

**Ius in bello, laws of war, international humanitarian law – did we all speak the same language throughout history?**

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Abstract

πάντα ῥεῖ – everything is flowing, the world is permanently changing. With the objective change in the real world the normative regulation by the law has also to be adapted. This is of course a general observation which applies to any kind of law. However, the law is sometimes not only adapted but re-organized, reformed. A re-organization becomes then obvious – and peculiar, when the denotation of the very legal body changes. The legal body which is today known as international humanitarian law offers hereby a notable example as it evolved from a general medieval idea of the “ius in bello” to the “laws of war” in the 19<sup>th</sup> century. *Isabel Hull* showed in “A Scrap of Paper” – to name only one concrete example – that the term “militärische Notwendigkeit” (military necessity) meant in the 19<sup>th</sup> century something completely different than today.

Law realizes itself through language. The way we coin and use terms reflects on the way we understand our world. Not only law changes, but also language and the way we understand the language. Starting with *Hull*, the paper aims to show how our understanding of key legal terms and concepts of International Humanitarian Law changed over time. Or to put it in one sentence: what distinguishes the laws of war from International Humanitarian Law. The paper argues that not the terms were changed but their interpretation in order to make them fit into the changed world. Doing so, it identifies different “realities” of war and law over time and reflects upon if we find ourselves at the beginning 21<sup>st</sup> century again at a crossroad.

Of course, no history of international law can do without methodological remarks – especially when it is authored by a lawyer. *Martti Koskenniemi* rose the key question by asking “how to write (international) legal histories that would be true to their protagonists while simultaneously relevant to present audiences?” The paper argues that lawyers do not write a legal history per se but always in order to make today’s situation and discourse understandable. Therefore, a legal history is always objective and subjective the same time. What is to be understood under this dilemma shall be exemplified also by selected terms of the laws of war which still are in use in today’s International Humanitarian Law.