
Preface

The present Handbook deals with an eminently topical and important subject-matter, namely the interplay between International Human Rights Law (HRL) and International Humanitarian Law (IHL). This turbulent subject-matter has been of increasing importance since the days of the adoption of the Universal Declaration of 1948 and the Geneva Conventions of 1949. At the beginning, it was the issues of non-international armed conflicts and the protection of civilians under Geneva Convention IV that provided fruitful avenues for interplay and interaction. Later, occupied territories entered the scene, especially when prolonged occupations took place, from 1967. Today, the manifold grey areas opened by (armed) conflicts of different types, the interplay between the conduct of hostilities and the maintenance of order in the interstices of applicable legal regimes, the issues of *jus post bellum* (including occupation law), the mandates of the UN Security Council playing on both legal grounds, and also the evolving missions of modern armies, which are not any more confined to simple combat missions ('conduct of hostilities') – all these considerations imply new reflections on the mutual impact of each of these bodies of public international law. To what extent can they cooperate without accidents and tensions? To what extent does one prevail over the other? By what means does one induce legal developments in the other? How can one provide mechanisms of implementation for the benefit of the other without endangering the integrity of each? How far can one contribute to a better understanding and interpretation of the other? All these questions, among others, posed in concrete circumstances, are today of the greatest importance to the practitioner in the field, as well as to the international lawyer, be he or she an academic or involved in legal advice. It is to these questions that the present Handbook seeks to open the way, by putting some of them under the focus of legal analysis.

The Handbook is structured in four parts.

The first part provides the historical background. It recalls the origins of HRL and IHL and retraces the various stages of the relationship of these two bodies of law. It analyses the different legal theories of the relationship of HRL and IHL and looks at the position of the individual in international law in light of these evolutions.

The second part analyses some issues of particular concern to either one or both of the bodies of international law that constitute HRL and IHL. Key human rights issues such as the applicability of HRL in armed conflicts, the extraterritorial application of HRL, the definition and scope of the human rights principle of proportionality, the question of non-state armed groups as bearers of human rights obligations and the impact of positive obligations in armed conflict situations are discussed. Some specificities common to both HRL and IHL, such as the principle of humanity or specific rules pertaining to State responsibility are also addressed. The question of the interplay between HRL and IHL is not only addressed generally but also more specifically in contributions addressing conflict rules such as the *lex specialis* principle or the most-favorable-to-the-individual rule.

The third part contains contributions showing how and to what extent there is a need for a combined approach in order to provide adequate protection for victims of armed conflicts. A sample of various topics of importance in armed conflict situations, such as the law of occupation, humanitarian assistance or enforced disappearances, are analyzed in that perspective. One contribution even suggests a new concept, that of a 'humanitarian rights' approach, in order to highlight the significance of both HRL and IHL to protect civilians in armed conflicts. Other specific issues pertaining to the role of HRL and IHL in armed conflict situations are also discussed. The question of HRL and IHL as limits to the actions of the Security Council but also as an integral part of UN activities, in the context of UN territorial administrations for example, is analyzed. The impact of HRL and IHL in agreements regulating or terminating internal armed conflicts is also addressed.

Finally, the fourth and last part is dedicated to the monitoring bodies of HRL and IHL. It shows how human rights bodies have been increasingly interested in IHL, sometimes even applying explicitly or implicitly this body of law or at least taking it into account in order to apply human rights instruments in armed conflict situations. The impact of HRL on IHL implementation bodies is also addressed, as well as the place of HRL in the context of international criminal law. Last but not least, the possibility of developing new monitoring bodies for a better implementation of IHL and HRL in armed conflict situations and the question of reparations for victims of armed conflicts are discussed.

From the various contributions, a clear trend towards *rapprochement*, complementarity, and/or mutual influence between these two bodies of law is palpable. It becomes undeniable that, today, the protection of victims of armed conflicts requires a combined approach, looking both at HRL and IHL. However, a tension is still noticeable. While some authors highlight the areas of convergence, others tend, on the contrary, to stress the enduring differences and conflicting approaches of these two bodies of law. The solutions to the conflicts between rules of HRL and IHL are all the more diverse. The richness of the contributions and the variety of approaches adopted demonstrate the continuing complexity of the interplay between HRL and IHL; a topic that continues to interest academics and practitioners alike.

I should like to close the present short Foreword by saying a word of heartfelt thanks to Dr Gloria Gaggioli for having so competently and diligently carried out all the real work in the setting up of this volume. To the publisher, we both offer our gratitude for the proposal to prepare such a Handbook and for the careful editorial work. We hope that the reader will be enriched by the contributions from so many different horizons that are compiled in this volume, and that he or she will find in the multitude of texts a great number of starting points for his or her own reflections.

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