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From the "demands of humanity" : the formulation of opinio juris in decisions of international criminal tribunals and the need for a renewed emphasis on state practice / Noora Arajärvi

Document type:	Chapter
Title:	From the "demands of humanity" : the formulation of opinio juris in decisions of international criminal tribunals and the need for a renewed emphasis on state practice
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In:	Reexamining customary international law
Editor:	New York : Cambridge University Press, 2017
Physical description:	p. 189-229
Language(s):	eng
Abstract:	This chapter explores the role of opinio juris in the process of identifying rules of customary international law. In particular, it focuses on examples of case law in the field of international criminal law to illustrate the fluidity of approaches by international criminal tribunals in identifying customary international law, as well as the indeterminacy of opinio juris within customary international law. It also argues that while some flexibility in the formulation of opinio juris is desirable, a rule of customary international law must be supported by actual state practice, as reaffirmed in the draft conclusions of the International Law Commission on identification of customary international law.
Keyword in French:	DROIT INTERNATIONAL COUTUMIER DROIT INTERNATIONAL PENAL SOURCE DU DROIT INTERNATIONAL TRIBUNAL PENAL JURIDICTION INTERNATIONALE JURISPRUDENCE
Keyword in English:	CUSTOMARY INTERNATIONAL LAW INTERNATIONAL CRIMINAL LAW SOURCE OF INTERNATIONAL LAW CRIMINAL COURT INTERNATIONAL JURISDICTION CASE LAW
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Go to:	Reexamining customary international law / ed. by Brian D. Lepard

Call number	Disposability / Due date
345/723	See main document