

And finally, the Law of New York (UN) refers to more recent issues such as war criminals and atomic warfare. While the merger of the three strands⁴⁸ has been a constant evolution, General Assembly Resolution 2444 (Dec. 1968) speeded up their amalgamation along with the clear indication that their common theme was that of protecting human rights in armed conflicts.

It is increasingly academic to differentiate between the fundamentals that underpin the laws of Geneva, The Hague, and New York. They may deal with different aspects of the law of armed conflict, but their driving force and focus, the protection of human rights in armed conflict situations, are identical. So too, there is not a lot of benefit in trying to differentiate between the fundamentals that underpin both international human rights law, and the law of armed conflict⁴⁹. Arguably the law of armed conflict increasingly will be seen as a specialized subset of international human rights law. However, that debate can certainly wait and will probably be more illuminated by others as they proceed to analyse field experience such as in the former Yugoslavia or Rwanda, where human rights people and law of armed conflict people worked concurrently if not always hand in hand.

However, it is interesting to look at the utilitarian theme that is generally ascribed to the law of armed conflict, that of preventing unnecessary suffering during armed conflict. This explains much of the convergence of first the Hague, Geneva, and New York laws, and their convergence with international human rights law. Torturing prisoners for intelligence or using biological weapons, could well be necessary to win an armed conflict. Yet such actions have become illegal, and the reason is that the world has decided that there are certain standards of behaviour that are unacceptable in any armed situation. In other words, there are a whole range of basic protections for individuals that cannot be derogated from in any situation of armed conflict, and a rare few that can only be derogated from in extreme cases. This is much akin to human rights terminology such as fundamental rights and limited derogations to those fundamental rights. The issue of derogation however, does remain a major differentiation between the law of armed conflict and international human rights law.

Even assuming a fundamental commonality between international human rights law and the law of armed conflict, ie. protecting individual's rights, international human rights law provides substantial scope for derogation. International human rights law has the added weakness of a less than strenuous identification of which rights are both universal and fundamental so as to be non derogable in any situation. This is particularly so at the edges of 'fundamental rights', as rights start to incur a social or cultural determinate as to their interpretation and applicability. For example, is whipping an acceptable judicial punishment?, can parents hit children?, or can states use the death penalty? The law of armed conflict on the other hand is

⁴⁸ Two useful books that bring some of the strands together, see an academic analysis by Fritz Kalshoven, *Constraints on the Waging of War*, ICRC, Geneva, 2nd Ed. 1991, pp. 175, and for a field commander's handbook with recommendations for action and behaviour see Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC 1987, pp. 257.

⁴⁹ For a short introduction into some of the logic of this convergence see Asbjørn Eide, *The laws of war and human rights - Differences and convergences*, pp. 675-97, in *Studies and essays on international law of armed conflict and Red Cross principles*, C. Swinarski ed., ICRC, Geneva 1984, Martinus Nijhoff Publishers.