

Critical Analysis on Interaction between International Human Right Law and International Humanitarian Law in Counter Insurgency Operations

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Wars of the 20th Century were mainly interstate, and they were mainly conducted by professional armies. The International Humanitarian Law was introduced in order to mitigate the innocent human suffering due to increasing conventional wars. However, the present world situation has changed. Most of the armed forces and their type of conflicts are unconventional in nature. Most of the time they manifested as small intrastate warfare where non-state actors (insurgents) employ irregular means against state military forces. However, the Law of Armed Conflicts developed in a background of conventional battles lacks the capacity in addressing the issues emerging in the present world of irregular warfare context. Since it does not provide concrete operational guidance for contexts such as counterinsurgency, commanders who confront with insurgents in this new irregular atmosphere are left with a difficult situation to handle. Thus, this dissertation is intended to evaluate how the Interaction between the standards of International Human Rights Law and Law of Armed Conflicts impact the lawfulness of addressing counterinsurgency operations. The methodology employed in this dissertation, which aim to answer the formulated research questions, comprises of four phases. Initially the research discusses the concepts in the relevant legal and military contexts and finds out how the two legal regimes provided for the use of force and targeting in hostilities. In the second phase, the research will study the possibility of interrelating International Human Rights Law and Law of Armed Conflicts in the context of targeting in counterinsurgency operations. Thirdly, this research observes rules of the two legal regimes such as general and exceptional to acquire the legal basis of targeting. Further, this phase investigates whether the countering forces could target the people who come under the category of protected persons as to the fact that some insurgents would not qualify as lawful military personnel. Then, in the third phase the research will observe how the interaction of the two legal regimes could be utilised in determining lawful targets. Finally, the research will conclude by presenting the recommendations directed towards the countering commanders to consider in determining targets in Counterinsurgency Operations. This study, after a systematic discussion and analysis on the Interaction of standards provided by the Law of Armed Conflicts and International Human Rights Law makes recommends the field commanders to obtain legitimate targets in counterinsurgency operation and for the development of the law.

Keyword: Counterinsurgency, International Human Rights Law, Law of Armed Conflicts, Right to Life