**Joshua**

Traditionally humanitarian law is applied in situations of non-international armed conflict and the use of force in situations of occupation (Alexander, 2015). Humanitarian law, according to Alexander (2015), “aims to protect persons who are not or are no longer taking part in hostilities, the sick and wounded, prisoners and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities” (para. 5). However, as Dr. Droege (2008) concludes it can be difficult to discern whether an individual is a civilian or a member of the armed forces during both situations. What Droege (2008) means is that in these situations, do members of the military count as civilians or those who can be attacked and how does one discern, especially for those who have a permanent function as one that is charged with carrying out actions of hostilities. The precedent set by the Inter-American Commission has determined that members of the military cannot switch back and forth between combatant and civilian status, meaning that members of the military are not subject to the humanitarian law in situations of non-international armed conflict and the use of force in situations of occupation (Droege, 2008). Yet, there is a further problem of distinction when those committing acts of hostility are insurgents or terrorists. In these cases, human rights law has taken precedence (Droege, 2008). When insurgents or terrorists can be arrested instead of killed, the preference is not to kill them especially when they are located near residences or are some distance from traditional war zones (Droege, 2008). Droege (2008) concludes that humanitarian law and human rights law can no longer remain separate, but yet the different features of both of these laws should remain distinct in order to offer the most protection to all individuals during armed conflict. While the application of humanitarian law in these situations would maintain the tradition, nations run the risk of making mistakes when determining whether someone is serving in the capacity of a civilian or a combatant. The same situation would occur if human rights law is considered customary. A clear definition of what scenarios would result in civilian versus combatant status or a clear and firm distinction between civilian and combatant status is needed in either case.

References

Alexander, A. (2015). A short history of International Humanitarian Law, European Journal of

            International Law, 26(1), 109–138, https://doi.org/10.1093/ejil/chv002

Droege, C. (2008). Elective affinities? Human rights and humanitarian law. International Review

            of the Red Cross, 90(871), 501-548.

**Avon**

What law controls in situations of non-international armed conflict and in the use of force in situations of occupation? Of course it is both the Human Right Law and IHL (International Humanitarian Law), according to Droege, humanitarian law is generally the lex specialis in relation to human rights law, and two situations are more problematic: the use of force in non-international armed conflict; and the use of force in situations of occupation, where human rights have an important role to play (Droege, 2008). My thoughts are that these two laws are categorical but interdependent bodies of law**.**What isn’t in one law, is obviously covered in the next. However, non-international armed conflict and the use of force in situations of occupation is explicitly covered under the IHL (Droege, 2008). Both the Human Right Law and the International Humanitarian Law are enforced under the Geneva Convention. The Geneva Conventions is a body of Public International Law (Jurkowski, 2017). The Geneva Convention was entrusted to the ICRC, through the Statutes of International Red Cross and Red Crescent Movement. The ICRC takes this opportunity to present the prevailing legal opinion on the definition of international armed conflict and non-international armed conflict under International Humanitarian Law, the branch of international law which governs armed conflict (International Committee of the Red Cross (ICRC, 2008).

Do you agree with Dr. Droge's conclusion? I would have to say yes and no. We are totally in agreement when Dr. Droge's said these two bodies of law, which were not originally meant to come into such close contact, but will live in harmony and there is no going back to a complete separation of the two realms (Droege, 2008). I disagree with him when he said international humanitarian law, which is not conceived around individual rights (Droege, 2008). Simply because, the IHL (International Humanitarian Law) and HRL (Human Right Law) exist primarily to improve the treatment of individuals during armed conflicts (International Committee of the Red Cross (ICRC, 2008).

Issues with International Humanitarian Law

International humanitarian law (IHL) outlines the limitations and restrictions of parties engaged in armed conflict, both international and non-international. While IHL does not prohibit all violence, it does seek to limit the harm and violence caused during situations of conflict (Diakonia, 2013).

Things to remember about IHL.

IHL only applies during armed conflict (Diakonia, 2013).

IHL does not decide on the legality of a conflict (Diakonia, 2013).

IHL is based on a balance between humanitarian and military considerations;

 IHL does not prohibit all violence;

The central modern conventions of IHL are the Geneva Conventions of 1949;

In general, international armed conflict – between states - is much more heavily regulated that internal or non-international armed conflict (Diakonia, 2013).

An Issue with International Human Right Law

International human rights law are caused by the role of authoritarian states who use well-intentioned institutions to influence enforcement and legitimize practices of repression (Amsterdam, 2010).

Benefit of International Human Right Law

International human rights law is the body of international law intended to promote and protect human rights at the international and domestic levels (Diakonia, n.d.).

Benefit of International Humanitarian Law

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict (ICRC, 2004).

Does your answer change if human rights law is viewed as customary law? Somehow I don’t so, because, treaty law and customary international law are sources of international law. Treaties, such as the four Geneva Conventions of 1949, are written conventions in which States formally establish certain rules. Treaties bind only those States which have expressed their consent to be bound by them, usually through ratification (International Committee of the Red Cross, 2005). Customary international law, on the other hand, derives from a general practice accepted as law. Such practice can be found in official accounts of military operations but is also reflected in a variety of other official documents, including military manuals, national legislation and case law. The requirement that this practice be accepted as law is often referred to as opinio juris. This characteristic sets practices required by law apart from practices followed as a matter of policy, for example (International Committee of the Red Cross, 2005). In principle, there is no difference in the enforcement of treaty law and customary international law, as both are sources of the same body of law (International Committee of the Red Cross, 2005).

References

Amsterdam, R. (2010, March 15). Retrieved from The Limitations of International Human Rights Law: https://robertamsterdam.com/the\_limitations\_of\_international\_human\_rights\_law/

Diakonia. (2013, October 30). *Diakonia*. Retrieved from Understanding IHL: https://www.diakonia.se/en/IHL/The-Law/International-Humanitarian-Law-1/Introduction-to-IHL/

Diakonia. (n.d.). *Diakonia*. Retrieved from International Human Rights Law: https://www.diakonia.se/en/IHL/The-Law/International-Human-Rights-Law/

Droege, C. (2008). Elective affinities? Human rights and humanitarian law. 527.

ICRC. (2004). What is International Humanitarian Law? *ICRC*, 1.

International Committee of the Red Cross (ICRC). (2008). How is the Term "Armed Conflict" Defined in International Humanitarian Law? *International Committee of the Red Cross (ICRC)*, 1.

International Committee of the Red Cross. (2005, August 15). *International Committee of the Red Cross*. Retrieved from Customary international humanitarian law: questions & answers: https://www.icrc.org/en/doc/resources/documents/misc/customary-law-q-and-a-150805.htm#a1

Jurkowski, S. (2017, June). *Legal Information Institute*. Retrieved from Geneva Convention: https://www.law.cornell.edu/wex/geneva\_conventions