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Pouw, E.H.

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# International Human Rights Law and the Law of Armed Conflict in the Context of Counterinsurgency



*With a Particular Focus on  
Targeting and Operational Detention*

**Eric Pouw**

International Human Rights Law and the Law of Armed Conflict  
in the Context of Counterinsurgency

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In the past decade, few topics have attracted more attention among international lawyers than the interplay between *international human rights law* (IHRL) and the *law of armed conflict* (LOAC). At the same time, the multiple – often multinational and extraterritorial – military operations in response to the ‘new threats’ to (inter)national security posed by non-State actors have incited a debate among security experts on how to counter insurgencies. This study ties these legal and security debates together, and in doing so focuses specifically on two traditional, but controversial kinds of military power, namely *targeting* and *operational detention*. Counterinsurgency doctrine recognizes both as indispensable instruments to defeat an insurgency. At the same time, they are seen as strategic hazards that are to be applied with consideration and care for fundamental counterinsurgency principles. To end today’s ‘wars amongst the people’, such as those in Iraq and Afghanistan, counterinsurgent States have come to realize that it is in their strategic interest to ensure that the conduct of their troops remains within the boundaries of the applicable law. However, especially targeting and operational detention raise controversial issues in IHRL and LOAC as well as their interplay, which is even more complicated by the specific characteristics of modern-day insurgencies.

This study aims to contribute to the development of the legal theory on the interplay of IHRL and LOAC, and to value the operational consequences of this interplay on targeting and operational detention in counterinsurgency. It makes a considered plea to look beyond normative conflict between these two regimes and focus upon which legal and factual paradigm (hostilities or law enforcement) best fits a particular situation.

Among the issues covered in this study are the concepts of insurgency and counterinsurgency; the conceptual underpinnings of IHRL and LOAC; the ‘humanization’ of armed conflict; the international law on the interplay of norms in general and the maxim of *lex specialis derogat legi generali* in particular. Other topics include the applicability of IHRL and LOAC in counterinsurgency operations; and the regulation of targeting and operational detention under IHRL and LOAC, including controversial topics such as the concept of direct participation in hostilities, the existence of a requirement of ‘least harmful means’ in the concept of military necessity, and the requirements pertaining to security detention in non-international armed conflicts.