THE RELATIONSHIP BETWEEN HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Implications of the decision Hassan v United Kingdom

Author: Tanja Fachathaler
Supervisor: Prof. Dr. Carmen Márquez Carrasco
Abstract

With the increased development of ever more specialised and detailed sub-branches of general international law emerging, the debate on the interplay between IHL and IHRL is by no means the only one, but given the similar underlying humanitarian concerns of both branches, certainly one which has raised particular interest by scholars. Despite a vast array of theoretical views and academic debates and the IJC’ important but apparently changing statements on the matter, the debate as regards how to make IHL and IHRL co-exist without norm conflicts is still ongoing and far from being settled. On the European level, the ECtHR, often had to consider the realities of armed conflict when interpreting and applying the provisions of the ECHR but it did not engage with the interplay between human rights and international humanitarian law in detail. Its recent change in position in the decision of the matter Hassan v United Kingdom and its explicit acknowledgment of the importance of the norms of IHL for the interpretation of the Convention are positive but its approach of adding an additional ground for detention, borrowed from IHL, into an otherwise narrowly framed provision of the ECHR is certainly not without problems. In providing a broader look at the picture by taking historical and theoretical sources into account, the present thesis analyses the first decision of the ECtHR in which the interplay between IHL and IHRL was tackled.
Table of Contents

Foreword

Table of cases 4

Table of acronyms 4

1. Introduction 10
   1.1. Context 11
   1.2. Aims and objectives 12
   1.3. Literature review 12
   1.4. Research questions 13
   1.5. Research design 13
   1.6. Methodology 13
   1.7. Thesis structure 14

2. Contextualisation and definitions 15
   2.1. Characteristics of IHRL and IHL 15
      2.1.1. Human rights law 15
      2.1.2. International humanitarian law 17
   2.2. Developments in international law 18
      2.2.1. Humanity in international law 18
         2.2.1.1. The humanisation of international law 18
         2.2.1.2. The individualisation of international law 19
         2.2.1.3. The constitutionalisation of international law 19
         2.2.1.4. Humanity in IHL 20
      2.2.2. The fragmentation of international law 22
   2.3. Concluding remarks 23

3. The historical development of the relationship between IHRL and IHL 23
   3.1. Pre-Teheran Conference period 23
   3.2. The Teheran Conference of 1968 and onwards 26
   3.3. Concluding remarks 28

4. Theories on the relationship between IHRL and IHL 29
   4.1. Exclusivity 30
      4.1.1. Separatist theories 30
         4.1.1.1. Self-contained v. special regimes 32
      4.1.2. IHL as lex specialis 33
         4.1.2.1. The interplay in the jurisprudence of the ICJ 35
            4.1.2.1.1. The Nuclear Weapons Advisory Opinion 35
            4.1.2.1.2. The Wall Advisory Opinion 37
            4.1.2.1.3. DRC v Uganda 38
         4.1.2.2. Criticising lex specialis 39
   4.2. Complementarity 40
The relationship between human rights law and international humanitarian law in the jurisprudence of the European Court of Human Rights: implications of the decision Hassan v United Kingdom

Fachathaler, Tanja