INTERNATIONAL LAW AND THE USE OF FORCE BY NATIONAL LIBERATION MOVEMENTS

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Although several studies have been made on the right of peoples to self-determination, none has drawn upon an analysis of international law—and especially international humanitarian law—to examine the authority of national liberation movements to resort to the use of force. It is in this area that Mrs. Wilson has produced her most outstanding contribution.*

In a general introduction, the author begins by analysing the traditional law of war, whose field of application (with the exception of cases where belligerence was recognized in an internal conflict) was restricted to conflicts between States. The laws, rights and duties of war were extended to include militia and volunteer corps provided that they had a commander at their head, carried arms openly and respected the laws and customs of war; they also included participants in a *levée en masse*, as long as they carried their weapons openly and acted in accordance with the laws and customs of war.

By examining the legitimacy of resorting to the use of force and the principle of self-determination up to the time when provision was made for it under a rule of international law, Mrs. Wilson's excellent legal analysis then goes on to explore the political and legal changes which have occurred and their influence on the law of war. Recognition of the right to self-determination—within the United Nations and in State practice—alters the traditional distinction between internal conflict and international conflict in that it extends the scope of international humanitarian law. This principle is incorporated in Article 1(4) of Protocol I additional to the Geneva Conventions. The problem arises when a definition has to be given to the concept of "peoples" to whom this article applies. The author not only analyses the restrictions imposed by Articles 43 and 95 of Protocol I, under which the peoples in question must be represented by an "authority"; she also reviews the practice followed by the

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United Nations and regional organizations—such as the Organization of African Unity—when recognizing a national liberation movement as representative of a people struggling for self-determination.

Although the right to self-determination has been unanimously accepted, the authority of national liberation movements to resort to force has not met with universal agreement. This authority is recognized by newly independent States and socialist countries, but countries faced with such conflicts have never done so.

Practice within the United Nations, and in particular the Declaration on Friendly Relations and the Definition of Aggression, both of which were adopted without vote, has not settled the fundamental differences of opinion as to the extent to which national liberation movements have authority to use force. Moreover, Article 1(4) of Protocol I does not sanction recourse to force by these movements; it merely extends the application of humanitarian law to wars of national liberation.

Despite the States' reluctance to apply the law of international armed conflicts to wars of national liberation, they often observe its rules. In this realm, State practice remains ahead of codification of the law. (Note how few States are even today party to Protocol I.). The author examines State practice is this context—especially during the conflicts in Algeria and in the Portuguese colonies (Angola, Mozambique and Guinea-Bissau)—as regards the treatment of captured combatants, the protection of civilians and immunity from prosecution for lawful acts of war. She points out that, after an initial period of repression, States treated detainees as prisoners of war and refrained from prosecuting them under their domestic laws; they even went so far as to exchange them for their own captured combatants, though all the while refusing to recognize their status as prisoners of war. Furthermore, there were several cases where government authorities allowed the ICRC to visit detainees, help the civilian population and forward family messages, while nevertheless making it clear that they did so on general humanitarian grounds and not in accordance with any legal obligation. In such cases, the legal basis for humanitarian organizations (such as the ICRC) continues to stem from Article 3 common to the Geneva Conventions or, as regards the ICRC, from its statutory right of initiative.

In conclusion, this is an outstandingly clear work, objective and rich in content.

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