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Is there a text in this court ? : the purposive method of interpretation and the ad hoc tribunals / Mia Swart

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Abstract:	The ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) have contributed to the humanisation of humanitarian law inter alia by resorting to the purposive approach to interpretation. The application of the purposive approach to interpretation contributed to the development and extension of international humanitarian law. The ad hoc Tribunals also made new law in this way. The Tribunals also prioritised the humanisation of international law by blowing new life into the Martens Clause. Drawing on the work of Stanley Fish and his work on interpretive communities, this article will suggest that one of the ways to understand the purposive lawmaking of the Tribunals is to adopt the hermeneutical theory of deriving the meaning of a text from an "interpretive community". In the context of international criminal law such interpretive community will consist of the members of the international community who are sympathetic to the aims of international criminal law.
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