

Session of Berlin - 1999

**The Application of International Humanitarian Law and
Fundamental Human Rights, in Armed Conflicts in which
Non-State Entities are Parties**

(Fourteenth Commission, Rapporteur : Mr Milan Šahović)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Recalling its Resolutions “Droits et devoirs des Puissances étrangères, au cas de mouvement insurrectionnel, envers les gouvernements établis et reconnus qui sont aux prises avec l’insurrection” (Neuchâtel Session, 1900), “The Principle of Non-Intervention in Civil Wars” (Wiesbaden Session, 1975) and “The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States” (Santiago de Compostela Session, 1989) ;

Recalling further its Resolutions on the “Conditions of Application of Humanitarian Rules of Armed Conflict to Hostilities in which United Nations Forces May Be Engaged” (Zagreb Session, 1971) and on the “Conditions of Application of Rules, Other than Humanitarian Rules, of Armed Conflict to Hostilities in which United Nations Forces May Be Engaged” (Wiesbaden Session, 1975) ;

Considering that armed conflicts in which non-State entities are parties have become more and more numerous and increasingly motivated in particular by ethnic, religious or racial causes ;

Noting that, as a consequence, the civilian population is increasingly affected by internal armed conflicts and ultimately bears the brunt of the resulting violence, causing great suffering, death and privation ;

Noting that armed conflicts in which non-State entities are parties do not only concern those States in which they take place, but also affect the interests of the international community as a whole ;

Bearing in mind that, in the last fifty years, the principles of the United Nations Charter and of human rights law have had a substantial impact on the development and application of international humanitarian law ;

Recalling the ruling of the International Court of Justice that the obligation laid down in Article 1 common to the Geneva Conventions “to respect” the Conventions and to “ensure respect” for them “in all circumstances” derives from general principles of international humanitarian law, with the consequence that it has acquired the status of an obligation of customary international law ;

Emphasizing the ruling of the International Court of Justice that Article 3 common to the Geneva Conventions of 1949 reflects “elementary considerations of humanity” and that the fundamental rules of humanitarian law applicable in armed conflicts “are to be observed ... because they constitute intransgressible principles of international customary law” ;

Considering the ruling of the International Criminal Tribunal for the Former Yugoslavia whereby many principles and rules previously applicable only in international armed conflicts are now applicable in internal armed conflicts and serious violations of international humanitarian law committed within the context of the latter category of conflicts constitute war crimes ;

Supporting the prosecution and punishment by national jurisdictions of those responsible for war crimes, crimes against humanity, genocide or other serious violations of international humanitarian law, as well as the establishment of international tribunals entrusted with this task ;

Recognizing that, under Article 7 of the Rome Statute of the International Criminal Court, crimes against humanity can be committed by persons acting for States or non-State entities ;

Noting that the actions undertaken by the Security Council under Chapter VII of the Charter in armed conflicts in which non-State entities were parties confirm that respect for international humanitarian law is an integral element of the security system of the World Organization ;

Welcoming the United Nations Secretary General's regulation of 6 August 1999 on the Observance by United Nations Forces of international humanitarian law which reaffirms their obligation to comply strictly with humanitarian law, in particular as to the protection of the civilian population, and provides for the possibility of prosecuting members of the military personnel of such Forces in case of violations of humanitarian law, in particular in situations of internal armed conflicts ;

Welcoming also the important role played by the International Committee of the Red Cross (ICRC) in recent conflicts to which non-State entities were parties in seeking to ensure humanitarian protection for all victims and in inviting the parties to such conflicts to abide by elementary principles of humanity, notably to spare the civilian population the effects of violence and devastation ;

Considering that it is desirable that international humanitarian law be reconsidered and adapted to new circumstances, so as to reinforce respect for this law and the protection of victims in armed conflicts in which non-State entities are parties ;

Adopts this Resolution :

I. For the purposes of this Resolution :

- the expression “armed conflicts in which non-State entities are parties” means internal armed conflicts between a government’s armed forces and those of one or several non-State entities, or between several non-State entities ; also included are internal armed conflicts in which peacekeeping forces intervene ;

- the expression “non-State entities” means the parties to internal armed conflicts who oppose the government’s armed forces or are fighting entities of a similar nature and who fulfill the conditions set forth in Article 3 common to the Geneva Conventions of 1949 on the Protection of Victims of War or in Article 1 of the 1977 Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

II. All parties to armed conflicts in which non-State entities are parties, irrespective of their legal status, as well as the United Nations, and competent regional and other international organizations have the obligation to respect international humanitarian law as well as fundamental human rights. The application of such principles and rules does not affect the legal status of the parties to the conflict and is not dependent on their recognition as belligerents or insurgents.

III. Respect for international humanitarian law and fundamental human rights constitutes an integral part of international order for the maintenance and reestablishment of peace and security, in particular in armed conflicts in which non-State entities are parties.

IV. International law applicable to armed conflicts in which non-State entities are parties includes :

- Article 3 common to the Geneva Conventions of 1949 as basic principles of international humanitarian law ;

- Protocol II and all other conventions applicable to non-international armed conflicts ;

- customary principles and rules of international humanitarian law on the conduct of hostilities and the protection of victims applicable to internal armed conflicts ;

- the principles and rules of international law guaranteeing fundamental human rights ;

- the principles and rules of international law applicable in internal armed conflicts, relating to war crimes, crimes against humanity, genocide and other international crimes ;

- the principles of international law “derived from established custom, from the principles of humanity and from dictates of public conscience.”

V. Every State and every non-State entity participating in an armed conflict are legally bound *vis-à-vis* each other as well as all other members of the international community to respect international humanitarian law in all circumstances, and any other State is legally entitled to demand respect for this body of law. No State or non-State entity can escape its obligations by denying the existence of an armed conflict.

VI. In cases of serious violations of international humanitarian law or fundamental human rights, the United Nations and competent regional and other international organizations have the right to adopt appropriate measures in accordance with international law.

VII. Without prejudice to the functions and powers which the Charter attributes to the organs of the United Nations, in case of systematic and massive violations of humanitarian law or fundamental human rights, States, acting individually or collectively, are entitled to take diplomatic, economic and other measures towards any party to the armed conflict which has violated its obligations, provided such measures are permitted under international law.

VIII. Any serious violation of international humanitarian law in armed conflicts in which non-State entities are parties entails the individual responsibility of the persons involved, regardless of their status or official position, in accordance with international instruments that entrust the repression of these acts to national or international jurisdictions.

The competent authorities of a State on the territory of which is found a person against whom is alleged a serious violation of international humanitarian law committed in a non-international armed conflict are entitled to prosecute and try such a person before their courts; they are urged to do so.

IX. In order to achieve a better protection for the victims in armed conflicts in which non-State entities are parties and taking into account the experience of recent armed conflicts of a non-international character the following measures should be considered :

- the conclusion by the parties to such conflicts of special agreements, in accordance with Article 3 paragraph 2 common to the Geneva Conventions of 1949, on the application of all or part of the provisions of the Conventions ;
- the support of States, the United Nations, the ICRC as well as other international bodies of a humanitarian character for measures to verify and oversee the application of international humanitarian law in internal armed conflicts ; furthermore, should the State concerned claim that no internal armed conflict has broken out, the authorisation given to the United Nations or any other competent regional or international organisation to establish impartially whether international humanitarian law is applicable ;
- the application of Protocol II in all non-international armed conflicts, without waiting for its formal revision ;

- the amendment of Protocol II, with a view to complementing its rules and in particular so as :

- (a) to establish an impartial and independent international body designed to investigate respect for international humanitarian law (*cf.* Article 90 of Protocol I) ;
- (b) to add a grave breaches provision addressing, in particular, issues of jurisdiction, extradition and surrender to an international criminal jurisdiction.

X. To the extent that certain aspects of internal disturbances and tensions may not be covered by international humanitarian law, individuals remain under the protection of international law guaranteeing fundamental human rights. All parties are bound to respect fundamental human rights under the scrutiny of the international community.

XI. The Institute welcomes and encourages the progressive adaptation of the principles and rules relating to internal armed conflicts to the principles and rules applicable in international armed conflicts. Therefore it is desirable and necessary that States, the United Nations and competent regional and other international organizations, drawing special inspiration from the important work done by the ICRC in this field, draft and adopt a convention designed to regulate all armed conflicts and protect all victims, regardless of whether such conflicts are international, non-international or of a mixed character.

XII. All States and non-State entities must disseminate the principles and rules of humanitarian law and fundamental human rights which are applicable in internal armed conflicts.

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(25th August 1999)