Responding the Internationalisation of Conflict: Rule of Law based Humanitarian Law Approaches as Pioneers of Legal Globalisation

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Abstract

What interpretative role can the historical development of International Humanitarian Law (IHL) norms play in the current discussion on the globalization of law in general? To answer this question, the article firstly highlights from a theoretical perspective the fragmentary effects of the phenomena of globalization on law in general to set the discursive playing field. Based on these findings, the author shows potential normative and institutional answers provided by IHL on the truly global phenomenon of armed conflicts. To demonstrate the ongoing development and normative reinterpretations of IHL norms in the interdependent system of customary rules and treaty-based rules, the article draws a line of reception from the norms of the St. Petersburg Declaration (1868) to the influential Customary International Law Study of the International Committee of the Red Cross (2005) and recent IHL conventions such as the convention on cluster munitions (2008). Thereby, a special emphasis is given to the broad global acceptance of the relevant IHL norms despite its rather weak enforcement mechanisms.

Keywords

Globalisation, Global Law, Proactive Conflict Resolution, Humanitarian Law

Declaration of St. Petersburg (1868), Internationalisation of Conflicts, Customary International Law

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Introduction

What role, or — in a broader sense — which potential opportunities can be seen in the development of norms of International Humanitarian Law (IHL) for the scientific discussion on *Globalisation and Law* in general? Focussing on the main topic of the conference, the following considerations shall be understood as a fragmentary and descriptive examination of the globalisation of IHL norms. Due to various possible aspects of globalisation, the paper has to

start with examining globalisation itself and its influences on the interpretation of law and legal scholarship in general. Based on that it aims to locate the development of IHL norms within the framework of legal globalisation. To backup the theoretical framework with some practice, the paper visualises the development within IHL by drawing the historical line from a contractual inter-partes norm to a globally recognised customary principle. As a conclusion it tries to condensate some ground breaking principles of IHL that could be of help by approaching to other fields of law within the discourse on globalisation.

Globalisation and its "Reception" in Law — a Fragmentary Introduction

Starting point has to be a definition of *globalisation* itself. Due to its general approach and broadness, the conceptual definition of Anthony Giddens seems to be very useful for the debate:

Globalisation can thus be defined as the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa[1]

One could take other definitions into account as well, for example the "transformations"-approach of David Held et al., that stresses more the temporal and procedural aspect of globalisation[2]. Nevertheless, mostly due to its simplicity, Giddens' definition developed to an authoritative statement within the interdisciplinary globalisation debate. The essential message to understand, though, is that world economy is not the only dimension promoting globalisation at all[3]. But also language, communication in general, conflict, migration and so on create such globally relevant social interactions and interdependencies. As one of the first legal scholars Twining[4] adapted Giddens' broad sociological understanding of globalisation to jurisprudence and to law as a discipline. Already during the 90's, he tried to analyse the starting academic debate on the influences of globalisation on law. Twining's central approach is the fostering of a global perspective on law instead of a pure rhetorical globalisation of law and meanwhile a critical awareness of the abuse and over-use of so called "g-words" (such as global, globalising, globalisation etc.)[5]. Twining locates one of the main reasons for the enormous use of "g-words" within all branches of legal research in the coarseness of the classical tripartition of

[1] *Giddens A*. The Consequences of Modernity. Stanford, Stanford University Press, 1990, p. 64.

[2] Held et al. understands globalization as "spatio-temporal processes of change actions"; therefore "the concept of globalization implies (...) a stretching of social, political and economic activities across frontiers such that events, decisions and activities in one region of the world can come to have significance for individuals and communities in distant regions of the globe." See *Held D*. Rethinking Globalization in: D. Held and A. McGrew (eds.). The Global Transformations Reader . An Introduction to the Globalization Debate (Cambridge, Polity Press, 2003), p. 67.

[3] A rudimentary starting point or framework can be seen in Giddens' four dimensions of globalisation: (1) World capitalist economy, (2) Nation-state system, (3) World military order and (4) International division of labour; see Giddens, op. cit., note 1, 71 et seq.

[4] *Twining W*. Globalization and Legal Theory. London, Cambridge University Press, 2000.

[5] *Twining W*. General Jurisprudence — Understanding Law from a Global Perspective. Cambridge, Cambridge University Press, 2009, p. 13 et seq. A subjective and unrepresentative proof for the "à la mode"-character of the topic can for example be seen in the amount of books related to it, available at the main library of Zurich University: The trunked search «Globalisation AND Law» shows 459 results; 337 of them where published within the last decade.

local (national) — regional (supranational) — global level of legal regime[6]. The consequence is an inflationary identification of feigned (legal) global phenomena although in reality "*much of the transnationalisation of law (…) is taking place at sub-global levels*"[7]. That does not mean that there are no global phenomena at all. Recent examples are the challenges of global warming, financial crisis and so on. But especially jurists have to be cautious not to conceal the real implications of globalisation on law (itself and as a discipline) by an extensive overestimation of points of contact. Helpful in this regard — as a further step into the fascinating candy shop of social theory — can be the procedural distinction between "globalised localism" and "localised globalism" pointed out by Bonaventura de Sousa Santos. He argues that:

The process of globalization is, thus, selective, uneven and fraught with tensions and contradictions (…). It reproduces the hierarchy of the world system and the asymmetries among core, peripheral and semi-peripheral societies. There is, therefore no genuine globalism. Under the conditions of the modern world system, globalism is the successful globalization of a given localism.[8]

This general procedural aspect of globalisation can be seen within the developing globalisation of law as well. To quote once more de Sousa Santos: "*most significant, instances of the globalization of law can be directly traced back to the networking of globalized localisms and localized globalisms*"[9]. This may sound somehow strange in the first place, but the third part of this paper will try to give a practical example for this process within IHL. Under this precondition of a procedural character of globalisation, one has to take into account that the eminent struggles of the early 21st century between globalisation and law are by far not the first time these two phenomena interact. To proof roughly this hypothesis, one could for example just focus on the influence of the discovery of the New World and the rising modernity on the general understanding of law[10]. The confrontation with the indigenes peoples of South America forced the law to redefine its basic assumptions (e.g. what defines a human being and therefore the subjectivity of law?). One could find further examples to visualise the historical relativity and transformation of interaction of the phenomena "globalisation" and "law" but that would go far beyond the limited scope of this paper.

But still, our discipline has today — independently of its history — to respond to such challenges. One of the outcomes of the discussions in recent times is the development of the so called *global law* — approaches in legal philosophy and legal theory. Some central questions within these theories are today's role of the nation-state in a globalised world, the appearance of new actors in national as well as international law (such as transnational corporations, international organizations, NGO's etc.) and the debated existence or non-existence of a tendency towards global governance within a truly global society[11]. Additionally, the reconciliation of the

[6] By just using a geographical distinction Twining highlights eight levels of law (global, international, regional, transnational, inter-communal, territorial state, sub-state, non-state); see his Globalization and Legal Theory, p.139.

[7] *Twining W*. Op. cit., note 5, 15.

[8] *Sousa Santos B. de.* Toward a New Legal Common Sense: Law, Globalization and Emancipation. Edinburgh, Butterworths, 2002, p.177.

[9] Ibid, p. 187.

[10] A good starting point can be found in works of historian Jorg Fisch. See *Fisch* J. Die europäische Expansion und das Völkerrecht: die Auseinandersetzungen um den Status der überseeischen Gebiete vom 15. Jahrhundert bis zur Gegenwart. Beiträge zur Kolonial- und Überseegeschichte. Stuttgart, Steiner Verlag, 1984, p.26.

[11] See for example *Capaldo G.* The Pillars of Global Law. Aldershott, Ashgate Publishing, 2008; *Domingo R.* The New Global Law. Cambridge, Cambridge University Press, 2010.

role of the "Individual" develops to an eminent topic of global law itself[12] — an idea, especially hard to combine with today's common practice of international law. Moreover, the discipline of classical international law itself (understood as the set of norms that regulates legal relations between states under the precondition of their equality) seems to be on test bed by the idea of global law.[13] A promising example can be seen in the "Global Law Program" of Benoît Friedman and his team at the Centre Perelman for Legal Philosophy (Université Libre de Bruxelles). Working hypothesis is "*that, for law, globalization (…) raises not only a problem of scale, but also a core transformation in the nature and form of regulation, as well in the modes of norm-making and implementation*"[14]. But this project does not intend to develop a general or holistic theory of the interrelations between globalisation and law. Instead it tries to analyse certain specific thematic fields of global law, such as the regulation of global communication networks, Internet and virtual worlds, questions of corporate social responsibility, the problems of global warming and emissions-trading markets, transnational human rights litigation and the emergence of a new rights-based Ius Gentium, as well as the development of technical norms and standards as privileged instruments of global regulation[15]. The advantage of such a fragmentary idea of legal globalisation is based on its bottom-line assumption that in general one should be careful with (premature) constructions of new universal legal systems/regimes. Instead — coming from the opposite direction — one should focus on truly global issues and should try to develop certain legal patterns to handle the inherent and interdependent challenges of multi-layered legal cultures regarding this specific topic. Taking this into account, the following considerations try to show this by eclectically highlight some central patterns within the field of IHL-regulations.

Development of IHL Norms within the Framework of Globalisation

However, what does IHL or more precisely a rule of law -based approach to IHL (as it is predominantly practiced since the 19th century) to do with these general developments within legal theory and jurisprudence? A first step is once more to clarify the term IHL. In short, it can be defined as:

" *branch of international law limiting the use of violence in armed conflicts by: a) sparing those who do not or no longer directly participate in hostilities* [and] *b) restricting it to the amount necessary to achieve the aim of the conflict, which — independently of the causes fought for — can only be to weaken the military potential of the enemy*"[16].

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[12] Quite interesting but utopian one seems idea of Domingo that "*the human being should constitute the centre of law in general and of global law*" and "*the science of the law can never lose sight of the fact that it has been created — established by persons and for persons — so that the person is anterior to it*". See Domingo R. Op. cit. P. 11, 123 et seq.

[13] It "is *not a question of creating two completely separate orders: one fully legal and the other responsible for ordering international relations (…). No, there is a single global order, compatible with the family and other smaller communities, that situates the human person at the centre of its structure. Thus when international law does not recognize the state as its main subject and gives primacy instead to the person, then it will have become global law*"; See Ibid, p. 99.

[14] Available at: <http://www.philodroit.be/spip.php?page=rubrique&id_rubrique=31&lang=en>

[15] The complete list of relevant research topics within the "global law program" is available at: <http://www.philodroit.be/spip.php?page=rubrique&id_rubrique=31&lang=en>

[16] *See Sassòli M., Bouvier A., Quintin A. (eds.).* How Does Law Protect in War? Vol. I: Outline of International Humanitarian Law. Geneva, 2011, p. 93.

Therefore it is a perfect setting for the topic of this colloquium, due to its object of regulation: Conflict — understood in a very broad sense as all kind of warlike interactions between people(s) — can be interpreted as one of the undeniable global phenomena since the beginning of the 20th century. The international or better "global" aspect of conflict is not exclusively grounded within the involvement of parties from virtually all over the world, as it was (up to a certain point) for example during the two World Wars and the related industrialisation of war[17]. In fact, the number of international warlike conflicts is obviously declining and instead the quantity of internal or non-state-conflicts is growing in recent years[18]. But meanwhile the dimension of consequences of conflict became globally as well, independently of the question whether one is involved into the conflict at all. Such phenomena can be seen in the potential large-scale destructiveness of modern weaponry (not only nuclear weapons but also chemical and biological ones) or in the growing flow of refugees and displaced people and its globally impact in the aftermath of local, regional and international conflicts.

But there are further reasons, why the study of IHL could — at least from a methodological point of view — be very helpful for the understanding of the interrelations between "globalisation" and "law". It is important to keep in mind, that IHL is "*perhaps the oldest branch of international law*"[19] at all and still, a certain contradiction towards the fundamental idea of classical international law (or Ius Gentium) is inherent to its development: Actors and addressees of codified IHL-norms are from its historical beginning onward not only states (or governments), but also individuals[20]. This (early accepted) peremptory character of the relevant norms can therefore be interpreted as an important step towards an individualisation and verticalization of international law, prior to the often discussed post — World War II Human Rights movement. Contrary to the Human Rights discussion, codified IHL-norms contain a stronger immunity against allegations of cultural relativism. Responsible for this strength is the fact, that "*the humanitarian ideas and concepts formalized in humanitarian law treaties are shared by many different schools of thought and cultural traditions*"[21].

Furthermore — even though a driving force behind the whole concept is a predominantly moral one ("idea of humanity")[22] — IHL-norms come close to technical standards and can therefore be understood as kind of procedural rules, binding — due to its neutrality — all parties within a conflict. The result is a spatial legislation, based on the combination of fundamental principles (Humanity, Military Necessity, Proportionality, Distinction)[23] — independent of the specific conflict situation — and highly specific concrete regulations as for example the

[17] See *Giddens* A. Op. cit., pp. 1, 75.

[18] Human Security Report Project 2009 — 2010. Causes of Peace and Shrinking Costs of War. N.Y., Oxford University Press, 2011, p. 173.

[19] *See Thürer D.* International Humanitarian Law: Theory, Practice, Context (Recueil des cours, vol. 338), The Hague, Brill Academic Publishing, 2011, p. 31.

[20] "*One of the unusual features of humanitarian law is that, unlike most rules of international law, it binds not only the state and its organs of government but also the individual. Thus, the individual soldier or civilian who performs acts contrary to humanitarian law is criminally responsible for those act and liable to trial for a war crime*" (Greenwood C. Historical Development and Legal Basis in D. Fleck, M. Bothe (eds.) The Handbook of International Humanitarian Law. Oxford, Oxford University Press, 2008. N 101–150).

[21] Sassòli M., Bouvier A., Quintin A. (eds.) Op. cit., pp. 16, 97.

[22] Thürer D. Op. cit. Pp.19, 66. Next to this "humanitarian idea" within International Humanitarian Law probably its character of reciprocity seems to be the most plausible momentum for the successful globalisation of contents of International Humanitarian Law.

[23] Ibid., p. 68.

constraints in the use of and ban on certain weapons. This holistic understanding provides the needed flexibility to the regime of IHL to react on the new challenges regarding the globalised nature and consequences of conflicts. Next to these predominantly normative aspects of IHL, one has to take its institutional dimension into account as well: the International Committee of Red Cross (ICRC) — guardian of the Geneva Conventions and driving force behind the strengthening of legal protection for victims of armed conflicts[24] — is until today, due to its guaranteed neutrality and independence within conflicts the only accepted truly global institution[25].

Sketching a Globalising Line — The Declaration of St. Petersburg (1868) and its Consequences

To backup the theoretical framework with practical content, the next step is to visualise the globalising tendency of codified IHL-norms with a concrete example. As a small reminiscence to the wonderful place of this conference, the procedural aspect will be shown with regard to the evolutionary history of the content of the Declaration of St. Petersburg (1868).

Even though the labelling of extraordinary events for the development of IHL is quite common within research literature, its emergence and evolution within legal history and within the history of ideas is not widely substantiated yet. This lack of research can be explained by the relative novelty of the (positivistic) discipline and the currently challenge of the "Acquis Communautaire" of IHL due to persistent new constellations of conflict. Therefore the historical research is heretically speaking limited on so-called centenary-literature, mostly intended by new inhuman drawbacks[26].

Starting point of the Declaration of St. Petersburg (1868)

In 1863, the Russian military authorities developed a new category of ammunition which exploded on contact with hard substance and whose primary object was to blow up ammunition wagons.[27] Four years later, the projectile was modified (reduction of the explosive material) to explode on contact with soft substances as well and therefore it could be used against human targets. The integrated gas, set free by the explosion of the projectile, caused inevitably the death of the wounded[28]. As such, the bullet would have been an inhuman instrument of war.

As a result, the Russian military has certainly tested the new projectiles (otherwise the inhuman consequences of the use could not have been recorded at all) but never used the ammunition in a concrete warlike situation. Instead, Emperor Alexander II has invited in 1868 representatives of the so-called "civilized" states to a military conference in Saint Petersburg to

[24] The International Commission of the Red Cross. Resolution I of 31st International Conference of the Red Cross and Red Crescent, Geneva, November 28 to December 1, 2011. Available at: <http://www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-1-2011.htm>.

[25] Sassòli M., Bouvier A., Quintin A. (eds.). Op. cit., pp. 16, 465 et seq.

[26] Some good examples for this tendency can be seen in *Gasser H.* Die St. Petersburger Erklärung von 1868. *Revue international de la croix-rouge*, 1993, vol. XLIV, no. 6, p. 278–283 (with a short, two — pages long Laudatio of journal's board to the 125th anniversary of signing the Declaration); as well as the speech of ICRC Chairman Jakob Kellenberger to 140th anniversary of the Declaration. Available at: <http://www.icrc.org/eng/resources/documents/misc/st-petersburg-declaration-281108.htm>).

[27] *See Schindler D., Toman J.* The Laws of Armed Conflicts. The Hague, Kluwer, 1988, p. 102.

[28] See *Gasser H.* Op. cit., p. 26, 279.

discuss the acquaintance with this new weapon. Delegates of 19 states[29] followed the invitation and took part in the hearings of the temporary military commission under the presidency of general Dmitri Milutin, the war-minister of Tsar Alexander II. Within only three days of negotiations, the commission decided the abolition of the use of explosive projectiles under 400 gram in times of war[30]. Due to the participation of Brazil, Turkey and Persia the geographical, cultural and confessional borders of Europe were obviously left behind.

Essential results

In relation to the original technical question of the particular case — the renouncing of the use of explosive projectiles below 400 grams weight in times of war between signatory states –, the fundamentality of the Declaration surprises. It starts by the recognition of the fact: a) "*that the progress of civilization should have the effect of alleviating as much as possible the calamities of war*", combined with the awareness b) "*that the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy*" and ends in relation to the means of war in the summary c) *"that this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable*".[31]

These humanitarian confessions were simultaneously enlarged and strengthen in an institutional and inter-temporal perspective: the work of the military commission was not declared for termination but transformed into an ad hoc commission to draw a line between technical development, law and warfare [32]. In relation to the miscellaneous international collaboration in the mid-19th century (next to the foundation of the first IO's the collaboration stuck in bilateral trade or military support treaties) the importance of the Declaration of St. Petersburg cannot be overestimated. Especially due to the included obligation of further dialogue between the contracting parties the declaration visualises its intended proactive conflict avoidance strategy: the parties in procedural dimension try to perpetuate the achieved proactive mechanism of interstate weapon control into the future.

Consequences of the Declaration of St. Petersburg

Even though the Declaration was a big step in the direction of the positive legal acceptance and foundation of these humanitarian principles, out of a normative perspective the radiance of the declaration seemed to be limited according to the explicit negation of universality by itself: "*This engagement is compulsory only upon the Contracting or Acceding Parties thereto in case of war between two or more of themselves; it is not applicable to non-Contracting Parties, or*

[29] Austria-Hungary, Baden, Bavaria, Belgium, Brazil, Denmark, France, Greece, Italy, Netherlands, Persia, Portugal, North German Confederation, Russian Empire, Sweden, Switzerland, Turkey, United Kingdom, Wurtemberg.

[30] The declaration explicitly prohibited in warlike conflicts between the signatory states, *the employment by their military or naval troops of any projectile of a weight below 400 grams, which is either explosive or charged with fulminating or inflammable substances*" (see Annex).

[31] See Annex of the declaration.

[32] "*The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.*" (see Annex).

Parties who shall not have acceded to it"[33]. From a technical legal perspective the declaration was therefore nothing else than a multinational agreement, binding only signatory states inter se.

Nonetheless the core elements of the declaration had a strong influence on the emerging foundation of IHL, especially in relation to the handling of new weapon technologies. Already in 1874, the abolition of explosive projectiles below 400 grams found its way into the canon of the Brussels Declaration[34], the first undertaking of collecting all international customary law of that time concerning war. Even though the Brussels project and the thereby intended norm-setting procedure was not capable of winning a majority within the forum of represented states[35], the project was (as a link of reception) still of great importance for the contextual framework of the Hague Peace Conventions (1899/1907). The non-ratification of the Brussels Declaration occasioned the representatives of the 1873 in Ghent founded Institute for International Law (a private institution of recognized international law scholars and practitioners with the aim of making a strong contribution to the development, implementation and codification of international law) to commission the writing of an (intentionally) non-binding manual on the international customary humanitarian law in relation to land wars[36]. Responsible for the edition of the handbook was Gustave Moynier in Geneva, then president of the International Committee of the Red Cross. In 1880, the results of the research were presented at the annual meeting of the Institute for International Law in Oxford and were subdivided into "General Principles", "Application of General Principles" and "Penal Sanctions"[37]. Meanwhile, a double reception of the core elements of the Declaration of St. Petersburg can be seen within the manual: On one hand the central rules gained explicitly entrance into the "General Principles": "*The only legitimate end that States may have in war being to weaken the military strength of the enemy ' (Declaration of St. Petersburg, 1868)*"[38]. On the other hand, the renouncing of use of explosive projectiles was repeated in the handbook: "*It is forbidden* (...) *to employ arms, projectiles, or materials of any kind calculated to cause superfluous suffering, or to aggravate wounds — notably projectiles*

[33] See Annex of the declaration.

[34] The complete title of the Brussels Declaration (also strongly initiated and supported by Tsar Alexander II.) is: "*Project of an International Declaration concerning the Laws and Customs of War*" (available at <http://www.icrc.org/dih.nsf/FULL/135?OpenDocument>), and forestalls already the intended direction of the declaration. In Article 13 lit. e can be found a direct link to the Declaration of St. Petersburg: "*According to this principle are especially ' forbidden ':: (...) The employment of arms, projectiles or material calculated to cause unnecessary suffering, as well as the use of projectiles prohibited by the Declaration of St. Petersburg of 1868*". In contrast to the conference in St. Petersburg, only European states participated in the Brussels Conference.

[35] See *Noone G.* The History and Evolution of the Law of War Prior to World War II. Naval Law Review. 2000. Pp. 176–207, 194; *Kolb R.* Ius in bello. Le Droit international des conflicts armés. Bruxelles, 2009, p. 43.

[36] See Kolb R. Op. cit., pp. 35, 43. The limitation on land-wars had only political reasons: United Kingdom threatened to not participate, if the debate was on naval-wars and the prohibition of so called non-regular troops as well; see Jochnick C. and *Normand R.* The Legitimation of Violence: A Critical History of the Laws of War. *Harvard International Law Journal*, 1994, vol. 35, no. 1, pp. 49–95.

[37] The official title is: "The Laws of War on Land, adopted by the Institute of International Law, Oxford, 9 September 1880". Already the Preamble of the manual shows its intention: "*War holds a great place in history, and it is not to be supposed that men will soon give it up — in spite of the protests which it arouses and the horror which it inspires — because it appears to be the only possible issue of disputes which threaten the existence of States, their liberty, their vital interests. But the gradual improvement in customs should be reflected in the method of conducting war.* (...) *Rash and extreme rules will not, furthermore, be found therein. The Institute has not sought innovations in drawing up the 'Manual'; it has contented itself with stating clearly and codifying the accepted ideas of our age so far as this has appeared allowable and practicable.*" Available at: <http://www.icrc.org/ihl.nsf/FULL/140?OpenDocument>). Due to the place of the conference, the document was named «Oxford Manual».

[38] Available at: <http://www.icrc.org/ihl.nsf/FULL/140?OpenDocument> (Sub Art. 3).

of less weight than four hundred grams which are explosive or are charged with fulminating or inflammable substances ' (Declaration of St. Petersburg)"[39]. Especially the first recurrence on the declaration from 1868 is of utmost importance for this work: it shows that the limitation of legitimate aims of war on the weakening of the military strength of the enemy cannot just be seen as non-binding "preamble rhetoric" but implies legally binding character. In addition the manual visualises that the content of the former exclusive multilateral treaty can now be seen as international customary law with the demand of universal validity.

Within a shortest period of time the Oxford Manual despite its non-binding and anti-normative character gained the status of authority par excellence in relation to the Acquis Communautaire of humanitarian customary law and was the fundamental base for the Hague Peace Conferences (1899/1907). The core content of the Declaration of St. Petersburg can be especially found within Art. 22 of the Hague Convention on land war (IV), that repeats the principle that a war-waging state is not free in its use of weapons[40]. The prohibition of weapons, which cause or uselessly aggravate the sufferings of disabled, had been considered in Art. 23 of the Hague Convention [41].

Summing up the results of this part, the wording as well as the core elements of the Declaration of St. Petersburg found its way into the Hague Conventions (1899/1907)[42] and thereby into the canon of universal — or regarding to the title of the colloquium may be better — global validity demanding IHL-norms via the (on a first view ineffective) Brussels Convention and the non-binding Oxford Manual. During the 20th century the fundamental principles of the Declaration of St. Petersburg were affirmed and stated more precisely within positive international law, for example in the first additional protocol to the Geneva Convention (June 8, 1977). Within this additional protocol once more the fundamental principle of the declaration from 1868 was confirmed by the strict prohibition "*to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering*"[43]. A recent example is the adaption of the "Convention on Cluster Munitions" (May 30, 2008)[44] as well as the consideration of the basic principles of the declaration within the "Customary International Humanitarian Law", a study of the ICRC in 2005 on humanitarian customary international law. The results are squeezed to 161 "Rules of Customary IHL".[45] Within this opus — in its character

[39] Available at: <http://www.icrc.org/ihl.nsf/FULL/140?OpenDocument> (Art. 9 lit. a).

[40] Art. 22: "*The right of belligerents to adopt means of injuring the enemy is not unlimited*." Available at: <http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument>). A clear consent on the content of the "l*imitation*" was missing until the 1. additional Protocol to the Geneva Convention (1977).

[41] Art. 23 lit. e: "*In addition to the prohibitions provided by special Conventions* [such as the Declaration of St. Petersburg], *it is especially forbidden* (...) to *employ arms, projectiles, or material calculated to cause unnecessary suffering*". Available at <http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument>.

[42] See *Copeland R.*, *Loye D*. The 1899 Hague Declaration Concerning Expanding Bullets. A Treaty Effective for More than 100 Years Faces Complex Contemporary Issues. *International Review of the Red Cross*, 2003, vol. 85, pp. 135–142.

[43] See Art. 35 para. 2 of the 1 additional Protocol to the Geneva Convention (1977); available at <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>. Surprisingly there is no direct link to the Declaration of St. Petersburg. The ICRC is only quoting Art. 22 of the 1907 Hague Convention (see <http://www.icrc.org/ihl.nsf/COM/470-750044?OpenDocument>).

[44] Regarding the precise wording of the "Convention on Cluster Munitions" see <http://www.icrc.org/ihl.nsf/INTRO/620?OpenDocument>; to its history see Kellenberger J. *Humanitäres Völkerrecht* Stuttgart, 2010, p. 273 et seq.

[45] The major study of Jean-Marie Henckaerts und Louise Doswald-Beck (published in Vol. 3, Cambridge University Press, Cambridge, 2005) is slightly modified and actualised today. Available at: <http://www.icrc.org/customary-ihl/eng/docs/home>.

a reincarnation of the idea of the Oxford Manual — the Declaration of St. Petersburg serves explicitly as foundation of Rule 78: "*The anti-personnel use of bullets which explode within the human body is prohibited*"[46].

Conclusions

Up to a certain point, the presented view on IHL and its importance within the process of globalisation is primarily an idealistic/normative one. The reality looks quite different: IHL cannot stop conflicts effectively at all and serious violations still happen in warlike conflicts all over the world, often without any legal consequences. But this is not today's question. Moreover and as a kind of result of the drawn hypotheses, the specific and interesting peculiarities of IHL regarding the tension-relation of "globalisation" and "law" can be seen in different dimensions: First of all in its object of regulation. IHL tries (more or less successful) to regulate a truly global phenomenon (conflicts in a broad understanding). At the same time its global acceptance provides certain immunity against cultural relativism (one could discuss whether this is a result of a global understanding of "humanity" or just a result of the potential reciprocal means of violations). In any case, IHL-norms come close to technical standards, even though the driving force behind the whole concept seems to be a predominantly moral one ("idea of humanity"). Furthermore it is important to stress its fundamental procedural principles such as neutrality/impartiality and its tendency towards an individualisation and verticalization of international law. And last but not least from an institutional perspective: as a matter of fact, the IHL is the only "branch" of law, in which — with the ICRC — a truly globally accepted and functioning International Organization was established.

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[46] Available at: <http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule78> and <http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule78>. Regarding the deeper sense of such transformations to Customary International Law see J. Kellenberger. Op. cit., pp. 44, 137 et seq.

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