This Latin term is derived from the legal maxim in the interpretation of laws, both in domestic and international law: ‘lex specialis derogat legi generali’. This essentially means that more specific rules will prevail over more general rules.

The term is frequently used in describing the relationship between international humanitarian law and international human rights law. The precise nature of the relationship, and of the application of the lex specialis principle, is still the subject of some debate, particularly when it comes to issues of targeting and detention [1] in non-international armed conflicts [2].

In the ICRC’s view, IHL constitutes the lex specialis governing the assessment of the lawfulness of the use of force against lawful targets in international armed conflicts [3]. The interplay of IHL rules and international human rights standards on the use of force is less clear in NIAC, and the use of lethal force by States in NIAC requires a fact-specific analysis of the interplay between the relevant rules.

See Human Rights applicable in armed conflicts [4];
ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011

CASES

ECHR, Hassan v. UK

United Kingdom, The Case of Serdar Mohammed (High Court Judgment)

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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]

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ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 [paras 168-177]

United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments)
UN/Colombia, Human Rights Committee Clarifications and Concluding
Observations (2016) [19]

United States of America, Military Commissions Trial Judiciary, Guantanamo
Bay, Cuba: United States of America v. Khalid Shaikh Mohammad et al. [20]

Africa, The AfCHPR on the interplay between human rights and IHL [21]

BIBLIOGRAPHIC RESOURCES

Suggested readings:

CHEVALIER-WATTS Juliet, “Has Human Rights Law Become Lex Specialis for
the European Court of Human Rights in Right to Life Cases Arising from
14, No. 4, pp. 584-602.

DROEGE Cordula, “The Interplay between International Humanitarian law and
International Human Rights Law in Situation of Armed Conflict”, in Israel Law

DROEGE Cordula, “Elective Affinities?: Human Rights and Humanitarian Law”,

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


Further readings:


SOMER Jonathan, “Jungle Justice: Passing Sentence on the Equality of

Source URL: https://casebook.icrc.org/glossary/lex-specialis

Links
[1] https://casebook.icrc.org/glossary/detention