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**International Humanitarian Law and Human Rights Education:
An Exploration of Differences and Complementarity**

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This article is meant as a small attempt to deal critically with Humanitarian Law within Human Rights Education. After a quick glance at the nature of Humanitarian Law, its relation to Human Rights Education will be discussed and possibilities for linking it to Human Rights Education will be contemplated. The article's intention is to initialize a discourse which, after further intensive analysis, should contribute to clarifying the relation between Human Rights Education and education in Humanitarian Law.

1. Short introduction of Humanitarian Law

Humanitarian Law is part of International Law. As a so-called *lex specialis* it determines the minimal standards for international and partially also domestic armed conflicts and is therefore also called *ius in bello*. It is applied in all cases of declared war as well as “any other armed conflict [...], even if the state of war is not recognized by one of them”.¹ Article 3 describes the minimal standards that also apply in non-international conflicts. Some of the clauses are also valid in times of peace, like the protection of the Red Cross symbol.

Humanitarian Law includes – first – regulations for the protection of persons who are not or no longer partaking in the conflict and – second – limitations of means and methods of war. Humanitarian Law is concerned with the protection of human dignity in the extreme situation of war. Its regulations are intended to limit violence in armed conflicts and to ease human suffering.

¹ Common Article 2 of the four Geneva Conventions, 1949.

Humanitarian Law holds absolute validity; none of its regulations may be overridden in times of its application. Neither does the principle of reciprocity apply. This means that a party is obligated to uphold Humanitarian Law, even if the opposing party is acting in violation of its rules. The reasons for war are irrelevant in Humanitarian Law; it must be adhered to by all parties regardless of who started the hostile acts. Due to the Martens Clause (named after Fyodor Martens 1899) there are no legal loop holes in Humanitarian Law: "(...) civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."² It is complemented by the international law of Human Rights.

Universal and most written Humanitarian Law can be traced back to two people: Francis Lieber and Henry Dunant. Without being aware of the other, both simultaneously contributed considerably to the conception and content of today's Humanitarian Law.³ In 1863, by assignment of the United States of America, Francis Lieber, a German-American lawyer, drafted the so-called "Lieber-Code," a domestic decree for American soldiers during the American Civil War. It was a first attempt to codify existing orders and customs of war. Henry Dunant is seen as the founding father of modern Humanitarian Law. By accident, he became witness of the immense dimensions of suffering on the battlefield of Solferino in 1859. At that time, not even medical care existed for the wounded soldiers in the field. In his book "A Memory of Solferino" he offers two suggestions: the first concerned the creation of private organizations to tend to the wounded soldiers, the second envisioned an international treaty declaring medical aid for the wounded a neutral enterprise and effectively protecting medical personnel. His first suggestion led to the founding of the International Committee of the Red Cross in 1863; the second brought about the drafting of the first Geneva Convention in 1864 and thus represents one of the foundations of modern International Law.⁴

The main instruments of Humanitarian Law are the four Geneva Conventions 1949 together with their additional protocols from 1977 and 2007. Content-wise, these four conventions encompass the "Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" (1.), the "Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea" (2.), the "Treatment of Prisoners of War" (3.), and the "Protection of Civilian Persons in Time of War" (4.). The two additional protocols formulate in detail protective provisions for international (1st Additional Protocol) and non-international (2nd Additional Protocol) armed conflicts. The 3rd Additional Protocol 2007 introduces a new symbol of protection – the red crystal – which is equal to the Red Cross and the

² International Committee of the Red Cross, *Humanitarian law: Answers to your questions* (Genf: 2002), 7.

³ Cf. Hans-Peter Gasser, „Das Humanitäre Völkerrecht,“ in *Menschlichkeit für alle – Die Weltbewegung des Roten Kreuzes und des Roten Halbmonds*, ed. Hans Haug, Hans-Peter Gasser and Françoise Perret (Bern: Haupt Verlag, 1991), 5.

⁴ Cf. Hans-Peter Gasser, *Humanitäres Völkerrecht – Eine Einführung* (Zürich/Basel/Genf: Schulthess Juristische Medien AG und NOMOS Verlagsgesellschaft, 2007), 36.

Red Crescent. It was devised as a neutral emblem that leaves no room for religious interpretations.

Humanitarian Law has universal validity. The four Geneva Conventions have been signed and ratified by 194 states as of 2009. Like Human Rights Law, Humanitarian Law is not static; it is constantly being developed. It must respond to new challenges that originate from the “new wars.” Some recent developments that Humanitarian Law has undergone were through the Treaty of Ottawa in 1999, which banned anti-personnel-mines, through the Treaty of Oslo in 2008 with its regulations concerning cluster munitions, and through the Montreux Document in 2008 which covers the issue of the role of private security organizations and military organizations, but which does not constitute a binding document.

2. Purpose

The question here is not one of the legitimacy of Humanitarian Law or of Human Rights in education, for the proliferation of both is mandated by international law. The mandate to propagate all Human Rights can be found in the Universal Declaration of Human Rights, which reads,

Whereas common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly

proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.⁵

The duty of states, to proliferate Humanitarian Law is asserted in all four Geneva Conventions and in both Additional Protocols from 1977. Article 47 of the first Geneva Convention formulates this mission thus:

The High contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

This resolute call for proliferation of understanding demonstrates the importance of the awareness of these rights for society and the basic education of each individual, while at the same time it appeals to the responsibility of instances of the state to carry out this mission accordingly.

⁵ Preamble of the Universal Declaration of Human Rights (1948).

The purpose of this article is not to emphasize the bigger relevance of the one or other rule of International Law; the question that will be discussed here is, in what form the proliferation of Human Rights and Humanitarian Law, especially of the latter, should be carried out, which is still little known among the population. As guardian and promoter of Humanitarian Law, the Red Cross is particularly endeavoring to close this educational gap and to raise awareness on Humanitarian Law. Should proliferation efforts focus on presenting Humanitarian Law as a full-fledged part of Human Rights Education to be taught accordingly, or should they try to establish Humanitarian Law as an independent field of education?

3. Starting point for a critical analysis

In their Final Document, which was drafted during the International Congress on the Teaching of Human Rights in Vienna in 1978, the UNESCO unmistakably defined Humanitarian Law as a part of Human Rights Education. It states: “Considering that the teaching of human rights should also be concerned with securing the observance of human rights in cases of armed conflict, and should include the teaching of international humanitarian law, [...]”⁶

The first reaction would probably be to completely agree with this statement by saying, “Of course Humanitarian Law is part of Human Rights Education! After all, it is about people’s rights and the preservation of human dignity in armed conflicts. They must be protected. In human history, there will always be wars, which is why it is so important to let the teaching of Humanitarian Law enter Human Rights Education in order to be able to perceive and demand the human-rights dimension even in such extreme situations.” However, if we contemplate what an integration of Humanitarian Law into Human Rights Education would entail, the answer is no longer that clear. The differences and commonalities are so entangled that it is difficult to take a clear stand.

The whole issue of armed conflicts lies in a triangular tension between Humanitarian Law, prohibition against violence and Human Rights.⁷ (The actual goal of International Law is to create and maintain an order based on peace, justice and the realization of Human Rights. In certain situations, however, the use of military force is permitted. Regulations pertaining to the legitimate use of force are recorded in the United Nations charter of 1945, in which an international military use of force is only permitted, first, in the case of a state’s right of self-defense and, second, as a forceful means “to maintain and restore international peace and security”, based on a resolution of the UN Security Council.⁸) This tension in the relations between Humanitarian Law and Human Rights naturally also affects the relation of the education of these two concepts towards one another.

⁶ UNESCO, „International Congress on the Teaching of Human Rights, Vienna, Austria, 1978,“ unesco.org, http://portal.unesco.org/shs/en/ev.php-URL_ID=1686&URL_DO=DO_TOPIC&URL_SECTION=201.html.

⁷ Cf. Daniel Thürer, „Kriegerische Gewalt und rule of law,“ in *Humanitäres Völkerrecht – eine Einführung*, ed. Hans-Peter Gasser ((Zürich/Basel/Genf: Schulthess Juristische Medien AG und NOMOS Verlagsgesellschaft, 2007), 4.

⁸ Cf. Charter of the United Nations, Chapter VII (Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression) (1945).

4. Common Goals?

It must be reasserted that Human Rights and Humanitarian Law are two different kinds of international law; though they are interconnected and sometimes cover the same areas, they must still be systematically distinguished.⁹ A clear distinction is necessary in order to retain a clear image of the respective law with its intentions and goals as well as in order to uphold its autonomy and to communicate it to the people. Otherwise, the term would run the danger of ambiguity.

Only a detailed knowledge of the purpose of these two laws can show that an unreflected mingling of Humanitarian Law and Human Rights Law would considerably lessen the acceptance and, as a consequence, the effectiveness and strength of both international laws as important instruments for the preservation of human dignity under different circumstances and with different means. After all, their purpose is the subject of education on these laws. If, however, they do not completely correspond, how can Humanitarian Law be a full-fledged part of Human Rights Education? That way, Human Rights Education would end up as an education of contradictions that causes confusion instead of clarity, and which paralyzes instead of motivating action.

4.1 Aims of the Law of Human Rights vs. aims of Humanitarian Law

While both laws pursue the goal of protecting human dignity, they do so under different circumstances and with different means. Humanitarian Law was particularly created for protection in times of armed conflict. With its regulations it attempts to set limits to violence in the extreme situation of war and thus to prevent, the “degeneration of humankind into complete savagery” [my translation].¹⁰ The main goal is thus to limit the negative effects of war. Suffering in war cannot be completely eliminated, but it can be alleviated by upholding the rules. Humanitarian Law is in a constant state of tension between military needs and humanitarian elements, which leads to profound ethical dilemmas. It has no place for asking for the meaning, or the reasons, or the prevention of war. It is a *lex specialis* that was developed exactly for such situations of war. This is why it consists of regulations which only apply in times of war.

The prior goal of Human Rights, too, is to preserve human dignity. Human Rights were created “to protect the dignity of humans [...] from the threat of disregard by granting all humans the same liberty rights” [my translation].¹¹ The

⁹ Manfred Nowak, *Einführung in das internationale Menschenrechtssystem* (Wien/Graz: Neuer Wissenschaftlicher Verlag, 2002), 50.

¹⁰ „Ableiten der Menschheit in die absolute Barbarei“
Hans-Peter Gasser, „Das Humanitäre Völkerrecht,“ in *Menschlichkeit für alle – Die Weltbewegung des Roten Kreuzes und des Roten Halbmonds*, ed. Hans Haug, Hans-Peter Gasser and Francoise Perret (Bern: Haupt Verlag, 1991), 4.

¹¹ „die Würde des Menschen [...] vor drohender Missachtung zu schützen, dass allen Menschen gleiche Freiheitsrechte garantiert werden“

Heiner Bielefeldt, „Die Würde als Maßstab – Philosophische Überlegungen zur Menschenrechtsbildung,“ in *Menschenrechtsbildung, Bilanz und Perspektiven*, ed. Claudia Mahler and Anja Mihr (Wiesbaden: VS Verlag, 2004), 24.

objectives formulated in the preamble of the Universal Declaration of Human Rights show that the observance of human rights should result in liberty, justice and peace as well as social progress and improved living conditions. It describes a world in which people can experience freedom of speech and faith and freedom from fear and need as the highest aspiration of humankind.

Human Rights bear within them an altering, revolutionary force which does not content itself with the status quo, but wants to track down acts against fundamental freedoms and human rights and to change it into acts in accordance with Human Rights that serve the “protection and guarantee of elemental interests of life, of basic freedoms and elemental political opportunities of participation” [my translation].¹² It is obvious that the regulations of Humanitarian Law cannot refer to these goals directly. War is a symbol of fear, hardship and restriction of liberties and it will remain so despite Humanitarian Law. ”Oh, happiness is a warm gun ... Reality killed life, deleted memories and put romance into dark alleys, between houses without light.“ [my translation]¹³

It is not the purpose of Humanitarian Law to include regulations for times of peace. This is the essential purpose of Human Rights Law, which, in these times, once again reclaims its original meaning and might as a universal system of values. Humanitarian Law was not conceived for an ideal world of peace. The usefulness of Humanitarian Law ends as soon as military conflict has come to an end and the humanitarian problems have been solved. Prisoners of war are protected by the 3rd Geneva Convention “until their final release and repatriation“.¹⁴

Peace and social progress, in the way that Human Rights envision and pursue them, are only a part of considerations in Humanitarian Law in that by complying with the regulations of Humanitarian Law a normal life in peace becomes possible more quickly after an armed conflict has ended because, for example, hospitals and schools have been saved from destruction, families were reunited etc.

4.2 Aims in education

These differing aims are also reflected in the content of the respective education. The UN describes Human Rights Education accordingly,

[...] as education, training and information aiming at building a universal culture of human rights through the sharing of knowledge, imparting of skills and moulding of attitudes directed to:

- a) The strengthening of respect for human rights and fundamental freedoms;

¹² „Schutz und der Garantie von elementaren Lebensinteressen, basalen Freiheiten und elementaren politischen Partizipationschancen“

Georg Lohmann and Arnd Pollmann, „Menschenrechte,“ in *Handbuch der Politischen Philosophie und Sozialphilosophie, Band 1*, ed. Stefan Gosepath, Wilfrid Hinsch and Beate Rössler (Berlin: Walter de Gruyter, 2008), 806.

¹³ „Oh, happiness is a warm gun ... Die Wirklichkeit tötete das Leben, löschte die Erinnerungen aus und stellte die Romantik in düstere Gassen, zwischen Häuser ohne Licht.“

Maruša Krese, *Alle meine Kriege. Happiness is a warm gun* (Graz: Leykam, 2006), 9.

¹⁴ Article 5 of the 3rd Geneva Conventions (1949)

- b) The full development of the human personality and the sense of its dignity;
- c) The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- d) The enabling of all persons to participate effectively in a free and democratic society governed by the rule of law;
- e) The building and maintenance of peace;
- f) The promotion of people-centered sustainable development and social justice.¹⁵

Human Rights Education, thus, should serve as a contribution to the preservation of peace, to continuity, social order, and to combating of behavior and attitudes that disturb social order.¹⁶ The Vienna World Conference on Human Rights in 1993 “[...] considers human rights education [...] essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.”¹⁷

Human Rights Education with its peace-pedagogical claim wants to assist with its commitment in the creation of a world without violence, in the sense of a process “of promoting knowledge, skills, attitudes and values needed to bring about behaviour changes that will enable children, youth and adults to prevent conflict and violence, both overt and structural; to resolve conflict peacefully; and to create the conditions conducive to peace, whether at an intrapersonal, interpersonal, intergroup, national or international level.”¹⁸ In Human Rights Education questions about the meaning and the origins of wars are discussed, war as a means for problem solving is questioned, strategies for solving conflicts nonviolently are developed, and a world is aspired to in which Humanitarian Law becomes an unused law. Utopias are developed and all steps are taken to the realization of these goals.

Sobhi Tawil, the leader of the project “Discover Humanitarian Law” of the International Red Cross from 1999 to 2001 makes clear that education in Humanitarian Law only indirectly pursues peace as its goal. “[It] is not explicitly about peace, tolerance, mutual understanding, violence prevention or conflict resolution; it is about the ethical issues related to the shared human experience of armed conflict.”¹⁹ And he continues: “Although education for young people in humanitarian law is not explicitly about conflict prevention, and even less about conflict resolution, it definitely helps to create conditions conducive to peace. In

¹⁵ UNESCO, *Plan of Action. World Programme for Human Rights Education* (New York/ Genf: 2006), 12.

¹⁶ Cf. Nancy Flowers, „How to define Human Rights Education? – A complex Answer to a simple Question,“ in *International Perspectives in Human Rights Education*, ed. Viola B. Georgi and Michael Seberich (Gütersloh: Bertelsmann Foundation Publishers, 2004), 108.

¹⁷ A/CONF.157/23 (12.07.1993): World Conference on Human Rights: Vienna Declaration and Programme of Action, paragraph 78.

¹⁸ UNICEF, „Peace Education in UNICEF,“ *Working Paper Series, Education Sector* (New York: 1999), i.

¹⁹ Sobhi Tawil, „International humanitarian law and basic education,“ *Interantional Review of the Red Cross* no. 839 (2000): 4.

situations of acute social and political tension [...] education in humanitarian law may have a potential indirect pacifying effect.”²⁰

Education in Humanitarian Law focuses on humanitarian issues that derive from times of armed conflict, and for that context attempts to develop understanding and readiness to act. The focus is on the question: “How can human dignity be best protected in times of armed conflict?” The aim is to propagate the principle of humaneness through the regulations of Humanitarian Law. An important concern of education in Humanitarian Law lies in limiting and preventing violations of Humanitarian Law and with it, of the inner core of Human Rights. Thus, Tawil formulates the goals of Humanitarian Law:

- awareness of limits and of various forms of protection applicable to situations of armed conflict;
- understanding of the multiple aspects of international humanitarian law, of the complexity of its application, and of humanitarian issues;
- interest in international current events and humanitarian action;
- capacity to view conflict situations at home and abroad from a humanitarian perspective;
- active involvement in community service or other forms of mobilization to protect and promote humanitarian attitudes.²¹

The search for origins and reasons for conflicts of this kind are deliberately excluded, since they are not an issue in Humanitarian Law. The importance of education in Humanitarian Law, according to Tawil, is based on three observations:

The first is that the tendency of armed conflicts around the world to multiply and change in nature does not seem to be abating. Secondly, it is becoming ever more difficult to distinguish between armed conflict and non-conflict settings, as all societies appear to be increasingly prone to various forms of violence. [...] Finally, young people are increasingly exposed to greater media coverage of these different forms of violence, and are more and more affected by and involved in both urban violence and armed conflict.²²

Education in Humanitarian Law must adhere to these observations because such violent situations are closely related to the application of Humanitarian Law. While Human Rights essentially apply to all people at all times and under any circumstances, Humanitarian Law was exclusively conceived only for times of armed conflict. Human Rights are more or less only used to fill gaps in legal protection.²³

The provisions of this Section are additional to the rules concerning humanitarian protection of civilians and civilian objects in the power of a Party to the conflict contained in the Fourth Convention, [...], as well as to

²⁰ Ibid., 4.

²¹ Ibid., 4.

²² Ibid., 3.

²³ Cf. Hans-Peter Gasser, *Humanitäres Völkerrecht – Eine Einführung* (Zürich/Basel/Genf: Schulthess Juristische Medien AG und NOMOS Verlagsgesellschaft, 2007), 28-9.

other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict.²⁴

Bernhard Schäfer sees the mutual relation of these two legal areas towards one another in the “Interpretation of not closely defined terms of humanitarian law”²⁵ [my translation]. To give an example, he refers to the “guarantees of rights which are seen as indispensable” [my translation]²⁶ in Humanitarian Law, which are more closely defined by the human-rights-guarantees for procedural fairness in law (International Covenant on Civil and Political Rights, Art. 14), or the prohibition of torture, which is strengthened by the regulations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Art.1, par.1).²⁷

The conventions for the protection of human rights are poorly prepared for domestic violent situations that do not cross the threshold of an armed conflict subject to Humanitarian Law. „For example, they do not mention under which circumstances and in what ways public authorities may use force.” [my translation]²⁸ For this reason, limits for the containment of violence are not present in human rights documents.²⁹ Herein lies the great importance of Humanitarian Law; it is its goal to set limits to violence in armed conflicts, that is what it was developed for. As a *lex specialis* it essentially has priority over Human-Rights-regulations in international armed conflicts.³⁰ The difficulty lies in defining exactly at what point a conflict has reached the size and strength so that Humanitarian Law applies to fill the gap in the regulation structure of Human Rights. The attribute of the always valid Human Rights can, on closer scrutiny, only be awarded to some of them, for within some of the human rights documents there is actually an emergency clause which, under certain conditions, permits the overriding of several human rights. The so-called inner core of human rights is exempted from this rule; it is absolute. The rights that cannot be overridden include: prohibition of discrimination based on race, colour, sex or religion, the right to life, prohibition of torture, the prohibition of cruel treatment, prohibition of humiliating or degrading treatment, prohibition of slavery, prohibition of retroactive application of the law.

These are regulations that the Human Rights Law shares with Humanitarian Law. At this point and in the common documents like the Convention on the Rights of the Child, the optional Protocol on the Participation of Children in Armed Conflict,

²⁴ Article 72 of the 1st Additional Protocol (1977).

²⁵ „Auslegung allgemeiner, nicht näher bestimmter Begriffe im humanitären Völkerrecht“ Bernhard Schäfer, „Zum Verhältnis von Menschenrechten und humanitärem Völkerrecht“, in *Menschenrechtseinbindung bei Auslandseinsätzen deutscher Streitkräfte, Expertengespräch*, Menschenrechtszentrum Potsdam, ed. Norman Weiß (2006), 7

²⁶ „, als unerlässlich anerkannten Rechtsgarantien“
Ibid, 7.

²⁷ Cf. Ibid., 7.

²⁸ „Sie sagen z.B. nichts aus zur Frage, unter welchen Umständen und in welcher Art und Weise die staatlichen Behörden Gewalt anwenden dürfen.“

Hans-Peter Gasser, *Humanitäres Völkerrecht – Eine Einführung* (Zürich/Basel/Genf: Schulthess Juristische Medien AG und NOMOS Verlagsgesellschaft, 2007), 30.

²⁹ Cf. Ibid., 30.

³⁰ Cf. Ibid., 28-9.

the Rome Statute of the International Criminal Court, the close relation between these two legal areas becomes clearly visible – they complement one another in times of armed conflict. Of special importance is their interplay in cases of domestic conflicts, because conflicts have to reach a certain intensity for Humanitarian Law to be applied.

5. Images of Hope – with or without boundaries

Through a series of ethical explorations relating to the common human experience of armed conflict, education in humanitarian law is an important contribution to positive attitudinal change fostered by ideas such as respect for life and human dignity, civic responsibility, and solidarity.³¹

Humanitarian Law seeks to turn the looking other way from the suffering of others into a perception of it and into an active commitment to alleviate this suffering. It appeals to the responsibility of each individual to let themselves be touched by the face of the other. By attempting to ease suffering, it takes up the element of hope and tries to bring light into the darkness of war. This light, however, will always be connected and fueled by war and its cruelty. The light that Human Rights Education should convey must go beyond this. Human Rights Education has its goal in a world without war. It is working towards the elimination of war as a means to carry out or solve conflicts. Human Rights Education acts according to the motto: “The human being is capable of peace, otherwise it wouldn’t exist” [my translation]³², and builds its concept on the basis of a person that is willing to both learn and evolve, whom it leads on the way to becoming real human. This “Utopia of peace with a claim to reality” the UN pledges itself to in its aims where we read, “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and [...] to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security.”³³ The basis of this pledge is a holistic image of humankind, which is free of prejudice and political or economic interests that are accompanied by hatred and violence.³⁴ This is why the efforts of Human Rights Education are focused on seeing “behind the secrets of violence” to demystify violence and war. [my translation]³⁵

Humanitarian Law, on the other hand, communicates the image of a hopeless and incorrigible humankind that has always been waging war and will continue to do so. War, in Humanitarian Law’s view, will always be part of humankind. “Who

³¹ Sohbi Tawil, „International humanitarian law and basic education,“ *International Review of the Red Cross* no. 839 (2000): 3.

³² „Der Mensch ist zum Frieden fähig, sonst gäbe es ihn nicht.“

Werner Wintersteiner, *Pädagogik des Anderen. Bausteine für eine Friedenspädagogik in der Postmoderne* (Münster: agenda Verlag, 2000), 162.

³³ Charta of the United Nations, Preamble (1945).

³⁴ Cf. Benedict XVI, *The human person, the heart of peace. Message for the celebration of the World Day of Peace* (2007).

³⁵ „hinter das Geheimnis der Gewalt“, „die Gewalt und den Krieg zu entmystifizieren“
Werner Wintersteiner, *Pädagogik des Anderen. Bausteine für eine Friedenspädagogik in der Postmoderne* (Münster: agenda Verlag, 2000), 118.

believes today that war can be abolished? No one, not even pacifists. We hope only (so far in vain) to stop genocide and to bring to justice those who commit gross violations of the laws of war (for there are laws of war, to which combatants should be held) [...].”³⁶ Humankind has not learned its lesson from history; on the contrary, it develops ever more cruel methods for waging war, and weapon systems to which Humanitarian Law must respond. It is the bitter burden of war that humankind is carrying and from which there is seemingly no escape. Through its regulations, Humanitarian Law attempts to tame the culture of violence, but it does not try to transform it into a culture of peace. This transformation is the fundamental mission of Human Rights Laws.

Humanitarian Law focuses in on the realities of war and attempts to “improve” them as far as possible, which does not mean that it does not call for a universal prohibition of war. At the very beginning of the preamble to the First Additional Protocol it states,

The High Contracting Parties, Proclaiming their earnest wish to see peace prevail among peoples, Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or independence of any State, or in any other manner inconsistent with the purposes of the United Nations, Believing it necessary nevertheless to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application, [...].³⁷

6. „Communication problems“

In practical communication the systematic differences of these two legal areas become very clear. Lubell describes his experiences thus:

Anyone who has been involved in teaching IHL to human rights professionals or speaking of human rights law with military personnel is aware of the acute difficulties that at times make it seem like speaking Dutch to the Chinese or vice versa. A military officer schooled in the rules determining whom he has licence to target might find discussion of „a right to life“ slightly vexing. A human rights professional is often equally baffled by the definition of a military objective. Communication breakdown in these situations can be rapid.³⁸

What is interesting is the comparison that Lubell undertakes afterwards when he compares the two laws to two distinct languages. “The difference between languages includes not only words and terms, but encapsulates conceptual differences that can lead to contrasting ways of thinking and differing approaches to situations”.³⁹

³⁶ Susan Sontag, *Regarding the Pain of Others* (New York: Picador, 2003), 5.

³⁷ Preamble, 1st Additional Protocol (1977).

³⁸ Noam Lubell, „Challenges in applying human rights law to armed conflict,“ *International Review of the Red Cross*, vol. 87, no. 860 (2005): 744-5.

³⁹ *Ibid.*, 745.

Sometimes, one term can be translated, while others only exist in one of the two 'languages', and are thus not translatable. As an example Lubell mentions the term „military objective“ and says, “Such terms must be explained and taught in their native form”.⁴⁰ It becomes problematic when some terms exist in both 'languages' but have different denotations, like the principle of proportionality:

In both of them it denotes a balancing relationship: X in relation to Y. In substance, however, it is not always the same and can indeed cause confusion.

For example, under human rights law and the rules of law enforcement, when a State agent is using force against an individual, the proportionality principle measures that force in an assessment that includes the effect on the individual himself, leading to a need to use the smallest amount of force necessary and restricting the use of lethal force.

Under IHL, on the other hand, if the individual is for instance a combatant who can be lawfully targeted, then the proportionality principle focuses on the effect upon surrounding people and objects, rather than upon the targeted individual, against whom it might be lawful to use lethal force as a first recourse.⁴¹

Therefore, it is essential to make clear which of the two 'languages' is being used and not to conflate them. This is the only way that misunderstandings can be prevented which lead to reactions like: “It is not good trying to see something human in war.”

7. Closing Thoughts

In order to reach a decision concerning how to position Humanitarian Law inside Human Rights Education, Human Rights Education as well as education in Humanitarian Law have to be seen in their entirety of goals, contents, principles etc. Were they to be propagated under the one roof of Human Rights Education, both types of international law would lose value and substance, because contents and principles would become intermingled by unclear, ambiguous definitions of terms. Additionally, Humanitarian Law as a part of Human Rights Education would never be able to gain the attention and importance that it would have through an education on its own. In dealing with Humanitarian Law, the question for the meaning of war surfaces frequently. Why do they have to exist? Why do we not put more energy into work of peace pedagogy? If there is no clear distinction between the actual contents of Humanitarian Law and similar issues, there is the danger that Humanitarian Law might be called into question, to even misunderstand it as a justification for war and thus to lessen its importance. However, the Preamble of the 1st Additional Protocol clearly indicates that Humanitarian Law by no means justifies war: “Expressing their conviction that nothing in this Protocol or in the Geneva Conventions ... can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations, [...]”⁴² Human Rights, then, would lose their power as a peace-creating force by being mixed with

⁴⁰ Ibid., 745.

⁴¹ Ibid., 745-746.

⁴² Preamble of the 1st Additional Protocol (1977).

Humanitarian Law, because the latter has a strong focus on acts of war, when many of the human rights can be suspended.

A clear distinction between them is essential so that the importance and power of Human Rights in their entirety are not diminished. War as an extreme exception to carrying out conflicts must not weaken the image of indivisible human rights. Present human suffering can be overcome and future suffering prevented by adhering to Human Rights in their wholeness. Human Rights Education must convey an image of strong human rights, an image that depicts human rights as an effective instrument against feelings of helplessness and for the blossoming of hope with respect to a world of peace. Human Rights Education does not content itself with war as a part of reality and normality, and it does not see war as “an event that happens inevitably like a natural catastrophe” [my translation].⁴³

How, then, could a mutually fruitful working relation between Humanitarian Law and Human Rights Education look like? What is important is that they are perceived as two distinct areas which, through their common contents, should strive for cooperation, while each international law is being treated with denotational correctness. Humanitarian Law can serve as a valuable bridge and supplement to Human Rights Education: its intense preoccupation with the cruelties of war and their devastating consequences for individuals and for the whole of humankind shows an urgent need for a stronger work in peace pedagogy, for development of concepts of a future without war, and for the observation of all human rights in their completeness. The preoccupation with Humanitarian Law shows us very vividly the necessity of adhering to human rights as universal, indivisible and mutually complementing rights. The work of Humanitarian Law can, in a way, pave the way for a mobilization towards an active human rights culture.

⁴³ „Ereignis, das mit der Unvermeidlichkeit einer Naturkatastrophe *kommt*“
Werner Wintersteiner, *Pädagogik des Anderen. Bausteine für eine Friedenspädagogik in der Postmoderne* (Münster: agenda Verlag, 2000), 118.

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