Silent Leges Inter Arma

IHL *v.* Human Rights: Systemic Integration and *Lex Specialis*

Raphaël van Steenberghe

Research Associate at the Belgian National Fund for Scientific Research (FNRS)

Professor at the University of Louvain (UCLouvain) in Belgium

Table of Contents

Preliminary remarks

Lex specialis principle

Preliminary remarks

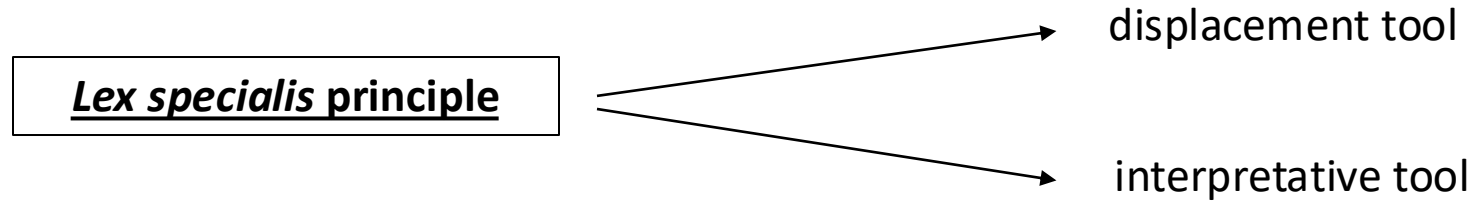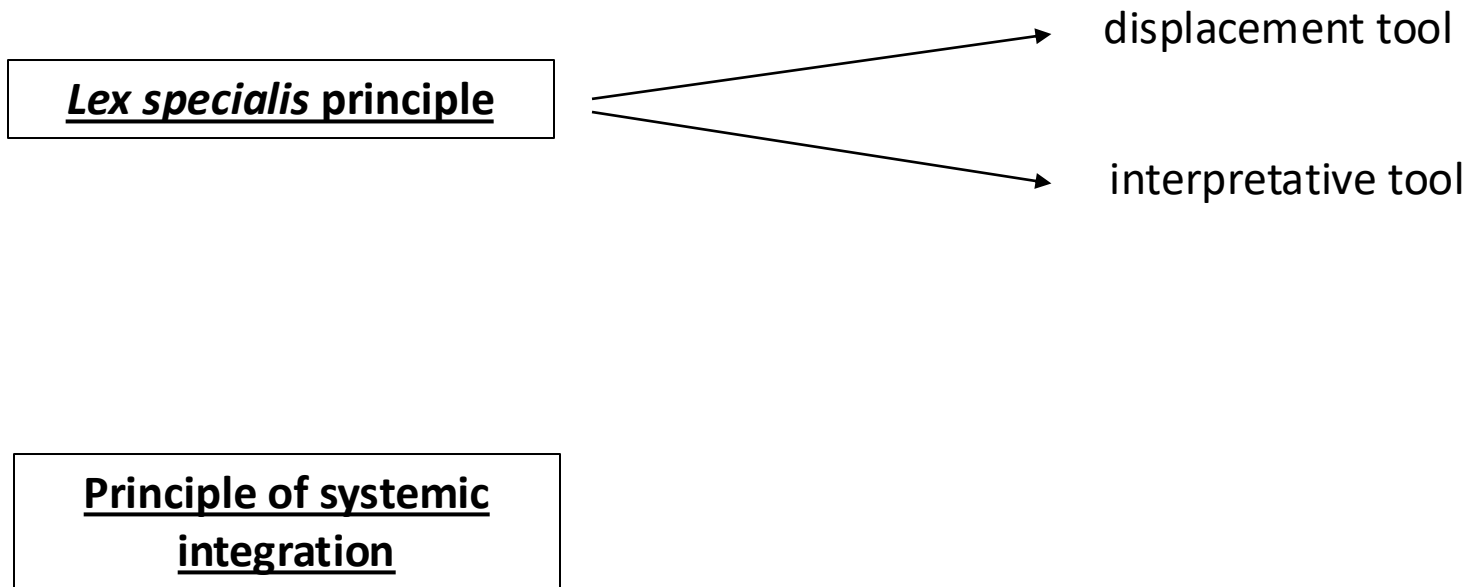displacement tool

| *Lex specialis* principle | → displacement tool |

Preliminary remarks
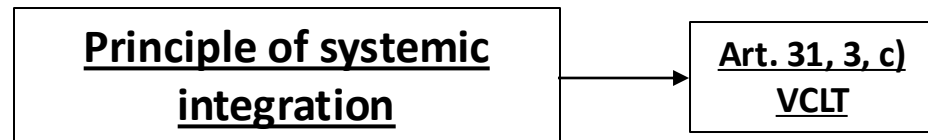
Lex specialis principle → displacement tool

Lex specialis principle → interpretative tool

Preliminary remarks

| **_Lex specialis_ principle** | → displacement tool |
| | → interpretative tool |

Principle of systemic integration

Preliminary remarks

Lex specialis principle → displacement tool

→ interpretative tool

Principle of systemic integration → **Art. 31, 3, c) VCLT**

Preliminary remarks

Lex specialis principle → displacement tool

→ interpretative tool

Principle of systemic integration → **Art. 31, 3, c) VCLT**

A treaty shall be interpreted in light of 'any *relevant* rules of international law applicable in the relations between the parties'.
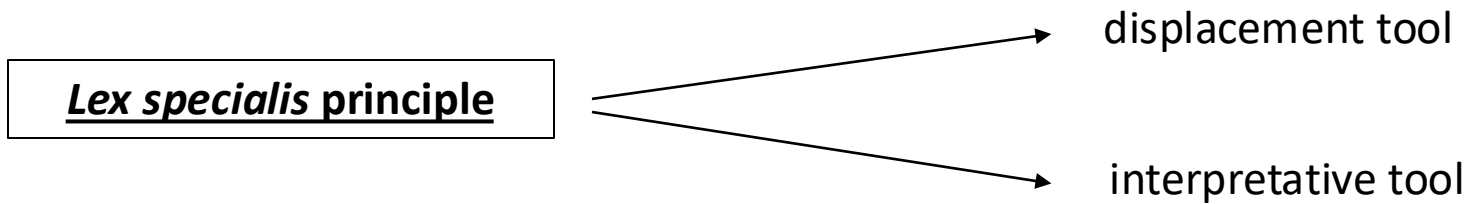
Preliminary remarks

Lex specialis principle → displacement tool

→ interpretative tool

Principle of systemic integration → **Art. 31, 3, c) VCLT** → international legal order as a coherent system

A treaty shall be interpreted in light of 'any *relevant* rules of international law applicable in the relations between the parties'.

Preliminary remarks

Lex specialis principle → displacement tool

→ interpretative tool

Principle of systemic integration → **Art. 31, 3, c) VCLT** → international legal order as a coherent system → interpretative tool
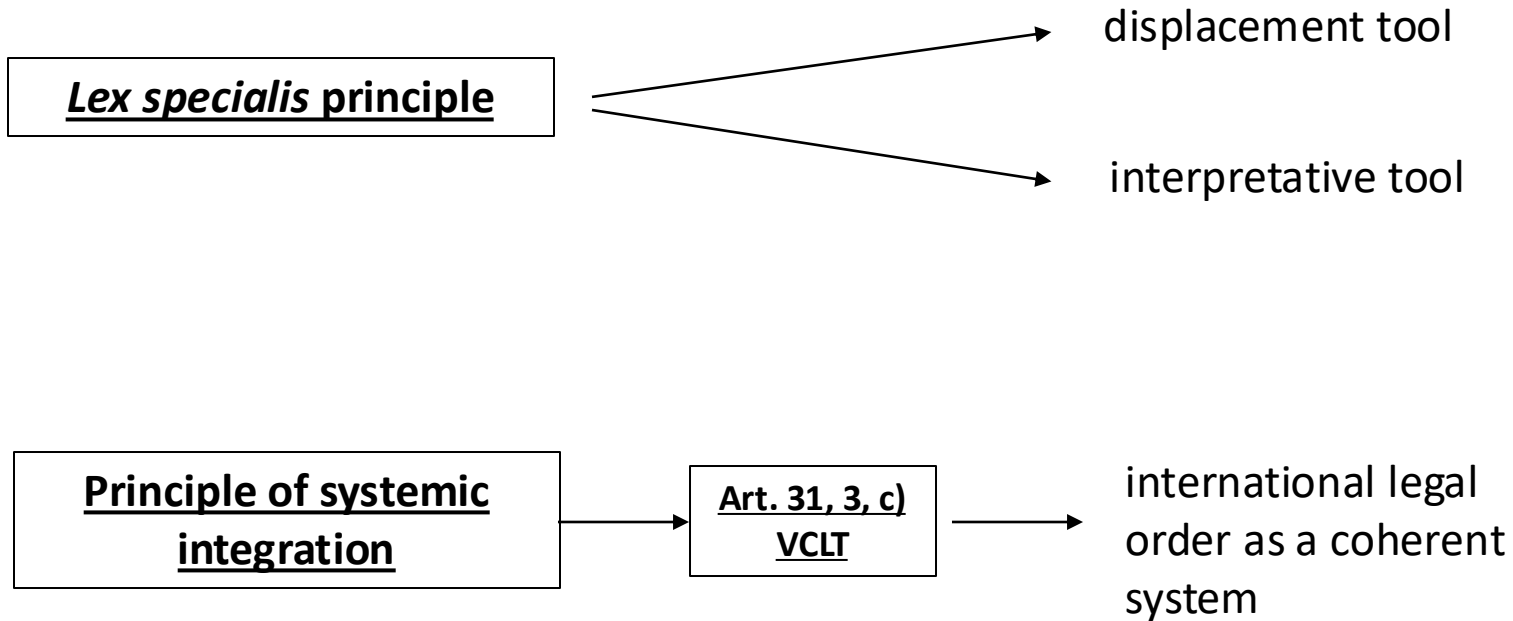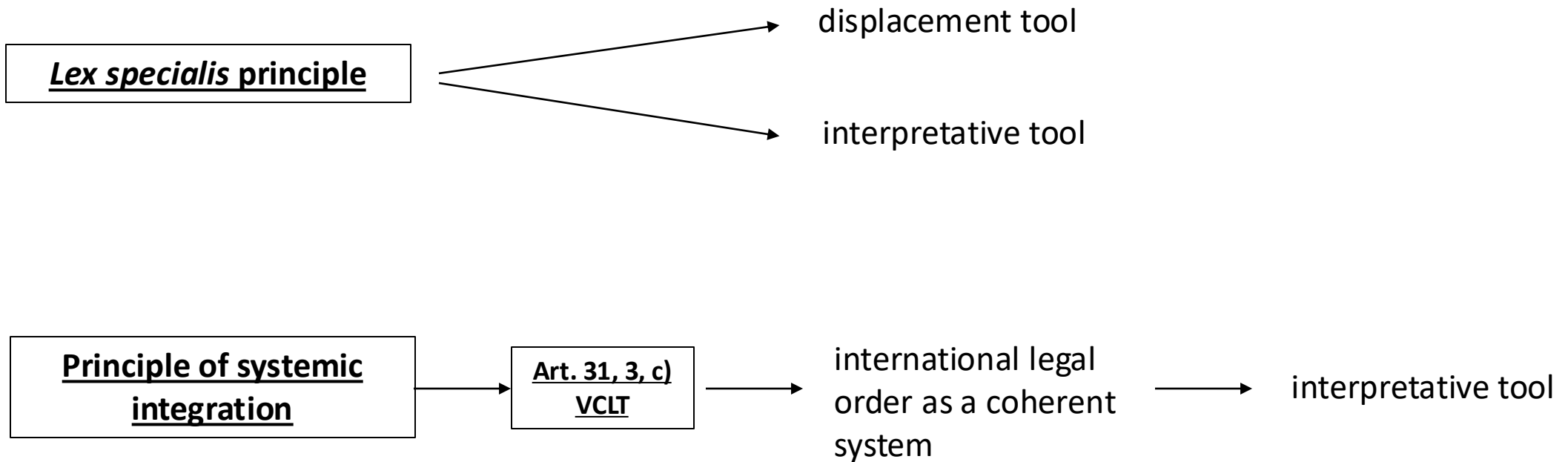
A treaty shall be interpreted in light of 'any *relevant* rules of international law applicable in the relations between the parties'.

PART 1 : Overview

Impacts of human rights law (HRL) on the regulation of armed conflicts
1968 Teheran Conference

Incorporation process

Application process

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ 'humanization' of IHL

Applicability alongside IHL
(HRL applicable in armed conflicts according to its own scope of application)

Normative process
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in light of HRL)

Conflicts between IHL and HRL :
a) both applicable to the conduct
b) with different results
→harmonization: interpretation of HRL in light of IHL ?
→ 'humanitarization' of HRL

No conflict between IHL and HRL

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

Lex specialis
(e.g. *Nuclear weapons* case)

Systemic integration
(e.g. *Hassan* case)

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Conflicts of norms
Conflicts of interpretation
→displacement of HRL norm/interpretation

No specific mechanism
(e.g. notion of torture/ICTY *Kunarac*)

General mechanisms

Specific mechanisms
(eg : Art. 21-3 of the Rome Statute/ICC Al Hassan)

Lex specialis
(e.g. scholarship)

Systemic Integration
(e.g. ICRC Updated Commentaries)

Adaptation of HRL
(e.g.: notion of torture/ICTY *Kunarac*)

PART 1 : Overview

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the
same scope of application)
→ **'humanization' of IHL**

Incorporation process

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the
same scope of application)
→ **'humanization' of IHL**

Normative process
(IHL norms inspired by HRL)

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ **'humanization' of IHL**

Normative process
(IHL norms inspired by HRL)

Secondary norms
(e.g. non-reciprocity/Kupreškić)

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the
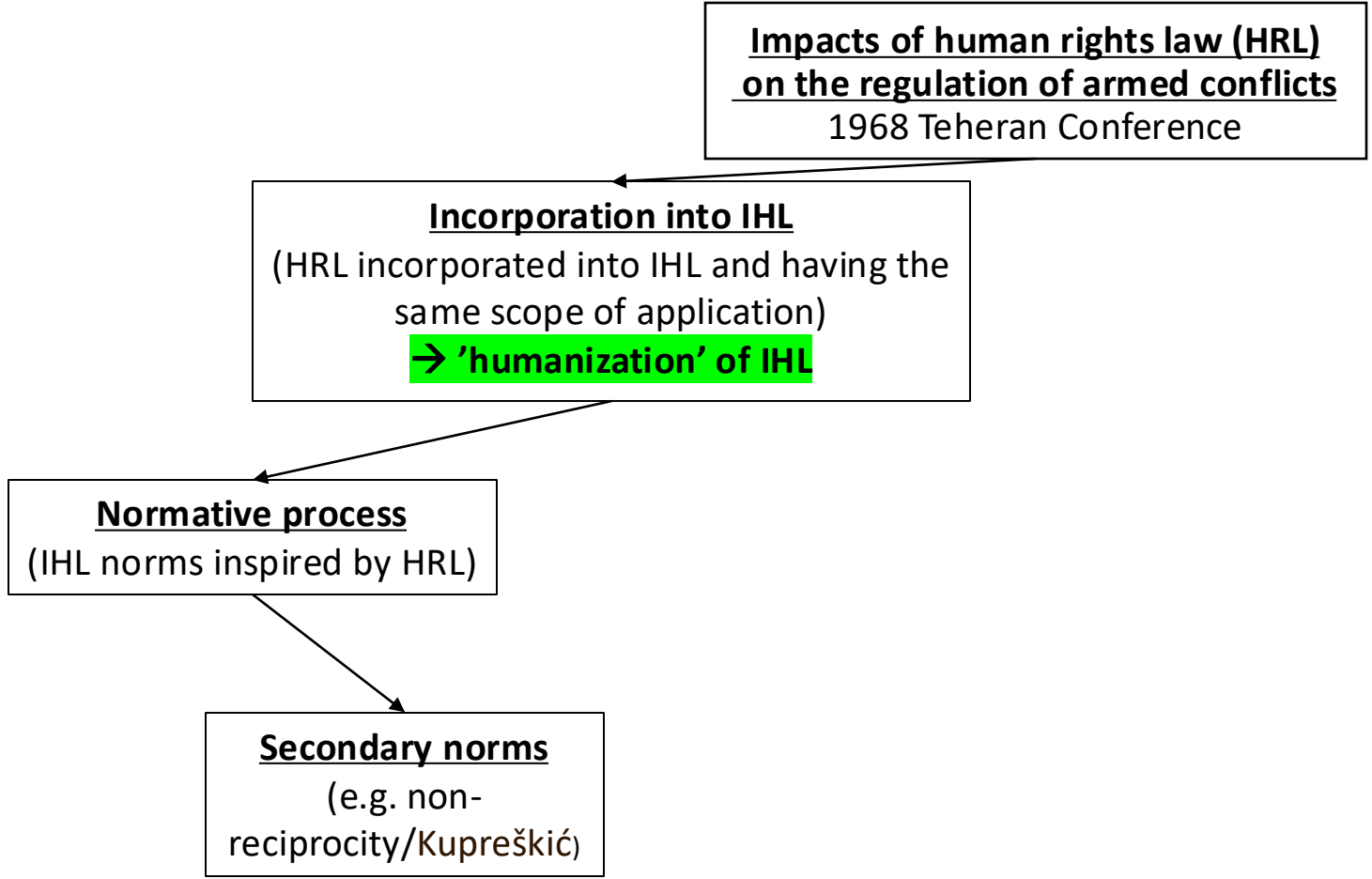same scope of application)
→ 'humanization' of IHL

Normative process
(IHL norms inspired by HRL)

Secondary norms
(e.g. non-
reciprocity/Kupreškić)

"The absolute nature of most obligations imposed by rules of international humanitarian law reflects the progressive trend towards the so-called 'humanisation' of international legal obligations, which refers to the general erosion of the role of reciprocity in the application of humanitarian law over the last century"

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the
same scope of application)
→ 'humanization' of IHL

Normative process
(IHL norms inspired by HRL)

Primary norms

Secondary norms
(e.g. non-
reciprocity/Kupreškić)

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ **'humanization' of IHL**

Normative process
(IHL norms inspired by HRL)

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

Treaty
(e.g. Art. 6 APII)

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the
same scope of application)
→ 'humanization' of IHL

Normative process
(IHL norms inspired by HRL)

Primary norms

Secondary norms
(e.g. non-
reciprocity/Kupreškić)

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the
same scope of application)
→ **'humanization' of IHL**

Normative process
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in
light of HRL)

Primary norms

Secondary norms
(e.g. non-
reciprocity/Kupreškić)

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

```
                    ┌─────────────────────────────────────────┐
                    │  Impacts of human rights law (HRL)      │
                    │  on the regulation of armed conflicts   │
                    │  1968 Teheran Conference                │
                    └─────────────────────────────────────────┘

        ┌───────────────────────────────────────────┐
        │  Incorporation into IHL                   │
        │  (HRL incorporated into IHL and having the│
        │  same scope of application)               │
        │  → 'humanization' of IHL                  │
        └───────────────────────────────────────────┘

┌───────────────────────────┐              ┌───────────────────────────┐
│  Normative impact         │              │  Interpretation process   │
│  (IHL norms inspired by   │              │  (IHL norms interpreted in│
│  HRL)                     │              │  light of HRL)            │
└───────────────────────────┘              └───────────────────────────┘

┌─────────────────┐  ┌──────────────────┐           ┌─────────────────────┐
│ Primary norms   │  │ Secondary norms  │           │ General mechanisms  │
│                 │  │ (e.g. non-       │           └─────────────────────┘
│                 │  │ reciprocity/     │
│                 │  │ Kupreškić)       │
└─────────────────┘  └──────────────────┘

┌─────────────────┐  ┌──────────────────┐
│ Treaty          │  │ Custom           │
│ (e.g. Art. 6    │  │ (e.g. ICRC study)│
│ APII)           │  │                  │
└─────────────────┘  └──────────────────┘
```

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the
same scope of application)
→ **'humanization' of IHL**

Normative impact
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in
light of HRL)

Primary norms

Secondary norms
(e.g. non-
reciprocity/Kupreškić)

General mechanisms

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Systemic integration
(e.g. ICRC Updated
Commentaries)

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ 'humanization' of IHL

Normative impact
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in light of HRL)

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

General mechanisms

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Lex specialis
(e.g. scholarship)

Systemic Integration
(e.g. ICRC Updated Commentaries)

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the
same scope of application)
→ 'humanization' of IHL

Normative impact
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in
light of HRL)

Primary norms

Secondary norms
(e.g. non-
reciprocity/Kupreškić)
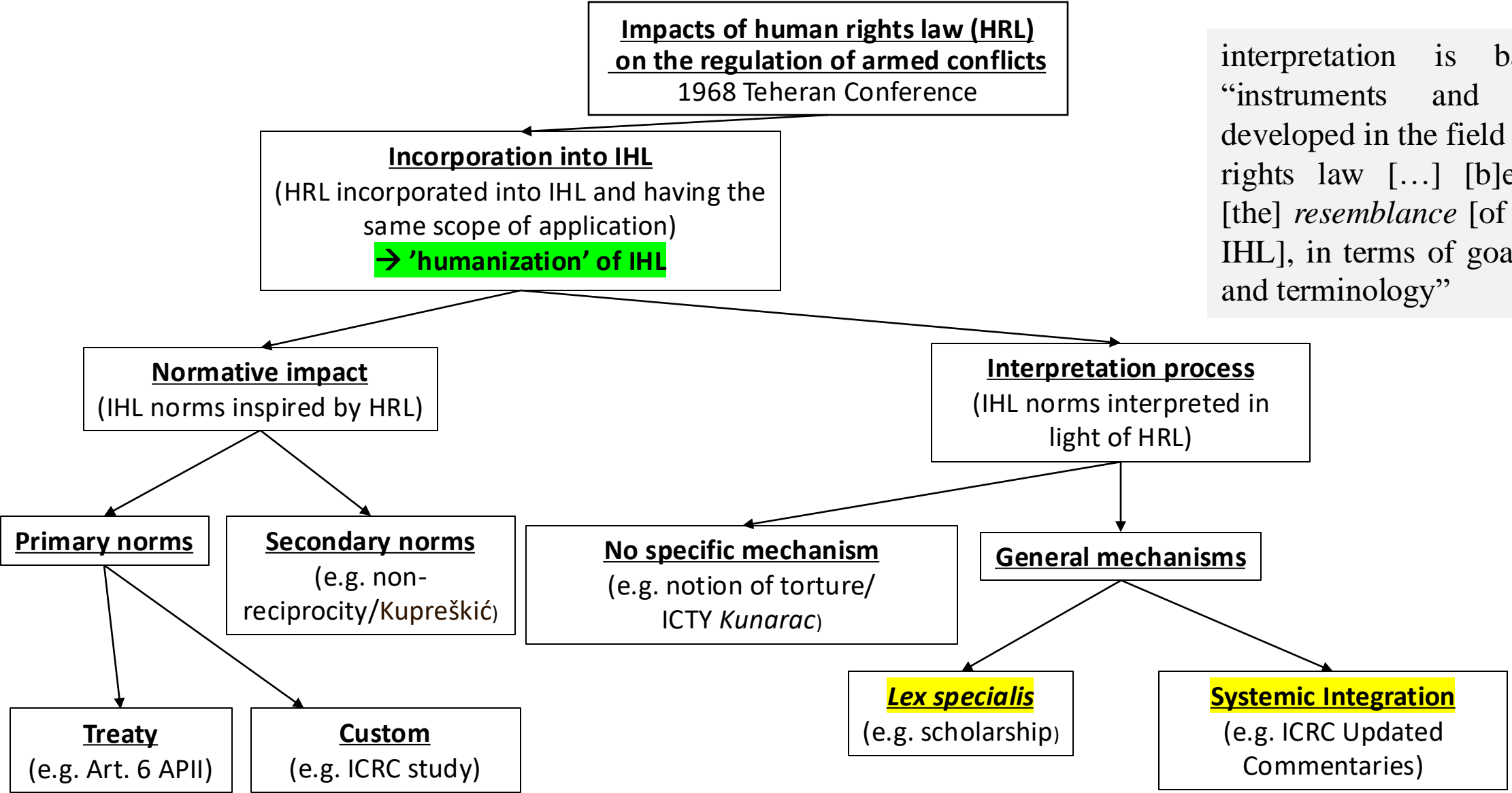
No specific mechanism
(e.g. notion of torture/
ICTY *Kunarac*)

General mechanisms

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Lex specialis
(e.g. scholarship)

Systemic Integration
(e.g. ICRC Updated
Commentaries)

Impacts of human rights law (HRL) on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ 'humanization' of IHL

interpretation is based on "instruments and practices developed in the field of human rights law […] [b]ecause of [the] *resemblance* [of HRL and IHL], in terms of goals, values and terminology"

Normative impact
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in light of HRL)

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

No specific mechanism
(e.g. notion of torture/ ICTY *Kunarac*)

General mechanisms

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Lex specialis
(e.g. scholarship)

Systemic Integration
(e.g. ICRC Updated Commentaries)

Impacts of human rights law (HRL) on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ **'humanization' of IHL**

Normative impact
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in light of HRL)

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

No specific mechanism
(e.g. notion of torture/ ICTY *Kunarac*)

General mechanisms

Specific mechanisms
(eg : Art. 21-3 of the Rome Statute/ ICC Al Hassan)

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Lex specialis
(e.g. scholarship)

Systemic Integration
(e.g. ICRC Updated Commentaries)

Impacts of human rights law (HRL) on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ 'humanization' of IHL

any law applicable before the Court, including IHL, must be consistent with HRL

Normative impact
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in light of HRL)

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

No specific mechanism
(e.g. notion of torture/ICTY *Kunarac*)

General mechanisms

Specific mechanisms
(eg : Art. 21-3 of the Rome Statute/ICC Al Hassan)

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Lex specialis
(e.g. scholarship)

Systemic Integration
(e.g. ICRC Updated Commentaries)

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ 'humanization' of IHL

Normative impact
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in light of HRL)

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

No specific mechanism
(e.g. notion of torture/ICTY *Kunarac*)

General mechanisms

Specific mechanisms
(eg : Art. 21-3 of the Rome Statute/ ICC Al Hassan)

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Lex specialis
(e.g. scholarship)

Systemic Integration
(e.g. ICRC Updated Commentaries)

Adaptation of HRL
(e.g.: notion of torture/ICTY *Kunarac*)

Impacts of human rights law (HRL) on the regulation of armed conflicts
1968 Teheran Conference

The ICRC merely indicated in its Updated Commentaries that "human rights law and interpretations [based on that law] can[not] be transposed mechanically to humanitarian law provisions."

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ 'humanization' of IHL

Normative impact
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in light of HRL)

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

No specific mechanism
(e.g. notion of torture/ICTY *Kunarac*)

General mechanisms

Specific mechanisms
(eg : Art. 21-3 of the Rome Statute/ICC Al Hassan)

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

Lex specialis
(e.g. scholarship)

Systemic Integration
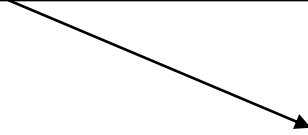(e.g. ICRC Updated Commentaries)

Adaptation of HRL
(e.g.: notion of torture/ICTY *Kunarac*)

**Impacts of human rights law (HRL)
 on the regulation of armed conflicts**
1968 Teheran Conference

Application process

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Applicability alongside IHL
(HRL applicable in armed conflicts
according to its own scope of application)

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Applicability alongside IHL
(HRL applicable in armed conflicts
according to its own scope of application)

**No conflict between IHL and
HRL**

**Impacts of human rights law (HRL)
on the regulation of armed conflicts**
1968 Teheran Conference

Applicability alongside IHL
(HRL applicable in armed conflicts
according to its own scope of application)

Conflicts between IHL and HRL :
a) both applicable to the conduct
b) with different results

**No conflict between IHL and
HRL**

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Applicability alongside IHL
(HRL applicable in armed conflicts
according to its own scope of application)

Conflicts between IHL and HRL :
a) both applicable to the conduct
b) with different results
→**harmonization: interpretation of**
HRL in light of IHL ?
→ **'humanitarization' of HRL**

No conflict between IHL and
HRL

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Applicability alongside IHL
(HRL applicable in armed conflicts
according to its own scope of application)

Conflicts between IHL and HRL :
a) both applicable to the conduct
b) with different results
→**harmonization: interpretation of**
HRL in light of IHL ?
→ **'humanitarization' of HRL**

No conflict between IHL and
HRL

Systemic integration
(e.g. *Hassan* case)

```
┌─────────────────────────────────────┐
│  Impacts of human rights law (HRL)   │
│   on the regulation of armed conflicts│
│       1968 Teheran Conference        │
└─────────────────────────────────────┘
              │
              ▼
        ┌──────────────────────────────────────┐
        │      Applicability alongside IHL      │
        │    (HRL applicable in armed conflicts │
        │  according to its own scope of application) │
        └──────────────────────────────────────┘
              │                          │
              ▼                          ▼
┌───────────────────────────────┐   ┌──────────────────────────┐
│ Conflicts between IHL and HRL :│   │ No conflict between IHL and│
│ a) both applicable to the conduct│  │            HRL             │
│ b) with different results      │   └──────────────────────────┘
│ →harmonization: interpretation of│
│ HRL in light of IHL ?          │
│ → 'humanitarization' of HRL    │
└───────────────────────────────┘
       │                  │
       ▼                  ▼
┌──────────────────┐  ┌──────────────────────┐
│  Lex specialis   │  │ Systemic integration │
│(e.g. Nuclear weapons case)│ │  (e.g. Hassan case)  │
└──────────────────┘  └──────────────────────┘
```

Impacts of human rights law (HRL)
on the regulation of armed conflicts
1968 Teheran Conference

Applicability alongside IHL
(HRL applicable in armed conflicts
according to its own scope of application)

Conflicts between IHL and HRL :
a) both applicable to the conduct
b) with different results
→**harmonization: interpretation of**
HRL in light of IHL ?
→ **'humanitarization' of HRL**

No conflict between IHL and
HRL

Lex specialis
(e.g. *Nuclear weapons* case)

Systemic integration
(e.g. *Hassan* case)

Conflicts of norms
Conflicts of interpretation
→**displacement of HRL norm/interpretation**

PART 1 : Overview

Impacts of human rights law (HRL) on the regulation of armed conflicts
1968 Teheran Conference

Incorporation process

Incorporation into IHL
(HRL incorporated into IHL and having the same scope of application)
→ 'humanization' of IHL

Normative process
(IHL norms inspired by HRL)

Interpretation process
(IHL norms interpreted in light of HRL)

Primary norms

Secondary norms
(e.g. non-reciprocity/Kupreškić)

Treaty
(e.g. Art. 6 APII)

Custom
(e.g. ICRC study)

No specific mechanism
(e.g. notion of torture/ICTY *Kunarac*)

General mechanisms

Specific mechanisms
(eg : Art. 21-3 of the Rome Statute/ICC Al Hassan)

Lex specialis
(e.g. scholarship)

Systemic Integration
(e.g. ICRC Updated Commentaries)

Adaptation of HRL
(e.g.: notion of torture/ICTY *Kunarac*)

Application process

Applicability alongside IHL
(HRL applicable in armed conflicts according to its own scope of application)

Conflicts between IHL and HRL :
a) both applicable to the conduct
b) with different results
→harmonization: interpretation of HRL in light of IHL ?
→ 'humanitarization' of HRL

No conflict between IHL and HRL

Lex specialis
(e.g. *Nuclear weapons* case)

Systemic integration
(e.g. *Hassan* case)

Conflicts of norms
Conflicts of interpretation
→displacement of HRL norm/interpretation

| Incorporation process: interpretation process (interpretation of IHL in light of HRL) | PART II: Normative Coherence | Application process: conflicts between IHL and HRL (displacement of HRL norm/interpretation) |

Incorporation process: interpretative impact	**Application process:**
(interpretation of IHL in light of HRL)	**conflicts between IHL and HRL**
	(displacement of HRL norm/interpretation)

Ony through the *Lex specialis* ?

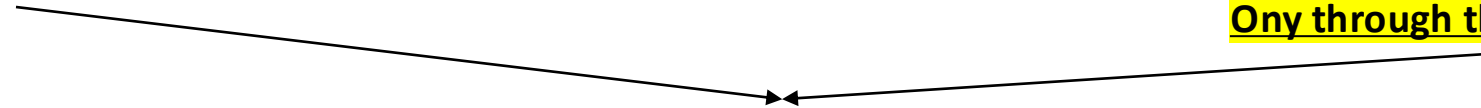| **Incorporation process: interpretative impact** (interpretation of IHL in light of HRL) | | **Application process:** **conflicts between IHL and HRL** (displacement of HRL norm/interpretation) |

==Only through systemic integration ?==

==Ony through the *Lex specialis* ?==

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'?

-

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?

-

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Only through systemic integration ?

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems

-

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms

-

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the _Lex specialis_ ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms
b) coherence: norms make sense when taken together, compatible with a
  fundamental principle

-

| **Incorporation process: interpretative impact** (interpretation of IHL in light of HRL) | **Application process: conflicts between IHL and HRL** (displacement of HRL norm/interpretation) |

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms
b) coherence: norms make sense when taken together, compatible with a fundamental principle

Common regulation specific to armed conflict

-

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms
b) coherence: norms make sense when taken together, compatible with a
fundamental principle

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

| Incorporation process: interpretative impact (interpretation of IHL in light of HRL) | Application process: conflicts between IHL and HRL (displacement of HRL norm/interpretation) |

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms
b) coherence: norms make sense when taken together, compatible with a fundamental principle

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best protection to persons**

-

Incorporation process: interpretative impact	**Application process:**
(interpretation of IHL in light of HRL)	**conflicts between IHL and HRL**
	(displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms
b) coherence: norms make sense when taken together, compatible with a
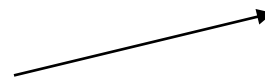fundamental principle

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best**
protection to persons
Objective of the Tehran conference

-

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

==**Only through systemic integration ?**==

==**Ony through the *Lex specialis* ?**==

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms
b) coherence: norms make sense when taken together, compatible with a
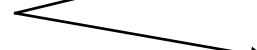fundamental principle

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best**
protection to persons
Objective of the Tehran conference

Full incorporation of HRL into IHL

-

Incorporation process: interpretative impact
(interpretation of IHL in light of HRL)

Application process:
conflicts between IHL and HRL
(displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) **consistency:** no conflicts through the operation of formal mechanisms
b) **coherence:** norms make sense when taken together, compatible with a
   fundamental principle

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best**
protection to persons
Objective of the Tehran conference

Full incorporation of HRL into IHL

Full application of HRL alongside IHL

-

| Incorporation process: interpretative impact (interpretation of IHL in light of HRL) | Application process: conflicts between IHL and HRL (displacement of HRL norm/interpretation) |

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) **consistency:** no conflicts through the operation of formal mechanisms
b) **coherence:** norms make sense when taken together, compatible with a fundamental principle

---

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best protection to persons**
Objective of the Tehran conference

Full incorporation of HRL into IHL

Full application of HRL alongside IHL

⇒ **Second prong: regulation must take into account military necessities/realities of war**

-

Incorporation process: interpretative impact (interpretation of IHL in light of HRL)	Application process: conflicts between IHL and HRL (displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms
b) coherence: norms make sense when taken together, compatible with a fundamental principle

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best protection to persons**
Objective of the Tehran conference

Full incorporation of HRL into IHL

Full application of HRL alongside IHL

⇒ **Second prong: regulation must take into account military necessities/realities of war**
a) Context-dependent circumstances (e.g. capacities of the parties)

Incorporation process: interpretative impact (interpretation of IHL in light of HRL)	Application process: conflicts between IHL and HRL (displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) **consistency:** no conflicts through the operation of formal mechanisms
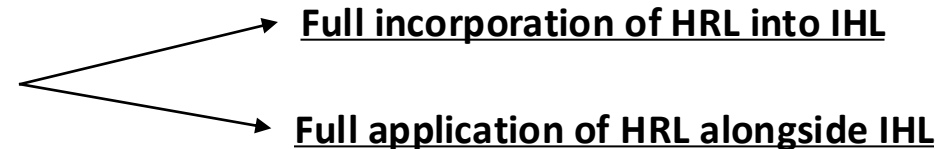b) **coherence:** norms make sense when taken together, compatible with a fundamental principle

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best protection to persons**
Objective of the Tehran conference

→ **Full incorporation of HRL into IHL**

→ **Full application of HRL alongside IHL**

⇒ **Second prong: regulation must take into account military necessities/realities of war**
a) Context-dependent circumstances (e.g. capacities of the parties)
b) Abstract circumstances (e.g. equality between belligerents)

Incorporation process: interpretative impact (interpretation of IHL in light of HRL)	Application process: conflicts between IHL and HRL (displacement of HRL norm/interpretation)

Only through systemic integration ?

Ony through the *Lex specialis* ?

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?
Results must be guided by substantial considerations

Normative coherence of legal systems
a) consistency: no conflicts through the operation of formal mechanisms
b) coherence: norms make sense when taken together, compatible with a fundamental principle

Common regulation specific to armed conflict
Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best protection to persons**
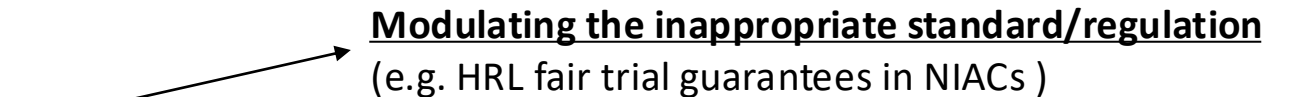Objective of the Tehran conference

Full incorporation of HRL into IHL

Full application of HRL alongside IHL

⇒ **Second prong: regulation must take into account military necessities/realities of war**
a) Context-dependent circumstances (e.g. capacities of the parties)
b) Abstract circumstances (e.g. equality between belligerents)

Modulating the inappropriate standard/regulation
(e.g. HRL fair trial guarantees in NIACs)

Incorporation process: interpretative impact

(interpretation of IHL in light of HRL)

Application process:

conflicts between IHL and HRL

(displacement of HRL norm/interpretation)

==**Only through systemic integration ?**==

==**Ony through the *Lex specialis* ?**==

Formal mechanisms: What is 'relevant' and 'specialis/generalis'? Which adaptation?

Results must be guided by substantial considerations

Normative coherence of legal systems

a) consistency: no conflicts through the operation of formal mechanisms

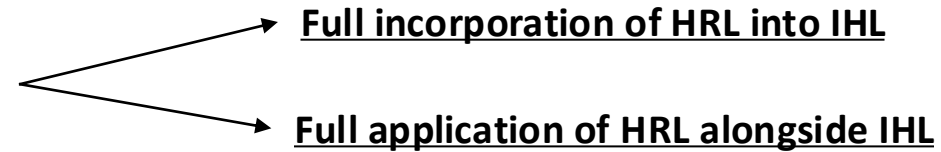**b) coherence:** norms make sense when taken together, compatible with a fundamental principle

Common regulation specific to armed conflict

Coherency test: legal solutions compatible with a fundamental principle (two prongs)

⇒ **First prong: regulation must offer the best protection to persons**
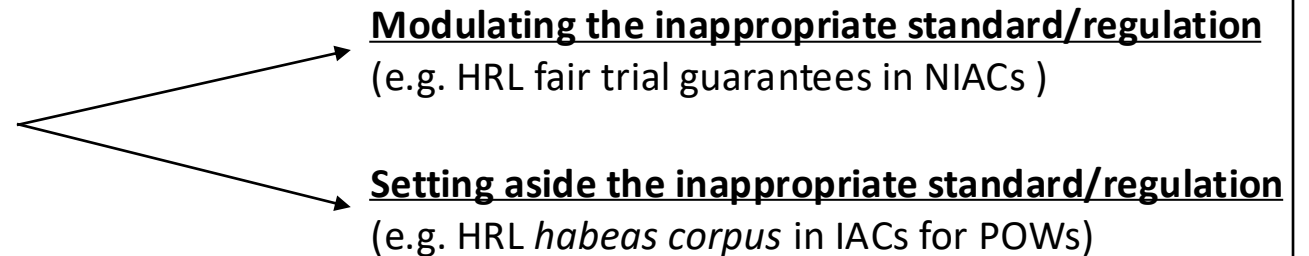
Objective of the Tehran conference

Full incorporation of HRL into IHL

Full application of HRL alongside IHL

⇒ **Second prong: regulation must take into account military necessities/realities of war**

a) Context-dependent circumstances (e.g. capacities of the parties)

b) Abstract circumstances (e.g. equality between belligerents)

Modulating the inappropriate standard/regulation

(e.g. HRL fair trial guarantees in NIACs)

Setting aside the inappropriate standard/regulation

(e.g. HRL *habeas corpus* in IACs for POWs)

Conclusion

Many thanks for your attention !