

DETERMINING THE PROPER SCOPE OF INTERNATIONAL HUMANITARIAN LAW

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1. DEFINITION:

According to Buergenthal, international humanitarian law might be defined as “the human rights component of the law of war”. It is that branch of human rights law which applies in international armed conflicts, and in certain limited circumstances, in internal armed conflicts.¹ What this implies therefore is that humanitarian law is just a component or a sub-unit of the law of war and does not represent the latter in its entirety. Our reaction to this however is that it should be borne in mind that the dividing line between means and conduct of warfare on the one hand, and the protection of the victims thereof on the other, is fast disappearing, as evidenced by the convergence of the Hague and General laws. The practical result therefore is that international humanitarian law is now generally understood as a nomenclature for what used to be the law of war.^{1a}

In Nahlik’s view, the term “humanitarian law” applies to those rules of international law which aim to protect persons suffering from the evils of armed conflicts as well as, by extension, objects not directly serving military purposes. In his view, there is an essential difference between humanitarian law and “human rights”. While human rights law applies in all situations, humanitarian law restricts itself to situations of armed conflicts.² What was stated in relation to the definition given by Buergenthal also applies to Nahlik’s definition.

For K.J. Partsch, both human rights and humanitarian law contain rules for the treatment and protection of human beings based on considerations of humanity. Traditionally, the term human rights law is primarily employed for rules valid in times of peace between the individual and his state. Humanitarian law usually designates the rules valid in times of war or armed conflict between a belligerent and the nationals of an enemy state. To the learned writer, not all the rules of war are covered by the term humanitarian law; and it is limited to the *jus in bello* (rules regulating the conduct of war and excluding the *jus ad bellum* (rules requesting recourse to war)). Thus, a distinction is drawn between humanitarian rules *stricto sensu* and other non-humanitarian rules, example, the rules for hostilities on the battle field. The main elements of humanitarian law therefore are the rules for the treatment of the victims of armed conflicts, as codified in the Geneva Conventions of 1949

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