
Comparative Study of International Human Rights law and International Humanitarian law: Case study of their commonalities

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Abstract

This article delves into the intricate relationship between international human rights laws (IHRL) and international humanitarian laws (IHL), disclosing their intersecting principles and mutual reinforcement in a global governance context. By an extensive analysis of relevant legal frameworks and academic works, this research article clarifies how IHRL complements IHL while focusing on their shared objectives that protect human dignity and secure justice especially during periods of war and emergencies. With reference to a captivating case study, the article demonstrates how these two branches of law interconnect in practice, showing their similarities through delicate legal interpretations as well as pragmatic approaches. Looking at the interaction between IHRL and IHL, this piece enhances understanding about their strategic partnership that requires coherence and synergy between these legal regimes to effectively confront today's humanitarian challenges at global level.

Keywords: International Human rights law (IHRL), International humanitarian law (IHL), UDHR

Introduction

International Human Rights Law (IHRL) and International Humanitarian Law (IHL) are two significant branches of international law aimed at safeguarding human dignity, promoting peace, and protecting individuals during times of conflict. While they have distinct scopes and objectives,

there exists a significant overlap between these two bodies of law, reflecting their shared commitment to human rights principles. This article seeks to explore the relationship between IHRL and IHL through a case study analysis, highlighting their commonalities and synergies in promoting and protecting fundamental human rights in times of peace and conflict.

International Humanitarian Law (IHL), also known as the law of armed conflict or the laws of war, is a set of rules and principles that seek to limit the effects of armed conflict. It governs the conduct of armed hostilities and aims to protect civilians and combatants who are no longer taking part in hostilities. It applies specifically to situations of armed conflict, whether international or non-international (such as civil wars or internal strife). Its primary goal is to mitigate the suffering caused by armed conflict by regulating the means and methods of warfare. These include principles such as distinction (between combatants and civilians), proportionality (balancing military advantage with civilian harm), and necessity (limiting the use of force to what is essential for achieving legitimate military objectives). IHL is derived from international treaties (such as the Geneva Conventions and their Additional Protocols), customary international law, and general principles of law recognized by civilized nations.

International Human Rights Law (IHRL), on the other hand, is a body of international law that protects and promotes human rights at the global, regional, and domestic levels. It encompasses treaties, customary international law, and general principles aimed at safeguarding fundamental freedoms and dignity for all individuals, regardless of nationality, ethnicity, religion, gender, or other status. It applies at all times, in times of peace and conflict alike, and covers a broad range of civil, political, economic, social, and cultural rights. It aims to protect individuals from abuse and ensure their fundamental rights and freedoms are respected by states and other actors. These include principles such as universality (rights apply to all individuals), non-discrimination, and indivisibility (all rights are interrelated and interdependent). It is derived from international treaties (such as the Universal Declaration of Human Rights and various regional human rights conventions), customary international law, and general principles.

Research Methodology.

This article embraces doctrinal methodology based on the theoretical framework of the both laws IHL and IHRL in the context of their mutual similarities and comparison in terms of their scope and applicability for the purposes of the ensuring the human rights of the civilians and people who donot take part in the conduct of hostilities. So the qualitative research design will be invoked while conducting this reseach based on interpretative philosophy.

Origin and Evolution

International humanitarian law initially emerged from bilateral agreements among army commanders but was later codified into international law

through the Hague Conventions. It is now delineated in the four Geneva Conventions of 1949 and additional protocols of 1977 and 2005, aiming to ensure equal treatment of states' troops through reciprocity while balancing military necessity with the reduction of unnecessary suffering by regulating hostilities and imposing constraints on belligerents.

In contrast, international human rights law evolved as part of individual states' constitutional law and entered the global arena in 1948 with the adoption of the Universal Declaration of Human Rights (UDHR). Human rights are enshrined in various international and regional instruments, such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Right (ICESCR), European Convention on Human Rights (ECHR), and the American Convention on Human Rights, based on the principle of humanity and safeguarding individuals' inherent rights from state interference.

Despite their disparate origins and objectives, recent years have witnessed a convergence between these two legal frameworks. The applicability of human rights during armed conflicts has been acknowledged, as affirmed in the Consequences of the Wall Opinion, with the understanding that human rights conventions continue to apply unless derogated under Article 4 ICCPR. This shift is evident in resolutions from Tehran Conference on Human rights which called on Israel to apply both the ICCPR and Geneva Conventions in the Occupied Palestinian Territories and clarifications from the Human Rights Committee, emphasizing the complementary nature of IHRL and IHL.

Furthermore, there has been a trend towards the "humanizing" of IHL, with greater incorporation of human rights standards. Common Article 3 of the Geneva Conventions extends certain human rights guarantees, particularly in non-international conflicts, while the additional protocols demonstrate a significant influence of human rights norms as provided in the preambles of protocols and the human rights mentioned in ICCPR resembles Article 75 of Protocol 1 where several fundamental guarantees are provided without discrimination. Recent international instruments have also integrated provisions from both IHRL and IHL, reflecting a shared ideal of protecting individual dignity and integrity.

Commonalities

International humanitarian law (IHL) and international human rights law (IHRL) share commonalities in their objective to protect and uphold human dignity. Here are some commonalities with reference to articles: Protection of Human Dignity: Both IHL and IHRL aim to protect the inherent dignity of individuals. In IHL, Article 3 of the Geneva Conventions outlines fundamental principles applicable in armed conflicts, including the principle of humanity, which requires humane treatment of all persons. In IHRL, Article 1 of the Universal Declaration of Human Rights (UDHR) states "all human beings are born free and equal in dignity and rights". During armed

conflicts, such as the Syrian Civil War, where civilians are caught in the crossfire, both IHL and IHRL principles regarding the protection of human dignity apply. Despite the complexities of the conflict, international organizations and humanitarian groups work to provide aid and ensure that civilians are treated with dignity and respect, in accordance with IHL and IHRL.

Prohibition of Torture and Cruel Treatment: Both IHL and IHRL prohibit torture and cruel treatment. In IHL, Article 3 of the Geneva Conventions and Article 4 of Additional Protocol II prohibits violence to life and person, in particular, torture, cruel, inhuman, or degrading treatment. In IHRL, Article 5 of the Universal Declaration of Human Rights prohibits torture and cruel, inhuman, or degrading treatment or punishment. Instances of torture and cruel treatment have been documented in places like Guantanamo Bay detention camp. The treatment of detainees there raised concerns about violations of both IHL and IHRL, prompting scrutiny and calls for accountability from the international community.

Protection of Civilians: Both IHL and IHRL seek to protect civilians during armed conflict. In IHL, Article 51 of Additional Protocol I to the Geneva Conventions prohibits attacks on civilians and civilian objects. In IHRL, Article 3 of the Universal Declaration of Human Rights affirms the right to life, liberty, and security of person, which applies to civilians in conflict situations. In conflicts such as the wars in Yemen and Afghanistan, where civilian casualties are tragically high, the principles of both IHL and IHRL regarding the protection of civilians are of paramount importance. International pressure is often exerted on parties involved to adhere to these principles and minimize harm to non-combatants.

Non-Discrimination: Both IHL and IHRL promote non-discrimination and equality. In IHL, Article 27 of the Fourth Geneva Convention prohibits discrimination based on race, religion, or political opinion for protected persons. In IHRL, Article 2 of the Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights affirm the principle of non-discrimination. Discrimination based on ethnicity, religion, or political affiliation has been a significant issue in conflicts like the Rohingya crisis in Myanmar and the ongoing conflict in South Sudan. In both cases, violations of IHL and IHRL regarding non-discrimination have been documented, leading to calls for accountability and justice.

Protection of Persons with Disabilities: Customary international humanitarian law recognizes the protection of persons with disabilities, including provisions related to the treatment of wounded, sick, and shipwrecked persons. Article 7 of the Convention on the Rights of Persons with Disabilities guarantees the right to equality and non-discrimination for persons with disabilities. So, both IHL and IHRL protect persons with disabilities. **Protection of Property:** Article 53 of Additional Protocol I to the

Geneva Conventions prohibits the destruction of property except when it is imperatively required by military necessity. Article 17 of the Universal Declaration of Human Rights recognizes the right to own property and states that no one shall be arbitrarily deprived of their property. Protection of Cultural Property: Article 53 of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict prohibits the destruction of cultural property. Similarly, Article 27 of the Universal Declaration of Human Rights recognizes the right of everyone to freely participate in the cultural life of their community and to enjoy the arts. Prohibition of Enforced Disappearances: Customary international humanitarian law Rule 98 and 117 prohibits enforced disappearances of individuals during armed conflict, as it constitutes a grave breach of the Geneva Conventions. The International Convention for the Protection of All Persons from Enforced Disappearance 2007, along with various regional human rights treaties, prohibits enforced disappearances in peacetime. Right to Life: IHL's Common Article 3 of the Geneva Conventions and Additional Protocol II upholds the inherent right to life, emphasizing the obligation to protect individuals from harm during armed conflict. In IHRL, as articulated in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights, unequivocally affirms the right to life as a fundamental and non-derogable right under all circumstances.

Protection of Prisoners of War (POWs): Within IHL, Article 13 of the Third Geneva Convention safeguards the rights and humane treatment of prisoners of war, ensuring their protection from torture, degrading treatment, and arbitrary detention. Correspondingly, IHRL, as enshrined in Article 10 of the Universal Declaration of Human Rights, emphasizes the rights of detainees, including prisoners of war, to be treated with dignity and respect, and to have their legal status determined through fair and impartial processes.

Right to Fair Trial and Due Process: In IHL, Article 75 of Additional Protocol I to the Geneva Conventions establishes comprehensive provisions for ensuring fair trial and due process rights for individuals accused of war crimes or other serious violations of IHL during armed conflict. Likewise, IHRL, as outlined in Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights, underscores the right to fair trial and due process as fundamental components of the rule of law, applicable to all individuals regardless of their circumstances.

Islamic View point

.Islam and UDHR: Exploring differences The reluctance to Implementation of international human rights standards in certain regions of the Muslim and Arab worlds is particularly conspicuous, especially concerning the array of rights related to the religion. In terms of Universal Declaration of Human Rights (UDHR), the core of the resistance is centered on the issues pertaining to the prohibition of discrimination on the basis of religion (Article 2), the

proscription of discrimination on base of sex (preamble, Article 2, Article 16), and of right to freedom of thought, religion and conscience (Article 18). In Islam and the Challenge of Human Rights, Abdulaziz Sachedina argues that the UDHR is failed to establish the space for Islam, and further stated that there are serious shortcomings in UDHR, namely that it is expresses an unduly secularistic view and is overly individualistic. He found that its individualism is at the root of the problem and it is culturally insensitive to Muslim social values. The most frequently invoked inconsistencies of Islam with the UDHR are: • Contrary to the principles laid down in Preamble and Article 2, Islam distinguishes among the Muslims and non-Muslims as the Allah says: “Is the one who is a believer equal before Allah to the one who is rebellious? They are not equal!

The Concept of inherent dignity and rights have roots in antiquity but modern human rights have their origin in European enlightenment. The American Declaration of independence and French revolution escalated this process. And later aftermaths of World War-II Culminated in the form of UN Charter (1945) and Universal Declaration of Human Rights (1948). The UN General Assembly by its Resolution 217 A (III) adopted the UDHR On December 10,1948. For the first time, it establishes, the basic human rights to be universally protected. In Human Rights law, the UDHR is considered as the spiritual parent and the inspiration, and is most cited document in human rights in world. The UDHR is enshrined in the many human rights instruments, treaties, and constitutions of many states (such as Pakistan). Certainly, Islam is a comprehensive way of life which has covered holistic framework that addresses various dimensions of human existence (spiritually, socially, economically). Islam is inherently in conformity with the human rights, but the source of human rights in Islam is from Allah (Quran & Sunnah). And when we speak about the human rights in Islam these are conferred by Almighty to His creatures and not those granted by human beings, and no individual, and no constitution has the authority to withdraw the rights conferred by the Allah.

A Pragmatic approach to the Contemporary World

IHRL and IHL are considered binding international legal frameworks, their enforcement mechanisms differ. IHRL relies heavily on state compliance and judicial review through domestic and international courts, while IHL enforcement often involves monitoring and enforcement by international organizations, such as the International Committee of the Red Cross (ICRC). Experts advocate for the application of IHRL standards alongside IHL to ensure comprehensive protection of human rights, particularly for vulnerable populations such as refugees, detainees, and civilians in conflict zones .There is a debate regarding potential conflicts, which arises out of the parallel enforcement of IHL and IHRL. Some argue that IHRL provides broader protection for individuals, including during armed conflict, compared to IHL. On the other hand, some argue that IHL should prevail in

situations of armed conflict, leading to potential conflicts with IHRL standards. IHRL and IHL norms, particularly in situations where IHL grants certain exceptions or derogations during armed conflict that might infringe upon human rights protections. Balancing the need for military necessity and humanitarian considerations against the protection of individual rights is a central challenge.

The contemporary issues are being the main challenge in this regard, with the increase in non-state armed groups such as Tehreek-e-Taliban-e-Pakistan (TTP) Harkat al-Muqawama al-Islamiya (HAMAS), ensuring the safety and rights of civilians remains a significant challenge, as seen recently in Israel Palestinian issue, and the restrictions on humanitarian access to conflict zones impede the delivery of aid to the civilians. The proliferation of drones, cyber warfare, and autonomous weapons raises ethical and legal questions regarding compliance with IHL principles such as distinction, proportionality, and precaution. Treatment of detainees, including issues such as indefinite detention, torture, and rendition, raises concerns about compliance with IHRL and IHL standards. The increasing number of refugees and internally displaced persons IDPs due to conflicts and persecution highlights the importance of ensuring their rights and protection. Ensuring accountability for perpetrators of war crimes, genocide, and crimes against humanity remains a challenge, particularly in cases where the international bodies remain silent on the actions of their favorites, they lack the capacity or willingness to prosecute.

Here are some aspects of a pragmatic approach to contemporary IHL and IHRL:

- Recognizing the evolving nature of conflicts and human rights violations, a pragmatic approach involves adapting legal frameworks and responses to address new challenges such as cyber warfare, terrorism, and humanitarian crises.
- Encouraging collaboration between states, international organizations, civil society, and other stakeholders to promote compliance with legal obligations, share best practices, and coordinate responses to humanitarian crises and human rights abuses.
- Prioritizing preventive measures such as diplomacy, conflict resolution, and early warning systems to mitigate the escalation of conflicts and prevent human rights violations before they occur.
- Holding perpetrators of violations of IHL and IHRL accountable through mechanisms such as international criminal tribunals, national prosecutions, and truth and reconciliation processes to ensure justice for victims and deter future abuses.
- Investing in capacity building initiatives for states, non-state actors, and civil society organizations to strengthen their ability to uphold human rights and comply with international humanitarian norms.

- Recognizing the different forms of discrimination and violence, a pragmatic approach involves addressing the inter sectionality of gender, race, ethnicity, religion, and other factors in the implementation of IHL and IHRL.
- Ensuring access to humanitarian assistance and protection for civilians affected by conflicts and disasters, including the provision of essential services such as healthcare, food, shelter, and education.

By adopting a pragmatic approach that incorporates these principles, policymakers and practitioners can better navigate the complexities of contemporary conflicts and human rights challenges while advancing the protection of individuals and communities worldwide. Addressing these contemporary issues requires effort from states, international organizations, humanitarian actors, and civil society to uphold the principles of IHL and IHRL and ensure the protection of human rights in all circumstances.

Conclusion

There are efforts to harmonize and integrate IHRL and IHL to minimize potential conflicts and ensure coherent legal frameworks for the protection of individuals in all circumstances. This includes promoting a more holistic approach to human rights and humanitarian action, emphasizing the indivisibility of human rights and the interconnectedness of IHRL and IHL principles. Overall, while there is general agreement on the importance of both IHRL and IHL in protecting human rights and promoting humanitarian objectives, the debate continues regarding their relationship, applicability, and potential conflicts in practice. Balancing the interests of states, military necessity, and individual rights remains a central challenge in ensuring effective and principled humanitarian action in situations of armed conflict.

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