

Key issues related to Protection of Human Rights of Civilians in Armed Conflicts

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Cite as : 2004 PL WebJour 22

Introduction

“As human beings, we cannot be neutral, or at least have no right to be, when other human beings are suffering. Each of us ... must do what he or she can to help those in need, even though it would be much safer and more comfortable to do nothing.”

Kofi Annan, UN Secretary General

Stories of Pearl Harbour and the atomic bombing of the cities of Hiroshima and Nagasaki have been narrated again and again by America and Japan in their own versions. However, there was a common element in both the incidences. In both the incidences innocent civilians lost their lives. Violent conflicts have been the centre stage for the gravest violations of international humanitarian and human rights law and blatant disrespect for the normative framework of humanity. Civilians have become the primary target of attack motivated by ethnic or religious hatred, political confrontation or simply ruthless pursuit of economic interests. As a result, many millions of civilians have lost their lives and tens of millions more are permanently displaced.

The introduction of new technology, which is unfortunately used for carving out sophisticated weapons, has changed the definition of war altogether. The images of war that showed uniformed soldiers of opposing armies meeting on the field of battle have faded into a more insidious vision of millions of civilians, including innocent women and children, being targeted and killed. With many international tensions at rest, new forms of conflicts have emerged within the borders of a State: civil strife flamed by ethnic and religious tension and in many cases caused by greed and the control of a country’s mineral or timber resources. One should not forget to mention here the attacks conducted by the terrorist and the war against terrorism. At the centre of these shocking developments is the emergence of civilians as the deliberate targets of warfare rather than its incidental victims. Today, victims of war cover all segments of the population regardless of gender or age.

Though the reasons for which wars are fought today may not have changed completely, however, the circumstances in which wars are fought today have undergone a sea change from the circumstances that existed in the past. The term “war” seems to be narrow and formal to cover the types of situations of armed conflicts arising in the different countries of the world. Today even a conflict between two political, ethnic or religious groups in one country can produce a war-like situation, thanks to small arms and light weapons. Another feature of internal conflicts today is that the dividing line between civilians and combatants is frequently blurred. Combatants often live or seek shelter in villages, and sometimes use civilians, even children, as human shields. In some cases, communities provide logistic support to armed groups, either voluntarily or under compulsion, and become targeted as a consequence. Camps for refugees, or those displaced within their own countries are often used by armed elements as hiding places and as bases from which to rise up and continue the conflict. War against terrorism is a new entry, where though formal war is not declared, but still bombs and missiles are showered on the cities resulting in loss of civilian lives and property. Although, international humanitarian laws outrightly prohibit attacks on civilians however, in all the situations of armed conflict today, civilians are made deliberate target of the attacks.

The main object of this article is to highlight the key issues that arise under international humanitarian law, with respect to the duty of all warring parties to protect civilians and other non-combatants. It tries to zero in on the violations of human rights of civilians in situations of armed conflicts emerging today. This article also discusses the international humanitarian laws applicable in such situations.

The laws of war reconsidered

The fact remains that every war is a Petri dish for the next round of the laws of war. And while almost every is principally about well-established legal principles, and their violation, it ends with a reconsideration of the laws dictating how war should be waged.

For the past 20 years, the centre of gravity in establishing, interpreting and shaping the laws of war has gradually shifted away from the military establishments of leading States and their “State practice”. It has even shifted away from the International Red Cross (invested by the Geneva Conventions with special authority) and towards more activist and publicly aggressive NGOs – including the ad hoc coalitions that produced the Ottawa Treaty, banning land mines, and the new International Criminal Court. These NGOs are indispensable in advancing the cause of humanitarianism in war. But the pendulum shift toward them has gone further than is useful, and the ownership of the laws of war needs to give much greater weight to the State practices of leading countries. This does not mean that State practice is all that matters, nor

does it mean that all State practice matters, it means that the State practice of democratic sovereigns that actually fight wars should be ascendant in shaping the law. And this includes raising the standards of the laws of war to reflect, for example, advances in technology and precision weapons, standards that should become the norm for leading militaries, first for NATO and then beyond.

NGOs are also wedded far too much to a procedural preference for the international over the national. But that agenda increasingly amounts to internationalism for its own sake, and its specific purpose is to constrain American sovereignty. It thus promotes, embedded in an agenda of human rights and the laws of war, the ceding of sovereignty, even democratic sovereignty, as the most virtuous act that a State can perform on behalf of its citizens. This agenda of privileging internationalism, unfortunately, is even sometimes allowed to override obvious steps backward in the laws of war, like privileging guerrilla combatants over the civilians in their midst. For this reason, one consequence of wars (especially wars in Iraq and Afghanistan) for the future of the laws of war will have to be an understanding that the solicitude of Protocol I for irregular fighters hiding among civilians is wrong.

More broadly in recent years, the NGOs have been promoting an evermore utopian law of war, in keeping with absolutist human rights ideology. In practice, alas, this utopianism is aimed only at one side in conflicts – the side that in fact tries to obey the law. And so a second consequence of the present war situations for the future of the law of war will have to be a halt to raising the standards ever higher for protecting the civilian population when that burden effectively falls only on attacking forces, unreciprocated. The status quo has the effect of rewarding defending forces for recognising that war crimes against their own civilians are the best strategy against a powerful but scrupulous enemy. It risks in the end creating a law of war that assumes, for all practical purposes, that the burden is all on one side, the side with the more advanced technology and the less desperate military. After the last cruise missile has been launched and the last irregular fighter silenced, we will look back on the war that was wrought. What we will find is that the meaning of asymmetric warfare is not what we thought. The issue is not so much disparities in technology. Instead, a form of warfare has re-emerged that tacitly assumes, indeed permits, that the weaker side must fight by using systematic violations of the law and its method. This is unsustainable as a basis for the law of war. Reciprocity matters.

Now, let's have a look at some of the key issues that arise under international humanitarian law (IHL), also known as the law of armed conflict, with respect to the duty of all warring parties to protect civilians and other noncombatants.

Human shields and hostages

The gravest violation of human rights of civilians is use of civilians, including State's own citizens as human shields to protect military objectives from attack. Millions of civilians face increased risk of death and serious injury because military targets are illegally located among them. These military installations are built adjacent to civilian objects such as schools or places of worship (mosques, churches etc). Thus, even if attacking forces take proper and legally required precaution in launching attacks, innocent civilians pay the cost. Corollary to this is urban combat, which poses particularly compelling humanitarian challenges that are rooted in the proximity of combatants to civilians in an urban environment. Such fighting inherently increases the risk to civilians and could result in substantial civilian casualties. Fighting in cities significantly endangers the civilian population in a manner that few other operational environments do. Among the dilemmas posed by urban combat are the difficulties of discriminating between combatants and civilians because of their proximity to one another and the narrow margin for error associated with the use of weapons in close-quarters combat.

The Iraqi Government has used human shields several times. As early as 1991, the UN General Assembly condemned the alleged use of human shields by Iraq, saying:

[The General Assembly] expresses its deep concern about the numerous and detailed allegations of grave human rights violations by the Government of Iraq to which the Special Rapporteur has referred in his report, in particular ... the use of persons as "human shields", a most grave and blatant violation of Iraq's obligations under international law.¹

Fearing US and British airstrikes in 1997, the Iraqi Government explicitly stated that it was using Iraqi civilian "volunteers" in government palaces and other strategic locations.²

Iraq has taken hostages in the past in violation of the Geneva Conventions. During its invasion of Kuwait in August 1990, Iraq seized Westerners and offered to release them if the US withdrew its military forces from the region. Subsequently it threatened to use these hostages as human shields. On 6-12-1990, Iraq announced the release all of the people it held as hostages.³ UN Security Council Resolution 687 of 3-4-1991 condemned Iraq for taking hostages.⁴

However, attacking and defending military forces have independent and non-derogable legal obligations toward civilians in the course of combat operations. The use of civilians, including a State's own citizens, as human shields to protect military objectives from attack, is a violation of international humanitarian law amounting to a war crime. The forcible use of civilians or other non-combatants as human shields also violates the prohibition on the taking of hostages.⁵ Customary humanitarian law and Protocol I prohibit encouraging or making use of volunteers as human shields.⁶

But what counts as a military target? As with the rest of the laws of war, this formula represents a hard-fought trade-off

between military requirements and humanitarian concerns and the result is a kind of calculated ambiguity. However, the suspicion often lingers that the targets are in fact being attacked not to disrupt military operations as traditionally understood, but to undermine the morale of enemy civilians or turn the population against the regime.

Military target and dual-use targets

The ban on attacking civilian targets has been part of the laws of war since their beginning. According to the St. Petersburg Declaration of 1868, "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy". In the years following World War II, to prevent a recurrence of the indiscriminate bombing attacks of cities in Britain, Germany and Japan, the language was tightened. The law now says that you can only attack sites or objects that "make an effective contribution to military action" and whose destruction offers "a definite military advantage" in the circumstances ruling at the time.

One gray area concerns political sites (like government ministries) that aren't a direct part of the military chain of command, or the personal assets of the leadership. Another involves the many possible targets "electrical and water supplies, oil refineries, transport networks, industry, computer systems, communications" that can be used for both civilian and military purposes.

It's generally accepted that these "dual-use" targets can be attacked if necessary, as long as the harm to civilians is not disproportionate to the military advantage that you expect to gain. But judgments about proportionality are notoriously slippery. And in modern industrial societies, just about any aspect of the economic or social infrastructure could conceivably contribute to the war effort. Pentagon officials "in common with British and some other European armed forces" take a fairly permissive attitude in this area. According to Sarah Sewall, who directs a programme on national security and human rights at Harvard University, "the US military can make a strong case within its interpretation of international humanitarian law that you attack pretty much anything".

During the 1991 Persian Gulf War, for example, the failure of American war planners to accurately assess the cascading effects that attacks on electricity would have on the civilian population had profound humanitarian consequences. These attacks crippled basic civilian services, including hospital-based medical care, and shut down water-distribution, waterpurification and sewage-treatment plants. As a result, the most vulnerable members of the population, young children and adults requiring medical attention, suffered injury and death from the lack of potable water and poor medical treatment.⁷

A question of intent

In such cases, the suspicion often lingers that the targets are in fact being attacked not to disrupt military operations as traditionally understood, but to undermine the morale of enemy civilians or turn the population against the regime. These questions came up with a vengeance during NATO's war with Serbia over Kosovo. This was a classic case of what the experts call a "coercive war" where the aim was not to defeat the Serbian army in the field, but to make Slobodan Milosevic decide that his military campaign in Kosovo was simply not worth the trouble. In other words, the objectives of the NATO campaign were political and psychological ones, as much as military.

On 2-5-1999 NATO forces disabled the electricity grid in Belgrade. A legitimate military target, you might argue "except that some NATO officials incautiously admitted that a principal aim was to disrupt life in the city and make Milosevic unpopular. Another disputed bombing attack was directed against a cigarette factory owned by a crony of Milosevic. But far and away the most controversial strike was against the studio of the Stateowned broadcasting organisation, RTS, in which sixteen technicians were killed.

After the war, the Prosecutor of the War Crimes Tribunal for the former Yugoslavia (which has jurisdiction over all actions committed within the old boundaries of the country) asked a committee of experts to advise whether this attack should be investigated as a war crime. No, said the committee, the military and civilian communications systems could be routed through each other's facilities: the studio was a fair target. But many people felt that a NATO spokesman let the cat out of the bag when he said at the time of the attack that an additional incentive had been to "dismantle the Federal Republic of Yugoslavia propaganda machinery which is a vital part of President Milosevic's control mechanism".

Attacks on civilian morale

Efforts of any military are bound with the morale of the civilians. Morale of the civilians supports the military efforts indirectly. That's why armed attacks are often targeted at civilian morale. Attacks on the morale of the civilians include denying the general population electricity and other basic necessities, attacking economic supporters of a regime, or destroying national symbols which undermine civilian support for war.

During the Second World War, both the Axis and the Allied powers conducted bombing campaigns for the purpose of instilling terror in the civilian population; the current prohibition on such practices is reflected in Article 51 of Protocol I, adopted in 1977.

Armed attacks directed at civilian morale are prohibited under international humanitarian law and are inimical to the purpose of protecting civilians.⁸ Parties to a conflict have a legal obligation to minimise the effects of combat on the civilian population. International humanitarian law for civilian protection does not allow any attacks as a method of warfare, which bring devastation in the form of death, physical harm and other hardships.⁹

Denial of humanitarian access

Wars are not fought solely on the basis of weapons like bombs, guns, missiles and battle tanks. One of the weapons of war also includes deprivation of basic necessities – withholding food and deliberately starving civilians. An armed conflict may disrupt distributions, cause food shortages and exacerbate existing malnutrition among children.¹⁰ In various areas around the globe, humanitarian aid is being blocked from reaching millions of people in desperate need of help. In many conflicts, safe and unhindered access to vulnerable civilian populations by relief workers is only granted sporadically, if at all. In internal armed conflicts women, children and the elderly are often targeted as part of a political strategy. This is really agonising as it increases the difficulties and sufferings of the civilian population. Such conflicts are generally characterised by a vicious blend of ethnic, religious or social hatred and envy often mobilised by a small elite for reasons of personal or political short-term gain. Access is often denied because it is viewed as contrary to the political and military objectives of a warring party. The political and military objectives of the warring party generally become a hindrance in access to humanitarian aid for the citizens. Where, for example, civilians are deliberately attacked and expelled from their homes due to their ethnicity or religious faith, any outside support, to these civilians, might be perceived as interference even though they are purely humanitarian.¹¹

Under customary humanitarian law and Protocol I, food, water, medical supplies and other objects essential to the survival of the civilian population may never be attacked.¹² When these resources are used directly or indirectly in support of the military, they still may not be attacked if such action would produce starvation or forced displacement of civilians.¹³ Feeding those who are the targets of ethnic cleansing, for example, would run contrary to the horrific goals of such a campaign. However, the primary responsibility for the protection of civilians rests with Governments, as stated in the Guiding Principles on Humanitarian Assistance.¹⁴

At the same time, all armed groups have a direct responsibility to protect civilian populations according to the Geneva Conventions¹⁵ and customary international humanitarian law. Additionally, displaced persons and other victims of conflict are entitled to international protection and assistance where it is not available from their own national authorities.

People who are without food, water, shelter or medical care cannot wait for a conflict to end in order to receive life saving assistance. As a result, the United Nations and its partners must often negotiate access agreements with all warring parties. Such negotiations must be understood by all to be neutral and a humanitarian necessity. All armed groups must be engaged in constructive dialogue. Governments, concerned that such engagements might legitimise armed groups, should be guided by their overriding obligation to protect each and every civilian within their jurisdiction, regardless of their gender, ethnicity, religious or political conviction.

Access is not a simple one-time effort but a concept that involves dimensions of time and space. Negotiations should always have a clear objective and lead to unimpeded, timely, safe and sustained humanitarian space to reach this objective. Access must be obtained, managed and maintained throughout a conflict, by keeping the parties continuously engaged. The inability of aid agencies operating in Sierra Leone to make, throughout 1998, even initial contacts with the Revolutionary United Front (RUF) illustrates the difficulties in engaging rebel groups in a structured dialogue. Establishing a regular rapport and having freedom of movement in the conflict area can contribute to normalisation and building confidence among war-affected populations.

It is very important here to have a look at the types of weapons, which are although used against enemies, but keep on making innocent civilians their target even after the armed conflict has ended. The next section tries to describe how these weapons violate human rights of civilians.

Conventional weapons – landmines and cluster bombs

Anti-personnel landmines

Probably, landmine is such a weapon, which causes more devastation after the war than during the war. Uncountable civilians have died as a result of landmines. The devastation caused by mines is indiscriminate.¹⁶ A mine can lie dormant for decades, long after a peace settlement is declared. Landmines are increasingly used to target and demoralise civilian populations. Sometimes the sole objective of laying landmines is to force the civilians out from their community. Civilians if survive a landmine blast suffer serious injuries and amputations which make them disabled for the rest of their life. Landmines impede the reconstruction of war-affected societies, the return of refugees and internally displaced people to their communities. They stymie political reconciliation and block humanitarian relief efforts.

The prohibition on the use of means of attack that strike at military and civilian targets without distinction is fundamental

to humanitarian law.¹⁷ Landmines are prohibited in customary international law, as they are inherently indiscriminate weapons.¹⁸ In 1999, after a worldwide campaign, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction entered into force. As of 1-3-2001, the Ottawa Treaty has 133 signatures, 112 parties and 6 accessions. The Treaty had yielded some progress regarding manufacturing landmines or their components, and all traditional exporters of mines, except Iraq, have officially ceased their activities. The United Nations is coordinating a global effort.

Cluster bombs

Cluster bombs dropped in air strikes are as disastrous as landmines. Even if these bombs are dropped on military targets, they cause vast destruction and casualties to civilians. The large numbers of bomblets that fail to explode as designed on initial impact threaten civilians long after attacks, just like anti-personnel mines.

In the Gulf War, the US dropped about 61,000 cluster bombs containing some twenty million bomblets on Iraq and Kuwait. The US dropped about 1228 cluster bombs in Afghanistan between October 2001 and March 2002, leaving at least 12,400 explosive duds throughout the country.¹⁹

Military installations built in and around populated area should be attacked through precision-guided weapons only. Moreover, military officials must refrain from operations likely to produce collateral civilian damage that is excessive relative to the military advantages.

Small arms and light weapons

Small arms and light weapons (SALW) though are not weapons of mass destruction, but they are taking thousands of lives every year. SALW are inexpensive, light to carry and easy to use. They not only result in fuelling armed conflicts but also disrupt humanitarian relief operations and development programmes. Producing a devastating impact on civilians, they are a cause of massive population displacement and destabilise regions.

The devastating effect of SALW and their illicit transfer has raised deep concern in the United Nations. Since 1995, special attention has been devoted to the issue of small arms and light weapons, which have been the weapons of choice in many recent conflicts. Already in September 2000 all the member States of the Organisation pledged, in the United Nations Millennium Declaration, to take concerted action to end illicit traffic in small arms and light weapons, especially by making arms transfers more transparent and by supporting regional disarmament measures. In 2001, the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects adopted a Programme of Action to Combat, Prevent and Eradicate the Illicit Trafficking in Small Arms and Light Weapons. This resolution sets a series of measures to be taken at the national, regional and global level in order to reduce and eliminate illicit trade in small arms and to enhance international cooperation. As a follow-up to the 2001 Conference, the First Biennial Meeting of States to Consider the Implementation of the Programme of Action to Combat, Prevent and Eradicate the Illicit Trafficking in Small Arms and Light Weapons²⁰ was held from 7-7-2003 to 11-7-2003 in New York.

Internationally recognised standards of protection will only be effectively upheld when they are given the force of law and when violations are regularly and reliably sanctioned. As the tribunals bring war criminals to justice and more nations ratify the Rome Statute, the atmosphere of impunity in which violators of human rights have operated is evaporating. But while international prosecution plays an important role in encouraging compliance with international humanitarian and human rights laws, consistent enforcement largely depends on national judicial systems and on the willingness of governments to bring alleged criminals to justice. The successful prosecution of individual criminals can go a long way toward helping to heal the wounds of war by allowing victims to feel that justice has been done. In so many cases, however, it is practically impossible to prosecute all suspected perpetrators of conflict-related crimes. Recently the "war on terrorism" has emerged as a different pattern of armed conflict, in which wartime laws are applied in peacetime resulting in violations of human rights of civilians.

War on terrorism

What are the boundaries of the Bush administration's "war on terrorism"? The recent battles fought against the Afghan and Iraqi Governments were classic wars between organised military forces. But President George W. Bush has suggested that his campaign against terrorism goes beyond such conflicts; he said on 29-9-2001, "Our war on terror will be much broader than the battlefields and beachheads of the past. The war will be fought wherever terrorists hide, or run, or plan."²¹

By literalising its "war on terror", the Bush administration has broken down the distinction between what is permissible in times of peace and what can be condoned during a war. In peacetime, governments are bound by strict rules of law enforcement. Police can use lethal force only if necessary to meet an imminent threat of death or serious bodily injury. Once a suspect is detained, he or she must be charged and tried. These requirements "what one can call "law-enforcement rules" are codified in international human rights law.

In times of war, law-enforcement rules are supplemented by a more permissive set of rules: namely, international humanitarian law, which governs conduct during armed conflict. Under such "war rules," unlike during peacetime, an enemy combatant can be shot without warning (unless he or she is incapacitated, in custody, or trying to surrender), regardless of any imminent threat. If a combatant is captured, he or she can be held in custody until the end of the conflict, without any trial.

These two sets of rules have been well developed over the years, both by tradition and by detailed international conventions. There is little law, however, to explain exactly when one set of rules should apply instead of the other. For example, the Geneva Conventions "the principal codification of war rules" apply to "armed conflict," but the treaties define the term. Fortunately, in its commentary on them, the International Committee of the Red Cross (ICRC), the Conventions' official custodian, has provided some guidance. One test that ICRC suggests to help determine whether wartime or peacetime rules apply is to examine the intensity of hostilities in a given situation. The Bush administration, for example, has claimed that Al Qaeda is at "war" with the United States because of the magnitude of its attacks on 11-9-2001, its bombings of the US embassies in Kenya and Tanzania, its attack on the USS Cole in Yemen, and the bombing of residential compounds in Saudi Arabia. Each of these attacks was certainly a serious crime warranting prosecution. But technically speaking, was the administration right to claim that they add up to a war? ICRC's commentary does not provide a clear answer.

In addition to the intensity of hostilities, ICRC suggests considering factors such as the regularity of armed clashes and the degree to which opposing forces are organised. Whether a conflict is politically motivated also seems to play an unacknowledged role in deciding whether it is a "war" or not. Thus organised crime or drug trafficking, although methodical and bloody, are generally understood to fall under law-enforcement rules, whereas armed rebellions, once sufficiently organised and violent, are usually seen as "wars." The problem with these guidelines, however, is that they were written to address political conflicts rather than global terrorism. Thus they do not make it clear whether Al Qaeda should be considered an organised criminal operation (which would not trigger the application of war rules) or a rebellion (which would).

Even in the case of war, another factor in deciding whether law-enforcement or war rules should be applied is the nature of a given suspect's involvement. Such an approach can be useful because war rules treat as combatants only those who are taking an active part in hostilities. Typically, this category includes members of a military who have not laid down their arms as well as others who are fighting or approaching a battle, directing an attack, or defending a position. Under this rule, even civilians who pick up arms and start fighting can be considered combatants and treated accordingly. But this definition is difficult to apply to terrorism, where roles and activities are clandestine and a person's relationship to specific violent acts is often unclear.

Using war rules when law-enforcement rules could reasonably be followed is dangerous. Errors, common enough in ordinary criminal investigations, are all the more likely when a government relies on the kind of murky intelligence that drives many terrorist investigations. If law-enforcement rules are used, a mistaken arrest can be rectified at trial. But if war rules apply, the government is never obliged to prove a suspect's guilt. Instead, a supposed terrorist can be held for however long it takes to win the "war" against terrorism. And the consequences of error are even graver if the supposed combatant is killed. Such mistakes are an inevitable hazard of the battlefield, where quick life-and-death decisions must be made. But when there is no such urgency, prudence and humanity dictate applying law-enforcement standards.

The best way to determine if war rules should apply would be through a three-part test. To invoke war rules, Washington should have to prove, first, that an organised group is directing repeated acts of violence against the United States, its citizens, or its interests with sufficient intensity that it can be fairly recognised as an armed conflict; second, that the suspect is an active member of an opposing armed force or is an active participant in the violence; and, third, that law enforcement means are unavailable.

Until there are better guidelines on when to apply war and law-enforcement rules, this three-part test, drawn from the policy consequences of the decision, offers the best way to balance security and civil rights.

UN resolutions and protection of civilians in armed conflict

The primary responsibility for the protection of civilians rests with governments, as stated in the Guiding Principles on Humanitarian Assistance.²² At the same time, armed groups have a direct responsibility, according to Common Article 3 of the four Geneva Conventions and to customary international humanitarian law, to protect civilian populations in armed conflict. International instruments require not only governments but also armed groups to behave responsibly in conflict situations, and to take measures to ensure the protection of civilian population and that their basic needs are met.

The "protection of civilians in armed conflict" is an umbrella concept of humanitarian policies that brings together protective elements from a number of fields, including international humanitarian and human rights law, military and security sectors, and humanitarian assistance. The concept first arose in the Secretary General's Report on the Situation in Africa of 13 April 1998²³, in which he identified protecting civilians in situations of conflict as a "humanitarian imperative." This stemmed from the reality that, in recent years, civilian populations have become increasingly the main targets of fighting

between hostile armies rather than chiefly indirect victims.

The Security Council heeded the Secretary General's recommendation that more attention must be paid to the monitoring and reporting of respect for human rights during armed conflicts and by the Presidential Statement on 12-2-1999²⁴, requested that the Secretary General prepare a report with recommendations for how the Council could improve the physical and legal protection of civilians in situations of armed conflict (POC). Since then, the Secretary General has presented three reports to the Security Council on POC (S/1999/957, S/2001/331 and S/2002/1300) and, in turn, the Security Council has issued two resolutions in 1999²⁵ and 2000²⁶, as well as four further Presidential Statements in 1999²⁷, 2001 (S/PRST/2002/6), 2002²⁸ and 2003 (S/PRST/2003/37). "Protecting the vulnerable" and developing a "culture of protection" were also identified as priorities in the Secretary General's Millennium Declaration of September 2000, which noted the need to "expand and strengthen the protection of civilians in complex emergencies in conformity with international humanitarian law".

The Office for the Coordination of Humanitarian Affairs (OCHA) has been at the forefront of developing the policy framework for this culture of protection, in close collaboration with other UN departments, humanitarian partner agencies and interested member States. Among its activities, OCHA's Policy Development and Studies Branch (PDSB) has developed an "Aide Memoire"²⁹ on POC as a diagnostic tool or framework to assist the Security Council and associated departments, such as DPA and DPKO, in defining threats that arise to the protection of civilians in country situations, in drafting resolutions that better safeguard civilians and in reviewing peacekeeping operations and threats to international peace and security. The protection framework is also being furthered through the development and distribution of a variety of resource tools on POC, including a glossary of humanitarian terms and a bibliography of related resources.

Most recently, the Security Council briefing in December 2003 introduced a Ten-Point Plan of Action on POC. This followed a thorough consultation process completing the interdepartmental and interagency work on the UN system's responsibilities for POC, as outlined in a "Roadmap". The next Secretary General's report on POC in June 2004 will present an agreed Plan of Action for the Security Council and member States to assist them in meeting their protection obligations. This may also help form part of a new Security Council resolution on POC, on which the Council requested that work be undertaken.

Together, these measures support the integration of the protection framework within the United Nations' work, as well as that of the broader international community, thereby strengthening the culture of protection for civilians.

Conclusion

Not every conflict is marked by full-fledged outright warfare and heavy fighting. Many countries are caught in a gray zone between war and peace: armed conflict may erupt sporadically in parts of the country and may tend to intensify or to subside. In these situations, it is often the diversity of entities providing protection and their mandates that helps to cover a wide range of needs. Relevant activities may include the delivery of humanitarian assistance; the monitoring and recording of violations of international humanitarian and human rights law, and reporting these violations to those responsible and other decision-makers; institution-building, governance and development programmes; and, ultimately, the deployment of peacekeeping troops. The scope of protection has grown in the last decades in an effort to meet the challenges of contemporary war. Protection must be enhanced, but it is not a solution in its own right, and should not be seen as such. Not only attacking but also defending military forces has independent and nonderogable legal obligations toward civilians in the course of any armed conflict. Media could play a more effective role by emphasising the obligation of the warring parties and by reporting violations of international humanitarian and human rights law in an unbiased manner. International actors should not cease to remind States and their governments of the fact that the primary responsibility for the protection of civilians rests with them and that international efforts can only be complementary to governments' own efforts in this respect. It is said that prevention is better than cure therefore the best way to protect the civilians' human rights in war is by preventing violent conflict from erupting in the first place. If this fails, no effort should be spared to end a conflict and build sustainable peace.

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1. UN General Assembly "Situation of Human Rights in Iraq," A/RES/46/134, 17-12-1991, <http://www.un.org/documents/ga/res/46/a46r134.htm> (last accessed 1-8-2004). Return to Text

2. "Iraqis Volunteering as Human Shields," CNN Interactive, 14-11-1997. <http://www.cnn.com/WORLD/9711/14/iraq.al.sahhaf.presser> (last accessed 1-8-2004). Return to Text

3. "Chronology of the Kuwait Crisis," Kuwait Information Office, http://www.kuwaitinfo.org/Gulf_War/chronology_of_kuwait%20_crisis.html (last accessed 1-8-2004). Return to Text

4. Anthony Cordesman, "The Iraq Crisis: Major UN Resolutions Affecting the Crisis," http://www.csis.org/stratassessment/reports/iraq_unres.html#687 (last accessed 1-8-2004). Return to Text

5. Geneva IV, Article 34. Return to Text

6. Protocol I, Article 51(7) states: "The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favor or impede military operations. The parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations." Return to Text

7. "Needless Deaths in the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War" (New York, Human Rights Watch, 1991), pp. 180-185. Return to Text

8. Protocol I, Article 51(2) states: "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." Return to Text

9. See Article 48, Protocol I: "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." See also Article 51, Section 1 of Protocol I: "The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations." Return to Text

10. See United Nations "Likely Humanitarian Scenarios," 10-12-2002, para 11, available at <http://www.casi.org.uk/info/undocs/war021210.pdf> (last accessed on 31-7-2004). Return to Text

11. At <http://www.ochaonline.un.org/webpage.asp?SiteID=4> (last accessed on 22-6-2004). Return to Text

12. Protocol I, Article 54(2). Return to Text

13. Protocol I, Articles 54(3)(b) and 54(4). Return to Text

14. General Assembly Resolution 46/182 (A/RES/46/182 78th Plenary Meeting 19-12-1991). This resolution led to the creation of the Department of Humanitarian Affairs (DHA); at http://www.reliefweb.int/ocha_ol/about/resol/resol_e.html (last accessed on 31-7-2004). Return to Text

15. Protocol Additional to the Geneva Conventions of 12-8-1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8-6-1977 (specifically, Articles 4, 5, 7, 11). Return to Text

16. "International Campaign to Ban Landmines," Executive Summary, Landmine Monitor Report 2002: Toward a Mine-Free World (Washington DC, Human Rights Watch, 2002), p. 35. "Every year, AP mines are estimated to cause between 15,000 and 20,000 new casualties, the vast majority civilians"; see "International Humanitarian Law Issues In A Potential War In Iraq," Human Rights Watch Briefing Paper, (20-2-2003); at <http://www.hrw.org/backgrounder/arms/iraq0202003.htm#8> (last accessed on 22-6-2004). Return to Text

17. See Protocol I, Article 51(4) Return to Text

18. "Memorandum to Delegates of the Fourth Annual Meeting of States Parties: Implementation of CCW Protocol II," Human Rights Watch, 11-12-2002, <http://www.hrw.org/press/2002/12/ccwapii202.htm>. Return to Text

19. "Fatally Flawed: Cluster Bombs and Their Use by the United States in Afghanistan," A Human Rights Watch Report, Vol. 14, No. 17-12-2002, pp. 1-2. Return to Text

20. At <http://disarmament.un.org.8080/cab/salw-2003.html> (last accessed on 26-6-2004). Return to Text

21. Kenneth Roth, The Law of War on Terror, Foreign Affairs (January/February 2004). Return to Text

22. Adopted by General Assembly Resolution 46/182 of 19-12-1991. Return to Text

23. (S/1998/318 or A/52/871). Return to Text

24. (S/PRST/1999/6). Return to Text

25. Security Council Resolution 1265 (1999) on the Protection of Civilians in Armed Conflict (S/RES/1265). Return to Text

26. Security Council Resolution 1296 (2000) on the Protection of Civilians in Armed Conflict (S/RES/1296). Return to Text

27. Statement by the President of the Security Council requesting for the first time that the Secretary General report on recommendations for how the Council could improve the physical and legal protection of civilians in situations of armed conflict (S/PRST/1999/6). [Return to Text](#)

28. Statement by the President of the Security Council on the Protection of Civilians in Armed Conflict (S/PRST/2002/41). [Return to Text](#)

29. The Aide Memoire was adopted by the Council as an annexe to Presidential Statement 2002/6, with the understanding that it would be updated periodically to reflect new trends. The Security Council in S/PRST/2003/37, reflecting emergent issues and important new language that the Council has used since March 2002, adopted the first updated version of the Aide Memoire. [Return to Text](#)