

Protecting Civilians in Conflict: Human Rights and Humanitarian Law

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This essay aligns its argument with the strand in international legal thought that argues that humanitarian and human rights law build on two very distinct perspectives of protection of civilians during armed conflicts; and therefore, present two independent legal regimes, which were not necessarily designed to closely coexist (Droege 2008: 548). However, the realities of armed conflicts require their interdependency for the sake of their common aim – protection of innocent victims of armed conflicts. As the essay suggests, this interplay is not necessarily smooth or easy. There exist lacunae in application of both and further improvement in application of existing regimes is necessary to ensure protection of civilians.

The essay starts with discussion of basic tenets and instruments of the international humanitarian law, followed by a contrasting discussion with features of international human rights law.

Then the essay presents a specific example of the use of force against civilians in non-international armed conflicts. The divergent perspectives of humanitarian and human rights law are presented, the issues of applicability discussed and contemporary jurisprudence debated. Finally, the essay suggests that those civilians, who perhaps need it the most – those in the areas under control of belligerent non-state actors –, are left without effective legal protection of arbitrary use of force. Here, provisions to provide protection for these civilians under international human rights law are suggested to alleviate the situation.

The principle of distinction and discrimination of combatants and non-combatants is the cornerstone of international humanitarian law (Quenivet 2008: 342). Contemplations of the principle of distinguishing between the combatants and non-combatants in the armed conflict appeared already in moral and theological discussions of medieval Christian scholars (see Pictet 1985: pp. 5 – 24), as well as other legal traditions, such as the Islamic legal culture (see Sultan pp. 56 – 59). However, more concrete steps towards creation of internationally recognized rules for protection of civilians during armed conflicts only appeared in the second half of the 19th century with the efforts of Henri Dunant (leading to foundation of the Red Cross) and the first Hague Conference in 1899 (Pilloud and Pictet 1987: p. 585). The increasing destructiveness of wars and the unprecedented civilian suffering during the First and the Second World War expedited these efforts and led to codification of the protection of civilian population. However, this process was not without its complications and internal contradictions as discussed below.

Dieter Fleck and Michael Bothe suggested that rules for protection of civilian population under international humanitarian law can be divided into two groups according to the situation they are designed to react to:

“a) protection of the civilian population or individual persons under the control of the adversary against violent or arbitrary acts;

b) protection of the civilian population against the effects of military operations and individual acts of hostility” (Fleck and Bothe 1999: p. 209).

The first set of rules falling under the a) paragraph are often described as ‘The Law of Geneva’ and relate to legal

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protection of civilians against the misuse of power by alien or occupying power in control of the given area. The second set is typically termed 'The Law of The Hague' and relates to the conduct of military operations from which the civilian population should be shielded as much as possible (Crawshaw et al. 2007: pp. 74 – 76).

'The Law of The Hague' stems from two Hague Conventions signed at international peace conferences in 1899 and 1907. While focusing mainly on rights of combatants, these conventions also established protection of hospitals (1899 Hague II, Article 27), civilian objects (1899 Hague II, Article 23) and unprotected civilian dwellings (1899 Hague II, Article 25). Pillage was prohibited under two separate articles (1899 Hague II, Article 28 and 47) in the event of assault and under occupation, respectively. The Hague Conventions also laid the ground work for prohibition of chemical and biological warfare following the First World War (banned by subsequent Geneva Protocol in 1925).

Interestingly, while the articles concerning combatants establish individual rights of combatants captured by the hostile power, articles covering protection of civilians treat them collectively. For example, Article 17 of the Hague II (1899) convention reads:

"Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government."

On the other hand, Article 46 of the same convention reads:

"Family honors and rights, individual lives and private property, as well as religious convictions and liberty, must be respected. Private property cannot be confiscated."

As discussed below, humanitarian law in regards of protection of civilian population is distinguished from the human rights law by this particular feature – while the former establishes their rights as a community, the latter focuses on individual rights (Droege 2008: p. 548).

Yet, for contemporary purposes, another feature of The Law of The Hague is perhaps more important: all obligations as towards the civilians are (understandably, as the convention aimed at regulation of belligerent state's behaviour towards other belligerent's nationals) formulated as obligations of the foreign power, implicitly understood as a state, waging war against or occupying territory of another state. These formulations assume that belligerents are states and that there exist central authorities that are bound by and able to enforce articles of the Hague Conventions. However, these underlying assumptions have been challenged by the rise of civil warfare in the 20th century and belligerent non-state actors, later tackled by The Law of Geneva.

The Law of Geneva summarily covers four different Geneva Conventions (Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1864; Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1906; Treatment of Prisoners of War, 1929;[1] and Protection of Civilian Persons in Time of War, 1949) and three subsequent additional protocols (Protection of Victims of International Armed Conflicts, 1977; Protection of Victims of Non-International Armed Conflicts, 1977; Adoption of an Additional Distinctive Emblem, 2005). For our purposes, the most interesting pieces of international law in this set are the 1949 Convention on Protection of Civilian Persons in Time of War and two additional protocols signed in 1977.

Even though the recommendation of drawing up an international convention on protection of civilians of enemy nationality under occupation of belligerent or in the belligerent's territory was contained in the Final Act of the Geneva Diplomatic Conference in July 1929 and the International Law Association prepared the Draft Convention for the Protection of Civilian Population Against New Engines of War in 1938, these efforts did not lead to much success (Hayashi 2007: p. 107 – 108).

Similarly, the Fourth Geneva Convention (GC IV) actually does not cover the protection of civilian population as a whole and, instead, focuses on specific categories of victims in the armed conflict (Mansson 2008: p. 569). Even though its full title (The Convention Relative to the Protection of Civilian Persons in Time of War), the convention

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neither provides full protection to all civilians, nor does it address all potential effects of hostilities on the civilian population (Hayashi 2007: p. 108). The Part I of the GC IV establishes a definition of a 'protected person' limiting the protection to those

“who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are” (GC IV, Part I, Article 4).

On the other hand, the Part II of the convention has wider application and covers all civilian population regardless of their nationality and with specific reference to ban on adverse distinction on the basis of race, gender or religion (GC IV, Part II, Article 13). However, this part focused mainly on the protection of hospitals, medical convoys, children under 15 years of age, and made provisions for creation of neutralized zones and communication between family members. Conduct of military operations in a way that would ensure protection of civilian population was deemed to had been covered by The Law of The Hague and no further provisions in this regard were made in the GC IV (Hayashi 2007: p. 108).

Only the amending protocols of 1977 have provided wider coverage of civilian population and brought an overhaul in perspective of protection of civilians. Instead of specifying particular groups of protected persons, the Protocol I reads:

“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives” (AP I, Article 48).

Article 48 of the Protocol I also establishes detailed rules of discrimination in the conduct of military attacks. Article 51 contains a provision of prohibition of indiscriminate attacks on civilian population as well as threats of such attack in order to spread terror (AP I, Article 51). However, this particular provision is missing in the case of Protocol II, which governs the rules of civilian protection in the case of non-international conflicts.

Essentially, Protocol II establishes protection of civilian population along the lines of Common Article 3 of the GC IV, which rules that persons taking no part in hostilities shall “in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or any other similar criteria” and prohibits

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) passing of sentences and the carrying out of executions without previous judgement by a regularly constituted court... (GC IV, Article 3).

Additionally, Protocol II also provides protection from dangers arising from military operation to civilian population as such and individual civilians.

Protocol II suffers from a fundamental defect as it is left upon states where the non-international conflict occurs to decide, whether the protocol applies to the particular conflict or not. Mika Hayashi observed that those countries, where protection of civilian population was in dire need in non-international conflicts are either not signatories of the Protocol II or decided the protocol did not apply due to particular conflict not meeting the set requirements (Hayashi 2007: p. 115).

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However, it seems to be a more pressing issue of humanitarian law that while these additional protocols offer wider civilian protection, not all the parties to Geneva Conventions have ratified them. The United Kingdom only ratified Protocol I and II in 1998 and the United States decided not to ratify it to date (ICRC 2011a and ICRC 2011b). Thus the wider civilian protection provided by these two protocols does not necessarily find its application in practice.

To open the discussion of human rights law in respect of protection of civilians during armed conflicts, it needs to be said that protection of human right is one of the basic principles of the international system under the United Nations. Human rights and their protection have been sanctioned in The Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948. Principles stated in the Declaration have been upheld by the international community ever since and led to various sanctions against states that fail to protect or violate them.

The following human rights provisions are the most relevant in respect of protection of civilian population:

- “the principle of human dignity,
- the principle of non-discrimination,
- the right to life, liberty and security of person,
- the prohibition of slavery or servitude,
- the prohibition of torture or cruel, inhuman or degrading treatment or punishment” (Mansson 2008: p. 573).

In essence, it seems clear that human rights law is directed towards the very same goals as the humanitarian law – protection of human beings caught in the whirlwind of armed conflict. However mutual differences between humanitarian and human rights law suggest that they present distinctive, even though complementary, international legal regimes.

There exist essentially three potential views of the relationship between humanitarian law and human rights law. First, human rights law can be considered a branch of humanitarian law as an overarching normative concept. Second, humanitarian law can be considered an adaptation of human rights law in conditions of armed conflict. Finally, the dominant view suggests that even though humanitarian law and human rights law are indeed overlapping, they still constitute separate branches of international law (Durham and McCormack 1999: p. 60). The last approach is also present in this essay as it seems that internal differences between human rights law and humanitarian law are too deep to allow their mutual identification as extensions or parts of one-another.

The above section has unveiled the applied character of humanitarian law, which defines the situations and groups of people to whom it is applicable. Under humanitarian law, protection is conditioned by no participation in hostilities and nationality requirements. On the other hand, human rights law assigns a set of rights to an individual as a human being, regardless of the situation (Provost 2002: p. 41). It applies to combatants and non-combatants alike and does not depend on distinguishing one from another. Of course, human rights law is not even dependent on the existence of the state of armed conflict and applies in peace as much as in war.

Yet, the most important distinction between humanitarian and human rights law rests in the approach they adopt. Under humanitarian law the protection is granted on the basis of individual's belonging to a certain group with a “specific kind of relationship to the state under whose power the individuals find themselves” (Provost 2002: p. 42). The only marked exception is the Article 75 of the Protocol I, which provides protection for individuals in power of the signatory party regardless of their nationality. On the other hand, human rights law does not condition applicability of individual rights it establishes by belonging to a particular group – obviously, with exception of minority rights. Besides of this exception, the emphasis is typically placed on the interests of individuals rather than any collective. This is in marked contrast to the humanitarian law, which focuses on protection of non-combatants as a group (Provost 2002: p. 42).

Protection of civilians in the armed conflict builds upon the provisions of the Universal Declaration of Human Rights (1948) and the confirmation of its applicability in conditions of armed conflict. The General Assembly resolution no. 2444 (XXIII) on Respect for Human Rights in Armed Conflicts posits that the

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“basic principle for the protection in armed conflict... are fundamental human rights, as accepted in international law and laid down in international instruments, which continue to apply fully in situations of armed conflict” (UN 1968).

The same resolution also establishes that provision of international relief conforms with principles of the Charter of the United Nations and the Universal Declaration of Human Rights (Mansson 2008: p. 572). Interestingly, further UN General Assembly resolutions in regards of protection of civilians in armed conflicts (UN 1970a, 1970b and 1970c) take the humanitarian law perspective.

However, even these resolutions bore in mind the purpose of the United Nations a human rights protecting and promoting organisation (UN 1970b) and called upon commitment of the UN members to observe and promote respect of human rights. Here, references to instruments concerning universal human rights are mixed with references to international humanitarian law norms, suggesting the dominant view of humanitarian law as extension of human rights law within the UN (Durham and McCormack 1999: p. 60).

So it would seem that while the instruments of humanitarian law and human rights law differ in their approach, applicability and object of protection, the only thing they share is the overarching objective of assuring protection of human beings (Eriksson 2000: p. 335). Yet, resolutions of the UN General Assembly tend to mix the two branches of law and suggest that humanitarian law presents a set of rules ensuring observation of human rights by belligerents in the conditions of armed conflict. However, in further discussion we will see that perhaps this assumption in practice does not work as smoothly as envisaged.

Rene Provost observed that the “issue of a connection between human rights and humanitarian law surfaced on the legal and political scene in the late 1960s” (Provost 2002: p. 2). He suggested that while the human rights law experienced a boom in the post-Second World War period with adoption of several international norms regulating basic human rights as well as areas of civil, political, social, economic and cultural rights; the efforts for increasing protection of civilian population in armed conflicts met with a cold response among majority of the UN members. However, the change in designation of norms regulating protection of civilian population during conflicts from ‘law of war’ to ‘humanitarian law’, suggested a convergence in perception of common aim of both branches of international law (Provost 2002: p. 55).

An instrumental expression of this convergence was, in Provost’s view, the Additional Protocol I (1977). Some provisions of Protocol I are traceable back to human rights instruments of the UN rather than earlier norms regulating protection of civilians in armed conflicts. An example of such provisions is paragraph 4 of Article 1, which defines its application to include conflicts “in which a people is fighting a racist, colonial or alien regime” (Provost 2002: p. 55). This paragraph is clearly linked to the right of self-determination established in the Declaration by the United Nations (1942), the Charter of the United Nations (1945) and the International Covenant on Civil and Political Rights (1976). Similarly, the already mentioned Article 75 presents a contrast to the applied approach of humanitarian law and reflects the universal approach of human rights law.

Yet, differences between the two branches as discussed above still apply. Maja Eriksson (2000) suggested that even though the two international legal regimes overlap in their aim to protect “dignity and integrity of the individual”, they “have different substantial content (*ratione materiae*), different *ratione personae* applicability, different history and apply different implementation procedures” (Eriksson 2000: p. 338). She specifically highlighted that originally, the state of war or armed conflict was considered by the UN as the negation of human rights (ICHR 1968). This would draw the line between the two regimes along the distinction of the state of war and peace. Similarly, Eriksson also pointed out that institutional background of both regimes differs – the UN institutions and regional organisations are concerned with human rights, while the International Committee of the Red Cross and the Red Cross movement provide institutional background of humanitarian law. Finally, she also highlighted the fact that humanitarian law follows inter-state law system, where an individual has no *locus standi* before international organs (Eriksson 2000: p. 335). Yet, she noted that increasing willingness of international organs to prosecute war criminals, as well as emerging norms regulating human rights (such as the Declaration of Minimum Humanitarian Standards 1990) under conditions of armed conflict, suggests convergence of both legal regimes.

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Yet, this convergence is not as simple as Eriksson would have it. There exist contradictions between the two legal regimes, which have led to establishment of the practice emphasising 'the more specific' of the two regimes in individual cases as *lex specialis* (Droege 2008: p. 521). However, the problem with application of humanitarian law as *lex specialis* in some cases remains, that it is only applicable in times of armed conflict. On the other hand, human rights law is only binding for states. Both of these applicability problems complicate the situation especially in non-international conflicts, as will be discussed below.

Humanitarian law and human rights law use different rules to judge the use of force, based on divergent assumptions. While under human rights law, review of any use of force by state agencies requires a review; humanitarian law starts from the premise that there is lethal force to be used, during exercise of which, humans might be intentionally deprived of life or injured – the key is to differentiate between combatants and non-combatants (Kretzmer 2005: p. 171).

Under human rights law, force can only be used by state agencies if there exists imminent danger of serious violence that "cannot be averted save for such use of force" (Droege 2008: p. 526). Here, the intention is to protect the basic human right to life. Articles 9 and 10 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials suggest that: "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" (UN 1990) and be preceded by a clear with sufficient time for the warned to respond. Planning and exercise of an operation with clear intention of killing a person is not permissible and state agents are bound to pursue procedures to avoid and deescalate potential violence (ECtHR 1995).

On the other hand, humanitarian law assumes that force is to be used and focuses on regulation of distinguishing between combatants and non-combatants, principle of proportionality of the used of force and necessary precautions to avoid damage to civilian objects and loss of civilian lives (Henckaerts and Doswald-Beck 2005: p. 11). While human rights law focuses on defining proportional use of force in regards of the least possible level of injury or death; humanitarian law simply requires 'non-excessive' civilian casualties as compared to the military advantage achieved or anticipated (Lubell 2005: p. 737). Obviously, the two understandings can result into very different situations, even though principle of proportionality is not the only principle guiding the use of force under humanitarian law – principles of humanity and military necessity also apply, as well as ban on using weapons causing superfluous injury, etc. The bottom line, however, remains that humanitarian law regulates anticipated use of force in order to minimize civilian casualties, while human rights law scrutinizes every use of force by the state agencies resulting into loss of human life.

It has been suggested that this section will focus on the use of force in non-international conflicts as a problematic case of applicability of human rights or humanitarian law. While we have now discussed the doctrinal aspects of the use of force under human rights law and humanitarian law, the existing jurisprudence seems to be a more contentious issue. First of all, in the instances of the substantial use of force against civilians in non-international conflicts, humanitarian law is rarely invoked as countries would have to formally acknowledge the fact that they are involved in an internal armed conflict for this purpose. As this is typically not a popular option with states, the cases of use of force resulting into loss of life (without regard to whether the killed person was or was not involved in militant activities) are typically considered by human rights courts and bodies. However, the question remains, whether this practice is a desirable one, given the escalation of number and intensity of non-international armed conflicts in recent years.

Cordula Droege, an ICRC legal specialist, suggested that "it would be fairly uncontroversial to assume that for the conduct of hostilities – that is, put simply, battlefield situations – humanitarian law is generally the *lex specialis* in relation to human rights law" (Droege 2008: p. 527), however, it is not so simple in the cases of non-international conflict and occupation. While humanitarian law rules contained in international treaties are 'patchy' at best, customary international law has established further rules for conduct of hostilities, such as proportionality or precaution (Henckaerts and Doswald-Beck 2005: p. 1). With the thickening blanket of protection of non-combatants as the international customary law develops, the problem remains that in non-international conflicts the status of 'combatant' is missing. As Droege puts it, this could suggest that there are no combatants in non-international conflict apart of the armed groups, which "are actually conducting hostilities, but not at any other time" (Droege 2008: p.

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527). This would prevent the lawful use of force against armed groups when not conducting hostilities, as they would be considered civilians – an unrealistic point of view from military perspective. Indeed, such a situation was not an intention of the humanitarian law treaties and the commentary to the Protocol II suggests that those, who belong to armed forces or groups may, indeed, be attacked at any time (Sandoz et al. 1987: p. 262).

The customary law developed towards three accepted practices of ascribing an individual a combatant status – identification as combatant on the basis of an assumption of a permanent fighting function within an armed group by an individual; to identify them as combatants on the same basis but only for purposes of conduct of hostilities; and the identification of combatants as those actually participating in hostilities at a given time. The result is that force can be legally used against those individuals identified as combatants, with protection established by international treaties and customary law covering the remaining civilian population. The problem here is that with the first two approaches, the members of armed groups could be attacked at any time at any given place as combatants; however, is this perspective of humanitarian law applicable, should the combatant be, for example in the middle of the innocent crowd at the shopping mall or at home in a residential neighbourhood? A more appropriate action here would perhaps be an arrest rather than military action, replacing the humanitarian law by human rights law as *lex specialis* (Droege 2008: p. 529).

Indeed, the above point of view in regards of desirability of the use of the least possible violence is established by the existing jurisprudence in such cases. This does not come as a surprise as it has already been observed that jurisprudence in this regard has largely been a product of adjudications of human rights courts and bodies. Cases such as *Guerrero v. Colombia* (HRC 1992) or *McCann and others v. United Kingdom* (ECtHR 1995) suggested that not only is the human rights law applicable in these cases, it also requires the application of principle of attempting to avoid violence if possible and if the use of force is unavoidable, to observe the principle of proportionality.

These cases suggest that the courts were applying full set of human rights and instruments of their protection to persons, who were alleged terrorists and rule that the use of force was undesirable, should other options be available. On the other hand, the judgement of the ECtHR in case *Ergi v. Turkey* (ECtHR 1998) was based on the application of humanitarian law rather than human rights law – minimising of the loss of civilian life in the conduct of hostilities against armed groups (in this case and operation against PKK armed group) was to be the guiding principle under Protocol I and therefore, limited and proportional civilian casualties resulting from the conduct of hostilities were to be expected and permissible.

So it would seem that the existing jurisprudence establishes a distinction between two situations – the first, where individual members of armed groups are killed in limited scope operation; the second, where governmental armed forces are engaged in military operations against an armed group. In the first case, human rights law prevails as *lex specialis*, however, in the second case it is humanitarian law that seems to inspire court rulings – at least implicitly, given the fact that states typically do not acknowledge the internal conflict that would substantiate the use of humanitarian law (Droege 2008: p. 533).

This fact in itself, would perhaps not constitute a problem. Human rights law offers significantly more comprehensive coverage to individuals against the use of force than the humanitarian law – thus offering individuals high level of protection from arbitrary use of force by state agencies in other than combat situations. On the other hand, human rights courts seem to be willing to take into regard humanitarian law if the case is clearly related to the conduct of larger hostilities – thus allowing for high degree of protection of civilian population, while acknowledging that certain civilian losses do occur in these cases.

However, the problem remains in the fact that if the state of non-international armed conflict is not acknowledged, the rulings can only be governed by human rights law. And armed groups are not considered to be a party to human rights treaties. Therefore, only the state forces have obligations under its provisions, depriving population under control of armed groups of any legal protection at all.

Perhaps a suggestion put forward by Droege (2008) that human rights law should apply in situations where the state forces are in effective control of a certain territory and humanitarian law in combat situations, could be developed

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further and assign responsibility for observation of human rights to armed groups in effective control of a given territory. This solution would extend the same legal coverage to civilians in the territory controlled by armed groups as to those in the territory controlled by state agencies.

Yet, some practical difficulties remain, of which two stand out particularly. First, armed groups are not party to human rights treaties. However, they are not a party to humanitarian law treaties either and their provisions do cover them. Therefore, perhaps, this difficulty could be tackled on the basis of customary law establishing the responsibility of even those groups that are not a party to the treaties in question. The second difficulty is the question of whether armed groups are indeed in effective control of territory they dominate and are therefore able to take on a responsibility otherwise assigned to a state. It would seem that armed groups at least in some cases do possess such a capacity, as has recently been demonstrated by Taliban's ability to administer Sharia Law upon communities of Northern Pakistan in the area under its effective control (Moncrieff 2009). Moreover, the UN has already acknowledged that individual members of armed groups can be held responsible for breaching human rights, especially, if they constitute crimes against humanity (UN 2011).

So it would seem that assigning responsibility for observing human rights to armed groups in effective control of territory would offer legal protection for civilians in situations of non-international armed conflict unacknowledged by the given state.

This essay argued that humanitarian and human rights law constitute two distinctive international legal regimes. Their mutual differences in fundamental premises were presented and issues of their applicability discussed. It does not come as a surprise that the essay observed considerable gaps in protection of civilians in armed conflicts, given the presented issues of applicability of both laws.

It is to be concluded that if legal protection of civilian population is to be improved in future, the issues of applicability of both human rights and humanitarian law need to be addressed in order to correspond to the realities of armed conflicts. Non-international armed conflicts – even though they are rarely acknowledged by governments in question – are the most common form of armed conflicts in contemporary world (ICRC 2008). Even though both humanitarian law and human rights law aim to alleviate human suffering in conflicts, their applicability in the case of non-international conflicts is problematic – the presented issue of the use of force against civilians is only one of the numerous examples that could be drawn. Making those armed groups, who fight for control over human beings on a certain territory, responsible for conducting this control in accord with universally acknowledged human rights, is perhaps the necessary step to be taken to ensure protection of civilian population in their control.

Bibliography

Crawshaw, R., Cullen, S. and Williamson, T. (2007) *Human rights and policing*, Martinus Nijhoff Publishers

Droege, C. (2008) 'Elective affinities? Human rights and humanitarian law', *International Review of the Red Cross*, vol. 90, no. 871, September 2008, pp. 501 – 548

Durham, H. and McCormack, T. (1999) *The changing face of conflict and the efficacy of international humanitarian law*, Martinus Nijhoff Publishers

ECtHR (1995) *McCann and Others v. United Kingdom*, available at: <http://www.leeds.ac.uk/law/hamlyn/gibraltar.htm>, accessed on 7 January 2011

ECtHR (1998) *Ergi v. Turkey*, available at: <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/d0cd2c2c444d8d94c12567c2002de990/1533f3cf8800cba3c1256658002a3d36?OpenDocument>, accessed on 7 January 2011

Eriksson, M. K. (2000) *Reproductive freedom: in the context of international human rights and humanitarian law*, Martinus Nijhoff Publishers

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Fleck, D. and Bothe, M. (1999) *The handbook of humanitarian law in armed conflicts*, Oxford University Press

GCIV (1949) 'Convention (IV) relative to the Protection of Civilian Persons in Time of War', Geneva, 12 August 1949, available at: <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>, accessed on 5 January 2011

Henckaerts, J. M. and Doswald-Beck, L., eds. (2005) *Customary International Humanitarian Law*, ICRC and Cambridge University Press

HRC (1993) 'Human Rights Committee, Communication No. R.11/45, UN Doc. Supp. No. 40(A/37/40)', 31 March, available at: <http://www1.umn.edu/humanrts/undocs/undocs.htm>, accessed on 7 January 2011

ICRC (2008) 'Increasing respect for international humanitarian law in non-international armed conflicts', available at: <http://www.icrc.org/eng/resources/documents/publication/p0923.htm>, accessed on 7 January 2011

ICRC (2011a) 'Protocol I - state parties', available at: <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=470&ps=P>, accessed on 6 January 2011

ICRC (2011b) 'Protocol II - state parties', available at: <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=470&ps=P>, accessed on 6 January 2011

ICHR (1968) 'Human Rights in Armed Conflicts. Resolution XXIII', International Conference on Human Rights. Teheran, 12 May, available at: <http://www.icrc.org/ihl.nsf/FULL/430?OpenDocument>, accessed on 6 January 2011

Kretzmer, D. (2005) 'Targeted killing of suspected terrorists: extra-judicial executions or legitimate means of defence?', *European Journal of International Law*, vol. 16, no. 1, pp. 171, 185

Lubell, N. (2005) 'Challenges in applying human rights law to armed conflict', *International Review of the Red Cross*, vol. 87, no. 860 (December 2005),

pp. 737 - 746

Mansson, K. (2008) 'Chapter XXI. Implementing the Concept of Protection of Civilians in the Light of International Humanitarian Law and Human Rights Law: The Case of MONUC', in Arnold, R. and Quenivet, N. R. (2008) *International humanitarian law and human rights law: towards a new merger in international law*, BRILL, pp. 555 - 591

Moncrieff, V. (2009) 'Taliban forces Sharia onto large areas of Pakistan', *Huffington Post*, 5 January, available at: http://www.huffingtonpost.com/virginia-moncrieff/taliban-impose-sharia-in_b_155142.html, accessed on 7 January 2011

Pictet, J. (1985) *Development and Principles of International Law*, Dordrecht: Matrinus Nijhoff

Pictet, J. (2004) *The Geneva Conventions of 12 August 1949: Geneva convention relative to the protection of civilian persons in time of war*, International Committee of the Red Cross

Pilloud, C. and Pictet, J. (1987) 'Article 55', in Sandoz, Y. et al. (1987) Hayashi, M. N. (2007) 'The Principle of Civilian Protection and Contemporary Armed Conflict', in Hensel, H. M., ed. (2005) *The Law of Armed Conflict: Constraints on the Contemporary Use of Military Force*, Ashgate

Protocol I (1977) 'Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)', Geneva, 8 June, available at: <http://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-English.pdf>, accessed on 5 January 2011

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Protocol II (1977) 'Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)', Geneva, 8 June, available at: http://www.un.org/preventgenocide/rwanda/text-images/Geneva_Protocol2.pdf, accessed on 5 January 2011

Provost, R. (2002) *International human rights and humanitarian law*, Cambridge University Press

Quenivet, N. (2008) 'Chapter XII: The Right to Life in International Humanitarian Law and Human Rights Law' in Arnold, R. and Quenivet, N. R. (2008) *International humanitarian law and human rights law: towards a new merger in international law*, BRILL, pp. 331 – 354

Sandoz, Y., Swinarski, C. and Zimmermann, B., eds. (1987) *Commentary on the Additional Protocols*, Geneva: ICRC

Sultan, H. (1986) 'Islamic Conception' in UNESCO/Henri Dunant Institute (1986) *International Dimensions of Humanitarian Law*, Paris: Henri Dunant Institute, pp. 47 – 60

UN (1942) 'Declaration by the United Nations', 1 January, available at: http://avalon.law.yale.edu/20th_century/decade03.asp, accessed on 5 January 2011

UN (1945) 'Charter of the United Nations', available at: <http://www.un.org/en/documents/charter/index.shtml>, accessed on 5 January 2011

UN (1948) 'Universal Declaration of Human Rights', available at: <http://www.un.org/Overview/rights.html>, accessed on 6 January 2011

UN (1968) 'Resolution 2444 (XXIII) on Respect for Human Rights in Armed Conflicts', 19 December, available at: <http://www.icrc.org/ihl.nsf/INTRO/440?OpenDocument>, accessed on 6 January 2011

UN (1970a) 'Resolution 2675 (XXV) on Basic Principles for the Protection of Civilian Population in Armed Conflicts', 9 December, available at: <http://www.unhcr.org/3ae68cbc18.html>, accessed on 6 January 2011

UN (1970b) 'Resolution 2676 (XXV) on Respect for Human Rights in Armed Conflict', 9 December, available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/349/41/IMG/NR034941.pdf?OpenElement>, accessed on 6 January 2011

UN (1970c) 'Resolution 2677 (XXV) on Respect for Human Rights in Armed Conflict', 9 December, available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/349/42/IMG/NR034942.pdf?OpenElement>, accessed on 6 January 2011

UN (1976) International Covenant on Civil and Political Rights, 23 March, available at: <http://www2.ohchr.org/english/law/ccpr.htm>, accessed on 5 January 2011

UN (1990) 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials', 7 September, available at: <http://www2.ohchr.org/english/law/firearms.htm>, accessed on 7 January 2011

UN (2011) 'Elements of International Law Relevant to Humanitarian Negotiations', available at: <http://ochaonline.un.org/humanitariannegotiations/Chapter3-3.htm>, accessed on 7 January 2011

1899 Hague Conventions (1899) 'Laws of War: Laws and Customs of War on Land (Hague II)', 29 July, available at: http://avalon.law.yale.edu/19th_century/hague02.asp, accessed on 4 January 2011

1925 Geneva Protocol (1925) 'Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare', available at: <http://www.un.org/disarmament/WMD/Bio/1925GenevaProtocol.shtml>, accessed on 4 January 2011

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[1] The first three conventions were amended in 1949, therefore, all four are typically jointly subsumed under the terms of 'Geneva Conventions of 1949" or "Geneva Convention" (Pictet 2004, p. 11).

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