Protection of Civilians in Armed Conflict

Protection of civilians in armed conflict has become increasingly more difficult over the last century. Despite significant advances within the international community with regard to the development of binding standards regarding conduct in conflict zones, civilians are still subject to danger and violations of basic human rights from new and old threats alike. This is especially true given that many modern conflicts involve non-state actors of various kinds; as such, modern battlefields are often residential areas and urban centers, putting civilians at increased risk of physical harm, loss of livelihood, or predation by combatants. Similarly, given the new dynamics of modern conflicts, States themselves have increasingly begun to sidestep elements of key international standards for conduct in conflicts. By analyzing the frameworks of current International Humanitarian Law, and acknowledging the new threats posed by modern technologies and tactics, new standards can be set to protect civilians and guarantee their inalienable human rights.

International Humanitarian Law, otherwise known as the law of armed conflict, is a set of treaties and conventions that seek to protect civilians and noncombatants, as well as regulate the means and ways of combatants fighting conflicts. These laws are broken into two streams of laws known colloquially as the Law of Geneva, and the law of the Hague. The law of the Hague
pertains to combatants and the methods and conduct of combat, whereas the Law of Geneva constitutes binding norms pertaining to treatment of civilians and victims of wars, and the obligations that combatants have towards them.¹ The Law of Geneva comes primarily from the Geneva Conventions; the Conventions collectively comprise of four treaties, and three additional protocols, that establish the standards of international laws and regulations for the humanitarian treatment of civilians in war. Before the Second World War, the Geneva Conventions protected only wounded, sick, shipwrecked or captured combatants, but during the Second World War, civilians became the target of all manner of excessive violence, such as mass extermination, indiscriminate attack, hostage-taking, and pillage of personal belongings.

The Fourth Geneva convention was adopted on the 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War.² While the first three Conventions adopted were crucial developments in limiting damage to combatants and those in the area around combatants, The Fourth Convention represented a great stride towards protection of civilians in that it protects "persons taking no active part in the hostilities," and "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" as outlined in articles 3 and 4.³ It is of further importance to note that article 3 specifically applies to conflicts "not of an international character,” or in other words, is also applicable to internal conflicts. The Fourth Convention gives special attention to civilians that are sick, injured, or are expectant mothers as outlined in article 16, and outlines the protection of civilians in hospitals and hospital staff, as well as protection for land sea and air

³ Ibid.
transports as noted in articles 18 through 22.\textsuperscript{4} Articles 24 through 34 deal with protection of civilians rights, such as disallowing hostage taking or torture of civilians, as well as not allowing the coercion of civilians to disclose information. Articles 35 through 46 extend protection to nationals of a third state that, while not taking part in hostilities, find themselves in a conflict area. Articles 14 and 15 specifically give protection to neutral zones in which “Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction”.\textsuperscript{5} In addition to the Fourth Geneva Convention, a second Additional Protocol, adopted by the international community in 1977, further extended protections to various people not specifically mentioned in the previous conventions, in particular with the intent of clarifying the rights of persons involved in, and the obligations of belligerents involved in, non-international conflicts.\textsuperscript{6} Article 2 of the 1977 Protocol II reaffirms that humanitarian protections and rights apply to all civilians in conflicts “regardless of any adverse distinction founded by race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status”.\textsuperscript{7} Further, the protocol looks to protect civilian objects vital to their survival, such as food, stores, live stocks, and water, as well as religious and cultural objects as outlined in articles 14 and 16.\textsuperscript{8}

\begin{itemize}
\item \textsuperscript{4} Ibid.
\item \textsuperscript{7} Ibid.
\item \textsuperscript{8} Ibid.
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Aside from the Conventions themselves, the international community - through the United Nations system - has repeatedly reaffirmed these principles in numerous ways, and has sought to address the numerous issues relating to their implementation. In 2006, the General Assembly adopted Resolution 60/147, which contains a series of recommendations and guidelines regarding the right of redress and remedy in the case of violations of both human rights law and humanitarian law.\(^9\) The annex further indicates that states are obligated under international law to incorporate elements of international humanitarian law, including but not limited to the Geneva Conventions, their Protocols, and the Hague Convention, into their domestic statutes.\(^10\)

Despite the comprehensive set of protections and standards delineated by the Geneva Conventions, their Protocols, and the Hague Convention, there are still numerous issues with the application of these norms by various States. When confronted with situations in which the Conventions should be applied, many States cite various grounds on which to assert that the Conventions are not applicable to the conflict in question. Further, the unclear legal status of territories, claims to rights over such territories, annexation or reclaiming of territory, and other scenarios can lead to situations where it is unclear as to which set of standards in fact apply, giving States additional room to subvert or sidestep various obligations. In recent years, additional doctrines for ignoring elements of the Conventions have been devised, including but not limited to: combating “unlawful combatants”, police actions, and formal interventions in ongoing foreign conflicts.\(^11\) Because of these various doctrines for refusal, the elements of International Humanitarian Law are not enforced as they should be, thus leading to

\(^10\) Ibid.
conflicts in which repeated attacks against, and predation of, civilian persons occur with alarming frequency.

This also leads to situations in which humanitarian workers - whether from State entities, non-governmental organizations, or affiliated with the United Nations system - are also less protected than they should be. The First Geneva Convention laid out rules to protect wounded soldiers and medics, and to the creation of relief societies in each country. These bodies became known as Red Cross Societies, referring to the universal emblem adopted in the Conventions to identify and protect medical units. The International Committee of the Red Cross (ICRC), established in 1863 is one of many bodies which works to provide humanitarian help for people affected by conflict and armed violence, as well as promoting International Humanitarian Law. As a third party giving assistance to civilians caught in conflicts, the ICRC are to be given protection and allowed access to civilians to complete their work as well as protection for civilians not taking part in hostilities. However, on numerous occasions the ICRC and other relief organizations have either not been allowed entrance into zones or areas that require humanitarian assistance, or have been put in threat of imminent harm for “helping enemy combatants”.

Articles 14 and 15 specifically give protection to neutral zones in which “Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without

distinction”. However, many states do not acknowledge these claims because they claim the conflict is not a conflict, but a police situation occurring within their State; alternately, it may not be a State entity committing the offenses directly, but rather entities such as private defense contractors instead. The most high-profile instances where international humanitarian law fails to be applied, however, is in the case of occupations. An occupation, in international law, is defined thusly: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised”. However, in most cases, occupied territory is treated more as annexed territory, and thus a state refuses to abide by its obligations. This can be seen in Israel's occupation of the West Bank since 1967. The West Bank previously belonged to Jordan, and a group of people known collectively as Palestinians still live in the West Bank, where currently 2.6 million Palestinians live. These Palestinians now live in an occupied state in which humanitarian laws should apply. The United Nations Security Council affirmed this in 1967 when it adopted Resolution 237, which specifically noted the applicability of the Fourth Geneva Convention.

Despite this, Israel has on various occasions failed to implement, or outright ignored, various elements of international humanitarian law, including allowing torture, and unlawful seizure of land that is vital to the people of the West Bank. The Security Council has repeatedly noted Israel’s reluctance to properly apply Geneva Conventions protections to individuals in the

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15 Ibid.
17 Ibid.
West Bank or Gaza, including but not limited to Resolution 465 of 1980, Resolution 681 of 1990, Resolution 1322 of 2000, Resolution 1544 of 2004, and a host of others.\textsuperscript{19} In the Second Additional Protocol to the Geneva Convention, articles 14 forbids occupying forces from “prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”.\textsuperscript{20} However, Israel has seized land previously used by Palestinians and has given the land to Israeli citizens instead.\textsuperscript{21} In addition, Palestinians living in Israeli controlled areas are frequently subjected to confinement, mandatory curfews, closure of areas of cities, and checkpoint stops.\textsuperscript{22}

In the Third Geneva Convention, article 43 states that the population can be broken down into two categories: civilian or combatant. Combatants are members of armed forces, or volunteer groups operating under commands that would contribute to armed conflict. A civilian is a person not partaking in a conflict in any way; if arms are taken up by civilians, in defense of their territory or otherwise, they become combatants. However, a grey area has arisen and given rise to a separate legal term used by some States: “unlawful combatants”. The term unlawful combatants has a very broad definition and is used however a state deems necessary, but a loose definition of unlawful combatants is usually defined as combatants who refuse to follow the International Humanitarian Law to gain a military advantage over the enemy or combatants wearing civilian clothing such as spies and saboteurs or combatants who use civilians as


\textsuperscript{21} “Primer on Palestine, Israel, and the Arab-Israeli Conflict”, \textit{Middle East Research Project}, 2014, \url{http://www.merip.org/primer-palestine-israel-arab-israeli-conflict-new}.

\textsuperscript{22} “Humiliation at the checkpoints”, \textit{Haaretz}, July 8, 2003, \url{http://www.haaretz.com/print-edition/opinion/humiliation-at-the-checkpoints-1.93502}. 
Because of these tactics, many countries refuse to give such persons any status recognized under the Geneva Conventions or its protocols when dealing with persons termed unlawful combatants. Many States claim that article 4 of the Fourth Geneva Convention allows for interpretation of unlawful combatants; the article reads as follows: “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.” However, other articles, such as article 5 of the Fourth Geneva Convention and Article 45 of the First Protocol, imply or provide for protection for the majority of those ordinarily classified as “unlawful combatants”, thus making the exact protections afforded to unlawful combatants very difficult to determine.

The trend towards the use of the term “unlawful combatants”, or similar terms, is most clear with respect to members of terrorist organizations or other non-state actors. Groups such as Al-Qaeda, Hamas, the FARC, and others, actively fight in armed conflicts against state actors. However, many in their ranks are not nationals of the state in which they are fighting, and come from other states who have diplomatic ties with the state in conflict but do not openly engage in hostilities. These problems are best represented in the current issue with the Islamic State (IS), known variously as ISIS, ISIL, or Da’esh. IS began as an al-Qaeda offshoot involved in the ongoing fighting in Syria, with nationals from as many as 80 different countries, then ultimately

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24 Ibid.
began claiming land with the goal of declaring a new Caliphate. While IS has attempted to portray itself as a state, capable of providing services to people in the territory it claims, it is not a party to the elements of international humanitarian law, but those that fight for it are also nationals of other states that are parties to the Geneva Conventions and similar instruments. This makes it extremely difficult to determine what standards and obligations apply, both to states fighting IS, and to IS itself.

This dilemma is evident in numerous conflicts involving non-state actors. In Colombia, for example, the decades-long conflict between the government and the Fuerzas Armadas Revolucionarias de Colombia (FARC) has seen numerous violations of international humanitarian law on both sides over the years, with civilians sympathetic to both sides of the conflict being victimized by both the FARC and state entities via targeted killings, looting, torture, and numerous other violations. Similarly, with respect to the conflict in the State of Israel and the Occupied Territories, Hamas has routinely targeted civilians via suicide bombings, while Israel has used significant force against Palestinian non-combatants as well. Violations of international humanitarian law thus unfortunately characterize many internal conflicts, despite the applicability of the Second Protocol to the Geneva Conventions.

In addition to unlawful combatants, private military and security companies (PMSCs) have seen an increase in their use in modern conflicts. PMSCs are routinely used for base

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defense, administration of detention facilities, and similar duties.\textsuperscript{30} Because PMSCs do not follow the normal military chain of command, oversight of PMSCs is a significant problem, and there have been reports of private contractors taking part in the ill-treatment of detainees on behalf of state actors.\textsuperscript{31} Not only have states been hiring PMSCs, but private companies have also contracted with such organizations to defend facilities in conflict zones. Thus, cases of PMSCs using excessive force on behalf of private firms is also a concern.\textsuperscript{32} International humanitarian law covers the activities of PMSCs in a \textit{de jure} sense, as outlined in the Montreaux Document adopted by the International Committee of the Red Cross in 2008.\textsuperscript{33} However, in practice, the lack of oversight combined with the deniability afforded by the use of a non-state entity has made it difficult for states to hold PMSCs accountable for violations of international humanitarian law.

The Hague Conventions, the Geneva Conventions, and their additional protocols are the foundation for international humanitarian law, and are the primary protections for civilians in conflict. They set basic protection for civilians that apply to all people regardless whatever subcategories they may belong to. However, even with these instruments in place, many civilians are still in great danger from conflicts of all sorts, and from State and non-State entities alike. By acknowledging the weak points in the current international humanitarian law regime such as those relating to occupied territory and police actions, as well as responding to emerging factors such as PMSCs and the use of the term “unlawful combatants”, the international community can

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\item \textsuperscript{30} “A humanitarian perspective on the privatization of warfare”, \textit{ICRC}, September 14, 2012, \url{https://www.icrc.org/eng/resources/documents/statement/2012/privatization-war-statement-2012-09-06.htm}
\item \textsuperscript{31} Ibid.
\item \textsuperscript{32} Ibid.
\item \textsuperscript{33} “Montreux Document”, \textit{ICRC}, September 17 2008, \url{https://www.icrc.org/eng/resources/documents/publication/p0996.htm}.
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thus strengthen protections for all persons involved in conflict and perhaps prevent future violations of the principles of respect for human life and human rights.

Questions to Consider:

1. Is your State a party to the Geneva Conventions and their Protocols, as well as the Hague conventions? Did your State ratify them with reservations or in total? If so, why?

2. What steps, in terms of military doctrine, has your State undertaken in order to ensure that its armed forces respect the letter and spirit of the Conventions?

3. In cases where a State commits acts that violate international humanitarian law, how does your State believe such cases should be handled? What issues does your State see with the enforcement of such law?

4. What is the best method to ensure that non-combatants are protected on both sides of a given conflict?

5. What protections does your State provide for “unlawful combatants”? How should “unlawful combatants” be treated under international humanitarian law?

6. What obligations do non-state actors have with respect to international humanitarian law? Can IHL be binding on non-state actors?

7. With regard to state-sponsored actors such as private military contractors, what protections do they have? What obligations do they have? Is a State responsible for the activities of such groups, and if so, what is the remedy for if PMCs violate international humanitarian law?

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