

Humanitarian law and human rights

HUMANITARIAN LAW AND HUMAN RIGHTS LAW

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International humanitarian law and human rights law share a common goal, namely to protect the individual and to ensure respect for human dignity. Yet these two branches of international public law each have their own characteristics and origins and have evolved in different ways.

Nevertheless, the troubled aftermath of the Second World War, the unchecked rise of violence and poverty in recent decades and the resulting need for improved protection of the ever-growing number of victims of violations of fundamental human rights have all contributed not only to the evolution of the two branches of law but also to their convergence, like “two poor crutches on which disarmed victims can lean simultaneously”, to quote an expressive image by Karel Vasak.¹ This expert went so far as to estimate in 1984 that “the convergence of the two branches has led to an overlapping both on paper and, increasingly, in practice as well”.²

Not quite overlapping, but the similarities and mutual influence of the two branches have become more evident. Several events have marked the trend towards a convergence: the adoption of the 1949 Geneva Conventions in a way transcended the limits of humanitarian law by including a provision on situations of non-international conflict. By introducing Article 3 common to the four Geneva Conventions, humanitarian law was no longer confined solely to conflicts between States but also imposed upon them rules governing the treatment of some of their own nationals, as foreshadowed by Francis Lieber in his 1863 *Instructions for the Government of Armies of the United States in the Field*.

Human rights law followed the reverse course. Previously of internal bearing only, it gradually gained international significance, as demonstrated by the adoption of the Universal Declaration of Human Rights in 1948 and

¹ Karel Vasak, “Pour une troisième génération des droits de l’homme” (For a third generation of human rights) in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, Christophe Swinarski, ed., ICRC; Martinus Nijhoff Publishers, Geneva, The Hague, 1984, pp. 837-850, ad. 837.

² *Ibid.*

various other international pacts and conventions on human rights by the United Nations and several regional organizations.

While stressing that “peace is the underlying condition for the full observance of human rights and war is their negation”, the International Human Rights Conference of 1968 also proclaimed that “even during the periods of armed conflict, humanitarian principles must prevail”.

The adoption of the 1977 Protocols additional to the Geneva Conventions of 1949, containing rules that correspond to inalienable human rights,³ accentuated still further the convergence between the rules of humanitarian law and certain human rights rules. Moreover, by adopting Protocol II on the protection of victims of non-international armed conflicts, which supplements and defines Article 3 of the Geneva Conventions, and by stipulating in Article 75 of Protocol I and Article 4 of Protocol II respectively the fundamental guarantees concerning the treatment of persons affected by an international or non-international armed conflict, legislators achieved further progress in ensuring respect for human rights.⁴

Around this “hard core”, the mutual influence of human rights law and humanitarian law has emerged in resolutions adopted by the United Nations General Assembly and Security Council. For example, in the case of the conflict in the former Yugoslavia, and particularly with respect to Bosnia-Herzegovina, references to humanitarian law are particularly in evidence in a number of resolutions adopted in 1992 by the UN Security Council and condemning violations of humanitarian law and human rights.

Similarly, recent practice by non-governmental organizations concerned with local conflicts, such as the International Commission of Jurists, Americas Watch or Amnesty International, is significant. There are many examples of recourse to both human rights law and humanitarian law provisions in reports presented by these organizations on human rights violations in conflict situations. Indeed, human rights violations in a non-international armed conflict are often simultaneously serious violations of the provisions contained in Article 3 or in Protocol II.⁵

³ These are the “hard core” of human rights: the right to life, the prohibition of torture and inhuman degrading punishment and treatment, the prohibition of slavery and servitude, and the principles of legality and non-retroactivity.

⁴ See Louise Doswald-Beck and Sylvain Vité, “International humanitarian law and human rights law”, pp. 94-119. After analysing the philosophical basis and the nature of humanitarian law and human rights law and describing their specific characteristics, the authors examine their similarities and mutual influence, citing both textual and practical examples.

⁵ See David Weissbrodt and Peggy L. Hicks, “Implementation of human rights and humanitarian law in situations of armed conflict”, pp. 120-138. In particular, these two authors discuss convergence in the application of human rights law and humanitarian law in conflict situations. They also give considerable space to a comparison of the role of the ICRC and that of the NGOs.

In view of the numerous cases of armed conflict, it is likely that this convergence will become still more marked. Can it be said then that we are moving towards a merging of the two branches of law? The question is an interesting one, but in our view the crux of the matter lies not in whether the "integrationists" in favour of merging will prevail over the "separatists", who fear that convergence will create confusion, but in examining how both the differences and the growing similarities between each of the two branches can be turned to better account for enhanced protection of the fundamental rights of the individual in situations of violence.

It is useful to recall the specific characteristics of each of the two branches in cases of armed conflict. Humanitarian law, which is an emergency law applicable in armed conflict, has aims which are more limited yet more clearly defined than are those of human rights law; its provisions are mandatory. Human rights law is applicable at all times, hence also in time of armed conflict, but its applicability is restricted by derogation clauses (except for the "hard core" rights) or by the manner in which it is interpreted by the bodies entrusted with its implementation.

Whereas the rules of international humanitarian law governing the protection of the individual in time of armed conflict are set forth in detail and adapted to circumstances, human rights law is more general and its provisions are not always applicable in practice to the various categories of persons affected by an armed conflict. Thus, the advantage of the former is that it covers violations both by governments and by armed opposition groups, whereas the latter deals primarily with the responsibilities of governments.

Finally, the mechanisms for implementation of the two branches of law and for monitoring that implementation remain as fundamentally different as are the organizations entrusted with their development and promotion, namely the ICRC for humanitarian law and regional and international organizations, including the United Nations, for human rights law.

Yet the two branches complement each other, and therein lies a source of greater strength. It should be used to benefit the victims as much as possible.

Although humanitarian law is less vulnerable than are human rights to the dangers of politicization or divergent interpretations and although its rules on the protection of the human being in situations of armed conflict are far more detailed, international human rights law, with its more readily accessible terminology and its own particular momentum, can come to the aid of humanitarian law in cases of internal conflict or strife through the pressure it is capable of bringing to bear on sovereign States. It is to be hoped that through continued recognition of the specific nature and universality of humanitarian law, together with efforts undertaken to implement human rights law, a better application of humanitarian law will be attained.

What can the ICRC and non-governmental organizations each do to reinforce implementation of human rights and humanitarian law? The ICRC's position is distinct from other organizations in that it applies humanitarian law in time of armed conflict while occasionally having recourse, in emergency situations, to standards corresponding to inalienable human rights. Its right of humanitarian initiative also allows it to take appropriate measures in situations of violence not covered by humanitarian law. The *Review* will give special coverage to this important subject in its next issue.

NGOs, on the other hand, apply human rights law in time of peace, in situations of internal strife or armed conflicts, referring to the principles of humanitarian law on a case-by-case basis whenever they consider it relevant. The important thing is that NGOs and United Nations agencies must continue to have recourse to humanitarian law wherever it can support or supplement international human rights law. It will always be in their interests to draw on the experience of the ICRC to safeguard fundamental human rights more effectively in time of armed conflict. While maintaining their autonomy and their own identity, these institutions must more than ever promote the complementary nature of the two systems by ensuring that the principles shared by humanitarian law and human rights law are widely known. These principles are non-discrimination; inviolability, which consecrates each individual's right to life and to physical and moral integrity; and security of person, which provides each individual with legal guarantees and stresses the prohibition of reprisals, collective punishment, hostage-taking and deportations.

Also, they must spread knowledge of the respective instruments of the two branches of law, particularly among the armed forces, paramilitary groups and the police, and finally, they must encourage States to accede to those instruments and to implement them, bearing in mind their specific structures and methods.

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What sort of contribution can the International Red Cross and Red Crescent Movement make towards greater respect for human rights? When retracing the Movement's commitment to human rights as shown in decisions adopted by its statutory bodies and the practical work done by its components, it can be seen that the traditional activities of the International Red Cross do much to enhance respect for human rights. They should be continued and intensified, especially those for which it has become renowned, such as humanitarian assistance to victims of armed conflicts, and of natural disasters.

In referring to the tasks assigned by the Council of Delegates to the Commission on the Red Cross, Red Crescent and Peace, some experts have

stressed the work of the Movement to uphold the rights of the most vulnerable sections of the population, namely minority groups, refugees and displaced persons, women, children and the elderly. Similarly, the Movement should take action to ensure respect for the fundamental rights of the individual, particularly as regards the prohibition of torture, discrimination, forced or involuntary disappearances and racial discrimination. In all these respects the ICRC has a direct role to play at government level, with the support of the National Societies.

Other experts believe that although a great deal has been accomplished, the Movement should invest itself still further, particularly in the light of the serious violations committed in many parts of the world.⁶ Should we therefore be more active in forestalling abuse of human rights, which would imply a greater role for the National Societies in convincing the governments of their respective countries to assume their responsibilities to that effect? Moreover, bearing in mind the experience of the National Societies and of the Federation in health-related activities, would it not be advisable to promote certain economic and social rights such as the right to decent living conditions or the right to education? These are issues which the Movement has not yet addressed and which would require precise guidelines.

In 1969, the International Conference of the Red Cross in Istanbul adopted a declaration proclaiming, among other things, that man has the right to enjoy lasting peace and live a full and satisfactory life founded on respect of his rights and his fundamental liberty. This goal can be achieved only if human rights, as set forth and defined in the Universal Declaration of Human Rights and the humanitarian conventions, are respected and observed.

This message is as vital as ever today: it indicates the path to be followed if the "two crutches" that are humanitarian law and human rights are not to become the white canes of communities blinded by violence and barbarity.

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⁶ This is the personal view of Peter Nobel, Secretary General of the Swedish Red Cross, as set forth in his article "The role of the International Red Cross and Red Crescent Movement in promoting respect for human rights", pp. 139-149. The author is also Chairman of the Sub-Commission (Human Rights) of the Commission on the Red Cross, Red Crescent and Peace.