SOME REFLECTIONS ON THE CONVERGENCE OF HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

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I. Introduction

Human rights law and international humanitarian law are both parts of international law. Their inception and development, though simultaneous, were also independent, and were constantly affected by social circumstances, peace and war. Ideas concerning human rights were created in peace in response to the need to improve man’s status in society. On the other hand, human suffering in times of war gave rise to ideas and actions prompted by the need to protect man² the individual and victim of war. Human rights are the common denominator of both; some may be exercised only in peace, others only in war, but the most important human rights are those exercised both in times of war and in times of peace. The rights to life and dignity of man lie at the heart of both human rights law and international humanitarian law.

It was on these foundations that the corpus of human rights was built. Its international codification departed from the fact that human rights law affects international humanitarian law and vice versa. Peace and war encourage the determination of new categories of human rights as well as their convergence. This contemporary process has evolved in circumstances marked by a fragile world peace and constant armed conflict. Some of the recognisable elements

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² The word “man” relates to both male and/or female human beings.

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of the convergent development of human rights law and international humanitarian law have provoked deliberations on their importance today and on the possibility of advancing both of these bodies of law in the future.

II. Genesis

*Human rights* were part of states’ legal systems long before they were incorporated into international legislation. The first major charters and declarations on the rights of man\(^3\) gave rise to ideas about the need to protect man and the fundamental values of human life. These ideas were defined as the rights of man during the revolutionary societal changes of the time. The rights of man have been incorporated in the constitutional norms of states since the 19th century. They are considered a benchmark of the development of civil society and civilisation in general.

The gradual creation of the corpus of human rights, which today makes up part of international law, has been one of the features of the manner in which the international community has organised itself. Human rights law is nowadays entirely related to the state of peace. At the time when the standardising of human rights began, situations such as war or other states of emergency were not conducive to the application of existing rights or the determination and acknowledgement of new rights aimed at protecting man in armed conflicts. The right to life and other values of human life in the contemporary meaning of the word appeared as a source of international law only after WWII, after mankind had confronted its atrocities and vast human casualties. This period was marked by increased international legislative activity, particularly under the auspices of the United Nations Organisation (UNO). A number of conventions and other international legal instruments regulating human rights were adopted. New lists of human rights were composed, obviously for life in a state of peace, not in a state of war. Such were the 1948 Universal Declaration of Human Rights and the 1966 Covenants on human rights, as well as many other conventions belonging to the opus of sources of international human rights law. Interestingly, although the Universal Declaration of Human Rights and the Geneva Conventions for the protection of victims of war were drafted almost simultaneously (1948 and 1949 respectively), the Declaration makes no mention of the protection of human rights in armed conflict; nor do the Geneva

\(^3\) To mention only a few of the first major charters and declarations of human rights: *The Petition of Rights* (1682); *The Habeas Corpus Act* (1679); *The Bill of Rights* (1689) and, in particular, *The Bill of Rights* of the Constitution of Virginia (1776), and *Déclaration des droits de l’homme et du citoyen* (1789).