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## WEAPONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

International human rights law offers an overarching international legal framework to help determine the legality of the use of any weapon, as well as its lawful supply. It governs acts of states and non-state actors alike. In doing so, human rights law embraces international humanitarian law regulation of the use of weapons in armed conflict and disarmament law, as well as international criminal justice standards. In situations of law enforcement (e.g. counterpiracy, prisons, ordinary policing, riot control, and many peace operations), human rights law is the primary legal frame of reference above domestic criminal law. This important and timely book draws on all aspects of international weapons law and proposes a new view on international law governing weapons. Also included is specific discussion on armed drones and cyberattacks, two highly topical issues in international law and international relations.

STUART CASEY-MASLEN is head of research at the Geneva Academy of International Humanitarian Law and Human Rights.

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In memory of my father

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## EDITOR'S PREFACE

International human rights law (IHRL) offers an overarching international legal framework to help determine the legality of any weapon. Such a bold assertion may come as a surprise to some, and perhaps be adjudged a heresy by others. Instinctively, an international lawyer might be tempted to argue that a weapon's legality should be determined by reference to international humanitarian law (IHL); indeed, there are strong reasons for such an argument. It does, though, ignore two critical facts. First, weapons are used far more often away from the battlefield than they are as a method of warfare. In a situation of 'law enforcement', IHL does not apply and IHRL is a primary frame of reference under international law. Second, even in a situation of armed conflict fundamental human rights continue to apply, and in certain circumstances may even supersede IHL norms.

It could also be argued that disarmament law is a critical legal framework. To date, however, only four weapons have been rendered illegal by a disarmament treaty: anti-personnel mines, biological weapons, chemical weapons, and cluster munitions.<sup>1</sup> This means the vast majority of extant weapons are not addressed. Moreover, of the four weapons covered by disarmament law treaties, chemical weapons are not unequivocally prohibited since certain chemical agents may lawfully be used for domestic law enforcement (and therefore their regulation automatically falls under IHRL).

In contrast to most branches of international law, IHRL is eclectic, drawing actively on norms from other legal regimes – including, though not limited to, IHL and disarmament law – or on standards set in a range of domains of professional endeavour. Its implementation is supported by a variety of formal and informal mechanisms operating nationally, regionally, and internationally. What is more, IHRL is dynamic: its implementing mechanisms, which

<sup>1</sup> One could argue that the prohibition of 'blinding laser weapons' in Protocol IV to the Convention on Certain Conventional Weapons falls within the realm of disarmament law due to the prohibition on transfer. According to Article 1 of the Protocol: 'It is prohibited to employ laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices. The High Contracting Parties shall not transfer such weapons to any state or non-state entity.'

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range from courts, tribunals, and commissions to treaty-based oversight bodies and thematic or country-based special rapporteurs, all contribute to this dynamism.

Accordingly, although this book focuses on the law as it stands today, it also describes the law as it is evolving. The distinction between *lex lata* and *lex ferenda* is made explicitly in each chapter. In addition, on occasion the authors offer their own views as to the direction the law should take; where such 'advocacy' occurs, it is similarly overt.

The book comprises six parts. Part I looks at the use of weapons for law enforcement purposes. Chapter 1 considers the use of firearms in law enforcement; such weapons should only be used by law enforcement officials where a threat to life or of serious injury exists. Today, most police forces are routinely armed, and increasingly the weapons with which some are equipped are of a military nature, capable of firing at a rate of many hundreds of rounds per minute. Intentional lethal use of force should, though, be limited to situations where it is strictly unavoidable to protect life. In Chapter 2, Abi Dymond-Bass and Neil Corney discuss the use of so-called 'less-lethal' weapons. The term 'non-lethal' is avoided wherever possible, as it is a misnomer: many of the weapons that attract this epithet are potentially lethal, as experience has taught us. Chapter 3 reviews the use of weapons – lethal or 'less-lethal' – for crowd management, crowd control, and riot control. In Chapter 4, Silvia Suteu applies international and regional standards to the use of weapons in custodial centres, for it is well established in law (if not necessarily in practice) that human rights do not stop at the prison gate. In Chapter 5, Alice Priddy applies the 'international law of law enforcement' to the maritime environment, looking at the use of weapons in counterpiracy operations, including by private security service providers.

Indeed, it is now possible to speak of an 'international law of law enforcement'. This body of law is, I would argue, composed of three main elements:

- international human rights law, especially rights to life, liberty, security, to peaceful protest (an umbrella right comprising a number of independent rights), and to freedom from torture and other forms of cruel, inhuman, or degrading treatment or punishment;
- customary international law, derived from, inter alia, criminal justice standards, especially the 1979 Code of Conduct for Law Enforcement Officials<sup>2</sup>

<sup>2</sup> Adopted by United Nations (UN) General Assembly Resolution 34/169 of 17 December 1979. Melzer affirms that it is 'widely recognized as an authoritative guide for the use of force by state agents engaged in law enforcement activities'. Nils Melzer, *Targeted Killings in International Law*, Oxford Monographs in International Law, Oxford University Press, 2009, p. 196.



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and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;<sup>3</sup> and

- general principles of law, which reflect core principles of national criminal law across democratic nations.

As such, it is understood that the action of law enforcement may demand the use of force, including the use of weapons. To be lawful, however, such force – and any concomitant use of a weapon – must be both necessary and proportionate. Naturally, any weapon used must not be illegal under applicable national or international law. Furthermore, any use of weapons where death or serious injury results must be followed by an independent investigation to assess the legality of the use of force and to determine who should be held accountable for any unlawful action.

Part II addresses IHRL and armed conflict. In Chapter 6, Andrew Clapham discusses the complex interaction between weapons and armed non-state actors. He looks first at the legality of state transfers of arms to rebels and then at their legal obligations as individuals, armed groups, and as putative states. In Chapter 7, Nigel White assesses how weapons may lawfully be used in peace operations. As he observes, modern peace operations represent a challenge for the development of international human rights-based standards for the use of weapons since such operations are multinational and contain a range of armed components. He finds that while training, preparation, and risk assessment prior to the deployment of peace operations are improving, clear, human-rights-compliant standards still need to be elaborated, particularly by the United Nations. In Chapter 8, Sharon Weill and I describe the relationship between IHL and IHRL as it pertains to the use of weapons in armed conflict. General IHL criteria outlaw the use under any circumstances of weapons possessing certain characteristics (either because they are inherently indiscriminate, or because they are of a nature to cause superfluous injury or unnecessary suffering), while the rules of distinction, proportionality, and precautions in attacks govern combat action ‘on the battlefield’ (a key question, of course, being what are the outer limits of that notion?). We argue that in other circumstances IHRL standards governing the use of lethal force apply. Finally

<sup>3</sup> Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. A UN General Assembly resolution adopted the same year welcomed the Basic Principles and invited governments ‘to respect them and to take them into account within the framework of their national legislation and practice.’ Operative Paragraph 4, UN General Assembly Resolution 45/166, adopted without a vote on 18 December 1990. In the view of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, these standards are ‘authoritative statements of international law that set out the principles on the use of force by the police.’ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, annexed to UN doc. A/66/330, 30 August 2011, §36.

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for Part II, in Chapter 9 I look at IHRL's application to the use of weapons and *jus ad bellum* – the resort to armed force between states or between a state and a non-state actor where it constitutes, respectively, an international armed conflict or an armed conflict of a non-international character.

Part III looks at selected weapons and technologies from an IHRL and IHL perspective. In Chapter 10, David Fidler discusses their relevance for cyberattacks. He concludes that existing experiences with cyberweapons suggest that such weapons pose less threat to human rights interests than do traditional military weaponry and tactics. Government use of cyberweapons against political dissidents worries human rights activists, but the response to this problem does not focus on weaponised computer code as such but on protecting and expanding internet freedom. In Chapters 11 and 12, Michael Crowley looks, in turn, at the use of riot control agents and chemical incapacitants. Both have been used for law enforcement, sometimes with lethal consequences. He argues that further clarification of the application of international law is urgently required. In Chapter 13, I look at the proliferation of drones and their use within and outside armed conflicts. They probably represent the future of warfare as well as perhaps policing, albeit over the longer term.

Part IV considers the implications of IHRL for weapons design, acquisition, and transfer. In Chapter 14, Abi Dymond-Bass, Neil Corney, and I propose a normative framework for a review of the legality of a weapon for use in law enforcement as well as reiterating the rules applicable to means of warfare destined for use in armed conflict. Using selected human rights norms and principles is, we assert, long overdue. In Chapter 15, Annyssa Bellal assesses to what extent a proposed international arms transfer may be prohibited by human rights law or under broader international law governing state responsibility for complicity. In Chapter 16, Gilles Giacca and Tahmina Karimova discuss the implications of economic and social rights for arms acquisitions. They conclude that no *expressis verbis* rule of international law requires states to prioritise spending on socio-economic rights over military expenditure.

Part V is devoted to issues of responsibility and accountability for unlawful use of weapons under human rights law. In Chapter 17, Ralph Steinhardt describes the extent of corporate responsibility for the design, manufacture, sale, and use of weapons. He argues that company-wide compliance programmes – adopted to minimise the risk of alien tort litigation – become a free-standing means for assuring that corporations do not replace governments as the dominant perpetrator of human rights abuse. In Chapter 18, Megan Burke and Loren Persi-Vicentic assess the right to a remedy and reparation where the use of a weapon is unlawful. They conclude that, given the relative lack of individual compensation schemes for violations of IHL, human rights law and, in certain cases, potentially international criminal law can offer broader and more significant avenues for redress.

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In the final section of the book (Part VI) on future regulation of weapons under international law, I set out how I believe international weapons law, including IHRL, should regulate weapons and weapons systems. This includes certain weapons still under development or on the horizon.

Before ending this introduction, a brief discussion is merited of the definitions of *weapons* and of *arms* and of the distinction between them. Both terms are used in international law, including in international treaties, but nowhere is either term formally defined. In general, however, an arm is a narrower concept, as it refers to devices specifically manufactured to kill or injure, especially where they are military in nature. A weapon, on the other hand, can be any item or action that is so used,<sup>4</sup> as well as to coerce a person's behaviour.<sup>5</sup> This encompasses so-called truth serums, among others. Further, it is common to refer to rape as a 'weapon' of war in terms that could not apply to arms.<sup>6</sup> For

<sup>4</sup> A US Department of Defense Working Group has reportedly suggested a definition of 'all arms, munitions, materiel, instruments, mechanisms or devices that have an intended effect of injuring, damaging, destroying or disabling personnel or property.' Cited in ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977*, ICRC, Geneva, 2007, p. 8, fn. 17. Within the context of IHL, a weapon has been defined by one British military lawyer as connoting 'an offensive capability that can be applied to a military object or enemy combatant'. J. McClelland, 'The Review of Weapons in Accordance with Article 36 of Additional Protocol I', *International Review of the Red Cross*, vol. 85, no. 850 (June 2003), 397–415, p. 404. The US Department of Defense's *Dictionary of Military Terms* does not contain a definition of 'weapon' or of 'arms'.

<sup>5</sup> In November 2012 it was reported that the date when stone-age humans first invented the lethal technology of spears and arrows had been put back many thousands of years with the discovery of small stone blades dating to 71,000 years ago. Archaeologists believe the 'bladelets' were used as the sharp tips for arrows or spears and were made by a relatively sophisticated technique involving the heat treatment of stone before shaping the final cutting edges. Steve Connor, 'Stone-age humans began using lethal technology 71,000 years ago to fight Neanderthals', *Independent*, 7 November 2012.

<sup>6</sup> It appears to be insufficient for rape to be widespread in order to be termed a weapon of war under international criminal law. In a case before the International Criminal Tribunal for the former Yugoslavia, the Trial Chamber read out the verdicts against three men, which included the following: 'The trial against the three accused has sometimes been called the "rape camp case", an example of the systematic rape of women of another ethnicity being used as a "weapon of war" ... It is to some extent misleading to say that systematic rape was employed as a "weapon of war". This could be understood to mean a kind of concerted approach or an order given to the Bosnian Serb armed forces to rape Muslim women as part of their combat activities in the wider meaning. There is no sufficient evidence for such a finding before the Trial Chamber ... What the evidence shows, is that the rapes were used by members of the Bosnian Serb armed forces as an instrument of terror. An instrument they were given free rein to apply whenever and against whomsoever they wished.' ICTY, *Prosecutor v. Kunarac et al.*, Judgment (Trial Chamber) (Case No. IT-96-23-T), 22 February 2001, Summary.

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the purpose of this book, we take a broad definition of the term 'weapon', as follows:

Any device constructed, adapted, or used to kill, harm, disorient, incapacitate, or affect a person's behaviour against their will, or to damage or destroy buildings or materiel. A weapon acts through the application of kinetic force or of other means, such as the transmission of electricity, the diffusion of chemical substances or biological agents or sound, or the direction of electromagnetic energy. The term 'weapon' includes cyber weapons that damage computer systems and networks or result in physical harm to people or objects.

## ACKNOWLEDGEMENTS

This book owes its existence first and foremost to the vision of two people. In 2010 Dr Robin Coupland of the International Committee of the Red Cross (ICRC) suggested that the Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy) elaborate a guide to the review of weapons under human rights law, akin to the ICRC's guide to the review of weapons under Article 36 of 1977 Additional Protocol I, published in 2007. Subsequently, Professor Andrew Clapham, the Geneva Academy's Director, saw the potential – that I initially did not – to expand such a guide into a detailed treatise on how international human rights law applies to and regulates weapons.

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ABBREVIATIONS

1868 Saint Petersburg Declaration	1868 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight
1899 Hague Regulations	1899 Regulations concerning the Laws and Customs of War on Land, annexed to Convention (II) with Respect to the Laws and Customs of War on Land
1907 Hague Regulations	1907 Regulations concerning the Laws and Customs of War on Land, Convention (IV) respecting the Laws and Customs of War on Land
1925 Geneva Gas Protocol	1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
1949 Geneva Convention IV	Convention (IV) relative to the Protection of Civilian Persons in Time of War
1955 Standard Minimum Rules	1955 Standard Minimum Rules for the Treatment of Prisoners
1958 High Seas Convention	1958 Geneva Convention on the High Seas
1979 Code of Conduct	1979 Code of Conduct for Law Enforcement Officials
1977 Additional Protocol I	1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
1977 Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
1990 Basic Principles	1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
1997 Anti-Personnel Mine Ban Convention	1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction
2005 Basic Principles and Guidelines	2005 Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

ACHPR	1981 African Charter on Human and Peoples' Rights
ACHR	1969 American Convention on Human Rights
ACLU	American Civil Liberties Union
ACmHPR	African Commission on Human and Peoples' Rights
ACPO	Association of Chief Police Officers
ADF	Allied Democratic Forces
AMISOM	African Union Mission in Somalia
ANSA	Armed non-state actor
APMBC	1997 Anti-Personnel Mine Ban Convention
ArCHR	2004 Arab Charter on Human Rights
ASEAN	Association of South-east Asian Nations
ASIS International	American Society for Industrial Security
ATS	Alien Tort Statute
ATT	Arms Trade Treaty
AU	African Union
AUC	United Self-Defence Committees of Colombia
BA	Bromoacetone
BTWC	1972 Biological and Toxin Weapons Convention
CA	Bromobenzylcyanide
CAS	Chemical Abstracts Service
CAT	1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCF	Continuous combat function
CCM	2008 Convention on Cluster Munitions
CCR	Center for Constitutional Rights
CCW	1980 Convention on Certain Conventional Weapons
CED	Conducted energy device
CEJIL	Center for Justice and International Law
CERD	1965 International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CGPCS	Contact Group on Piracy off the Coast of Somalia
CIA	Central Intelligence Agency
CoW	Coalition of the Willing
CN	2-chloro-1-phenyl-ethanone (phenylacyl chloride)
COE	Contingent-Owned Equipment
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CR	Dibenz-(b,f)1:4-oxazepine (dibenzoxazepine)
CRC	Committee on the Rights of the Child
CRPD	2006 Convention on the Rights of Persons with Disabilities
CS	[(2-chlorophenyl)-methylene] propanedinitrile
CSP	Conference of States Parties



LIST OF ABBREVIATIONS

XXV

CWC	1992 Chemical Weapons Convention
DFS	Department of Field Support
DM	Diphenylaminochloroarsine (adamsite)
DPKO	UN Department of Peacekeeping Operations
DU	Depleted uranium
DUF	Directives on the Use of Force
ECHR	1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
ED	Effective dose
EDW	Electrical Discharge Weapons
EEZ	Exclusive economic zone
EPR	European Prison Rules
EU	European Union
EU NAVFOR	European Union Naval Force
FAA	US Federal Aviation Administration
FBI	Federal Bureau of Investigation
FPU	Formed Police Units
FSA	Free Syrian Army
GCS	Ground control station
Geneva Academy	Geneva Academy of International Humanitarian Law and Human Rights
HMIC	Her Majesty's Inspectorate of Constabulary
IAC	International armed conflict
IACmnHR	Inter-American Commission on Human Rights
IACP	International Association of the Chiefs of Police
IACtHR	Inter-American Court of Human Rights
ICCPR	1966 International Covenant on Civil and Political Rights
ICC	International Criminal Court
ICESCR	1966 International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICoC	International Code of Conduct for Private Security Service Providers
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IED	Improvised explosive device
IFOR	Implementation Force
IHL	International humanitarian law
IHRL	International human rights law
ILC	International Law Commission

ILO	International Labour Organization
IMB	International Maritime Bureau
IMF	International Monetary Fund
IMO	International Maritime Organization
INCB	International Narcotics Control Board
IPCC	Independent Police Complaints Commission
IRA	Irish Republican Army
ITAR	International Traffic in Arms Regulations
JAG	Judge Advocate General
JNLWP	Joint Non-lethal Weapons Program
KFOR	Kosovo Force
LAPD	Los Angeles Police Department
LD	Lethal dose
LGB	Laser guided bomb
LOS Convention	1982 United Nations Convention on the Law of the Sea
LRAD	Long Range Acoustic Device
MDG	Millennium Development Goal
MNC	Multinational corporation
MONUC	UN Mission in Democratic Republic of Congo
MONUSCO	UN Organization Stabilization Mission in Democratic Republic of Congo
MOSOP	Movement for the Survival of the Ogoni People
MoU	Memorandum of Understanding
MPK/MPA	N-nanonylmorpholine
MPS	Metropolitan Police Service
NATO	North Atlantic Treaty Organization
NEER	Non-lethal Environmental Evaluation and Remediation Center, Kansas State University
NGO	Non-governmental organisation
NIAC	Non-international armed conflict
OC	Oleoresin capsicum
OECD	Organisation for Economic Cooperation and Development
OEFF	One Earth Future Foundation
OHCHR	Office of the UN High Commissioner for Human Rights
OIOS	Office of Internal Oversight Services
OLA	UN Office of Legal Affairs
ONUC	UN Operation in the Congo
ONUCA	UN Observer Group in Central America
ONUMOZ	UN Operation in Mozambique
ONUSAL	UN Observer Mission in El Salvador
OPCW	Organisation for the Prohibition of Chemical Weapons
ORF	Omega Research Foundation
PAVA	Pelargonic Acid Vanillylamide

LIST OF ABBREVIATIONS

xxvii

PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PDT	Pre-Deployment Training
PERF	US Police Executive Research Forum
PIRA	Provisional Irish Republican Army
PKK	Kurdistan Workers Party
PLAN	Proportionate, lawful, accountable, and necessary
PMSC	Private military and security contractor
Principles for the Protection of Detainees	UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
PS	Trichloronitromethane chloropicrin
PSSP	Private security service provider
RAF	British Royal Air Force
RCA	Riot control agent
RoE	Rules of Engagement
RPG	Rocket-propelled grenade
RULAC Project	Rule of Law in Armed Conflicts Project
SAPS	South African Police Service
SAS	Special Air Service
SCSL	Special Court for Sierra Leone
SCO	Shanghai Cooperation Organization
SIPRI	Stockholm International Peace Research Institute
SOFA	Status of Forces Agreement
SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SUA Convention	1988 Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
TCN	Troop-contributing nations
TSN	Troop-sending nations
UAV	Unmanned aerial vehicle
UCAV	Unmanned combat aerial vehicle
UDHR	1948 Universal Declaration of Human Rights
UN	United Nations
UNAVEM	UN Angola Verification Mission
UNCC	UN Compensation Commission
UNDOF	UN Disengagement Observer Force
UNDP	United Nations Development Programme
UNDSS	UN Department of Safety and Security
UNEF	UN Emergency Force
UNFICYP	UN Peacekeeping Force in Cyprus
UNGA	UN General Assembly
UNIFIL	UN Interim Force in Lebanon

xxviii	LIST OF ABBREVIATIONS
UNISOM	UN Operations in Somalia
UNMBIH	UN Mission in Bosnia and Herzegovina
UNMIK	UN Mission in Kosovo
UNMIS	UN Mission in Sudan
UNODC	UN Office on Drugs and Crime
UNPROFOR	UN Protection Force
UNSAS	UN Stand-By Arrangement System
UNSC	UN Security Council
UNSG	UN Secretary-General
UNTAC	UN Transitional Authority in Cambodia
UNTAG	UN Transition Assistance Group
USAF	US Air Force
XREP	eXtended Range Electronic Projectile
WFP	World Food Programme
WTO	World Trade Organization

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## International courts and tribunals

### *International Court of Justice*

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