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Bridging Meaning across Disciplines: Construction, Interpretation and Categorisation in Armed Conflict

Abstract: This research investigates how the disciplines of social science and law construct meaning in fundamentally different ways, and how these divergent disciplinary approaches shape the categorisation of actors in international armed conflicts. It juxtaposes social constructionism, which emphasises the fluidity, contextuality and performativity of categorisation, with the interpretive methodology codified in the Vienna Convention on the Law of Treaties, which seeks determinacy, stability and objectivity. Focusing on asymmetric conflicts such as anti-colonial struggles, the research explores how political discourse constructs labels like 'terrorist' or 'freedom fighter' to reinforce dominant narratives, while international humanitarian law imposes strict binary categories such as 'combatant' and 'civilian'. The approaches are placed in dialogue to reveal tensions, overlaps and the potential for mutual enrichment. Ultimately, the article draws attention to the implicit, often obscured effects of categorisation and advocates for a more reflexive, interdisciplinary engagement with processes of meaning-making.

Key Words: social construction, treaty interpretation, armed conflict, IHL, interdisciplinarity

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Introduction

This research seeks to investigate how the disciplines of social science and law approach the construction of meaning in different ways, shaping and determining their understanding of given phenomena. These processes of meaning construction or interpretation are often subconscious, implicit and/or obscure, yet they fundamentally determine the way phenomena are engaged with by scholars and practitioners in the respective fields. Drawing attention to this fact is a key aim of this interdisciplinary inquiry, as scholars generally take for granted that their discipline's way of understanding things is the 'right' way, indeed: "[w]e tend to take 'the sense we make of things' to be 'the way things are'. We blithely do that and, just as blithely, hand on our understandings as quite simply 'the truth'."¹ This research does not seek to make normative arguments or state that one discipline's approach is superior to another's, but simply to draw attention to the fact that when studying what may be understood as the 'same' phenomenon, scholars from different disciplines may actually be proceeding from very different points of departure as a result of their divergent epistemologies and disciplinary aims. Furthermore, it raises the question as to how these disciplinary approaches can coexist in scholarship and practice, and what can be learned from attempting to bridge their differences.

In the following, the term 'categorisation' will be favoured to refer to processes of constructing meaning.² This term is chosen as it encapsulates the essence of the process by which meaning is ascribed to a phenomenon. However, categorisation should not simply be understood as a descriptive act; as will be shown below, it is also performative, shaping the phenomena under scrutiny as much as it reflects them. Finally, the term also conveniently avoids using vocabulary employed by the two disciplinary approaches under study: social construction and treaty interpretation. Social constructionism is the chosen approach for the political or social scientific understanding of categories because it not only looks at the processes by which phenomena come to be constructed and categorised, but also emphasises the underlying social dynamics which inform and produce certain categorisations and make them appear inevitable. It is a relatively well-known and popular approach, and aspects of the theory at least – such as the observation that the meanings and significance of social phenomena are culturally contingent rather than pre-given or natural – enjoy relatively widespread acceptance across a number of disciplines and, indeed, in public discourse. Furthermore, given the interdisciplinary approach of this research,

1 Michael Crotty, *The Foundations of Social Research. Meaning and Perspective in the Research Process* (New York: Sage, 1998), 60.

2 For the purposes of the research undertaken here, 'categorisation' is understood as the process(es) by which phenomena are classified or subsumed under certain headings (categories) according to explicit and/or implicit criteria. The Oxford English Dictionary defines 'category' as "a class, or division, in any general scheme of classification", specifying that in philosophy in particular, its use varies greatly from author to author. "Category," Oxford English Dictionary, www.oed.com/dictionary/category_n. Accessed 8 June 2025.

it offers a very different starting point to interpretation and meaning from the method used in public international law and thus raises some interesting points of comparison. As regards the legal approach to categorisation, the methodology of interpretation set out in the 1969 Vienna Convention on the Law of Treaties (VCLT) is the clear choice for such a study. This method is the most widely recognised standard for interpretation in public international law; indeed, the rules set out in Arts. 31 and 32 VCLT are customary rules of international law.³ The VCLT looks to the wording and context of an individual provision, alongside the ‘object and purpose’ of the treaty as a whole, in order to establish its meaning and pave the way for subsequent categorisation.⁴

The scope of this research is largely limited to the two chosen theoretical approaches which are juxtaposed in an interdisciplinary synthesis, but the thematic area of focus is the study of peace and conflict, and specifically on the categorisation of actors engaged in international armed conflicts (IACs). Within this context, the tension between the disciplinary approaches or framings is particularly clear. Politics and law have vastly different aims, as can be demonstrated through their respective ways of categorising groups in armed conflict situations. On the one hand, there is categorisation based on ‘political criteria’, that is, labelling a group to fit a certain narrative of the ongoing conflict situation; on the other, there is categorisation based on the fulfilment of strict, legally-defined criteria. The former presents a much more dynamic process of categorisation, whereby the group may appear to affect the conception of the category as much as the category affects the group. Meanwhile, in the latter approach, the category stands as fixed, and the group, or rather its members, are subsumed under it so long as they fulfil the required criteria. It could be argued that this is simply stating the obvious; after all, it is not surprising to find that politics and the law approach such processes differently, with the former embracing greater fluidity and subjectivity, while the latter aims for determinacy and objectivity. Constructionism maintains and indeed promotes plurality and redefinition, while legal interpretation requires a degree of closure and the use of fixed definitions in order to function. What is interesting to explore, however, is how these disciplinary approaches coexist in the ‘real world’: where they diverge, but also where they are surprisingly similar, and what can be learnt from looking at one approach through the lens of the other.

3 Oliver Dörr, “Article 31. General Rule of Interpretation,” in *Vienna Convention on the Law of Treaties. A Commentary*, ed. Oliver Dörr and Kirsten Schmalenbach (Berlin, Heidelberg: Springer, 2012); Jean-Marc Sorel and Valérie Boré Eveno, “Art. 31 1969 Vienna Convention,” in *The Vienna Convention on the Law of Treaties: A Commentary*, ed. Olivier Corten and Pierre Klein (Oxford: Oxford University Press, 2011).

4 ‘Categorisation’ in this context is relevant with regard to those provisions which provide for categories of person with individual rights, protections and obligations. Naturally, not every legal provision will result in some form of categorisation.

The following section sets out the two chosen approaches, or methodologies: social construction and treaty interpretation. They are then briefly brought together to analyse how actors are categorised in political discourse and international humanitarian law (IHL) in contexts of armed conflict – specifically asymmetric IACs, such as anti-colonial struggles⁵ – to demonstrate the extent to which disciplinary processes of meaning construction differ in practice. This is followed by a synthesis, in which the processes are juxtaposed and placed in dialogue in an attempt to bridge their differences through interdisciplinary analysis. By analysing one discipline's process of categorisation using the methodology of the other, this research demonstrates that innovative interdisciplinary work offers opportunities to create space for a more nuanced and reflective engagement with the categories through which we make sense of phenomena. The main arguments are then brought together in a conclusion.

Theoretical basis

Social construction

The notion of social construction continues to permeate discussions across academic disciplines and in public discourse, giving rise to a multiplicity of uses for the term and what it is taken to imply.⁶ At its core, the claim that something is 'a social construct' seeks to challenge the common or taken-for-granted understanding of the phenomenon, and instead draw attention to its meaning as a product of social practices. This distinguishes it from the objectivism inherent in positivist stances, that is, "the notion that truth and meaning reside in their objects independently of all consciousness".⁷ To set out the key ideas of social constructionism,⁸ this research employs the terminology of Canadian philosopher Ian Hacking as presented in his 1999 book *The Social Construction of What?*, complemented by his earlier chapter 'The Looping Effects of Human Kinds' (1995). His approach is chosen as it offers a clear and well-delineated scheme for analysing the construction of meaning and focuses on how social constructionist analyses are employed in philosophy and research. Hacking defines the constructionist approach as "various sociological, historical, and philosophical projects that aim at displaying or analysing actual, historically

⁵ This context was chosen because of the particularly opaque nature of the categories employed. Furthermore, the struggles over the categorisation of non-state actors in these contexts have a more profound relevance, raising questions about power structures and the persistence of colonial imbalances, the concepts of statehood and sovereignty, the idea of legitimacy and the use of violence, the politics of language, discrepancies between international law and politics, etc.

⁶ Sally Haslanger, *Resisting Reality. Social Construction and Social Critique* (Oxford: Oxford University Press, 2012).

⁷ Crotty, *Social Research*, 42.

⁸ The term "constructionism" as opposed to the perhaps more common "constructivism" is used throughout this paper in line with Ian Hacking's terminology, who argues the latter belongs fundamentally to the field of mathematics. There is no theoretical difference between the two terms, however, and both are used by social scientists to refer to what is fundamentally the same approach.

situated, social interactions or causal routes that led to, or were involved in, the coming into being or establishing of some present entity or fact.”⁹ At its core, then, this approach is concerned with drawing attention to the observation that things are not necessarily what they seem; that a great deal (if not all) of our understanding of our lived experience, and of the world we inhabit, is to be conceived of as produced by social processes of construction rather than being inevitable, preordained or pre-existing.¹⁰ It is for this reason that thinkers such as Michel Foucault sought to draw attention to the power dynamics that underpin the social production of meaning and the idea that one version of things among many may be presented as ‘the truth’, emphasising that the processes of construction are, themselves, “the power which is to be seized”.¹¹

A central tension in constructionist thought is the notion of ‘construction’ itself. The claim that something is ‘a social construct’ is often taken to mean that it is somehow illusory, or not fully real.¹² Sceptics of constructionism are quick to criticise that the approach loses sight of the ‘real’ existence of the things it claims are constructed, or their profound effects on individuals’ lives. Yet constructionists do not maintain that everything – that is, the things or objects themselves – is constructed, but that their meanings are, along with how we interact with them, our classifications of them, interests in them, etc.¹³ The ‘social’ in social constructionism, then, refers to the process of meaning generation rather than the kind of object that has meaning.¹⁴ Individuals learn the meaning of chairs, or womanhood, or terrorism, through the culture – the context or ‘matrix’ – they inhabit and in which they themselves are embedded as constituent parts.¹⁵

Hacking argues that the “primary use” of social constructionist analyses is to raise consciousness, i.e., to draw attention to the fact that things we may take for granted or consider inevitable are, in fact, (socially) constructed.¹⁶ In other words, such approaches have the potential to disrupt the status quo as they “involve iconoclastic questioning of varnished reality, of what the general

9 Ian Hacking, *The Social Construction of What?* (Cambridge, Mass.: Harvard University Press, 1999), 48.

10 Ibid.

11 Foucault writes about ‘discourse’ rather than social processes of construction, but for the purposes of the argument being highlighted here, his point is most relevant: “discourse is not simply that which translates struggles or systems of domination, but is the thing for which and by which there is struggle, discourse is the power which is to be seized.” Michel Foucault, “The Order of Discourse,” in *Language and Politics*, ed. Michael J Shapiro (New York: NYU Press, 1984) 110. See also Stuart Hall, *Representation* (New York: Sage, 2011), 29–30.

12 Haslanger, *Resisting Reality*, 5.

13 Hacking, *Social Construction*.

14 Crotty, *Social Research*.

15 Stanley Fish, *Is there a Text in this Class?* (Cambridge, Mass.: Harvard University Press, 1980). The term ‘matrix’ is used by Hacking to refer to the social setting within which an idea, a concept or kind is formed. See Hacking, *Social Construction*, 10.

16 Hacking, *Social Construction*, 6.

run of people take for real.”¹⁷ However, Hacking emphasises that, in principle, constructionist analyses do not strive to provide a new conception of whatever X they are investigating. Rather, the point of such analyses is simply to draw attention to the fact that X is not inevitable, that its meaning is the product of particular social factors and relations of power, and that it can therefore be changed or re-conceptualised. He refers to this as the ‘unmasking’ of X: “[Talk of construction] challenges complacent assumptions about the inevitability of what we have found out or our present ways of doing things – not by refuting or proposing a better, but by ‘unmasking’.”¹⁸ This process does not necessarily imply that the current form of X is automatically a bad thing. However, ‘unmasking’ does imply a zero condition, “a precondition for a social constructionist thesis about X.”¹⁹ This is:

In the present state of affairs, X is taken for granted; X appears to be inevitable.²⁰

Condition (0) is not an assumption or presupposition about X; rather, it is a necessary prerequisite to talk about the social construction of X. If there is no question as to the character of X as a social construct, of there being something ‘masked’, then there is no need for further discussion on the matter or for ‘unmasking’. In other words, “there is no point in making construction claims with respect to items whose nonnaturalness is obvious”.²¹ The US Federal Reserve, for example, is clearly the contingent upshot of social arrangements, and there is thus little value in analysing its constructedness.²² The idea of gender, however, has been interrogated by social constructionists to great effect, because it was for a long time taken to be a natural reflection of biological differences between the sexes, rather than a cultural imposition typically serving the interests of the male sex.²³

Similarly, the concept of armed conflict may be taken for granted, with political analysts, social scientists, jurists, humanitarian actors, etc. rarely stopping to question whether they are, in fact, talking about the same thing. While few would question that the underlying grievances or motivations for a conflict, or the best proposals for its resolution, are subjective questions, most approaches choose to assume that the basic ‘fact’ of an armed conflict involving certain actors is a given. And yet, upon closer inspection, it becomes clear that even this ‘fact’ can look very

¹⁷ Hacking, *Social Construction*, 49.

¹⁸ *Ibid.*, 58.

¹⁹ *Ibid.*, 12.

²⁰ *Ibid.*

²¹ Finn Collin, “Bunge and Hacking on Constructivism,” *Philosophy of the Social Sciences* 31, no. 3 (2001), 443.

²² Hacking, *Social Construction*, 13.

²³ Collin, “Constructivism”. Indeed, Hacking maintains that gender has been the object of the most influential social construction doctrines, paving the way for a vast array of further studies. Hacking, *Social Construction*, 7.

different from various social or disciplinary viewpoints, for example with regard to the actors engaged in the conflict, as outlined in more detail below. The idea of armed conflict can thus also be effectively interrogated from a constructionist viewpoint, highlighting the taken-for-grantedness of there being a state of war between two or more parties. This is all the more pertinent in asymmetric contexts where the dominant party sets the narrative and may seek to delegitimise the struggle being waged against it by an armed group by denying its very existence. The constructionist approach can therefore be applied to unmask the power dynamics underpinning a narrative promoted by the dominant party as the ‘truth’ of the conflict.

Treaty interpretation

Turning to the discipline of law, this research focuses on the legal method set out in Articles 31–33 of the Vienna Convention on the Law of Treaties (VCLT) to illustrate how meaning is constructed in public international law through the interpretation of codified treaty provisions. In order to apply or implement a given rule, the latter must first undergo a process of interpretation.²⁴ However, it is essential to note from the outset that interpretation should not be considered a secondary process which only comes into play when the wording of a provision is unclear. As Oliver Dörr argues, “to know whether the wording is clear or ‘makes sense’ presupposes a process of interpretation and cannot, therefore, preclude that operation.”²⁵ All use of treaty provisions thus necessitates interpretation, whether explicit or implicit.

The legal method of treaty interpretation set out in the VCLT forms the backbone of much international legal practice; indeed, Arts. 31–33 VCLT are considered to have customary status in international law.²⁶ Article 31 sets out the general rule of interpretation, while Article 32 provides for supplementary means of interpretation, and Article 33 covers treaties that are authenticated in more than one language.²⁷ Taken together, these so-called ‘Vienna rules’ are best understood as an attempt to provide a “framework and guiding principles [...] for interpretative reasoning”, rather than as strictly prescribing the process of interpretation itself.²⁸ Interestingly, therefore, the Vienna rules provide relatively few pointers on how these individual elements are to be used

²⁴ Dörr, “Article 31”.

²⁵ Ibid., para 15.

²⁶ Dörr, “Article 31”; Sorel and Eveno, “Article 31”.

²⁷ “Vienna Convention on the Law of Treaties,” (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Arts. 31–33, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>. Accessed 8 June 2025.

²⁸ Richard K Gardiner, “Characteristics of the Vienna Convention Rules on Treaty Interpretation,” in *Conceptual and Contextual Perspectives on the Modern Law of Treaties*, ed. Michael J Bowman and Dino Kritsiotis (Cambridge, UK: Cambridge University Press, 2018), 335; Dörr, “Article 31,” para 2.

in practice during the interpretive operation.²⁹ Indeed, the flexibility in application offered by the VCLT interpretation regime implies that their functionality in a given context depends on how the Vienna rules are themselves interpreted.³⁰ This, in turn, grants the interpreter an important role which cannot be disregarded in favour of focusing on the outcome of the interpretive operation, i.e. the meaning of the provision under scrutiny.

Article 31 VCLT consists of four paragraphs which together set out the general rule of interpretation for treaties. It is considered the “sacrosanct core” of treaty interpretation,³¹ and its provisions are to be considered a “single, closely integrated” entity.³² It is for this reason that Art. 31(1), as the initial statement of the rule in its most essential form, is formulated as one continuous paragraph, rather than a separate, itemised list.³³ The focus of interpretation following the general rule contained in Art. 31 is the written word, as “the text [is] presumed to be the authentic expression of the intentions of the parties.”³⁴ It thus follows that the automatic point of departure is a linguistic and grammatical analysis of the provision in question, in order to ascertain its “ordinary meaning”; that is, “the meaning that is ‘regular, normal or customary’.”³⁵ However, the concept of ‘ordinary meaning’ cannot be taken for granted in the interpretive operation, as what is the ‘ordinary’ meaning of a term in one context may be rather extraordinary in another. Given that the provisions of Art. 31 VCLT are to be applied in tandem in the process of interpretation, the establishment of ‘ordinary meaning’ is impossible without simultaneously accounting for the context.

The general rule thus provides guidelines on how to account for this context, which may take a number of different forms. These are set out in paragraphs 2 and 3 of Art. 31 VCLT and include the text of the treaty itself, alongside the title, preamble and annexes; i.e., the systematic structure of the treaty and the position of the provision under interpretation within the whole, as well as other acts and agreements made in connection with the treaty’s conclusion. Paragraph 3 introduces “subsequent” agreements which arise independently from the process of conclusion, as well as practice and relevant international law. The latter refers to both the law as it stood when the treaty was adopted, as well as to the law as it stands at the moment of interpretation.³⁶ This

²⁹ Gardiner, “Characteristics of the Vienna Convention”.

³⁰ Ibid.

³¹ Sorel and Eveno, “Article 31”, para 8.

³² Gardiner, “Characteristics of the Vienna Convention”, 352.

³³ Richard K Gardiner, *Treaty Interpretation* (Oxford: Oxford University Press, 2008).

³⁴ Dörr, “Article 31”, para 38.

³⁵ Ibid., para 41.

³⁶ Jean-Marie Henckaerts and Elvina Pothelet, “The Interpretation of IHL Treaties: Subsequent Practice and other Salient Issues,” in *Law-Making and Legitimacy in International Humanitarian Law*, ed. Heike Krieger and Jonas Püschmann (Cheltenham: Edward Elgar, 2021).

provides scope for the potential evolution of a treaty provision's meaning over time in the light of changes to the wider international legal framework. Overall, these provisions underscore that interpretation does not happen in isolation; rather, it is embedded within the systemic coherence of international law and legal practice.

The final words of the first paragraph of Art. 31 VCLT refer to the “object and purpose” of a treaty, introducing a teleological element to interpretation.³⁷ A close reading of Art. 31 suggests that the ‘object and purpose’ is not a standalone element of the interpretive operation, but may only be used directly in relation to the establishment of the meaning of the individual terms employed.³⁸ Thus, the ‘object and purpose’ cannot be used to “establish a reading that clearly cannot be expressed with the words used in the text”, i.e., which undermines the ‘ordinary meaning’ or dislocates it from its context.³⁹ But what constitutes the ‘object and purpose’ of a treaty? Though often established, at least in part, through recalling the title and/or preamble of a treaty, the ‘object and purpose’ is an inherently fluid concept which is open to contestation.⁴⁰ Furthermore, from the perspective of the argumentation in this research, the concept is perhaps particularly significant, as it “averts our gaze away from the four corners of [a treaty’s] text [...] to something that is altogether more mercurial but which is also, if the Vienna Convention is to be believed, no less real than the written word.”⁴¹ The requirement for interpretation “in good faith” (Art. 31(1) VCLT) similarly raises a subjective aspect to the interpretive operation, highlighting the normative expectations placed on the interpreter rather than necessarily shaping the interpretation itself. Here, again, the role of the interpreter in determining the meaning of a textual provision comes to the fore.

Article 32 VCLT provides for recourse to “supplementary means of interpretation,” which can be used either to confirm the interpretation reached through Art. 31 or, in limited circumstances, to resolve ambiguity or avoid “manifestly absurd or unreasonable” outcomes of the interpretive operation.⁴² These means, while not mandatory, play a significant role in practice.⁴³ Art. 32 identifies preparatory work (more commonly known as *travaux préparatoires*) and the circumstances of a treaty’s conclusion as a key supplementary means of interpretation. *Travaux préparatoires*

³⁷ Gardiner, *Treaty Interpretation*; Dörr, “Article 31”.

³⁸ Gardiner, *Treaty Interpretation*.

³⁹ Dörr, “Article 31”, para 58.

⁴⁰ Dino Kritsiotis, “The Object and Purpose of a Treaty’s Object and Purpose,” in *Conceptual and Contextual Perspectives on the Modern Law of Treaties*, ed. Michael J Bowman and Dino Kritsiotis (Cambridge, UK: Cambridge University Press, 2018).

⁴¹ *Ibid.*, 238.

⁴² Oliver Dörr, “Article 32. Supplementary Means of Interpretation,” in *Vienna Convention on the Law of Treaties. A Commentary*, ed. Oliver Dörr and Kirsten Schmalenbach (Berlin, Heidelberg: Springer, 2012).

⁴³ Yves le Bouthillier, “Art. 32 Vienna Convention” in *The Vienna Convention on the Law of Treaties: A Commentary*, ed. Olivier Corten and Pierre Klein (Oxford University Press, 2011).

often reveal the negotiating history of a given provision and thus provide indications as to its intended meaning. Similarly, understanding the historical context of its drafting can shed light on a treaty's rationale and objectives. The open-ended nature of Art. 32 (the list of means provided is not exhaustive) allows interpreters to consider additional materials, such as academic commentary or state practice not covered by Art. 31, granting a degree of discretion that complements the structured approach of the general rule.⁴⁴

Categorising actors in international armed conflicts

The disciplines of social science and law, through the different methodologies outlined above, approach meaning in fundamentally different ways, which in turn shapes and determines their understanding of given phenomena. This section will briefly attempt to juxtapose the two approaches by applying them in a practical case – the categorisation of actors in armed conflict – to demonstrate how their methodologies lead the respective disciplines to very different results. As has been shown, constructionists understand meaning as a product of social forces. The meaning we make of things is dependent on context and cultural influences and is thus fluid, depending on the unique positionality of the interpreter. However, prevailing power structures in society may make certain meanings dominant and appear inevitable, presenting them as 'the truth', thus obscuring the nature of the phenomenon as a social construct. The primary legal approach, meanwhile, maintains that meaning – understood as the outcome of the process of interpretation – can be arrived at by following a fixed and clearly-defined set of rules. The process is pre-given and determinate so as to guarantee the stability and transparency of the interpretive operation. This limits the scope for individual subjective influences or the interpreter's positionality to affect the meaning. After all, law is a discipline within which precision is highly prized; indeed, clarity and consistency in definition are necessary for it to function. It must be noted, however, that the VCLT rules are themselves subject to interpretation. Indeed, the very names given to the methodologies are already revelatory as to their different approaches to meaning and categorisation. Constructionists work with something which is not pre-given but must first be constructed, while legal interpreters take a given provision as their starting point and attempt to make sense of it.

If the comparison is applied to the phenomenon of international armed conflict, and the characterisation of individuals/groups engaged in such struggles, we see how the different disciplinary

⁴⁴ Henckaerts and Pothelet, "Interpretation of IHL Treaties".

approaches to meaning play a huge role in creating two very different understandings of these actors and how they are to be categorised. In asymmetric contexts such as anti-colonial conflict, armed groups engaged in struggles against state forces are⁴⁵ frequently characterised as ‘terrorists’, a term which constructs a certain conception of both the actor/group and the struggle in which they are engaged.⁴⁶ Indeed, the expression ‘one man’s terrorist is another man’s freedom fighter’ lays bare the social construction of actors engaged in anti-colonial struggles, highlighting that the character of a given actor and their cause is fundamentally in the eye of the beholder. And yet, the ‘fact’ of this process of social construction is often obscured by the dominant discourse in such contexts – that of the colonial state – which deliberately forces the supposed inevitability of the non-state group’s character as ‘terrorist’.⁴⁷ The connotations of the term ‘terrorist’ have the effect of delegitimising the group and the ends it seeks to achieve, in line with the narrative which the more powerful state against whom the so-called ‘terrorists’ are fighting seeks to uphold.⁴⁸ Constructionism sheds light on how these categorisations are not inevitable, but rather produced in such a way as to reinforce a certain narrative, revealing the dynamics of politics and power which enable and uphold such constructions. In conflict situations, these dynamics have a profound effect on how a given struggle may be perceived both internally and externally, while remaining largely unseen. Regardless of this, the constructionist approach highlights that depending on whom you ask, the perception or interpretation of a given actor and their actions will vary. Furthermore, there is scope for nuance, with an arguably infinite number of possible characterisations or categorisations available, due to ever-shifting contexts and power dynamics. Meanwhile, the law of international armed conflict functions on the basis of the assumption that a given actor can only be categorised as one of two mutually exclusive types of person: ‘combatant’ or ‘civilian’. These are clearly defined under IHL, with each category enjoying a specific set

45 The use of the present tense to discuss anti-colonial struggles is intentional, as there are a number of cases of armed struggles for self-determination which continue to this day and where similar discourses prevail, for example in Western Sahara and in the Occupied Palestinian Territories.

46 Charlotte Heath-Kelly, “Post-Structuralism and Constructivism,” in *Routledge Handbook of Critical Terrorism Studies*, ed. Richard Jackson (New York: Routledge, 2016); Helen Kinsella, *The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (New York: Cornell University Press, 2011); Joseba Zulaika, “The Real and the Bluff. On the Ontology of Terrorism,” in *Routledge Handbook of Critical Terrorism Studies*, ed. Richard Jackson (New York: Routledge, 2016).

47 Priya Dixit, “Securitisation and Terroristisation: Analysing States’ Usage of the Rhetoric of Terrorism” in *State Terror, State Violence*, ed. Bettina Koch (Wiesbaden: Springer, 2016); Ana Camacho, “Terrorism and War in the Sahara,” Grupo de Estudios Estratégicos, <https://www.gees.org/articulos/terrorism-and-war-in-the-sahara>. Accessed 8 June 2025; Harmonie Toros, “‘We Don’t Negotiate with Terrorists!’ Legitimacy and Complexity in Terrorist Conflicts,” *Security Dialogue* 39, no. 4 (2008).

48 Edward Said, “Identity, Negation and Violence,” *New Left Review* 46 (1988); Eqbal Ahmad, “Comprehending Terror,” *MERIP Middle East Report* 2 (1986).

of obligations, entitlements and protections.⁴⁹ An individual can, at any time, only have one or the other status – not neither, nor both; there is little to no scope for nuance or hybridity, though provision is made for actors to shift from one status to the other under specific conditions.⁵⁰ The VCLT rules imply that it should be objectively discernible whether an actor falls into one or the other category; this strictness is necessary to uphold two of the core principles of IHL – the ‘equality of belligerents’ and the ‘principle of distinction’. The former maintains that all combatants have the same rights, privileges and obligations, regardless of the cause or ‘side’ for which they are fighting, provided they uphold IHL. The latter requires parties to a conflict to distinguish at all times between combatants and civilians and to target only combatants. The strict definitional criteria to establish the categorisation or status of an actor is thus essential to ensure these principles – and the integrity of the IHL regime as a whole – are upheld, and that all parties can clearly identify who is who according to ‘objective’ criteria. Nevertheless, there are numerous cases where the distinction between the two is rather blurry, highlighting the importance of the interpretive operation which leads to categorisation and the power dynamics inherent in this process. Despite the supposed precision and rigorousness of the legal rules for interpretation, there thus remains a great deal of scope for deviation and interpretive flexibility. The role of the interpreter as an individual subject with certain interests, biases, limited knowledge, etc. must also be taken into account.

Bridging law and social science

Having outlined the disciplinary approaches and demonstrated how they differ in practice, the following section will place them in dialogue in an attempt to bridge their differences, and explore what can be learnt by studying one through the lens of the other. The two distinct disciplinary approaches explored in the above revealed vastly different ways of establishing meaning, categorising people and phenomena, and understanding the role of these categories in characterising armed groups and their struggles. This is not necessarily surprising, given the respective aims and functions of the two fields and their methodologies. The social constructionist approach seeks to unmask ideas and categories in order to draw attention to their non-inevitable nature and the specific narratives they are constructed to serve; it is a political project which questions the status quo and challenges widespread, complacent assumptions about the nature

49 The main treaty provisions which set out the two categories are as follows. *Combatant*: Article 4 GC III (Third Geneva Convention, 1949), Articles 43 and 44 AP I (First Protocol Additional to the Geneva Conventions, 1978); *civilian*: Article 50 AP I. For reasons of space, scope and relevance, the definitions themselves are not discussed here.

50 A discussion of these provisions would require an extensive digression into IHL which exceeds the scope of this paper.

of social reality. Meanwhile, IHL pursues its practical, humanitarian aim of protecting people and limiting the destructive effects of war through a reliance on strict, precise and objective criteria for the categorisation of persons in armed conflict. The two categories of persons in IHL are thus clearly defined and stable in their meaning, and their application in a given case rests on the rules of interpretation codified in the VCLT, through which the meaning of provisions can be reliably established in line with fixed requirements. As a result of these divergent aims and points of departure, the two approaches differ in many of the assumptions they make as to how meaning is established, the prospect of ‘objective truth’ or stable definition, the role and purpose of categories and their flexibility, and the ultimate significance of their impact on real-world conflict situations. On the one hand, social constructionism argues for the fluidity and instability of meaning, the indispensability of context, and the inherent subjectivity of the process of categorisation. On the other hand, international law relies on, and thus emphasises, the existence of stable meanings, the ability for clear definition, and the objectivity of classificatory criteria. The main point of tension underlying the interdisciplinary discussions in this research, then, is the question of how these two approaches can coexist.

There are two primary explanations for this. First, as has already been detailed above, each approach stems from a different field and seeks to achieve a very different goal. In this sense, it is necessary that they make their respective assumptions and rely on distinct frameworks in order to work towards their individual aims. This is the case with regard to both the theoretical aspects (that is, the social constructionist and VCLT approaches to the establishment of meaning and the process of categorisation) and the practical aspects (the actual categorisation of actors engaged in asymmetric IACs, particularly anti-colonial struggles). Politics relies on the malleability of categories, playing with – and indeed at times exploiting – the lack of stable meanings which characterises the social world in order to construct and uphold certain narratives which support the dominant group’s interests. In contrast, public international law exists, fundamentally, to impose order on a fluid and dynamic social world. To this end, it seeks to find applicability in as wide a variety of contexts as possible. This is more easily achieved in the abstract, through the codification of rules and definitions, such as those of the VCLT and the treaty regime of IHL. Precise and tangible laws are essential prerequisites for the functioning of the legal system.⁵¹ For example, it was shown how the mutually exclusive binary of ‘civilian’ and ‘combatant’ is essential to the effective functioning of IHL, as it underpins some of its fundamental principles, such

⁵¹ Consider, for example, one of the key universal legal maxims: *ignorantia juris non excusat*. That is, not knowing something was illegal is not a defence against prosecution or other proceedings if the law is breached. This could not hold if recourse could not be had to clearly-defined legal provisions.

as the ‘equality of belligerents’ and the ‘principle of distinction’. Nevertheless, the codified rules of the international legal system are designed to regulate an idealised form of the ‘real world’, and the application of categories or definitional provisions in practice can prove rather challenging, despite the supposed clarity of their formulation. In IHL this is evidenced in complex contemporary conflict situations which fail to fit into the categories it prescribes. In other words, the actual legal work of imposing order on social reality may face significant problems if it fails to account for the fluidity that characterises the latter.

The second explanation for how the legal and political approaches can coexist is that they are not, in fact, as clear-cut or divergent as might be assumed. Despite constructionists’ rejection of the prospect of the existence of objective truths applicable in manifold situations regardless of context, there have nonetheless been numerous attempts to find a definition of the inherently unstable term ‘terrorism’.⁵² Hacking recognises a similar tendency in the social sciences more broadly.⁵³ Thus, while recognising the futility of claims to objectivity with regard to socially-constructed categories, constructionists acknowledge that there is scope for attempting to capture the meaning of a category at a given moment, in order to subject the phenomenon to further study. Another area of similarity is that of the nature of categories as such. While it has been argued that the fixed definition and codification of categories in international law – such as ‘combatant’ and ‘civilian’ in IHL – suggests that these categories are understood as pre-existing in given conflict situations, they were, in the first place, established in response to the ‘reality’ of armed conflict; that is, historical cases of how wars were and are fought, and taking note of the kinds of people involved in, and affected by, conflict. Thus, while the criteria to be met by individual actors in order to attain combatant status may appear essentialised, due to the nature of their definition, the categories themselves ultimately also constitute impositions on reality, just like their constructionist counterparts.⁵⁴

This raises the prospect that there is a great deal to be learned from juxtaposing the approaches by interrogating each discipline using the methodology of the other. Indeed, one of the goals of

⁵² Indeed, these definitional endeavours have been a core focus area of research in Critical Terrorism Studies, a school which seeks to highlight the ideological, ethical and political dimensions to terrorism research which are often obscured. A great deal of the theoretical framework of this school is based on social constructionist approaches. See Richard Jackson (and others), *Terrorism: A Critical Introduction* (Basingstoke: Palgrave Macmillan, 2011) and Richard Jackson (ed), *Routledge Handbook of Critical Terrorism Studies* (New York: Routledge, 2016).

⁵³ See Ian Hacking, “The Looping Effects of Human Kinds,” in *Causal Cognition. A Multidisciplinary Debate*, ed. Dan Sperber (and others) (Oxford: Clarendon Press, 1995), 361.

⁵⁴ Paraphrasing Collin, “Constructivism”, 444: “the concepts in terms of which we describe reality are not derived from the latter but are imposed upon it.”

an interdisciplinary inquiry such as this is to demonstrate the respective strengths and weaknesses of the different approaches, and attempt to synthesise certain elements in order to broaden the prevailing understanding of phenomena beyond the constraints of (perceived) disciplinary boundaries. Their differing stances on the stability of meaning and their respective emphases on objectivity and subjectivity in their methods and outlook on the world have been identified as the main point of tension between the two disciplinary approaches presented here. And yet, they are not mutually exclusive but coexist in a complex relationship of tension and overlap. Against this background, the following section will attempt to outline some arguments derived from reading the interpretive approach of international law and the categorisation processes of IHL from a social constructionist perspective, and vice versa.

Constructing international law

By looking at the law from a social constructionist perspective, a few illuminating observations and potential pitfalls can be identified. This section will focus on three main arguments: the need to account for 1) the subjectivity of the legal interpreter; 2) the unmasking of the definability of legal concepts; and 3) the matrix of legal phenomena. It has been shown that the field of IHL offers a particularly interesting case to examine in the context of the methodological comparison undertaken in this thesis because of the assumptions it makes regarding neutrality under the banner of the ‘equal application’ principle and the field’s strict delimitation from *jus ad bellum*.⁵⁵ In this sense, it arguably already tests the limits of the legal approach to interpretation by drafting its provisions in such a way as to make interpretation and categorisation possible without regard for certain aspects of the context, such as the legality of the parties’ struggle or the justness of their cause. The social constructionist lens, in turn, only serves to magnify these challenges by emphasising the contextual factors which inevitably contribute to the understanding of categories and their applicability.

Turning to the first observation, one of the central aspects of the constructionist approach is precisely this emphasis on the non-inevitability of categories and the ensuing project of unmasking, whereby attention is drawn to the positionality of the constructor and/or categoriser. This may be compared to the role of the legal interpreter. In the presentation of the VCLT method of treaty

⁵⁵ *Jus ad bellum*, or the regime of law concerning the justification or prevention of war, considers questions including the legitimacy of armed struggle and a group’s right to resort to the use of violence. However, this field is strictly delimited from IHL (*jus in bello*), and as soon as there is a state of war, the IHL regime comes into force and applies equally to all parties irrespective of the ‘justness’ of their causes. See Adam Roberts, “The Equal Application of the Laws of War: A Principle under Pressure,” *International Review of the Red Cross* 90, no. 872 (2008).

interpretation provided above, the role of the individual interpreter was briefly alluded to with regard to the recognition of their role in giving meaning to a text.⁵⁶ Legal scholars emphasise that interpreters must carry out the interpretive operation “properly”, following the guiding principle of ‘good faith’.⁵⁷ This implies that there must be a proper or ‘correct’ way to apply the rules, resulting in a ‘correct’ interpretation of the provision in question, guiding the interpreter to its ‘true’ meaning, i.e. the intention of the drafting parties. This implicit assumption, it may be argued, underpins the functioning of the entire VCLT regime. However, this directly contradicts the social constructionist approach, which would encourage analyses to account more for the individual interpreter and their power to frame or present – to not say construct – their interpretation in a certain way. Every interpretation is the result of a human process of analysis and inference. Assumptions will be made and contributing factors considered or neglected due to their perceived relevance or irrelevance, or because they were simply unknown to the interpreter. This is inevitable and not necessarily good or bad. The constructionist approach draws attention to these aspects without seeking to judge, or assess, the result which is produced by the interpretation; it merely seeks to shed light on the complexity that underlies any human process. The VCLT’s requirement that multiple sources be consulted in order to support the outcome of the interpretive operation may certainly be considered a step in a similar direction as regards the law’s attempts to account better for the subjectivity inherent in the process of interpretation. However, having considered the constructionists’ arguments on the social dynamics which shape all aspects of human experience, this lack of attention paid to the positionality of the interpreter may be considered a weak spot in the legal method.

Secondly, the legal approach emphasises that the applicability of its categories and concepts depends on the fulfilment of objective criteria. Its definitions consist of (often cumulative) requirements which an individual, group or action must meet in order to be considered to legally constitute a type of person or a specific form of conduct, e.g. the definition of combatant status (Arts. 43 and 44 AP I). While any constructionist would call into question the purported objectivity of these criteria, a more nuanced argument could be made by looking at the phenomena which are deemed definable according to such objective criteria in the first place. There are any number of prominent contemporary phenomena which remain undefined by the IHL regime; to stay with the examples explored here,

⁵⁶ For example: “The process of interpretation, rightly conceived, cannot be regarded as a mere mechanical one of drawing inevitable meanings from the words in a text, or of searching for and discovering some preexisting specific intention of the parties with respect to every situation arising under a treaty ... In most instances, therefore, interpretation involves giving meaning to a text.” Humphrey Waldock quoted in Gardiner, “Characteristics of the Vienna Convention”, 338, emphasis in original. Waldock was one of the original architects of the VCLT rules.

⁵⁷ Mahnouch Arsanjani and Michael Reisman quoted in Gardiner, “Characteristics of the Vienna Convention”, 356. See Henckaerts and Pothelet, “Interpretation of IHL Treaties”, 155.

we need look no further than the concept of ‘terrorism’ and its absence from codified IHL.⁵⁸ Such phenomena are not defined in international law because their fluidity, susceptibility to politicization, and/or vagueness is deemed to make them unmanageable. ‘Terrorism’, for example, is recognised as fundamentally in the eye of the beholder, and instances of its occurrence thus cannot be determined according to objective criteria. Arguably, then, the law recognises the phenomenon’s nature as a socially constructed idea. But how does the law establish which concepts or categories are stable enough to warrant assessment according to (supposedly) objective standards? Where is the line to be drawn between the nebulous social constructs and the tangible, definable concepts?

To take perhaps one of the most significant examples, we can examine the concept which underpins the entire body of IHL and without which the regime would serve no purpose: armed conflict. This concept is, in many respects, very fluid and at times highly controversial. It should be noted from the outset that armed conflict is not actually defined in the IHL treaties; rather, its understanding is derived from customary law, state practice and scholarship.⁵⁹ Nevertheless, it is considered a ‘known’ concept, and the existence of a state of armed conflict hence assessable according to accepted criteria. And yet, it can equally be argued that the existence of an armed conflict may be in the eye of the beholder, as alluded to above. This has been the case in countless colonial contexts where states have been known to deny the presence of ongoing conflict in order to eschew the obligations of the IHL regime and avert the critical gaze of the international community.⁶⁰ There are thus many legal concepts, including those central to the functioning of the IHL regime, which are socially constructed and thus inherently instable and liable to misconstrual, politicisation and instrumentalisation, despite the fact that they are supposedly subject to the fulfilment of strict criteria. The constructionist perspective highlights these aspects and problematises how exactly the law purports to distinguish between tangible and intangible concepts.

58 ‘Terrorism’ is not defined under international law, and ‘terrorist’ is not a category of person or recognised means of warfare under IHL.

59 Common Article 2 of the Geneva Conventions together with Article 1(4) of the First Additional Protocol to the Geneva Conventions contain the various recognised forms of international armed conflict (IACs), while non-international armed conflicts (NIACs) are understood according to the provisions of Common Article 3 of the Geneva Conventions and Article 1(1) of the Second Protocol Additional to the Geneva Conventions.

60 This was the case, for example, in Algeria, where the French authorities maintained that the violent struggle between the FLN and the French colonial army were simply “internal problems of public order”, and it was not until 1999 that the French government officially recognised that the liberation struggle from 1954–1962 had, in fact, been a ‘war’. See Robert Gildea, *France since 1945* (Oxford: Oxford University Press, 2002), 25; William B Cohen, “The Algerian War, the French State and Official Memory,” *Historical Reflections/Réflexions Historiques* 28, no. 2 (2002), 219; Jessica Whyte, “The ‘Dangerous Concept of the Just War’: Decolonisation, Wars of National Liberation, and the Additional Protocols to the Geneva Conventions,” *Humanity* 9, no. 3 (2018).

The final observation from the constructionist viewpoint draws attention to the importance of the historical and social context in establishing the meaning and applicability of constructed categories. It could be argued that this is recognised to a certain extent in the VCLT method of interpretation, namely in its recommendation that recourse be had to *travaux préparatoires* and the circumstances of a treaty's conclusion (Art. 32 VCLT).⁶¹ However, this is not the same sense in which 'context' is understood by the constructionist approach, and, furthermore, the provisions arguably do not go far enough. For one thing, Art. 32 VCLT is a supplementary means of interpretation distinct from the general rule; that is, the reference to context in this sense is not an intrinsic part of the interpretive method. Nevertheless, almost all interpretive operations do, in fact, make use of *travaux préparatoires* in practice.⁶² Secondly, the provisions of Art. 32 VCLT relate only to the interpretive method, and are not, as such, a general principle of international law. In other words, drawing on the broader context of a legal category, definition or provision is not necessarily a constituent element of the legal method for working with these phenomena outside of the interpretive operation. Constructionists, in contrast, would encourage consideration of the context every time a category, or construct, is employed. This is because the constructionist viewpoint accounts for the so-called 'matrix' as a central element in establishing meaning, as it upholds, enables and determines a particular understanding of the term in question.

Particularly relevant in international law in this regard, then, is the historical and cultural context of a legal category. Was the provision perhaps drafted and the definition fixed in a colonial context, thus implicitly upholding racialised structures of domination and oppression? Is the concept and/or its definition outdated today in the face of technological advancements, e.g. in weapons technology? Does the IHL regime as a whole adequately reflect and account for the contemporary contexts in which armed struggles are waged? In the 21st century, there is an increasing prevalence of complex phenomena which complicate the 'traditional' scenarios of declared war between two states and thus pose a challenge to the prevailing IHL regime and its adaptability. Among these, and worthy of note, are: the engagement by states of private military and security companies and mercenaries; lethal autonomous weapons systems; urban warfare; proxy wars; and conflicts involving multinational troop units, such as those of the UN and NATO. How do existing concepts and legal instruments work with, and around, these phenomena and adapt to the new order, particularly given the relative age of the core IHL treaty regime? The

⁶¹ The 'context' referred to in the general rule in Art. 31 VCLT has a very different meaning, namely the text of the treaty and closely related instruments (so-called 'extrinsic context') and can thus not be compared to the constructionist sense of the word, namely the broader social, cultural and historical setting in which a given provision or term is embedded.

⁶² See Gardiner, *Treaty Interpretation*, 323.

constructionist viewpoint encourages reflection on these questions and emphasises the need to take the contemporary context and social dynamics into account at all times when applying legal categories. The law is not blind to these observations; indeed, scholars and practitioners are well aware of the challenge posed by legal provisions which no longer reflect contemporary realities accurately. However, the provisions nevertheless continue to apply. As Abi-Saab argues, “the acceptance of this sociological observation about the disparity between law and the social reality it is called upon to regulate does not extend to the legal consequences to be drawn from it.”⁶³ In other words, recognition and acceptance of the fact that legal provisions may not, or no longer, correspond to contemporary situations does not imply that the provisions themselves are no longer applicable.

Interpreting social science

The three arguments presented above demonstrate the value of regarding the workings of the law from a social constructionist perspective. Likewise, there are a number of insights to be gained from observing the social constructionist approach and the political use of constructed categories from the point of view of the legal methods examined in this research. The below argues that there is value in 1) recognising the need for a certain degree of fixity when working with phenomena; 2) reflecting on what exactly constitutes the matrix of a phenomenon; and 3) considering the genealogy or methodological framework of social constructs.

The first observation stems from the law’s reliance on established categories with stable, codified definitions. The existence of these categories, which can subsequently be interrogated and deconstructed, is essential for the functioning and practical work of the legal order, as has been argued above. The provision of exception clauses or derogations further enables the application of such categories in practice. It can thus be recognised that there is value in having established categories and tangible definitions in order to work with concepts. To take the argument to its extreme, if everything is reduced to a construction, inherently obscure and ambiguous, where might the analysis even begin? There can be no unmasking without consensus on the existence of a mask. At the most banal level, then, categories, no matter how fuzzy or undefined, are pre-conditions to constructionist analysis and to testing the limits of the approach. Moreover, they are also representative of the reality of how phenomena are engaged with in the ‘real world’. That is, while constructionists may recognise objects, ideas and concepts as inherently fluid and

⁶³ Georges Abi-Saab, “Wars of National Liberation in the Geneva Conventions and Protocols,” *Collected Courses* 165 (1979), 421.

thus indefinable, every individual who employs or engages with any kind of category in their daily life will have a certain understanding of what it consists of. Their understanding may not be static, and they may not even be fully aware of it, but the individual will nonetheless have an implicit definition, or set of criteria, which must be met in order for the category to be considered applicable. Even within the social sciences, where the constructionist approach finds broad acceptance and use, scholars frequently work with definitions as a way of fixing the understanding of a given construct for purposes of conceptual orientation, comparison, etc. Finally, as has been argued above, acknowledgment of the value of having tangible categories or definitions should not be taken to undermine the social constructionist approach. Both can co-exist; indeed, there is potential for mutual enrichment.

The second observation emerges from the interpretive method set out in the VCLT, which requires recourse be had to multiple sources in order to support and justify a given interpretation. In the case of a judicial decision, such as an ICJ ruling in the event of an unclear treaty provision, these sources of meaning are explicitly stated. As revealed by the constructionist approach, the processes by which meaning is ascribed in politics and society tend to be hidden, and the existence of constructs (and their meaning) taken for granted. While it would be impossible to hold socially-constructed concepts to the same requirements as legal interpretations in this regard, it is nonetheless an interesting exercise for constructionist scholars and critics to consider how exactly the conception of a given object or idea is arrived at in practice by making reference to multiple sources. For example, by subjecting to scrutiny the various institutions and processes which constitute Hacking's 'matrix' of a given idea, and their individual roles in ascribing and upholding meaning, or how they interact to produce a certain understanding, different aspects of the process of social construction may be revealed. Attempting to pin down these inherently nebulous elements would be a challenging exercise, but considering them as sources of meaning which support a dominant understanding of the idea or category might shed some light on how it is that categories are constructed as inevitable in mainstream discourse.

Finally, and in the same vein, the introduction to the legal approach revealed that it is, in a sense, more transparent overall than the political processes of categorisation, including through social construction. A final way in which the constructionist approach can be studied through applying the legal lens is by examining more closely the process of categorisation itself. The clear set of rules for interpretation in the VCLT provides a framework which can be disassembled in order to study the constituent parts from which an interpretation was made. In other words, the interpretive process can be 'reversed' by using the VCLT method as a kind of trail of evidence which

can be followed in order to ascertain how a certain interpretation or categorisation was arrived at. With regard to the constructionist approach, this is, again, significantly more challenging. However, to think about the political processes whereby an armed actor is constructed and construed in a certain way and referred to as ‘terrorist’ offers a potentially enlightening exercise for the constructionist: Reversing the approach by taking the categorised phenomenon and trying to trace it back to its origins through a genealogical approach – that is, which characteristics of the group were perhaps overstated and which brushed aside in order to subsume it under the category ‘terrorist’ – might put the constructionist in a better position to interrogate the result and the interests it serves.

Not seeking to claim that the above observations or proposed angles for future legal and constructionist analyses are necessarily original, the observations in this section serve to demonstrate how the legal and philosophico-political approaches which have been juxtaposed throughout this research may also complement and enrich one another.

Conclusion

This research set out to examine and compare two distinct disciplinary approaches to the construction of meaning and categorisation – social constructionism, representative of political and social theory, and the legal method of interpretation as codified in the Vienna Convention on the Law of Treaties, emblematic of public international law – through the lens of how actors engaged in international armed conflict are understood and categorised. The goal was not to evaluate these frameworks normatively or to determine their relative superiority, but to investigate how their contrasting assumptions and methodologies shape the phenomena they purport to describe, and how these interpretations coexist in real-world contexts, such as in the study of armed conflict. The juxtaposition of these two approaches reveals not only divergent epistemologies and disciplinary aims but also some surprising points of intersection. Social constructionism, grounded in the idea that meaning is not pre-given but produced through social processes, highlights the fluidity of categories and draws attention to the contextual, contingent, and often politicised nature of how phenomena are understood. Law, by contrast, and particularly the interpretive rules set out in the VCLT, operates under the assumption that meaning can be clarified and stabilised through the application of structured interpretive principles. The legal framework depends on fixed rules for interpretation to enable consistent application and, ultimately, uphold the legitimacy of the rule of law. Yet as this research has shown, the disciplinary distinctions are not always so clear-cut. While the legal approach emphasises consistency and stability in

definition, it is inescapably mediated by human interpreters, whose subjectivities and positionalities inevitably influence the interpretive process. Despite its objective posture, the legal method, too, is implicated in the construction of meaning – not least because the rules of interpretation must themselves be interpreted. Meanwhile, though constructionism questions the inevitability of meanings and categories, it cannot escape the practical necessity of working with provisional definitions in order to engage in analysis. This mutual reliance on – and simultaneous interrogation of – categorisation underscores that meaning-making is a dynamic process, even in domains where precision is highly prized.

A particularly fruitful site for this comparative inquiry has been the classification of actors in armed conflict. In political discourse, especially in asymmetrical or anti-colonial struggles, actors are routinely constructed in strategic ways: they may be labelled as terrorists or freedom fighters, insurgencies or liberation movements, depending on the interests and narratives of those in power. The constructionist lens draws attention to these processes, revealing how such labels are deployed to legitimise or delegitimise, include or exclude, and ultimately reinforce certain power structures. These categorisations are not neutral; they are imbued with political meaning and social consequence. IHL, by contrast, insists on strict, mutually exclusive categories such as ‘combatant’ and ‘civilian’, which are foundational to the legal regime’s ability to function. These categories enable the application of essential principles which are designed to mitigate the harms of armed conflict, such as the ‘principle of distinction’. But as this research has demonstrated, the reality of contemporary conflict challenges the adequacy of these binary classifications. While the legal framework aims to impose clarity, it must simultaneously grapple with the ambiguities and complexities of the real world.

The interplay between these approaches becomes particularly illuminating when each is used to interrogate the other. A social constructionist perspective reveals the latent assumptions embedded in legal interpretation – the role of the interpreter, the selective invocation of context, and the extent to which legal categories can ever be truly objective or context-free. Conversely, legal reasoning offers constructionism a model of rigour and transparency, particularly through its structured use of sources and explicit justificatory methods. While social and political categorisations often emerge through diffuse and opaque processes, legal interpretation at least aspires to be traceable and accountable, and its methodology may offer useful tools for constructionist scholars seeking to retrace the genealogy of social categories. Both approaches also illuminate the challenges of operating across disciplines. While constructionism invites openness to plurality, instability and redefinition, law requires a degree of closure in order to function. These

demands are not easily reconciled. The necessity of legal determinacy can obscure the fluid and contested nature of the categories the law employs, while the openness of social constructionism can risk undermining the possibility of shared meaning or coordinated action. The value of this interdisciplinary inquiry lies precisely in its ability to hold these tensions in view: to acknowledge the strengths and limitations of each approach, and to resist the temptation to evaluate them normatively.

This has significant practical implications. In conflict situations, the way actors are categorised – whether in political rhetoric or legal analysis – has profound effects on their treatment, their rights, and their legitimacy and can result in the denial of legal protections, the perpetuation of violence, or the entrenchment of unjust power structures. A more reflexive approach to categorisation, informed by both legal rigour and constructionist critique, highlights these often implicit or obscure effects and offers a way to engage more responsibly with these issues. Furthermore, it demonstrates that categorisation is not simply a descriptive act, but a performative one – a move that shapes the world as much as it reflects it.

Ultimately, this research has argued that while law and social science may construct meaning in different ways, their respective approaches are not mutually exclusive. Rather, they exist in a complex relationship of tension, overlap and mutual influence. Acknowledging this relationship does not diminish the disciplinary merit of either field; on the contrary, it enriches both. Legal scholars may benefit from greater attentiveness to the constructedness of their categories and the positionality of their interpretations, while political and social theorists may gain from engaging more directly with the structural constraints and normative commitments of legal reasoning. By placing these approaches in dialogue and attempting to bridge their differences, space is opened for a more nuanced and reflective engagement with the categories through which we understand and navigate the world.

Main Treaty Provisions cited

Vienna Convention on the Law of Treaties (1969)

Article 31 – General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - a. any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
 - b. any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - a. any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - b. any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - c. any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32 – Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- a. leaves the meaning ambiguous or obscure; or
- b. leads to a result which is manifestly absurd or unreasonable.

Table of Treaties

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31. <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-970-English.pdf>. Accessed 8 June 2025.

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85. <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-971-English.pdf>. Accessed 8 June 2025.

Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135. <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-972-English.pdf>. Accessed 8 June 2025.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287. <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-973-English.pdf>. Accessed 8 June 2025.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3. <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-English.pdf>. Accessed 8 June 2025.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609. <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17513-English.pdf>. Accessed 8 June 2025.

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331. <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>. Accessed 8 June 2025.

Bibliography

- Abi-Saab, Georges. "Wars of National Liberation in the Geneva Conventions and Protocols." *Collected Courses* 165 (1979): 353–445.
- Ahmad, Eqbal. "Comprehending Terror." *MERIP Middle East Report* 2 (1986): 2–5.
- le Bouthillier, Yves. "Art. 32 Vienna Convention." In *The Vienna Convention on the Law of Treaties: A Commentary*, edited by Olivier Corten and Pierre Klein. Oxford: Oxford University Press, 2011.
- Camacho, Ana. "Terrorism and War in the Sahara." Grupo de Estudios Estratégicos, <https://www.gees.org/articulos/terrorism-and-war-in-the-sahara>. Accessed 8 June 2025.
- Cohen, William B. "The Algerian War, the French State and Official Memory." *Historical Reflections/Réflexions Historiques* 28, no. 2 (2002): 219–239.
- Collin, Finn. "Bunge and Hacking on Constructivism." *Philosophy of the Social Sciences* 31, no. 3 (2001): 424–453.
- Crotty, Michael. *The Foundations of Social Research. Meaning and Perspective in the Research Process*. New York: Sage, 1998.
- Dixit, Priya. "Securitisation and Terroristisation: Analysing States' Usage of the Rhetoric of Terrorism." In *State Terror, State Violence*, edited by Bettina Koch. Wiesbaden: Springer, 2016.
- Dörr, Oliver. "Article 31. General Rule of Interpretation." In *Vienna Convention on the Law of Treaties. A Commentary*, edited by Oliver Dörr and Kirsten Schmalenbach. Berlin, Heidelberg: Springer, 2012.
- Dörr, Oliver. "Article 32. Supplementary Means of Interpretation." In *Vienna Convention on the Law of Treaties. A Commentary*, edited by Oliver Dörr and Kirsten Schmalenbach. Berlin, Heidelberg: Springer, 2012.
- Fish, Stanley. *Is there a Text in this Class?* Cambridge, Mass.: Harvard University Press, 1980.
- Foucault, Michel. "The Order of Discourse." In *Language and Politics*, edited by Michael J. Shapiro. New York: NYU Press, 1984.

Gardiner, Richard K. "Characteristics of the Vienna Convention Rules on Treaty Interpretation." In *Conceptual and Contextual Perspectives on the Modern Law of Treaties*, edited by Michael J. Bowman and Dino Kritsiotis. Cambridge, UK: Cambridge University Press, 2018.

Gardiner, Richard K. *Treaty Interpretation*. Oxford: Oxford University Press, 2008.

Gildea, Robert. *France since 1945*. Oxford: Oxford University Press, 2002.

Hacking, Ian. *The Social Construction of What?* Cambridge, Mass.: Harvard University Press, 1999.

Hacking, Ian. "The Looping Effects of Human Kinds." In *Causal Cognition. A Multidisciplinary Debate*, edited by Dan Sperber (and others). Oxford: Clarendon Press, 1995.

Hall, Stuart. *Representation*. New York: Sage, 2011.

Haslanger, Sally. *Resisting Reality. Social Construction and Social Critique*. Oxford: Oxford University Press, 2012.

Heath-Kelly, Charlotte. "Post-Structuralism and Constructivism." In *Routledge Handbook of Critical Terrorism Studies*, edited by Richard Jackson. New York: Routledge, 2016.

Henckaerts, Jean-Marie and Elvina Pothelet. "The Interpretation of IHL Treaties: Subsequent Practice and other Salient Issues." In *Law-Making and Legitimacy in International Humanitarian Law*, edited by Heike Krieger and Jonas Püschmann. Cheltenham: Edward Elgar, 2021.

Jackson, Richard (and others). *Terrorism: A Critical Introduction*. Basingstoke: Palgrave Macmillan, 2011.

Kinsella, Helen. *The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian*. New York: Cornell University Press, 2011.

Kritsiotis, Dino. "The Object and Purpose of a Treaty's Object and Purpose." In *Conceptual and Contextual Perspectives on the Modern Law of Treaties*, edited by Michael J. Bowman and Dino Kritsiotis. Cambridge, UK: Cambridge University Press, 2018.

Oxford English Dictionary, “category.” www.oed.com/dictionary/category_n. Accessed 8 June 2025.

Roberts, Adam. “The Equal Application of the Laws of War: A Principle under Pressure.” *International Review of the Red Cross* 90, no. 872 (2008): 931–962.

Said, Edward. “Identity, Negation and Violence.” *New Left Review* 46 (1988): 46–60.

Sorel, Jean-Marc and Valérie Boré Eveno. “Art. 31 1969 Vienna Convention.” In *The Vienna Convention on the Law of Treaties: A Commentary*, edited by Olivier Corten and Pierre Klein. Oxford: Oxford University Press, 2011.

Toros, Harmonie. “‘We Don’t Negotiate with Terrorists!’ Legitimacy and Complexity in Terrorist Conflicts.” *Security Dialogue* 39, no. 4 (2008): 407–426.

Whyte, Jessica. “The ‘Dangerous Concept of the Just War’: Decolonisation, Wars of National Liberation, and the Additional Protocols to the Geneva Conventions.” *Humanity* 9, no. 3 (2018): 313–341.

Zulaika, Joseba. “The Real and the Bluff. On the Ontology of Terrorism.” In *Routledge Handbook of Critical Terrorism Studies*, edited by Richard Jackson. New York: Routledge, 2016.