A. Introduction

The four Geneva Conventions\(^1\) and the two Additional Protocols of 1977\(^2\) are the primary humanitarian legal instruments, but generally lack authoritative mechanisms for interpretation. Interpretation and application of these treaties are principally left to the judgment of the States parties to the Geneva Conventions and Protocols,\(^3\) as well as


\(^3\) See Geneva Convention 1, Article 49. See also K. Boon, Legislative Reform in Post-Conflict Zones: Jus Post Bellum and the Contemporary Occupant’s Law-Making Powers, 50 McGill Law Journal 285, at 305 (2005) (“With regard to the enforcement of the Geneva Conventions more broadly, all contracting parties are required by article 1 to respect the Conventions, but the only external enforcement mechanism in the treaty is article 49 of the First Convention, which requires high contracting parties to enact penal legislation so as to prosecute grave breaches of the Conventions.”); N. Popovic, Humanitarian Law, Protection of the Environment, and Human Rights, 8 Georgetown International Environmental Law Review 67, at 77 (1995) (“Much of the responsibility for compliance with the Geneva Conventions and Protocols is left to the parties themselves, aided or cajoled by the International Committee of the Red Cross (ICRC).”) The ICRC has also convened scholars from around the world to gather customary
increasingly to the International Criminal Court and tribunals. The International Committee of the Red Cross (ICRC) encourages States parties to comply with their obligations under humanitarian law, but it is not an adjudicative body and rarely publishes its authoritative interpretations of the Geneva Conventions and Protocols. At the same time, the eight human rights treaty bodies, the thirty thematic mechanisms of the U.N. Human Rights Council (formerly Commission), and three regional human rights commissions/courts have responded to various situations involving humanitarian law violations. Further, national courts have been asked to apply humanitarian law for some time, and particularly in the context of the “war on terror” post 2001. These various institutions, however, have merely taken on the task of developing and interpreting humanitarian law on an ad hoc basis.

This Article reviews the jurisprudence of one of the principal human rights treaty bodies, the Committee on the Elimination of Racial Discrimination (“CERD,” “Committee,” or “Race Committee”).


7 See, e.g., Comm’n Human Rights, Res. 2002/34 of 22 April 2002, para. 13(a) (expressing Commission’s “grave concern over the continued occurrence of violations of the right to life highlighted in the report of the Special Rapporteur [on extrajudicial, summary or arbitrary executions] as deserving special attention [including] violations of the right to life during armed conflict”). See also P. Alston, The Competence of the UN Human Rights Council and Its Special Procedures in Relation to Armed Conflicts: Extrajudicial Executions in the “War on Terror,” 19 European Journal International Law 183, 196–197 (2008) (“Finally, the recent study on customary international humanitarian law produced under the auspices of the International Committee of the Red Cross concluded that ‘[t]here is extensive State practice to the effect that human rights law must be applied during armed conflicts’


9 CERD is the body of 18 independent experts established by the International Convention on the Elimination of All Forms of Racial Discrimination, 4 January 1969,