

International Humanitarian Law And International Human Rights Law; Similarities And Differences

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Abstract: Both the international humanitarian law (IHL) and human rights law have developed with the objectives of protecting human being and their dignity, yet some dissimilarities can be found between these two bodies of international law. Many issues are dealt by IHL what are not considered by IHRL, for example, the conduct of hostilities, the status of prisoners during war, the protection of some emblems, signs and so on. Alternatively many matters are consulted by IHRL which are not subject matters of IHL, for example, freedom of thought, right to movement, right to assembly and others. This paper is an effort to identify the similarities and dissimilarities between IHL and international human rights law (IHRL).

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I. INTRODUCTION

International humanitarian law is a branch of public international law and also perceived as a larger part of human rights law applicable in the armed conflict (Louse and Sylvain, 1993: 1). Although the humanitarian law and human rights law have totally different historical origins, i.e., the documentation of IHL started by the adoption of the first GC in 1964 but human rights law started its journey in national or regional level in many more years ago and formally by the Universal Declaration of Human Rights, yet in many respects they have the similarities. At the initial stage of development of IHL, it was considered that when an armed conflict is started the human rights law goes away and the IHL is applied but this concept has been changed when the International Court of Justice in its Wall Advisory opinion expressed that the protection offered by human rights conventions does not cease in case of armed conflict (International Court of Justice Reports, 2004: 136). The following discussion clarifies the similarities, dissimilarities and inter-relationship between the IHL and IHRL.

Concept of International Human Rights Law and Humanitarian Law:

International Human Rights are those rights which are possessed by a person only for the reason he/she is a human being irrespective of race, caste, color, sex, language, nationality, place of birth etc. All people male or female, black or white, minority or majority are all equally entitled to their rights without discrimination. These rights are all interrelated, interdependent and indivisible. Human rights law is those rules either written or oral originated from custom, conventions or treaty which works for the protection of human being and the individual or groups being entitled to claim certain rights or benefits from the government under these rules. Numerous non-treaty based principles and guidelines ("soft law") also belong to the body of international human rights standards. IHRL main treaty sources are "the International Covenants on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights (1966), as well as Conventions on Genocide (1948), Racial Discrimination (1965), Discrimination against Women (1979), Torture (1984) and Rights of the Child (1989). The main regional instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Declaration of the Rights and Duties of Man (1948) and Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981)".

On the other hand IHL is an important branch of international law which mainly deals with the protection of the civilians and victims of armed conflict. This newly named IHL was previously known as the law of war or the law of armed conflict (ICRC, 2004: 1). The international humanitarian law is a set of written and unwritten rules which seek to limit the effects of armed conflict for the humanitarian reasons. The most realistic definition was given by Jean Pictet who says; "IHL is that body of law: which is inspired by a feeling of humanity and is centered on the individual at the time of war."

For better understanding the definition of IHL it can be said that IHL is that body of documented or undocumented rules which are applied in the both International and non-international armed conflict with a view

to reduce the sufferings of the victims of the armed conflict and to protect those who do not or no longer taking part in the hostilities. Although IHL applies only at the time of armed conflict and IHRL applies both AC and peace yet there are some similarities between IHL and IHRL which are most important for the protection.

The Similarities between International Humanitarian Law and International Human Rights Law:

International humanitarian law is an important part of international human rights law, originated from different roots and in different ways, yet both of them share some common goals, i.e., protection of lives, protection of human dignity, protection of environment (ICRC, 2004: 1). Jakob Kellenberger, President of "the International Committee of the Red Cross" (ICRC) has stated: "Like international human rights law, international humanitarian law aims, among other things, to protect human life, prevent and punish torture and ensure fundamental judicial guarantees to persons subject to criminal process (Hathaway et al. 2011: 2)." IHL and IHRL maintain the following similarities for protection of human being at the time of conflict and at the time of peace:

1. Both IHL and IHRL deal with similar conduct and share common goals with a view to protecting fundamental human dignity (Dannenbaum, 2009: 1) and lives (ICRC, 2003:1). It means both these laws intend to protect human lives and dignity.
2. Both these two branches of international law guarantee respect for life ensuring physical and mental well being (Srinivas, 2009: 29).
3. IHL and IHRL are set of international rules established by customs or treaty and work for the protection of human and their dignity. Both of them ensure some rights of the individual which can be claimed by individual and the individuals have right to ensure them if denied by the State parties (ICRC, 2003).
4. It is the responsibility of the state to implement both IHL and IHRL. For proper implementation of IHL, States are the main organ for taking necessary steps of legal and practical both in peace and in conflict. On the other hand to implement IHRL the state is to take immediate and progressive measures including making legislations, establishing separate judicial body, taking administrative actions etc.
5. A good number of parallel provisions can be found in the documents of IHL and instruments of IHRL such as the protection of life, protection from torture, degrading punishment or treatment, arbitrary arrest or detention, discriminations on the ground of race, colour, sex, place of birth, religion and so on (Meron, 1987: 12-18).
6. Another similarity exists between the two laws regarding trial of the violators of either IHL or IHRL. Under IHL if any one violates IHL then he can be prosecuted before the domestic court or international criminal court if national court or tribunal shows its unwillingness to try these matters or domestic court or tribunal exists. On the other side the IHRL also can be enforced by the national court and international mechanisms.

The study found that some dissimilarities also remain present between these two branches of international law which are also as follows:

Differences between Humanitarian Law and Human Rights Law:

Both IHL and IHRL have developed with a view to protect and promote human life and dignity, they comprise some differences in respect to the principles and objectives by which they try to achieve their common purposes (Patric, 2005: 2). Those differences are:

1. The scope of IHL treaties is wider in compare to IHRL treaties. The IHL treaties are mainly international in nature, i.e., all GCs of 1949 but IHRL treaties are international or regional, for example, the "International Covenant on Civil and Political Rights 1966" is an international document whereas the "European Convention for the Protection of Human Rights and Fundamental Freedoms 1950" is a regional convention
2. **Regarding Limitation:**

Human Rights law use the limitation clause on the exercise of human rights by individuals like article 22(1) of ICCPR states, "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." 22 (2) of the same document says, "no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others prescribed by law (Art. 18 (3) International Covenant on Civil and Political Rights)" or "in the interest of public order or public health or morality or security of the state or friendly relation with foreign state or decency (Articles 36, 37, 38, 39, 41 and 43, the Constitution of the Peoples Republic of Bangladesh)" It indicates that restriction on individuals' human rights can be imposed by state in various situations but no restriction can be imposed on the rights granted under the IHL because IHL is applied only in emergency situations where derogation is not permitted.

3. Regarding Application:

The principle of reciprocity applies regarding the application of IHL. It indicates that IHL applies to the parties where the parties are signatory of the humanitarian documents. Under the GCs the party of an armed conflict who is not a signatory of convention or treaty cannot be compelled to comply with IHL treaty (Common art. 2, GCs). There is an exception of this rule is where the opposite party otherwise accepted the obligation of the treaty, there it can be applied to all parties. By contrast, the provision of human right treaty is quite different where a State once accepted the HR treaty is bound to observe the obligations whether the adversary is a party of this convention or not.

4. A further difference between HL and HR that is often pointed out rests on the fact that HR is centered on the granting of rights to nationals against their states. For example articles 14, 15, 16, 17, 18, 19, 26(2), 27, 28 and many other articles of the Constitution of Bangladesh impose obligations on the state to ensure human rights of its national and if these rights are violated the people has right to enforce them in some cases against the state. While IHL focuses on imposing obligation directly on the individual and ensuring individual rights as well. For example, “art 13 of the Third GC provides for humane treatment of prisoners of war and particularly prohibits any unlawful act or omission by the detaining power causing death or seriously endangering the health of a prisoner of war in its custody. In addition to it no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by doctor for treatment of the prisoner.” This prohibition suggests the right of the prisoner of war not to be subject to inhuman treatment. Furthermore, the GCs and other HL treaties comprise provisions which are expressly formulated as individual rights. For example, art 27(1) of the Fourth GC provides that “protected persons are entitled ... to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs.” Article 75 of Additional Protocol I to the GCs further lists a series of fundamental guarantees for persons in the power of a belligerent.

5. IHL or the law of armed conflict applies “in all cases of declared war or of any other armed conflict or all cases of partial or total occupation of the territory of a High Contracting party (common article 2, GCs). But Human Right is designed to govern in peace time and in armed conflict in limited form. For the first time the International Court of Justice in “its 1996 advisory opinion on the Legality of the Threat or Use of Nuclear Weapons” observed that the protection of the ICCPR does to cease to exist during the time of war. In the “2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (*the 2004 Wall Advisory Opinion*)”, the Court confirmed that IHRL applies to the situations of military occupation. In the next, the Court in “*Democratic Republic of the Congo v. Uganda*” case finds that Uganda by violating the principle of the non-use of force in international relations and of non-intervention, it violated the both IHRL and IHL; and that it violated other obligations owed to the Democratic Republic of the Congo. The decisions of ICJ clarify that Human Rights Law apply both in peace time and in conflicting time.

6. For the violation of human rights the injured party may initiate legal proceeding against government officials and agencies to the national court. For example under article 44 together with 102 of the Constitution of Bangladesh, any person aggrieved by violation of fundamental rights (human rights) has the right to move the High Court Division to enforce the rights, or may send report to the concern international committees i.e. individuals who claim that any of their rights enumerated in the Covenant on Civil and political Rights have been violated may submit a written communication to the Committee for consideration (Article 2, Optional Protocol to ICCPR). On the other hand for violation of International Humanitarian Law, violators either government officials or private citizens may be prosecuted before the National court or tribunal like Bangladesh International War Crimes Tribunal¹ or International Tribunal or Court, i.e., International Criminal Court.

¹Article. 3 of International Crimes Tribunal Act 1973, says, A Tribunal shall have the power to try and punish any individual or group of individuals, or organization or any member of any armed, defense or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act, any of the crimes namely, crimes against humanity, crime against peace, genocide, war crimes, violation of any humanitarian rules applicable in armed conflicts laid down in the GCs of 1949, any other crimes under international law, attempt, abetment or conspiracy to commit any such crimes complicity in or failure to prevent commission of any such crimes. Article, 1, Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States,

7. HRL aims to establish and maintain the democracy and the rule of law in the society. They are legally founded and based on the guarantee of freedom and on the welfare of the human person, developing especially in time of peace. On the other hand, IHL seeks to promote civilized behavior in conducting conflicts. It aims to limit effects of the armed conflicts by imposing restrictions to choose means and methods of warfare (Cristiana and Spataru-negura).

8. It should be noted that IHL and HRL do not differ only in terms of origin, but of character. On the one hand, "IHL, under various names, has existed throughout history and is inherently conservative, taking as a given the armed conflicts". HRL, on the other hand, has developed from the democratic revolutions of the late eighteenth century, have always been revolutionary, outrageous in its inception, inspired by the collective action and struggle, and which threaten the existing state order.

9. IHL has a tradition since the nineteenth century when Henri Dunant has started to help the victims of war. It has enriched and developed continuously by many international and national documents namely, "GC 1864, St. Petersburg Declaration 1868, Hague Regulations 1899 (especially Convention II and annexes), Hague Regulations 1907 (especially Convention IV and annexes), and four GCs 1949 and reached a remarkably high level under the two Additional Protocols of 1977". International human rights law, on the other hand, is a more recent phenomenon which developed as part of the constitutional law of individual States (Schindler, 1981). HRL is an emanation of the subsequent period of the Second World War. They arose from the atrocities committed during the war, particularly by the German armed forces, but also by the allied forces that emerged victorious. It was introduced into the international sphere by The Universal Declaration of Human Rights 1948 and following this document human rights have been incorporated almost in all constitutions of the world. Now human rights law is considered as an important enriched branch of International law as many important human rights international, regional and national documents have been adopted i.e. "Charter of the United Nations, International covenant on Civil and Political Rights 1966, International Covenant on Economic Social and Cultural Rights 1966, Optional Protocol to the International Covenant on Civil and Political Rights 1966, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008, the Convention on the Elimination of All Forms of Discrimination against Women 1979, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Convention on the Rights of the Child (1989) The African Charter on Human and Peoples' Rights 1987, European Convention on Human Rights and Fundamental Freedom 1950" etc.

10. Regarding use of force:

International Humanitarian law permits the combatants to use force against the enemy combatants during the conflict, even it allows to kill the persons who take direct part in the hostilities with a view to weaken the opposite party until they surrender or are otherwise *hors de combat* but IHRL usually does not permit use of force except exception, but the right to life most important right, cannot be taken away even in an exceptional situations also.

11. Derogation Clause:

Under HRL derogation is permissible during the time of emergency. For example, article 4.1 of ICCPR states that in time of public emergency which threatens the life of the nation, the States Parties to the present Covenant may take measures derogating from their obligations.² So HR can be suspended in time of emergency which

between 1 January 1994 and 31 December 1994 Adopted by Security Council resolution 955 (1994) of 8 November 1994 amended by Security Council resolutions 1165 (1998) of 30 April 1998 , 1329 (2000) of 30 November 2000, 1411 (2002) of 17 May 2002 and 1431 (2002) of 14 August 2002. Article 1, Statute of the International Criminal Tribunal for the Former Yugoslavia, 25 May 1993, article 1, Agreement for and Statute of the Special Court for Sierra Leone, 16 January, 2002

²Art. 4(1), International Covenant on Civil and Political Rights 1966, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, states, "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent

may arise from war, aggression, internal disturbance etc. Although depending on the demand of situations, IHL allows derogation from obligations, it is not common for all rights, certain rights which cannot be derogated in any circumstances in any time which are as follows: The right not to be arbitrarily deprived of life, Prohibition against torture and other cruel, inhuman or degrading treatment or punishment, Prohibition of slavery and servitude, Prohibition against detention for debt, Prohibition against retroactive criminal laws, Recognition of legal personality, Freedom of thought, conscience and religion. But under the IHL derogation is not permitted because IHL is applied only in emergency so derogation will be amounting to the violation of the IHL.

12. The overall development, promotion and implementation of IHL are mainly supervised by the “International Committee of the Red Cross and Red Crescent Movement” and the development, progress and implementation of IHRL are supervised by the United Nations or other Human Rights Organizations (ICRC, 2003).

13. The IHL documents mainly the four Geneva Conventions of 12 August 1949, “Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, Geneva Convention (II) for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, Geneva Convention (III) Relative to the Treatment of Prisoners of War of 12 August 1949, Geneva Convention (IV) Relative to the Protection of Civilian Persons at Time of War of 12 August 1949,” are universal character as these conventions have been accepted by all countries of the world but IHRL documents are not universal in respect of acceptance.

14. IHL protects all the individuals who do not or are no longer taking part in the hostilities and the persons who are the *hors de combat* but IHR being tailored primarily for peacetime, applies to all persons.

II. CONCLUSION

The aforesaid analyses reveal that both the international humanitarian law and International human rights law are two important branches of the international law. Both laws work for the protection the human being and their dignity. It found that there are many similarities between these two branches of international law yet in some respects IHL and IHRL maintain some differences mainly regarding their scope of application, objects of protection, derogatory principle, enforcement systems, the use of force and responsibilities of the states, universality, sources and evolution, individual criminal responsibilities, implementation mechanisms and so on. Another important concept also been cleared in this study that the application of IHRL does not cease to exist even after the starting of an armed conflict, in some cases both IHL and IHRL apply during the conflict for better protection of the victims of the armed conflict.

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strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

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