

---

## **International Law and the Protection of Individuals in Armed Conflict**

**Dr. Akrem jalel**

Research Unit "Health, Ethics, Money" Faculty of Law and Political Science of Tunis, Tunisia.

---

**Abstract:** *Nowadays, we mention very frequently, the existence of a rapprochement between human rights and international humanitarian law. This reconciliation is a relatively recent phenomenon, especially since the United Nations conference in Tehran in 1968 which was a turning point in the relationship between human rights and international humanitarian law. How the mutual influence between human rights and international humanitarian law can it happen and it is beneficial to improve the protection of individuals in armed conflict?*

*We will treat this issue in two parts: the first is a historical part, the methodology is based on a contextual analysis of the mechanisms and theoretical and political foundations that have led to this convergence. The second part is more prescriptive and focuses on describing and analyzing the events in the positive law of this convergence. This division seemed necessary because we cannot separate the study of law, especially the movements that cross international law, the historical and ideological context that gave them the jour. Pour explain the law of nations, "we do may be limited to a history of standards. We must link them to a discourse that gives them a sense and an infrastructure that gives them life. "I will attach myself to show that the relationship between human rights and humanitarian law were held over 3 days. To understand the structural differences that characterized from both disciplines, it is important to trace the sources, ie their birth, their development, in order to then analyze their nature and characteristics.*

---

### **1. INTRODUCTION**

International humanitarian law is increasingly perceived as part of the right of human rights applicable in armed conflicts. To deliver humanity from the misery of war, the UN, began to call for the use of humanitarian law when considering the situation of human rights. A small historical detour is necessary in this context to grasp the changing regulations of the war. Indeed, regulate warfare is a goal that does not date from today. Ancient civilizations have conducted regulate conflicts and wars between themselves. No interest or rights were granted to others. For the Greeks, the war was conducted with moderation between cities under the authority of the arbitral Amphyctions. Subsequently, from the Middle Ages to the 18th century, it is essentially chivalric principles undertaking to regulate the war (notion of fair play). The belligerents conclude cartels: a kind of treaties establishing the status of victims of war<sup>1</sup>. In the 1787 peace treaty, the United States and Prussia agree to the mutual protection and to "the universe." No doubt the picture is dark as to the objectives of human rights during armed conflicts, hence the interest of this study that emerges through decortication entanglement in synergies points contact, convergences and divergences that herald a promising merger in favor of a more effective and operative protection both domestically and internationally. It follows from the above that although the distinction between the problem of human rights and humanitarian issues will not a priori obvious because they recognized a divergent evolution. Thus, it appears that the gap between being and having to be that human rights lie in armed conflict, would be an invitation to reflect on how their convergence or merger will build for be respected. To this end, we will consider, in the first part, the divergence as a result of separate evolution. In the second part, convergence as the seed of a revolution.

### **2. FIRST PART: THE DIVERGENCE AS A RESULT OF SEPARATE EVOLUTION**

The two distinct branches of international law, which developed in parallel from different prerequisites, saw their long devoted divergence (A), would, increasingly, challenged for better protection of the rights of individuals (B )

---

<sup>1</sup> Gardot A (1948) « Le droit de la guerre dans l'œuvre des capitaines français du 16ème siècle » Rec. des Cours. pp. 450-74.

### **2.1.A / Divergence, a Hallowed Principle**

A first distinction between humanitarian and human rights concerns their sources. Indeed, the two branches thus refer to distinct sources. Without going into the historical analysis of the two branches sources, it is striking that on the side of international humanitarian law, it is primarily the four Geneva Conventions of 1949, to which were added the two additional protocols of 1977<sup>2</sup>. On the side of human rights, particularly their internalisation draws in the adoption of dozens of agreements concluded under the aegis of the UN or its specialized agencies: the two Covenants of 1966 and the various conventions that have their succeeded<sup>3</sup>.

Another fact that demonstrates the divergence of the two branches, is the fact of the relativity of the application of human rights in armed conflicts. However, one might wonder, in this context, if respect for human rights would not it be demanded at any time and any place? In other words, he could be applied at all times and therefore necessarily in armed conflict since the philosophical basis of human rights is that everyone, in that it is human, still enjoys these rights? Indeed, the difficulty in the treaties on human rights is that most of them allow Parties to derogate from most provisions in time of war, to the exclusion of what 'commonly called the "hard core" of rights, i.e. those that all of these treaties cited as not being subject to any derogation<sup>4</sup>. On the other hand, international humanitarian law and international human rights law are "two legal constructions which, under the appearances of similarity or complementarity, belong to two different levels." As a result, both organizations (ICRC and UN) bent over their concerns separately. Notwithstanding, an intersection point is: humanity. Thus, the justification of protection in both cases refers to "mankind", the concept does not have the same meaning or the same connotation. From the perspective of humanitarian law, it is to relieve the suffering of victims, provide them with a "human" treatment that is to say, befitting their status as human beings. For human rights, they refer to rights holders individuals that are universal because humanity is one. However, protecting humanity from the suffering of the war and its excesses requires extrapolation of respect for human rights in times of armed conflict: hence the challenge to the divergence between the two branches.

### **2.2.B- The Divergence, a Contested Principle**

We can deliver us a detailed review of the similarities between the right of human rights and humanitarian law, to challenge this divergence born of their distinct evolution. We would like to support the main provisions of humanitarian law which contribute alongside human rights to protect the most basic rights. Firstly, humanitarian law is consistent with the rights of human rights on non-discrimination for victims of armed conflict. Such a rule of human rights is essential to the point that it is found expressed in almost all treaties on human rights. Surplus, much of humanitarian law is devoted to the protection of human life, which would have only a positive impact on the right to life. Second, the victims of the war can't be executed, because these people are essentially protected by the Geneva Conventions of 1949. Additional Protocol I of 1977 reinforces this protection. Indeed, human rights, which are echoed initially as abstract and universal, gradually seek the protection of categories of persons, situations or concrete and specific rights. From the other side, international humanitarian law, is a good example of a non-universal principle at first, but becomes universal over time. Indeed, first narrowly limited (wounded, sick, shipwrecked), has continued to expand its range of applications (prisoners, non-international armed conflicts, civilians ..) to cover all individuals in situations precarious and require protection. It follows that the narrowing of the broad spectrum of the first takes place simultaneously with the widening of the narrow spectrum of the second law, which has undoubtedly contributed to their further accommodation. Indicating a lack of convergence of the two branches of law, a trigger zone was triggered by the Teheran conference. The goals it has set is to be at the center of the agenda obligations to protect human rights in times of armed conflict. This conference qualified for the first time humanitarian law of "human rights in armed conflict and

---

<sup>2</sup> Which respectively relate to the protection of victims of international armed conflicts and the protection of victims of non international armed conflicts.

<sup>3</sup> the 1989 Convention on the Rights of the Child, the de1984 against Torture, de1979 one on the Elimination of All Forms Of Discrimination against Women, the 1965 on the Elimination of All Forms of Discrimination racial, that of 1948 for the suppression of genocide

<sup>4</sup> These are: the right to non-retroactivity of criminal law, the right to freedom from torture or inhuman treatment, the right to life and the right not to be placed in bondage.

declared that its principles should then prevail. Then the resolution 2444 of the General Assembly confirmed this definition and enunciated the three basic principles to be observed in armed conflict<sup>5</sup>. The results are far from achieving the ambition of the followers of human rights. However, such a resolution marked the acceleration of the movement to gather into one the three main currents of international humanitarian law-Geneva, Hague and the UN. She acknowledged interdependence, which appeared previously dotted between rules to protect the victims, combat rules of the restoration and protection of human rights.

### 3. SECOND PART: CONVERGENCE AS THE SEED OF A REVOLUTION

The Tehran Convention represented the germ of a revolution that would press the march towards convergence between international humanitarian law and human rights. Thus, we will advocate examining first, acceptance of the convergence (A) then the pitfall of this convergence (B)

#### 3.1. A-Acceptance of the Convergence

One can't study the fundamentals of this convergence without saying study the changes that have occurred in the two branches and would be a useful model for their rapprochement. In this case, the Humanitarian Law, recourse to war is no longer conceived as a code of honor for the parties to the conflict, but rather to protect civilians from the hostilities of the war<sup>6</sup>. If one agrees to think with human rights, the use of force is, in itself, a violation of human rights. The offensive part is forced to provide justifications for his behavior and now operating under the eye out to the world. This was announced at the Tehran Conference: "*Peace is the first condition of full observance of human rights and war is the negation of these rights.*"<sup>7</sup> Similarly, human rights side, the debate is lively on reports that link human rights, displaced persons and massive expatriation<sup>8</sup>. Very close contiguity mark relations between the rights of refugees with humanitarian law, population migrations resulting from the violation of humanitarian law applicable to internal or international conflict<sup>9</sup>. In addition, as a possible and desirable extension, international refugee law is bound by Protocol I and the Fourth Geneva Convention relative to the protection of civilians during armed conflicts. The name given to a new definition of refugee, is very telling in this regard invite to highlight populations mass movements<sup>10</sup>. Such an objective qualification amplify the protection provided by refugee law including those displaced<sup>11,12</sup>. In this context, the ICRC promotes the correlation between the establishment of a stable peace and cosmopolitan logic and universal respect for human incarnation of man<sup>13</sup>. In 1989, a new agreement has befallen on the international scene: the International Convention on Children's Rights (CRC). It was the first international treaty on human rights that meets the same time, refugee law, humanitarian law and human rights. For the movement of individuals on the national territory of their country, the Human Rights Commission in 1998 adopted the Guidelines on

---

<sup>5</sup> The right of injuring the enemy is not unlimited; 2-ban attacking civilian distinction 3-requirement between participants in the hostilities and civilian, to spare them.

<sup>6</sup> The right of injuring the enemy is not unlimited; 2-ban attacking civilian distinction 3-requirement between participants in the hostilities and civilian, to spare them. Almost the majority of rules of humanitarian law aimed at the protection of vulnerable subjects in time of war which justifies continuing applicability. However, in practice, such rules could not be applied, unless they are required for both parties

<sup>7</sup> Resolution XXIII of the Tehran Conference: "Protection of human rights in armed conflict"

<sup>8</sup> Degni-Segui.R. The action of African institutions for refugees in Asylum and Refugees. p. 250.

<sup>9</sup> Gowliand-Debbas.V.La international responsibility of the State of origin for refugee flows, in Asylum and Refugees. p.107

<sup>10</sup> Given the excess and obsolescence of the current definition subjective, referring to the qualification of persecution

<sup>11</sup> Trindade.A, Tratado de direito internacional dos direitos humanos. p. 398.

Council of ICRC delegates, Resolution No. 4, IRRC, 1983, No. 744, p. 311.

<sup>12</sup> Gunning.IR (1991). Modernizing Customary International Law, the challenge of Human Rights, Virginia journal of International Law.vol. 31, pp. 234-47.

<sup>13</sup> Principles on Internal Displacement within their own country - comments, , R.I.C.R., No. 831, pp.503-516.

principles including elements right under the two branches<sup>14</sup>. This plethora in the implementation of controls ends Register for the pediment a positive spin by offering the individual the freedom to choose the procedure that offers him the most favorable protection or even to combine these procedures. This coexistence, although overlaps very different world views, but could amplify the effectiveness of the international protection of the rights of the victim. In addition, humanitarian law attaches importance to the protection of family life as well as special requirements for children orphaned or separated from their families<sup>15</sup>. The latter is protected on its cohesion by preventing the separation of its members<sup>16</sup>. Respect for religious beliefs is similarly provided by humanitarian law: it advocates that prisoners of war and detained civilians may practice their religion<sup>17</sup>. In addition; ministers of religion shall enjoy special protection<sup>18</sup>. Similarly, the Geneva Conventions stipulate that the dead must be buried according to the rites and funerals of their own religion<sup>19</sup>. However, this rapprochement, highly useful in protecting human rights, could not hide some pitfalls that are marred its implementation.

### **B-pitfall of convergence**

In many situations, it is first to act with the aim of protecting human rights but, unfortunately, it leads to his transgression. Thus, the intervention of UN forces could violate humanitarian law while they attempt to restore peace<sup>20</sup>. Similarly, another critic takes support in projects for development financed by international organizations could lead to a violation of human rights by the changes they cause in the field<sup>21</sup>. It becomes intolerable and the facts do not agree with the very principles of human rights. In addition, behind the diversity of international organizations committed to bring reality in line with the law, erects the thorny issue of coordination of their actions and the consistency of the messages they specifically lead to democratic transition states<sup>22</sup>. So, one can only contemplate an unfriendly eye the influx of what can be called pitfalls or traps "military-humanitarian", designed to invoke a right intended to soften the war (*jus in bello*) or international humanitarian law, to justify the use of force against the weakest (*jus ad bellum*)<sup>23</sup>. On another backdrop, should read and understand another severe criticism which affects the links between humanitarian law, refugee law and human rights that can be taxed paradox. Indeed, these international measures due to violation of the sacrosanct principles of human rights could themselves transgress<sup>24</sup>. Thus, it is an alienation from oneself that scandalizes the economic sanctions imposed by the UN or certain States to Haiti or Cuba, justified the violation of human rights by the State subject to the embargo could be causing the mass exodus of the inhabitants of the states concerned by the measure<sup>25</sup> or cause the violation of their rights as anything

---

<sup>14</sup> Trindade.A (1987). Coexistence and co-ordination of International Mechanisms of Protection of Human Rights RCADI, Volume 202, p. 114.

<sup>15</sup> Plattner D (1984) "Child protection in international humanitarian law", IRRC, No. 747, pp. 148-61.

<sup>16</sup> Many articles mainly contained in the Third and Fourth Geneva Conventions and their Additional Protocols.

<sup>17</sup> Article 34 of the Third Geneva Convention.

<sup>18</sup> Article 93 of the Fourth Geneva Convention.

<sup>19</sup> Article 130 of the Fourth Geneva Convention.

<sup>20</sup> Ryniker A (1999). Respect for international humanitarian law by United Nations forces, IRRC, No. 836, pp. 795-805.

<sup>21</sup> Simab, Aschenbrenner JB and Schulte C (2001). Observations on human rights in regard to the development cooperation activities of the European Community, in the European Union and human rights, Bruylant, Brussels, p. 641

<sup>22</sup> Rozakis C.L (1998). Multiple institutional protection in the New European Landscape, Zeitschrift für Europarechtliche Studien, p. 491. In Chapter VII of the UN Charter, there has been a rediscovery of the concept of "just war"

<sup>23</sup> In Chapter VII of the UN Charter, there has been a rediscovery of the concept of "just war"

<sup>25</sup> Pictet. International Humanitarian Law, supra notes 1.p. 26-30.

by the precariousness of life that results<sup>26</sup>. In addition, the combination of dual use. Despite the stimulating perspective, it provides to the individual, could hurt states. Indeed, an international body might have to rule on the decision of another, leading to his goodwill, legal uncertainty for states condemned by one and not the other. Further still, a regrettable state of affairs arises because of the acceptance that the attacks "*cause incidental loss of life among the civilian population, provided that the principle of proportionality is respected*"<sup>27</sup> However, these achievements may question the observer, which is bound to note that there is no perfect solution, but renewed fighting always for the good of humanity.

---

<sup>26</sup> Segall A (1999). Economic sanctions: legal and policy constraints, IRRC, No. 836, pp. 763-784.

<sup>27</sup> Article 52 (5) (b).