The prevention of gross human rights violations under international human rights law

van der Have, N.S.

Publication date
2017

Document Version
Other version

License
Other

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
ACKERMAN, Alice, 'The Prevention of Armed Conflicts as an Emerging Norm in International Conflict Management: The OSCE and the UN as Norm Leaders' (2003) 10(1) PCS 1.


Alebeek, Rosanne van, 'The Pinochet Case: International Human Rights Law on Trial' (2001) 71(1) BYIL 29


Aust, Anthony, Handbook of International Law (2nd edn CUP, 2010).


Bellamy, Alex J., 'Libya and the Responsibility to Protect: The Exception and The Norm' (2011) 25(03) Ethics Int Aff 263.


Bellamy, Alex J., Massacres and Morality: Mass Atrocities in an Age of Civilian Immunity (OUP, 2012).


Bellamy, Alex J. and Williams, Paul D., Understanding peacekeeping (Polity, 2010).

Bellamy, Alex J. and Dunne, Tim (eds), The Oxford Handbook of the Responsibility to Protect (OUP, 2016).

Ben-Naftali, Orna, 'The Obligation to Prevent and to Punish Genocide' in Paola, Gaeta (ed), The UN Genocide Convention A Commentary (OUP, 2009) 27.


Besson, Samantha and Tasioulas, John, The Philosophy of International Law (OUP, 2010).


Bratspies, Rebecca M., Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration (CUP 2010).


Brownlie, Ian, Principles of Public International Law (7th edn OUP, 2008).


Courses-Neff, Zama, 'Preventive Measures Pertaining to Unconventional Threats to the Peace such as Natural and Humanitarian Disasters' (1997) 30 NYU J Int'l L& Pol 645.


Dimitrijević, Vojin, 'The Monitoring of Human Rights and the Prevention of Human Rights Violations Through Reporting Procedures' in Bloed, Arie, Leicht, Liselotte, Nowak, Manfred and Rosas,


Gallagher, Adrian, 'Syria and the Indicators of a 'Manifest Failing’” (2014) 18(1) Int'l J HR 1.


Gibney, Mark, 'Universal Duties: The Responsibility to Protect, the Duty to Prevent (Genocide) and Extraterritorial Human Rights Obligations' (2011) 3(2) GR2P 123.

Gibney, Mark, 'Genocide and State Responsibility' (2007) 7(4) HRLR 760.

Gibney, Mark and Skogly, Sigrun (eds), Universal Human Rights and Extraterritorial Obligations (University of Pennsylvania Press, 2010).


Grünefeld, Fred and Huijboom, Anke, The Failure to Prevent Genocide in Rwanda: The Role of Bystanders (BRILL, 2007).


Hakimi, Monica, 'The Council of Europe Addresses CIA Rendition and Detention Program' (2007) 101(2) AJIL 442.


Hampson, Fen O. and Malone, David M., *From Reaction to Conflict Prevention: Opportunities for the UN System* (Lynne Rienner Pub, 2002).


Have, Nienke van der, 'The Right to Development: Can States Be Held Responsible?' in Foeken, Dick and others (eds), *Development and Equity* (BRILL, 2014) 191.


Hoffmann, Julia and Nollkaemper, André, (eds), *The Responsibility to Protect - From Principle to Practice* (AUP, 2012).


Jackson, Miles, Complicity in International Law (OUP, 2015).


Koskenniemi, Martii, From Apology to Utopia: The Structure of International Legal Argument (CUP, 2006).


Milanović, Marko, 'Al-Skeini and Al-Jedda in Strasbourg' (2012) 23(1) EJIL 121.


Nollkaemper, André, ‘Wither Aut Dedere? The Obligation to Extradite or Prosecute after the ICJ’s Judgment in Belgium v Senegal’ (2013) 4(3) JIDS 501.


Nowak, Manfred, ‘Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective’ in Gibney, Mark and Skogly, Sigrun (eds), Universal Human Rights and Extraterritorial Obligations (University of Pennsylvania Press, 2012) 11.


Orford, Anne, International Authority and the Responsibility to Protect (CUP, 2011).


Peel, Jacqueline, Science and Risk Regulation in International Law (CUP, 2010).

Peters, Anne, 'Humanity as the A and Ω of Sovereignty' (2009) 20(3) EJIL 513.


Pooter, de, Helene, 'The Obligation to Prevent Genocide: A Large Shell Yet to be Filled' (2009) 17 Afr Yearb Int Law 287.


Ruebana, Etienne, Prevention of Genocide under International Law – An Analysis of the Obligations of States and the UN to Prevent Genocide at the Primary, Secondary and Tertiary Levels (Intersentia, 2014).


251


Schaefer, Max, 'Al-Skeini and the Elusive Parameters of Extraterritorial Jurisdiction' (2011) 5 EHLRL 566.


Soljan, Lada, 'The General Obligation to Prevent Transboundary Harm and its Relation to Four Key Environmental Principles' (1998) 3(2) ARIEL 209.


Talmon, Stefan, 'The Duty Not to 'Recognize as Lawful' a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation Without Real Substance?' in Tomuschat, Christian and Thouvenin, Jean-Marc (eds), The Fundamental Rules of the International Legal Order (BRILL, 2006) 99.


Trouwborst, Arie, Precautionary Rights and Duties of States (Martinus Nijhoff, 2006).


Reports, Declarations and Resolutions


Comments and Observations Received from Governments (19 March, 3 April, 1 May and 28 June 2001) 53rd session of the ILC, UN Doc A/CN.4/515 and Add.1–3, chp3.


Committee Against Torture, ‘General Comment 1: Refoulement and Communications (Implementation of Article 3 in the Context of Article 22)’ (21 November 1997) UN Doc A/53/44, annex IX.


Committee on Economic Social and Cultural Rights, ‘General Comment 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting From any Scientific, Literary or Artistic Production of Which He or She is the Author (Article 15, paragraph 1 (c), of the Covenant)’ (12 January 2006) UN Doc E/C12/GC/1712.


Concluding Observations CAT Committee on Israel (17 October 2002) UN Doc A/57/44 (SUPP).

Concluding Observations HRCee on Belgium (12 August 2004) UN Doc CCPR/CO/81/BEL.

Concluding Observations CAT Committee on Canada (7 July 2005) UN Doc CAT/C/CR/34/CAN.

Concluding Observations HRCee on Germany (November 2012) UN Doc CCPR/C/DEU/CO/6.
Concluding Observations HRCee on the United States of America (23 April 2014) UN Doc CCPR/C/USA/CO/4.
Concluding Observations HRCee on Israel (21 November 2014) UN Doc CCPR/C/ISR/CO/4.
Concluding Observations HRCee on Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6.
Declaration on the Establishment of a Mechanism for Conflict Prevention, Management and Resolution (28 to 30 June 1993) adopted by the 29th Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Cairo, Egypt.
Economic and Social Council Resolution 77 (V), ‘Genocide’ (6 August 1947) UN Doc E/573.
Human Rights Committee, ‘General Comment 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Article 7)’ (10 March 1992) UN Doc CCPR/C/GC/20.
Human Rights Committee, ‘General Comment 24: Issues Relating to Reservations Made Upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, Or in Relation to Declarations Under Article 41 of the Covenant’ (4 November 1994) UN Doc CCPR/C/21/Rev.1/Add.6.


Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (7 August 2015) UN Doc A/70/303.


Miyazaki Initiatives for Conflict Prevention, adopted by the G8 Foreign Ministers’ Meeting in Miyazaki (13 July 2000, Japan).


Secretary-General Ban Ki-Moon, ‘Implementing the Responsibility to Protect’ (12 January 2009) UN Doc A/63/677.

Secretary-General Ban Ki-Moon, The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect’ (28 June 2011) UN Doc A/65/877–S/2011/393.


Special Rapporteur Mr. James Crawford, ‘Third Report on State Responsibility’ (15 March, 15 June, 10 and 18 July and 4 August 2000) 52nd session of the ILC, UN Doc A/CN.4/507 and Add 1–4, chp4C.


Special Rapporteur Theo van Boven, ‘Report Submitted Pursuant to General Assembly Resolution 58/164’ (1 September 2004) UN Doc A/59/324.


Subcommittee on Prevention of Torture, ‘The Approach of the Subcommittee on Prevention of Torture to the Concept of Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (30 December 2010) UN Doc CAT/OP/12/6-A/HRC/18/24.


UN General Assembly Resolution 41/128, ‘Declaration on the Right to Development’ (4 December 1986) UN Doc A/41/53.

UN General Assembly Resolution 60/1, ‘2005 World Summit Outcome’ (24 October 2005) UN Doc A/RES/60/1 (2005 World Summit Outcome).

UN General Assembly Sixth Committee, Summary record of the 12th meeting (5 November 2015) UN GAOR A/C.6/70/SR.12.


UN Security Council Resolution 2117 (26 September 2013) UN Doc S/RES/2117.


Treaties


Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) TS 993 (ICJ Statute).


Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (adopted 26 November 1987, entered into force 1 February 1989) ETS 126 (ECPT).


Cases

Arbitral Tribunals

Trail Smelter Arbitration (United States v Canada) 3 RIAA 1905-1982 (16 April 1938 and 11 March 1941).

Permanent Court of International Justice (PCIJ)

SS ´Lotus´ France v. Turkey (7 September 1927) PCIJ Series A no 10.

International Court of Justice (ICJ)


Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) (Merits) [2005] ICJ Rep 34.


Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) (Merits) [2012] ICJ Rep 422.

European Commission of Human Rights (EComHR)

Hess v. the United Kingdom, no. 6231/73, EComHR judgment on admissibility, (28 May 1975).

Denmark, France, Norway, Sweden and the Netherlands v. Turkey, no. 9940-9944/82, EComHR judgment on admissibility (6 December 1983).
European Court of Human Rights (ECtHR)

Ireland v. the United Kingdom, no. 5310/71, 18 January 1978, series A no 25.
Soering v. the United Kingdom, 7 July 1989, ECHR Series A no. 161.
Tomasi v. France, judgment of 27 August 1992, Series A no. 241-A.
Loizidou v. Turkey (preliminary objections), 23 March 1995, Series A no. 310.
McCann and Others v. the United Kingdom, 27 September 1995, Series A no. 324.
Aksoy v. Turkey, 18 December 1996, Reports of Judgments and Decisions 1996-VI.
Yaşa v. Turkey, 2 September 1998, Reports of Judgments and Decisions 1998-VI.
A. v. the United Kingdom, 23 September 1998, Reports of Judgments and Decisions 1998-VI.
Osman v. the United Kingdom, 28 October 1998, Reports of Judgments and Decisions 1998-VIII.
Rigopoulos v. Spain (dec.), no. 37388/97, ECHR 1999-II, section B.
Kılıç v. Turkey, no. 22492/93, ECHR 2000-III.
Mahmut Kaya v. Turkey, no 22535/93 (Sect. 1) ECHR 2000-III (28.3.00).
İlhan v. Turkey [GC], no. 22277/93, ECHR 2000-VII (27.6.00).
Z. and Others v. the United Kingdom [GC], no 29392/95, ECHR 2001-V (10.5.01).
Cyprus v. Turkey [GC], no. 25781/94, ECHR 2001-IV.
Al-Adsani v. the United Kingdom [GC], no. 35763/97, ECHR 2001-XI – (21.11.01).
Banković and Others v. Belgium and Others (dec.) [GC], no. 52207/99, ECHR 2001-XII.
Paul and Audrey Edwards v. the United Kingdom, no. 46477/99 (Sect. 3), ECHR 2002-II.
Mastromatteo v. Italy [GC], no. 37703/97, ECHR 2002-VIII.
Broniowski v. Poland [GC], no. 31443/96, ECHR 2004-V.
İlaşcu and Others v. Moldova and Russia [GC], no. 48787/99, ECHR 2004-VII.
Issa and Others v. Turkey, no. 31821/96, 16 November 2004.
Öneryıldız v. Turkey [GC], no. 48939/99, ECHR 2004 – XII.
Öcalan v. Turkey [GC], no. 46221/99, ECHR 2005-IV.
Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, ECHR 2005-VII.
Salah Sheekh v. the Netherlands, no. 1948/04, ECHR 2007-I.
Jorgic v. Germany, no. 74613/01, ECHR 2007-III.
Pad and others v. Turkey (Decision) no. 60167/00, 28 June 2007.
Solomou and Others v. Turkey, no. 36832/97, 24 June 2008.
Branko Tomašić and Others v. Croatia, no. 46598/06, 15 January 2009.
Opuz v. Turkey, no. 33401/02, ECHR 2009.
Rantsev v. Cyprus and Russia, no. 25965/04, ECHR 2010 (extracts).
Al-Saadoon and Mufdhi v. the United Kingdom, no. 61498/08, ECHR 2010.
Medvedev v. Russia [GC], no. 3394/03, ECHR 2010.
A v. the Netherlands, no. 4900/06, 20 July 2010.
Ivancic a.o. v Moldova and Russia, no. 23687/05, 15 November 2011.
Al-Skeini and Others v. the United Kingdom [GC], no. 55721/07, ECHR 2011.
Al-Jedda v. the United Kingdom [GC], no. 27021/08, ECHR 2011.
Othman (Abu Qatada) v. the United Kingdom, no. 8139/09, ECHR 2012 (extracts).
Hirsi Jamaa and Others v. Italy [GC], no. 27765/09, ECHR 2012.
Đorđević v. Croatia, no. 41526/10, ECHR 2012.
Catan and Others v. the Republic of Moldova and Russia [GC], nos. 43370/04, 8252/05 and 18454/06, ECHR 2012.
El Masri v. “the former Yugoslav Republic of Macedonia” [GC], no. 39630/09, ECHR 2012.
Jones and Others v. the United Kingdom, nos. 34356/06 and 40528/06, ECHR 2014.
Gray v. Germany, no. 49278/09, 22 May 2014.
Husayn (Abu Zubaydah) v. Poland, no. 7511/13, 24 July 2014.
Jaloud v. the Netherlands [GC], no. 47708/08, ECHR 2014.
Cestaro v. Italy, no. 6884/11, 7 April 2015.
Pisari v. Moldova and Russia, no. 42139/12, 21 April 2015.
J.K. and Others v. Sweden [GC], no. 59166/12, 23 August 2016.

Inter-American Commission of Human Rights (IACtHR)


Decision on Request for Precautionary Measures Concerning the Detainees at Guantánamo Bay, Cuba (Precautionary Measures) Decision of March 12, 2002, IACtHR 41 ILM 532 (2002).

Inter-American Court of Human Rights (IACtHR)


Bámaca-Velasquez v. Guatemala (Merits) Judgment of November 25, 2000, I/A Court HR Series C No. 70.


Bulacio v. Argentina (Merits, Reparations and Costs) Judgment of September 18, 2003, I/A Court HR Series C No 100.


Gutiérrez-Soler v. Colombia (Merits, Reparations and Costs) Judgment of September 12, 2006, I/A Court HR Series C No. 140.


Gelman v. Uruguay (Merits and Reparations) Judgment of February 24, I/A Court HR 2011 Series C No. 221.


African Commission on Human and Peoples’ Rights (AComHPR)


Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, AComHPR, Communication No. 279/03-296/05 (27 May 2009).


Human Rights Committee (HRCee)


Committee Against Torture (CAT Committee)


International Tribunal for the Former Yugoslavia


Domestic Courts


Kiobel et al v. Royal Dutch Petroleum Company (17 April 2013) Supreme Court of the United States, 10 US 1491.

Sala Tercera de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente (10 May 2013) Judgment against Efraín Ríos Montt.

Nuhanović v. The Netherlands (6 September 2013) Supreme Court of the Netherlands, 12/03324.

Mustafić v. The Netherlands (6 September 2013) Supreme Court of the Netherlands, 12/03329.

Unless indicated otherwise, all weblinks were last accessed on 20 January 2017.