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THE COMMON PHILOSOPHICAL FOUNDATIONS OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

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Abstract

This article explores the relationship between international humanitarian law (IHL) and international human rights law (IHRL), arguing that their current convergence reflects a return to shared philosophical and historical roots. It traces the principles of humanity and respect for human dignity to ancient moral, religious, and philosophical traditions, including early norms in ancient civilizations, Christian and Islamic thought, and Stoic philosophy. The article emphasizes that the true historical breakthrough was not the creation of these principles but their gradual extension from limited groups to a universal standard, forming the basis of modern international law.

It then examines how these ethical ideas evolved into a systematic legal framework during the Enlightenment, shaped by thinkers such as Hugo Grotius, Emmerich de Vattel, and Jean-Jacques Rousseau, and later reflected in key documents like the French Declaration of the Rights of Man and of the Citizen. In the nineteenth century, their codification in the Lieber Code and the Geneva and Hague Conventions marked the formal embedding of humanitarian and human rights principles in international law.

The article also discusses the artificial division of IHL and IHRL in the mid-twentieth century, viewing it as a result of Cold War politics rather than a fundamental contradiction. Today, this divide is narrowing, as international courts such as the International Court of Justice and the European Court of Human Rights increasingly interpret the two regimes in harmony.

Recognizing their common origins, the article concludes, is essential for applying IHL and IHRL in a complementary way, reinforcing protection, filling legal gaps, and advancing their shared purpose: safeguarding human dignity in all circumstances.

Keywords: International Humanitarian Law, IHL, International Human Rights Law, IHRL, human dignity, principle of humanity, philosophical foundations, convergence, *lex specialis*, Martens Clause, international courts.

Introduction

The relationship between international humanitarian law (IHL) and international human rights law (IHRL) is one of the most dynamic and hotly debated issues in contemporary international law. In an era defined by complex and often blurred armed conflicts, this topic extends far beyond academic debate

to become a matter of urgent practical importance. Contemporary armed conflicts-from hybrid wars that blur the lines between combatants and civilians, to prolonged military occupations, to global counterterrorism operations-clearly demonstrate the limitations of the outdated approach that viewed these two branches of law as isolated systems. For decades, the prevailing doctrine was that, in wartime, IHL acted as a special law (*lex specialis*) that superseded or significantly modified the application of human rights norms. However, this approach has proven incapable of adequately responding to today's challenges when applied in practice, creating significant gaps in legal protection and increasing uncertainty for states, international organizations, and most importantly, people caught in the epicentre of armed conflict.

This issue's relevance is heightened by the fact that international courts, from the UN International Court of Justice to the European Court of Human Rights, increasingly deal with cases at the intersection of these two legal regimes. Their jurisprudence advances the discussion but simultaneously highlights the risks of international law fragmentation if different courts' approaches are not coordinated. This uncertainty creates practical difficulties for states: What rules should be followed when detaining individuals during foreign military operations? How can military necessity be balanced with fundamental human rights in occupied territory? How can the armed forces be trained to act effectively while adhering to fundamental human rights standards? Answers to this question require clear and consistent legal regulations. However, this problem is most acute from a human perspective. For example, for the victims of armed conflict, legal disputes over the precedence of norms mean the difference between life and death, or protection and lawlessness. Any gap resulting from inconsistencies between international humanitarian law (IHL) and human rights law creates a vacuum of protection, leaving individuals unprotected at the very moment when they need protection the most. Therefore, overcoming the artificial division between these branches and ensuring their harmonious, complementary application is a priority, not just a legal task.

To propose solutions to these pressing contemporary problems, we must go beyond a technical analysis of legal norms and explore their shared historical and philosophical roots. Recognising that both branches of law stem from the same source – the principles of humanity and respect for human dignity – allows us to reevaluate their interaction and establish a foundation for a more comprehensive and effective protection system. This article argues that their shared origins are key to their future harmonious application.

Materials and Methods

The relationship between IHL and IHRL law is a widely discussed topic in contemporary scholarship. Most authors analyse their interaction in the context of modern armed conflicts, focusing particularly on debates concerning the concept of *lex specialis* and the harmonising role of international judicial institutions. Another group of sources examines the history of the formation and development of IHL or IHRL, analysing the key stages of their codification. However, comprehensive studies tracing the common philosophical and historical roots of both branches of law and viewing them as a single evolutionary process from ancient ideas to modern jurisprudence remain rare. This prompts us to ask: What common ideological foundations underlie IHL and IHRL, and how does understanding this shared heritage alter our perception of their current convergence?

Our analysis focuses primarily on international treaties that serve as sources of IHL and IHRL. These include the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949, and their Additional Protocols, as well as the Universal Declaration of Human Rights. A significant part of the study involves analysing how these norms are applied by international judicial and quasi-judicial institutions, including the International Court of Justice, the European Court of Human Rights, and the International Criminal Tribunal for the former Yugoslavia. Particular attention is given to analyzing fundamental philosophical and legal treatises that formed the doctrinal foundations of both branches. These include the works of Cicero, Hugo Grotius, Emmerich de Vattel, and Jean-Jacques Rousseau, as well as key historical legal documents, such as the Codex Liber, the English Bill of Rights, and the French Declaration of the Rights of Man and of the Citizen.

Results and Discussion

The idea of limiting the cruelty of war and protecting human dignity is not a modern invention, but rather an ancient and cross-cultural phenomenon deeply rooted in the moral, religious, and philosophical traditions of humanity. Ancient civilizations, despite frequent and destructive wars, developed norms aimed at setting certain limits on violence. For example, the ancient Indian epic Mahabharata contains clear prohibitions on the use of "destructive" weapons, as this was considered immoral and contrary to the accepted

rules of warfare (Singh, 2021, pp. 27–28). Similar restrictions existed in the practice of Greek city-states, where temples, priests, and ambassadors were considered inviolable, and mercy towards the defeated, although not always observed, was recognized as a virtue (Bederman, 2001, pp. 14–15). The philosophical basis for a universal approach to humanity was laid by the Stoics, who developed the idea of common humanity (*koinonia*) and natural law, which applies to all people. Cicero, drawing on Stoic philosophy and the Roman legal tradition of *ius gentium* (the law of nations), formulated the conditions for a just war in his works *De re publica* and *De officiis*, clearly distinguishing for the first time between *jus ad bellum* (the right to war) and *jus in bello* (the rules of warfare) (Bederman, 2001, pp. 34–35). He insisted that "no war is considered just unless it has been declared and compensation has been demanded" (Cicero, 1913, *I*, para. 36), thus laying the foundations for the future tradition of just war, which required not only a just cause, but also compliance with certain procedures and restrictions in the war itself.

With the spread of Christianity, theological thought also made a significant contribution to the development of humanitarian ideas. St. Augustine and later Thomas Aquinas, in developing the doctrine of just war, emphasized that even in a just war, violence must be limited, and the goal of war must be to restore peace and justice, not blind revenge or destruction. At the same time, the Islamic world developed its own system of laws of war, known as *Siyar*. This branch of Islamic law contained detailed rules governing relations with other peoples, particularly during armed conflicts. Siyar established clear prohibitions on the killing of non-combatants and civilians, including women, children, and the elderly, the destruction of property that had no military significance, and required the humane treatment of prisoners (Khadduri, 1955, pp. 102–112). In his instructions to soldiers, the Prophet Muhammad urged: "Do not kill old people, children, or women... Do not destroy palm trees or burn them, do not cut down fruit trees" (as cited in Weeramantry, 1997, p. 136). These norms demonstrate the existence of a developed humanitarian tradition that arose independently of the European one but was based on similar principles of protecting human life and dignity. In medieval Europe, the code of chivalry, although elitist and applicable mainly to representatives of the military aristocracy, also played a role in the formation of humanitarian customs. Chivalry required adherence to certain rules of combat, respect for opponents of equal status, and mercy towards the defeated. The practice of ransoming captured knights, unlike the killing of commoners, created an economic incentive to preserve life (Bederman, 2001, pp. 26-27). Despite their limitations, the ideals of chivalry contributed to the spread of the idea that war is not a state of absolute anarchy, but should be regulated by certain codes of honor and professional ethics.

An analysis of these early sources reveals an important pattern: the existence of humanitarian principles did not guarantee their universal application. These norms quite often coexisted with practices of extreme cruelty. Chivalry protected knights, but not peasants; the doctrine of just war was used to justify cruel crusades; the Greeks recognized certain rights for other Greeks, but not for "barbarians." The key variable was the scope of application of these norms, which was limited to a specific community-religious, cultural, or social. The principles were applied selectively to "their own," while "outsiders" remained outside the scope of legal protection. Thus, the long history of the development of both humanitarian law and human rights is not so much a history of the invention of humanitarian principles and the principle of respect for human dignity as it is a history of the gradual and painful expansion of their scope of application (Authoritative source not found). The real revolution of modern IHL and IHRL lies in the affirmation of the principle of universality – the idea that these protective norms apply to all people without any adverse discrimination. This principle found its most vivid expression in the common Article 3 of the 1949 Geneva Conventions, which became the minimum humanitarian standard applicable to everyone everywhere (ICRC, 1949).

The early modern era and the Age of Enlightenment marked a transition from abstract moral principles and customs to a more systematic, secular legal framework that conceptualized a universal "community of states" governed by international law. At the center of these changes was Hugo Grotius, who, in his seminal work *De Jure Belli ac Pacis* (On the Law of War and Peace), drawing on classical heritage and humanistic thought, attempted to create a comprehensive system of international law independent of theological dogma (Grotius, 1625/2004). He distinguished between natural law (*jus naturale*), which derives from human reason, and the voluntaristic law of nations (*ius gentium voluntarium*), which is based on the consent of states. Grotius argued that even in the absence of a supranational sovereign, relations between states are governed by law, and that "there are laws of war, just as there are laws of peace" (Grotius, 1625/2004, Prolegomena, para. 28). He systematized the causes of just war and, more importantly, justified the need for moderation (*temperamenta belli*), calling for the humane treatment of prisoners and the protection of civilians,

based not only on law but also on the principles of humanity and honor (Grotius, 1625/2004, Book III, Ch. 11). Grotius' ideas were developed by Enlightenment thinkers. Emmerich de Vattel, in his work *Le Droit des Gens* (de Vattel, 1797), systematised and popularised the concept of law governing relations between sovereign states (de Vattel, 1758/1797). Vattel clearly distinguished between the "necessary" law of nations, based on natural law, and the "arbitrary" law, which derives from custom and treaties. He argued that although the sovereign is the sole judge in his own affairs, he is nevertheless obliged to adhere to the principles of humanity, since "even in war, humanity must not forget itself" (de Vattel, 1758/1797, Book III, § 137). At the same time, Jean-Jacques Rousseau, although pessimistic about the possibility of establishing lasting peace between states, made a significant contribution to the formation of the idea that rights are inherent in the human personality and are not granted by the state with his theories of social contract and natural human rights. His concept of war as a relationship between states, rather than between individuals, indirectly contributed to the development of the idea of protecting the civilian population (Rousseau, 1762/1968, Book I, Ch. 4). The culmination of these philosophical explorations was their codification in national legal acts at the end of the 17th and 18th centuries. The English Bill of Rights of 1689 established restrictions on royal power and enshrined certain rights of subjects, in particular the prohibition of "cruel and unusual punishments" (UK Parliament, 1689). The American Declaration of Independence of 1776 proclaimed as "self-evident truths" that "all men are created equal" and endowed with "inherent rights," including "life, liberty, and the pursuit of happiness" (The U.S. National Archives and Records Administration, 1776). The French Declaration of the Rights of Man and of the Citizen of 1789, which became the preamble to the first constitution, proclaimed that "men are born and remain free and equal in rights," and that the purpose of any political association is "to preserve the natural and inalienable rights of man: liberty, property, security, and resistance to oppression" (National Assembly of France, 1789). These documents were revolutionary. For the first time in history, they enshrined the ideals of the Enlightenment as norms of positive law, establishing the principle that state power is limited by the inherent dignity of the individual. It was this domestic legal culture, which recognized the primacy of human rights, that created the intellectual and political foundation from which international protection mechanisms later grew.

The nineteenth century witnessed a decisive transition from philosophical principles and unwritten customs to codified, binding international law. This process was largely triggered by the experience of modern industrial wars, whose brutality demanded clear and universal rules. The turning point in this evolution was the 1863 Lieber Code. Compiled by Francis Lieber at the request of President Abraham Lincoln for the US Army during the Civil War, this document became the first comprehensive codification of the laws and customs of war (ICRC, 1863). The code, entitled "Instructions for the Government of Armies of the United States in the Field," was the result of the practical implementation of the ideals of the Enlightenment, in particular the works of Vattel, and represented a unique synthesis of philosophy and military practice. Article 16 of the Code proclaimed: "Military necessity does not permit cruelty, that is, inflicting suffering for the sake of suffering or for the purpose of revenge... it does not permit the use of poison in any way, nor the deliberate devastation of the country" (ICRC, 1863, Art. 16). The Lieber Code became the bridge that translated abstract human rights philosophy into concrete operational rules for soldiers, clearly balancing the requirements of "military necessity" and "humanity." Its influence extended far beyond the American conflict, inspiring many countries to create their own military statutes and becoming a model for future international codifications. The next step was the conclusion of the first Geneva Convention (Swiss Federal Archives, 1864). The immediate impetus for its creation was the shocking experience of Swiss entrepreneur Henri Dunant on the battlefield at Solferino. The Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field was revolutionary in nature. It enshrined the principles of impartial assistance to wounded soldiers regardless of their affiliation with the parties to the conflict, as well as the neutrality and protection of medical personnel, hospitals, and equipment marked with the emblem of a red cross on a white background (Swiss Federal Archives, 1864). This treaty marked the birth of modern IHL as a multilateral treaty regime based on the principle of humanity. The logical continuation of this process was the St. Petersburg Declaration of 1868 (ICRC, 1868) and the documents adopted at the Hague Peace Conferences of 1899 and 1907 (ICRC (II), 1899; ICRC, 1907). While the Geneva Convention focused on the protection of war victims (*droit de Genève*), the Hague Conventions aimed to codify the rules of warfare (*droit de la Haye*), regulating the means and methods of war. They prohibited the use of certain types of weapons, such as bullets that easily turn or flatten in the human body, and established rules for the treatment of prisoners of war, bombing, and military occupation. Of particular importance was the so-called "Martens reservation," included in the preamble to the Hague Convention II

of 1899 and Convention IV of 1907. It proclaimed that in cases not covered by treaty provisions, "civilians and combatants remain under the protection and scope of the principles of international law derived from the customs established among civilized nations, from the laws of humanity, and from the dictates of public conscience" (ICRC, 1907, Preamble). This caveat is extremely important because it directly links positive law to its unwritten humanitarian foundation, recognizing that even in the absence of a specific prohibition, the actions of the parties to the conflict are limited by higher principles of humanity. It serves as a "safety valve" against the argument that anything not expressly prohibited is permitted, and confirms that the spirit of humanity is an integral part of the law of armed conflict (Ticehurst, 1997).

Despite the creation of the League of Nations and certain efforts in the field of international cooperation, the interwar period did not bring significant progress in the development of international human rights law at the universal level, although certain steps were taken to protect the rights of minorities. At the same time, two new Geneva Conventions were adopted in 1929, one of which concerned the treatment of prisoners of war, which was a reaction to the experience of World War I (ICRC, 1929). However, the real catalyst for the creation of modern IHL and IHRL regimes was the unprecedented horrors of World War II. The systematic extermination of civilians, the Holocaust, the cruel treatment of prisoners of war, and the destruction of entire cities demonstrated the glaring inadequacy of existing legal norms and gave rise to a powerful political will to create a new, more effective international legal order based on respect for human dignity. This momentum led to the parallel but institutionally separate development of two major legal systems. On the one hand, in 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (the Declaration) (United Nations, 1948). An analysis of its preparatory materials (*travaux préparatoires*) reveals profound philosophical debates and the desire of its drafters to create a "common standard of achievement for all peoples and all nations" based on "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family" (Morsink, 1999, p. xxix). The Declaration became the cornerstone of the modern human rights regime, proclaiming the universality and interdependence of all human rights – civil, political, economic, social, and cultural. On the other hand, almost simultaneously, in 1949, four Geneva Conventions were adopted at the Diplomatic Conference in Geneva (ICRC, 1949). This process was a direct response to the gaps in IHL identified during World War II. The first three conventions updated and expanded the protection of the wounded, sick, shipwrecked persons, and prisoners of war. The fourth convention was a real breakthrough, as it established for the first time in history a comprehensive regime for the protection of civilians during war and occupation.

The political context of the beginning of the Cold War and different views on the role of the state in relations with individuals led to these two projects – human rights and humanitarian- developing separately, creating an artificial legal divide between ideologically related systems. However, even at the moment of this formal separation, the inextricable link between them was evident. The clearest evidence of this is the common Article 3 for all four Geneva Conventions. This provision, often referred to as the "miniature convention," was a revolutionary step, as it extended fundamental humanitarian principles to non-international armed conflicts, which had previously been considered exclusively an internal matter for states. The ICRC commentary emphasizes that this article "should be regarded as an expression of the fundamental principles of humanity that underlie all four Conventions" (ICRC, 2016, para. 490). Common Article 3 prohibits "at any time and in any place" attacks on life and physical integrity, taking hostages, attacks on human dignity, and condemnation without due process of law of persons who are not actively participating in hostilities. In essence, this is a list of basic human rights incorporated into the core of humanitarian law. Thus, Common Article 3 serves as a bridge demonstrating the inseparable link between the two branches of law, even during the period of their greatest formal separation. The process of formal reconvergence began with the adoption in 1977 of two Additional Protocols to the Geneva Conventions. Additional Protocol I, which concerns international armed conflicts, largely reflects the influence of the human rights movement. In particular, its Article 75, "Fundamental Guarantees," contains a detailed list of rights granted to persons under the authority of a party to the conflict, and in its content and wording resembles the provisions of the 1966 International Covenants on Human Rights (United Nations, 1977, Art. 75). It guarantees the right to humane treatment, prohibits discrimination, torture, and collective punishment, and establishes detailed judicial guarantees. The inclusion of such a provision in a key instrument of IHL was a clear recognition that the protection of human dignity is a common task of both legal regimes.

The practical application of this principle was demonstrated in the UN ICJ ruling in the case *Armed Activities on the Territory of the Congo (DRC v. Uganda)*. The Court found Uganda responsible for violations

of both IHL and the ICCPR as the occupying power in the province of Ituri. The Court found that Uganda had failed to fulfil its obligations to protect the civilian population from violence and had violated a number of human rights, in particular the right to life and the prohibition of torture (International Court of Justice, 2005, paras. 205-220). This decision clearly showed that states are simultaneously responsible under both standards and that IHL establishes a minimum standard of protection that cannot be lowered even during occupation (Lysyk, & Shperun, 2024, p. 22). Regional human rights courts have also joined this process. The European Court of Human Rights in the case of *Hassan v. the United Kingdom* considered the issue of detention during the armed conflict in Iraq. The Court recognized that the European Convention on Human Rights continues to apply during armed conflict, but its provisions, in particular Article 5 on the right to liberty and security, must be interpreted in light of IHL norms. The Court did not apply a simple *lex specialis* approach, but instead used IHL as a tool to interpret the scope of obligations under the Convention, which allowed for the harmonization of the two legal regimes (HUDOC, paras. 102-104). This approach demonstrates that IHL is not an obstacle to the application of human rights, but rather a contextual framework for their understanding. The interaction between these two branches of law is not static or unidirectional. Courts use IHRL to interpret and expand the scope of IHL, as the ICTY did in the *Tadić* case, extending protective norms to non-international conflicts (International Criminal Tribunal for the former Yugoslavia, 1995). At the same time, they use IHL to determine the specific content of human rights obligations in wartime. For example, the prohibition of arbitrary deprivation of life under IHRL in the context of hostilities is interpreted through the lens of IHL rules on target selection and the principle of distinction. This creates a dynamic normative feedback loop. IHRL provides a universal normative framework and language of human dignity, prompting IHL to provide broader protection. In turn, IHL provides context-specific, operational rules that give practical meaning to human rights in the extreme circumstances of war. They do not simply complement each other; they are mutually constitutive in the context of armed conflict. Understanding this dynamic interaction is key to the consistent and effective application of international law norms aimed at protecting human rights.

Conclusions

Thus, it can be stated that, by covering the evolution of humanitarian ideas from ancient religious and philosophical doctrines to the contemporary jurisprudence of international courts, it convincingly demonstrates that international humanitarian law and international human rights law originate from a common ideological source: the principle of humanity. Based on the recognition of the inherent dignity of every human being, this principle has served as a moral compass, guiding the development of norms that limit violence and protect individuals. Historical and legal analyses show that the artificial separation of these two branches of law in the mid-20th century was due to the specific political context of the time rather than a fundamental ideological divide. This separation reflected the tension between state sovereignty and universal rights rather than a difference in ultimate goals. The current trend toward convergence, actively promoted by international judicial bodies, is a restoration of a holistic vision of the human rights protection system – a return to common roots, not an innovation. Recognizing this common origin has important practical implications. It allows the two legal regimes to fill in each other's gaps and mutually reinforce their protective mechanisms, promoting a more harmonious and consistent interpretation of international law. IHRL provides IHL with a universal ethical foundation and an effective control mechanism, while IHL provides IHRL with specific operational rules for application in the extreme conditions of armed conflict. Ultimately, the goal of international law, both in peacetime and wartime, is to protect human dignity – a principle rooted in humanity.

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