The law of internal crisis and conflict

An outline prospectus for the merger of international human rights law, the law of armed conflict, refugee law, and the law on humanitarian intervention

by
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THE relationship between international human rights law and the international law of armed conflict is a long-standing issue.[1] For many years the two were widely regarded as distinct areas. And there are still some who continue to think of international humanitarian law, as it is usually termed,[2] as an entirely separate discipline. The most recent *Handbook of Humanitarian Law in Armed Conflict*[3], for example, makes no reference at all to human rights law. The prevailing view, however, is that human rights law and the law of armed conflict are complementary in that both are applicable in most situations of internal or international conflict. This is reflected in the statutes of the international tribunals established to deal with war crimes in the former Yugoslavia and Rwanda and of the International Criminal Court, which give them jurisdiction over serious violations both of human rights law – as crimes against

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1 There is a huge range of literature on this and many other issues discussed in this article; references will be made only to those from which a relevant point is derived directly.

2 In this article the term "humanitarian law" will be reserved for the law governing humanitarian intervention; the rules in the Geneva Conventions and Protocols will be referred to as the "law of armed conflict".

3 D. Fleck (ed.), *The Handbook of humanitarian law in armed conflicts*, Oxford University Press, Oxford, 1995.

humanity – and of the Geneva Conventions for the protection of war victims and their Additional Protocols – as war crimes.

This approach has been neatly summarized by the United Nations Special Rapporteur on Kuwait, Professor Walter Kälin, in the claim that while the two bodies of law remain conceptually different in many regards they should be applied in an integrated and cumulative manner.[4] But it must be remembered that individual States may be differentially bound according to the extent to which they have ratified the relevant conventions and protocols. It may be reasonable to conclude, therefore, that the continuing separate status of the two sets of rules is generally accepted, but that they should be regarded as providing cumulative protection in situations of internal or international conflict.

Apparent differences

Professor Kälin's approach is obviously an attractive way of maximizing international protection for individuals affected by internal or international conflict. But it is not without its conceptual and practical problems.

In conceptual terms there are some significant differences and some apparent incompatibility between the two branches of law. The most striking, as discussed below, may be summarized as follows:

Human rights law	Law of armed conflict
The right to life is granted a high degree of protection	The right to shoot combatants is formally recognized
The right to be tried rather than detained without trial is protected	The right of combatants to be detained but not tried is protected
There appears to be a continuing obligation to prosecute human rights violators	There is a tendency to grant an amnesty when the conflict is over for most conflict-related crimes
The primary responsibility for ensuring compliance is imposed on the States	Individuals as well as States may be held responsible for ensuring compliance

In more practical terms the separate status and formulations of the two branches of law often make it difficult to provide a straightforward account of the international rules and standards for those working on

4 W. Kälin (ed.), *Human rights in times of occupation: the case of Kuwait*, Stämpfli, Berne, 1994, pp. 26-27.

the ground in conflict situations. As a result, most practice and training manuals deal separately with the two sets of rules, leaving it to those concerned to work out which rules to seek to apply.5

The need for integration

If human rights law and the law of armed conflict are to be regarded as complementary, there is clearly a need to eliminate any incompatibility between them, either of principle or of application. Peacekeepers, peace-enforcers and human rights monitors on the ground cannot reasonably be expected to apply or seek to enforce conflicting sets of rules. This must be so even if there is a case for preserving the distinctive traditions of the International Committee of the Red Cross (ICRC) in discharging its mandate by persuasion and negotiation rather than by legal enforcement.

A comprehensive reformulation of the law should also incorporate, in so far as is possible, the relevant provisions of the law on refugees and internally displaced persons and the law of humanitarian intervention by international bodies, uninvolved States and non-governmental voluntary relief agencies. The status and proper treatment of refugees and internally displaced persons is a primary concern in many situations of conflict and crisis. Those from foreign countries and other agencies who go to crisis areas in an attempt to deal with the conflict and to protect those affected by it also need to know what their own status and rights are under international law. And they must understand the rules governing humanitarian intervention, whether by States or by voluntary agencies.

The purpose of this article is to suggest how such a reformulation might be approached. As the use of the term "prospectus" implies, the project is by no means complete. In some areas the way in which the apparent conflicts between the various legal rules might be resolved is relatively clear. In others there is obviously more work to be done. In this sense the analogy with a commercial prospectus is both appropriate and deliberate. The aim is to set out the essentials of a projected merger and to call for contributions from others who may be prepared to invest some time and effort in bringing the project to fruition.

5 See, e.g., *Human rights and law enforcement: A manual on human rights training for the police*, United Nations Centre for Human Rights, 1997; C. de Rover, *To serve and protect: human rights and humanitarian law for police and security forces*, International Committee of the Red Cross, Geneva, 1998.

The continuum from normality to full-scale armed conflict

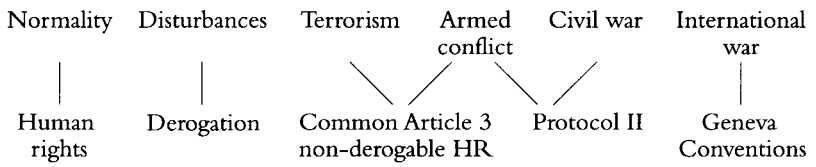
The key to a successful merger of the two bodies of law is clearly a recognition of the legal consequences of moving along the factual continuum from normality to full-scale armed conflict. In the real world there is an obvious progression – or regression – from situations of peace and stability through those of political and social instability, involving popular protests and riots and those in which organized groups are involved in terrorism or insurgency, to those in which there is something like a front line between government and opposition forces, whether internal or external, each of which controls part of the national territory. This continuum is reflected in the rules and standards of international law.

The ordinary rules of human rights law clearly apply to situations of normality, subject only to the usual limitations in respect of national security, public order and public morality. When the level of disturbance is sufficient to pose a threat to the life of the nation, and thus to the enjoyment of rights by the main body of the population, States are entitled under human rights law to declare a state of emergency and to derogate from some of their human rights commitments if they can establish that the derogation is necessary and that the measures are proportionate to the threat to the State or to the rights of others.[6] When the situation has deteriorated into armed conflict, the rules of Article 3 common to the Geneva Conventions come into operation and impose certain basic obligations on all sides of the conflict. These are broadly similar to the non-derogable rights under the main human rights conventions, in particular the obligation to deal humanely with all those not taking part in the conflict. If the conflict escalates into a situation in which organized forces on either side exercise some control over part of the national territory, the rules under Protocol II additional to the Geneva Conventions come into operation.[7] Finally, the full range of rules of the international law of conflict, as expressed in the Geneva Conventions and Additional Protocol I, apply to international armed conflicts and certain wars of national liberation.[8]

6 International Covenant on civil and political rights (ICCPR), Art. 4; (European) Convention for the protection of human rights and fundamental freedoms (ECHR), Art. 15.

7 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), Art. 1.

8 Art. 1 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) extends the application of the Geneva Conventions of 1949 to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination".



This relationship between the degree of disturbance/conflict and the applicable international law can be portrayed in simple tabular form as follows:

Further development

This presentation is clearly over-simplified as some elements of normal human rights standards apply throughout the continuum while others are variable in relation to the degree of disturbance or the seriousness of the conflict. And it is not always clear where the rules meet or merge in respect of derogations under the main human rights conventions, the rules of Article 3 common to the Geneva Conventions and those of Protocol II. Further development of any proposal for a merger or reformulation of these standards requires a more detailed examination of specific aspects and applications of the rules under each branch of the law. In the context of this outline prospectus, however, all that can be done is to draw attention to some of the problems, some of the emerging solutions and some areas of continuing controversy.

Absolute prohibitions

There are a limited number of absolute rights or prohibitions which apply in all circumstances, however serious the conflict or crisis. In human rights law these rights, referred to as non-derogable rights, are made absolute by excluding them from any possible derogation or limitation.[9] Since in the law of conflict there is no provision for derogation, the rights are made effectively universal by their explicit inclusion in the conventions and protocols which apply to all levels of armed conflict. The most obvious example is the prohibition of torture.[10] Both branches of law also require

9 ICCPR, Art. 4 (2); ECHR, art. 15 (2).

10 First Geneva Convention, Art. 50; Second Geneva Convention, Art. 51; Third Geneva Convention, Art. 130; Fourth Geneva Convention, Art. 147; Protocol I, Art. 85; Protocol II, Art. 4 (2).

humane treatment in all circumstances: in human rights law this is achieved by making the prohibition of "inhuman or degrading treatment or punishment" a non-derogable right along with the prohibition of torture;[11] in the law of conflict there is an explicit requirement that protected persons must be treated humanely in all circumstances.[12] There is also an absolute prohibition of all forms of genocide which is superimposed on both branches of law under the 1948 Convention on the prevention and punishment of the crime of genocide.

In this area there is clearly some scope for a more coordinated formulation of these absolute rights and prohibitions. Human rights law might draw on some of the more explicit formulations of conflict law, such as the list of prohibitions in common Article 3 and Article 4 of Additional Protocol II. In the law of conflict the main requirement may be to make it more explicit that these absolute rights are to apply to all persons in all circumstances rather than merely to protected persons, given the complex criteria defining the status of protected person under each of the main conventions.[13] A good start has been made in this area in the formulation of absolute rights and prohibitions in the Declaration on minimum humanitarian standards ("Turku/Abo Declaration") [14] though, as will be seen, some of the terms used such as 'murder' and 'terrorism' may require further clarification.

The right to life

There is an immediately striking divergence between human rights and conflict law in respect of the right to life. In human rights law the right to life is non-derogable and is often given pride of place.[15] In the law of armed conflict the right of combatants to shoot other combatants on sight and without warning is recognized. The beginnings of a reconciliation between these apparently conflicting standards may be found in the fact that in human rights law the right to life is not absolute since it is subject to the right to use

11 ICCPR, Art 7; ECHR, Art. 3.

12 First Geneva Convention, Art. 3 and 12; Second Geneva Convention, Art. 3 and 12; Third Geneva Convention, Art. 3 and 13; Fourth Geneva Convention, Art. 3 and 27; Protocol II, Art. 4.

13 First Geneva Convention, Art 13; Second Geneva Convention, Art. 13; Third Geneva Convention, Art. 4; Fourth Geneva Convention, Art. 4.

14 "Declaration of minimum humanitarian standards", reprinted in UN Doc. E/CN.4/1996/80 and *International Review of the Red Cross*, No. 282, May-June 1991, p. 328.

15 ICCPR, Art. 6; ECHR, Art. 2.

lethal force in lawful executions, in self-defence or in defence of an immediate threat to the life of others.[16] It might be argued, therefore, that under conditions of open warfare, including guerrilla campaigns, a continuing threat from combatants on either side may be presumed and would thus justify shooting on sight. This approach would have the advantage of casting doubt on the legitimacy not only of indiscriminate weapons and land-mines but also of aerial or missile attacks on forces not actively engaged and on part-time combatants while off-duty, both of which appear to be acceptable in the current interpretation of the law of conflict.[17]

It might also help to resolve the difference between the presumption in human rights law that warfare can never be lawful and the acceptance in the law of conflict that conflict is a fact of life and that its causes are irrelevant by emphasizing that in so far as individual combatants are concerned it is the immediate threat to life rather than the justification of the conflict which sets the standard. This is, incidentally, the approach to homicide in most countries' domestic law. And it would leave open the question whether those responsible for initiating or planning the campaigns on either side could be held to have acted in breach of human rights standards, as for example in the recent decision of the European Court of Human Rights in respect of the United Kingdom's actions in response to the terrorist threat in Gibraltar.[18]

Rights relating to trial and detention

There is a similar apparent divergence between human rights law and the law of armed conflict in respect of the trial and detention of combatants. Under human rights law the normal standard is that deprivation of freedom is permitted only after a fair trial for a criminal offence.[19] During states of emergency, however, derogations may be made to the normal standards for a fair trial. Detention without trial is also permitted. Under the law governing international armed conflict, on the other hand, the trial and punishment of combatants for the mere fact of having committed

16 ECHR, art 2; United Nations Basic Principles on the use of force and firearms by law enforcement officials, 1990, Art. 9.

17 See, e.g., R. Goldman, "International humanitarian law: Americas Watch's experience in monitoring internal armed conflict", *American University Journal of International Law and Policy*, vol. 9, 1993, p. 75.

18 *McCann v United Kingdom*, European Human Rights Reports, vol. 21, 1996, p. 97.

19 ICCPR, Arts. 9 and 14; ECHR Arts 5 and 6.

a hostile act is forbidden and those who are captured must be detained as prisoners of war.[20] Under common Article 3 and Additional Protocol II, however, the trial and punishment of those engaged in internal armed conflict is not ruled out provided that certain essential minimum standards for a fair trial, recognized as essential by civilized peoples, are observed.[21]

A measure of convergence between these two sets of rules may perhaps be based on the above-mentioned essential minimum standards.[22] Since any derogation under the main human rights conventions must in any case be compatible with the other international obligations of the State, they must be treated as non-derogable rights under human rights law.[23] The resulting position would be that all governments in their response to terrorism or insurgency must choose between the trial of those involved in accordance with these non-derogable standards and their detention without trial in conditions equivalent to those accorded to prisoners of war. A merged formulation along these lines would effectively resolve any apparent incompatibility between the principles of human rights and conflict law.

Political rights

There is a similar approach in both human rights and conflict law to political rights such as free expression, free association and democratic elections. All these rights are derogable under the main human rights conventions.[24] And there is nothing in the Geneva Conventions or Protocols to prevent governments or occupying powers from curtailing political rights of this kind. State practice is in line with this approach. The normal governmental response to serious internal crisis or war is to postpone elections and/or limit political freedoms of association and expression. The legitimacy of such derogations during states of emergency or war is usually accepted.

This suggests that there would be no major difficulty in drawing up a coherent set of standards for a merged restatement of the law in this area. But there may also be a case for developing the standard according to which derogations or lengthy occupations are assessed to include the extent

20 Third Geneva Convention, Arts. 82-108.

21 Common Article 3 (1) (d); Protocol II, Art. 6.

22 See S. Stavros, "The right to a fair trial in emergency situations", *International and Comparative Law Quarterly*, vol. 41, 1992, p. 343.

23 ICCPR, Art 4 (1).

24 ICCPR, Art. 19, 21-22 and 25; ECHR Art. 10-11 and Protocol 1, Art. 3. Article 23 of the American Convention on human rights, which makes the right to political participation non-derogable, is out of line.

to which the government or occupying power has made appropriate efforts to resolve its underlying political or economic problems and to restore democratic structures.[25]

Free and forced movement

International human rights law guarantees the right to freedom of movement, subject to the usual limitations in respect of national security, public order and public health and to the possibility of derogation during states of emergency.[26] In situation of crisis and conflict, restrictions on free movement, such as curfews and house arrest as a form of limited detention without trial, are regularly imposed and there are no general grounds on which justifiable and proportionate measures of that kind could be successfully challenged. In the law of conflict there is an express prohibition of the forced displacement or transfer of civilians during armed conflict other than on grounds of military necessity.[27] There is also an express prohibition of certain forms of forced eviction by armed attack, which is treated both as a war crime and a crime against humanity.[28]

As in the case of political rights there would not appear to be any major problem in combining these various standards in a merged formulation based on the twin principles of human rights and conflict law: first a general statement of the right to free movement, which may be curtailed only on specified grounds directly and proportionately related to the degree of crisis or conflict and subject to appropriate legal safeguards; and second a more tightly framed prohibition of forced movement or transfer except in the most restricted circumstances for the better protection of the lives of those affected and with an express right to return as soon as circumstances permit.

Refugees and internally displaced persons

Dealing with mass population movements, whether they occur for fear of attack or by actual force of arms, is one of the major concerns during acute crises and conflict. In cases where those affected have fled across

25 T. Hadden, "Human rights abuses and the protection of democracy during states of emergency", Cairo Conference on Democracy and the Rule of Law, 1997 (forthcoming).

26 ICCPR, Art. 12; ECHR, Protocol 4, Art. 2.

27 Fourth Geneva Convention, Art 49; Protocol II, Art. 17.

28 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, 1968, Art. 1 (b).

international boundaries, they may be entitled to formal refugee status under the 1951 Convention relating to the status of refugees and the 1967 Protocol. But this is limited to cases in which it can be established that their flight was the result of a well-founded fear of persecution.[29] And even when such formal status is granted, the principal right of refugees is that they will not be returned to their country of origin (the right of *non-refoulement*). There is no formal right of settlement in the country of refuge or of resettlement elsewhere. The Convention does prescribe valuable standards of treatment and there is an obligation to cooperate with the United Nations High Commissioner for Refugees (UNHCR). But the mass influxes which typically occur during acute crises and conflicts render the individualistic approach of the 1951 Convention, which was drafted with individual asylum seekers in mind, highly problematic. Any reformulation of the rules would need to take into account and develop the concept of temporary protection, which is increasingly being relied on in cases of mass flight.

There are two significant categories of *de facto* refugees who do not qualify for formal refugee status under the 1951 Convention. The first are those who cannot establish a well-founded fear of persecution, generally referred to as non-status refugees. The second are those who have not crossed an international boundary, generally referred to as internally displaced persons. Neither group is entitled to any special protection other than that which is generally available to the civilian population under human rights law or the law of conflict. They do, however, fall under the functional responsibility of the UNHCR as well as of the other organizations that become involved in situations of forced displacement.

There is therefore a pressing need for a clear statement of the specific rights of all these groups. An initial account of the rights of internally displaced persons under both human rights law and the law of conflict has been prepared at the request of the UN Secretary-General.[30] But there is less clarity regarding the precise rights of non-status refugees other than that which can be deduced by analogy from those of status refugees. This lack of clarity has caused major problems in some refugee camps, notably those in (former) Zaire following the conflict in Rwanda. A coherent restate-

29 Art. 1 (A) (2).

30 Report of the Special Representative of the Secretary-General on internally displaced persons, UN Doc. E/CN.4/1998/53 (Deng Report).

ment of the existing rules and an indication of how best they might be developed to take account of the realities of mass movements of this kind is one of the most urgent requirements in this area.

Enforcement against involved States and/or individuals

A further major difference between human rights law and the law of conflict is that the obligations under the main human rights conventions are imposed exclusively on States while those under the Geneva Conventions and Protocols are binding on both States and on individuals, and in certain circumstances on organized paramilitary groups. This distinction has in recent years given rise to controversy as to whether non-State forces engaged in internal conflicts and liberation struggles can be held responsible for human rights violations. The prevailing view among most international non-governmental organizations is that opposition forces can properly be held responsible only for breaches of the law of conflict and that they cannot be accused of human rights violations.[31] But it is difficult to justify this distinction in the public arena in other than formalistic legal terms. And the fact that the statutes of the international criminal tribunals for the former Yugoslavia and Rwanda and of the new International Criminal Court provide for individual responsibility for crimes against humanity, which can be viewed as equivalent to serious human rights violations, as well as for war crimes, makes it even more difficult to justify the distinction.

There is therefore a strong case for extending responsibility for serious human rights breaches and violations of the law of conflict to all organized groups in situations of conflict. As in the case of responsibility under the Geneva Conventions and Protocols, this would require formulations taking account of the degree of control exercised by organized opposition groups over parts of the national territory and/or sections of the population. A similar approach is already applied under the main human rights conventions in respect of State responsibility for violations by non-State forces.[32] There is certainly no good reason in principle why a different rule should be applied under the two bodies of law. The further development of individual and group responsibility under the jurisdiction of the Interna-

31 See Goldman, *op. cit.* (note 17).

32 See the judgement of the Inter-American Court of Human Rights in *Velasquez Rodriguez v Honduras*, *Human Rights Law Journal*, vol. 9, 1988, p. 212.

tional Criminal Court may be the simplest means of pursuing this objective. But it may also be possible to argue that since the provisions of the Universal Declaration of Human Rights are widely regarded as having achieved the status of customary international law, any alleged difficulty in holding non-State bodies responsible for breaches of covenants which only States can ratify may be avoided.

Impunity and/or amnesty

There is a related and equally controversial divergence between human rights law and the law of conflict as regards the issue of impunity or amnesty for serious human rights violations and war crimes. Human rights lawyers typically take the view that all serious human rights violations should result in the prosecution and punishment of the individuals responsible for them and they argue strongly against any form of impunity. This approach has been given some backing by international human rights courts and commissions in decisions requiring States to investigate and bring to justice those responsible for disappearances and other serious human rights violations.[33] The law of conflict, on the other hand, favours the release of prisoners and the granting of amnesties to all combatants on the termination of hostilities. There is an express provision in Protocol II calling on the authorities in power to endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict.[34] This provision, however, must be read in conjunction with the standard articles in the main Geneva Conventions which require all States to provide effective penal sanctions against grave breaches of the Conventions and not to absolve themselves or other parties from any liabilities incurred as a result of such grave breaches.[35]

One possible approach to these apparently conflicting provisions is to distinguish between grave breaches for which no amnesty should be granted and other breaches and/or criminal offences related to the conflict, such as charges of homicide against members of non-State forces for their actions during the conflict, for which combatants should not be penalized. The practice of most States following the termination of hostilities in both international and internal conflicts, on the other hand, is to grant amnesty

33 See, for example, the opinion of the Human Rights Committee in *Suarez de Guerrero v Columbia*, No. 45/1979 (1982).

34 Art. 6 (5).

35 First Geneva Convention, Arts. 49-51; Second Geneva Convention, Arts. 50-52; Third Geneva Convention, Arts. 129-131; Fourth Geneva Convention, Arts. 146-148.

for all offences arising from the conflict, though in some recent cases this has been linked to the appointment of truth commissions in order to ascertain and publish the facts about serious and systematic violations by both State and non-State forces during the conflict.[36]

There is currently no agreement between human rights lawyers who argue against all forms of impunity and politicians who argue that national reconciliation may require some means of bringing an effective end to criminal proceedings for offences committed during the conflict, whether by the agreement by the parties to a negotiated peace settlement[37] or by international arbitration. Some measure of compromise might perhaps be reached by developing international standards under which democratically mandated amnesties – as opposed to those granted by the violators to themselves – might be legitimated, provided that appropriate compensation is not denied to victims. A distinction might also be drawn between offences committed by those responsible at the highest level for initiating or planning the violations and those responsible at lower levels for their implementation for whom an amnesty might be more readily agreed. But these are matters on which there is as yet insufficient international consensus upon which to base any agreed reformulation of the law.

Rights and obligations of intervening States and agencies

A final crucial issue on which both human rights law and the law of conflict are silent is the question of humanitarian intervention by external parties. There is an increasing expectation of intervention by external States and voluntary agencies to protect and relieve the suffering of those affected by internal crises and conflicts. But the legal principles on which such humanitarian intervention might be based remain unclear.

36 Amnesties linked with various forms of truth commissions have been implemented as part of political settlements following almost all the recent conflicts in Latin America and in South Africa.

37 See the decisions of the Inter-American Commission on Human Rights that the amnesty laws in Argentina and Uruguay were contrary to the American Convention on Human Rights: Report No. 28/92 in respect of Argentina and Report No. 29/92 in respect of Uruguay, *Human Rights Law Journal*, vol. 13, 1992, p. 336. But a challenge to the amnesty powers of the Truth and Reconciliation Commission in South Africa on the ground that they were contrary to the human rights included in its new Constitution was rejected on the grounds that it had been adopted as part of the peace settlement, *AZAPO v President of the Republic of South Africa* [1996][4], South African Law Reports, p. 562.

The UN Charter provides for the authorization of forcible intervention by the Security Council only where international security is threatened.[38] Most recent United Nations peace-keeping operations have therefore been mounted with the consent of the States or governments concerned. Action taken by the ICRC in internal conflicts is also based on negotiation with the relevant government or insurgent party, though the express provisions for its involvement in international conflicts under the Geneva Conventions and Protocols provide a formal basis for its operations.[39] And non-State aid agencies are wholly dependent on consent from State authorities. But individual States and regional interstate organizations in both Europe and Africa have intervened in a number of recent conflicts without clear UN authorization in order to protect individual or communal human rights or to prevent grave breaches of conflict law.[40]

This is one of the most controversial and politically sensitive areas of international law and there is no immediate prospect of international agreement on a clear set of rules. Even if international consensus cannot be reached on a formal right of intervention in such cases, however, there is clearly a need for a more coherent formulation of principle and practice for all those involved in such action for the protection of the victims of both internal and international crises and conflicts. This should include guidelines on the status and rights of military, police and other governmental and voluntary personnel who are working on the ground in situations of crises and conflict. Some of the principles and rules may be deduced by analogy from the mandates and working practices of international agencies, notably the ICRC and the UNHCR. But a considerable body of work remains to be done in this area.

Conclusions

The main objective of this outline prospectus has been to argue that the time has come for a coherent restatement of international law and practice in this area. Insofar as is possible this should be based upon a merged reformulation of the established rules of human rights law and the law of

38 United Nations Charter, Chapter VII.

39 First Geneva Convention, Art. 9; Second Geneva Convention, Art. 9; Third Geneva Convention, Art. 9; Fourth Geneva Convention, Art. 10; Protocol I, Art. 81; Protocol II, Art. 18.

40 As, for example, the recent interventions in Sierra Leone under the auspices of the Organization of African States and in Kosovo under the auspices of the Organization for Security and Cooperation in Europe.

conflict along the lines set out above. In other areas it may be possible only to suggest new rules or guidelines based on current international, State and voluntary practice. But it is clear that the long-standing separation between international human rights law and the international law of conflict has outlived its usefulness and that experts in both areas need to come together to agree on those issues on which there is already effective consensus and to resolve the continuing differences in their respective approaches. It is hoped that this initial formulation of the project, despite its generality, will contribute in some way to the initiation of more detailed work over the coming years so that in the new millennium it will no longer be necessary to talk or write about two conflicting bodies of international law in the field of humanitarian intervention.

Résumé

Le droit des crises et conflits internes – Esquisse pour une fusion du droit des droits de l'homme, du droit des conflits armés, du droit des réfugiés et du droit de l'intervention humanitaire

par TOM HADDEN et COLIN J. HARVEY

Les auteurs prennent pour point de départ la constatation que les situations de violence et de conflit sur le territoire d'un État exigent très souvent la mise en œuvre de normes internationales d'origines différentes, notamment, d'une part, les règles internationales protégeant les droits de l'homme et d'autre part, le droit international humanitaire. Sur le plan de la doctrine, cependant, un fossé est encore trop souvent créé entre ces deux domaines. Le présent article tente d'esquisser une approche commune qui engloberait non seulement les deux domaines mentionnés mais encore le droit des réfugiés et les règles internationales relatives à l'intervention humanitaire. Avec ce texte, les auteurs cherchent moins à présenter des solutions qu'à susciter un débat, dans l'espoir qu'au nouveau millénaire droits de l'homme et droit humanitaire ne seront plus perçus comme deux disciplines antagonistes du droit international.

LA REVUE