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Amelie Theussen is a researcher in the fields of contemporary war, the changing character of war, and international law relating to armed conflict.

She is affiliated with the Center for War Studies and the international relations section at the Department of Political Science and Public Management, University of Southern Denmark.

Amelie obtained a Master's degree in International Security and Law in 2013 from the University of Southern Denmark and a BA in European Studies in 2011 from Maastricht University, the Netherlands. The multidisciplinary nature of these study programs inspired her to take on an interdisciplinary research project in her PhD, combining international politics and law to investigate the effect of contemporary armed conflicts on the laws of war.



PhD Dissertation of

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at the Center for War Studies,  
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### War As Politics, Not Legal Facts

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How the Modern Battlefield Drives  
the Disputed Creative Use of International Law

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# War As Politics, Not Legal Facts

## How the Modern Battlefield Drives the Disputed Creative Use of International Law

The classification of conflicts in international humanitarian law (IHL) is of crucial importance: whether an armed conflict is an international (between two or more states) or a non-international armed conflict (between a state and a non-state actor, or between such non-state actors) determines the applicable legal regime in this conflict. For instance, notions, such as combatant status or the protections awarded to prisoners of war, only exist in international armed conflicts.

Contemporary wars challenge this distinction. Globalization and technological progress have changed war and warfare, both in terms of the actors involved and the way the wars are fought. Today's armed conflicts are fought mostly against non-state actors in form of transnational terrorist networks or insurgent groups and are often fought across international borders, while also involving other non-state actors, such as private companies, non-governmental organizations, international organizations and the media. Technological advances in communications and weapons technology allow states and non-state actors to reach their targets worldwide through armed drones, social media, and the internet. The role of the state in war is declining, and the traditional distinctions between soldier and civilian, war and peace, internal and international are blurring.

These developments challenge the laws of war, including the laws of conflict classification. How to classify a conflict that is not directly between

two states, but nevertheless fought on the territory of another or even multiple states, has spawned a large-scale debate that remains unresolved.

This dissertation examines how the changing character of war drives the political use of the law of conflict classification. It is argued that conflict classification is becoming politicized, as the ambiguity surrounding the applicability of the different legal regimes allows states and other actors to act as norm entrepreneurs in order to use the law in their own interests. Their uses and interpretations of the law have the potential to change the law of conflict classification.

The dissertation combines insights about norm change and norm entrepreneurs from constructivism in international relations with critical legal theory that emphasizes the importance of law as the indeterminate language of modern war (chapter II). The existing literatures about the changing character of war and the challenges that contemporary war poses for the traditional distinction between international and non-international armed conflicts in international humanitarian law are used to build the frames for the case analysis. In chapter III, four different views of international law are identified within the changing character of war literature, based on diverging views of the nature of war and whether continuity or change drives the development of war, and chapter IV proposes three potential pathways to overcome the classification challenges in contemporary wars

found in the literature on the challenges contemporary armed conflicts pose for IHL.

These frames are then used to analyse the three cases in chapters V to VII: the Iraq war from 2003 to 2011, as the most traditional form of contemporary conflict and, thus, a least-likely case for the politicized use of classification (chapter V); the conflict in Syria since 2011 as middle case where some politicization can be expected (chapter VI); and drone strikes outside active battlefields since 2002 as a most-likely case for politicization of classification (chapter VII).

All three cases show that conflict classification indeed is more politics than legal facts, as facts are interpreted in very diverging manners. The conflict in Iraq highlights the role of the United Nations Security Council in the politicization of conflict classification, while the case of Syria shows the impact of a lack of political will for classification and how the increasing internationalization of the conflict creates substantial disagreement regarding classification. Finally, the case of drone strikes outside active battlefields highlights how the US attempted to change classification norms after 9/11, but also that this US approach met substantial criticism and sustained resistance, thus politicizing conflict classification.

*Amelie Theussen*

## CWS – Center for War Studies

The Center brings together a broad range of disciplines in order to understand how wars break out, how they can be managed, and how they may be ended to make peace possible.

War studies is focused on the changing character of war and its relation to peace. It is concerned with the most dramatic events in human affairs that portend great hope because a new peace is in sight but also bring despair given the cruelty to which human beings sometimes subject one another. Hope and despair – this is the tension that provide the field with its vibrant and, admittedly, controversial character.

The Center for War Studies at the University of Southern Denmark hosts the disciplines of International Relations and International Law. It will reach out to area studies, history, and any discipline which can bring insight into its domain.

Research at the Center is problem-driven: it favours no particular theory or methodology. Collaboration is based on particular themes which connect researchers who come from different disciplines but have convergent research interests.

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