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Domestic humanitarian law : developing the law of war in domestic courts / Ashley Deeks

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Abstract:	<p>Several states have been engaged for years in armed conflicts against non-state actors outside their territory. These conflicts implicate a wide array of difficult questions related to international humanitarian law ('IHL'). Yet for structural and political reasons, the international community has not attempted to craft a new treaty to regulate these armed conflicts, and state practice is not yet sufficiently robust to crystallize new rules of customary international law. Although we have no new international rules to guide states' conduct in these contexts, that is not to say that we have no new rules at all to regulate these types of armed conflict. The new rules simply stem from non-international sources. Domestic courts of certain states have played a significant role in establishing new rules to govern how those states must conduct themselves during these armed conflicts. These courts have stepped in to interpret, extend, and craft laws applicable in armed conflict, producing what this chapter terms 'domestic humanitarian law' ('DHL'). DHL is important for two reasons. First, it establishes detailed, legally binding rules by which particular states' militaries must conduct themselves in extra-territorial conflicts. Second, the existence of DHL will have a significant effect on future IHL developments. DHL will affect the production and content of customary rules, the likelihood of future agreements about IHL, and the substance of those future rules in the event such an agreement emerges. The proliferation of DHL has the propensity to reduce international calls for a new treaty and complicates the initial negotiating positions of states whose courts have produced DHL. But DHL has advantages as well for IHL development, akin to the U.S. constitutional idea that U.S. states serve as experimental 'laboratories' in which different approaches to problems are tested. Because states will continue to face serious challenges in developing new IHL treaty rules on the international stage, the production of new interpretations and norms in U.S. and other domestic courts represents a potentially important phase in the development of IHL. As importantly, the phenomenon of DHL allows us fruitfully to explore the nature of domestic court decisions more generally in the project of international law creation.</p>
Keyword in French:	DIH DROIT INTERNATIONAL COUTUMIER TRIBUNAL CONFLIT ARME DEVELOPPEMENT DU DROIT MISE EN OEUVRE DROIT INTERNE
Keyword in English:	IHL (INTERNATIONAL HUMANITARIAN LAW) CUSTOMARY INTERNATIONAL LAW COURT/TRIBUNAL ARMED CONFLICT DEVELOPMENT OF THE LAW IMPLEMENTATION NATIONAL LAW
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