

THE HUMANITARIAN DIMENSION OF WAR

Protection of the individual, whether military or civilian

by Aristidis S. Calogeropoulos-Stratis

Recently, a number of armed conflicts have broken out in Europe or not far away: armed conflicts between States — the Gulf War, for example, authorized by UN Security Council resolution 678 — or wars of national liberation, such as the armed conflict in Yugoslavia or the revolt in Kurdistan. Whether or not the use of force was legitimate in each of these situations, and even though the classic notion of a “just war” no longer exists, all parties to any armed conflict have a moral, legal and humanitarian obligation to abide by the laws and customs of war in the conduct of hostilities and indeed throughout the entire conflict.

Although war is by its very nature the negation of modern international law, it is nevertheless governed and conditioned by part of that law: the international humanitarian law of armed conflict, which sets limits and forbids certain practices, concerning not only the treatment of individuals but also the use of various means of combat. This law (*jus in bello*) is based on the principle that belligerents must not cause their adversaries harm that is disproportionate to the objective of war, which is to destroy or weaken the enemy’s military potential.

International humanitarian law governing armed conflicts has two major branches:

(a) *humanitarian law* proper, or the *Law of Geneva*, comprising the four Geneva Conventions of 12 August 1949 and their two Additional Protocols of 8 June 1977; and

(b) the *Law of The Hague*, composed of all the international conventions and agreements adopted in the context of the peace conferences held in The Hague in 1899 and in 1907.

In addition, there is a whole series of “autonomous” international agreements concerning the law of war. These include the *Declaration of St. Petersburg* of 1868, which prohibits the use of certain projectiles, the *Geneva Protocol* of 1925 for the prohibition of the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of warfare, the *UN Convention* of 10 October 1980 on prohibitions or restrictions on the use of certain conventional weapons deemed to be excessively injurious or to have indiscriminate effects, and *The Hague Convention* of 1954 for the protection of cultural property in the event of armed conflict, concluded under the auspices of UNESCO.

The *Law of Geneva* essentially tends to protect victims of armed conflict, that is, members of the armed forces no longer able to fight because they are wounded, sick, shipwrecked or taken prisoner, the civilian population and all others directly or indirectly affected by war. The *Law of The Hague* sets down the rights and duties of those conducting hostilities and limits the choice of means that can be used to harm the enemy. In short, international humanitarian law applicable in times of armed conflict is inspired by humane feelings and thus ensures respect for human dignity, while at the same time taking the imperatives of armed conflict into account. The *International Committee of the Red Cross (ICRC)* plays an essential role in the implementation of international humanitarian law.

That being said, ultimately the application of humanitarian law is always dependent, *de facto* if not *de jure*, upon the determination of the States concerned to respect their obligations. No institution has been set up to define a given situation in ways that would be considered binding, and even the ICRC does not have the means to impose its point of view. So Iraq refused to apply the Fourth Geneva Convention in Kuwait because it did not consider the situation to be one of military occupation. This is also the case today in the territories occupied by Israel, and in the part of Cyprus occupied by the Turkish army.

In contrast, the application of *international human rights law* does not present any apparent difficulties in this respect. The conditions for its application are the same in peacetime as in wartime and are monitored by permanent institutions. A State at war can suspend the application of most rights, but the exercise of this prerogative comes under international supervision. If one considers, on the one hand, the rights that are inalienable under the human rights conventions and, on the other, the provisions of humanitarian law, it becomes clear that humanitarian law and human rights law largely overlap, in particular

with regard to the humane treatment of individuals: see for example the Universal Declaration of Human Rights of 1948, the 1966 International Covenant on Civil and Political Rights (ratified by Iraq), and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the Gulf conflict, the belligerent States were bound to respect both humanitarian law, including the Geneva Conventions (contracting States undertake to respect and ensure respect for these treaties), and human rights, in particular civil and political rights, and above all the fundamental rights of the individual, which are essentially the same under both systems of law, even in times of armed conflict. The fundamental rules in question are:

- The life and physical and mental integrity of all persons who are *hors de combat* (wounded, sick or shipwrecked members of the armed forces), who are not taking part in hostilities (civilians) or who are no longer taking part (prisoners of war) must be respected. It is strictly forbidden to wound or kill an adversary who is surrendering or who is *hors de combat*. By the same token, these people are entitled to respect for their convictions and their individual rights, and must be protected from all acts of violence and reprisals.
- Wounded, sick or shipwrecked members of the armed forces must be collected and cared for by the party to the conflict into whose hands they fall. In addition, it is imperative to respect medical personnel, medical establishments, means of transport and material, and the emblem of the red cross or of the red crescent (the latter is used in Islamic countries).
- All persons, whether aliens or nationals of the State in whose power they are, must be granted fundamental judicial guarantees in times of armed conflict and/or military occupation. No one may be subjected to physical or mental torture, to corporal punishment or to cruel or degrading treatment.
- The right of States and their armed forces involved in hostilities to choose methods and means of combat is not unlimited. The use of weapons (chemical, for example) and methods of warfare likely to cause superfluous losses and excessive suffering are prohibited.

- A distinction must be drawn between combatants and civilians, even though both categories must be granted minimum protection (fundamental rights) at all times. Humanitarian law takes the specific nature of armed conflict into account and limits attacks to military targets; civilians must be spared. Acts of terrorism are therefore strictly prohibited.

To sum up, belligerent parties have a moral and legal obligation to comply with the rules of international humanitarian law and of international human rights law in the conduct of hostilities and in the treatment of all persons affected in any way by the armed conflict. Members of the armed forces no longer able to fight, prisoners of war and civilians must never be subjected to violence of any kind, including terrorist acts. Even if, according to the law of war, the primary right of belligerents is the right to kill, this right may be exercised only in well-defined cases. Respect for these restrictions and for the other rights mentioned above contributes to the humanization of war and thus prepares the way for the return to peace; and peace remains the final goal and the grounds for the existence of international law as it is currently evolving within the United Nations.

Aristidis S. Calogeropoulos-Stratis

Aristidis S. Calogeropoulos-Stratis, D. Pol. Sci. (University of Geneva) and Press Counsellor at the Greek Embassy in Paris, is the author of: *Droit humanitaire et droits de l'homme. La protection de la personne en période de conflit armé* (Humanitarian law and human rights. The Protection of the individual in times of armed conflict), Sijthoff/IUHEI, Leyden/Geneva, 1980.