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Convergence of International Humanitarian Law and International Human Rights Law in Armed Conflicts

Konwergencja międzynarodowego prawa humanitarnego i prawa międzynarodowego praw człowieka w konfliktach zbrojnych

ABSTRACT

The article concerns the convergence of international humanitarian law and international human rights law in armed conflicts. International humanitarian law and human rights law converge and permeate each other because both these disciplines of public international law are founded on natural law. Although international humanitarian law constitutes a *lex specialis*, the general rules on the interpretation of treaties clearly indicate that international human rights law must be interpreted in the context of other rules of international law, and its derogations, if any, must be compatible with other international obligations of the state, including with humanitarian law. Where a conflict arises between international humanitarian law and international human rights law, the mechanism for resolving conflicts between norms has been supplemented by the International Court of Justice by applying an interpretation based on the principle of systemic integration, resulting in the "humanization" of international humanitarian law. As regards the application of universal and regional instruments of international human rights law, we face a "humanization" of them. That is why more and more attention is paid in practice to the complementarity of international humanitarian law and international human rights law, and this is confirmed in United Nations discussions and resolutions on the situation in armed conflicts.

Keywords: international humanitarian law; international human rights law; armed conflict; complementarity; principle of systemic integration

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INTRODUCTION

Members of the international community increasingly argue that human rights, democracy and socio-economic development are all interdependent. If human rights are not respected, it will be impossible to preserve global peace and security. It should therefore be proposed that although international humanitarian law and international human rights law are still considered two different branches of international law, their dichotomy is currently being more and more discussed. This paper seeks to examine to what extent it is about a variety of forms of armed conflict and to what extent it is the case of militarisation of the internal security management of states.

The issue of convergence of international humanitarian law and international human rights law is extremely important in the practice of law application and enforcement by states and international organizations. This is so because the vagueness and even gaps in the provisions of international humanitarian law with regard to non-international armed conflicts, protection of refugees, displaced persons, victims of natural disasters and other emergencies, as well as situations of tensions, military occupation and new forms of transnational combat against various threats or terrorism made it necessary to cover such situations by the system of international human rights law.

To examine the peculiarities and scope of the convergence of the two branches of law, the legal dogmatic method, the comparative method and the analysis of the current case law of international bodies and committees were used. These methods make allow us to verify if and to what extent international humanitarian law and international human rights law are slowly converging, interweaving and even, to a small extent, overlapping, since both of these branches of international law are based on natural law and the concept of international community within which a human person holds a prominent position as a subject of law.

RESEARCH AND RESULTS

1. Purpose and subject of international humanitarian law and international human rights law

International humanitarian law and international human rights law take as their common foundation the respect for the human person, their dignity and inalienable rights.[1] Of fundamental importance for the protection of human rights in the UN

[1] K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *Prawo międzynarodowe praw człowieka*, Warszawa 2022, pp. 276–277; K. Orzeszyna, *The Right to a Natural and Dignified Death*, "Studia Iuridica Lublinensia" 2020, vol. 29(4), p. 221.

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system is the UN Charter,[2] which points to the interdependence between peace, development and human rights, while the obligations of UN members to cooperate internationally in pursuit of the UN's goals and values provided the appropriate framework and possibilities for action.[3] International or non-international conflicts dealt with by the UN since 1960 have often provided an opportunity for the UN General Assembly, the Security Council or the Commission on Human Rights, and now the Human Rights Council, to recommend that warring parties apply international human rights and international humanitarian law jointly and simultaneously.[4] At the first United Nations Conference on Human Rights in Tehran in 1968, Resolution XXIII "Human Rights in Armed Conflicts" was adopted, in which it was noted that "peace is the underlying condition for the full observance of human rights and war is their negation".[5] The participants of the Conference concluded that the implementation of international humanitarian law was the best guarantee for the protection of fundamental rights in armed conflict situations. Resolution XXIII was subsequently reaffirmed by the United Nations General Assembly in Resolution 2444 (XXIII) of 1968 with the same title. On the basis of that resolution, the Secretary-General of the United Nations prepared two reports in 1969 and 1970 on measures to be taken to enhance the protection of individuals during armed conflicts. Then the General Assembly adopted Resolution 2675 (XXV) of 1970, in which it called for human rights to be respected during armed conflicts and reaffirmed that "fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict". A kind of culmination of the efforts related to the convergence of international human rights law and international humanitarian law were the Additional Protocols to the Geneva Conventions of 1949, including in particular the provisions of Article 75 of the First Additional Protocol of 1977, which contains fundamental guarantees explicitly referring to human rights.[6] In view of the above, there is a convergence of the content of human rights and humanitarian law that states are obliged to respect.

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[2] Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

[3] K. Drzewicki, *Prawa człowieka w Karcie NZ i w Powszechnej Deklaracji Praw Człowieka*, "Sprawy Międzynarodowe" 1998, no. 3, p. 13.

[4] M. Bettati, *Droit humanitaire*, Paris 2012, p. 58.

[5] Resolution 2444 (XXIII) adopted by the International Conference on Human Rights, Tehran, 12 May 1968: Human Rights in Armed Conflicts, [w:] Final Act of the International Conference on Human Rights, UN Doc A/CONF 32/41, New York 1968, p. 18, https://digitallibrary.un.org/record/701853 (access: 25.8.2023).

[6] See A. Szpak, *Międzynarodowe prawo humanitarne*, Toruń 2014, pp. 410–411; G. Oberleitner, *Humanitarian Law as a Source of Human Rights Law*, [in:] *The Oxford Handbook of Human Rights Law*, ed. D. Shelton, Oxford 2015, p. 291.

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International humanitarian law does not contain a prohibition of the application of rules of other branches of international law when these can provide better protection.[7] Under general international law, an armed conflict is not the reason for termination or suspending human rights agreements (treaties), as confirmed by the draft articles of the Committee on International Law on the impact of armed conflicts on the validity of agreements (treaties).[8] The purpose of international humanitarian law is to promote civilized conduct during armed conflicts. It aims to "control the damage" caused by war, not to ban it at all. Hence its area of application is practically reduced to the battlefield.[9] As is the case in international human rights law, international humanitarian law also incorporates the principle expressed in Article 27 of the Fourth Geneva Convention of 1949, which provides that "all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion".[10] International humanitarian law is positioned from the very beginning as a global and universal law, even if the subsequent transposition of its norms into national law gives it a somewhat new territorial dimension.[11] Its sources are rooted in religious and knighthood values that required honour, loyalty and protection for the weaker. They often refer to the idea of "civilization" as opposed to "barbarity".

International case law points to important elements on how to apply and supplement international humanitarian law and international human rights law. It is therefore about a certain evolution towards abandoning the legal arguments preventing the simultaneous application of international humanitarian law and international human rights law in the context of the ongoing war against terrorism.[12]

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[7] Article 75 (8) of the First Additional Protocol to the Geneva Conventions of 1949.

[8] See the articles adopted at first reading by the International Law Commission, including in particular Article 5 and the Annex thereto: Report of the International Law Commission, 60th session (5 May – 6 June and 7 July – 8 August 2008), A/63/10, pp. 80–135.

[9] M. Bettati, *op. cit.*, p. 55.

[10] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Geneva, 12 August 1949, UNTS vol. 75, p. 287.

[11] It is covered by numerous conventions in the late 19th or early 20th centuries: the convention of 1864 and the conventions of 1899 and 1907, the sources of "law of war" or the "Hague law". It is partially incorporated and expanded in the four conventions of 1949 and the protocols of 1977, which deal specifically with the "Geneva law"; its philosophical sources are older than the sources of human rights.

[12] Detainees were denied protection of the rights guaranteed by the conventions on the grounds that they were foreigners and had been detained outside the national territory. They were also denied protection under international humanitarian law on the grounds that they did not participate in an international armed conflict because they belonged to and operated as part of non-state armed groups. Pursuant to the fundamental guarantees contained in Article 3 common to all four Geneva Conventions, they were also denied such protection on the ground that the war against terrorism was not considered a non-international armed conflict, since it involved several States. It is in this context that the possibility

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Human rights bodies have also recognized that instruments in this area apply to hostilities conducted by States Parties on their own territories or at the invitation of the authorities of another State[13] and the possibility of applying the derogation clause independently in precisely defined circumstances.[14] The issue of serious violations of human rights during armed conflicts essentially affects the activities of all human rights protecting bodies.[15] International bodies have extended the scope of application *ratione loci* to include instruments obliging States Parties to respect them in operations carried out in territories outside their boundaries,[16] while exercising "effective control",[17] and this has been calculated and limited.[18]

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of protection within these two branches of international law must be recognized and understood. See F. Bouchet-Saulnier, *Dictionnaire pratique du droit humanitaire*, Paris 2013, p. 308.

[13] Judgment of the ECtHR of 27 September 1995, case of *McCann and Others v. the United Kingdom*, application no. 18984/91, HUDOC; judgment of the ECtHR of 14 December 2000, case of *Gül v. Turkey*, application no. 22676/93, HUDOC; decision of the ECtHR of 20 May 1999, case of *Alya OĞUR v. Turkey*, application no. 55099/12, HUDOC; judgment of the ECtHR (final) of 13 September 2005, case of *Hamiyet Kaplan et al.*, application no. 36749/97, HUDOC; judgment of the ECtHR (final) of 24 February 2005, case of *Isayeva, Yusupova and Bazayeva v. Russia*, applications no. 57947/00, 57948/00 and 57949/00, HUDOC.

[14] Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and subsequently amended by Protocols Nos. 3, 5 and 8, and supplemented by Protocol 2 (ETS, no. 5, and Article 4 of the Covenant on Civil and Political Rights, opened for signature on 19 December 1966 in New York (UNTS, vol. 999, p. 171).

[15] I. Topa, *Prawa ofiar poważnych naruszeń praw człowieka w świetle orzecznictwa regionalnych organów ochrony praw człowieka*, [in:] *Wpływ Europejskiej Konwencji Praw Człowieka na systemy ochrony praw człowieka oraz międzynarodowe prawo humanitarne*, ed. E. Karska, Warszawa 2013, p. 145.

[16] The International Red Cross Committee noted that "while Council of Europe states have been determined to 'carry' their obligations abroad when they engage in detention, based either on effective control over persons or the relevant territory, the case law is unsettled as regards the extraterritorial application of human rights norms governing the use of force" (31st International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 28 November – 1 December 2011, Report: International Humanitarian Law and the challenges of contemporary armed conflicts, 31IC/11/5.1.2, p. 15).

[17] Judgment of the ECtHR (preliminary objections) of 23 March 1995, case of *Loizidou v. Turkey*, application no. 15318/89, HUDOC; IACHR, case of *Coard et al. v. United States*, 29 September 1999, report N. 109/99 – case no. 10951, paras. 24 and 25; HRC, case of *Lopez Burgos v. Uruguay*, 29 July 1981, UN Doc. CCPR/C/13/D/52/1979; General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, adopted on 29 March 2004 (2187th meeting), CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 10.

[18] Decision of the HRC, case of *Lopez Burgos/Delia Saldias de Lopez v. Uruguay*, Communication no. 52/1979 (29 July 1981), UN Doc. CCPR/C/13/D/52/1979 (1981), para. 12.3; decision of the HRC, case of *Celiberti de Casariego v. Uruguay*, Communication no. 56/1979, UN Doc. CCPR/C/13/D/56/1979 (1981); decision of the ECoHR, case of *Stocké v. Federal Republic of Germany*, ECHR Series A, vol. 199, p. 24, para. 166.

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2. Similarities between international humanitarian law and international human rights law

Both the similarities and the interpenetration of the systems of international humanitarian law and international human rights law result from the adoption of documents relevant to these two branches of international law. It is only four months between the adoption of the Universal Declaration of Human Rights and the Geneva Conventions. The political climate that accompanied their adoption was not radically different. The ideas of international and cross-border solidarity and the activities of non-governmental organizations led to the conclusion that each individual is a holder of trust not only *vis-à-vis* its own state but also towards other members of the international community. Especially as regards the three principles common to humanitarian international law and international human rights law, namely: the principle of inviolability, i.e. the right to respect for life and physical and moral integrity (prohibition of torture, inhuman and degrading treatment…); the principle of non-discrimination (based on race, religion, sex, nationality, belief…); the principle of certainty (prohibition of retaliatory measures, collective punishment: taking hostages, deportation…),[19] one should notice the convergence of international humanitarian law and international human rights law both in their content and through international mechanisms, in particular with respect to more and more frequent non-international armed conflicts. Therefore, there are rarely any problems for which these two branches of international law provide incompatible solutions.[20]

3. Differences between international humanitarian law and international human rights law

The difference between international humanitarian law and international human rights law is mainly due to the fact that these two branches of international law are related to different periods of their historical development.[21] International humanitarian law focuses on basic protection, i.e. what is commonly referred to as the "hard core" of human rights.[22] Its provisions are therefore a compromise

[19] *Międzynarodowe prawo humanitarne we współczesnym świecie. Osiągnięcia i wyzwania*, ed. T. Jasudowicz, Toruń 2007, p. 145.

[20] M. Sassòli, *Relations entre droit humanitaire et droits humains*, [in:] *Introduction aux droits de l'homme*, eds. M. Hertig Randall, M. Hottelier, Genève–Zurich–Bâle 2014, p. 153.

[21] *50 ans de déclaration universelle des droits de l'homme: droits de l'homme et droit international humanitaire*, "International Review of the Red Cross" 1998, vol. 80(831): "Dossier. 1948–1998: Droits de l'homme et droit international humanitaire" 1998 (September). See also L. Doswald-Beck, S. Vité, *Le droit international humanitaire et les droits de l'homme*, "International Review of the Red Cross" 1993, vol. 75(800), pp. 99–128.

[22] A. Biad, *Droit international humanitaire*, Paris 2006, p. 41.

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between military needs and the principle of humanity, between what is necessary to defeat the enemy and what is pointless and cruel.[23] It should also be noted that codification of humanitarian international law was initiated in the late 19th century based on customary rules, often very old, whereas codification of human rights and freedoms was generally adopted just after the Second World War, even if their formal recognition is linked to the 18th-century revolutions: American and French.

However, there are differences between these two branches of international law, namely: human rights apply to all individuals without any discrimination while international humanitarian law distinguishes between civilians and combatants.[24] The systems of international humanitarian law and international human rights law differ because of the situations they regulate. The human rights system encompasses, by its very nature, the time of peace, introduction and maintenance of democracy and the rule of law. It builds legal and organizational instruments to guarantee the freedom and rights of the human person, while the war limits the exercise of certain fundamental freedoms, such as: freedom of assembly, freedom of association, including the exercise of certain social, economic and cultural rights.[25] Fundamental concepts of international human rights law, such as the right to life, the right to freedom, judicial guarantees, non-discrimination and the rule of law, are in conflict with certain provisions of international humanitarian law, in particular the principles of military necessity and proportionality, since they legitimize, in certain circumstances, the infringement of the right to life and the acceptance for detention without a judicial decision, resulting in an infringement of the right to freedom and classical legal guarantees.[26]

Moreover, international humanitarian law governs wartime relations between states, ensures the protection of individuals against foreign authorities, and not only

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[23] Provisions set out in the Lieber Code, see Instructions for the Government of the Armies of the United States in the Field of 24 April 1863, promulgated by Lincoln as "General Orders No. 100", "Revue Internationale de la Croix-Rouge" 1953, pp. 401–409, 476–482, 635–645, 974–980. See also A. Durand, *The International Committee of the Red Cros*, Geneva 1981, p. 10; M. Bettati, *op. cit.*, p. 54; A. Bouvier, *International Humanitarian Law and the Law of Armed Conflict*, Williamsburg 2012, p. 14; B. Janusz-Pawletta, *Międzynarodowe prawo humanitarne konfliktów zbrojnych*, Warszawa 2013, p. 37; M. Marcinko, *Międzynarodowy Ruch Czerwonego Krzyża i Czerwonego Półksiężyca*, [in:] *Międzynarodowe prawo humanitarne konfliktów zbrojnych*, eds. Z. Falkowski, M. Marcinko, Warszawa 2014, pp. 96–98; V. Harouel-Bureloup, *Traité de droit humanitaire*, Paris 2005, pp. 97–98.

[24] M. Marcinko, *Podstawowe zasady międzynarodowego prawa humanitarnego konfliktów zbrojnych*, [in:] *Międzynarodowe prawo humanitarne konfliktów…*, pp. 63–76.

[25] J. Meurant, *Droit de l'homme et droit international humanitaire: spécificités et nonvergences*, "Revue internationale de la Croix-Rouge" 1993, pp. 93–98 ; L. Doswald-Beck, S. Vité, *op. cit.*, pp. 99–128 ; D. Weisbrodt, P.L. Hicks, *Mise en œuvre des droits de l'homme et du droit humanitaire dans les relations de conflits armés*, "International Review of the Red Cross" 1993, vol. 75(800), pp. 129–150.

[26] B. Janusz-Pawletta, *op. cit.*, pp. 34–40.

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states but also individual perpetrators can be held criminally responsible for violations of international humanitarian law.[27] International human rights law generally applies in peacetime, protects individuals against authorities of their respective states, and the responsibility for violations of its provisions is borne by states.[28]

International humanitarian law, as a special law, does not protect all those staying in the territory of the warring parties. The guarantees granted to detainees shall only apply to individuals imprisoned for activities related to an armed conflict.[29] On the other hand, it is international human rights law that contains a whole set of general rules which are common to all human beings.[30]

International humanitarian law has traditionally been put into practice by means of permanent controls in the form of prevention and on-site correction, while international human rights law puts in practice *a posteriori* controls and at the request of the parties (a state, individual, other entities), through judicial or quasi-judicial procedures.[31] International human rights law provides for a more institutionalized mechanism that focuses, on the one hand, on the examination of applications concerning violations of guaranteed rights and the replies of respective violating states and, on the other hand, on adversarial judicial procedures.[32] In this context, reference is made to the role of the International Court of Justice (ICJ) in the Hague, and the quasi-judicial body of the Human Rights Committee in Geneva established under the International Covenant on Civil and Political Rights (1966), or to regional judicial bodies such as the European Court of Human Rights in Strasbourg and other, non-European courts.

Today, despite many fundamental differences, it is noted that these two systems of norms of international law are gradually converging as a result of the global movement for human rights.[33]

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[27] A. Szpak, *op. cit.*, p. 409.

[28] K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *International Human Rights Law*, Warszawa 2023, pp. 273–276.

[29] Article 75 of Protocol I and Articles 4 and 5 of Protocol II – Additional Protocols to the Geneva Conventions of 12 August 1949 concerning the protection of victims of international armed conflicts (Protocol I) and the protection of victims of non-international armed conflicts (Protocol II), done at Geneva on 8 June 1977 (UNTS, vol. 1125).

[30] K. Orzeszyna, *Universalism of Human Rights: Notion of Global Consensus or Regional Idea*, "Review of European and Comparative Law" 2021, vol. 46(3), pp. 165–176; A. Biad, *op. cit.*, p. 42.

[31] M. Sassòli, *op. cit.*, p. 152.

[32] K. Orzeszyna, M. Skwarzyński, T. Tabaszewski, *Prawo międzynarodowe...*, pp. 166–171, 193–194.

[33] M. Bettati, *op. cit.*, p. 56.

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APPLYING A SYSTEMATIC INTERPRETATION TO RESOLVING CONFLICTS OF NORMS OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN ARMED CONFLICTS

International humanitarian law has for a long time been generally understood as a special law (*lex specialis*), the application of which in conflict situations replaces the general principles of international human rights law (*lex generalis*).[34] However, this distinction has been now abandoned in favor of the simultaneous application of these two branches of international law and the extraterritorial application of human rights when the state exercises effective control on the territory or towards individual foreigners.[35] To regulate the simultaneous application of different rules, the principle is that special law provided for in a particular situation (*lex specialis*) takes precedence over general law (*lex generalis*).[36] Therefore, if we follow an interpretation compliant with the rule of good faith, it is logical to take the view that international humanitarian law contains specific provisions for situations of armed conflict, and that is why it should be applied first. Otherwise, in situations where international humanitarian law is silent or vague, the term *lex specialis* loses its meaning, while human rights become the preferred norm for application, including their extraterritorial application, according to the criterion of effective control. This interpretation allows for the removal of possible legal loopholes, which are the result of too restrictive and literal interpretation of different concepts of international humanitarian law and international human rights law.[37]

The scarcity of the protection offered by international humanitarian law in situations of non-international (or transnational) armed conflict[38] and legal loopholes in international humanitarian law to combat such crimes in armed conflicts seem to have forced controlling bodies to resort to the application of international human rights law.[39] The situation in which international humanitarian law and international

[34] As the provisions of humanitarian law are "special" in relation to the more "general" human rights law provisions, the former must, as a consequence, precede the latter. See J. d'Aspremont, J. de Hemptinne, *Droit international humanitaire*, Paris 2012, p. 87.

[35] Judgment of the ECtHR of 7 July 2011, case of *Al-Jedda v. the United Kingdom*, application no. 27021/08, HUDOC, paras 107–109; F. Bouchet-Saulnier, *op. cit.*, p. 308, 318.

[36] K. Mejri, *Le droit international humanitaire dans la jurispridence internationale*, Paris 2016, pp. 118–120.

[37] F. Bouchet-Saulnier, *op. cit.*, pp. 309–310.

[38] Chapter VII of the Charter of the United Nations.

[39] Currently, however, it is commonly argued that threats to international peace and security may also be caused by human rights and humanitarian law violations. Therefore, Resolution 771 of the UN Security Council of 13 August 1992 regarding the conflict in Bosnia and Herzegovina applied an extensive interpretation of Article 39 of the UN Charter and stated that in a situation of regular, mass violations of internationally recognized humanitarian rules, there is a threat to the peace or breach of the peace. The Security Council recognized also that mass violations of human rights may become

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human rights law have been applied simultaneously has, in some cases, resulted in a conflict of norms. The ICJ, in its case law, has recognized the need to complement and jointly apply international humanitarian law and international human rights law.[40] International jurisdiction, including especially the ICJ, has developed an interpretation of human rights towards "humanizing the rights of the human being". Interestingly, in a case concerning the legality of the threat or use of nuclear weapons in 1996,[41] as well as in a case in 2004 concerning the legal consequences of the construction of a wall in the occupied Palestinian territory,[42] the ICJ, in a situation of conflict between the norms of international humanitarian law and international human rights law, did not attempt to resolve the contradiction by applying the general principle *lex posterior derogat priori*, but made a conciliatory interpretation based on the principle of "systemic integrity". The ICJ first applied a special rule (humanitarian law) and then a general rule (human rights) to resolve the conflict, thus interpreting the general rule in the light of the special rule. That was the way in which human rights provisions were applied to situations of armed conflict. Complementarity between international human rights law and international humanitarian law has thus been achieved.[43]

Two advisory opinions of the ICJ on the legality of the threat or use of nuclear weapons of 1996, as well as that of 2004 on the legal consequences of the construction of a wall in the occupied Palestinian territory stipulate that international human rights law instruments are applicable also during wartime. In the case of 8 July 1996, the ICJ went back to its own opinion of 1951 on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide[44] stating that "these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law".[45] In the advisory opinion of

a basis for the use of measures provided for in Chapter VII of the UN Charter. See R. Wieruszewski, *Społeczność międzynarodowa wobec masowych naruszeń praw człowieka w byłej Jugosławii*, "Sprawy Międzynarodowe" 1998, no. 3, pp. 97–98.

[40] K. Mejri, *op. cit.*, p. 120.

[41] ICJ, Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion of 8 July 1996), [1996], ICJ Reports 226, para. 25.

[42] ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion of 9 July 2004), [2004], ICJ Reports 136, paras 105–112.

[43] J. d'Aspremont, J. de Hemptinne, *op. cit.*, p. 88.

[44] In its advisory opinion of 28 May 1951, the Court underlined the special nature of the Convention by stating that the prohibition of genocide constitutes an *erga omnes* obligation. The Court has explained the general concept behind *erga omnes* obligations, prohibitions of acts of aggression, and principles and rules concerning fundamental rights of the human being, including the protection against slavery and racial discrimination. See ICJ, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion), [1951], Reports 15, para. 31.

[45] ICJ, Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion of 8 July 1996), [1996], ICJ Reports 226, para. 79.

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1996, the ICJ for the first time clearly recognized the link between international humanitarian law and international human rights law, stating that "the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency".[46] Since the rule concerning the respect for the right to life is not subject to derogation, the right not to be arbitrarily deprived of life is still relevant during hostilities. International humanitarian law, as a *lex specialis*, applies in armed conflicts because it has been adopted to determine the manner in which the fight is conducted. So it is in the light of this law that it should be determined what is an arbitrary deprivation of life. Therefore, it is only in the light of the law applicable to armed conflicts (*lex specialis*) and not the provisions of the Covenant (*lex generalis*) that it may be determined whether a case of death caused by the use of a certain type of weapon during an armed conflict can be regarded as an arbitrary deprivation of life contrary to Article 6 of the Covenant. Indeed, the ICJ has stated in general terms that the International Covenant on Civil and Political Rights is applicable during wartime, even if the conflict does not take place in the territories of the states' parties.[47] Thus, the ICJ has not questioned the extension of the scope of application of *ratione loci* either. In these cases, the ICJ confirms the application of the human rights treaties in the event of armed conflict for two reasons. In substantive terms, the treaties' provisions on international human rights law go beyond conventional humanitarian law and fill a number of normative loopholes, especially in the context of non-international armed conflicts and internal unrest. At procedural level, the human rights treaties contain strengthening mechanisms to complement other more fundamental mechanisms by applying humanitarian law essentially involving preventive measures.[48] What is important here is the ICJ's statement on the validity of the covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,[49] as well as the Convention on the Rights of the Child.[50] According to the ICJ, these agreements apply on the occupied Palestinian lands.[51] In General Comment No. 31, the Committee on Human Rights

[46] *Ibidem*, para. 25.

[47] *Ibidem*.

[48] D. Jinks, *International Human Rights Law in Time of Armed Conflict*, [in:] *The Oxford Handbook of International Law in Armed Conflict*, eds. A. Clapham, P. Gaeta, Oxford 2015, pp. 664–665.

[49] International Covenant on Economic, Social and Cultural Rights, opened for signature on 19 December 1966 in New York, UNTS, vol. 993, p. 3.

[50] Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989, UNTS, vol. 1577, p. 3.

[51] ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion of 9 July 2004), [2004], ICJ Reports 136, paras 105–106. The ICJ has not decided if the extraterritorial application of each of the covenants is based on the same criteria (paras 109–113).

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agrees that, in an armed conflict, human rights must be interpreted in the light of humanitarian law.[52]

The decision of the ICJ on the application of the Covenant during an armed conflict allows for stating that there is a complementarity between international humanitarian law and international human rights law.[53] International judges, in making a conciliatory interpretation, ensure that the specific nature of humanitarian law, whose purpose is not to regulate relations between the state and its citizens, is preserved. This thesis is also supported by the analysis of debates concerning, e.g. the definition of the crime of torture.[54]

International humanitarian law can therefore be regarded as a category forming part of international human rights law in the broad sense. It is not about the difference between their internal nature, but about the context of the application of rules to protect the human person in different circumstances. By invoking the principle of systemic interpretation in interpretation of the principle of human rights in the light of humanitarian law, the ICJ takes into account the development of human rights and this leads to the "humanization" of international humanitarian law.[55]

CONCLUSIONS

International humanitarian law and international human rights law are slowly converging and permeate each other because both these disciplines of public international law are deeply rooted in natural law. Among the members of the international community, it is becoming increasingly common to believe that human rights and the preservation of global peace and security are becoming more and more complementary. Although international humanitarian law is a *lex specialis*, the general rules on the interpretation of treaties clearly indicate that international human rights law must be interpreted in the context of other rules of internation-

[52] Para. 11: "As implied in General Comment 29 [General Comment No. 29 on States of Emergencies, adopted on 24 July 2001, reproduced in Annual Report for 2001, A/56/40, Annex VI, para. 3], the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive". See General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, adopted on 29 March 2004 (2187th meeting), CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 11; J.K. Kleffner, *Scope of Application of International Humanitarian Law*, [in:] *The Handbook of International Humanitarian Law*, ed. D. Fleck, Oxford 2013, p. 73.

[53] A. Szpak, *op. cit.*, p. 412.

[54] Under international humanitarian law, it is not necessary for the perpetrator to be a public official for his or her action to qualify as torture.

[55] J. d'Aspremont, J. de Hemptinne, *op. cit.*, pp. 82–89.

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al law, and its derogations, if any, must be compatible with other international obligations of the state, including with humanitarian law. Where a conflict arises between international humanitarian law and international human rights law, the mechanism for resolving conflicts between norms that has traditionally privileged the principle of *lex specialis derogat legi generali* has been supplemented by the ICJ by applying an interpretation based on the principle of systemic integration, resulting in the "humanization" of international humanitarian law.

Universal and regional instruments also directly apply humanitarian law in the field of international human rights law when it constitutes a *lex specialis* for the interpretation of human rights. That is why more and more attention is paid in practice to the complementarity of international humanitarian law and international human rights law, which is confirmed in United Nations discussions and resolutions on the situation in armed conflicts.

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ABSTRAKT

Artykuł dotyczy konwergencji międzynarodowego prawa humanitarnego i prawa międzynarodowego praw człowieka w konfliktach zbrojnych. Międzynarodowe prawo humanitarne i prawo praw człowieka zbliżają się oraz wzajemnie przenikają, ponieważ u podstaw obu tych dyscyplin prawa międzynarodowego publicznego znajduje się prawo naturalne. Jakkolwiek międzynarodowe prawo humanitarne stanowi *lex specialis*, to jednak reguły ogólne dotyczące interpretacji traktatów wyraźnie wskazują, że prawo międzynarodowe praw człowieka musi być interpretowane w kontekście innych reguł prawa międzynarodowego, a jego ewentualne derogacje muszą być kompatybilne z innymi zobowiązaniami międzynarodowymi państwa, w tym z prawem humanitarnym. W przypadku konfliktu między międzynarodowym prawem humanitarnym i prawem międzynarodowym praw człowieka mechanizm rozwiązywania sprzeczności między normami został przez Międzynarodowy Trybunał Sprawiedliwości uzupełniony interpretacją w oparciu o zasadę integracji systemowej, co skutkuje „humanizacją" międzynarodowego prawa humanitarnego. W przypadku stosowania instrumentów uniwersalnych i regionalnych prawa międzynarodowego praw człowieka mamy do czynienia z „humanitaryzacją" tych praw. Dlatego w praktyce coraz częściej zwraca się uwagę na komplementarność międzynarodowego prawa humanitarnego i prawa międzynarodowego praw człowieka, co znajduje potwierdzenie w dyskusjach i rezolucjach dotyczących sytuacji w konfliktach zbrojnych Organizacji Narodów Zjednoczonych.

Słowa kluczowe: międzynarodowe prawo humanitarne; prawo międzynarodowe praw człowieka; konflikt zbrojny; komplementarność; zasada integracji systemowej