human rights protection equivalent to what states are bound to offer. In the relevant cases, the individual was however always present on the territory of the respondent state.

Extraterritorial application of EU human rights law

If IHL applies to EU forces, by definition it applies worldwide, wherever parties to an armed conflict fight. If however, it applies through provisions on the respect of human rights, the traditional controversy over whether and to what extent human rights apply extraterritorially becomes relevant. This problem is often neglected in very rosy assessments of the human rights obligations of EU missions. At least under Article 1 of the ECHR, states parties must secure the rights listed only to everyone within their jurisdiction. Under the jurisprudence of the ECtHR, which is constantly developing, jurisdiction exists in an occupied territory where a state exercises public powers normally exercised by a sovereign government, and when a state exercises control and authority over an individual through its agents abroad, but such jurisdiction does not cover everyone whose rights are violated by a party. Detaining someone abroad is sufficient to establish jurisdiction. May the EU however, be considered as “detaining” anyone?

The question arises, whether the references to human rights in EU law concerning its external action imply an extraterritorial application of human rights going beyond that of the ECHR. Article 21 TEU affirms that the “Union’s action on the international scene shall be guided by [...] the universality and indivisibility of human rights”. Does this only mean that the EU promotes human rights worldwide, or equally that it must respect human rights worldwide, including towards persons who are not under the jurisdiction of the EU? In our view, when the TEU refers to human rights, it necessarily not only refers to its substantive entitlements, but also to its rules on who the beneficiary is, and in what relations they apply. A solution to the question of the extraterritorial application of human rights could be found through a functional approach, distinguishing the degree of control necessary according to the right to be protected. Also, further thoughts must be given on the ECHR derogation clause for situations in which a state’s security is in jeopardy and how it may be adapted to the EU.

Specific problems for the EU to respect IHL
Arguably, EU missions have not yet been parties to an armed conflict. When and how they could become parties to an armed conflict and what difficulties could arise in complying with IHL, are problems regularly neglected by those painting a rosy picture of the applicability of IHL to EU forces.39

Armed conflicts that trigger the application of IHL imply a minimum level of violence, which is different for international armed conflicts (IACs) and NIACs. If EU forces use force against a non-state armed group with the consent of the territorial state, there must be violence of certain intensity against the group for IHL of NIACs to apply.40 When the adversary is a state, any act of violence or capture of adversaries directed against the forces of a de facto government of an existing state is arguably covered by IHL of IACs.41 Some authors and state practice consider however, that IACs also require a certain level of violence.42 Accordingly, IHL would not apply if the violence is not widespread and the states involved maintain normal diplomatic and economic relations. However, if there are hostilities between forces belonging to a state or an organized armed group, then the legal basis of the use of force and the mandate of the EU mission are irrelevant for the applicability of IHL. Besides, IHL only applies to military operations directed at combatants or members of an armed group with a continuous fighting function. Even in an armed conflict, police operations against civilians are subject to human rights law and many more restrictions than hostilities.

An additional difficulty is to define whether the EU or its member states are party to an armed conflict. Although IHL is not only addressed to the parties to a conflict, many rules mention them. When the EU is party to the conflict, because it has command and control over EU forces, its legislation, EU law, lacks certain rules IHL requires belligerent parties to apply. For example, there is no EU law on the definition of and jurisdiction over grave breaches,43 the use of the emblem of the red cross or the red crescent,44 or criminal legislation applicable to detainees.45 On the two former issues, we consider that contributing states remain in control even if the EU has command and control over the operation and their domestic law therefore applies (which raises tricky interoperability problems when persons other than members of the EU forces are addressed, prosecuted or detained). EU forces have done everything possible to transfer any detainee as soon as possible to the territorial state, to avoid legal proceedings. This may not always be possible under the non-refoulement principle. If legal proceedings are necessary, they must respect the guarantees foreseen in EU law, but be conducted according to the territorial legislation if an agreement with the territorial state exists. Otherwise, legal proceedings must be conducted according to the national legislation of the detaining contributing state, as no EU criminal procedure applicable to such cases exists.

Another question that arises is whether the rules of Geneva Convention IV on military occupation bind hypothetical EU forces administering a territory or an international civil administration.46 The examples of Kosovo or Mostar are not entirely relevant because international forces were present with the agreement of the (former) territorial State. One could, however, imagine an international civil administration, run by the EU, without the agreement of the former government. In that case, in our view, Geneva Convention IV applies, although a UN Security Council mandate may extend the rights of the EU compared with those of an occupying power, allowing it, for example, to change local legislation and institutions. Even if
EU forces administer a territory with the consent of the local sovereign, it may be wise to apply IHL by analogy since it provides a framework to address many of the situations with which peacekeepers will be confronted.\(^47\)

The EU promoting IHL and its respect

In 2005, the Council adopted Guidelines on promoting compliance with IHL (hereafter: Guidelines).\(^48\) They deal with efforts by the EU to obtain the respect of IHL by others. Under EU law they are not binding,\(^49\) which does not mean that they do not have an impact.

Acting on the basis of those Guidelines, the EU first calls upon third states to adhere to IHL instruments, which are not yet universally accepted, such as the 1977 Protocol I, to enact the necessary implementing legislation,\(^50\) and it supports training and education on IHL.\(^51\) The EU and its member states also had a crucial role in developing several IHL instruments. They were among the first to insist on individual criminal responsibility for violations of IHL. Declarations and decisions, which initially concerned the former Yugoslavia, demonstrated in particular an *opinio juris* of states concerning the criminalization of violations of IHL of NIACs.\(^52\) Therefore, it was only logical that the EU supported both the creation of *ad hoc* international criminal tribunals and of the International Criminal Court (ICC).\(^53\) In fact, the EU and its member states have done a lot to ensure the integrity of the ICC Statute and the effectiveness of the ICC. In various Conclusions and Recommendations, the Council has expressed its support to the ICC, in particular for its action in Sudan, Uganda and the DRC. The EU encourages in its political dialogue with third states ratification or accession and implementation of the Statute. It aims at the inclusion of an ICC clause in agreements with third states and it has signed an agreement on cooperation and assistance with the ICC.\(^54\)

Facing recent scepticism by African states towards the concept of universal jurisdiction, the EU established with the African Union an Expert Group on the Principle of Universal Jurisdiction. The report\(^55\) reaffirmed important principles, but remained vague and cautious on operational details, as are European states when they are required to prosecute suspected war criminals found on their territory who allegedly committed war crimes abroad. Governments and national justice systems are fearful of diplomatic complications, which may result from such prosecutions and accompanying arrests of (former) officials of third states suspected of war crimes and adopt, apart from a very conservative position in genuine controversies about the extent of immunities of (even former) officials, various avoidance strategies.

In addition, the EU strongly supported the adoption of the Laser Weapons Protocol to the 1980 Convention on Certain Conventional Weapons and it influenced the prohibition of antipersonnel mines in the Ottawa Convention.\(^56\) Furthermore, it supports the conclusion of an international treaty regulating arms trade, which should include the respect of IHL by the receiving country as a criterion for the legality of arms transfers. The EU has also adopted Guidelines on children in armed conflict, to promote the respect of IHL in this field by third states and armed non-state actors.\(^57\)

In addition, the Guidelines allow EU member states to respect their obligation under Article 1 common to the Geneva Conventions, to ensure respect of IHL by belligerents worldwide, implementing it through the CFSP. As IHL applies only to armed conflicts, a situation must
first be so classified. The Guidelines require EU bodies to determine the applicability of IHL in situations within their area of responsibility. 58 A second step would be an impartial enquiry into alleged violations of IHL. While the EU Guidelines prescribe that consideration should be given to drawing on the services of the International Humanitarian Fact-Finding Commission (IHFFC) established under Article 90 of Additional Protocol I, 59 not all EU member states have accepted the competence of the IHFFC. 60 Further, even when it was competent, no EU member state has asked the IHFFC to undertake an enquiry. Instead of using the IHFFC, in the 2008 conflict between Russia and Georgia, the EU established an ad hoc fact-finding commission, 61 which was heavily dominated by diplomatic concerns to please the parties. This was a missed opportunity for the IHFFC to leave its involuntary lethargy, 62 allowing it to demonstrate that it can work efficiently and impartially.

The third step to ensure respect of IHL consists of taking action against states and armed groups that violate it. The Guidelines envisage that this may be done through political dialogue, demarches, public statements about specific conflicts, restrictive measures, sanctions, cooperation with other international bodies, and crisis management operations. 63 In this respect, the overall performance, in particular of the Council, vis-à-vis powerful or influential states, such as Russia, the US or Israel, is less satisfactory than vis-à-vis weaker, mainly African states. 64 As EU member states were involved, it is not astonishing that Afghanistan and Iraq only rarely appeared among the crisis situations where the EU expressed concern about IHL violations. 65 Common positions on respecting IHL in Afghanistan were much stronger before EU member states became involved in the armed conflict. 66

EU restrictive measures may be taken in its commercial policy (in the form of non-concession or withdrawal of trade preferences), its foreign and security policy and its development cooperation policy. Here again, the Council is more reluctant than the Commission, to take restrictive measures against powerful states (beyond UN sanctions). IHL violations have never been the only reason for imposing autonomous EU sanctions. 67

As for commercial policy, the Commission introduces clauses into commercial agreements with third states, allowing the EU to suspend them if that state violates human rights (which includes, as seen above, IHL). 68 The Court of Justice, the Council and the Commission have furthermore confirmed that goods produced in the Israeli settlements in the Westbank (which are unlawful under IHL), may not benefit from preferential treatment under an Israel-EC free trade agreement. To enforce this position, the EU requires the postal code of the place of production. 69

The Court of Justice has confirmed that the Commission may pursue the elimination of small arms and light weapons in its development cooperation policy. 70 Its reasoning could be extended to IHL issues, considering that sustainable development cannot be achieved without the respect of IHL. 71 As for EU assistance, promoting observance of IHL is explicitly mentioned as a possible aim the Commission may pursue under the European Instrument for Democracy and Human Rights. 72 Similarly, measures by third countries supported by the EU under its Instrument for Stability, must comply with IHL. 73
The Council may decide, under the CFSP, to take restrictive measures or sanctions against states violating IHL. Diplomatic, economic or financial sanctions may be aimed at governments, armed non-state actors or individuals. Often, EU sanctions merely implement decisions taken by the UN Security Council. Violations of IHL justified measures taken against the FRY and Indonesia. Without explicitly mentioning IHL, the Council has withdrawn the benefits of the generalized system of preferences for developing countries from Myanmar, and has taken restrictive measures, including arms embargoes, or bans on the export of luxury goods and technology that may be used for internal repression, against, among others, Liberia, DRC, Côte d’Ivoire, and Syria. Furthermore, the Council temporarily withheld the special incentive arrangement for sustainable development and good governance (GSP+) for products originating in Sri Lanka, because of the country’s failure to implement its obligations under several human rights treaties.

A field in which the EU may have a direct impact on violations of IHL is the export of arms. However, because of commercial and political interests of member states, EU law and policy on the issue are very flexible. The Guidelines rather cautiously mention that the respect of IHL by the importing country “should be considered”, while the Council’s Common Position on arms export mentions the respect of IHL as one of the criteria for deciding upon arms export licence applications by member states. A denial is only prescribed if “there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations.”

Conclusion

After a millennia of wars, history had mercy with Europe. Since – and because – the idea of European integration became a reality through what is now the EU, armed conflicts no longer occur between EU member states or on their territory. EU member states continued to be involved in armed conflicts, but their involvement was not governed by EU law. Therefore, the relationship between IHL and EU law is fortunately not (yet) an issue of daily concern for practitioners and EU institutions. As far as the EU has become a military actor abroad, IHL arguably did not yet apply. If the EU becomes involved in an armed conflict, there will be compelling arguments under EU law, IHL and public international law in general to subject it to IHL. However, it will face serious legal problems to comply with its rules, because the EU and EU law lack several features IHL presupposes to exist among belligerent states and their legislation. Where the EU has been most active for IHL is in its promotion abroad, including by fulfilling its member states’ obligation to ensure its respect. Compared with other international organizations and most states of other regions, the EU has been a champion in this respect. However, even the EU, a community governed by law, has not been immune from double standards as soon as the interests of its most powerful members are involved.

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1. Article 348 TFEU. This is what the Commission did in 1994 when Greece adopted trade restrictions against Macedonia. See Case C-120/94 *Commission of the European Communities v Hellenic Republic* [1996] ECR I-01513.


5. See in particular Article 43 of the Hague Regulations concerning the Laws and Customs of War on Land (1907) and Article 64 of Geneva Convention IV, n 2 above.

7 Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 10 on Cyprus [2003] OJ L 236/955.


12 See *Prosecutor v Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, ICTY, Trial Chamber (3 April 2008), in particular paras 49 and 60.

13 Article 43(1) TEU.


15 See Articles 2 and 3(5) TEU.

16 Article 21(3) TEU.

17 Article 6 (1) and (3) TEU; Articles 51-53 of the Charter of Fundamental Rights of the European Union. See, e.g., Thierry Bontick, « L’effectivité des droits fondamentaux dans le Traité de Lisbonne, » in *La Charte des droits fondamentaux de l’Union européenne après le Traité de Lisbonne*, ed. Bertrand Favreau (Bruxelles: Bruylant, 2010), 110-113.

18 Article 275 TFEU. Marisa Cremona, “The Union’s External Action: Constitutional Perspectives,” in *Genesis and destiny of the European Constitution: Commentary on the Treaty establishing a Constitution for Europe in the light of the "travaux préparatoires" and future prospects*, ed. Giuliano Amato et al. (Brussels: Bruylant, 2007), 1191, wonders however whether the exception in Article 275(2) includes a Council’s decision authorizing an EU operation to use restrictive measures against individuals.

19 Article 21(1) TEU.


21 Ibid., Article 2.


26 Articles 47, 42 and 43 TEU.


32 Article 61, Draft Articles on the Responsibility of International Organizations, International Law Commission, n 29 above.


35 See an overview of the jurisprudence in *Al-Skeini and others v United Kingdom* (2011) 53 EHRR 18, paras 130-141.


37 Cerone, “Human Dignity in the Line of Fire,” 1494 – 1507, frames the discussion in terms of a ‘range’ of applicable rights and in terms of the ‘level of obligation’ binding States acting extra-territorially.

38 Article 15 of the ECHR refers to ‘time of war or other public emergency threatening the life of the nation…’


40 See n 12 above.


43 See Articles 49/50/129 and 146, respectively, of the four Geneva Conventions of 12 August 1949.

44 See e.g. Articles 44, 53 and 54 of Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces (the 1949).

45 See e.g. Articles 82 of Geneva Convention III relative to the Treatment of Prisoners of War (1949), Article 64 of Convention IV, n 2 above, and Article 3(1)(2)(d) common to the four Geneva Conventions of 1949 (‘regularly constituted courts’ must be established by law).


48 See Guidelines, n 20 above. They were updated without changes relevant to this contribution in 2009 (Updated European Union Guidelines on promoting compliance with international humanitarian law (HIL) 2009/C 303/06 [2009] OJ C 303/12).


50 Guidelines, n 48 above, Article 16(a).

51 Ibid., Article 16(h).

52 See Tristan Ferraro, «Le droit international humanitaire dans la politique étrangère et de sécurité commune


58 Guidelines, n 48 above, Article 15(a).

59 Ibid.


63 Guidelines, n 48 above, Article 16(a)-(f).


66 See Ferraro, «Le droit international humanitaire, » 453 with references.


71 Bolaert-Suominen, « Le rôle du DIH, » 161.


74 See for an overview Auvret-Finck, « L’utilisation du DIH, » 54-59.

75 Articles 75 and 215 TFEU.

76 See Ferraro, «Le droit international humanitaire, » 459.


83 See for a detailed analysis Anne-Sophie Millet-Devalle, « L’UE et le droit relative aux moyens de combat, » in Millet-Devalle, *L’Union européenne*, 217-246.
84 Guidelines, n 48 above, Article 16(i).
86 Ibid., Article 2(2)(c).