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Approaching custom identification as a conflict avoidance technique : Tadic and Kupreškic revisited / Alexandre Skander Galand

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Abstract:	International human rights law (IHRL), international humanitarian law (IHL) and international criminal law (ICL) have trouble staying faithful to the two pillars of customary international law – state practice and opinio juris. In ICL, the Tadic Interlocutory Appeal on Jurisdiction and the Kupreškic Trial Judgement have even gone as far as enunciating new models to identify customs. In this article, I show that the approaches to customs' identification postulated in these two cases were conflict-avoidance techniques used by the International Criminal Tribunal for the Former Yugoslavia (ICTY) to bring together IHRL and IHL. The crux of the matter in the Tadic and Kupreškic cases was that the human rights of the victims of war crimes committed in internal conflicts required that a new approach to customary international law be adopted. Thus, the criminal aspect of IHL (i.e., ICL) was updated, and conceptual conflicts between IHL and IHRL were avoided.
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