Introduction

Individually or together, the American Bar Association’s sister volumes of *The International Humanitarian Law Sourcebook* and *The International Human Rights Law Sourcebook* will be useful to lawyers and non-lawyers in the fields of international development, humanitarian operations, and military or security operations at governmental and non-governmental organizations.

International Humanitarian Law (IHL) and International Human Rights Law (IHRL) are complementary; as such, this book and its sister volume are designed to be complementary as well. The two areas of law aim to protect individual human beings, especially through a small number of substantive norms known as “the hard core” or “non-derogable” rights. These are the right to life; freedom from torture, inhumane treatment, and slavery; and the assurance of legality and non-retroactivity. IHL and IHRL arrive at this common core from different intellectual traditions, which illuminate shared goals as well as differences.

IHL has its roots in the 19th century in the systematic attempts to use treaties between nation-states to limit the damage caused by armed conflict. Two major strands developed: the Law of The Hague, which regulates the means and methods of warfare, and the Law of Geneva, which codifies humanitarian norms and ensures humane treatment for noncombatants. Together, Geneva and the Hague determine who and what are valid targets, the methods a commander may use to attack a target, and who must be protected from harm and how. Crucially, however, IHL accepts the existence of warfare and, although it mandates that combat be guided by the customary principles of necessity, distinction, and proportionality, it does not give humanitarian concern total priority over the exigencies of the battlefield.

IHRL, on the other hand, prioritizes protection of the individual over all other concerns. Where IHL regulates the relationship between military and civilian in time of war, IHRL regulates the relationship between the individual and the state. Intellectually, IHRL is often seen as an extension and expansion of other documents asserting individual rights and governing the relationship between citizen and state, such as the Constitution and the Declaration of the Rights of Man. IHRL takes the premise a step farther by applying rights guarantees across the board, regardless of gender, race, or religion, in an effort to ensure that members of minority groups are not deprived of rights and protections. The panoply of rights asserted by assorted human rights instruments is varied and growing; nevertheless, they can be divided into two groups: those that cannot be derogated and those that can.

Most of the overlap between IHL and IHRL lies in the rights that cannot be derogated, the so-called “hard core” discussed above. These rights cannot be

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1 As both bodies of law and custom within IHL and IHRL are subject to occasional change, readers may send any feedback for improvements in future editions through the American Bar Association.
suspended, even in times of war or national emergency. Governments can derogate from, or suspend, other human rights in times of armed conflict and emergency. Examples of rights a state can derogate from—only due to necessity, and only for the duration of the crisis—include rights guaranteeing civic participation, services such as health care or education, and extensive due process rights.

This stark distinction between non-derogable and derogable rights—between the “hard core” and everything else—lies at the heart of a heated contemporary debate about the role of international human rights law in times of war. Just because a right can be derogated does not mean that it is automatically derogated, or that parties to an armed conflict can dismiss all of IHRL; indeed, in the last ten years the International Court of Justice has advised that the IHL and IHRL are not mutually exclusive. When the two bodies of law overlap, according to the ICJ, IHL is lex specialis, meaning that where both IHL and IHRL are applicable, IHL takes priority as it was specifically created for the emergency of armed conflict.