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A fine line between protection and humanisation : the interplay between the scope of application of international humanitarian law and jurisdiction over alleged war crimes under international criminal law / Rogier Bartels

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Abstract:	<p>International humanitarian law (IHL) provides limits to the conduct of warring parties during armed conflicts. If these limits are crossed, international criminal law (ICL) can address alleged violations of IHL. When certain conduct falls outside the scope of jurisdiction over war crimes it may result in impunity. International courts and tribunals have therefore taken a very broad approach to their jurisdiction, including with regards to the concept of non-international armed conflict, which has been expanded well beyond the initial intention of States. While an expansive approach to the application of IHL may be desirable after the fact, in order to ensure that atrocities can be prosecuted as war crimes, applying IHL too broadly to situations on the ground may not result in better protection of those affected by violence. Although the protective function of IHL remains of paramount importance, States nowadays also extensively rely on the permissive aspect of IHL that allows targeting of military objectives, combatants and other persons taking a direct part in hostilities. The present chapter addresses the tension between the desire to expand the jurisdiction over war crimes and the consequential impact on IHL. It does so by specifically looking at the manner in which international courts and tribunals have pronounced on the material scope of IHL.</p>
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Keyword in English:	IHL (INTERNATIONAL HUMANITARIAN LAW) INTERNATIONAL CRIMINAL LAW MATERIAL SCOPE WAR CRIME INTERNATIONAL CRIMINAL TRIBUNAL CASE LAW NON-INTERNATIONAL ARMED CONFLICT
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