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THE INTERNATIONAL LAW OF ARMED CONFLICT

Nowadays, three areas of modern international law attempt to provide protection to victims of war: human rights law, refugee law and International humanitarian law. While these fields are closely linked, they need to be distinguished systematically.

The international law of armed conflicts, of which international humanitarian law is a part, was formulated much earlier than international human rights law. Important phases in the development of the international humanitarian law of armed conflicts were the Conferences of Paris (1856), Geneva (1864), St. Petersburg (1868), Brussels (1874), The Hague (1899, 1907) and Geneva (1949 and 1977).

The international law instruments adopted at these conferences form the basis of modern Human Rights and Armed Conflict international humanitarian law, the most relevant being the four Geneva Conventions (1949) and their two Additional Protocols (1977). The principal purpose of the four Geneva Conventions was to set out humanitarian rules to be followed in international armed conflict. The Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) lists a number of actions which the parties must refrain from in all circumstances. These include actions that are recognised as violating the most basic human rights, such as violence endangering life, torture and physical or moral coercion, as well as non-compliance with many due process rights. The Convention forbids in the strongest terms the utilisation of human shields. It also provides that civilians may not be compelled to work for an occupying power unless certain strict conditions are met (Article 51). The Additional Protocols to the Geneva Conventions, which were adopted by the

Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (1977), are major developments in this context.

International humanitarian law must be understood and analysed as a distinct part of a more comprehensive framework: the rules and principles regulating coordination and cooperation between the members of the international community, i.e. Public International Law.

Here are some of the ways in which IHL protects fundamental human rights in armed conflicts:

- The protection accorded to victims of war must be without any discrimination;
- A great deal of humanitarian law is devoted to the protection of life, especially the life of civilians and people not involved in the conflict; IHL also restricts the imposition of the death penalty;
- IHL goes beyond the traditional civil right to life by protecting the means necessary for life, a right that might be categorised as ‘economic and social’ under human rights law;
- IHL absolutely prohibits torture and inhuman treatment;
- IHL specifically prohibits slavery: prisoners of war are not to be seen as the property of those who captured them;
- Judicial guarantees are codified in the Geneva Conventions and the Additional Protocols;
- The protection of children and family life is clearly emphasised in IHL: examples include rules on the conditions of internment of children and rules against separating family members;
- The respect for religion is taken into account in the rules concerning prisoners of war as well as in customs of burial. [2]

International humanitarian law is specifically designed to regulate the contact of parties to an armed conflict. Its provisions already take into account the principles of:

1. Distinction. All sides must distinguish between military targets and civilians. Any deliberate attack on a civilian or civilian building - such as homes, medical facilities, schools or government buildings - is a war crime (providing the building has not been taken over for military use). If there is any doubt as to whether a target is civilian or military, then it must be presumed to be civilian.

2. Proportionality. Civilian casualties and damage to civilian buildings must not be excessive in relation to the expected military gain.

3. Precaution. All sides must take precautions to protect civilians [5]

The problem of human rights in armed conflict is both complex and urgent. Millions of people suffer abuses in the context of warfare every year. Just as the problem is complex, so is the solution. There are at least three major elements to improving the protection of human rights in armed conflict. First, it is vital that all actors in the international community accept and reaffirm the standards of conduct in warfare stated in IHL treaties in order to make such norms universal. While the 1949 Geneva Conventions have been widely ratified and their provisions have achieved the force of customary international law, the same cannot be said for the provisions of the 1977 Additional Protocols, which contain even stricter standards for the protection of civilians. Second, states must develop the tactical capacity to wage war in a manner that protects civilians as they engage the enemy.

Finally, the international community must take more active steps to ensure ambient security in conflict and post-conflict areas in order to prevent human rights.

Reference list:

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3. High Commissioner's opening remarks at the Expert consultation on the protection of the human rights of civilians in armed conflict. - Geneva. - 2009.

4. International Committee of the Red Cross; website on War and Law / [Electronic source]. - <http://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>.

5. Fact Sheet No. 32, International Humanitarian Law and Human Rights, Office of the High Commissioner for Human Rights/ [Electronic source]. -

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