COMMON PROSPECTS AND CHALLENGES FOR INTERNATIONAL HUMANITARIAN LAW (IHL) AND THE LAW OF HUMAN RIGHTS

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Summary: I. IHL within the international system of legal proteccion of the individual. II. Normative aspects of convergence between IHL and human rights. III. Hermeneutical aspects of convergence between IHL and human rights. IV. Implementation aspects of convergence between IHL and human rights. V. Final remarks.

«... the long lasting separation between international human rights law and the international law of conflict has outlived its usefulness and experts in both areas need to come together to agree on those issues on which there is already effective consensus, and to resolve the continuing differences in their respective approaches». (T. Hadden, C. Harvey «The Law in internal crisis and conflict» in «International Review of the Red Cross (IRRC) », vol. 81, n° 883, March 1999, p. 233)

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I. IHL WITHIN THE INTERNATIONAL SYSTEM OF LEGAL PROTECTION OF THE INDIVIDUAL

1. Within the contemporary international legal systems of protection for the individual, International Humanitarian Law (IHL) does indeed represent the «other edge» of protection.

Amongst various attempts at the classification of different *corpora iuris* which actually compose this system, attention was given to their respective origin («Law of peace» v. «Law of

war»)[1], to organs whereby they appeared and have been instrumented and implemented («universal» v. «regional»), to their generational sequence and precedence (first, second and third «generation»)[2] as well as to persons they are specifically to protect (everybody, women, children, disabled, etc..), but considerably less to a categorisation based on the entitlement to the effects of protection in distinct conditions of their implementation.

Such criterion of the need for international rules of protection for an individual could lead to typifying the existing bodies of international norms applicable in this domain into four major categories:

In the first category we would find rules meant to protect the individual as a member of the mankind. It would encompass the general rules of the Human Rights to which each and every person is entitled by his/her mere quality of a human being, at universal and regional level, thus representing the general Law of Human Rights.

The second category would be composed by the instruments aiming at the protection of the individual for reasons of specificities of its objective station within the society; there we shall find, for example, norms on women and children.

The third category could involve rules pursuing to protect the human person for reasons of its particular function within the society e.g. norms of International Labour Law, International Medical Law, etc.

The fourth category would contain international rules of protection in situations of emergency, where a person lacks of, *de facto or de iure*, an adequate coverage of the domestic law and/or is therefore in need of international legal standards; here would belong both International Humanitarian Law and International Law of Refugees[3]. Accordingly, these standards not only represent the other «edge» of international protection but should provide for a necessary complement of the whole system, in particular in sofar as the mechanisms of its implementation are concerned.

The subsidiarity, complementarity and co-ordination of these mechanisms are to-day much more than of sheer doctrinal interest, for they truly condition the credibility of the present

1 J. Pictet: «International Humanitarian Law: Definition» in «International Dimensions of Humanitarian Law», Henry-Dunant Institute, UNESCO, Martinus Nijhoff, 1988, p. XXI.

2 See K. Vasak: «Pour une troisième génération des droits de l'homme» in Ch. Swinarski (éd): in «Etudes et essais sur le droit humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean Pictet», CICR-Martinus Nijhoff, 1984, pp. 837-850.

3 Ch. Swinarski: «Perspectivas del derecho humanitario» in J. Irigoin Barenne (ed.) «Nuevas Dimensiones en la Protección del Individuo». Instituto de Estudios Internacionales, Universidad de Chile, 1991, pp. 151-152.

and future use of the international law at stake, as both a binding legal reference and a tool of action for the international community. In this regard, a more holistic approach to the functioning of the whole system is urgently needed.

Such a categorisation of international systems of legal protection obviously does not need to, and certainly should not, result in any conclusions upon their possible «divisibility» from the point of view of their effects for the individual, and even less so in any pronouncement on their respective value and importance; their fundamental nature depends on their respective evolution and the evaluation of their usefulness in specific situations[4].

The main convergence between IHL and the Law of Human Rights may be appropriately examined, as proposed by A.A. Cançado Trindade, in a threefold perspective[5]:

At the normative level, a long-lasting doctrinal controversy on the relationship between these two branches of international law is on its way to be positively overcome. Their complementarity and interaction are to-day universally admitted. At the hermeneutical level, there is a crescent interpenetration and a sort of cross-pollination between them, recently enhanced and further articulated by the work of the international tribunals, and at the level of their implementation there exists a growing need for common efforts towards its strengthening, and a noteworthy increase of the concurrence of their fields of applicability and ambits of application.

II. NORMATIVE ASPECTS OF CONVERGENCE BETWEEN IHL AND HUMAN RIGHTS

2. In the area of the normative relationship between IHL instruments and those of Human Rights three different periods can be distinguished:

The first period of IHL post-war codification, which culminated with the adoption in 1949 of the four Geneva Conventions for the IHL, and, for the Human Rights, corresponds to the period since the 1948 Universal Declaration until the adoption of 1966 universal Covenants, has been characterised by a rather scant interaction between them. Although some solutions have been envisaged principally at a theoretical level, the two bodies of law kept a certain aloofness from each other concepts and procedures, mainly on the grounds that IHL was originally

4 Th. Meron: «On a Hierarchy of International Human Rights», in «American Journal of International Law», vol. 80, 1986, pp. 1-23.

5 See A.A. Cançado Trindade: «Tratado de Direito Internacional dos Direitos Humanos», Sergio Antonio Fabris Editor, 1997, vol. I, pp. 269-284.

proceeding from the law of war, while the Law of Human Rights encountered itself in the very core of the law of peace[6].

The breaking point, inaugurating the second period of this relationship, was definitely the adoption on 12 of May 1968, in Teheran, of the famous Resolution XXIII on «Human Rights in Armed Conflict» through which the fundamental concepts of the two bodies became definitely intertwined[7]. For IHL this period culminated with the adoption in 1977 of the two Additional Protocols, wherein the concept of fundamental guarantees of Human Rights have fully permeated its substance, having been practically incorporated within the body of these instruments (see art. 75 for the Protocol I and the art. 4-6 for the Protocol II)[8].

The third, present period of this relationship remains marked above all by the problems of the concurrent implementation of the two laws, especially in situations of non-international armed conflicts and other circumstances of violence[9].

Such an evolution of the process evidently reflects not only the theoretical normative considerations on the mutual relations, but is function of the needs of the international community, corresponding to the evolving definition of the latter's objectives and structures.

III. HERMENEUTICAL ASPECTS OF CONVERGENCE BETWEEN IHL AND HUMAN RIGHTS

3. In the development of both laws their common features are to be found in their characteristics within contemporary international law. Indeed, treaties of humanitarian protection («Geneva Law» Treaties) and the treaties of Human Rights have reached there a particular *locus standi*, generally recognised by the jurisprudence and the doctrine as to their legal régime, limits on their derogation and effects of their denunciation, as well as ways of their interpretation[10].

6 See R. Kolb: «Relations entre le droit international humanitaire et les droits de l'homme» in «Revue internationale de la Croix-Rouge» (RICR), septembre 1998, n° 831, pp. 437-447, and also Ch. Swinarski: «Principales nociones e Institutos del derecho International humanitario como sistema de protección de la persona humana», Instituto Interamericano de Derechos Humanos, 1991, pp. 82-83.

7 See also Resolution 2444 (XXIII) of UN General Assembly of Dec. 19.1968 in Supplement n° 18 (A/7218) 1969, pp. 51-52.

8 See, Y. Sandoz, Ch. Swinarski, B. Zimmermann (ed): «Commentary on the Additional Protocols to Geneva Conventions», ICRC - Martinus Nijhoff, 1987, par.par. 3000-3146, par.par. 4515-4632.

9 See Th. Merib «Human Rights in Internal Strife: The International Protection», Grobius, 1987 and Daniel Zovatto: «Los Estados en excepción y los derechos humanos en América Latina», IIDH - Editorial Jurídica Venezolana, 1990.

10 See A.A. Cançado Trindade: «Tratado de Direito Internacional dos Direitos Humanos», op. cit. pp. 280-282.

Such a hermeneutical interaction of both laws creates an organic link of fundamental significance for their effectivity and implementation.

The particular standing of the treaties of IHL in this area was expressly recognised in the law of treaties by the 1969 Convention of Vienna which, in its art. 60 (5), has excluded the possibility of suspending or terminating effects of humanitarian obligations for reasons of other Party violations. This exception to the reciprocity, deeply enshrined in IHL since 1949 Geneva Convention, now extends to treaties of Human Rights, constituting thus a «clause of safeguard» for all the international instruments of protection of the human being[11].

Parting from this clause, the constant jurisprudence of international judicial organs of Human Rights - The European Court[12] as well as the Inter-American one[13] - have asserted the specificities of those treaties. This specificity is being further confirmed at the universal level by the practice of United Nations organs in charge of Human Rights[14], and by the attitude of States towards the instruments of IHL[15]. The understanding of IHL by the international tribunals is to-day a further proof of such a hermeneutical link between the two laws. After the International Court of Justice[16] and the European Court of Human Rights, the Inter-American system has clearly declared itself competent to apply the IHL standards, under art. 27 of the «San José Pact», in a recent case before the Inter-American Commission[17].

11 *Ibídem,* p. 282.

12 See, for example «Case Ireland v. United Kingdom», in European Court of Human Rights, Judgment of 18.01.1978, Series A, n° 25 or «Soering v. United Kingdom», ibidem, Judgment of 7.7. 1989, Series A, n° 161, and for a comprehensive review, A. Reidy: «The appoach of the European Commission and Court of Human Rights to international humanitarian law» in IRRC, vol. 831, September 1998, pp. 513-523.

13 See, for example, «Opinión Consultiva del 24 Septiembre 1982»: «Efecto de las reservas sobre la entrada en vigencia de la Convención Americana sobre Derechos Humanos» in, OC-2-82, Serie A, n° 2, 1982, or «Opinión Consultiva del 8 de Septiembre 1983»: «Restricciones a la pena de muerte» OC-3/83m Serie A, n° 3.

14 See C.M. Cerna: «Human Rights in Armed Conflict; Implementation of International Humanitarian Law Norms by Regional Intergovernmental Human Rights Bodies» in F. Kalshoven, Y. Sandoz (eds): «Implementation of International Humanitarian Law», Nijhoff, 1989, for comprehensive approach A.A. Cançado Trindade: «The Interpretation of the International Law of Human Rights by the Two Regional Human Rights Courts» in «Contemporary International Law Issues: Conflicts and Convergence», Asser Institute, 1996.

15 See G. Abi-Saab: «The specificities of humanitarian law» in Ch. Swinarski (ed), «Studies and essays in honour of Jean Pictet», op. cit. p. 265-281.

16 As, for example, in the case of Nicaragua v. United States. «Military and Paramilitary Activities in and Against Nicaragua» (Meits). ICJ Reports, 1986.

17 See «Tablada Case» in Inter-American Commission of Human Rights, Report n° 57/1997, and L. Zegveld: «Commission interaméricaine des droits de l'homme et droit international humanitaire» in «RICR», vol. 831, September 1998, pp. 543-551.

Another major development in this framework is obviously provided by the activity of the international tribunals for former Yugoslavia and Rwanda, which are both empowered by their respective Statutes to apply and to interpret norms of IHL, together with those of International Human Rights[18]. The contribution of these tribunals to the confirmation of the principles of Humanitarian Law, as well as to their progressive interpretation, is already considerable, alongside of their comparable contribution to the Human Rights. A new body of international jurisprudence is being created, coherence and consistence of which will substantially determine future correspondence, both in law and in practice, between IHL and the other international systems of protection[19]. A considerable task seems to lay ahead for all international instances involved in this process to ensure such a coherence, so that the beneficiaries of those systems could really enjoy an increased level of protection, as well as to contribute, in a harmonised manner, to a progressive development of the whole international law.

> *«In our time, there cannot be any more doubt that the treaties of Human protection are not only binding for the Governments, but on the States (Party), and the non-compliance with the obligations they stipulate entails directly the international responsibility of the State, by commission or omission on the part of their Executive, Legislative and Judicial Powers»*[20].

IV. IMPLEMENTATION ASPECTS OF CONVERGENCE BETWEEN IHL AND HUMAN RIGHTS

4. It is undoubtedly in the realm of implementation that the convergence between the two bodies of law proved its importance in the most significant and convincing way. Among several areas of the IHL implementation of impact on the Human Rights, four are bearing constant effects on the application of the latter, namely:

– Interaction in situations of internal conflicts and other situations of emergency;

– The part of IHL organs in monitoring of the respect of Human Rights;

– The national measures of IHL implementation as a mechanism of promotion of Human Rights observance, and

– The contribution of IHL mechanisms of sanctions to their enforcement.

18 Art. 2, 3 and 4 of respectively of both Statutes.

19 See I. Bantekas: «Principles of Individual Responsibility for Violations of International Humanitarian Law after ICTY», Liverpool University, 1999, (mimeographed), and R. Provost: «International Human Rights and Humanitarian law; Fusion or Confusion?», Mc Gill University, 1999 (mimeographed).

20 A.A. Cançado Trindade: «Tratado de Direito Internacional dos Direitos Humanos» op. cit. vol. II p. 192 (our translation from Portuguese).

Even if the art. 3 common to four 1949 Geneva Convention has been adopted without direct influence of incipient concepts of Human Rights, the right of initiative provided to the ICRC by this article offered already a framework in which the scrutiny by the International Committee of the Red Cross could produce effects on the observance of the universal guarantees of protection therein, which were to be later reaffirmed in the Human Rights instruments (right to life, prohibition of torture and of cruel and inhumane treatments, of taking of hostages, guarantees of personal dignity and of due process of law)[21].

5. The possibilities for the ICRC to further enquire into the respect of individual fundamental guarantees are largely amplified, although solely on IHL standards, by the means of the exercise of its "extra-conventional" right of initiative, particularly in the field of political detention, where the Institution has been constantly faced with problems of the observance of Human Rights. This so called «extra-conventional right of initiative» provided *de facto* a second legal basis for the ICRC activities in that respect.

> *«,,,The ICRC has two kinds of rights of initiative - that laid down in treaties and that not laid down in treaties. (...) The rights of initiative not laid down in treaties has its basis in the ICRC Statutes and the International Red Cross Statutes. It is more tenuous but it is not without some legal ground since those Statutes were approved - directly of indirectly - by International Red Cross Conferences, in which States Parties to the Geneva Conventions have their say. It makes it possible for the ICRC to offer its services in situations other than conflicts; mainly to propose to visit and assist political detainees»*[22].

In the course of exercising its «right of initiative», the ICRC is inexorably led to get involved into evaluation and handling of information on violations and inobservances not only of Humanitarian Law, but practically always on those of Human Rights.

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21 See A. Calogelopoulos-Stratis: «Droit humanitaire et droits de l'homme; la protection de la personne humaine en période de conflit armé», Genève-Leiden, IUHEI, 1980, M. El-Kouhene: «Les garanties fondamentales en droit humanitaire et droits de l'homme», Martinus Nijhoff, Dordrecht-Boston-Lancasster, 1986; Y. Sandoz, Ch. Swinarski, B. Zimmermann (eds): «Commentary on the Additional Protocols to Geneva Conventions», ICRC-Martinus Nijhoff, Geneva, 1987; M. Sassòli: «Mise en oeuvre du droit international humanitaire et du droit international des Droits de l'homme - une comparaison» in «Annuaire Suisse de droit international», vol. XVIII, 1987, pp. 52 ss; R-J. Dupuy: «L'action humanitaire» in A.J.M. Delissen, G.J. Tanja (ed.): «Humanitarian Law of Armed Conflict; Challenges Ahead; in honour of Frits Kalshoven», Martinus Nijhoff, Dordrecht-Boston-London, 1991, pp. 66-67; L. Doswald-Beck, S. Vité: «International Humanitarian Law and International Law of Human Rights» in «IRRC», vol. 293, 1993, pp. 94-119: T. Pfanner: «Le rôle du CICR dans la mise en oeuvre du DIH» in «Law in Humnitarian Crisis», vol. I, European Commission, 1995, pp. 177-248.

22 Y. Sandoz: «Le droit de l'initiative du Comité international de la Croix-Rouge» (off-print) in «German Yearbook of International Law», vol. XXII, 1993, p. 373.

6. The subsequent development of the Human Rights on one hand, and on another the adoption of the 1977 Additional Protocols to Geneva Convention led to a discussion on their respective applicability in the above- mentioned situations which embarked on a tentative to submit to the acceptance of the States a declaratory instrument in which the fundamental guarantees of the protection for the individual were to be reconfirmed in all situations, and conceived as the minimal standards of both laws[23].

The first proposals to that effect, having emanated from the ICRC[24], were embodied in an instrument accepted by the group of experts and known as "The Turku/Abo Declaration". The Declaration was essentially inspired by the contents of the articles 4-6 of the 1977 Additional Protocol II for the IHL and by the provisions of the non-derogable rights of the Human Rights treaties[25].

The failure to get such an instrument accepted by the States nourishes an ongoing debate, during which various further proposals have been put forward towards finding solutions of the better protection for the individual in all situations, by means of the use of the existing mechanisms and procedures of Human Rights protection, at the political, para-judicial and judicial levels. This tendency has been confirmed at the 1993 IInd Vienna Conference on Human Rights, where their implementation appeared pivotal to the present dynamics of interaction between the two laws[26].

7. The second area in which IHL is apt to contribute to the implementation of Human Rights is the one of monitoring their respect and observance through the functioning of IHL procedures and organs.

Besides the already mentioned framework of ICRC's «right of extra-conventional initiative», the Geneva Institution may also carry out in this area various mandates, upon decisions of the Red Cross Movement.

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23 See Th. Meron op. cit., also R. Abi-Saab: «Droit humanitaire et conflits internes», Pédone, Institut Henry-Dunant, 1986, and D.P. Forsythe «Human Rights and the International Committee of the Red Cross», 12, Human Rights Quarterly, 1990, p. 265-289. A general view is also given in L. Doswald-Beck, S. Vité: «Le droit international et le droit des droits de l'homme in «Revue Internationale de la Croix-Rouge (RICR)», n° 800, mars-avril 1993, pp. 99-128.

24 See H.P. Gasser in «RICR», janvier-février 1988, n° 769, pp. 39-61.

25 Text in «IRRC», September-October n° 278, 1990, pp. 404-408, in Spanish, *ibídem* n° 101, pp. 434-438.

26 See A. A. Cançado Trindade: «Direito internacional dos Direitos Humanos, Direito Internacional Humanitario e Direito Internacional dos Refugiados: Aproximaçoes e convergencias» in A.A. Cançado Trindade, G. Peytrignet, J. Ruiz de Santiago: «As Tres Vertentes da Proteçao Internacional dos Direitos da Pessoa Humana», Instituto Interamericano de Derechos Humanos. Comité Internacional de La Cruz Roja - Alto Commisionado de Naciones Unidas para los Refugiados, 1996, pp. 29-85, also A.A. Cançado Trindade: «Tratado de Direito dos Direitos Humanos», op. cit. vol. I, pp. 270-313.

The decisions of the Red Cross Movement conferring to the ICRC competences to act in specific area of violations of Human Rights are quite numerous. Not embarking here on their exhaustive catalogue, let us single out some main areas of their concern, such as, for instance:

a) Prohibition of torture[27]

b) Rights of the child[28]

c) Forced disappearances[29]

The ICRC reporting within the framework of the exercise of its « right of initiative» can, and often does, considerably contribute to ensure respect of Human Rights, although its use cannot be of the same nature as the procedures devised for monitoring violations by the existing systems of the Human Rights instruments. The main difference of such nature consists in the confidentiality of the ICRC's reporting which excludes any publicity on its delegates' findings. Therefore, the effects of such reporting cannot be but preventive, by means of their subsequent evaluation, conclusions drawn and measures adopted by the concerned authorities themselves, to whom these reports are remitted.

8. Yet other possibilities of scrutiny provided by the IHL mechanisms are to be found in its procedures of fact-finding.

The constitution of the International Fact-Finding Commission of the article 90 of the 1977 Protocol I has been successfully completed and its procedures remain henceforth at the disposal of the international community, even if they have not been resorted to until now. A more productive source of monitoring the respect for Human Rights is to be found in the procedures instituted by the international organs into which the requirements provided by IHL are partly incorporated. There is a constant interaction which leads to the ever-growing pattern of co-ordination between different ways of enquiry, opening perspectives towards more effective performance of these procedures as means of increasing the respect for both laws[30].

27 Resolution XIV of the 24th International Conference, Manila 1981.

28 Resolution XX of the 25th International Conference, Geneva, 1986.

29 Resolution II of the 24th International Conference, Manila, 1981. See also: ICRC Report CD/7/1 (prepared in collaboration with the Secretariat of the League of Red Cross Societies) on «The Red Cross and Human Rights», Geneva, August 1983, for the Council of Delegates, pp. 21-47, and Report CD/6/1 «Contribution of the International Red Cross and Red Crescent Movement to Respect for Human Rights» (Group of Experts) for the Council of Delegates, 26-27 October 1986, Geneva.

30 See S. Vité: «Les procédures internationales d'établissement des faits dans la mise en oeuvre du droit international humanitaire». Bruylant - Editions de l'Université de Bruxelles, 1999, especially pp. 399-449.

9. Finally, under the article 5 par. 4 of the Statutes of the International Red Cross and Red Crescent, the ICRC has right to take cognisance of complaints regarding alleged breaches of the humanitarian conventions. Two categories of such breaches can be distinguished:

– The first one comprises complaints or communications concerning inobservances or inadequate applications of provisions of the Conventions in respect of persons protected by them. This can also take form of an individual right to petition ICRC in suchlike situations. The ICRC may, if it deems it in accordance with its own criteria, make corresponding representations on behalf of the concerned individual, suggesting measures to be taken by competent authorities, and pursuing the matter until their satisfactory response.

– The second category of complaints includes protests against grave breaches of international humanitarian law committed in circumstances where the ICRC «*is unable to take direct action to help the victims*»[31]. Such protests are rare and resorted to only after other means of action have repeatedly failed to prove effective.

Thus, it appears quite clearly that, in spite of its lack of specific competence in the field of monitoring the implementation of Human Rights, the ICRC is often called to get involved into this process, principally in two main manners:

– through its own procedures of monitoring the compliance with IHL, to the extent to which:

  a) the contents of IHL provisions are similar or identical to those of rules of Human Rights and,

  b) in situations where both laws are to be concurrently observed.

– in a subsidiary way, when its activities require that the standards of Human Rights be preliminary and corollary conditions for IHL provisions and/or extra-conventional humanitarian procedures to be implemented and observed[32].

Moreover, in this area as in the others, «(...) *The ICRC activities in situations which are not within the purview of humanitarian law, may undoubtedly be seen as safeguarding some human rights to be fundamental*»[33].

31 R. Wieruszewski: «Application of International Humanitarian Law and Human Rights Law: Individual Complaints» in F. Kalshoven, Y. Sandoz (eds): «Implementation of Humanitarian Law», Martinus Nijhoff, Dordrecht-Boston-London, p. 455.

32 See E. Kornblum: «A Comparison of Self-evluating State Reporting Systems» in IRRC, n° 304, January-February, 1995, pp. 47-52.

33 C. Sommaruga: «Humanitarian Law and Human Rights in the Legal Arsenal of the ICRC» in D. Warner (ed): «Human Rights and Humanitarian Law: The Quest for Universality», Martinus Nijhoff, The Hague-Boston-London, 1997, p. 130.

10. The third aspect of convergence between Human Rights law and IHL implementation concerns the patterns of their co-existence and interaction within the domestic law. At the present level of their entry into force, this context seems to be of foremost importance for both law as far as their effective implementation is concerned, i.e. the efficiency of their real protective value for the individual.

The universality of acceptance of the 1949 Geneva Conventions and a high level of acceptance of the 1977 Additional Protocols[34] constitute for IHL a solid basis of co-existence with Human Rights instruments at the domestic level.

A good number of legislative and administrative measures that the States are to take, in order to integrate, in an operative way, IHL and Human Rights rules concern, at least partly, both of them. As is known, such measures of implementation are far from being satisfactorily taken. The co-operation of international organs in charge of the promotion of both bodies of law and the support of the domestic authorities and the civil society entities in favour of providing for such measures is indeed urgently needed, so that the formal acceptance of the international obligations could be promptly transformed into their real effectiveness. There exist in many States official, para-official or private bodies in charge of promoting and monitoring respect for Human Rights in force. There is also a growing number of States, where similar bodies have been created at an official level, with tasks to promote the implementation of IHL. A degree of appropriate synergy among them could valuably contribute to better focus on the shared efforts in view of advancing pertinent domestic law and decision making process[35].

11. As it is also known, the 1949 Geneva Convention and the 1977 Additional Protocols contain a particular obligation for States Party to disseminate their knowledge among all concerned[36].

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34 Presently 155 States are Party to the Protocol I and 148 to the Protocol II. All the States of Interamerican system are Party to the Protocols, except Haïti, Trinidad-and-Tobago and United States; Mexico having ratified only Protocol I.

35 Within the Inter-American system such bodies have been established in Argentina (Executive decrees n° 933/94 of 16 June 1994), Bolivia (Decree 23345 of 2 December 1992), Chile (Decision of Ministry of Foreign Affairs n° 1229/94 of 31 August 1994), Colombia (Presidential Decree n° 1863 of 11 October 1996), Dominican Republic (Commission established on 4 November 1995), El Salvador (Presidential Decree n° 118 of 4 November 1997), Panama (Executive Decree n° 145 of 25 August 1997), Paraguay (Presidential Decree n° 8802 of 12 May 1995) and Uruguay (Decrees n° 677/1992 of 24 November 1992 and of 24 March 1994).

36 Art. 47 of the First, art. 48 of the Second, art. 127 of the Third, art. 144 of the Fourth 1949 Geneva Conventions, and art. 83 of the 1977, art. 19 of 1977 Protocols I and II respectively. See also Y. Sandoz, Ch. Swinarski, B. Zimmermann (eds): «Commentary on the Additional Protocols» op. cit. par.par. 3368-3384 and 4903-4913.

The ICRC, for its part, is not only prompting the States to comply with these obligations but devotes, ever more actively, a good part of its activities and resources to such dissemination. The inclusion of basic concepts of Human Rights, as well as of their complementarity to IHL, together with information on their interaction in various situations -nowadays a standard practice within these activities- allow to consider them as «*a frame of dissemination of the human rights*»[37]. *Furthermore, «any action taken by the ICRC with the aim of ensuring that the parties to the conflict comply with the obligations imposed by humanitarian law can obviously be considered as action promoting respect for the human rights in situations of armed conflict*»[38].

12. The importance of the judicial interpretation of the IHL by the international tribunals has been already mentioned as to their reciprocally paradigmatic function at the interpretative level. There is equally an organic interaction between them in the field of the repression of their violations.

The concept of individual responsibility for war crimes, admitted since the Nuremberg and Tokyo trials, has been conducive, through the 1948 Convention on Genocide and the 1968 Convention on the Non-Applicability of Statutory Limitations, to the present status of the crimes against humanity in international law, the same concepts having been incorporated in 1949 Geneva Conventions and their 1977 Additional Protocols.

Although the Human Rights systems were first to achieve, at least on the regional level, structures of judicial settlement of their own violations, that is still to be realized, otherwise than on an *ad hoc* basis, for the violations of IHL, several patterns of responsibility for violations of international rules concerning individual rights have originated in the latter.

With the work of International tribunals for former Yugoslavia and Rwanda, the interdependence of the systems of sanctions became even more evident. Such notions as conspiracy for crimes against humanity, responsibility for hate propaganda, incitement and instigation to commit crimes, together with the rules on liability for complicity and rules on torture have been clarified by the jurisprudence on these matters, whether when applying Human Rights Law or IHL. Further new prospects in this area will certainly come with the creation of the World Criminal Court[39].

37 C. Sommaruga, op. cit. p. 130

38 C. Sommaruga, *ibídem*.

39 See, for a comprehensive review I. Bantekas, op. cit., and also A. Cassese: «The International Criminal Tribunal for the Former Yugoslavia and the Implementation of International Humanitarian Law» in «The United Nations and International Humanitarian Law», Pédone, Paris, 1996, pp. 229-247; L. Kama: «Le tribunal pénal international et la répression des crimes de guerre» in ibid. pp. 251-258 and H.-P. Gasser: «The International Committee of the Red Cross and the United Nations Involvement in the Implementation of International Humanitarian Law» in *ibíd*., pp. 229-284.

V. FINAL REMARKS

13. As a conclusion to these observations, it can be said that a definite area of sharing in the common IHL and the Human Rights functions within the international law and community seems already well established.

Whereas IHL is an autonomous body of international rules on protection of the individual with its distinct origins, its own legal basis, its ambit of application and mechanisms of implementation, functioning there as a system of protection in situations of emergency, i.e. armed conflicts and other circumstances of violence, and being specifically adopted to their particular requirements, it is complementary to other legal systems of such protection, and in particular to the Law of Human Rights.

Moreover, in the reality, the two laws have not only a relation of mutual complementarity, but also concurrent scope of legal effects for persons concerned by the application of both of them[40].

14. «*The distinctive normative thrusts of Human Rights and Humanitarian Law are reflections both of their context of application and the resulting conceptualisation of the individual. A stable political situation is a founding premise of human rights law whereby, in the absence of any emergency threatening the life of the nation, it may be reasonably expected that individuals can use institutional mechanisms such as the judicial system, to effectively protect their own interests...*

15. *Humanitarian Law, by contrast, is posited on the existence of an armed conflict which will trigger, more often than not, a breakdown of order and institution... humanitarian standards are directed squarely at those yielding power over persons in need of protection, by way of individual obligations reflecting public order requirements*»[41].

The co-existence of both of them appears indispensable to render legal protection of the individual complete and effective.

40 See Ch. Swinarski: «Principales Nociones e Institutos» op. cit. pp. 85-90.

41 R. Provost: «International Human Rights. Fusion or Confusion?» op. cit. p. 372-373.