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^ CHAPTER BIBLIOGRAPHY

- *Journal of Conflict and Security Law*, Vol. 14, No. 3, 2009, pp 391-534.
- A serie of articles based on the different problematics which result of the application of IHRL during armed conflict.
- CLAPHAM Andrew, "The Complex Relationship Between the Geneva Conventions and International Human Rights Law" in Andrew Clapham, Paola Gaeta & Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford, Oxford University Press, 2015, pp. 701-735.
- LUBELL Noam, "Challenges in applying human rights law to armed conflict", in *IRRC*, Vol. 87, No. 860, 2005, pp. 737-754.
- MURRAY Daragh (ed.), AKANDE Dapo, GARRAWAY, Charles, HAMPSON Françoise, LUBELL Noam, & WILMSHURST Elizabeth (consultant eds), *Practitioners' Guide to Human Rights Law in Armed Conflict*, Oxford, Oxford University Press, 2016, 325 pp.
- SASSÒLI Marco, "The role of human rights and international humanitarian law in new types of armed conflicts" in BEN-NAFTALI Orna (ed.), *International humanitarian law and human rights law : pas de deux*, Oxford, Oxford University Press, 2011, pp 34-94.
- OHCHR, *International Legal Protection of Human Rights in Armed Conflict*, New York and Geneva, United Nations, 2011, 119 pp.

Introductory text

International humanitarian law (IHL) developed as the law of international armed conflicts and was therefore necessarily international law in the traditional sense, an objective legal order governing inter-State relations. Its main objective was always to protect individuals, but that protection was not expressed in the form of subjective rights of the victims; rather, it was a consequence of the rules of behaviour for States and (through them) of individuals.

Human rights have only recently been protected by international law and are still today mainly protected by national law (though not of exclusively domestic concern). They were always seen and formulated as subjective rights of the individual and of groups in respect of the State – mainly their own State.

Both branches of international law are today largely codified. IHL, however, is codified in a broadly coherent international system of binding universal instruments of which the more recent or specific clarify their relationship with the older or more general treaties. International Human Rights Law, conversely, is codified in an impressive number of instruments – universal or regional, binding or exhortatory, concerning the whole subject, its implementation only, specific rights or their implementation only – that emerge, develop, are implemented and die in a relatively natural, uncoordinated way.

Because of the philosophical axiom driving them, human rights apply to everyone everywhere, and as they are concerned with all aspects of human life, they have a much greater impact on public opinion and international politics than IHL, which is applicable only in armed conflicts that are themselves to be avoided. IHL is therefore increasingly influenced by human rights-like thinking.

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- APRAXINE Pierre, “Observations sur la distinction et la complémentarité entre droit international humanitaire et droits de l’homme”, in *Revue Régionale de Droit*, Vol. 91, pp. 111-121.
- JINKS Derek, “International human rights law in times of armed conflict”, in CLAPHAM Andrew and GAETA Paola, *The Oxford handbook on international law in armed conflict*, Oxford, OUP, 2014, 656 pp.
- DOSWALD-BECK Louise & VITÉ Sylvain, “International Humanitarian Law and Human Rights Law”, in *IRRC*, No. 293, March-April 1993, pp. 94-119.
- DROEGE Cordula, “The Interplay between International Humanitarian law and International Human Rights Law in Situation of Armed Conflict”, in *Israel Law Review*, Vol. 40, No. 2, 2007 pp. 310-355.
- EDEN Paul & HAPPOLD Matthew, “The Relationship between International Humanitarian Law and International Human Rights Law”, in *Journal of Conflict and Security Law*, Vol. 14, No. 3, 2009, pp. 441-527.
- EL KOUHENE Mohamed, *Les garanties fondamentales de la personne en droit humanitaire et droit de l’homme*, New edition, Brill and Nijhoff, 2017, 307 pp.
- HAMPSON Françoise, “Human Rights and Humanitarian Law in Internal Conflicts”, in MEYER Michael A. (ed), *Armed Conflict and the New Law*, London, The British Institute of International and Comparative Law, Vol. 2, 1993, pp. 53-82.
- HILL-CAWTHORNE Lawrence, “Humanitarian law, human rights law and the bifurcation of armed conflict”, in *ICLQ*, Vol. 64, No.2, pp. 293-325.
- KOLB Robert, “The Relationship between International Humanitarian Law and Human Rights Law: a Brief History of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions”, in *IRRC*, No. 324, September 1998, pp. 409-419.
- LATTIMER Mark & SANDS Philippe (eds), *The Grey Zone. Civilian Protection Between Human Rights and the Laws of War*, Oxford, Oxford Hart Publishing, 2018, 480 pp.

- MERON Theodor, “The Humanization of International Humanitarian Law”, in *AJIL*, Vol. 94, No. 2, 2000, pp. 239-278.
- PROVOST René, *International Human Rights and Humanitarian Law*, Cambridge University Press, Cambridge, 2002, 332 pp.
- SANDOZ Yves, “Droit international humanitaire et droits de l’homme : mariage d’amour ou de raison ?”, in *Les droits de l’homme et la constitution: études en l’honneur du professeur Giorgio Malinverni*, Geneva, Schulthess, 2007, pp. 339-374.

Further reading:

- AUREY Xavier, “The Universal Declaration of Human Rights and Armed Conflicts: from Fragmentation to Complexity”, in *Anuário brasileiro de direito internacional = Brazilian Yearbook of International Law*, Vol. 2, No. 4, 2009, pp. 48-67.
- BETHLEHEM Daniel, “The relationship between international humanitarian law and international human rights law in situation of armed conflicts”, in *Cambridge Journal of International and Comparative Law*, Vol.2, No.2, 2013, pp. 180-195.
- CALOGEROPOULOS-STRATIS Aristidis S., *Droit humanitaire et droits de l’homme. La protection de la personne en période de conflit armé*, Geneva, I.U.H.E.I., 1980, 257 pp.
- DOSWALD-BECK Louise, *Human Rights in Times of Conflict and Terrorism*, Oxford, OUP, 2011, 600 pp.
- EIDE Asbjorn, “The Laws of War and Human Rights – Differences and Convergences”, in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, Geneva, The Hague, ICRC, M. Nijhoff, 1984, pp. 675-698.
- HADDEN Tom & HARVEY Colin, “The Law of Internal Crisis and Conflict”, in *IRRC*, No. 833, 1999, pp. 119-134.
- HAMPSON Françoise, “Is Human Rights Law of Any Relevance to Military Operations in Afghanistan?”, in *International Law Studies*, Vol. 85, 2009, pp. 485-524.
- KHANNA S. K., *War and Human Rights*, New Delhi, Dominant Publ., 1999, 336 pp.
- KOLB Robert, “Human Rights Law and international humanitarian law between 1945 and the aftermath of the Teheran Conference of 1968”, in KOLB Robert & GAGGIOLI Gloria (eds.), *Research Handbook on Human Rights and Humanitarian Law*, Cheltenham/Northampton, Edward Elgar Publishing Limited, 2013, 35-52.
- MERON Theodor, “The Humanization of International Humanitarian Law”, in *AJIL*, Vol. 94/2, 2000, pp. 239-278.
- ORAKHELASHVILI Alexander, “The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism or Convergence?”, in *EJIL*, Vol. 19, No. 1, 2008, pp. 161-182.
- ROWE Peter, *The Impact of Human Rights Law on Armed Forces*, Cambridge, CUP, 2006, 259 pp.
- TAVERNIER Paul & HEYNS Christof (dir.), *Recueil juridique des droits de l’Homme en Afrique*, Brussels, Bruylant, vol 2, 2006, 3176 pp.

I. Fields of application

^ CASES AND DOCUMENTS

- Colombia/Displacement of Civilians
- ECHR, Cyprus v. Turkey
- Inter-American Commission on Human Right, Tablada [Paras 158 and 159]
- Colombia, Constitutional Conformity of Protocol II (Paras 11 and 12)
- ECHR, Al-Jedda v. UK
- United States of America, Military Commissions Trial Judiciary, Guantanamo Bay, Cuba: United States of America v. Khalid Shaikh Mohammad et al.
- Mexico, Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- SHELTON Dinah (ed.), *The Oxford Handbook of International Human Rights Law*, Oxford, Oxford University Press, 2013, 1088 pp.

1. Material fields of application: complementarity

Introductory text

IHL is applicable in armed conflicts only. International Human Rights Law is applicable in all situations. All but the non-derogable provisions, the “hard core” of International Human Rights Law, however, may be suspended, under certain conditions, in situations threatening the life of the nation. As those situations do not only include armed conflicts (see however below, b. aa)), which trigger IHL's applicability, the complementarity remains imperfect; in particular, a gap exists in situations of internal disturbances and tension in which IHL does not apply.

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- TOMUSCHAT Christian, “Human Rights and International Humanitarian Law”, in *EJIL*, Vol. 21, No. 1, 2010, pp. 15-23.
- OBERLEITNER Gerd, *Human Rights in Armed Conflict: Law, Practice, Policy*, Cambridge University Press, Cambridge, 2015, 431 pp.

Further reading:

- KRESS Claus, “Some Reflections on the International Legal Framework Governing Transnational Armed Conflicts”, in *Journal of Conflict and Security Law*, Vol. 15, No. 2, 2010, pp. 245-274.
- OHCHR, « International human rights law and international humanitarian law in armed conflict : legal sources, principles and actors », in OHCHR, *International Legal Protection of Human Rights in Armed Conflict*, New York and Geneva, United Nations, 2011, pp. 4-31.

a. IHL is applicable in armed conflicts

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- VITÉ Sylvain, “Typology of armed conflicts in international humanitarian law: Legal concepts and actual situations”, in *IRRC*, Vol. 91, No. 873, 2009, pp. 69-94.

b. Human rights apply at all times

Quotation

General Comment No. 31 [80]

The Nature of the General Legal Obligation Imposed on States Parties to the Covenant. Adopted on 29 March 2004 (2187th meeting) [...]

11. As implied in [...] General Comment No. 29 on States of Emergencies, adopted on 24 July 2001, reproduced in Annual Report for 2001, A/56/40, Annex VI, paragraph 3, the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

[Source: General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant: 26/05/2004. Human Rights Committee. Eightieth session (CCPR/C/74/CRP.4/Rev.6.), online: <http://docstore.ohchr.org/SelfServices>]

^ CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 101-106 and 127-130]
- Israel, Human Rights Committee’s Report on Beit Hanoun [Paras 50-80]
- Sudan, Report of the UN Commission of Enquiry on Darfur [Para. 143]

- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo [Paras 206-221]
- United Kingdom, The Case of Serdar Mohammed (High Court Judgment)
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 170, 183]
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

▲ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HAMPSON Françoise, “Direct Participation in Hostilities and the Interoperability of the Law of Armed Conflict and Human Rights Law”, in *International Law Studies*, Vol. 87, 2011, pp. 187-213.
- LUBELL Noam, “Challenges in applying human rights law to armed conflict”, in *IRRC*, Vol. 87, No. 860, 2005, pp. 737-754.

Further reading:

- CORN Geoffrey, “Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conflict”, in *International Humanitarian Legal Studies*, Vol. 1, 2010, 52-94.
- GAGGIOLI Gloria, “Remoteness and Human Rights”, in OHLIN Jens David (ed), *Research Handbook on Remote Warfare*, Edward Elgar Publishing, Cheltenham, Northampton, 2017, pp. 133-185.
- MILANOVIC Marko & PAPIC Tatjana, “The applicability of the ECHR in contested territories”, in *International & Comparative Law Quarterly*, No. 67, 2018, pp. 779-800.

aa) but derogations possible in situations threatening the life of the nation

International armed conflicts normally threaten the life of States parties and non-international armed conflicts threaten the life of the State on the territory of which they occur. There are however controversies regarding the need and possibility to derogate for a State involved in an non-international armed conflict outside its own territory. In our view, if a State is bound by human rights on the territory of another State, it must also be able to derogate based upon the situation in that territory.

▲ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- UN, Minimum Humanitarian Standards [Part B., paras 50-57]
- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 149-153]

- ECHR, Hassan v. UK
- UK, The Case of Serdar Mohammed (High Court Judgment) [Para 155]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- SCHREUER Christoph, “Deorgations of human rights in situations of public emergency: The experience of the European convention of human rights”, in *Yale Journal of international law*, Vol. 9, No. 1, 1982, pp. 113-132.
- OBERLEITNER Gerd, “10 - War as emergency: Deorgations”, in OBERLEITNER Gerd, *Human Rights in Armed Conflict: Law, Practice, Policy*, Cambridge University Press, Cambridge, 2015, pp. 169-175.

bb) no derogations from the “hard core” – but controversy whether and to what extent judicial guarantees belong to the “hard core”

Quotation

General Comment No. 35

65. Article 9 is not included in the list of non-derogable rights of article 4, paragraph 2, of the Covenant, but there are limits on States parties' power to derogate. [...]

66. [...] The fundamental guarantee against arbitrary detention is non-derogable, insofar as even situations covered by article 4 cannot justify a deprivation of liberty that is unreasonable or unnecessary under the circumstances. The existence and nature of a public emergency which threatens the life of the nation may, however, be relevant to a determination of whether a particular arrest or detention is arbitrary. [...] During international armed conflict, substantive and procedural rules of international humanitarian law remain applicable and limit the ability to derogate, thereby helping to mitigate the risk of arbitrary detention. Outside that context, the requirements of strict necessity and proportionality constrain any derogating measures involving security detention, which must be limited in duration and accompanied by procedures to prevent arbitrary application [...].

67. The procedural guarantees protecting liberty of person may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. In order to protect non-derogable rights, including those in articles 6 and 7, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention must not be diminished by measures of derogation.

[Source: General Comment No. 35, Article 9 of the International Covenant on Civil and Political Rights (Liberty and Security of Person): 23/10/2014.Human Rights Committee.112th session (CCPR/C/GC/35) online <https://tbinternet.ohchr.org>.]

^ CASES AND DOCUMENTS

- Israel, Methods of Interrogation Used Against Palestinian Detainees
- ECHR, Al-Jedda v. UK

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- OHCHR, *Core human rights in the two covenants*, 2013.
- OORA Jaime, “4.The principle of non-derogability of fundamental rights”, in OORA Jaime, *Human rights in state of emergency in international law*, Clarendon Press, Oxford, 1992, pp. 87-123.

Further reading:

- TEFERRA Zelalem Mogessie, “National security and the right to liberty in armed conflict: The legality and limits of security detention in international humanitarian law”, in *IRRC*, Vol. 98, No. 903, 2016, pp. 961-993.

cc) police operations remain at all times governed by the specific International Human Rights standards applicable to police operations against civilians, which may never be conducted like hostilities against combatants

^ CASES AND DOCUMENTS

- Israel, The Rafah Case
- Iraq, Use of Force by United States Forces in Occupied Iraq
- Belgium, Belgian Soldiers in Somalia
- India, People’s Union for Civil Liberties v. Union of India
- “Great March of Return” Demonstrations and Israel’s Military Response

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- FLECK Dieter, “Law Enforcement and the Conduct of Hostilities: Two Supplementing or Mutually Excluding Legal Paradigms?”, in *Frieden in Freiheit = Peace in Liberty = Paix en liberté : Festschrift für Michael Bothe zum 70 Geburtstag*, Baden-Baden, Nomos; Zürich, Dike, 2008, pp. 391-407.

a. **gap in situations of internal disturbances and tensions** (For a definition of internal disturbances and tensions, see *supra* Part I, Chapter 2.III.1.C) Other situations

^ CASES AND DOCUMENTS

- ICRC, Disintegration of State Structures
- Minimum Humanitarian Standards
- India, People’s Union for Civil Liberties v. Union of India

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- EIDE Asbjorn, ROSAS Allan & MERON Theodor, “Combating Lawlessness in Gray Zones Through Minimum Humanitarian Standards”, in *AJIL*, Vol. 89, No. 1, 1995, pp. 215-223.
- MERON Theodor, “Draft Model Declaration on Internal Strife”, in *IRRC*, No. 262, 1988, pp. 59-104.
- MERON Theodor, *Human Rights in Internal Strife: Their International Protection*, Cambridge, Grotius, 1987, 349 pp.
- MERON Theodor, “Towards a Humanitarian Declaration on Internal Strife”, in *AJIL*, Vol. 78, No. 4, 1984, pp. 859-868.
- MOMTAZ Djamchid, “The Minimum Humanitarian Rules Applicable in Periods of Internal Tension and Strife”, in *IRRC*, No. 324, 1998, pp. 455-462.

Further reading:

- FLECK Dieter, “Law Enforcement and the Conduct of Hostilities: Two Supplementing or Mutually Excluding Legal Paradigms?”, in *Frieden in Freiheit = Peace in Liberty = Paix en liberté : Festschrift für Michael Bothe zum 70 Geburtstag*, Baden-Baden, Nomos; Zürich, Dike, 2008, pp. 391-407.
- GASSER Hans-Peter, “A Measure of Humanity in Internal Disturbances and Tensions: Proposal for a Code of Conduct”, in *IRRC*, No. 262, 1988, pp. 33-58.
- GASSER Hans-Peter, “Troubles et tensions internes : un nouveau projet de déclaration sur les normes humanitaires minimales”, in *IRRC*, No. 789, May-June 1991, pp. 348-356.
- VIGNY Jean-Daniel, “Standards fondamentaux d’humanité : quel avenir ?”, in *IRRC*, No. 840, 2000, pp. 917-939.

2. Protected persons

Introductory text

While it is an important rule of International Human Rights Law that all human beings benefit equally from these rights, the traditional approach of IHL, consistent with its development as inter-State law, is essentially to protect enemies. IHL therefore defines a category of “protected persons”, consisting basically of enemy nationals, who enjoy comprehensive protections. Nevertheless, victims of armed conflicts who do not fall under the legal category of “protected persons” do not completely lack protection. In conformity with and under the influence of International Human Rights Law, all persons affected by armed conflicts benefit from a set of protective rules, which, however, never offer the full protection foreseen for “protected persons”.

^ CASES AND DOCUMENTS

- ECHR, *Bankovic and Others v. Belgium and 16 Other States*
- ECHR, *Al-Jedda v. UK*

- a. **International Humanitarian Law: concept of protected persons** (See supra, Part I, Chapter 2. III. 2.
 - a) passive personal scope of application: who is protected?)
 - b. **International Human Rights Law: all human beings**

^ CASES AND DOCUMENTS

- ECHR, *Bankovic and Others v. Belgium and 16 Other States*

aa) who are on the territory and/or under the jurisdiction of a State: controversy about the extraterritorial application of International Human Rights Law

^ CASES AND DOCUMENTS

- ECHR, *Bankovic and Others v. Belgium and 16 Other States*
- United Kingdom, *The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)*

3. Relations affected

Introductory text

International Human Rights Law prescribes (or recognizes) that individuals (or groups) have rights in respect of their State (or, arguably, other authorities). The provisions of IHL, too, protect individuals against the (traditionally enemy) State or other belligerent authorities. IHL, however, also corresponds to the traditional structure of international law in that it governs (often by the very same provisions) relations between States. In addition, it prescribes rules of behaviour for individuals for the benefit of other individuals. This is uncontroversial for those also referred to in international criminal law as war crimes, while the legal basis for

this widely held opinion is unclear for most other rules of IHL.[1]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- VAN STEENBERGHE Raphaël, “Chapitre I – Théorie des sujets”, in VAN STEENBERGHE Raphaël (ed.), *Droit international humanitaire, un régime spécial de droit international?*, Bruylant, Bruxelles, 2013, pp. 15-72.

^ CASES AND DOCUMENTS

- ICRC, Disintegration of State Structures

a. International Humanitarian Law

- individual – State
- State – State
- individual – individual

b. International Human Rights Law

- individual – State

^ CASES AND DOCUMENTS

- Minimum Humanitarian Standards (Part B., paras 59-64)
- ECHR, Bankovic and Others v. Belgium and 16 Other States

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- D'AMATO Anthony, “The relation of the individual to the State in the era of human rights”, in *Texas international law journal*, Vol. 24, 1989, pp. 1-12.

4. The geographical scope of application: the extraterritorial application of International Human Rights Law

Introductory text

No one disputes that a State has to comply with IHL when it fights outside its territory. The IHL of military occupation has even been specifically made for such situations. Some rules of IHL (e.g., on the protection of prisoners of war and protected civilians) protect only those who are in the power of a State, while other rules

(such as those on the conduct of hostilities) protect everyone, including, for example, the civilian population of the adverse party, against indiscriminate attacks or enemy soldiers against acts of perfidy or the use of prohibited weapons. The territorial field of application of International Human Rights Law raises many more controversies.

Most regional human rights conventions clearly state that the States Parties must secure the rights listed in those conventions for everyone within their jurisdiction. This includes occupied territory. On the universal level, under the International Covenant on Civil and Political Rights a Party undertakes 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized...' (our emphasis). This wording and the negotiating history lean towards understanding territory and jurisdiction as cumulative conditions. Several States therefore deny that the Covenant is applicable extraterritorially. The International Court of Justice, the United Nations Human Rights Committee and other States are, however, of the opinion that the Covenant applies equally in occupied territory. From a teleological point of view, it would indeed be astonishing that persons whose rights can neither be violated nor protected by the territorial State lose all protection of their fundamental rights in respect of the State which can actually violate and protect their rights.

Even if International Human Rights Law applies extraterritorially, the next key question that arises is when a person can be considered to be under the jurisdiction of a State. Today, it is suggested by human rights bodies that, in addition to territorial control, control over persons (for instance persons detained by a State's agents) is also sufficient to trigger jurisdiction. Some even suggest that the obligation to respect – but not necessarily to protect and to fulfil – human rights already applies as soon as a person's right can be affected by a State's conduct (e.g. through an aerial bombardment). One solution to this question lies in the functional approach, which distinguishes the degree of control necessary according to the right to be protected. Such a "sliding scale" approach would reconcile the object and purpose of human rights – to protect everyone – with the need not to bind States by guarantees they cannot deliver outside their territory and concern to protect the sovereignty of the territorial State (which may be encroached upon by international forces protecting human rights against anyone other than themselves).

Quotation

General Comment No. 31

3. Article 2 defines the scope of the legal obligations undertaken by States Parties to the Covenant. A general obligation is imposed on States Parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction [...].

[...]

10. States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. [...] the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.

[Source: General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26/05/2004. Human Rights Committee, 80th session (CCPR/C/21/Rev.1/Add.13) online <https://tbinternet.ohchr.org>]

Quotation

General Comment No. 36

63. In light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner. States also have obligations under international law not to aid or assist activities undertaken by other States and non-State actors that violate the right to life. Furthermore, States parties must respect and protect the lives of individuals located in places, which are under their effective control, such as occupied territories, and in territories over which they have assumed an international obligation to apply the Covenant. States parties are also required to respect and protect the lives of all individuals located on marine vessels or aircrafts registered by them or flying their flag, and of those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea. Given that the deprivation of liberty brings a person within a State's effective control, States parties must respect and protect the right to life of all individuals arrested or detained by them, even if held outside their territory.

[Source: General Comment No. 36, Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life: 30/10/2018. Human Rights Committee. 124th Session (CCPR/C/GC/36), online

▾ CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 107-112]
- ECHR, Cyprus v. Turkey
- ECHR, Bankovic and Others v. Belgium and 16 Other States
- United Kingdom, The Case of Serdar Mohammed (High Court Judgment)
- ECHR, Hassan v. UK
- United States of America, The Death of Osama bin Laden
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- ECHR, Al-Jedda v. UK, [paras 74-88]
- Somalia, The Death of Bilal Al-Sudani

▾ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CERONE John, "Jurisdiction and Power: the Intersection of Human Rights Law & the Law of Non-International Armed Conflict in an Extraterritorial Context", in *Israel Law Review*, Vol. 40, No. 2, 2007, 58 pp.
- DENNIS Michael J., "Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation", in *AJIL*, Vol. 99, No. 1, January 2005, pp. 119-142.
- DENNIS Michael J. & SURENA Andre M., "Application of the International Covenant on Civil and Political Rights in Times of Armed Conflict and Military Occupation: The Gap Between Legal Theory and State Practice", in *European Human Rights Law Review*, Vol. 8, 2008, pp. 714-731.
- LUBELL Noam, *Extraterritorial Use of Force Against Non-State Actors*, Oxford, Oxford University Press, 2010, 312 pp.
- MILANOVIĆ Marko, "Extraterritoriality and human rights: Prospects and challenges", in GAMELTFOFT-HANSEN Thomas & VEDSTED-HANSEN Jens (ed.), *Human rights and the dark side of globalisation: transnational law enforcement and migration control*, London, Routledge, 2017, pp 53-77.
- SASSÒLI Marco, "The International Legal Framework for Stability Operations: When May International Forces Attack or Detain Someone in Afghanistan?", in *IYHR*, Vol. 39, 2009, pp. 177-212.
- WILDE Ralph, "Triggering State Obligations Extraterritorially: The Spatial Test in Certain Human

Rights Treaties”, in ARNOLD Roberta & QUENIVET Noëlle, *International humanitarian law and human rights law: Towards a new merger in international law*, Leiden, M.Nijhoff, 2008, pp.133-155.

- ZIMMERMANN Andreas, “Extraterritorial Application of Human Rights Treaties: The Case of Israel and the Palestinian Territories Revisited”, in BUFFARD Isabelle, CRAWFORD James, PELLET Alain & WITTICH Stephan, *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner*, Leiden, M. Nijhoff, 2009, pp. 747-766.

Further reading:

- ARAI-TAKAHASHI Yutaka, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*, Leiden, Boston, M. Nijhoff, 2009, 758 pp.
- BEN-NAFTALI Orna & SHANY Yuval, “Living in Denial: The Application of Human Rights in the Occupied Territories”, in *Israel Law Review*, Vol. 37, No. 1, 2003, pp. 17-118.
- CAMPANELLI Dario, “The Law of Military Occupation Put to the Test of Human Rights Law”, in *IRRC*, Vol. 90, No. 87, September 2008, pp. 653-668.
- HENDIN Stuart, “Extraterritorial Application of Human Rights: the Differing Decisions of Canadian and UK Courts”, in *Windsor Review of Legal and Social Issues*, 2010, Vol. 37, pp. 57-86.
- KOLB Robert & VITÉ Sylvain, *Le droit de l'occupation militaire: Perspectives historiques et enjeux juridiques actuels*, Brussels, Bruylant, 2009, 482 pp.
- MILANOVIĆ Marko, “Extraterritorial derogations from Human Rights Treaties in Armed Conflict”, in BHUTA Nehal (ed.), *The Frontiers of Human Rights: Extraterritoriality and its Challenges*, Oxford, Oxford University Press, 2016, pp. 55-88.
- MODIRZADEH, Naz K., “The Dark Side of Convergence: A Pro-civilian Critique of the Extraterritorial Application of Human Rights Law in Armed Conflict”, in *International Law Studies*, 2010, Vol. 86, 349-410.
- NELSON Anna, “Joint Series: where IHL and IHRL intersect – Part II of Ken Watkin’s guest post”, in *Intercross blog*, 2014.
- RICHTER Dagmar, “Humanitarian Law and Human Rights: Intersecting Circles or Separate Spheres?”, in GIEGERICH Thomas (ed.), *A Wiser Century?: Judicial Dispute Settlement, Disarmament and the Laws of War 100 Years After the Second Hague Peace Conference*, Berlin, Duncker and Humblot, 2009, pp. 257-322.

5. Are armed groups bound by International Human Rights Law?

In contrast to IHL of non-international armed conflicts, which addresses non-State armed groups in addition to States, it is controversial whether non-State armed groups also have obligations under International Human Rights Law (IHRL). Traditionally, only very few scholars advocated that entities other than States had IHRL obligations. While this claim remains a minority view, it has gained traction in recent years, including for non-State armed groups. It is also reflected in the changing terminology employed by international organs, which previously referred to human rights ‘abuses’ committed by such groups but now increasingly refer to

human rights 'violations'.

However, when non-State armed groups have IHRL obligations is not very clear. The practice of certain international bodies suggests that such groups must comply with IHRL when they are *de facto* authorities due to their control of territory and the governmental functions they exercise therein. Shrouded in similar uncertainty is the question of exactly which IHRL norms may bind non-State armed groups. In any case, many of those norms must be reformulated to become meaningful for armed groups. Under one view, a group's IHRL obligations increase with the level of territorial control or governmental functions it exercises. Understandably, it is easier for States to accept that armed groups may be bound by 'negative' obligations to refrain from particular conduct (for example, from recruiting children into their armed forces) than by 'positive' obligations (for instance, the provision of education and healthcare in territories under their control) as they view the latter as functions that properly belong only to government. However, positive IHRL obligations of non-State armed groups controlling territory would be particularly important for inhabitants of such territory because IHL of non-international armed conflicts – as opposed to IHL of international armed conflicts governing military occupation – fails to provide any rules on what measures a non-State armed group must take to administer a territory, legislate or maintain law and order. Nor does IHL of non-international armed conflicts cover everyday rights of persons living under control of a non-State armed group on issues that lack the requisite nexus to the armed conflict.

^ CASES

Colombia, Response of armed groups to COVID-19

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BIANCHI Andrea, "Globalization of human rights: The role of non-state actors", in TEUBNER Gunther (ed), *Global law without a state*, Aldershot, Brookfield, Dartmouth, 1997, pp. 179-214.
- CALL Geneva, "Positive obligations of armed non-state actors: Legal and policy issues", in *The Garance Series*, No. 1, 2016, 32 pp.
- CLAPHAM Andrew, *Human Rights Obligations of Non-State Actors*, Oxford, OUP, 2006, 613 pp.
- FORTIN Katharine, *The accountability of armed groups under human rights law*, Oxford, OUP, 2017, 448 pp.
- MURRAY Daragh, *Human rights obligations of non-state armed groups*, Oxford, Hart Publishing, 2016, 360 pp.
- REINISCH August, "The changing international legal framework for dealing with non-state actors", in ALSTON Philip (ed), *Non-state actors and human rights*, New-York, OUP, 2005, pp. 38-92.
- RONEN Yaël, "Human rights obligations of territorial non-state actors", in *Cornell International Law Journal*, Vol. 46, No. 1, 2013, pp. 21-50.
- S.RODLEY Nigel, "Can armed opposition groups violate human rights standards?", in MAHONEY

Kathleen & MAHONEY Paul (eds), *Human rights in the twenty-first century: A global challenge*, Boston, M.Nijhoff, 1993, pp. 297-319.

- TOMUSCHAT Christian, "The Application of Human Rights Law to Insurgent Movements", in *Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck*, Berlin, Berliner Wissenschafts-Verlag, 2004, pp. 573-591.
- SZABLEWSKA Natalia, "Non-State Actors and Human Rights in Non-International Armed Conflicts", in *South African Yearbook of International Law*, Vol. 32, 2007, pp. 345-360.

Further reading:

- BELLA Annyssa & HEFFES Ezequiel, "'Yes, I do': Binding Armed Non-State Actors to IHL and Human Rights Norms through Their Consent", in *Human Rights & International Legal Discourse*, No. 12, 2018 pp. 120-136.
- CONSTANTIDINES Aristoteles, "Human rights obligations and accountability of armed opposition groups: The practice of the UN security council", in *Human Rights & International Legal Discourse*, Vol. 4, No. 1, 2010, pp. 89-110.
- FORTIN Katharine, "The application of human rights law to everyday civilian life under rebel control", in *Netherlands International Law Review*, Vol. 63, No. 2, 2016, pp. 161-181.
- WATKIN Kenneth, *Fighting at the Legal Boundaries. Controlling the Use of Force in Contemporary Conflict*, Oxford, Oxford University Press, 2016, 728 pp.
- YUN Seira, "Breaking imaginary barriers: Obligations of armed non-state actors under general human rights law – The case of the Optional Protocol to the Convention on the Rights of the Child", in *Journal of International Humanitarian Legal Studies*, Vol. 4, No. 1-2, 2015, pp. 213-257.

FOOTNOTES

- [1] See, however, Art. 18 (2) of Convention I: "The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence."

II. Protected rights

Introductory text

If the protective rules of IHL are translated into rights and these rights compared with those provided by International Human Rights Law, it becomes apparent that IHL protects, in armed conflicts, only some human rights,[2] namely those that:

- a. are particularly endangered by armed conflicts[3] and
- b. are not, as such, incompatible with the very nature of armed conflicts.[4]

These few rights are protected by much more detailed IHL regulations that are better adapted to the specific problems arising in armed conflicts than the broad guarantees formulated in International Human Rights Law. [5] In addition, IHL regulates problems of vital import for the protection of victims of armed conflicts, but which International Human Rights Law fails to address, even implicitly.[6]

IHL protects civil and political rights,[7] economic, social and cultural rights,[8] and collective or group rights. [9] Indeed, ever since it was first codified, IHL has never made the artificial distinction between civil and political rights and economic, social and cultural rights or between rights imposing a positive obligation on the State and those requiring the State to abstain from a certain type of behaviour.[10] In all those fields IHL foresees legal obligations. For instance, in armed conflicts there is no meaningful protection without the provision of humanitarian assistance to those in need. Conversely, there can be no humanitarian assistance without a simultaneous concern for protecting those assisted from abuse and against violence and danger, which may even stem from the assistance provided.

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- PEJIC Jelena, "Conflict Classification and the Law Applicable to Detention and the Use of Force", in WILMSHURST Elizabeth (ed.), *International Law and the Classification of Conflicts*, Oxford, Oxford University Press, 2012, pp. 80-116.

Further reading:

- AUGHLEY Sean & SARI Aurel, "Targeting and Detention in Non-International Armed Conflict: Serdar Mohammed and the Limits of Human Rights Convergence", in *International Law Studies*, Vol. 91, 2015, pp. 60-118.
- JUNOD Sylvie S., "Human Rights and Protocol II", in *IRRC*, No. 236, 1983, pp. 246-254.

1. Rights protected by both branches: the *lex specialis*

Introductory text

When a point is covered by both IHL and International Human Rights Law, most of the provisions of both branches are complementary. On some issues however, such as the use of force and admissible grounds and relevant procedure of internment, the applicable rules of the two branches lead to different results. Then, the question arises as to which provision prevails. The maxim of *lex specialis* is still generally solicited to solve the problem, although the maxim itself is today surrounded by much controversy regarding its meaning and the way to apply it or even objections against its very applicability.

Having said this, in most cases, the two applicable rules do not contradict each other, but one or the other simply provides more details and therefore constitutes the so-called *lex specialis*. Where contradictions exist

between two rules, some argue that IHL provisions always prevail, in every situation for which IHL has a rule or even through its allegedly qualified silence (e.g. by not referring to the freedom of press in the law of military occupation). Others, adopting an International Human Rights Law approach, argue that in any circumstance the rule providing the greatest level of protection must be applied. In our view, it is preferable to adopt a case-by-case approach and to apply the more detailed rule, that is, that which is more precise vis-à-vis the situation and the problem to be addressed, be it the rule emanating from IHL or from International Human Rights Law.

The *lex specialis* determines for each individual situation which rule prevails over another. Each case must be analysed individually. Specialty in the logical sense implies that the norm that applies to certain facts must give way to the norm that applies to those same facts as well as to an additional fact present in the given situation. Between two applicable rules, the one which has the larger common contact surface area with the situation applies. It is the norm with the more precise or narrower material and/or personal scope of application that prevails. Precision requires that the norm addressing a problem explicitly prevails over the one that treats it implicitly, the one providing more details over the one that is more general, and the more restrictive norm over the one covering the entire problem but in a less exacting manner.

A less formal – and also less objective – factor in determining which of two rules applies is the conformity of the solution to the systemic objectives of the law. Characterizing this solution as *lex specialis* perhaps constitutes a misuse of language. The systemic order of international law is a normative postulate founded on value judgements. In particular, when formal standards do not indicate a clear result, this teleological criterion must weigh in, even though it allows for personal preferences.

While the *lex specialis* has been the object of much discussion concerning IHL and international human rights law in recent years, this should not over-emphasize the differences between IHL and International Human Rights Law. As stated above, the aim of and the conduct or result required by both branches is identical on most issues.

The alternative to the *lex specialis* maxim is to proceed to systemic integration, i.e. to interpret each of the apparently conflicting rules in light of the other one [footnote: see Art. 31 (3)(c) of the Vienna Convention on the Law of Treaties]. This approach leads in most cases to the same results as an application of the *lex specialis* maxim. Thus, when International Human Rights Law requires that any deprivation of life must be non-arbitrary, we may simply turn to IHL to determine what arbitrariness means in the conduct of hostilities during an armed conflict. However, systemic integration may also raise some very practical questions. For instance, when International Human Rights Law requires that any deprivation of liberty must be non-arbitrary and based on a legal basis providing the grounds and procedures according to which liberty may be restricted, the question becomes of whether IHL may provide such legal basis, and the consequences under human rights law if it does not.

^ CASES AND DOCUMENTS

- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*
- ICJ, Democratic Republic of the Congo/Uganda, *Armed Activities on the Territory of the Congo* [Paras 206-211]
- United States, *Status and Treatment of Detainees Held in Guantanamo Naval Base* [Parts III. and IV.]
- Health Care in Pakistan's Tribal Areas
- United Kingdom, *The Case of Serdar Mohammed (High Court Judgment)*
- ECHR, *Al-Jedda v. UK*
- ECHR, *Hassan v. UK* [para 104]
- ICRC, *International Humanitarian Law and the challenges of contemporary armed conflicts in 2015* [paras 170, 175]
- Yemen, *Potential Existence and Effects of Naval Blockade*
- United States of America, *Military Commissions Trial Judiciary, Guantanamo Bay, Cuba: United States of America v. Khalid Shaikh Mohammad et al.*
- Israel/Occupied Palestinian Territory, *Occupation and Natural Resources*
- Yemen, *Humanitarian Impact of the Conflict*
- Colombia, *Special Jurisdiction for Peace, Extrajudicial Executions in Casanare*
- Somalia, *The Death of Bilal Al-Sudani*
- Nepal, *Torture and Extra-Judicial Killing of a Child in the Context of the Nepalese Conflict*

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CASSIMARIS Anthony E., "International Humanitarian Law, International Human Rights Law and the Fragmentation of International Law", in *ICLQ*, Vol. 56, No. 3, 2007, pp. 623-639.
- D'ASPREMONT Jean & TRANCHEZ Elodie, "The Quest for a Non-Conflictual Coexistence of International Human Rights Law and Humanitarian Law: Which Role for the Lex Specialis Principle?", in KOLB Robert & GAGGIOLI Gloria (eds), *Research Handbook on Human Rights and Humanitarian Law*, Northampton, Edward Elgar Pub, 2013, pp. 223-250.
- DROEGE Cordula, "The Interplay between International Humanitarian law and International Human Rights Law in Situation of Armed Conflict", in *Israel Law Review*, Vol. 40, No. 2, 2007, pp. 310-355.
- DROEGE Cordula, "Elective Affinities?: Human Rights and Humanitarian Law", in *IRRC*, Vol. 90, No. 871, 2008, pp. 501-548.
- KRIEGER Heike, "A Conflict of Norms: the Relationship between Humanitarian Law and Human Rights Law in the ICRC Customary Law Study", in *Journal of Conflict and Security Law*, Vol. 11, No. 2, 2006, pp. 265-291.
- LINDROOS Anja, "Addressing Norm Conflicts in a Fragmented Legal System: The Doctrine of Lex

Specialis”, in *Nordic Journal of International Law*, Vol. 74, 2005, pp. 27-66.

- SASSÒLI Marco, “Le droit international humanitaire, une *lex specialis* par rapport aux droits humains ?”, in AUER Andreas, FLUECKIGER Alexandre & HOTTELIER Michel, *Les droits de l’homme et la constitution : études en l’honneur du Professeur Giorgio Malinverni*, Zürich, Schulthess, 2007, pp. 375-395.
- SASSÒLI Marco, “The role of human rights and international humanitarian law in new types of armed conflicts”, in BEN-NAFTALI Orna (Ed.), *International law and human rights : pas de deux*, Oxford, Oxford University Press, 2011, pp. 34-94.

Further reading:

- ARNOLD Roberta & QUENIVET Noëlle (eds), *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law*, Leiden, Boston, M. Nijhoff, 2008, 596 pp.
- CHEVALIER-WATTS Juliet, “Has Human Rights Law Become *Lex Specialis* for the European Court of Human Rights in Right to Life Cases Arising from Internal Armed Conflicts?”, in *The International Journal of Human Rights*, Vol. 14, No. 4, pp. 584-602.
- DOSWALD-BECK Louise, “International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons”, in *International Review of the Red Cross*, Vol. 79, No. 316, 1997, pp. 35-55.
- GUELLALI Amna, “*Lex specialis*, droit international humanitaire et droits de l’homme : leur interaction dans les nouveaux conflits armés”, in *RGDIP*, 2007, Vol. 111, No.3, pp. 539-574.
- MARSH Jeremy J., “Rule 99 of the Customary International Humanitarian Law Study and the Relationship between the Law of Armed Conflict and International Human Rights Law”, in *The Army Lawyer*, 2009, pp. 18-22.
- SASSÒLI Marco & OLSON Laura, “The Relationship Between International Humanitarian and Human Rights Law Where it Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts”, in *IRRC*, Vol. 90, no. 871, September 2008, pp. 599-627.
- SHANY Yuval, “Human Rights and Humanitarian Law as Competing Legal Paradigms for Fighting Terror”, in *Hebrew University International Law Research Paper*, No. 23-09, 2009, 27 pp.
- SOMER Jonathan, “Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-International Armed Conflict”, in *IRRC*, Vol. 89, No. 867, 2007, pp. 655-690.
- WATKIN Kenneth, “Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict”, in *AJIL*, Vol. 3, No. 3, 2004, pp. 99-113.

a. alternatives to and criticism of the *lex specialis*

▸ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ARNOLD Roberta & QUENIVET Noëlle (eds), *International Humanitarian Law and Human Rights*

Law: Towards a New Merger in International Law, Leiden, Boston, M. Nijhoff, 2008, 596 pp.

- BOWRING Bill, “The Death of Lex Specialis? Regional Human Rights Mechanisms and the Protection of Civilians in Armed Conflict”, in LATTIMER Mark & SANDS Philippe (eds.), *The Grey Zone. Civilian Protection Between Human Rights and the Laws of War*, Oxford, Oxford Hart Publishing, 2018, 309-332.
- CLAPHAM Andrew, “The Complex Relationship Between the Geneva Conventions and International Human Rights Law”, in CLAPHAM Andrew Clapham, GAETA Paola & SASSÒLI Marco (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford, Oxford University Press, 2015, pp. 701-735.
- KÄLIN Walter, *Human Rights in Times of Occupation: The Case of Kuwait*, Bern, Stämpfli Verlag AG, 1994, 166 pp.
- MEYROWITZ Henri, “Le droit de la guerre et les droits de l’homme”, in *Revue de droit public et de la science politique en France et à l’étranger*, Vol. 88, 1972, pp. 1059-1105.
- MILANOVIC Marko, “Norm Conflicts, International Humanitarian Law, and Human Rights Law”, in BEN-NAFTALI Orna (ed.8+9), *International humanitarian law and human rights law : pas de deux*, Oxford, Oxford University Press, 2011, pp. 95-128.
- MILANOVIC Marko, “The Lost Origins of Lex Specialis: Rethinking the Relationship between Human Rights and International Humanitarian Law”, in OHLIN Jens David (ed), *Theoretical Boundaries of Armed Conflict and Human Rights*, Cambridge, CUP 2016, pp. 78-117.
- PRUD’HOMME Nancie, “Lex Specialis: Oversimplifying A More Complex and Multifaceted Relationship? ”, in *Israel Law Review*, Vol. 42, No. 2, 2007, pp. 355-395.
- SCHABAS William, “Lex Specialis? Belts and Suspenders? The Parallel Operation of Human Rights Law and the Law of Armed Conflict, and the Conundrum of Jus ad Bellum”, in *Israel Law Review*, Vol. 40, 2007, pp. 592-613.
- ORAKHELASHVILI Alexander, “The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism or Convergence?”, in *EJIL*, Vol. 19, No. 1, 2008, pp. 161-182.

b. areas in which details provided by IHL are more adapted to armed conflicts

^ CASES AND DOCUMENTS

- Minimum Humanitarian Standards [Part B., para. 66]
- ICJ, Nuclear Weapons Advisory Opinion [Para. 25]
- ECHR, Cyprus v. Turkey
- Inter-American Commission on Human Rights, Coard v. United States [Paras 38-44]
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts III. and IV.]
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

aa) right to life in the conduct of hostilities

Quotation

General Comment No. 36

64. Like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities. While rules of international humanitarian law may be relevant for the interpretation and application of article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive. Use of lethal force consistent with international humanitarian law and other applicable international law norms is, in general, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields, would also violate article 6 of the Covenant. States parties should, in general, disclose the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life, including the legal basis for specific attacks, the process of identification of military targets and combatants or persons taking a direct part in hostilities, the circumstances in which relevant means and methods of warfare have been used, and whether less harmful alternatives were considered. They must also investigate alleged or suspected violations of article 6 in situations of armed conflict in accordance with the relevant international standards.

65. States parties engaged in the deployment, use, sale or purchase of existing weapons and in the study, development, acquisition or adoption of weapons, and means or methods of warfare, must always consider their impact on the right to life. For example, the development of autonomous weapon systems lacking in human compassion and judgement raises difficult legal and ethical questions concerning the right to life, including questions relating to legal responsibility for their use. The Committee is therefore of the view that such weapon systems should not be developed and put into operation, either in times of war or in times of peace, unless it has been established that their use conforms with article 6 and other relevant norms of international law.

[Source: General Comment No. 36, Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life: 30/10/2018. Human Rights Committee. 124th Session (CCPR/C/GC/36), online <https://tbinternet.ohchr.org>]

^ CASES AND DOCUMENTS

- Israel, The Targeted Killings Case

- Israel, Human Rights Committee's Report on Beit Hanoun [Paras 45-51]
- Inter-American Commission on Human Rights, Tablada [Para. 161]
- Human Rights Committee, Guerrero v. Colombia
- India, People's Union for Civil Liberties v. Union of India
- Civil War in Nepal [Part II.]
- ECHR, Isayeva v. Russia
- ECHR, Khatsiyeva v. Russia [Paras 129, 132-138]
- General Assembly, The use of drones in counter-terrorism operations
- U.S., Lethal Operations against Al-Qa'ida Leaders
- United States of America, The Death of Osama bin Laden
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 168-177]
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)

▲ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DOSWALD-BECK Louise, "The Right to Life in Armed Conflict: Does International Humanitarian Law Provide all the Answers?", in *IRRC*, Vol. 88, No. 864, 2006, pp. 881-904.
- GAGGIOLI Gloria, *L'influence mutuelle entre les droits de l'homme et le droit international humanitaire à la lumière du droit à la vie*, Paris, Pedone, 2013, 614 pp.
- GERVASONI Luca, "A contextual-functional approach to investigations into right to life violations in armed conflict", in *QIL, Zoom in*, No. 36, 2017, pp. 5-26.
- ICRC (Report prepared and edited by GAGGIOLI Gloria), "The use of force in armed conflicts, Interplay between the conduct of hostilities and law enforcement paradigms", *Expert meeting*, 2013, 106 pp.
- PARK Ian, *The Right to Life in Armed Conflict*, Oxford, Oxford University Press, 2018, 272 pp.

Further reading:

- MELZER Nils, *Targeted Killing in International Law*, Oxford, OUP, 2008, 468 pp.
- OHLIN Jens David, "The Duty to Capture", in *Minnesota Law Review*, Vol. 97, 2012-2013, pp. 1268-1342.
- RATNER Steven R., "Predator and Prey: Seizing and Killing Suspected Terrorists Abroad", in *Journal of Political Philosophy*, September 2007, Vol. 15, No. 3, pp. 251-275.
- SOLOMON Solon, "Targeted Killings and the Soldiers Right to Life", in *ILSA Journal of International and Comparative Law*, Vol. 14, No. 1, 2007, pp. 99-120.
- SPEROTTO Federico, "Targeted Killings in response to Security Threats: Warfare and Humanitarian

Issues”, in *Global Jurist*, Vol. 8, No. 3, 2008, pp. 1-32.

bb) prohibition of inhumane and degrading treatment

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- SINGH Ashika, “The United States, the Torture Convention, and *lex specialis* : the quest for a coherent approach to the CAT in armed conflict”, in *Columbia human rights law review*, Vol. 47, No. 3, 2016, pp. 134-203.
- SOMER Jonathan, “Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-International Armed Conflict”, in *IRRC*, Vol. 89, No. 867, 2007, pp. 655-690.
- Advisory Service on International Humanitarian Law, *Prohibition and punishment of torture and other forms of ill-treatment*, ICRC, 2014, 3 pp.

^ CASES AND DOCUMENTS

- Israel, Methods of Interrogation Used Against Palestinian Detainees
- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*
- Iraq, Medical Ethics in Detention
- USA, *Al-Shimari v. CACI Premier Technology, Inc.*

cc) right to health

^ CASES AND DOCUMENTS

- Colombia, Response of armed groups to COVID-19
- Israel, Human Rights Committee’s Report on Beit Hanoun [Paras 53-56]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- M.BURKLE Frederick, L.KUSHNER Adams, GIANNOU Christos & A.PATERSON Mary, “Health care providers in war and armed conflict: Operational and educational challenges in international humanitarian law and the Geneva Conventions, Part II. Educational and training initiatives”, in *Disaster Medicine and Public Health Preparedness*, 2018, pp. 1-15.

dd) right to food

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- PEJIC Jelena, "The right to food in situation of armed conflict: The legal framework", in *IRRC*, Vol. 83, No. 844, 2001, pp. 1097-1109.

ee) right to individual freedom (in international armed conflicts)

^ CASES AND DOCUMENTS

- Inter-American Commission on Human Rights, *Coard v. United States* [Paras 42 and 52-59]
- United States, *The Schlesinger Report*
- ECHR, *Al-Jedda v. UK*
- ECHR, *Hassan v. UK*

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ICRC, *Internment in armed conflict: Basic rules and challenges*, 2014, pp. 10.

ff) protection of the environment during armed conflict

c. areas in which International Human Rights Law gives more details

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- SHAH Sangeeta, "Detention and Trial", in MOECKLI Daniel, SHAH Sangeeta & SIVAKUMARAN Sandesh (eds), *International Human Rights Law*, 2nd ed., Oxford, Oxford University Press, 2014, pp. 259-285.

aa) requirement of a legal basis and procedural guarantees in case of internment in non-international armed conflicts?

^ CASES AND DOCUMENTS

- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*
- Sri Lanka, *Conflict in the Vanni* [Paras 29-46]
- Democratic Republic of the Congo, *Conflicts in the Kivus* [Part III, paras 38-40]
- United States, *Status and Treatment of Detainees Held in Guantanamo Naval Base* [Parts III and IV]
- United Kingdom, *The Case of Serdar Mohammed* (High Court Judgment)
- ECHR, *Al-Jedda v. UK*
- ECHR, *Hassan v. UK*
- United Kingdom, *The Case of Serdar Mohammed* (Court of Appeal and Supreme Court Judgments)
- USA, *Guantánamo, End of "Active Hostilities" in Afghanistan*

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- McGOLDRICK Dominic, "Security Detention", in *Case Western Reserve Journal of International Law*, Vol. 40, No. 3, 2009, pp. 315-650.
- OLSON Laura, "Practical Challenges of Implementing the Complementarity between International Humanitarian and Human Rights Law: Demonstrated by the Procedural Regulation of Internment in Non-International Armed Conflict", in *Case Western Reserve Journal of International Law*, Vol. 40, No. 3, 2009, pp. 437-461.

Further reading:

- HENDIN Stuart, "Detainees in Afghanistan: the Balance between Human Rights Law and International Humanitarian Law for Foreign Military Forces", in *Tilburg Law Review*, Vol. 14, No. 3, 2008, pp. 249-271.
- LIPPOLD Matthias, "Between Humanization and Humanitarization? Detention in Armed Conflicts and the European Convention on Human Rights", in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 76, 2016, pp. 53-95.
- Ministry of Foreign Affairs of Denmark, "The Copenhagen Process on the Handling of Detainees in International Military Operations", in *MLLW*, Vol 51, No.1-2, 2012, pp 187-220.
- OSWALD Bruce, "The Detention of Civilians in Military Operations: Reasons for and Challenges to Developing a Special Law of Detention", in *Melbourne University Law Review*, Vol. 32, 2008, pp. 524-553.

bb) judicial guarantees in case of trial

^ CASES AND DOCUMENTS

- United States, Hamdan v. Rumsfeld
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- WEISSBRODT David, “International fair trial guarantees”, in CLAPHAM Andrew & GAETA Paola, *The Oxford handbook of international law in armed conflict*, Oxford, OUP, 2014, pp. 410-441.

Further reading:

- CASSEL Doug, “International human rights law and security detention”, in *Case Western Reserve Journal of International Law*, No. 40, 2009, pp. 383-401.
- GASSER Hans-Peter, “Respect for fundamental guarantees in time of armed-conflict – The part played by ICRC delegates”, in *IRRC*, Vol. 32, No. 287, pp. 121-142.

cc) use of firearms by law enforcement officials

^ CASES AND DOCUMENTS

- ICRC Appeals on the Near East [Part C., para. 8]
- Belgium, Belgian Soldiers in Somalia
- Human Rights Committee, Guerrero v. Colombia
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 65, 66, 168, 181-185]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CASEY-MASLEN Stuart, “1 – The use of firearms in law enforcement”, in CASEY-MASLEN Stuart, *Weapons under international human rights law*, Cambridge, CUP, 2014, pp. 3-31.

dd) medical ethics

^ CASES AND DOCUMENTS

- Iraq, Medical Ethics in Detention

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- G.SCHAPOWAL Andreas (LTC), "Medical ethics in peace and in the armed conflict", in *Military Medicine*, No. 167, 2002, 26-31.

ee) definition of torture

^ CASES AND DOCUMENTS

- Israel, Methods of Interrogation Used Against Palestinian Detainees
- USA, Al-Shimari v. CACI Premier Technology, Inc.

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- S.RODLEY Nigel, "The definition(s) of torture in international law", in *Current Legal Problems*, Vol. 55, No. 1, 2002, pp. 467-493.

ff) sexual orientation and gender identity

^ CASES AND DOCUMENTS

- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare [paras 528-536, 624-640]

gg) persons with disabilities

^ CASES AND DOCUMENTS

- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare [paras 540-541]

d. the main controversies over whether IHL or International Human Rights Law prevails

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- SASSÒLI Marco & OLSON Laura, "The Relationship Between International Humanitarian and Human Rights Law Where it Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts", in *IRRC*, Vol. 90, No. 871, September 2008, pp. 599-627.

aa) the right to life of fighters in non-international armed conflict

^ CASES AND DOCUMENTS

- Israel, The Targeted Killings Case
- Human Rights Committee, Guerrero v. Colombia
- Civil War in Nepal [Part II.]
- ECHR, Khatsiyeva v. Russia
- ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 64-67, 176, 177]
- Mexico, Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CHEVALIER-WATTS Juliet, "Has Human Rights Law Become Lex Specialis for the European Court of Human Rights in Right to Life Cases Arising from Internal Armed Conflicts?", in *The International Journal of Human Rights*, Vol. 14, No. 4, pp 584-602.
- DOSWALD-BECK Louise, "The Right to Life in Armed Conflict: Does International Humanitarian Law Provide all the Answers?", in *IRRC*, Vol. 88, No. 864, December 2006, pp. 881-904.
- ICRC (Report prepared and edited by GAGGIOLI Gloria), "The use of force in armed conflicts, Interplay between the conduct of hostilities and law enforcement paradigms", *Expert meeting*, 2013, 106 pp.
- MELZER Nils, *Targeted Killing in International Law*, Oxford, OUP, 2008, 468 pp.
- RATNER Steven R., "Predator and Prey: Seizing and Killing Suspected Terrorists Abroad", in *Journal of Political Philosophy*, September 2007, Vol. 15, No. 3, pp. 251-275.
- SASSÒLI Marco & OLSON Laura, "The Relationship Between International Humanitarian and Human Rights Law Where it Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts", in *IRRC*, Vol. 90, No. 871, September 2008, pp. 599-627.

Further reading:

- ABRESCH William, “A human rights law of internal armed conflict: The European Court of human rights in Chechnya”, in *EJIL*, Vol. 16, No. 4, 2005, pp. 741-767.
- KRETZMER David, “Targeted killing of suspected terrorists: Extra-judicial executions or legitimate means of defence?”, in *EJIL*, Vol. 16, No. 2, 2005, pp. 171-212.
- SPEROTTO Federico, “Counter-insurgency, Human Rights, and the Law of Armed Conflict”, in *Human Rights Brief*, Vol. 17, No. 1, 2009, pp. 19-23.

bb) legal basis and procedural requirements in case of arrest and detention of fighters in non-international armed conflict

Quotation

General Comment No. 35

45. Paragraph 4 entitles the individual to take proceedings before “a court,” which should ordinarily be a court within the judiciary. Exceptionally, for some forms of detention, legislation may provide for proceedings before a specialized tribunal, which must be established by law and must either be independent of the executive and legislative branches or enjoy judicial independence in deciding legal matters in proceedings that are judicial in nature.

[...]

64. [...] Security detention authorized and regulated by and complying with international humanitarian law in principle is not arbitrary. In conflict situations, access by the International Committee of the Red Cross to all places of detention becomes an essential additional safeguard for the rights to liberty and security of person.

65. Article 9 is not included in the list of non-derogable rights of article 4, paragraph 2, of the Covenant, but there are limits on States parties’ power to derogate. [...]

66. [...] The fundamental guarantee against arbitrary detention is non-derogable, insofar as even situations covered by article 4 cannot justify a deprivation of liberty that is unreasonable or unnecessary under the circumstances. The existence and nature of a public emergency which threatens the life of the nation may, however, be relevant to a determination of whether a particular arrest or detention is arbitrary. [...] During international armed conflict, substantive and procedural rules of international humanitarian law remain applicable and limit the ability to derogate, thereby helping to mitigate the risk of arbitrary detention. Outside that context, the requirements of strict necessity and proportionality constrain any derogating measures involving security detention, which must be limited in duration and accompanied by procedures to prevent arbitrary application, as explained in paragraph 15 above,

including review by a court within the meaning of paragraph 45 above.

[Source: General Comment No. 35, Article 9 of the International Covenant on Civil and Political Rights (Liberty and Security of Person): 23/10/2014. Human Rights Committee. 112th session (CCPR/C/GC/35) online <https://tbinternet.ohchr.org>]

^ CASES AND DOCUMENTS

- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts III and IV]
- United States, The Obama Administration's Internment Standards
- United States, Closure of Guantanamo Detention Facilities
- United Kingdom, The Case of Serdar Mohammed (High Court Judgment)
- ECHR, *Al-Jedda v. UK*
- ECHR, *Hassan v. UK*
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- Mexico, Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HILL-CAWTHORNE Lawrence, *Detention in non-international armed conflict*, Oxford, Oxford University Press, 2016, 304 pp.
- PEJIC Jelena, "Procedural Principles and Safeguards for Internment/Administrative Detention in Armed Conflict and Other Situations of Violence", in *IRRC*, Vol. 87, No. 858, June 2005, pp. 375-391.
- SASSÒLI Marco, "Legal Framework for Detention by States in Non-International Armed Conflict", in *Proceedings of the Bruges Colloquium, Detention in Armed Conflicts*, 16-17 October 2014, pp. 51-65.

Further reading:

- HENDIN Stuart, "Detainees in Afghanistan: the Balance between Human Rights Law and International Humanitarian Law for Foreign Military Forces", in *Tilburg Law Review*, Vol. 14, No. 3, 2008, pp. 249-271.
- SASSÒLI Marco, "Spécificités de la détention administrative en temps de conflits armés et conciliation avec la Convention européenne des droits de l'homme", in *Actes du Colloque « Les relations entre droit international humanitaire et droit européen des droits de l'homme : quelles perspectives ? »*, Paris, École militaire, 2014, pp. 94-107.

2. Rules of IHL not covered by International Human Rights Law

^ CASES AND DOCUMENTS

- United States, The Obama Administration's Internment Standards
- United States, Closure of Guantanamo Detention Facilities
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- GOODMAN Ryan, "The Detention of Civilians in Armed Conflict", in *American Journal of International Law*, Vol. 103, 2009, 48-74.

3. Human rights outside the scope of IHL

^ CASES AND DOCUMENTS

- ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 128-134]
- Sudan, Report of the UN Commission of Enquiry on Darfur [Paras 403-413]
- United States, The Schlesinger Report
- Afghanistan, Separate Hospital Treatment for Men and Women
- South Sudan, Activities of Oil Companies
- "Great March of Return" Demonstrations and Israel's Military Response
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DOSWALD-BECK Louise, "The Right to Life in Armed Conflict: Does International Humanitarian Law Provide all the Answers?", in *IRRC*, Vol. 88, No. 864, 2006, pp. 881-904.
- WATKINS Kenneth, "Controlling the use of force: A role for human rights norms in contemporary armed conflicts", in *JSTOR*, Vol. 98, No. 1, 2004, pp. 1-34.

FOOTNOTES

- [2] Thus, for example, Art. 41 of Protocol I protects the right to life of enemies hors de combat, Art. 56 of Convention IV protects the right to health of inhabitants of occupied territories, Art. 56 of Protocol I protects the right to a healthy environment.
- [3] Thus, e.g., since an armed conflict more strongly affects the war victims' physical integrity than their freedom of opinion, it is logical that IHL contains more rules on the former than on the latter.
- [4] The right of a people to peace, e.g., is by definition violated when that people is affected by an armed conflict. The right to self-determination is one of the (lawful) reasons for armed conflict. IHL, therefore, can not protect either of these rights.
- [5] Thus, e.g., the very detailed precautionary measures to be taken in attack, according to Art. 57 of Protocol I, constitute a translation of the right to life and physical integrity of civilians into detailed rules of behaviour for those who conduct hostilities which could affect the civilians. Note, however, that International Human Rights Law provides conversely more details on, e.g., "the judicial guarantees which are recognized as indispensable by civilized peoples" foreseen in Art. 3 common to the Conventions.
- [6] Thus, Art. 44(1)-(3) of Protocol I on combatant status deals with the question who may use force, an issue not addressed by International Human Rights Law, but which is crucial for the protection of civilians.
- [7] Thus, e.g., Art. 41 of Protocol I protects the right to life of enemies hors de combat.
- [8] Thus, e.g., Art. 56 of Convention IV protects the right to health of inhabitants of occupied territories.
- [9] Thus, e.g., Art. 56 of Protocol I protects the right to a healthy environment.
- [10] Thus, the very idea of Henry Dunant codified in the First Geneva Convention of 1864 is to prescribe an international obligation that the wounded and sick shall not only be respected but also, and in particular, be collected and cared for.

III. Implementation

Introductory text

While the purpose of both IHL and International Human Rights Law (IHRL) is to obtain respect for the individual, each of these branches of law has its own implementation approaches and specific mechanisms, tailored to the typical situations for which they were created. Violations of IHL typically occur on the battlefield. They can only be addressed by immediate reaction. International Human Rights Law is more often violated through judicial, administrative or legislative decisions or inaction against which appeal and review procedures are appropriate and meaningful remedies. In the implementation of IHL, the recovery or the improvement of the situation of the victims is central, and therefore a confidential, cooperative and pragmatic approach is often more appropriate. In contrast, the victims of traditional violations of International Human Rights Law want their rights to be reaffirmed, and therefore seek public condemnation as soon as they spot violations. A more legalistic and dogmatic approach is therefore necessary in implementing International Human Rights Law; indeed, such an approach corresponds to the human rights logic, which historically

represents a challenge to the “sovereign”, while respect for IHL can be considered as a treatment conceded by the “sovereign”.

It has been said in some quarters that implementation of IHL requires the mentality of a good Samaritan, implementation of International Human Rights Law the mentality of a judge. In practice, IHL has traditionally been implemented through permanent, preventive and corrective scrutiny in the field, whereas International Human Rights Law has traditionally been implemented through a posteriori control, on demand, in a quasi-judicial procedure.

Interestingly, today the different bodies implementing International Human Rights Law in situations of gross and widespread human rights violations in the field act in a way akin to that traditionally adopted by the International Committee of the Red Cross (ICRC) for the implementation of IHL. United Nations (UN) human rights monitors are deployed in critical regions and visit prisons similarly to ICRC delegates, and special rapporteurs of the UN Human Rights Council and even members of UN Human Rights treaty bodies travel to critical areas. On the other hand, IHL is more and more often implemented by human rights courts and bodies (and by international criminal tribunals), necessarily a posteriori and in a judicial procedure.

Indeed, as States reject new international mechanisms to deal with IHL violations, victims, NGOs and States take a bypass route and turn to the variety of IHRL mechanisms – some of which lead to binding decisions and can be triggered by individual victims of IHRL violations. Human rights bodies therefore have plenty of opportunities to address IHL issues. Albeit to a differing extent, such mechanisms do indeed take IHL into account. The mandates of some human rights mechanisms even provide them with the authority to deal equally with IHL violations. While doing so, such bodies sometimes neglect the specificities of IHL and armed conflicts and the debates in some of them are politicized and dominated by double standards. Because there are fundamental differences in the structure, approach and values between IHL and International Human Rights Law, judges and members of other Human Rights bodies often lack sufficient familiarity with IHL and the reality of armed conflicts to fully understand the practical problems its implementation raises, particularly from a military perspective. Therefore, decisions by IHRL bodies that take IHL into account may contribute as much to the substantive fragmentation of international law as decisions that continue to exclusively apply IHRL in situations of armed conflict. This also may lead to unrealistic findings and generate skepticism, if not hostility, towards such human rights bodies. In addition, the jurisdiction of such bodies in NIACs is generally limited to violations committed by the governmental side.

In international practice, discussions and resolutions of the UN Security Council, the UN General Assembly and the UN Human Rights Council concerning armed conflict situations sometimes mention IHL and human rights together. Certain convergences are also inherent in international human rights instruments. Most human rights, except the most fundamental ones belonging to “the hard core”, may be derogated from in states of emergency, to the extent required by the exigencies of the situation, and if this derogation is consistent with the other international obligations of the derogating State.[11] IHL contains some of those

other international obligations. Therefore, when confronted in times of armed conflict with derogations admissible as such under human rights instruments, the implementing bodies of International Human Rights Law must check whether those measures are compatible with International Law which encompasses IHL.

Similarly, International Human Rights Law considers the right to life as non-derogable, even in time of armed conflict. Some instruments, however, set out an explicit – and others an implicit – exception for “lawful acts of war”.^[12] IHL defines what is lawful in war. When confronted with State-sponsored killings in time of armed conflict, human rights courts, commissions or NGOs must therefore check whether such actions are consistent with IHL before they can know whether they violate International Human Rights Law.

Finally, whether a deprivation of the right to life or of liberty is arbitrary and therefore contrary to the provisions of some human rights instruments must be decided in light of the pertinent rules of IHL.

Conversely, the main international body implementing IHL, the ICRC, has for a long time been engaged in activities in situations of internal violence similar to those it performs in international armed conflicts. During such situations, IHL does not apply. In the past implicitly and today more and more often explicitly – but maintaining its pragmatic, cooperative, and victim-oriented approach – the ICRC must therefore refer to human rights instruments for applicable international standards, for example on procedural principles and safeguards for internment or administrative detention in non-international armed conflicts.

Finally, as far as the teaching, training and dissemination of the two branches are concerned, soldiers must know Human Rights Law, or at least senior officers must know it in order to translate their provisions into proper rules of engagement. Indeed, more and more soldiers are deployed in peacetime or in times of armed conflict for law enforcement or police operations to which Human Rights Law applies. As for police forces they have to be familiar with both branches and know the relationship between them. Finally, students will not understand new developments in IHL, in particular the important “human rights-like” rules of the law of non-international armed conflicts, if they have not first understood the philosophy and interpretations of International Human Rights Law. Conversely, they would have an incomplete view of the protection international law can offer to the individual if they studied only Human Rights Law without understanding the principles and fundamentally different starting point of IHL, namely the rules providing for protection of the individual in the most dangerous situations: armed conflicts.

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HENCKAERTS Jean-Marie, “Concurrent Application of International Human Rights Law and International Humanitarian Law: Victims in Search of a Forum”, in *Human Rights and International Legal Discourse*, Vol. 1, No. 1, 2007, pp. 95-124.
- KÄLIN Walter, “Universal human rights bodies and international humanitarian law”, in KOLB Robert &

GAGGIOLI Gloria (eds.), *Research handbook on human rights and international humanitarian law*, Cheltenham/Northampton, Edward Elgar, 2013, pp. 441-465.

- MAX Émilie, *Implementing international humanitarian law through human rights mechanisms: Opportunity or utopia?*, Working paper, Geneva Academy, 2019, 22 pp.
- SASSÒLI Marco, "Mise en œuvre du droit international humanitaire et du droit international des droits de l'homme : une comparaison", in *ASDI*, Vol. 43, 1987, pp. 24-61.
- WEISSBRODT David & HICKS Peggy, "Mise en œuvre des droits de l'homme et du droit humanitaire dans les situations de conflit armé", in *IRRC*, No. 800, March-April 1993, pp. 129-150.

Further Reading :

- ABI-SAAB Georges, "Droits de l'Homme et juridictions pénales internationales. Convergence et tensions", in DUPUY Jean-René (Ed.), *Mélanges en l'honneur de Nicolas Valticos*, Paris, Pedone, 1999, pp. 245-253.
- KLEFFNER Jann, "Improving Compliance with International Humanitarian Law through the Establishment of an Individual Complaints Procedure", in *Leiden Journal of International Law*, Vol. 15, 2002, pp. 237-250.
- PROVOST René, "Reciprocity in Human Rights and Humanitarian Law", in *BYIL*, Vol. 65, 1995, pp. 383-454.
- WIERUSZEWSKI Roman, "Application of International Humanitarian Law and Human Rights Law: Individual Complaints", in KALSHOVEN Frits & SANDOZ Yves (eds), *Implementation of International Humanitarian Law*, Dordrecht, M. Nijhoff, 1989, pp. 441-458.

1. Difference

^ CASES AND DOCUMENTS

- ICRC, Disintegration of State Structures
- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
- United States of America, Military Commissions Trial Judiciary, Guantanamo Bay, Cuba: United States of America v. Khalid Shaikh Mohammad et al.

a. due to the specificities of armed conflicts

b. in the approach: charity vs. justice ?

Quotation

[T]he ICRC abstains from making public pronouncements about specific acts committed in violation of law and humanity and attributed to belligerents. It is obvious that insofar as it set itself up as a judge, the ICRC would be abandoning the neutrality it has voluntarily assumed. Furthermore, in the quest for a result which would most of the time be illusory, demonstrations of this sort would compromise the

charitable activity which the ICRC is in a position to carry out. One cannot be at one and the same time the champion of justice and of charity. One must choose, and the ICRC has long since chosen to be a defender of charity.

[Source: Pictet, J., The Fundamental Principles of the Red Cross. Proclaimed by the Twentieth International Conference of the Red Cross, Vienna, 1965, Geneva, Henry Dunant Institute, 1979, pp. 59-60]

^ CASES AND DOCUMENTS

- Afghanistan, Separate Hospital Treatment for Men and Women

a. in action

aa) traditionally

- International Humanitarian Law: permanent, preventive and corrective control on the field
- International Human Rights Law: a posteriori control, on demand, in a quasi-judicial procedure

^ CASES AND DOCUMENTS

- India, People's Union for Civil Liberties v. Union of India

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ICRC, "Quelle différence y a-t-il entre le droit humanitaire et le droit des droits de l'homme?", in ICRC, *Droit international humanitaire : réponse à vos questions*, 2004.

bb) contemporary tendency of human rights bodies to adopt an IHL-like approach

^ CASES AND DOCUMENTS

- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*
- Case Study, *Armed Conflicts in the Great Lakes Region* [Part III., C.1 and D.1]
- United States, *Status and Treatment of Detainees Held in Guantanamo Naval Base* [Parts III. and IV.]

- ECHR, Hassan v. UK

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- PANOUSSIS Joannis, “L'évolution de la juridiction des cours supranationales”, in ANDRIANTSIMBAZOVINA Joël, BURGOGUE-LARSEN Laurence & TOUZÉ Sébastien, *La protection des droits de l'Homme par les cours supranationales, Actes du Colloque des 8 et 9 Octobre 2015*, Paris, A.Pédone, 2016, pp. 31-55.
- VAN DEN HERIK Larissa & DUFFY Helen, “Human rights bodies and international humanitarian law: Common but differentiated approaches”, in *Grotius Centre Working Paper*, No. 20, 2014, 27 pp.

2. Convergence

^ CASES AND DOCUMENTS

- UN, Guidelines on the Right to a Remedy and Reparation for Violations of International Humanitarian Law and Human Rights Law
- United States of America, Military Commissions Trial Judiciary, Guantanamo Bay, Cuba: United States of America v. Khalid Shaikh Mohammad et al.
- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- GREENWOOD Christopher, “Human Rights and Humanitarian Law – Conflict or Convergence”, in *Case Western Reserve Journal of International Law*, Vol. 43, 2012, pp. 491-512.
- LANDAIS Claire & BASS Léa, “Reconciling the rules of international humanitarian law with the rules of European human rights law”, in *International Review of the Red Cross*, Vol. 97, No. 900, 2015, pp. 1295-1311.
- LIPPOLD Matthias, “Between Humanization and Humanitarization? Detention in Armed Conflicts and the European Convention on Human Rights”, in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 76, 2016, pp. 53-95.

a. implementation of IHL by human rights mechanisms

^ CASES AND DOCUMENTS

- ECtHR, *Milanović v. Croatia*
- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*
- Inter-American Commission on Human Rights, *Coard v. US*
- Inter-American Commission on Human Rights, *Tablada* [Paras 158-171]
- Inter-American Court of Human Rights, *The Las Palmeras Case*
- United States, *Status and Treatment of Detainees Held in Guantanamo Naval Base* [Parts III. and IV.]
- United Kingdom, *The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)*
- Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017
- Nepal, *Torture and Extra-Judicial Killing of a Child in the Context of the Nepalese Conflict*

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BYRON Christine, "A Blurring of the Boundaries: the Application of International Humanitarian Law by Human Rights Bodies", in *Virginia Journal of International Law*, Vol. 47, No. 4, 2007, pp. 839-896.
- HAMPSON Françoise, "Using International Human Rights Machinery to Enforce the International Law of Armed Conflicts", in *RDMDG*, Vol. 31, 1992, pp. 117-127.
- HAMPSON Françoise, "The Relationship Between International Humanitarian Law and Human Rights Law from the Perspective of a Human Rights Treaty Body", in *IRRC*, Vol. 90, No. 871, September 2008, pp. 549-572.
- HENCKAERTS Jean-Marie, "Concurrent Application of International Human Rights Law and International Humanitarian Law: Victims in Search of a Forum", in *Human Rights and International Legal Discourse*, Vol. 1, No. 1, 2007, pp. 95-124.
- MARTIN Fanny, "Le droit international humanitaire devant les organes de contrôle des droits de l'homme", in *Droits Fondamentaux*, No. 1, 2001.
- OBERLEITNER Gerd, *Human Rights in Armed Conflict: Law, Practice, Policy*, Cambridge University Press, Cambridge, 2015, 431 pp.

Further Reading :

- ALSTON Philip, MORGAN-FOSTER Jason & ABRESCH William, "The Competence of the UN Human Rights Council and its Special Procedures in Relation to Armed Conflicts: Extrajudicial Executions in the "War on Terror"", in *EJIL*, Vol. 19, No. 1, 2008, pp. 183-209.
- D'AVIOLO Michele, "Regional Human Rights Courts and Internal Armed Conflicts", in *Intercultural Human Rights Law Review*, Vol. 2, 2007, pp. 249-328.
- J.BUIS Emiliano, "Chapter IX. The implementation of international humanitarian law by human rights courts: The example of the Inter-American human rights system", in ARNOLD Roberta & QUENIVET Noëlle (eds), *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law*, Leiden, Boston, M. Nijhoff, 2008, pp. 269-295.

- MARTIN Fanny, “Application du droit international humanitaire par la Cour interaméricaine des droits de l’homme”, in *IRRC*, No. 844, 2001, pp. 1037-1066.
- McCARTHY Conor, “Human Rights and the Laws of War under the American Convention on Human Rights”, in *European Human Rights Law Review*, No. 6, 2008, pp. 762-780.
- O’DONNELL Daniel, “Trends in the Application of International Humanitarian Law by United Nations Human Rights Mechanisms”, in *IRRC*, No. 324, September 1998, pp. 481-503.
- PEJIC Jelena, “The European Court of Human Rights’ Al-Jedda judgment: the oversight of international humanitarian law”, in *International Review of the Red Cross*, Vol. 93, No. 883, 2011, pp. 837-851.
- REIDY Aisling, “The Approach of the European Commission and Court of Human Rights to International Humanitarian Law”, in *IRRC*, No. 324, 1998, pp. 513-529.
- SASSÒLI Marco, “La Cour européenne des droits de l’homme et les conflits armés”, in BREITENMOSER Stephan, EHRENZELLER Bernhard, SASSÒLI Marco, STOFFEL Walter & WAGNER PFEIFER Beatrice (eds), *Human Rights, Democracy and the Rule of Law: Liber Amicorum Luzius Wildhaber*, Zürich, Dike, 2007, pp. 709-731.
- SÖFKER Carolin, “The Inter-American Commission and the Court of Human Rights: Enforcement Mechanisms of International Humanitarian Law?”, in *Humanitäres Völkerrecht*, Vol. 20, No. 1, 2007, pp. 33-36.
- ZEGVELD Liesbeth, “The Inter-American Commission on Human Rights and International Humanitarian Law: A Comment on the Tablada Case”, in *IRRC*, No. 324, 1998, pp. 505-511.

aa) through clauses in human rights treaties

^ CASES AND DOCUMENTS

- ECHR, *Bankovic and Others v. Belgium and 16 Other States*

- exception to the right to life

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- GAGGIOLI Gloria, *L’influence mutuelle entre les droits de l’homme et le droit international humanitaire à la lumière du droit à la vie*, Paris, Pedone, 2013, 614 pp.

Further reading:

- GAGGIOLI Gloria & KOLB Robert, “A Right to Life in Armed Conflicts?: the Contribution of the European Court of Human Rights”, in *IYHR*, Vol. 37, 2007, pp. 115-163.

- reference in derogation clauses

Quotation

General Comment No. 29: States of Emergency (article 4), 31/08/2001. [...]

1. Furthermore, article 4, paragraph 1, requires that no measure derogating from the provisions of the Covenant may be inconsistent with the State party's other obligations under international law, particularly the rules of international humanitarian law. Article 4 of the Covenant cannot be read as justification for derogation from the Covenant if such derogation would entail a breach of the State's other international obligations, whether based on treaty or general international law. This is reflected also in article 5, paragraph 2, of the Covenant according to which there shall be no restriction upon or derogation from any fundamental rights recognized in other instruments on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.
2. Although it is not the function of the Human Rights Committee to review the conduct of a State party under other treaties, in exercising its functions under the Covenant the Committee has the competence to take a State party's other international obligations into account when it considers whether the Covenant allows the State party to derogate from specific provisions of the Covenant. Therefore, when invoking article 4, paragraph 1, or when reporting under article 40 on the legal framework related to emergencies, States parties should present information on their other international obligations relevant for the protection of the rights in question, in particular those obligations that are applicable in times of emergency. In this respect, States parties should duly take into account the developments within international law as to human rights standards applicable in emergency situations.

[Source: International Covenant on Civil and Political Rights, Document CCPR/C/21/Rev.1/Add.11, of 31 August 2001, General Comment no. 29, States of Emergency (article 4), online:
[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11\(=en\]](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11(=en])

^ CASES AND DOCUMENTS

- Inter-American Commission on Human Rights, *Tablada* [Paras 168-170]
- Inter-American Court of Human Rights, *The Las Palmeras Case*

- the prohibition of “arbitrary” detention

^ CASES AND DOCUMENTS

- Inter-American Commission on Human Rights, *Coard v. United States*
- ECHR, *Hassan v. UK*

bb) indirectly, through the implementation of International Human Rights Law

^ CASES AND DOCUMENTS

- Israel, Human Rights Committee's Report on Beit Hanoun
- ECHR, *Cyprus v. Turkey*
- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala* [Paras 203-214]
- Human Rights Committee, *Guerrero v. Colombia*
- Inter-American Court of Human Rights, *The Las Palmeras Case*
- ECHR, *Isayeva v. Russia*
- ECHR, *Khatsiyeva v. Russia*
- ECHR, *Al-Jedda v. UK*
- ECHR, *Hassan v. UK*
- Iraq: Situation of Internally Displaced Persons
- UN/Colombia, Human Rights Committee Clarifications and Concluding Observations (2016)

a. implementation of human rights by the ICRC

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- FORSYTHE David P., "Choices More Ethical than Legal: The International Committee of the Red Cross and Human Rights", in *Ethics & International Affairs*, Vol. 7, 1993, pp. 131-151.
- SCHINDLER Dietrich, "The International Committee of the Red Cross and Human Rights", in *IRRC*, No. 208, January 1979, pp. 3-14.
- SOMMARUGA Cornelio, "Humanitarian Law and Human Rights in the Legal Arsenal of the ICRC", in *Human Rights and Humanitarian Law*, The Hague, M. Nijhoff, 1997, pp. 125-133.

Further Reading :

- GASSER Hans-Peter, "A Measure of Humanity in Internal Disturbances and Tensions: Proposal for a Code of Conduct", in *IRRC*, No. 262, 1988, pp. 33-58.

- in armed conflicts

- outside armed conflicts

c. implementation of IHL and IHRL by domestic courts

^ CASES AND DOCUMENTS

- Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

3. Cooperation between the ICRC and human rights bodies

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- FORTIN Katharine, “Complementarity between the ICRC and the United Nations and international humanitarian law and human rights law, 1948-1968”, in *IRRC*, Vol. 94, No. 888, 2012, pp. 1433-1454.

a. dissemination

^ CASES AND DOCUMENTS

- ICRC, Protection of War Victims [Para. 2.3.1]

a. thought

^ CASES AND DOCUMENTS

- Minimum Humanitarian Standards [Part B., para. 99]

a. operations

Footnotes

- [11] See 1966 Covenant on Civil and Political Rights, Art. 4(1), available on treaties.un.org ; European Convention on Human Rights , Art. 15(1), available on treaties.un.org; American Convention on Human Rights, Art. 27(1)
- [12] See explicitly European Convention on Human Rights, Art. 15(2), available on treaties.un.org. Other instruments only prohibit “arbitrary” deprivation of life.

