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## Terrorism, counter-terrorism, and international humanitarian law / Ben Saul

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Abstract:	<p>This chapter focuses on three key legal issues of particular relevance and specificity to terrorism in armed conflict. First, it examines IHL's specific, narrow prohibitions on 'terrorism' in armed conflict and the connected war crime of intending to spread terror amongst a civilian population, which is distinct from peacetime legal notions of terrorism. The war crimes jurisprudence has been developed by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL), and has implications for criminal jurisdiction under customary IHL and before the International Criminal Court (ICC). Second, the chapter analyses the varied and complicated relationships between IHL and different international counter-terrorism law (CTL) norms and instruments. Depending on the norm and context, CTL can apply, not apply, or partially apply in armed conflict, and there is no general international rule determining whether CTL or IHL is the more special law (<i>lex specialis</i>). Often CTL complements and extends IHL's focus on preventing and criminalizing attacks on civilians. Further, CTL often does not directly conflict with IHL. However, some aspects of CTL interfere with IHL's delicate balance between humanitarian protection and military necessity, by 'taking sides', undermining the equality of the parties, and ultimately reducing incentives for non-state armed groups (NSAGs) to comply with IHL. The chapter concludes by exploring the related, adverse effects of CTL on humanitarian relief operations in armed conflict. National implementation of CTL has variously chilled, restricted, prohibited, and even criminalized humanitarian engagement by external actors with armed 'terrorist' groups. These measures have both inhibited effective humanitarian assistance to vulnerable civilian populations and undermined the confidence of NSAGs in humanitarian cooperation with the international community.</p>
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