Introduction

The History of the Relationship Between International Humanitarian Law and Human Rights Law

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1. Introduction

The relationship between human rights law (HRL) and international humanitarian law (IHL), also called the law of war, did not draw much attention until the late 1960s. In contrast, nowadays, the way these two bodies of law interact is the focus of many scholarly writings and activities. Yet, the debate remains open as to how and when they apply and interrelate. In recent years academic literature has referred to the apparent “fusing,”1 “meshing,”2 “complementarity,”3 “convergence”4 or “confluence”5 of these two areas of law.

This book aims to examine the current state of the law and the interpretations provided by various legal scholars. At the heart of the enquiry is whether the two bodies of law, IHL and HRL, have finally merged into a single set of laws.

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2. IHL and HRL as Separate and Distinct Bodies of Law

At the inception of the discussion, both corpora juris were considered separate and distinct because, as many experts claimed, they historically emerged and developed independently from each other.6 International humanitarian law developed early within public international law,7 for it predominantly regulates inter-state relations. Moreover, some of the concepts used in IHL go as far back as the Middle Ages (e.g. idea of chivalry). While IHL mainly grew via customary law,8 its first treaty codification dates back to 1864 when the Geneva Convention of August 22, 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field was drafted.9 This convention was followed by a range of treaties, each of them the product of the acknowledgment that individuals needed to be protected in times of armed conflict. Hence, as clearly stated by Cerna, IHL “evolved as a result of humanity’s concern for the victims of war, whereas human rights law evolved as a result of humanity’s concern for the victims of a new kind of internal war – the victims of the Nazi death camps.”10

Consequently, human rights law only entered the field of public international law after the Second World War. Until then human rights had been granted to individuals via bills of rights11 or, more generally, constitutional law12 and in some

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11 Examples are the Magna Carta of 1215 the U.K. Bill of Rights of 1688, the French Declaration of the Rights of Man and of the Citizens of 1789, the U.S. Bill of Rights of 1791.
12 “The demand for human rights, in the modern sense of the word, started as a liberal reaction, influenced by rationalist thinking in the 17th and 18th century, to the unfreedom caused by feudalism or monachism.” Eide, supra note 4, at 678.