

The Humanitarian Law and the violations of human rights in armed conflicts

Diana Skrapari*

Abstract: *The humanitarian law is also called the law applied in armed conflicts. The human rights are violated during armed conflicts. For this reason, it is necessary the intervention and the respect of human rights during armed conflicts. The human rights became part of humanitarian law during the Tehran Conference in 1968. They influence the humanitarian right to ensure the protection of civilians during armed conflicts. On the other hand, they interact to bring before international penal courts, the perpetrators and promoters of these violations of fundamental human rights.*

Keywords: Human rights, Humanitarian Law, Armed Conflicts.

Introduction

The international human rights law and humanitarian law share the common goal to preserve the dignity and the human dimension of each person in the world.

The international human rights law is a system of international standards to defend and promote the human rights of everyone. Inherent to the human person regardless of nationality, place of residence, sex, national or ethnic origin, color, religion, language or any other aspect of his condition, these rights are interrelated, interdependent and indivisible. They are often proclaimed and guaranteed by legal instruments such as treaties, customary international law, general principles or soft law.¹

* Diana Skrapari holds a LLM in Business Law from Université Paris 2 Assas-Panthéon and a Master's Research degree in International studies from Université Paris 3 Sorbonne Nouvelle. She is a PHD Candidate at the University of Tirana in Diplomacy and International Relations of the European Union, and works as university lecturer at the Albanian University in Tirana and as a French language lecturer at Alliance Française of Tirana. Contact: skraparidiana@yahoo.fr.

¹ *International legal protection of human rights in armed conflicts*, United Nations Publication, New York, 2011, p. 5.

International humanitarian law includes all the rules that govern the behavior of the belligerents in the war in search of maximum humanization of it. It intends to regulate the use of weapons, to prohibit certain types of weapons, to protect people whose fate was affected by the war, as well as their goods.² International humanitarian law is increasingly perceived as part of human rights applicable in armed conflicts. This trend began to take shape during the United Nations Conference on Human Rights held in Tehran in 1968.³

The Conference encouraged the development of international humanitarian law and a new trend emerged consisting, for the United Nations, to make more use of humanitarian law for the protection of persons in armed conflicts.

The human rights and humanitarian law are reconciled in this conference and they influence each other.

We'll see how this merger has taken place and the mutual influence between the human rights and humanitarian law and whether this influence is beneficial to improve the protection of individuals in armed conflicts.

The reconciliation and mutual influence between human rights and humanitarian law

The reconciliation between human rights and humanitarian law

The classic public international law draws a clear distinction between international law in peacetime and international law applicable in times of war.⁴

One of the great civilizing progresses of modern international law was to prohibit states from using military force to impose their national interests. This prohibition was already provided in the Kellogg-Briand Pact of August 27, 1928.⁵

² Lectures of Professor of International Humanitarian Law, FRIN Philippe (Lieutenant Colonel), Research Professor at the Research Center of Saint-Cyr Coëtquidan Schools.

³ Resolution XXIII, "Protection of human rights in armed conflicts", adopted by the International Conference on Human Rights, Tehran, 12 May 1968.

⁴ Hans-Joachim Heintze, "Recoupement de la protection des droits de l'Homme et du droit international humanitaire (DIH) dans les situations de crise et de conflit", *Cultures & Conflicts*, no. 60, 2005, pp. 123-147.

⁵ *Ibidem*.

The international human rights law focuses on the Universal Declaration of Rights of the 1948, as well as a number of international treaties and customary international law.

International humanitarian law is a set of rules that aim to limit the effects of armed conflicts on people, including civilians, persons no longer taking part in hostilities, and even those who are still involved, such fighters. To achieve this objective, international humanitarian law covers two main areas: protection of persons and restrictions on means and methods of warfare.⁶ The sources of international humanitarian law are legal instruments and customary international law: its rules are contained in a series of conventions and protocols. The main instruments of modern international humanitarian law are: the Hague Regulations, the Geneva Convention, Additional Protocols to the Geneva Convention (the first Protocol on the protection of victims of international armed conflicts and the Second Protocol is relative to the Protection of Victims of International Armed Conflicts.⁷

The International Conference on Human Rights held in Tehran from 22 April to 13 May 1968 unanimously adopted the Proclamation of Teheran. It also adopted 29 resolutions, including on racial discrimination, self-determination and human rights in armed conflict. The most important change regarding humanitarian law is that the recourse to war is no longer a legal means of resolving conflict. If we see it strictly from the point of view of human rights (including respect for the life and welfare of human beings), the use of force is, in itself, a violation of human rights. This was clearly stated at the Teheran Conference of 1968: “*Peace is the first condition of full observance of human rights and war is the negation of these rights*”⁸.

This Conference, however, recommended further development of humanitarian law to ensure better protection to victims of war. When the Universal Declaration of Human Rights was adopted in 1948, the human rights and international humanitarian law were treated as separate fields. Since the International Conference on Human Rights in Tehran in 1968, the two issues are

⁶ *International legal protection of human rights in armed conflicts*, United Nations Publication, New York, 2011, p.12.

⁷ *Ibidem*.

⁸ Resolution XXIII, “Protection of human rights in armed conflicts”, adopted by the International Conference on Human Rights, Tehran, 12 May 1968.

now considered as different branches of the same discipline. Factors that contributed to this merger are the growing importance of criminal law and the fact to criminalize serious violations of human rights.⁹

The mutual influence between human rights and humanitarian law

The reconciliation launched by the International Conference of Tehran continued in the years that followed and continues today. Since then, they influence each other.¹⁰ Human rights reinforce the rules of IHL by reformulating more accurately the allegations of parties' dependent states. IHL makes effective the law of human rights. For example, it embodies the obligations relating to missing persons. While "doing disappear" someone is, without doubt, a serious violation of human rights, the law applicable to obligations on States in this case is only very little developed.

The Geneva Conventions III and IV, however, compel the occupation forces to deliver information about detainees and possible causes of death, to release people imprisoned and still alive, and conduct research on the fate of others.¹¹

The mutual influence between IHL and human rights has increased with the proliferation of inter-state conflicts and the existence of a weak regulatory framework of IHL. The cumulative application of human rights and international humanitarian law necessarily raises the question of their relations. Question to the ICJ had to answer in the *Nuclear Advisory Opinion*,¹² following the argument of the defenders of the illegal use of atomic weapons, who felt that the use of such weapons would violate the right to life as enshrined in Article 6 of the ICCPR.¹³ Article 6 provides that no one shall be arbitrarily deprived of his life. The prohibition of depriving someone "intentionally" of his life thus at also apply in

⁹ John Dugard, "Bridging the gap between human rights and humanitarian law: The punishment of offenders", *International Review of the Red Cross*, no. 324, 1998, p. 445.

¹⁰ Louise Doswald-Beck, Sylvain Vité, "International Humanitarian Law and Human Rights Law", *International Review of the Red Cross*, no. 293, 1993, p. 94.

¹¹ "Essential tools for the legal protection of Civilians in armed conflicts", UN-docs / 1999/957 § 36.

¹² "Legality of the threat or the use of Nuclear Weapons", Advisory Opinion, *ICJ Reports*, 1996, p. 26.

¹³ C.J. Greenwood, "Jus bellum and jus in bello in the nuclear weapons advisory opinion", in L. Bisson de Chazournes, P. Sands (eds), *International Law, The International Court of Justice and Nuclear Weapons*, Cambridge, Cambridge University Press, 1999, p. 253.

case of war. Nevertheless, the ICJ recognized the primacy of international humanitarian law in times of war.

In a report to the Security Council, *On the Protection of Civilians in Armed Conflicts*, the Secretary-General of the United Nations considers a cumulative application of all standards of personal protection, at least in regard to civilians. Similarly, he recommends the ratification of the main instruments of IHL, of human rights and refugee law, as these constitute the “essential tools for the protection of civilians in armed conflicts”¹⁴.

Benefits of influence between human rights and humanitarian law to improve the protection of individuals in armed conflict

An armed conflict is defined as by the Prosecutor in the judgment of the Chamber of Appeal at the ad hoc criminal tribunal for the former Yugoslavia (ICTY) of 2 October 1995, *Prosecutor v. Dusko Tadic*.

“An armed conflict exists whenever there is resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.

An armed conflict can be:

- the international armed conflict, conflict between states;
- the non-international armed conflict, conflict between governmental authorities and organized armed groups or between such armed groups within a State;¹⁵

The influence between the human rights and humanitarian law is beneficial to ensure better protection of individuals in armed conflicts (A) and condemn those responsible for crimes and thus respect the rights of victims during armed conflicts (B).

Better protection of individuals in armed conflict provided by the simultaneous application of human rights and IHL

¹⁴ W. Kälin (ed.), *Human rights in times of occupation: The case of Kuwait*, Bern, 1994, p. 27 and subsequent.

¹⁵ Lectures of Professor of International Humanitarian Law, FRIN Philippe (Lieutenant Colonel), Research Professor at the Research Center of Saint-Cyr Coëtquidan Schools.

The human rights have become part of the legislation applicable in armed conflicts. The adoption in 1977 of two additional protocols to the Geneva Conventions of 1946, from a certain point of view, echoed what had happened in Tehran nine years earlier. Article 75 of Protocol I, entitled “Fundamental guarantees” deals with themes and adopts a language that is directly inspired by the great instruments on human rights. There are so prescribed the principle of non-discrimination, the main prohibitions relating to the physical and mental integrity of individuals, the prohibition of arbitrary detention and the essential judicial guarantees. The same remarks can be made on articles 4, 5, 6 of Protocol II which are the counterpart of Article 75 of Protocol I in situations of non-international armed conflicts.¹⁶

Article 15 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) refers most specifically to the legal situation applicable in armed conflicts. According to this article, it is possible to “derogate from its obligations under this Convention” in case of war or public emergency threatening the life of the nation. It is possible to restrict certain rights in the extent strictly required by the situation. However, certain rights specifically enumerated (including the right to life, prohibition of torture, freedom of belief), are not subject to any restriction, which means that the rights of man – without any exception – are respected in all circumstances.¹⁷

The Inter-American Commission on Human Rights was seized in 1983 by the organization “Disabled Peoples' International” which accused the US of violating the right to life protected by Article 1 of the American Declaration of the Rights and Duties of Man. The United States had indeed bombed a mental asylum, killing several patients during their military intervention in Grenada in 1983. In their application, the complainants asked the Commission to interpret Article 1 of the American Declaration taking into consideration the humanitarian law. The Commission declared the application admissible. In dealing with the substance, it

¹⁶ *International legal protection of human rights in armed conflicts*, United Nations Publication, New York, 2011.

¹⁷ Hans-Joachim Heintze, “Recouplement de la protection des droits de l’Homme et du droit international humanitaire (DIH) dans les situations de crise et de conflit”, *Cultures & Conflicts*, no. 60, 2005, pp. 123-147

will therefore have to use a layout designed in the spirit of human rights to apply to a situation of armed conflicts.¹⁸

The Islamic Conference of Foreign Ministers adopted in April 1990, a Declaration on Human Rights in Islam.¹⁹ Although that statement poses expressly an instrument belonging to human rights contains provisions that are directly inspired by the humanitarian law. It provides, for example, that will be protected "in case of use of force or armed conflicts" the persons taking no active part in the fighting, such as the elderly, women, children, the wounded, the sick and prisoners . It also regulates the methods and means of warfare.²⁰

The principle of responsibility and the rights of victims in armed conflicts

The obligations created by the violations of international human rights law and international humanitarian law, ensure that the criminals should be charged for their crimes. As stated by the Secretary General of the UN, the rule of law implies that *“For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”*²¹

In the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and serious violations of international humanitarian law, the General Assembly recognized that the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law includes “to investigate effectively, promptly, thoroughly and impartially on the violations and

¹⁸ D. Weissbrodt and B. Andres, “The Right to Life During Armed Conflict, International Disabled People's v. United States”, *Harvard International Law Journal*, vol. 29, no. 1, 1988, p. 59.

¹⁹ This document was published by the UN under the rating A / CONF.157/PC/35.

²⁰ “Declaration on Human Rights in Islam”, Article 3, Cairo, Egypt, 1990.

²¹ UN Secretary-General, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General”, U.N.Doc. S/2004/616 (Aug. 23, 2004), para. 6.

to take, if any, action against the alleged perpetrator in accordance with domestic and international law”²².

The State and individuals may be responsible for crimes during the armed conflicts. Genocide, war crimes, crimes against humanity are violations of human rights and humanitarian law during armed conflicts.

In the event of armed conflicts, a State is responsible for violations of human rights and humanitarian law attributable to it, such as:

– the violations committed by the organs of that State, including its armed forces;

– the violations by individuals, corporations empowered to exercise prerogatives of public power;

– the violations committed by persons or groups acting in fact on instruction and direction or control of that State;

– the violations by individuals or private groups that it recognizes and adopts as its own conduct²³.

In the Case *Bosnia and Herzegovina v. Serbia and Montenegro*, The International Court of Justice concluded that Serbia had violated its obligations to prevent acts of genocide and prosecute the perpetrators.²⁴

There are also individual responsibilities for violations in the armed conflicts for committing crimes, controlled or obeyed illegal orders that led to these crimes (ICTY was established to bring to justice those responsible for crimes in the former Yugoslavia).²⁵

Conclusion

The recognition of the specific nature of humanitarian law and the many efforts dedicated to the implementation of the human rights have the effect of

²² *International legal protection of human rights in armed conflicts*, United Nations Publication, New York, 2011, p.75.

²³ *Ibidem*.

²⁴ *Ibidem*.

²⁵ *Ibidem*.

strengthening the protection of the individual in times of armed conflicts. The 1993 Vienna Conference continued in the same direction as the Conference of Tehran.²⁶

As a conclusion, we can say that the right to life is a fundamental and sacred right. Nothing justifies the violence to the law whether in times of peace or armed conflicts.

Bibliography

- Doswald-Beck, Louise, Vité, Sylvain “International Humanitarian Law and Human rights Law”, *International Review of the Red Cross*, no. 293, 1993
- Dugard, John, “Bridging the gap between human rights and humanitarian law: The punishment of offenders”, *International Review of the Red Cross*, no. 324, 1998
- Greenwood, C.J., “Jus bellum and jus in bello in the nuclear weapons advisory opinion”, in L. Bisson de Chazournes, P. Sands (eds), *International Law, The International Court of Justice and Nuclear Weapons*, Cambridge, Cambridge University Press, 1999
- Heintze, Hans-Joachim, “Recoupement de la protection des droits de l’Homme et du droit international humanitaire (DIH) dans les situations de crise et de conflit”, *Cultures & Conflicts*, no. 60, 2005, pp. 123-147
- Kälin, Walter (ed), *Human rights in times of occupation: The case of Kuwait*, Bern 1994
- Weissbrodt, David, Andres, Beth, “The Right to Life During Armed Conflict: International Disabled People's v. United States”, *Harvard International Law Journal*, vol. 29, no. 1, 1988, pp. 59-83

Legal documents

“Declaration on Human Rights in Islam”, Cairo, Egypt, 1990

“Essential tools for the legal protection of Civilians in armed conflicts”,
UN-docs / 1999/957 § 36

International legal protection of human rights in armed conflicts, United Nations Publication, New York, 2011

²⁶ Louise Doswald-Beck, Sylvain Vité, “International Humanitarian Law and Human Rights Law”, *International Review of the Red Cross*, no. 293, 1993, p. 94.

Lectures of Professor of International Humanitarian Law, FRIN Philippe (Lieutenant Colonel), Research Professor at the Research Center of Saint-Cyr Coëtquidan Schools

“Legality of the threat or the use of Nuclear Weapons”, Advisory Opinion, ICJ Reports, 1996

Resolution XXIII, “Protection of human rights in armed conflicts”, adopted by the International Conference on Human Rights, Tehran, 12 May 1968