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# **THE INTERPLAY OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW**

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## **Introduction**

International Humanitarian Law (IHL), often referred to as the law of armed conflict or the law of war, is increasingly being regarded as part of the broader human right's legal framework, especially in the context of armed conflict. This convergence began gaining global attention following the 1968 United Nations International Conference on Human Rights in Tehran, which both encouraged the development of IHL and signaled its incorporation into UN mechanisms for assessing human rights situations.

IHL and International Human Rights Law (HRL) are complementary bodies of law with a shared aim: the protection of human dignity. However, their applicability and scope differ. HRL is in force at all times, including in peacetime, and aims to shield individuals from arbitrary state actions. Conversely, IHL is specifically triggered by armed conflict and governs conduct during hostilities. While their interaction has sparked academic and legal debate since the late 20th century, a growing consensus acknowledges their overlap and mutual reinforcement.

## **Origins and Evolution**

### ***Human Rights Law***

Human rights law finds its roots in Enlightenment-era instruments such as the French Declaration of the Rights of Man and Citizen (1789) and the American Bill of Rights (1791). The modern framework, however, began to take shape under the aegis of the United Nations, particularly with the adoption of the Universal Declaration of Human Rights (1948).

Key milestones include:

1. International Covenant on Civil and Political Rights (1966) – Protects civil and political liberties (first-generation rights).
2. International Covenant on Economic, Social and Cultural Rights (1966) – Safeguards socio-economic rights (second-generation rights).

3. Emerging third-generation rights – Encompassing the right to development, peace, and a healthy environment.

Regional instruments further institutionalized human rights:

- European Convention on Human Rights (1950)
- American Convention on Human Rights (1969)
- African Charter on Human and Peoples' Rights (1981)
- Cairo Declaration on Human Rights in Islam (1990)

These frameworks are enforced through judicial or quasi-judicial bodies such as the European Court of Human Rights, Inter-American Court of Human Rights, and the UN Human Rights Committee.

### ***International Humanitarian Law***

Though modern IHL began codifying in the 19th century, its ethical principles are traceable to ancient civilizations and religious texts such as the Mahabharata, Bible, and Quran. The formalization began with:

- 1863: Founding of the Red Cross
- 1864: First Geneva Convention on the wounded in armed forces

Historical precedents like the Lieber Code (1863) and other ancient codes illustrate that warfare have long been subject to ethical limitations.

Subsequent treaties include:

- The Hague Conventions (1899, 1907)
- The Geneva Conventions (1949) and their Additional Protocols (1977)
- Conventions prohibiting chemical, biological, and certain conventional weapons
- The 1998 Rome Statute establishing the International Criminal Court

### **Philosophical Foundations**

IHL is rooted in honor, civility, and reciprocity — concepts that emphasized humane conduct even amidst warfare. HRL, by contrast, draws from diverse philosophical and political traditions including natural law, religious doctrine, and Enlightenment thinkers such as John Locke, Thomas Paine, and Jean-Jacques Rousseau.

### **Applicability and Scope**

- IHL applies exclusively to armed conflict, distinguishing between international and non-international conflicts. It governs conduct during hostilities and aims to protect

those not actively involved in fighting (civilians, medics, POWs) and to regulate the means and methods of warfare.

- HRL, in contrast, applies at all times, though certain rights may be derogated during emergencies. Derogation is permissible under conditions outlined in Article 4 of the ICCPR, but core rights — such as the right to life, freedom from torture, and freedom from slavery — are non-derogable.

## Points of Convergence and Debate

### *Hard Core Rights*

Both IHL and HRL unequivocally uphold certain fundamental protections:

1. Right to life
2. Freedom from torture or inhumane treatment
3. Prohibition of slavery
4. Protection from retroactive punishment

These form a shared ethical core — even as the legal tools and enforcement mechanisms differ.

### *Lex Specialis Doctrine*

In its 1996 advisory opinion on nuclear weapons, the International Court of Justice (ICJ) clarified that HRL remains applicable in wartime. However, IHL serves as the *lex specialis*— the specific law governing wartime situations. For example, whether a military act constitutes an arbitrary deprivation of life under HRL depends on its lawfulness under IHL.

This statement has fueled extensive academic debate over the boundaries and interrelation between the two legal regimes. Some scholars argue HRL is sidelined during armed conflict, while others advocate for a harmonious interpretation that integrates the humanizing values of both systems.

### **Complementarity or Distinction?**

Despite differing historical trajectories and legal frameworks, many scholars see IHL and HRL as mutually reinforcing:

- HRL fills gaps in IHL, particularly in areas such as fair trial rights.
- Human rights mechanisms, such as regional courts, are increasingly used to address IHL violations.
- A growing “humanization of humanitarian law” trend is emerging, aligning military norms with broader human rights protections.

Others, however, advocate for maintaining clear boundaries, citing the distinct purposes and practical applications of each body of law. As Greenwood notes, war's brutal reality requires standards that differ fundamentally from those designed for peacetime governance.

### **Limitations of Human Rights Law in Conflict**

While HRL has significantly expanded over the past decades, its application during conflict faces limitations:

- Vagueness in enforcement mechanisms
- Derogations permitted under emergency conditions
- Non-state actors are not clearly bound under HRL

Compared to IHL, which offers more precise wartime obligations, HRL's general nature can limit its effectiveness in combat scenarios.

### **Implementation and Compliance**

To ensure compliance with IHL:

- States must educate their armed forces and populations.
- National legislation must criminalize war crimes.
- International tribunals (e.g., Yugoslavia, Rwanda) and the International Criminal Court enforce violations.
- Symbols like the Red Cross/Crescent must be legally protected.

The International Committee of the Red Cross (ICRC) plays a pivotal role by monitoring conflicts, drafting legal proposals, and facilitating diplomatic conferences.

### **Conclusion**

International Humanitarian Law and Human Rights Law are two vital pillars of international legal order, developed to protect human dignity in vastly different contexts — one in peace, the other in war. Despite historical and legal distinctions, they are increasingly viewed as interdependent, with overlapping values and objectives.

Their convergence reflects a global shift toward a person-centered approach in international law — one where protecting the inherent dignity of every individual, whether in war or peace, remains the ultimate goal.

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